



Israel: Military Draft Law and Enforcement

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Israel: Military Draft Law and Enforcement

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SUMMARY Israeli law subjects all male and female Israeli citizens and residents to a military draft. Mandatory military service is generally twenty-four to thirty-two months, with this period varying depending on the recruit's gender, age or professional training in medicine or dentistry. Limited exemptions from the draft apply to female recruits under circumstances defined by law.

Two groups within Israeli society, however, have traditionally been exempted from the draft: ultra-Orthodox Jews (Haredi) and Israeli Arabs. The draft deferral provided to Haredi yeshiva (Jewish Orthodox institutions of learning) students has been the subject of multiple public debates and Supreme Court decisions. The deferral often resulted in full exemption from the draft. At present, there is no statutory basis for the deferral nor for exempting Haredi from conscription.

The exclusion of Arab Israelis from the draft has similarly been the subject of public debate as well as of petitions to the Supreme Court, and is expected to be addressed at a later date.

The State Comptroller's Report of March 14, 2018, officially recognized the government's lack of effective and meaningful enforcement mechanisms to facilitate the proper monitoring of service-deferred Haredi yeshiva students and the drafting of those who are not eligible for the deferral.

I. Introduction

The Defense Service Law [Consolidated Version] 5746-1986 generally authorizes the military to draft any qualified Israeli male or female citizen or resident who has reached eighteen years of age for periods determined by the law.¹ Female recruits, however, may be exempted from service under limited circumstances similarly enumerated by law.² The law imposes penalties of two- to five-years' imprisonment for draft avoidance offenses.³

Although the military draft generally applies to all Israeli citizens and residents, a declining rate of conscription has been noted in recent years.⁴

¹ Defense Service Law [Consolidated Version] 5746-1986, §§ 1 & 13, Sefer HaHukim [SH] (official gazette), No. 1170 p. 107 (as amended) (in Hebrew).

² Id. §§ 39 (c) & 40(a).

³ Id. § 46.

⁴ See, e.g., Hagai Amit, *The Israeli Army Needs Ultra-Orthodox Soldiers*, Haaretz (July 2, 2018), <https://perma.cc/VA3L-P239>; see also Avi Jager, *The Myth of Compulsory Military Service in Israel*, Jerusalem Post (Oct. 18, 2018), <https://perma.cc/9XQH-TVCH>.

The following report analyzes current law and relevant court decisions that apply to military draft laws, legal exemptions and draft enforcement within the ultra-Orthodox (Haredi) Jews and the Arab communities in Israel.

II. General Periods of Conscription

A male conscript is generally subject to thirty-two months of military service if he is from eighteen to twenty-six years of age; twenty-six months if he is from twenty-seven to twenty-nine years of age, or if he is a doctor or dentist between thirty and thirty-four years of age. A male immigrant who came to Israel after attaining twenty-seven years of age must serve a period of twenty months in the military. A period of fourteen months, however, will be imposed on a male recruit who is a doctor or dentist and is drafted while between thirty-four and thirty-eight years of age.⁵

A female conscript must generally serve a period of twenty-four months if she is drafted when she is eighteen to twenty-six years of age, or if she is a doctor or dentist of twenty-seven to thirty-four years of age. If she immigrated to Israel after reaching twenty-seven years of age, she will be drafted for a period of eighteen months; if she is a doctor or dentist and is from thirty-five to thirty-eight years of age, she will be drafted for a period of twelve months.⁶

III. Recognized Exemptions

Special exemptions apply to female recruits who are pregnant, are mothers, or who have proved eligibility for an exemption based on “reasons of conscience or reasons connected with [their] religious family background” or “religious conviction.”⁷

Two groups within Israeli society have traditionally enjoyed exemptions from the draft: Haredi Jews and Israeli Arabs. The exemption of members of the Haredi community from military service has been the focus of numerous public debates and government coalition agreements.⁸ Several Supreme Court decisions have deemed draft deferral arrangements for Haredi yeshiva students a violation of the principle of equality and unconstitutional, leaving for a later stage a determination of the constitutionality of the exemption of Israeli Arabs from military service.⁹

At present, draft deferral for Haredi students is one of the central issues to be decided in attempting to reach a coalition agreement for formation of a new government.¹⁰

⁵ Defense Service Law [Consolidated Version] § 15.

⁶ Id. § 16.

⁷ Id. §§ 39(c) & 40(a). (Translated from Hebrew by report author).

⁸ Guidelines and Coalition Agreements, Knesset, <https://perma.cc/C59A-ZWMA>.

⁹ See discussion *infra*, at part IV.

¹⁰ See Ruth Levush, *Here We Go Again: Forming a Coalition Government Israeli Style*, In Custodia Legis (Sept. 26, 2019), <https://perma.cc/EJ94-LQBP>.

IV. Draft Law in Regard to the Haredi Community

A. Background

As of September 26, 2019, the Haredi community constituted 10.1% of the Israeli population.¹¹ Haredi Israelis have traditionally enjoyed a military draft deferment resulting in de facto exemption from service. The deferment was initially based on an arrangement adopted by David Ben-Gurion, Israel's first prime minister and minister of defense. In consideration of the destruction of the yeshivas in Europe during the Holocaust, the goal of the deferral was to prevent the closing of yeshivas in Israel due to their students being drafted into the army.¹²

This objective no longer existed by 1998, when the Supreme Court held that yeshivas were flourishing in Israel, and that there appeared no basis to worry that the draft of yeshiva students, according to any arrangement, would bring about the disappearance of yeshiva institutions.¹³ The decreasing percentage of Haredi enlisting in the Israel Defense Forces (IDF) became the subject of numerous public debates; reports by the State Comptroller; Israel Defense Forces (IDF), ministerial, and parliamentary committee hearings; and numerous decisions by Israel's Supreme Court.¹⁴

B. Legislative History

The conditions and scope of Haredi draft deferment have evolved over time as a result of political considerations, and were often negotiated and constituted part of governmental coalition agreements. In August 2002, the Knesset (Israel's Parliament) for the first time passed a law to regulate draft deferment (Tal Law), which provided a statutory authorization to the Minister of Defense to approve yeshiva students' draft deferments for a period limited to five years.¹⁵

¹¹ Press Release, Israel Cent. Bureau of Stats., Israel in Figures – Rosh Hashanah Selected Annual Data 2019 (Sept. 26, 2019), <https://perma.cc/J7ZS-25TR>.

¹² Ruth Levush, *Israel: Supreme Court Decision Invalidating the Law on Haredi Military Draft Postponement*, Law Library of Congress (updated Mar. 2012), <https://perma.cc/9DU8-4R2Y>. Further developments are provided below.

¹³ HC 3267/97 Rubinstein v. Minister of Defense, 52(5) PD 481, 491 (1998); English translation available at State of Israel: the Judicial Authority (IJA), <https://perma.cc/Z2B4-E5RR>.

¹⁴ Ruth Levush, *supra* note 12; for a statistical report on the Haredi enlistment, see Jerusalem Inst. on Pol'y Res. & Israel Democracy Inst., Statistical Report on Ultra-Orthodox (Haredi) Society in Israel 2017 (Abstract) 22, fig. 13: Ultra-Orthodox Enlisting in the IDF or Serving in National Service (bar chart), <https://perma.cc/3HBV-FQGN>; see also addendum to this report, Major Developments Regarding Military Draft and Deferment Exemptions (chart).

¹⁵ The Deferment of Military Draft for Yeshiva Students Whose Occupation Is the Study of Torah Law, 5762-2002, SH No. 5762 p. 521.

The constitutionality of the Tal Law was examined by the Supreme Court in a number of decisions,¹⁶ and finally struck down in February 2012 as unconstitutional. The court required that it be annulled by August of that year.¹⁷

A newer bill prepared by the governmental Commission for Equal Sharing of the Burden of Service, chaired by MK Ayelet Shaked, was passed by the Knesset plenum in March 2014. The bill set new quotas and targets for conscription of Haredi, and introduced criminal sanctions against those refusing to serve. The bill allowed for an extended “adjustment period” of three years to end in June 2017, during which mandatory conscription would not be enforced, and service deferments would be given to yeshiva students.¹⁸

The 2014 Amendment Law, however, was again amended in November 2015 “[d]ue to pressure from the ultra-Orthodox parties that joined the government after the March 2015 elections for the 20th Knesset and due to subsequent coalition agreements.”¹⁹ This amendment, Amendment No. 21, extended the adjustment period by six years from 2014 to 2020 and moved the final status period from 2017 to 2020, among other things. Similar to the Tal Law that was struck down as unconstitutional, the amendment gave the Minister of Defense the discretion to decide on targets and quotas for draft of Haredi.²⁰ According to the Israel Democracy Institute (IDI),

Amendment 21 emptied the original law (passed in the summer of 2014) of any meaning, because with no clear targets to serve as the basis or imposing sanctions for avoiding conscription on both individual and institutional levels, the situation returned to what it was before the Tal Law. That is, enlistment of ultra-Orthodox Israelis to the IDF is once again voluntary, rather than being required by law, and is dependent on agreements, understandings, and cooperation between the secular and ultra-Orthodox communities.²¹

In its 2017 decision, the Supreme Court, by a majority of eight judges out of nine, overturned Amendment No. 21 and held that the arrangement it provided for drafting the Haredi harmed the principle of equality and violated the constitutional right to dignity²² of those who “were obliged to serve in the military.”²³ The majority opinion written by Court President Miriam Naor found that the arrangement proposed by the amendment constituted “a deep failure in

¹⁶ HC 6427/02 Movement for Quality of Government v. Knesset (Dec. 12, 2005), IJA, <https://perma.cc/Z8A2-4HAF>.

¹⁷ HC 6298/07 Resler v. Knesset 63, IJA <https://perma.cc/SQ6G-E6AQ>, English translation available at <https://perma.cc/3NDF-X8DF>.

¹⁸ Defense Service (Amendment No. 19) Law, 5774-2014, SH No. 2441 p. 350.

¹⁹ Asaf Malchi, *The “People’s Army”?*, Israel Democracy Inst. (Oct. 16, 2018), <https://perma.cc/PH3B-48QH>.

²⁰ Defense Service (Amendment No. 21) Law, 5776-2015, SH No. 2512 p. 262.

²¹ Malchi, *supra* note 19.

²² HC 1877/14 Movement for Quality Government in Israel v. Knesset, para. 42, IJA, <https://perma.cc/M4KD-UTLY>.

²³ *Id.* para 46.

[the government's] ability to realize the goal of significantly reducing the inequality in the distribution of military service burden[.]”²⁴

Striking down Amendment No. 21,

[t]he full plenum of justices, headed by Supreme Court Chief Justice Miriam Naor, ruled again that the arrangement is neither constitutional nor proportional, in that it is not equitable and does not include sanctions against those who do not enlist; and further ruled that the law should be annulled within a year. The justices also criticized the temporary nature of the law and the fact that it makes no clear provision for what will happen after the “second adjustment period” in 2023; and offers no hope of any significant change in the desired conscription arrangement for the ultra-Orthodox following this period[.]²⁵

To allow for preparing for the consequences of cancellation of the arrangement, the Court voided it effective one year from the date of the judgment, namely, from September 12, 2018.²⁶

C. Current Legal Status

With the absence of a legislative basis for draft deferral for Haredi following the September 12, 2018, expiration date of Amendment No. 21, the interim government filed a new draft bill on July 2, 2018, Amendment No. 25 to the Defense Service Law.²⁷ This bill has not been presented for a second and third reading as required for passage²⁸ and has been criticized by various parties and by the IDI, among others.²⁹

The draft of yeshiva students became a focal issue at the second round of national elections and of current coalition negotiations.³⁰ The adoption of legislation that would drastically increase the Haredi draft is opposed by ultra-Orthodox parties.³¹ At present, in the absence of any law regulating the Haredi's exemption from military service, they are subject to the draft.

²⁴ Id. para 73.

²⁵ Malchi, *supra* note 19.

²⁶ HC 1877/14 verdict.

²⁷ Draft Bill for Integration of Yeshiva Students (Defense Service Amendment No. 25), 5778-2018, Hatsaot Hok Hamemshala (Government Bills) HH (Knesset) No. 1238 p. 1005.

²⁸ For the bill's legislative status, see Draft Bill for Integration of Yeshiva Students (Defense Service Amendment No. 25), 5778-2018, <https://perma.cc/KJ9N-7ZHK>.

²⁹ For a review of the bill submitted to the Knesset Committee, see Yohanan Plasner et al., Opinion, Comments and Suggestions for Correction of the Arrangement Proposed by Amendment 25 to the Security Service Law, IDI (July 5, 2018), <https://perma.cc/3JCB-ZF8D>.

³⁰ See, e.g., Yonatan Lis, *Lieberman: The Draft Law Is Not a Caprice, This Is the Offer and There Is Nothing More to It*, Haaretz (May 28, 2019), <https://perma.cc/L4GH-UE6D>.

³¹ Toi Staff, *Netanyahu's Ultra-Orthodox Allies Stick Loyal by His Side*, Times of Israel (Sept. 22, 2019), <https://perma.cc/U9FR-JTJ5>.

V. Applicability of the Draft Law to the Israeli Arab Minority

By the end of 2018, Israeli Arabs constituted almost 20% of Israel's population.³² While members of the Druze³³ and Circassian³⁴ small minority communities³⁵ are usually drafted, Arab Muslims, Christians, and Bedouins usually have not been called to enlist, but could individually request to be drafted.³⁶ The exemption of Israeli Arabs is not based on statutory law. Instead, it is based on the discretionary powers of the Israel Defense Forces [IDF] to enlist qualified persons in accordance with the provisions of the Defense Service Law.³⁷ The policies of excluding Israeli Arabs from the draft are contained in guidelines issued by the IDF Human Resource Department and must be interpreted according to law.³⁸

Similar to the non-drafting of yeshiva students, the exclusion of Arab Israelis from the draft dates back to the establishment of the Jewish state. "One of the questions was the readiness of the Arab minority to accept the results of the War of Independence . . . the existence of the new state, recognize its character and show loyalty to the state[.]"³⁹

A scholarly article suggests that in recent years, however, the non-enlistment of members of the Arab minority community is based on reasons such as state security and the humanitarian consideration of not forcing Israeli Arabs "to serve in an army that is in direct conflict with the Palestinian people and part of the Arab nation."⁴⁰ Similar to objections raised for non-drafting of Haredi Jews, the exclusion of Arab Israelis from the draft has been the subject of public debate as well as of petitions to the Supreme Court, and is expected to be addressed at a later date.⁴¹

VI. Rate of Enforcement

A report issued by Israel's State Comptroller on March 14, 2018, criticizes "[b]arriers to encouraging the Bedouin sector to volunteer for service in the IDF."⁴² The report further

³² *Population by Religion and Population Group* (Oct. 16, 2019), Cent. Bureau of Stats., <https://perma.cc/7E7T-4MMZ>.

³³ *Druze*, Encyclopedia Britannica, <https://perma.cc/E94G-ZVX8>.

³⁴ Oren Kessler & Ron Almog, *Circassians Are Israel's Other Muslims*, Forward (Aug. 20, 2012), <https://perma.cc/EX72-D8VL>.

³⁵ *The Druze and the Circassians of Israel*, Israel Ministry of Foreign Aff. (Dec. 3, 2015), <https://perma.cc/MA3X-7YJZ>.

³⁶ Liav Orgad, *The Arab Minority in Israel and the Defense Service* 383 (2006), <https://perma.cc/RP8H-424T>.

³⁷ Defense Service Law [Consolidated Version] § 13; Orgad at 384.

³⁸ Orgad at 385.

³⁹ Id. at 389.

⁴⁰ Id. at 399-401.

⁴¹ Id. at 401-404.

⁴² Annual Report 68B, *Ministry of Defense: Ministry of Defense Activities to Strengthen the Connection between Youth and IDF and Designated Recruits*, State Comptroller's Office p. 50 (Mar. 14, 2018, in Hebrew), <https://perma.cc/5S3Z-7LHY>.

found “[d]elays in the security system activity in promoting meeting recruitment goals of yeshiva students.”⁴³

The report concluded that from 2013 to 2016, “the defense establishment did not meet its recruitment targets as determined by the government, and the gap between the actual scope of recruitment of Yeshiva students and the draft goals increased roughly eight times over three years, from a 4.1% gap in 2013 to an 11% gap in 2016.”⁴⁴ The report further noted the delays in preparation and review of a governmental draft plan for the draft.⁴⁵

The report found “lack of effective and meaningful enforcement mechanisms, to facilitate proper monitoring of service-deferred yeshiva students and drafting those who do not carry the burden of study in a yeshiva, in the way required by the draft law.”⁴⁶

VII. Conclusions

Referring to the exemptions given to the ultra-Orthodox Jews and to Arab Israelis, an October 18, 2018, *Jerusalem Post* article states that “[t]ogether these groups constitute over 30% of the Israeli population and, as their birth rate is significantly higher than other groups within Israel, they are set to constitute a whopping 60% of the Israeli population by 2050.”⁴⁷ Realizing the socio-economic impact of exempting an ever increasing segment of the population from the draft, this issue has remained a matter of hot debates in Israeli society.

An official recognition of lack of enforcement was provided in the State Comptroller’s Report of March 14, 2018, that found lack of effective and meaningful enforcement mechanisms to facilitate proper monitoring of service-deferred yeshiva students and drafting of those who are ineligible for the deferral as they do not attend a yeshiva on a full-time basis.⁴⁸

Instead of effectively subjecting members of the two groups, and particularly of the Haredi, to the draft, some have suggested that:

Israeli leaders haven’t countered these trends but rather encouraged them. They claim that the current threat level facing the state does not justify the great expense of sustaining a mass army. They fear that reversing the conscription exemption for ultra-Orthodox Jews and Arab Israelis, or enforcing military enlistment on those who evade it, would only lead to unnecessary expenses and would be operationally ineffective.⁴⁹

⁴³ Id. at 51.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id. at 52.

⁴⁷ Jager, *supra* note 4.

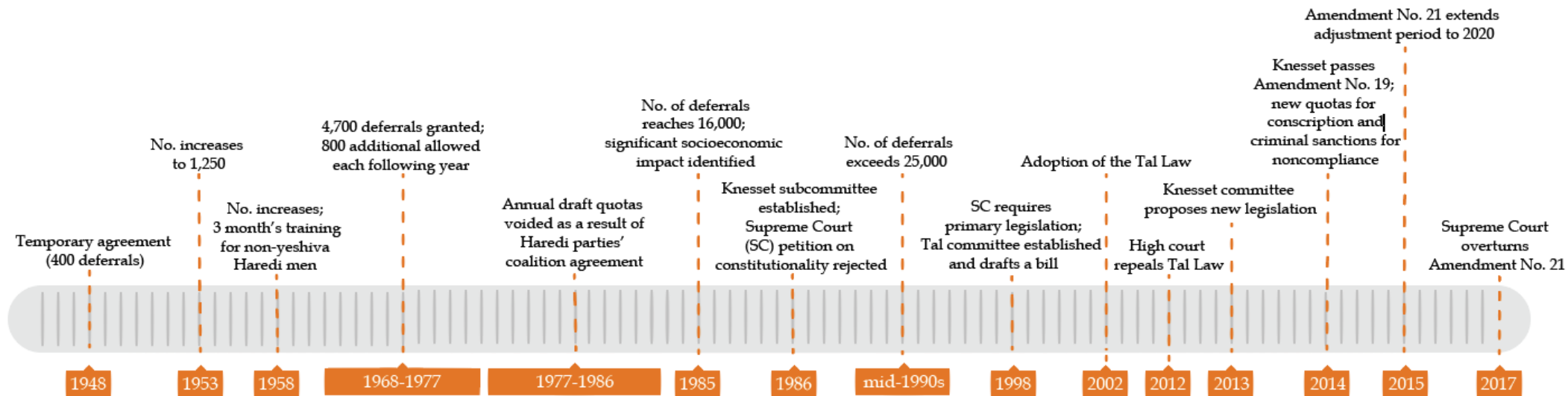
⁴⁸ Annual Report 68B, *supra* note 42.

⁴⁹ Id.

As military draft enforcement is one of the issues awaiting resolution in ongoing coalition negotiations for the formation of a coalition government, new developments are expected in the near future.

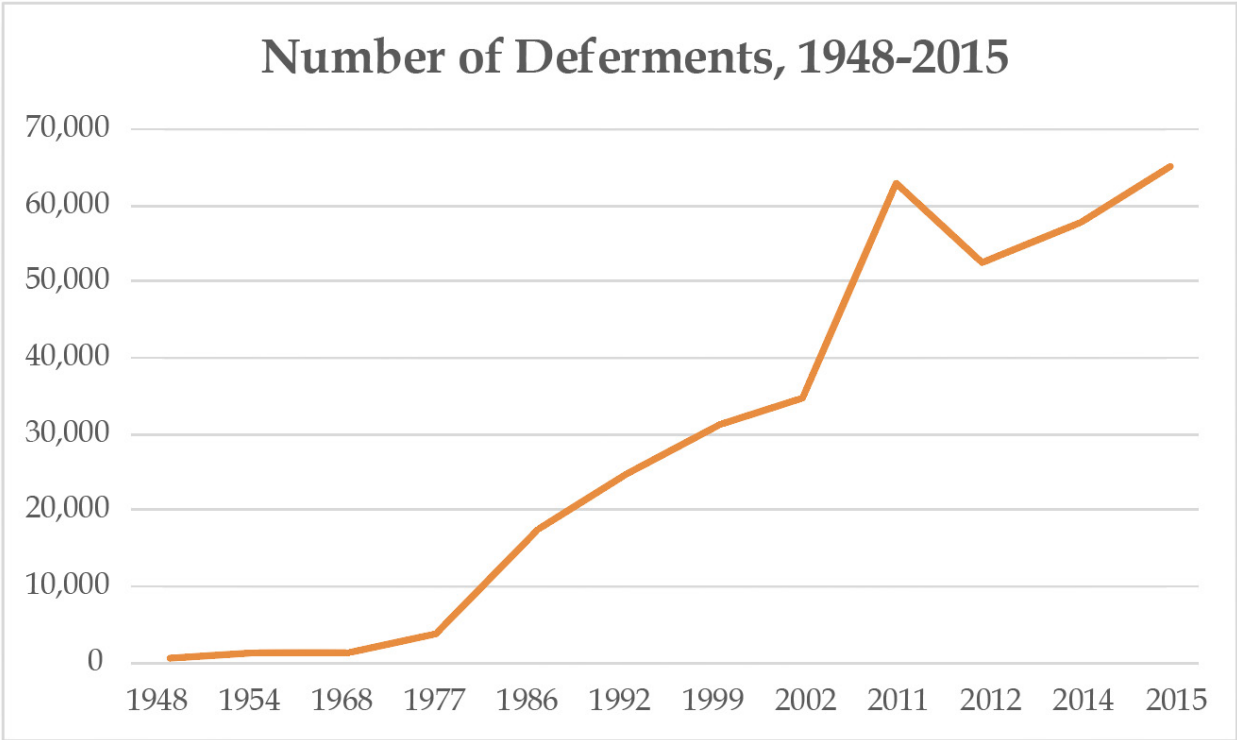
Figure 1

Major Developments Regarding Military Draft and Deferment Exemptions



Source: Susan Taylor, Law Library of Congress, based on information contained in Asaf Malchi, *The "People's Army"?*, Israel Democracy Inst. (Oct. 16, 2018), <https://perma.cc/PH3B-48QH>.

Figure 2



Source: Susan Taylor, Law Library of Congress, based on information contained in Asaf Malchi, *The “People’s Army”?*, Israel Democracy Inst. (Oct. 16, 2018), <https://perma.cc/PH3B-48QH>.is report.