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# A Conscientious Objector's Guide to the International Human Rights System

War Resisters' International, Quaker United Nations Office Geneva,  
Conscience and Peace Tax International, CCPR Centre

Compiled by Andreas Speck

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Published by  
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Conscience and Peace Tax International and the CCPR Centre



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Published by War Resisters' International, Quaker United Nations Office Geneva, Conscience and Peace Tax International and the CCPR Centre  
Compiled by Andreas Speck  
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## Foreword

The international human rights system is not always easy to understand. It can be difficult to assess the possible benefits of using one process rather than another, and this often prevents campaigners unfamiliar with these systems from using them. With this in mind, in 2000 the Quaker UN Office, Geneva, and War Resisters' International published *A Conscientious Objectors Guide to the UN Human Rights System* written by Emily Miles. In the year 2000, there was little explicit reference to conscientious objection to military service.

Since that time, the understanding and recognition of conscientious objection to military service has moved forward dramatically. In particular, the UN Human Rights Committee has made clear that it is protected as an inherent part of the right to freedom of thought, conscience and religion under the International Covenant on Civil and Political Rights, and that States must provide for conscientious objectors. Following this, the European Court of Human Rights, which has binding legal powers over Council of Europe States, has issued a series of judgements also recognising that conscientious objection to military service is protected under that Convention.

These breakthroughs mean that there is now a solid legal basis to which States can be held, and which can also be used by other international and regional bodies and procedures for their own work on this issue.

At the same time, these positive developments have meant that it was necessary to expand this updated version of the Guide to encompass the regional human rights systems as well as the United Nations. Fortunately, having an on-line version means that it is readily searchable and material can be accessed via weblinks, meaning that - although longer - it should be easier to use. This is important as each part of each system has its own particularities and requirements.

The main purpose is to guide individuals and organisations wishing to raise issues and cases about conscientious objection in what the possibilities are, how to use them, and the likely advantages and disadvantages of the different procedures. We hope that, in breaking down the steps involved, these mechanisms become more approachable.

The major steps forward that have occurred have resulted not only from individual actions, but from the greater awareness and understanding developed within these systems through having to consider cases and issues arising from different countries and regions. In addition, the greater visibility arising because of the judgements, opinions, views, concluding observations and reports issued as a result also contribute to a broader knowledge and understanding, including by people and within countries who might not previously been aware of conscientious objection to military service, and why it is important.

I commend this Guide to all those working on conscientious objection to military service and look forward to seeing the results.

Rachel Brett

December 2012



## About this guide

This guide updates and expands the publication *A Conscientious Objectors Guide to the UN Human Rights System*, published jointly by War Resisters' International and the Quaker United Nations Office, Geneva, in 2000, and compiled by Emily Miles<sup>1</sup>. The initial publication was extremely useful in raising awareness about the use of the United Nations human rights system to advance the right to conscientious objection to military service, and to protect conscientious objectors from persecution.

However, there have been a number of advancements in relation to the right to conscientious objection to military service since the initial publication, which made an update necessary. The most important of these has been the United Nations Human Rights Committee decision in the case of the complaint by *Yeo-Bum Yoon and Myung-Jin Choi vs. Republik of Korea* from January 2007, in which the Human Rights Committee for the first time explicitly recognised the right to conscientious objection to military service<sup>2</sup>. Other UN mechanisms too have increasingly dealt with conscientious objection to military service, creating a wealth of opinions and jurisprudence recognising the right to conscientious objection.

Initial discussions between War Resisters' International and the Quaker United Nations Office, Geneva, about updating the 2000 Guide go back to 2008. It quickly became clear that a simple update of the UN system would not be sufficient. In their work with human rights and conscientious objection organisations from all parts of the world, both, War Resisters' International and the Quaker United Nations Office, Geneva, often a lack of comparative knowledge of the different regional and international human rights mechanisms, and tendency to do "the usual" - meaning to use the regional or international system usually used by NGOs from a respective country, irrespective of whether or not the system had a good track record on conscientious objection to military service. Both organisations therefore felt that a comparative overview of the United Nations' and regional human rights systems would be needed, to enable conscientious objectors, their organisations and human rights NGOs to make an informed choice which system to use.

Work on this guide began in 2010, thanks to a generous grant by the *Joseph Rowntree Charitable Trust*. In addition to WRI and QUNO, Geneva, it was possible to involve Conscience and Peace Tax International (CPTI) as another international NGO working on conscientious objection, and the Centre on Civil and Political Rights (CCPR Centre) as an organisation supporting NGOs in working with the United Nations Human Rights Committee.

This *Conscientious Objector's Guide to the International Human Rights System* is mainly intended as a web publication (see <http://co-guide.org>), which allows users a quick overview of relevant human rights mechanisms applicable to their situation. While it can be read as a book, its main use is as an interactive guide. It is aimed at conscientious objectors to military service anywhere in the world who struggle for the recognition of their right to conscientious objection, or against discrimination for being a conscientious objector, and who want to use international or regional human rights systems in their struggle. It can also be used by local or national organisations of conscientious objectors to military service, or by human rights NGOs supporting conscientious objectors to help them to access international or regional human rights systems.

Some human rights mechanisms can be used in individual cases of human rights violations - the prosecution or imprisonment of a conscientious objector to military service, or an individual case of discrimination. Others are more suitable for highlighting state law (and the lack of recognition of the right to conscientious objection) or state practice, and for putting pressure on the State to comply with international human rights standards.

Human rights - and human rights systems - are dynamic and evolving. While every effort has been made to provide accurate descriptions of the human rights mechanisms included in this guide, and to include all relevant jurisprudence, we can not guarantee that all information remains correct. We therefore recommend to use this as a guide, and not as a reference book, and to always check the official website of the different mechanisms before making a submission.

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1 Available online at: <http://wri-irg.org/books/co-guide-un.htm>

2 Yeo-Bum Yoon and Mr. Myung-Jin Choi vs. Republic of Korea, CCPR/C/88/D/1321-1322/2004, 23 January 2007, <http://wri-irg.org/node/6221>

## Acknowledgements

This Guide would not have been possible without the support of many people who helped shape the idea, and commented on drafts. *Christopher Eduard Bösch* did some initial research and wrote very first drafts of especially some of United Nations chapter. *Rachel Brett, Derek Brett, Peggy Brett* and *Patrick Mutzenberg* helped to shape the idea and provided comments on many of the chapters.

*Albert Beale* did a lot of the proofreading, to turn this publication - as much as possible - into proper English.

*Boro Kitanoski* helped with the graphics on pages 42 and 56.

*Netuxo Ltd* did a great job on the development of the website at <http://co-guide.org>, also available under <http://co-guide.info>.

My colleagues in the WRI office and the WRI Executive had to cope with my frustrations and complaints about the work on this Guide, and the delay this caused to other important WRI work.

And last but not least, special thanks go to the *Joseph Rowntree Charitable Trust*, who did not only provide the funding for this publication, but also for WRI's Right to Refuse to Kill programme.

Andreas Speck, December 2012



## Before you start

### Acronyms

AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACRWC	African Charter on Rights and Welfare of the Child
ACERWC	African Committee of Experts on Rights and Welfare of the Child
CAT	Committee Against Torture
CCPR	Human Rights Committee (Committee on Civil and Political Rights - CCPR)
CERD	Committee for the Elimination of Racial Discrimination
CESR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights (until 2006)
CM	Committee of Ministers (of the Council of Europe)
CO	conscientious objector, conscientious objection to military service
CoE	Council of Europe
COMESA	Common Market for Eastern and Southern Africa
CRC	Convention on the Rights of the Child
CRTF	Country Report Task Force. See Human Rights Committee
CSO	Civil Society Organisation
EAC	East African Community
EACJ	East African Court of Justice
ECHR	European Court of Human Rights
ECOSOC	UN Economic and Social Council
ECOWAS	Economic Community Of West African States
ECSR	European Committee of Social Rights
EU	European Union
EUSR	European Union Special Representative
FRA	European Union Agency for Fundamental Rights
HRC	Human Rights Council
IACHR	Inter-American Commission on Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NGO	Non-Governmental organisation
OAS	Organization of American States
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner on Human Rights
OIJ	Organización Iberoamericana de Juventud - Ibero-American Youth Organisation
OPAC	Optional Protocol on Children in Armed Conflict (OP2)
OPSC	Optional Protocol on the Sale of Children (OP1)
OSCE	Organisation for Security and Cooperation in Europe
OP	Operative Paragraph
PP	Preamble Paragraph
SADC	Southern African Development Community
SR	Special Rapporteur
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	(Office of) United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
WGAD	Working Group on Arbitrary Detention



## Conscientious objection to military service - can international human rights systems help?

Although human rights systems will not provide solutions to all problems related with conscientious objection to military service, they can be of help in certain situations. However, it is important to be realistic, and not to expect that human rights - and international human rights systems - can solve the social and political problems of war and militarism.

There are many motivations for conscientious objection to military service. Most conscientious objectors strive for a society free of war and militarism. The vast majority of conscientious objectors do not only want to be exempted from military service, but see their conscientious objection in the context of a social and political struggle against war and militarism, and for a more just and peaceful society. The use of human rights systems can never be a substitute for this necessary struggle - but it can add a different dimension, it can help to protect conscientious objectors to military service, and it can contribute to the legal recognition of the right to conscientious objection to military service.

When using human rights systems, it is important to be aware of their limitations, of what they can achieve and what not. Bearing this in mind, international and regional human rights system can be an important tool for conscientious objectors to military service and their movements, and for NGOs supporting conscientious objectors.

The different international and regional human rights systems play a role in monitoring State practice of human rights, including the right to conscientious objection. This role can be beneficial for the lobbying of national governments and authorities, and to argue cases in national courts, up to the national Constitutional or Supreme Court.

This guide describes the way how you can use the different human rights systems, and which system might be the most promising one to use, when the right to conscientious objection has not been recognised or has been implemented in an unfair manner.

## The right to conscientious objection in the different human rights systems

Although the right to conscientious objection is not explicitly mentioned in any of the key human rights treaties (with the exception of the European Charter of Fundamental Rights) - globally (the United Nations) or regionally - it has often been recognised as a right.

### United Nations human rights system

The United Nations system has recognised conscientious objection as an *inherent* part of the right to freedom of thought, conscience and religion, and the different parts of the United Nations system - especially the *Human Rights Council* (page 51) building on the work of the former Human Rights Commission, and the *Human Rights Committee* through its Concluding Observations (see page 19) and Views on individual cases (see page 35) have developed a set of standards in relation to the right to conscientious objection to military service, which can be used to lobby national authorities and to argue in national courts.

### The European systems

Especially the Council of Europe took up the right to conscientious objection quite early - well before any other system - with its Recommendation 478 (1967) from 26 January 1967 (see page 138). However, in the end it lagged behind the UN system, and only in 2011 did the European Court of Human Rights (see page 133) recognise the right to conscientious objection as a *manifestation* of freedom of thought, conscience and religion.

### The Inter-American system

The Inter-American human rights system is presently less advanced. Although the American Convention on Human Rights also recognises the right to freedom of thought, conscience and religion, the Inter-American Human Rights Commission (see page 110) has so far not explicitly recognised the right to conscientious objection as protected under this provision. In fact, the jurisprudence of the Inter-American Human Rights Commission (see page 113) has so far been disappointing.

### The African human rights systems

The different African human rights systems - be it the *African Commission on Human and Peoples' Rights* (see page 90) or the *ECOWAS Community Court of Justice* (see page 105), or any other - have so far not dealt with the question of conscientious objection to military service. While article 8 of the *African Charter on Human and Peoples' Rights* also protects the right to freedom of conscience - and analogous to the similar provisions in the International Covenant, the European Convention, or the American Convention should therefore also include the right to conscientious objection to military service - this has so far not been tested.

Even though the different human rights systems are formally independent, they nevertheless do relate to each other. Advances in one system - e.g. the United Nations system - can be used to advance another system, and this is important when choosing which mechanism to use. Each of the many different mechanisms has its advantages and disadvantages, and might be more or less advanced on the concrete issue in question, and this can make the choice of mechanism more complicated. Hopefully, this guide will help to make the choice easier by giving a comprehensive overview.

Finally a word of warning: although many human rights mechanisms might be judicial or quasi-judicial mechanisms - others are clearly political, such as the *United Nations Human Rights Council* - they do not necessarily in a political vacuum. Just have the "right" legal arguments might not always be sufficient to win a case, especially when it comes to overturning existing jurisprudence, setting a new precedent or developing new human rights standards. It is therefore important to "play" the different human rights systems intelligently, and to get in touch with the organisations listed on page 157 if you want to engage in changing jurisprudence or standards setting. Trial and error might be a nice tactic in many areas of daily life, but not when it comes to human rights, as negative jurisprudence can make progress more difficult for others for decades to come.

To conclude, while the different human rights mechanisms presented in this guide will not bring about a demilitarised world - that's well beyond their mandate - they can make the lives of conscientious objectors safer and easier, and this is a worthwhile goal in itself. It can then free up energy and resources for the social and political struggle and war and militarisms, and for a more peaceful and just world.

## How to use this guide

The various human rights systems - the UN, the Council of Europe and the other regional systems - are complicated. Different mechanisms have their own processes, requirements, and potential outcomes. In addition, it can be difficult to choose which system might be the most effective, or most promising, to use.

This guide can be read like a book or manual, to get an overview of the different systems available. However, it is more intended to be used as an interactive guide online at <http://co-guide.org> or <http://co-guide.info>, to help you choose the most promising avenue.

If you want to use this guide in this way, you should first clarify what you want to achieve. The search function of the website version of the guide will help you with this process.

Starting with the **country**, ask yourself the following questions:

- Am I concerned with an **individual case**?
- If yes, am I interested in **urgent action**?
- Does the case concern a **person under 18 years**?
- If it is not about an individual case, am I interested in changing **state laws**?
- Or am I interested in changing **state practice**?

These questions will help you to narrow down your search, so that you can get an overview of those international human rights mechanisms that can be useful to achieve your objectives.

In addition, you can refine your search using different aspects in relation to conscientious objection. Are you concerned with:

- the **recognition of conscientious objection to military service**. This includes the question whether the right to conscientious objection is recognised at all, or only at certain times (e.g. during peacetime), and also whether total objection to military and substitute service is recognised.
- **Length/terms of substitute service**. This includes questions relating to the length of substitute service (is it of punitive length? - there are different standards for this in the different systems), or other discriminating terms of substitute service, e.g. payment, working conditions, etc.
- **Time limits for CO applications**. Are there time limits for applying for conscientious objection, for example does an application have to be made until a certain time before call-up for military service?
- **Discrimination of conscientious objectors**. This refers to discrimination between different conscientious objectors, for example which reasons for conscientious objection are accepted, or whether certain groups - e.g. religious groups, or people who ever had problems with the police - are automatically excluded from the right to conscientious objection.
- **in-service conscientious objection**. This refers to whether conscientious objection is allowed also for conscripts who are already serving their military service. It can also apply to professional soldiers who initially joined the Armed Forces voluntarily.
- **Selective conscientious objection**. Are only total pacifists recognised as conscientious objectors, who refuse participation in all wars, or is it sufficient to oppose certain wars?
- **Repeated punishment of conscientious objectors**. In countries where the right to conscientious objection is not recognised, are conscientious objectors punished more than once?
- **CO to military taxation**. Is the right to refuse to pay the proportion of one's tax which is used to fund war recognised? Are there provisions for conscientious objectors to military taxation to make sure that no part of their taxes is used to fund war or weapons?

These different aspects will help you to narrow down the results of your search, and especially relevant jurisprudence or interpretations of international human rights law.

The search function will provide you with a list of applicable mechanisms, and display a summary for each of the mechanisms, to give you some overview. You can click on the title of a mechanism to get a more

detailed description, its legal basis, relevant interpretations of the relevant legal basis and/or human rights treaties, and case law, jurisprudence, relevant opinions or reports of the mechanism.

For each of the aspects there are three different levels of recognition:

- positive or recognised (symbolised by a +)
- neutral (symbolised by a o)
- negative or not recognised (symbolised by a -)

The meaning of these levels differs slightly between a legal basis on the one hand, and interpretations and jurisprudence on the other hand.

For a legal basis, if an aspect is marked with a +, it does not necessarily mean that it is explicitly recognised in this legal basis, but that it can be argued that it can be derived from it (as conscientious objection is now recognised as either *inherent in* or a *manifestation of* the right to freedom of thought, conscience and religion). A legal basis which does not in itself guarantee human rights, but merely establishes a mechanism (such as the Optional Protocol to the International Covenant on Civil and Political Rights) will have all aspects set to neutral, and it is then important to check the relevant human rights treaty.

For interpretations and jurisprudence (which might come under many different names), “recognised” or a + means that there is an explicit reference to this aspect in the interpretation or jurisprudence, recognising this right. “Not recognised” or a - means that there is an explicit non-recognition. Should you encounter this, you should first check if there has been a more recent interpretation or jurisprudence overturning this. If this is not the case, it might be advisable to choose a mechanism which offers a better recognition, or - if such a mechanism does not exist - to get in touch with the organisations on page 157.

## The United Nations

The different bodies of the United Nations have repeatedly dealt with the question of conscientious objection to military service. The *UN General Assembly* resolution on the “*Status of persons refusing service in military or police forces used to enforce apartheid* ([Resolution 33/165](#))” from 20 December 1978 recognised “*the right of all persons to refuse service in military or police forces which are used to enforce apartheid*”.

Both, the former Commission on Human Rights, and the Human Rights Council, which replaced the Commission in 2006, have recognised the right to conscientious objection in numerous resolutions since 1987, with the Human Rights Council reaffirming the resolutions of the former Commission on Human Rights in its [resolution](#) from 5 July 2012.

The issue of conscientious objection to military service is repeatedly taken up during the *Universal Periodic Review* of all member States of the United Nations within the framework of the Human Rights Council (see page 51). In addition, several of the Special Procedures of the Human Rights Council are relevant to the question of conscientious objection, especially:

- the *Special Rapporteur on Freedom of Religion and Beliefs* (see page 69);
- the *Working Group on Arbitrary Detention* (see page 79).

An overview of some other potentially relevant Special Procedures is given on page 65.

Two human rights treaties are especially relevant for conscientious objectors to military service:

- the *International Covenant on Civil and Political Rights* (ICCPR), which is overseen by the Human Rights Committee. Article 18 of the ICCPR recognises the freedom of thought, conscience and religion, and the interpretations and jurisprudence of the Human Rights Committee have established that this includes the right to conscientious objection to military service.
- the *Convention on the Rights of the Child*, and the *Optional Protocol on Children in Armed Conflict* do not directly deal with conscientious objection, but are relevant in relation to the recruitment of under-18s.

In addition, the *Office of the United Nations High Commissioner for Human Rights* (OHCHR) and its country presences can be of use to conscientious objectors.

## Office of the United Nations High Commissioner for Human Rights (OHCHR)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is responsible for leading the United Nations human rights programme and for promoting and protecting all human rights established under the Charter of the United Nations and international human rights law.

State law & practice	✓
Individual cases	✓
Urgent action	✓
Only under-18s	

The High Commissioner for Human Rights is the principal human rights official of the United Nations. He/She heads OHCHR and spearheads the United Nations' human rights efforts.

The Office of the United Nations High Commissioner for Human Rights provides secretariat support to the nine core human right treaty bodies including the *Human Rights Committee* (CCPR), the *Committee on Economic, Social and Cultural Rights* (CESCR) and the *Human Rights Council* with its subsidiary mechanisms as the Advisory Committee, the *Universal Periodic Review* and the two Working Groups established under the Council's *Complaint Procedure*, the *Working Group on Communications* and the *Working Group on Situations*. In this role it receives communications, forwards them to the State concerned and engages in dialogue with the aim of securing respect for the human rights stipulated in the international human rights treaties.

The OHCHR can also be an important independent actor for the protection of human rights, including the right to conscientious objection. This is especially the case where the OHCHR is present in a country through its country offices or regional offices.

Currently the OHCHR has offices in Bolivia, Cambodia, Colombia, Guatemala, Guinea, Mauritania, Mexico, Nepal, the Occupied Palestinian Territories (stand-alone office), Kosovo (Serbia), Togo, and Uganda.

Details of country offices can be found at

<http://www.ohchr.org/EN/Countries/Pages/CountryOfficesIndex.aspx>.

The OHCHR has 12 regional offices/centres covering East Africa (Addis Ababa), Southern Africa (Pretoria), West Africa (Dakar), Central America (Panama City), South America (Santiago de Chile), Europe (Brussels), Central Asia (Bishkek), South East Asia (Bangkok), Pacific (Suva) and the Middle East (Beirut). Details of the regional offices are available at

<http://www.ohchr.org/EN/Countries/Pages/RegionalOfficesIndex.aspx>.

Both, country offices and regional offices are engaged in the promotion and protection of human rights, and cooperate also with NGOs. Information they receive will be used for the compilation of the OHCHR report as part of the Universal Periodic Review (see below). In case of a national or regional presence, it can be very useful to establish a relationship with the relevant office of the OHCHR, and to keep them informed of the situation, and of individual cases.

The OHCHR is also coordinating the United Nations human rights education and public information programmes.

### Contact:

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson

52 rue des Pâquis

CH-1201 Geneva, Switzerland

Telephone: +41 22 917 9220

E-mail: [InfoDesk@ohchr.org](mailto:InfoDesk@ohchr.org)

<http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>

### Office holder(s)

September 2008 - present:

Ms. Navanethem Pillay



**Legal basis**

<b>Name</b>	<b>Entry into force</b>	<b>Synopsis</b>	<b>Categories</b>
<b>Charter of the United Nations</b>	24 October 1945	<p>The preamble to the Charter of the United Nations states that <i>"we the peoples of the United Nations"</i> are determined (...):</p> <ul style="list-style-type: none"> <li>to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and</li> <li>to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained</li> </ul> <p><a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a></p>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	<p>Article 18 of the Universal Declaration of Human Rights: <i>"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."</i></p> <p><a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a></p>	All
<b>International Covenant on Economic, Social, and Cultural Rights</b>	3 January 1976	<p>Article 6 guarantees the <i>"right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"</i>. A substitute service that is much longer than military service can be seen as a disproportionate restriction of this right. Article 13 guarantees the right to education.</p> <p><a href="http://www2.ohchr.org/english/law/cescr.htm">http://www2.ohchr.org/english/law/cescr.htm</a></p>	Length/terms of substitute service
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	<p>Article 18:</p> <p><i>"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</i></p> <p><i>2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</i></p> <p><i>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</i></p> <p><i>4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."</i></p> <p><a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a></p>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

**Further reading**

- Office of the High Commissioner for Human Rights: *Working with the United Nations Human Rights Programme. A Handbook for Civil Society*. New York and Geneva 2008, [http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook\\_en.pdf](http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf), accessed 12 December 2012
- Office of the High Commissioner for Human Rights: *Human Rights in action. Promoting and Protecting Rights Around the World*. 2003, <http://www.ohchr.org/Backup%20%281%29%20of%20Documents/Countries/terrain.pdf>, accessed 12 December 2012

## Human Rights Committee State Reporting Procedure

State law & practice	✓
Individual cases	
Urgent action	
Only under-18s	

### Summary:

The Human Rights Committee (hereinafter referred to as HR Committee or Committee) is a treaty-based mechanism which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) (see: <http://www2.ohchr.org/english/law/ccpr.htm>) by State Parties. This is done through the examination of regular reports from States Parties (for States Parties see [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-4&chapter=4&lang=en)) The report is examined through a six-hour (periodic reports) or nine-hour (initial reports) dialogue between the Committee and representatives of the State. During the dialogue Committee members may raise any civil or political rights issues, including rights not addressed in the State report. After the dialogue, the Committee produces *Concluding Observations*, which outline recommendations, and comment on the State's practice and legislation.

The Committee addresses conscientious objection to military service under article 18 of the ICCPR.

### 1. Likely results from use of the mechanism

During the examination of the State's report, members of the Committee may also raise issues related to conscientious objection to military service. If the Committee comes to the conclusion that the State's practice does not comply with the ICCPR, it will outline this in its Concluding Observations in the form of concerns and recommendations. When the State reappears in front of the Committee, the Committee will be highly likely to ask the State about improvements it has made.

In some cases, the issue of conscientious objection to military service may also be chosen for the Committee's follow-up procedure.

The Concluding Observations may also be included in the compilation of UN information prepared for the *Universal Periodic Review*.

### 2. To which States does the mechanism apply?

The mechanism applies to those States who have ratified or acceded to the ICCPR. The status of ratifications is available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-4&chapter=4&lang=en).

### 3. Who can submit information?

Anyone - including NGOs without ECOSOC consultative status, and individuals.

### 4. When to submit information?

#### Information for the List of Issues:

The List of Issues is a document prepared by the Committee on the basis of the State report and information from other sources which aims to highlight the Committee's major issues of concerns for the review. The List of Issues is sent to the State several months before the dialogue so that the State can prepare responses. These responses form the starting point for the dialogue between the Committee and the State. It is therefore important to submit information before the drafting of the List of Issues to ensure that the issue of conscientious objection to military service is included in the List of Issues and so addressed throughout the review process.

The List of Issues is drafted by the *Country Report Task Force* (CRTF) with the support of the OHCHR at least two months before the session at which it is scheduled to be adopted.

For deadlines please visit: <http://www.ccprcentre.org/next-session>.

Submissions sent after the adoption of the List of Issues may be taken into account during the dialogue.

#### Information for standard reporting:

After the adoption of the List of Issues it is still worth submitting information for the examination of the State report. This should make reference to the List of Issues, if conscientious objection to military service is included. If the State has provided written replies to the List of Issues reference can also be made to these. However, the State is not obliged to provide its written replies in advance, so the NGOs should not wait for the State replies before preparing their submissions.

If the List of Issues does not include conscientious objection to military service, NGOs should prepare a short report explaining the issues with a view to getting them appropriately addressed during the dialogue with the State. Information should be submitted **no later than two weeks before** the start of the session at which the State report will be examined.

In their reports NGOs should highlight errors and omissions in the information provided by the State. The State reports are public and accessible online at:

<http://www2.ohchr.org/english/bodies/hrc/sessions.htm>. If not you might have to request it from your Ministry of Foreign Affairs or, if that is not possible, from the UN Human Rights Committee secretariat. Due to a backlog of State reports there is usually a delay of about a year between the submission of the State report and the start of the Committee's consideration.

Once the State report is available, check online when the report is likely to be considered:

<http://www2.ohchr.org/english/bodies/hrc/sessions.htm> or <http://www.ccprcentre.org/next-session>.

### Information for reporting under the Optional Reporting Procedure

In October 2009, the Human Rights Committee introduced a new *Optional Reporting Procedure* (also called *LOIPR procedure*), based on a *List of Issues Prior to Reporting* (LOIPR). A five year pilot period started in November 2010.

The Optional Reporting Procedure is optional, as the name applies. A State can continue to submit a full periodic report, or the Committee can request a full report "*when it deems that particular circumstances warrant a full report, including when a fundamental change in the State party's political and legal approach affecting Covenant rights has occurred; in such a case a full article-by-article report may be required*".

The Office of the High Commissioner of Human Rights will publish a list of those States that report under the LOIPR procedure, where possible, at least nine months prior to the session during which the LOIPR is to be adopted by the Committee. This gives NGOs the opportunity to submit their information prior to the adoption of the List of Issues Prior to Reporting.

## 5. Any special advice for making a submission to this mechanism?

### Structure of the Report

The following information applies to reports dealing only with conscientious objection to military service.

If you are preparing a longer report covering multiple issues please consult the Centre for Civil and Political Rights' Guidelines for NGOs on Engagement with the Human Rights Committee

(<http://www.ccprcentre.org/en/ngo-guidelines>).

### Introduction

The introduction should include a presentation of the NGO (including the contact details) submitting the report and relevant information about the general context, such as historical context, specific situations (e.g. armed conflict or socio-economic context), without repeating information provided in the State report.

### Substantive part

The information provided in the report should be directly linked to an analysis of the implementation of the Covenant, with clear indications of which articles are being breached, in what way, and the consequences that this implies. It may be useful to refer to already established interpretations of what constitutes a breach of the Covenant e.g. General Comment 22.

Also review and analyse how far the national laws, policies and other measures in the State Party comply with the ICCPR. Specific attention should be focused on gaps between the national laws and their implementation.

NGO written submissions should be objective and it is therefore advisable to acknowledge any progress, such as the positive measures taken by the State to implement the Covenant. It can be useful for NGO reports to illustrate the NGOs findings with cases that show concretely how the authorities fail to implement the ICCPR. Case law should be updated with the latest judicial process and other relevant information such as dates and sources. NGOs should be sure that the credibility of the information cannot be called into question.

It is worth reminding the Committee of its previous Concluding Observations where relevant.

### **Conclusions and recommendations**

At the end of your submission, include a list of suggested questions about domestic legislation or practice that you would like the Committee to put to the government.

Many NGOs include recommendations in their reports, which they like the Committee to make in the Concluding Observations. Recommendations should be concrete, realistic and action oriented.

Recommendations could also be made with regard to the role of NGOs in the implementation of the Concluding Observations.

However, others, such as War Resisters' International, do not include recommendations, and focus on criticising violations of the ICCPR.

### **Reference to the State report and the previous Concluding Observations**

NGOs should indicate whether their information corroborates, supplements, or contradicts the information provided in the State report. If the State has not addressed the issue at all this should also be noted.

The Concluding Observations adopted by the Human Rights Committee after the examination of the previous State report should also be taken into account by NGOs when they start to draft their reports as one of the Committee's objectives is to monitor how far their previous recommendations have been implemented. It is extremely important to assess if any progress has been made by the authorities with regard to the previous Concluding Observations. When NGOs consider that no improvement has been made with regard to the recommendations of the Human Rights Committee, it should be clearly stated.

It may also be very useful to consult the summary records of the discussions that took place during the consideration of the previous report by the Committee as well as the written replies or comments (if any) provided by the State in response to the previous recommendations of the Committee. Both are available on the OHCHR web site as well as on the CCPR Centre website:

<http://www2.ohchr.org/english/bodies/hrc/followup-procedure.htm>.

Consider putting out a press release saying that you have made the submission and send copies to anyone you think should see it. This might include other parts of the UN human rights machinery.

### **Confidentiality**

Usually, NGO information submitted to the Human Rights Committee is made public and posted on the OHCHR website, if the NGO agrees to this. This means that the reports are also available to the State Parties. This should be kept in mind especially for NGOs coming from countries where civil society cannot work freely and is harassed by the authorities.

Although it is possible to state that information shall not be posted to the OHCHR website the Human Rights Committee cannot however withhold the information after a State request.

If you are concerned about confidentiality, please contact the CCPR Centre for advice.

### **Language**

NGO reports should be submitted in one or more of the Human Rights Committee's working languages: English, French and Spanish. If the entire report cannot be translated NGOs should consider preparing a short executive summary in all three languages.

Naturally all information submitted should be as concise as possible.

### **Lobbying during the session**

Everybody is allowed to attend the Committee sessions as observers. Before attending however you have to apply to the Secretariat for accreditation.

Attendance at the session at which the State report is reviewed by the Committee is very important as it allows NGOs to react to the information provided by the State representatives. If necessary NGOs should be ready to provide informal feedback to the Committee members when assertions made by State representatives seem to be irrelevant or inaccurate. Although NGOs are not allowed to take the floor in the plenary session, Committee members can be approached and lobbied during break in the meeting, at the end of the meeting or before the meeting starts the following day. NGOs should not hesitate to suggest additional questions or clarifications that the Committee could ask the State representatives. There are also two opportunities for NGOs to meet the Committee members and present their concerns:

### Formal NGO briefings

NGOs have the opportunity to address the Committee on issues and subjects of concern related to countries being reviewed during the formal NGO briefings, typically lasting 30 minutes per country, and taking place on the same day or the day before the review of the country's report. These briefings are chaired by the Committee's President and are closed, which means that only Committee members and the NGOs are allowed to attend and participate. The meeting is conducted in the Committee's working languages (English, French and Spanish). Interpretation between these languages is provided. The President invites each NGO to deliver a brief statement (statement should take no more than two or three minutes to read slowly) and afterwards time is allocated for Committee members to ask questions and NGOs to reply.

If a national NGO is not in a position to take part in the NGO briefing the CCPR Centre (<http://www.ccprcentre.org/>) can address the Human Rights Committee on its behalf.

### Informal NGO Briefings

The Centre for Civil and Political Rights also organises informal briefings with the Committee. These informal meetings are usually scheduled over lunchtime and last up to 90 minutes. They are not held in the Committee room and no interpretation is provided. Although not all Committee members attend these meetings, they are a unique opportunity for NGOs to raise their concerns and to respond to the Committee members' questions. Usually there is one briefing on each State reviewed.

The Centre for Civil and Political Rights coordinates the informal briefings and assists NGOs with the practical arrangements. NGOs wishing to take part should contact the Centre before the session.

## 6. Special rules of procedure or advice for making a submission?

No

## 7. What happens to the submission (how long will it take)?

Due to a backlog of State reports there is usually a delay of about a year between the submission of the State report and the start of the Committee's consideration. The Committee will prepare by reading the report and any other material available to it on the country in question, for example from special rapporteurs of the Human Rights Council, or NGOs.

The Committee, with the support of the Secretariat, will draft the List of Issues and adopt it during one of their sessions. The List of Issues is sent to the State so that they can prepare replies.

The State is then examined in a public meeting during one of the Committee's sessions. The examination begins with an opening presentation by the State Party's delegation, including responses to the List of Issues. The Committee members then put questions to the representatives, seeking to clarify or deepen their understanding of issues concerning the implementation and enjoyment of the rights guaranteed by the ICCPR in the State Party. This often includes questions that have not been fully answered in the responses to the List of Issues.

Usually the Committee takes two half day meetings (of three hours) to consider a periodic State report and three meetings (of three hours) to consider an initial report. At the end of the session, the Committee will produce Concluding Observations outlining recommendations and comments on the State's practice and legislation.

### A) Raising awareness about the Concluding Observations

One of the key areas for NGOs is engaging national interest to ensure that the Concluding Observations are widely disseminated, discussed, and implemented. Issuing press releases as soon as the Concluding Observations are available is the first step to ensure that the national media are aware of the recommendations of the Committee. Press releases should also integrate the findings and the concerns of the NGOs.

NGOs may also organise press conferences at the national level or take advantage of their presence at the United Nations Offices to meet press and agencies' correspondents based in New York or Geneva.

Although it is the duty of the State to translate the Concluding Observations into national languages and make them available to the public this is often not done. It is therefore an important task for NGOs to make sure the Concluding Observations (or the relevant parts) are translated into national languages,



minority languages) and accessible to all interested parties.

### B) Lobbying for the implementation of the Concluding Observations

The implementation of the Concluding Observations is the ultimate objective of the NGOs. However this is probably the most challenging aspect of the follow-up process as the result depends on the willingness of the State authorities to cooperate and be actively involved in implementation.

NGOs and civil society can nevertheless play a role in this matter, particularly in lobbying the authorities to ensure that concrete steps are taken toward the implementation of the Concluding Observations.

Round tables or special events on the implementation of the Concluding Observations could be very useful to engage the State's authorities in dialogue, Parliamentarians and the bodies or ministries responsible for implementing and monitoring human rights should be targeted in particular.

### C) Reporting back to the Human Rights Committee

The Human Rights Committee has a follow-up procedure in which it asks the State to report on the implementation of selected Concluding Observations one year after the review. However, to date the Committee has only once included conscientious objection to military service in the issues selected for this procedure.

At the time of the next review of the State the NGOs should report on the progress made in implementing the Concluding Observations.

## 8. History of the use of the mechanism.

**Most issues relating to conscientious objection will come up in front of the Human Rights Committee as opposed to any other treaty body.**

The UN *Human Rights Reporting Handbook* provides guidance to States for raising the issue in their report to the Human Rights Committee. Under article 18 States are asked to discuss the status and position of conscientious objectors and to provide statistical information regarding the number of persons who have applied for conscientious objector status and the number who were actually recognised as such. They are also asked to give the reasons used to justify conscientious objection and the rights and duties of conscientious objectors as compared to those who serve in the regular military service.

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>International Covenant on Civil and Political Rights</b>	16 December 1966	<p><b>Article 18:</b></p> <p>1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p> <p>2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</p> <p>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</p> <p>4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.</p>	All

<http://www2.ohchr.org/english/law/ccpr.htm>

## Interpretations

Name	Date	Synopsis	Categories
<b>General Comment 22 on Article 18 of the ICCPR</b>	30 July 1993	<p>General Comment 22 emphasises the broad scope of the freedom of thought, and clarifies that article 18 protects all form of religion, including the right not to profess any religion or belief.</p> <p><b>However, manifestation of religion or beliefs may be limited on the grounds of the protection of others (also article 20: prohibition of propaganda for war, hatred or discrimination).</b></p> <p>No restrictions on other grounds may be imposed “<i>even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security</i>”. (reiterated in General Comment 29)</p> <p>“(…) while the ICCPR does not explicitly refer to the right to conscientious objection, that right can be derived from article 18 “inasmuch 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” (para. 11).</p> <p><a href="http://wri-irg.org/node/6410">http://wri-irg.org/node/6410</a></p>	Recognition Non-discrimination
<b>General Comment 32 on Article 34 of the ICCPR</b>	23 August 2007	<p>General Comment 34 on article 14 (right to equality before courts and tribunals and to a fair trial) also deals with conscientious objection, specifically noting that the principle of “ne bis in idem” (paragraph 7 of article 14) prohibits the repeated punishment of conscientious objectors for a refusal to perform military service.</p> <p><a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement</a></p>	Repeated punishment
<b>General Comment 29 on Article 4 of the ICCPR</b>	24 July 2001	<p>General Comment 29 on article 4 (states of emergency) clarifies that no derogation from Article 18 (freedom of thought, conscience and religion) is allowed during a state of emergency (paragraph 7).</p> <p><i>“Even in times of most serious public emergencies, States that interfere with the freedom to manifest one's religion or belief must justify their actions by referring to the requirements specified in article 18, paragraph 3.”</i></p> <p><a href="http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/\$FILE/G0144470.pdf">http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/\$FILE/G0144470.pdf</a></p>	Recognition of conscientious objection

## Concluding Observations (jurisprudence)

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Turkey</b>	1 November 2012	<p>23. The Committee is concerned that conscientious objection to military service has not been recognized by the State party. The Committee regrets that conscientious objectors or persons supporting conscientious objection are still at risk of being sentenced to imprisonment and that, as they maintain their refusal to undertake military service, they are practically deprived of some of their civil and political rights such as freedom of movement and right to vote. (arts. 12, 18 and 25)</p> <p>The State party should adopt legislation recognizing and regulating conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.</p> <p><a href="http://wri-irg.org/node/20560">http://wri-irg.org/node/20560</a></p>	Recognition of conscientious objection



Name	Date	Synopsis	Categories
<b>Concluding Observations: Turkmenistan</b>	29 March 2012	<p>16. The Committee is concerned that the Conscription and Military Service Act, as amended on 25 September 2010, does not recognize a person's right to exercise conscientious objection to military service and does not provide for any alternative military service. The Committee regrets that due to this law, a number of persons belonging to the Jehovah's Witness have been repeatedly prosecuted and imprisoned for refusing to perform compulsory military service (art. 18).</p> <p>The State party should take all necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service. Furthermore, the State party should halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those individuals who are currently serving prison sentences.</p> <p><a href="http://wri-irg.org/node/15048">http://wri-irg.org/node/15048</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Mongolia</b>	1 May 2011	<p>23. The Committee is concerned about the absence of an alternative civil service that would enable conscientious objectors to military service to exercise their rights in accordance with the provisions of the Covenant. The Committee is also concerned about the exemption fee that can be paid in lieu of doing military service, and the discrimination that may result therefrom (arts. 18 and 26 of the Covenant).</p> <p>The State party should put in place an alternative to military service, which is accessible to all conscientious objectors and neither punitive nor discriminatory in nature, cost and/or duration.</p> <p><a href="http://wri-irg.org/node/20804">http://wri-irg.org/node/20804</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Israel</b>	28 July 2010	<p>19. The Committee notes that certain exemptions from obligatory military service have been granted on the grounds of conscientious objection. It is concerned at the independence of the "Committee for Granting Exemptions from Defence Service for Reasons of Conscience", which is composed, with the exception of one civilian, of officials of the armed forces. It notes that persons, whose conscientious objection was not accepted by the Committee, may be repeatedly imprisoned for their refusal to serve in the armed forces (arts. 14 and 18).</p> <p>The "Committee for Granting Exemptions from Defence Service for Reasons of Conscience" should be made fully independent, persons submitting applications on the grounds of conscientious objections should be heard and have the right to appeal the Committee's decision. Repeated imprisonment for refusal to serve in the armed forces may constitute a violation of the principle of ne bis in idem, and should therefore be ceased.</p> <p><a href="http://wri-irg.org/node/10664">http://wri-irg.org/node/10664</a></p>	Recognition of conscientious objection Repeated punishment

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Estonia</b>	27 July 2010	<p>14. The Committee is concerned that few applications for alternative to military service have been approved during the last few years (11 of 64 in 2007, 14 of 68 in 2008, 32 of 53 in 2009). It is also concerned about the lack of clear grounds for accepting or rejecting an application for alternative to military service (art. 18, 26).</p> <p>The State party should clarify the grounds under which applications to alternative to military service are accepted or rejected and take relevant measures to ensure that the right of conscientious objection is upheld.</p> <p><a href="http://wri-irg.org/node/10662">http://wri-irg.org/node/10662</a></p>	Recognition of conscientious objection Discrimination of conscientious objectors
<b>Concluding Observations of the Human Rights Committee: Russian Federation</b>	29 October 2009	<p>23. While welcoming the reduction by half, in 2008, of the prescribed length of civilian service for conscientious objectors from 42 months to 21 months, the Committee notes with concern that it is still 1.75 times longer than military service, and that the State party maintains the position that the discrimination suffered by conscientious objectors is due to such alternative service being a “preferential treatment” (para. 151, CCPR/C/RUS/6). The Committee notes with regret that the conditions of service for alternative service are punitive in nature, including the requirement to perform such services outside places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organisations, and the restrictions in freedom of movement for the persons concerned. The Committee is also concerned that the assessment of applications, carried out by a draft panel for such service, is under the control of the Ministry of Defence. (arts. 18, 19, 21, 22 and 25)</p> <p>The State party should recognize fully the right to conscientious objection, and ensure that the length and the nature of this alternative to military service does not have a punitive character. The State party should also consider placing the assessment of applications for conscientious objector status entirely under the control of civilian authorities.</p> <p><a href="http://wri-irg.org/node/9157">http://wri-irg.org/node/9157</a></p>	Recognition of conscientious objection Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Azerbaijan</b>	2 August 2009	<p>14. The Committee remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18).</p> <p>The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22.</p> <p><a href="http://wri-irg.org/node/8396">http://wri-irg.org/node/8396</a></p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Chile</b>	18 May 2007	<p>13. The Committee notes the State party's intention to adopt a law recognizing the right of conscientious objection to military service, but continues to be concerned that this right has still not been recognized (article 18 of the Covenant).</p> <p>The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment and recognizing that conscientious objection can occur at any time, even when a person's military service has already begun.</p> <p><a href="http://wri-irg.org/node/6429">http://wri-irg.org/node/6429</a></p>	<p>Recognition of conscientious objection</p> <p>Time limit for conscientious objection</p> <p>In-service conscientious objection</p>
<b>Concluding observations of the Human Rights Committee: Ukraine</b>	28 November 2006	<p>12. While the State party has announced plans to convert its armed forces to an all-volunteer basis, the right to conscientious objection against mandatory military service should be fully respected. Conscientious objection has been accepted only for religious reasons, and only for certain religions.</p> <p>The State party should extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions.</p> <p><a href="http://wri-irg.org/node/6422">http://wri-irg.org/node/6422</a></p>	<p>Discrimination of conscientious objectors</p>
<b>Concluding observations of the Human Rights Committee: Korea, South</b>	28 November 2006	<p>17. The Committee is concerned that: (a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are excluded from employment in government or public organisations and that (c) convicted conscientious objectors bear the stigma of a criminal record (art.18).</p> <p>The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to the paragraph 11 of its general comment No. 22 (1993) on article 18 (freedom of thought, conscience and religion).</p> <p><a href="http://wri-irg.org/node/7271">http://wri-irg.org/node/7271</a></p>	<p>Recognition of conscientious objection</p>
<b>Concluding observations of the Human Rights Committee: Yemen</b>	9 August 2005	<p>19. The Committee regrets that no response was provided by the delegation to the question whether Yemen law recognizes a right to conscientious objection to military service (art. 18).</p> <p>The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service that is not of a punitive character.</p> <p><a href="http://wri-irg.org/node/7381">http://wri-irg.org/node/7381</a></p>	<p>Recognition of conscientious objection</p>

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Syrian Arab Republic</b>	8 August 2005	11. The Committee takes note of the information provided by the delegation whereby Syria does not recognize the right to conscientious objection to military service, but that it permits some of those who do not wish to perform such service to pay a certain sum in order not to do so (art. 18). The State party should respect the right to conscientious objection to military service and establish, if it so wishes, an alternative civil service of a non-punitive nature. <a href="http://wri-irg.org/node/7374">http://wri-irg.org/node/7374</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Tajikistan</b>	18 July 2005	20. The Committee is concerned that the State party does not recognize the right to conscientious objection to compulsory military service (art. 18).  The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. <a href="http://wri-irg.org/node/7378">http://wri-irg.org/node/7378</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Uzbekistan</b>	26 April 2005	The State party should take steps to ensure full respect for the right of freedom of religion or belief and ensure that its legislation and practices conform fully with article 18 of the Covenant. <a href="http://wri-irg.org/node/7393">http://wri-irg.org/node/7393</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Greece</b>	25 April 2005	15. The Committee is concerned that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defence (art. 18).  The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities. <a href="http://wri-irg.org/node/7384">http://wri-irg.org/node/7384</a>	Recognition of conscientious objection Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Finland</b>	2 December 2004	14. The Committee regrets that the right to conscientious objection is acknowledged only in peacetime, and that the civilian alternative to military service is punitively long. It reiterates its concern at the fact that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors.  The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it (arts. 18 and 26 of the Covenant). <a href="http://wri-irg.org/node/7396">http://wri-irg.org/node/7396</a>	Recognition of conscientious objection Discrimination of conscientious objectors Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Poland</b>	2 December 2004	15. The Committee notes that the duration of alternative military service is 18 months, whereas for military service it is only 12 months (arts. 18 and 26).  The State party should ensure that the length of alternative service to military service does not have a punitive character. <a href="http://wri-irg.org/node/7400">http://wri-irg.org/node/7400</a>	Length/terms of substitute service

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Morocco</b>	1 December 2004	<p>22. The Committee notes that, according to the information supplied by the State party, compulsory military service is a fallback applicable only when not enough professional soldiers can be recruited, while at the same time the State party does not recognize the right to conscientious objection.</p> <p>The State party should fully recognize the right to conscientious objection in times of compulsory military service and should establish an alternative form of service, the terms of which should be non-discriminatory (Covenant, arts. 18 and 26).</p> <p><a href="http://wri-irg.org/node/7404">http://wri-irg.org/node/7404</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Serbia and Montenegro</b>	12 August 2004	<p>21. The Committee takes note of the information provided by the delegation whereby conscientious objection is governed by a provisional decree, which is to be replaced by a law, which will recognize full conscientious objection to military service and an alternative civil service that will have the same duration as military service (art. 18).</p> <p><b>The State party should enact the said law as soon as possible. The law should recognize conscientious objection to military service without restrictions (art. 18) and alternative civil service of a non-punitive nature.</b></p> <p><a href="http://wri-irg.org/node/7426">http://wri-irg.org/node/7426</a></p>	Recognition of conscientious objection Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Colombia</b>	26 May 2004	<p>17. The Committee notes with concern that the legislation of the State party does not allow conscientious objection to military service.</p> <p><b>The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects (arts. 18 and 26).</b></p> <p><a href="http://wri-irg.org/node/7429">http://wri-irg.org/node/7429</a></p>	Recognition of conscientious objection Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Lithuania</b>	4 May 2004	<p>17. The Committee reiterates the concern expressed in its concluding observations on the previous report about conditions of alternative service available to conscientious objectors to military service, in particular with respect to the eligibility criteria applied by the Special Commission and the duration of such service as compared with military service.</p> <p>The Committee recommends that the State party clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief, to ensure that the right to freedom of conscience and religion is respected by permitting in practice alternative service outside the defence forces, and that the duration of service is not punitive in nature (arts. 18 and 26).</p> <p><a href="http://wri-irg.org/node/6473">http://wri-irg.org/node/6473</a></p>	Recognition of conscientious objection Discrimination of conscientious objectors Length/terms of substitute service

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Latvia</b>	6 November 2003	<p>15. The Committee notes with satisfaction that in 2002, a new law on alternative service entered into force, which provides for the right to conscientious objection. However, the Committee remains concerned that, pending a change in the conscription law, the duration of alternative service is up to twice that of military service and appears to be discriminatory (Article 18).</p> <p>The State party should ensure that the alternative service is not of a discriminatory duration.  <a href="http://wri-irg.org/node/7626">http://wri-irg.org/node/7626</a></p>	Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Russian Federation</b>	6 November 2003	<p>17. While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions.</p> <p>The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant.  <a href="http://wri-irg.org/node/7629">http://wri-irg.org/node/7629</a></p>	Recognition of conscientious objection Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Israel</b>	21 August 2003	<p>24. While noting the Supreme Court's judgement of 30 December 2002 in the case of eight IDF reservists (judgement HC 7622/02), the Committee remains concerned about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection (art. 18).</p> <p>The State party should review the law, criteria and practice governing the determination of conscientious objection, in order to ensure compliance with article 18 of the Covenant.  <a href="http://wri-irg.org/node/7634">http://wri-irg.org/node/7634</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Estonia</b>	15 April 2003	<p>15. The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.</p> <p>The State party is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the Covenant).  <a href="http://wri-irg.org/node/7637">http://wri-irg.org/node/7637</a></p>	Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Viet Nam</b>	26 July 2002	<p>17. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.</p> <p>The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.  <a href="http://wri-irg.org/node/7642">http://wri-irg.org/node/7642</a></p>	Recognition of conscientious objection



Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Georgia</b>	19 April 2002	<p>18. The Committee expresses its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service; it regrets the lack of clear information on the rules currently governing conscientious objection to military service.</p> <p>The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.  <a href="http://wri-irg.org/node/7645">http://wri-irg.org/node/7645</a></p>	Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Azerbaijan</b>	12 November 2001	<p>21. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.</p> <p>The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.  <a href="http://wri-irg.org/node/7650">http://wri-irg.org/node/7650</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Ukraine</b>	12 November 2001	<p>20. The Committee notes with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26 of the Covenant.</p> <p>The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.  <a href="http://wri-irg.org/node/7653">http://wri-irg.org/node/7653</a></p>	Discrimination of conscientious objectors Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Dominican Republic</b>	26 April 2001	<p>21. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.</p> <p>The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.  <a href="http://wri-irg.org/node/7667">http://wri-irg.org/node/7667</a></p>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Venezuela</b>	26 April 2001	<p>26. The Committee notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.</p> <p>The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.  <a href="http://wri-irg.org/node/7706">http://wri-irg.org/node/7706</a></p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Kuwait</b>	27 July 2000	44. 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. <a href="http://wri-irg.org/node/7709">http://wri-irg.org/node/7709</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Kyrgyzstan</b>	24 July 2000	18. The Committee takes note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms. The Committee regrets that the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service (arts. 18 and 26). Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis. <a href="http://wri-irg.org/node/7711">http://wri-irg.org/node/7711</a>	Recognition of conscientious objection Discrimination of conscientious objectors Length/terms of substitute service
<b>Concluding observations of the Human Rights Committee: Armenia</b>	19 November 1998	18. The Committee regrets the lack of legal provision for alternatives to military service in case of conscientious objection. The Committee deplores the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against their family members. <a href="http://wri-irg.org/node/7718">http://wri-irg.org/node/7718</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Cyprus</b>	6 August 1998	17. The Committee remains concerned about the discriminatory treatment accorded to conscientious objectors in Cyprus, who may be subject to punishment on one or more occasion for failure to perform military service. The Committee recommends that the proposed new law concerning conscientious objectors ensure their fair treatment under the law and eradicate lengthy imprisonment as a form of punishment. <a href="http://wri-irg.org/node/7727">http://wri-irg.org/node/7727</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: Finland</b>	8 April 1998	21. The Committee reiterates its concern, expressed during the consideration of Finland's third report, that Jehovah's Witnesses are granted by domestic law preferential treatment as compared with other groups of conscientious objectors and recommends that the State Party review the law to bring it into full conformity with article 26 of the Covenant. <a href="http://wri-irg.org/node/7730">http://wri-irg.org/node/7730</a>	Discrimination of conscientious objectors
<b>Concluding observations of the Human Rights Committee: Belarus</b>	19 November 1997	16. The Committee notes the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged. In this regard: The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22 (48). <a href="http://wri-irg.org/node/10516">http://wri-irg.org/node/10516</a>	Recognition of conscientious objection Length/terms of substitute service



Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Slovakia</b>	4 August 1997	12. The Committee notes with concern that insufficient steps have been taken to date to implement various provisions of the Constitution dealing with fundamental rights and of the Covenant. In particular, the Committee regrets the absence or inadequacy of laws regulating matters relating to article 14 of the Covenant, with respect to the appointment of members of the judiciary; article 4 of the Covenant; article 18, with respect to the right to conscientious objection to military service.  <a href="http://wri-irg.org/node/7743">http://wri-irg.org/node/7743</a>	Recognition of conscientious objection
<b>Concluding observations of the Human Rights Committee: France</b>	4 August 1997	19. The Committee is concerned that in order to exercise the right to conscientious objection to military service, which is a part of freedom of conscience under article 18 of the Covenant, the application must be made in advance of the conscript's entry into military service and that the right cannot be exercised thereafter. Moreover, the Committee notes that the length of alternative service is twice as long as military service and that this may raise issues of compatibility with article 18 of the Covenant.  <a href="http://wri-irg.org/node/7746">http://wri-irg.org/node/7746</a>	Time limit for CO applications Length/terms of substitute service In-service conscientious objection
<b>Concluding observations of the Human Rights Committee: Spain</b>	3 April 1996	15. Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22 (48). (...) 20. The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.  <a href="http://wri-irg.org/node/7751">http://wri-irg.org/node/7751</a>	Time limit for CO applications In-service conscientious objection
<b>Concluding observations of the Human Rights Committee: Russian Federation</b>	26 July 1995	21. The Committee is concerned that conscientious objection to military service, although recognized under article 59 of the Constitution, is not a practical option under Russian law and takes note in this regard of the draft law on alternative service before the Federal Assembly. It expresses its concern at the possibility that such alternative service may be made punitive, either in nature or in length of service. The Committee is also seriously concerned at the allegations of widespread cruelty and ill-treatment of young conscript-soldiers. (...) 39. The Committee urges that stringent measures be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers. It further recommends that every effort be made to ensure that reasonable alternatives to military service be made available that are not punitive in nature or in length of service. It urges that all charges brought against conscientious objectors to military service be dropped. <a href="http://wri-irg.org/node/7753">http://wri-irg.org/node/7753</a>	Recognition of conscientious objection Length/terms of substitute service

Name	Date	Synopsis	Categories
<b>Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya</b>	23 November 1994	13. Another area of concern is that of freedom of religion. The severe punishments for heresy (which are said not to have been used) and the restrictions on the right to change religion appear to be inconsistent with article 18 of the Covenant. The lack of provision for conscientious objection to military service is another concern. <a href="http://wri-irg.org/node/7754">http://wri-irg.org/node/7754</a>	Recognition of conscientious objection

**Contact:**

NGO information should be sent by post to:  
 Secretary of the Human Rights Committee  
 Human Rights Council and Treaty Bodies Division  
 Office of the High Commissioner for Human Rights  
 UNOG-OHCHR,  
 CH-1211 Geneva 10,  
 Switzerland

An electronic copy should be sent to:  
 Secretary of the Human Rights Committee  
 email: [ccpr@ohchr.org](mailto:ccpr@ohchr.org).

NGOs have to send their documents electronically to the Secretariat of the Human Rights Committee as well as providing 25 hard copies that will be distributed to the Experts. If needed, the CCPR Centre will provide support to the NGOs in the transmission of the documents to the Secretariat.

**Further reading**

- Human Rights Committee: *Rules of procedure of the Human Rights Committee*, 11 January 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/400/67/PDF/G1240067.pdf?OpenElement>, accessed 13 December 2012
- Human Rights Committee: *Focused reports based on replies to lists of issues prior to reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR procedure)*, 29 September 2010, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR-C-99-4.pdf>, accessed 13 December 2012
- Centre for Civil and Political Rights (CCPR Centre): *UN Human Rights Committee. Participation in the Reporting Process. Guidelines for Non-Governmental Organisations (NGOs)*, November 2010, [http://ccprcentre.org/doc/CCPR/Handbook/CCPR\\_Guidelines%20for%20NGOs\\_en.pdf](http://ccprcentre.org/doc/CCPR/Handbook/CCPR_Guidelines%20for%20NGOs_en.pdf), accessed 13 December 2012

## Human Rights Committee: Communication procedure

State law & practice	
Individual cases	✓
Urgent action	✓
Only under-18s	

### Summary:

The First Optional Protocol establishes an individual complaints mechanism, allowing individuals to complain to the Human Rights Committee about a violation of one or several of their rights guaranteed by the *International Covenant on Civil and Political Rights*. Communications may only be submitted against a State that has ratified the *First Optional Protocol* and after domestic remedies have been exhausted. In addition, the claim should not have been submitted to another treaty body mechanism, nor to a regional mechanism such as the *Inter-American Commission on Human Rights*, the *European Court of Human Rights*, the *African Commission on Human and Peoples' Rights*, or the *African Court on Human and Peoples' Rights*.

If the Committee finds that a State Party has failed in its obligations under the ICCPR, it will require that the violation be remedied and ask that the State Party provide follow-up information in this regard. The Human Rights Committee's decisions and its follow-up activities are made public and are included in the Committee's Annual Report to the General Assembly.

### 1. Likely results from use of mechanism

A decision from the Human Rights Committee on the case either declaring a violation of the Covenant by the State concerned, or declaring the case inadmissible. If a violation of the Covenant is found, the Committee may recommend that the State concerned make amends, or rectify the situation. This might include recommending compensation to the complainant, or releasing him or her from prison.

### 2. To which States does the mechanism apply?

This mechanism applies to States parties to the ICCPR which have also signed and ratified the First Optional Protocol (<http://www2.ohchr.org/english/law/ccpr-one.htm>).

A complaint can be brought against any State which had jurisdiction over the victim at the moment of the violation, and which has ratified the Optional Protocol. While the violation itself can have taken place before the Optional Protocol entered into force for the State concerned, it is important that some domestic court took a decision in relation to this violation after the Optional Protocol came into force.

### 3. Who can submit information?

Under the First Optional Protocol the Committee can receive Individual Communications from any individual under the jurisdiction of a State that is party to the First Optional Protocol who claims that his or her rights under the Covenant have been violated by the State Party.

If you wish to file a complaint on behalf of someone else or a group, you must submit a written consent from each of the victims you wish to represent or proof that they are incapable of giving such consent.

### 4. When to submit information?

There is no time limit after the alleged event for receiving information but it is best to submit the communication as soon as possible after the exhaustion of domestic remedies. In exceptional cases, submission after a protracted period may result in your case being considered inadmissible by the Committee.

Under Rule 96c of the Working Methods of the Committee, a communication submitted after 5 years from the exhaustion of domestic remedies, or after 3 years from the conclusion of another procedure of international investigation or settlement may constitute an abuse of the right of submission.

Repeated claims to the Committee on the same issue although they have already been dismissed are considered an abuse of the complaints process.

### 5. Special rules of procedure or advice for making a submission?

#### How to write a complaint:

The complaint mechanisms are designed to be simple and accessible to all. You do not need to be a lawyer or even familiar with legal and technical terms to bring a complaint to a Committee.

For a complaint to be admissible, it needs to meet the following requirements:

- It has to be submitted by the individual whose rights have been violated, or with the written consent of the individual. Only in exceptional cases, where the individual concerned is unable to give consent, this requirement may be ignored. Anonymous complaints will not be considered.
- Domestic remedies need to have been exhausted, which means all domestic appeal procedures need to have been tried. However, if you can demonstrate that local remedies are not effective (for example, because the highest court of the country already ruled on a very similar case), not available, or unduly prolonged, this requirement may be ignored.
- Not be under consideration by another international investigation or settlement procedure.

A complaint, sometimes also called a “communication” or a “petition” need not take any particular form. However, it needs to be in writing and signed (which means email complaints will not be considered). It should provide basic personal information - your name, nationality and date of birth - and specify the State party against which your complaint is directed.

A complaint needs to include - preferably in chronological order - all the facts on which your claim is based, and all efforts that have been made to exhaust domestic remedies (include copies of relevant court decisions and a summary in one of the working languages of the Committee).

It is useful to quote the relevant treaty articles which correspond to your case. It should be explained how the facts of the case disclose a violation of those articles. A model complaint form that can be used can be found at <http://www2.ohchr.org/english/bodies/docs/annex1.pdf>.

### **Emergency procedures:**

If there is a fear of irreparable harm (for example in cases of imminent execution or deportation to torture) before the Committee has examined the case, it is possible to request an intervention by the committee to stop an imminent action (or omission) by a State, which may cause such harm. Such an intervention is called a “request for interim measures of protection”.

### **6. What happens to the submission (how long will it take)?**

The two major stages in any case are known as the “admissibility” stage and the “merits” stage. The “admissibility” of a case refers to the formal requirements that your complaint must satisfy before the relevant committee can consider its substance. The “merits” of the case are the substance, on the basis of which the committee decides whether or not rights under a treaty have been violated.

If the complaint contains the essential elements outlined above, the case is registered, that is to say formally listed as a case for consideration by the Committee. Due to a big back-log of complaints it can take at least two years for a case to be considered after registration.

After the registration the complaint is transmitted to the State party concerned to give it an opportunity to comment. The State is required to respond to the complaint within six months. If the State party fails to respond to the complaint, you are not disadvantaged, Reminders are sent to the State party. If there is still no response, the committee takes a decision on the case on the basis of the original complaint.

Once the State replies to a submission, the complainant is offered an opportunity to comment. At that point the, the case is ready for a decision by the Committee.

The committee considers Individual Communications in closed session, but its Views (decisions) and the follow-up are public.

### **7. History of the use of the mechanism**

The Communication Procedure has been used successfully in a range of CO cases, which has helped to establish important jurisprudence on the length and terms of substitute service (*Foin v. France*, 1999) and on the right to conscientious objection itself (*Yeo-Bum Yoon and Mr. Myung-Jin Choi vs. Republik of Korea*, 2007).

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>Optional Protocol to the International Covenant on Civil and Political Rights</b>	23 March 1976	The Optional Protocol establishes the competence of the Human Rights Committee to receive individual communications in relation to violations of the <i>International Covenant on Civil and Political Rights</i> (ICCPR).  <a href="http://www2.ohchr.org/english/law/ccpr-one.htm">http://www2.ohchr.org/english/law/ccpr-one.htm</a>	All

## Case law (jurisprudence)

Name	Date	Synopsis	Category
<b>Cenk Atasoy and Arda Sarkut vs. Turkey</b>	28 March 2012	10.5 In the present cases, the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs, which have not been contested and which are genuinely held, and that the authors' subsequent prosecution and sentences amount to an infringement of their freedom of conscience, in breach of article 18, paragraph 1, of the Covenant. The Committee recalls that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18, paragraph 1, of the Covenant.  <a href="http://wri-irg.org/node/15538">http://wri-irg.org/node/15538</a>	Recognition of conscientious objection
<b>Min-Kyu Jeong et al vs. Republic of Korea</b>	24 March 2011	The complaint concerned the cases of more than 100 Jehovah's Witnesses sentenced to imprisonment for their conscientious objection to military service.  "7.3 (...) The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights. "7.4 In the present cases, the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs which, it is uncontested, were genuinely held and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1 of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant."  <a href="http://wri-irg.org/node/13665">http://wri-irg.org/node/13665</a>	Recognition of conscientious objection

Name	Date	Synopsis	Category
<b>Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh vs. Republic of Korea</b>	23 March 2010	<p>7.4 The Committee notes that the authors' refusal to be drafted for compulsory military service was a direct expression of their religious beliefs which, it is uncontested, were genuinely held and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief. The Committee finds that as the State party has not demonstrated that in the present cases the restrictions in question were necessary, within the meaning of article 18, para 3, it has violated article 18, paragraph 1, of the Covenant.</p> <p>8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts before the Committee reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1 of the Covenant.</p> <p><a href="http://wri-irg.org/node/10692">http://wri-irg.org/node/10692</a></p>	Recognition of conscientious objection
<b>Yeo-Bum Yoon and Mr. Myung-Jin Choi vs. Republik of Korea</b>	23 January 2007	<p>The Committee, therefore, considers that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant.</p> <p>The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant.</p> <p><a href="http://wri-irg.org/node/6221">http://wri-irg.org/node/6221</a></p>	Recognition of conscientious objection
<b>Paul Westerman v. the Netherlands</b>	13 December 1999	<p>The case concerned a conscientious objector whose application for conscientious objection had been rejected by the Dutch authorities. He subsequently refused to put on a uniform when called up for military service. He was then sentenced to nine months' imprisonment.</p> <p><i>"The Committee observes that the authorities of the State party evaluated the facts and arguments advanced by the author in support of his claim for exemption as a conscientious objector in the light of its legal provisions in regard to conscientious objection and that these legal provisions are compatible with the provisions of article 18. (...) The Committee observes that the author failed to satisfy the authorities of the State party that he had an "insurmountable objection of conscience to military service.. because of the use of violent means" (para. 5). There is nothing in the circumstances of the case which requires the Committee to substitute its own evaluation of this issue for that of the national authorities."</i></p> <p><a href="http://wri-irg.org/node/20934">http://wri-irg.org/node/20934</a></p>	Recognition of conscientious objection
<b>Foin vs. France</b>	9 November 1999	<p>The Committee reiterates its position that article 26 does not prohibit all differences of treatment. Any differentiation, as the Committee has had the opportunity to state repeatedly, must however be based on reasonable and objective criteria. In this context, the Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service.</p> <p><a href="http://wri-irg.org/node/6140">http://wri-irg.org/node/6140</a></p>	Length/terms of substitute service



Name	Date	Synopsis	Category
<b>J. P. v. Canada</b>	7 November 1991	<p>4.2. The Committee notes that the author seeks to apply the idea of conscientious objection to the disposition by the State of the taxes it collects from persons under its jurisdiction. Although article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article.</p> <p>4.3. The Human Rights Committee concludes that the facts as submitted do not raise issues under any of the provisions of the Covenant. Accordingly, the author's claim is incompatible with the Covenant, pursuant to article 3 of the Optional Protocol.</p> <p><a href="http://wri-irg.org/node/7341">http://wri-irg.org/node/7341</a></p>	Conscientious objection to military taxation
<b>L. T. K. v. Finland</b>	9 July 1985	<p>Although Finland recognised the right to conscientious objection at the time of the complaint, the complainant was initially not recognised as a conscientious objector, and on appeal was ordered to perform unarmed military service, which he refused. He was subsequently sentenced to 9 months' imprisonment for refusing military service.</p> <p>The Human Rights Committee declared the complaint inadmissible, stating that “<i>the Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right.</i>”</p> <p><a href="http://wri-irg.org/node/10693">http://wri-irg.org/node/10693</a></p>	Recognition of conscientious objection
<b>Muhonen v. Finland</b>	7 April 1985	<p>The complainant's application for recognition as conscientious objector was rejected by the Finnish authorities, and the complaint was then ordered to perform military service, which he refused. He was subsequently sentenced to 11 months' imprisonment.</p> <p>The Committee declared the complaint inadmissible in relation to article 18 (right to conscientious objection), and also was “<i>of the view that Mr. Muhonen has no right to compensation which the Finnish authorities have failed to honour and that consequently there has been no breach of article 14 (6) of the Covenant.</i>”</p> <p><a href="http://wri-irg.org/node/20812">http://wri-irg.org/node/20812</a></p>	Recognition of conscientious objection

**Contact:**

Petitions Team  
OHCHR-UNOG  
1211 Geneva 10  
Switzerland

E-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org) (indicate “Human rights complaint” in the Subject line of your e-mail.)

Fax: +41-22-917 90 22

You can call for procedural advice only: +41-22-917 12 34 (ask for the Petitions Team.)

**Further reading**

- Human Rights Committee: *Rules of procedure of the Human Rights Committee*, 11 January 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/400/67/PDF/G1240067.pdf?OpenElement>, accessed 13 December 2012





## Committee on the Rights of the Child State Reporting Procedure

State law & practice	✓
Individual cases	
Urgent action	
Only under-18s	✓

### Summary:

The Committee on the Rights of the Child is a treaty-based mechanism which monitors the implementation of the Convention on the Rights of the Child (CRC) (see: <http://www2.ohchr.org/english/law/crc.htm>) and its Optional Protocols on the Sale of Children (OP1, see: <http://www2.ohchr.org/english/law/crc-sale.htm>) and on Children in Armed Conflict (OP2, see <http://www2.ohchr.org/english/law/crc-conflict.htm>) by State Parties. This is done through regular reports from States Parties (for States Parties to the CRC see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, for OP1 see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> and for OP2 see <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>). The reports are examined through a dialogue between the Committee and representatives of the State. During this dialogue Committee members may raise and child rights issues, including rights not addressed in the state reports. After the dialogue, the Committee produces Concluding Observations, which outline recommendations, and comments on the State's practice and legislation.

The Committee will only address issues related to under-18s. For States Parties to the Optional Protocol on Children in Armed Conflict, the Committee addresses issues such as recruitment of minors, or excessive military recruitment efforts in schools. Although article 14 of the Convention guarantees the right to freedom of thought, conscience, and religion, this mechanism is less likely to be directly relevant in relation to the right to conscientious objection to military service, but can be useful to highlight issues of recruitment of minors, irregular recruitment, and military in schools.

### 1. Likely results from use of the mechanism

During the examination of the State's report, members of the Committee may also raise issue related to recruitment and military in schools. If the Committee comes to the conclusion that the State's practice does not comply with the CRC, it will outline this in its Concluding Observations in the form of concerns and recommendations. When the State reappears in front of the Committee, the Committee will be highly likely to ask the State about improvements it has made.

The Concluding Observations of the CRC will also form part of the OHCHR compilation for the Universal Periodic Review.

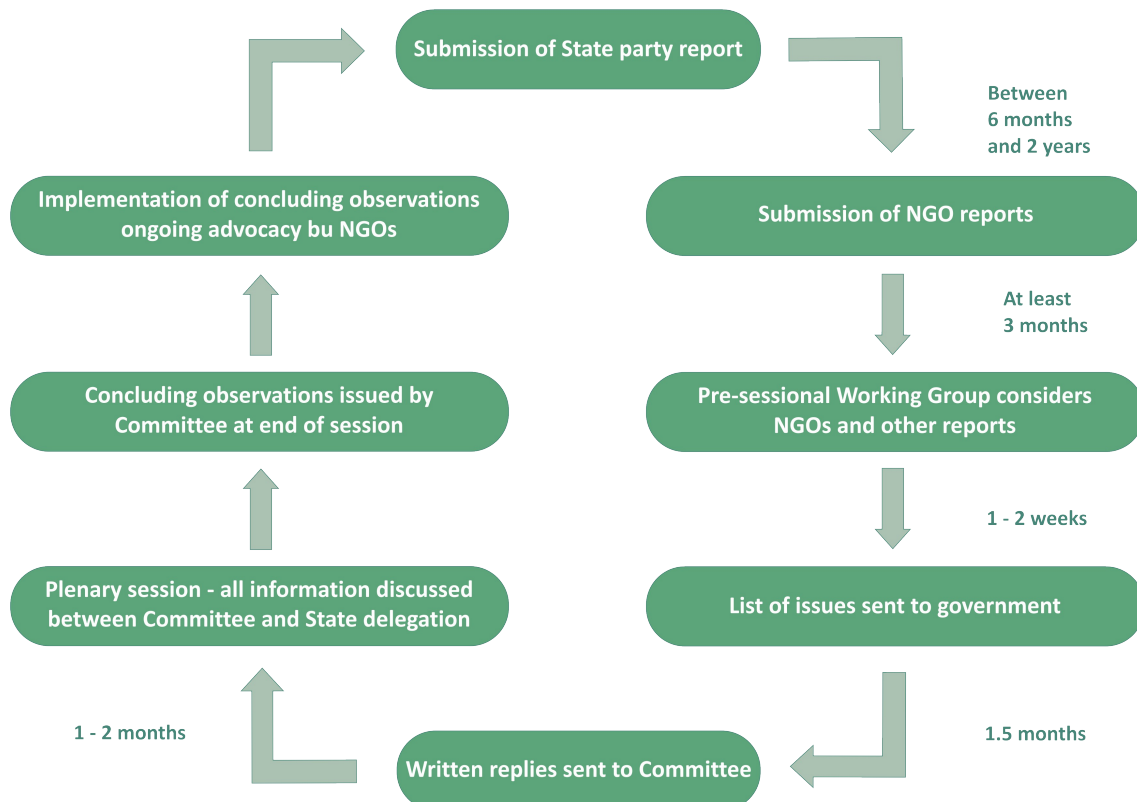
### 2. To which States does the mechanism apply?

The mechanism applies to those States who have ratified the CRC. The Optional Protocol on Children in Armed Conflict only applies to those States who have ratified it.

### 3. Who can submit information?

Anyone - including NGOs and individuals.

#### 4. When to submit information?



Reporting procedure under the Convention on the Rights of the Child. Source: NGO Group for the CRC

#### Information for the List of Issues

About three to four months before the session at which a State report will be examined, the pre-sessional working group of the Committee convenes a private meeting with UN agencies and bodies, NGOs and other competent bodies such as national human rights and youth organisations, which have submitted additional information to the Committee. This discussion leads to the List of Issues, which will be sent to the State, who will be requested to provide answers in writing in advance of the session.

It is therefore important that additional information is provided well in advance of the session, and it is recommended to submit a report no later than six month before.

#### Information for standard reporting

In their report, NGOs should refer to the State's reports (there are usually separate reports for the Convention on the Rights of the Child and each Optional Protocol), and highlight errors and omissions in the information provided by the State. The State reports are public and accessible online at:

<http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

Once the State report is available, check online when the report is likely to be considered:

<http://www2.ohchr.org/english/bodies/crc/sessions.htm>.

#### 5. Any special advice for making a submission to this mechanism?

##### Structure of the Report

The NGO Group for the Convention on the Rights of the Child (NGO Group) has published detailed guides on reporting to the Committee on the Rights of the Child. These can be found at:

- Guide for Non-Governmental Organizations Reporting to the UN Committee on the Rights of the Child (2006): <http://www.childrightsnet.org/docs/Reporting%20Guide%202006%20English.pdf>
- Reporting on the OPSC and OPAC: A Guide for Non-Governmental Organisations (2010): [http://www.childrightsnet.org/docs/FileManager/NGOGroup/Guide\\_OP\\_web.pdf](http://www.childrightsnet.org/docs/FileManager/NGOGroup/Guide_OP_web.pdf)

## Introduction

The introduction should include a presentation of the NGO (including the contact details) submitting the report and relevant information about the general context, such as historical context, specific situations (e.g. armed conflict or socio-economic context), without repeating information provided in the State report.

## Substantive part

It can be advisable that the NGO report follows the structure of the State report, in the form of a section-by-section analysis of the report. The report should comment on and correct information provided by the State, and explain the position of the NGO.

It is important to analyse the extent to which law, policy and practice of the State comply or not with the provisions of the Optional Protocol. While State reports are often very legalistic, an NGO report should provide information on the practical implementation or lack thereof. It should also reflect on the experience of children/under-18s throughout the country, including differences in legislation, administration of services, culture and environment of different jurisdictions.

It is always a good idea to refer to previous Concluding Observations of the Committee, and their implementation or lack thereof.

## Conclusions and recommendations

It can be a good idea to include a list of questions the NGO wants the Committee to ask to the Government. Some NGOs include a list of concrete recommendations, but this is a matter of political approach.

## 6. What happens to the submission (how long will it take)?

Following the submission of the periodic or initial State report, which will be published on the website of the Committee on the Rights of the Child (see <http://www2.ohchr.org/english/bodies/crc/sessions.htm>), NGOs have the opportunity to submit additional information or their own reports. This should usually be done between six months and two years before the examination of a State's report.

About three to four months before the examination of the State report a meeting of a pre-sessional working group of the Committee on the Rights of the Child will draw up a List of Issues (see under 4.). States might choose to provide written answers to questions raised in the List of Issues in advance of the examination of the report.

The examination of the State's report happens in form of a dialogue between the members of the Committee on the Rights of the Child and the delegation of the State concerned. Following the session, the Committee will draw of its *Concluding Observations*, which also include recommendations.

## 7. History of the use of the mechanism

This mechanism has not been used for conscientious objection to military service itself, but has been used successfully to highlight issues of recruitment of under-18s, including aggressive recruitment by Armed Forces in schools.

## Legal Basis

Name	Entry into force	Synopsis	Categories
<b>Convention on the Rights of the Child</b>	2 September 1990	Article 14 of the Convention on the Rights of the Child protects a child's freedom of thought, conscience and religion. Article 28 guarantees the right of the child to education.  <a href="http://www2.ohchr.org/english/law/crc.htm">http://www2.ohchr.org/english/law/crc.htm</a>	None

<b>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)</b>	12 February 2002	<p>Article 2 of the Optional Protocol states:</p> <p><i>"States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces."</i></p> <p>Article 3 paragraph 1 states:</p> <p><i>"States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection."</i></p>	None
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<http://www2.ohchr.org/english/law/crc-conflict.htm>

### Concluding Observations

Name	Date	Synopsis	Categories
<b>Concluding Observations: Australia</b>	11 July 2012	<p>"17. The Committee notes that the age of voluntary recruitment into the ADF is 17 years.</p> <p>18. In order to promote and strengthen the protection of children through an overall higher legal standard, the Committee encourages the State party to review and raise the minimum age of voluntary recruitment into the ADF to 18 years of age.(...)</p> <p>20. The Committee recommends that the State party:</p> <p>(a) Review the operations of its cadet scheme to ensure that activities in such programmes are age appropriate, particularly with respect to military-like activities, and establish clear guidelines on the age requirement for such activities, taking due consideration of the mental and physical effects of such activities on the child;</p> <p>(b) Ensure effective and independent monitoring of the cadet scheme to safeguard the rights and welfare of the child enrolled in the cadet forces and ensure that children, parents and other groups are adequately informed about the recruitment process and are able to present concerns or complaints;</p> <p>(c) Prohibit the handling and use of firearms and other explosives for all children under the age of 18 years in line with the spirit of the Optional Protocol;</p> <p>(d) Ensure that young persons from different linguistic backgrounds and/or from marginalized populations are not overly targeted for recruitment and put in place measures for informed consent;</p> <p>(e) Include information on how the activities of the cadet forces fit with the aims of education, as recognized in article 29 of the Convention and in the Committee's general comment No. 1 (2001) on the aims of education."</p> <p><a href="http://wri-irg.org/node/20843">http://wri-irg.org/node/20843</a></p>	None
<b>Concluding Observations: United Kingdom of Great Britain and Northern Ireland</b>	17 October 2008	<p>"The Committee encourages the State party to consider reviewing its position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard.(...)</p> <p>15. The Committee recommends that the State party:</p> <p>(a) Reconsider its active policy of recruitment of children into the armed forces and ensure that it does not occur in a manner which specifically targets ethnic minorities and children of low-income families;</p> <p>(b) Ensure that parents are included from the outset and during the entire process of recruitment and enlistment."</p> <p><a href="http://wri-irg.org/node/15192">http://wri-irg.org/node/15192</a></p>	None

Name	Date	Synopsis	Categories
<b>Concluding Observations: United States of America</b>	25 June 2008	<p>“13. The Committee, while taking note of the amended policy of the State party to avoid direct participation in hostilities of members of the armed forces who are under 18 years, is nevertheless concerned that the State party failed to prevent the deployment of volunteer recruits below the age of 18 years to Afghanistan and Iraq in 2003 and 2004.</p> <p>14. The Committee recommends the State party ensure that its policy and practice on deployment is consistent with the provisions of the Optional Protocol. (...)</p> <p>16. The Committee encourages the State party to review and raise the minimum age for recruitment into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard.</p> <p>17. The Committee recommends that the State party ensure that recruitment does not occur in a manner which specifically targets racial and ethnic minorities and children of low-income families and other vulnerable socio-economic groups. The Committee underlines the importance that voluntary recruits under the age of 18 are adequately informed of their rights, including the possibility of withdrawing from enlistment through the Delayed Entry Program (DEP).</p> <p>18. The Committee furthermore recommends that the content of recruitment campaigns be closely monitored and that any reported irregularity or misconduct by recruiters should be investigated and, when required, sanctioned. In order to reduce the risk of recruiter misconduct, the Committee recommends the State party to carefully consider the impact quotas for voluntary recruits have on the behaviour of recruiters. Finally, the Committee recommends the State party to amend the No Child Left Behind Act (20 U.S.C., sect. 7908) in order to ensure that it is not used for recruitment purposes in a manner that violates the children's right to privacy or the rights of parents and legal guardians. The Committee also recommends the State party to ensure that all parents are adequately informed about the recruitment process and aware of their right to request that schools withhold information from recruiters unless the parents' prior consent has been obtained. (...)</p> <p>20. The Committee recommends the State party ensure that any military training for children take into account human rights principles and that the educational content be periodically monitored by the federal Department of Education. The State party should seek to avoid military-type training for young children.”</p> <p><a href="http://wri-irg.org/node/15193">http://wri-irg.org/node/15193</a></p>	None

## Contact

### Committee on the Rights of the Child (CRC)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Tel.: +41 22 917 91 41

Fax: +41 22 917 90 08

E-mail: [crc@ohchr.org](mailto:crc@ohchr.org)

## Further reading

- NGO Group for the Convention on the Rights of the Child: *Guide for Non-Governmental Organizations Reporting to the UN Committee on the Rights of the Child (2006)*, <http://www.childrightsnet.org/docs/Reporting%20Guide%202006%20English.pdf>, accessed 14 December 2012
- NGO Group for the Convention on the Rights of the Child: *Reporting on the OPSC and OPAC: A Guide for Non-Governmental Organisations (2010)*, [http://www.childrightsnet.org/docs/FileManager/NGOGroup/Guide\\_OP\\_web.pdf](http://www.childrightsnet.org/docs/FileManager/NGOGroup/Guide_OP_web.pdf), accessed 14 December 2012

## Committee on the Rights of the Child: Optional Protocol on Communications

State law & practice	
Individual cases	✓
Urgent action	✓
Only under-18s	✓

### Summary

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure from 19 December 2011 (see

[http://treaties.un.org/doc/source/signature/2012/CTC\\_4-11d.pdf](http://treaties.un.org/doc/source/signature/2012/CTC_4-11d.pdf)) establishes an individual complaints mechanism, allowing individuals to complain to the Committee on the Rights of the Child about a violation of the Convention or any one of the Optional Protocols to which the State is a party. Before submitting a complaint, domestic remedies have to be exhausted, unless these would be unreasonably prolonged or not effective. The complaint should also not have been submitted to any other procedure of international investigation or settlement.

If the Committee finds that a State Party has failed in its obligations under the CRC or its Optional Protocols, it will require that the violation be remedied and ask the State Party to provide follow-up information in this regard. The decisions of the Committee on the Rights of the Child and its follow-up activities are made public and are included in the Committee's Annual Report to the General Assembly.

At the time of writing (August 2012), the Optional Protocol to the Convention on the Rights of the Child on a communications procedure was not yet in force, as it had not yet been ratified by more than 10 States. Check for the status of ratification at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en)

### 1. Likely result from use of the mechanism

The Committee on the Rights of the Child will either declare the case inadmissible, or publish its views on the case if it finds on a violation of the Convention on the Rights of the Child or one of the Optional Protocols. If a violation is found, the Committee may recommend that the State concerned make amends, or rectify the situation.

The Committee might also attempt to reach a friendly settlement between the State Party and the victim or victims.

### 2. To which States does the mechanism apply?

This mechanism applies to States parties to the CRC which have also signed the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Check for the status of ratification at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en). A complaint can be brought against any State which had jurisdiction over the victim at the moment of the violation, and which has at the same time ratified the Optional Protocol.

### 3. Who can submit information?

Under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure the Committee can receive individual Communications (complaints) from any individual under the jurisdiction of a State that is party to the Optional Protocol who claims that his or her rights under the Convention have been violated by the State Party.

If you wish to file a complaint on behalf of someone else or a group, you must submit proof of consent from each of the victims you wish to represent in writing, or proof why they are incapable of giving such consent.

### 4. When to submit information?

According to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, complaints have to be submitted within one year of exhaustion of domestic remedies, except where it can be demonstrated that it had not been possible to submit the communication within the time limit.

### 5. Special rules of procedure or advice on making a submission

At the time of writing, the Committee had not yet adopted rules of procedure for submitting complaints (communications) under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Please check the website of the Committee at <http://www2.ohchr.org/english/bodies/crc/sessions.htm> for updates.



The following is therefore adapted from the guidelines for submissions to the Human Rights Committee:  
**How to write a complaint:**

The complaint mechanisms are designed to be simple and accessible to all. You do not need to be a lawyer or even familiar with legal and technical terms to bring a complaint to a Committee.

For a complaint to be admissible, it needs to meet the following requirements:

- It has to be submitted by the individual whose rights have been violated, or with the written consent of the individual. Only in exceptional cases, where the individual concerned is unable to give consent, this requirement may be ignored. Anonymous complaints will not be considered.
- Domestic remedies need to have been exhausted, which means all domestic appeal procedures need to have been tried. However, if you can demonstrate that local remedies are not effective (for example, because the highest court of the country already ruled on a very similar case), not available, or unduly prolonged, this requirement may be ignored.
- Not be under consideration by another international investigation or settlement procedure.

A complaint, sometimes also called a “communication” or a “petition” need not take any particular form. However, it needs to be in writing and signed (which means email complaints will not be considered). It should provide basic personal information - your name, nationality and date of birth - and specify the State party against which your complaint is directed.

A complaint needs to include - preferably in chronological order - all the facts on which your claim is based, and all efforts that have been made to exhaust domestic remedies (include copies of relevant court decisions and a summary in one of the working languages of the Committee).

It is useful to quote the relevant treaty or Optional Protocol articles which correspond to your case. It should be explained how the facts of the case disclose a violation of those articles.

#### Emergency procedures:

If there is a fear of irreparable harm (for example in cases of imminent execution or deportation to torture) before the Committee has examined the case, it is possible to request an intervention by the committee to stop an imminent action (or omission) by a State, which may cause such harm.

#### 6. What happens to the submission (how long will it take)?

As the Optional Protocol was not yet in force at the time of writing, there is presently no experience with complaints to the Committee on the Rights of the Child.

#### 7. History of the use of the mechanism

As the Optional Protocol was not yet in force at the time of writing, it could not be used yet.

#### Legal Basis

Name	Entry into force	Synopsis	Categories
Optional Protocol to the Convention on the Rights of the Child on a communications procedure	-/-	<p>The Optional Protocol establishes the competence of the Committee on the Rights of the Child to receive individual communications in relation to violations of the <i>Convention on the Rights of the Child</i> and its Optional Protocols.</p> <p><a href="http://treaties.un.org/doc/source/signature/2012/CTC_4-11d.pdf">http://treaties.un.org/doc/source/signature/2012/CTC_4-11d.pdf</a></p>	All

#### Views (Jurisprudence)

None at the time of writing.



## **Contact**

### **Committee on the Rights of the Child (CRC)**

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Tel.: +41 22 917 91 41

Fax: +41 22 917 90 08

E-mail: [crc@ohchr.org](mailto:crc@ohchr.org)

## Other Treaty Bodies

Apart from the Human Rights Committee, the other treaty bodies, which include the *Committee on the Elimination of Discrimination* (CERD) and the *Committee Against Torture* (CAT) are not likely to be the first port of call for a conscientious objector. The more obvious mechanisms for conscientious objectors to military service are the *Human Rights Committee* and the *Special Procedures of the Human Rights Council*, such as thematic and country-specific rapporteurs.

Like the Human Rights Committee, each treaty body oversees the implementation of a convention. The outcomes from these treaty bodies are similar to those of the Human Rights Committee. Both CERD and CAT have an optional individual communications procedure, enabling the committees to consider individual cases as well as State practice and legislation. However, these procedures are very underused.

State law & practice	✓
Individual cases	✓
Urgent action	✓
Only under-18s	

### When you might use other treaty bodies

If you find that the State who is failing to recognise rights associated with conscientious objection is not a party to the ICCPR but is a party to the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), *International Covenant on Economic, Social and Cultural Rights* (ICESCR) or the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), you may wish to pursue your case or country situation under these conventions. All treaty bodies receive periodic reports from states party to the treaty. Rules of procedure are similar to those for the Human Rights Committee. You should read the relevant conventions in full to see if the State Party is failing to respect these rights. These are available on the web at <http://www.ohchr.org>.

### Sources

<http://www2.ohchr.org/english/law/ccpr-one.htm>

<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

## United Nations Human Rights Council (UNHRC)

State law & practice	✓
Individual cases	
Urgent action	
Only under-18s	

### Summary:

In 2006 the The United Nations Human Rights Council replaced the United Nations Commission on Human Rights. The Council is an inter-governmental body within the UN human rights system made up of 47 States elected by the UN General Assembly responsible for strengthening the promotion and protection of human rights around the globe. Its main purpose is addressing situations of human rights violations and making recommendations on them. Its mandate was established by General Assembly resolution [60/251](#) from 15 March 2006. The Council meets in regular session three times annually and in special session as needed, and reports to the General Assembly.

In 2007 the Council adopted its "[Institution-building package](#)" ([http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc)) which established a system of four subsidiary mechanisms, of which the following two are most relevant for NGOs and individuals working on conscientious objection to military service:

- The [Universal Periodic Review](#) mechanism assesses the human rights situations in all 192 UN Member States.
- The UN [Special Procedures](#) established by the former Commission on Human Rights and assumed by the Council.

For a list of all member states please go to:

<http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>

On 5 July 2012, during its 20th session, the Human Rights Council passed a resolution on conscientious objection to military service, "*recalling all previous relevant resolutions and decisions, including Human Rights Council decision 2/102 of 6 October 2006, and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998, in which the Commission 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 laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights and general comment No. 22 (1993) of the Human Rights Committee*".

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that " <i>we the peoples of the United Nations</i> " are determined (...): <ul style="list-style-type: none"> <li>• to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and</li> <li>• to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.</li> </ul> <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: " <i>Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</i> "  <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All

Name	Entry into force	Synopsis	Categories
<b>International Covenant on Economic, Social, and Cultural Rights</b>	3 January 1976	Article 6 guarantees the "right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". A substitute service that is much longer than military service can be seen as a disproportionate restriction of this right. Article 13 guarantees the right to education.  <a href="http://www2.ohchr.org/english/law/cescr.htm">http://www2.ohchr.org/english/law/cescr.htm</a>	Length/terms of substitute service
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."  <a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Interpretations

Name	Date	Synopsis	Categories
<b>Conscientious objection to military service (Resolution A/HRC/RES/20/2)</b>	5 July 2012	"recalling all previous relevant resolutions and decisions, including Human Rights Council decision 2/102 of 6 October 2006, and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998, in which the Commission 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 laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights and general comment No. 22 (1993) of the Human Rights Committee" <a href="http://wri-irg.org/node/20176">http://wri-irg.org/node/20176</a>	All
<b>Conscientious objection to military service (Resolution 2004/35)</b>	19 April 2004	The resolution recalled all previous resolutions of the Human Rights Commission and especially "calls upon States that have not yet done so to review their current laws and practices in relation to conscientious objection to military service in the light of its resolution 1998/77, taking account of the information contained in the report"; In addition, it "encourages States, as part of post-conflict peace-building, to consider granting, and effectively implementing, amnesties and restitution of rights, in law and practice, for those who have refused to undertake military service on grounds of conscientious objection". <a href="http://wri-irg.org/node/6412">http://wri-irg.org/node/6412</a>	All

Name	Date	Synopsis	Categories
<b>Conscientious objection to military service (Resolution 2002/45)</b>	23 April 2002	The resolution recalls the previous resolutions of the Human Rights Commission regarding conscientious objections to military service and especially takes “ <i>note of recommendation 2 made by the Working Group on Arbitrary Detention in its report (see E/CN.4/2001/14, chap. IV, sect. B), aimed at preventing the judicial system of States from being used to force conscientious objectors to change their convictions</i> ”.	All
		<a href="http://wri-irg.org/node/6415">http://wri-irg.org/node/6415</a>	
<b>Conscientious objection to military service (Resolution 2000/34)</b>	20 April 2000	The resolution recalls the previous resolutions of the Human Rights Commission on the subject of conscientious objection to military service and “calls upon States to review their current laws and practices in relation to conscientious objection to military service in the light of its <a href="#">resolution 1998/77</a> ”.	All
		<a href="http://wri-irg.org/node/6418">http://wri-irg.org/node/6418</a>	
<b>Conscientious objection to military service (Resolution 1998/77)</b>	22 April 1998	The resolution recalls the early resolutions of the Human Rights Commission on the subject of conscientious objection to military service, and highlights: <ul style="list-style-type: none"> <li>• “article 14 of the Universal Declaration of Human Rights, which recognizes the right of everyone to seek and enjoy in other countries asylum from persecution”;</li> <li>• impartial decision making on applications for conscientious objection and the “<i>requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs</i>”;</li> <li>• that “States should (...) refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and (...) that no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”;</li> <li>• “that States, in their law and practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights”;</li> <li>• asylum for “conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service”.</li> </ul>	Recognition of conscientious objection Length/terms of substitute service Time limits for CO applications Discrimination of conscientious objectors in-service conscientious objection Repeated punishment of conscientious objectors
		<a href="http://wri-irg.org/node/6136">http://wri-irg.org/node/6136</a>	
<b>Conscientious objection to military service (Resolution 1995/83)</b>	8 March 1995	Recalling its earlier resolutions, the Commission “draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights, as well as article 18 of the International Covenant on Civil and Political Rights” and “affirms that persons performing military service should not be excluded from the right to have conscientious objections to military service”. The Commission calls on States to introduce “within the framework of their national legal system, independent and impartial decision-making bodies with the task of determining whether a conscientious objection is valid in a specific case”.	Recognition of conscientious objection Length/terms of substitute service Discrimination of conscientious objectors in-service conscientious objection
		<a href="http://wri-irg.org/node/9174">http://wri-irg.org/node/9174</a>	

Name	Date	Synopsis	Categories
<b>Conscientious objection to military service (resolution 1993/84)</b>	10 March 1993	The Commission recalls its previous resolutions on the subject and “ <i>appeals to States, if they have not already done so, to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service</i> ”.  <a href="http://wri-irg.org/node/10691">http://wri-irg.org/node/10691</a>	Recognition of conscientious objection Length/terms of substitute service Discrimination of conscientious objectors
<b>Conscientious objection to military service (Resolution 1991/65)</b>	6 March 1991	The Commission reaffirms “its <a href="http://wri-irg.org/node/20844">resolution 1989/59</a> adopted without a vote on 8 March 1989”.  <a href="http://wri-irg.org/node/20844">http://wri-irg.org/node/20844</a>	Recognition of conscientious objection Length/terms of substitute service Discrimination of conscientious objectors
<b>Conscientious objection to military service (Resolution 1989/59)</b>	8 March 1989	The Commission “ <i>appeals to States to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service</i> ”.  <a href="http://wri-irg.org/node/6409">http://wri-irg.org/node/6409</a>	Recognition of conscientious objection Length/terms of substitute service Discrimination of conscientious objectors
<b>Conscientious objection to military service. (Resolution 1987/46)</b>	10 March 1987	The Commission recognised “ <i>that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, moral or similar motives</i> ”, and appealed “ <i>to States to recognize that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights</i> ”. It recommended “ <i>to States with a system of compulsory military service, where such provision has not already been made, that they consider introducing various forms of alternative service for conscientious objectors which are compatible with the reasons for conscientious objection, bearing in mind the experience of some States in this respect, and that they refrain from subjecting such persons to imprisonment</i> ”.  <a href="http://wri-irg.org/node/20798">http://wri-irg.org/node/20798</a>	Recognition of conscientious objection

## Universal Periodic Review (UPR)

State law & practice	✓
Individual cases	
Urgent action	
Only under-18s	

### Summary:

The Universal Periodic Review (UPR) was established along with the Human Rights Council by resolution [60/251](#) in 2006 and is a unique mechanism of the United Nations human rights system which involves a review of the human rights records of all UN Member States once every 4½ years, based on the Charter of the United Nations, the Universal Declaration of Human Rights, and any other human rights instruments to which the State under review is a party, and voluntary pledges and commitments made by the State. During the review process, other States examine the human rights practice of a State under review based on information provided by the State, a compilation of relevant UN documents prepared by the Office of the High Commissioner on Human Rights (OHCHR) and information provided by other stakeholders, including NGOs (compiled by the OHCHR). Other states may ask questions and make recommendations, which the State under review may accept or reject. The result of this review is reflected in an “outcome report” listing the recommendations made to the State under review. Until the next due review, the State under review has now four years time to implement the accepted recommendations and fulfil its voluntary pledges.

The second cycle of the Universal Periodic Review started at the 13th session of the Human Rights Council in May 2012, and will run until November 2016.

Information, including a timetable of the current review cycle, is available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

### 1. Likely results from use of mechanism

As this is an inter-governmental procedure, only States can ask questions or make recommendations to the State under review. NGOs can not intervene directly, but have to get a State to ask a question or to make a recommendation to the State under review. The State under review then can either accept or reject a recommendation.

### 2. To which States does the mechanism apply?

This mechanism applies to all member states of the United Nations.

### 3. Who can submit information?

The review at the Working Group is based on three sources of information:

- Information prepared by the State under Review on its human rights situation. This can take the form of a national report no longer than 20 pages.
- A compilation of “*information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed ten pages*” (Resolution A/HRC/RES/5/1). It can include for example Concluding Observations of the Human Rights Committee or the Committee on the Rights of the Child, reports by Special Rapporteurs or UN Country teams, etc. This compilation is prepared by the Office of the High Commissioner on Human Rights (OHCHR).
- Other “*credible and reliable information*” provided by “*other relevant stakeholders*” (including NGOs), which are summarised by the Office of the High Commissioner in a document not exceeding ten pages (Resolution A/HRC/RES/5/1).

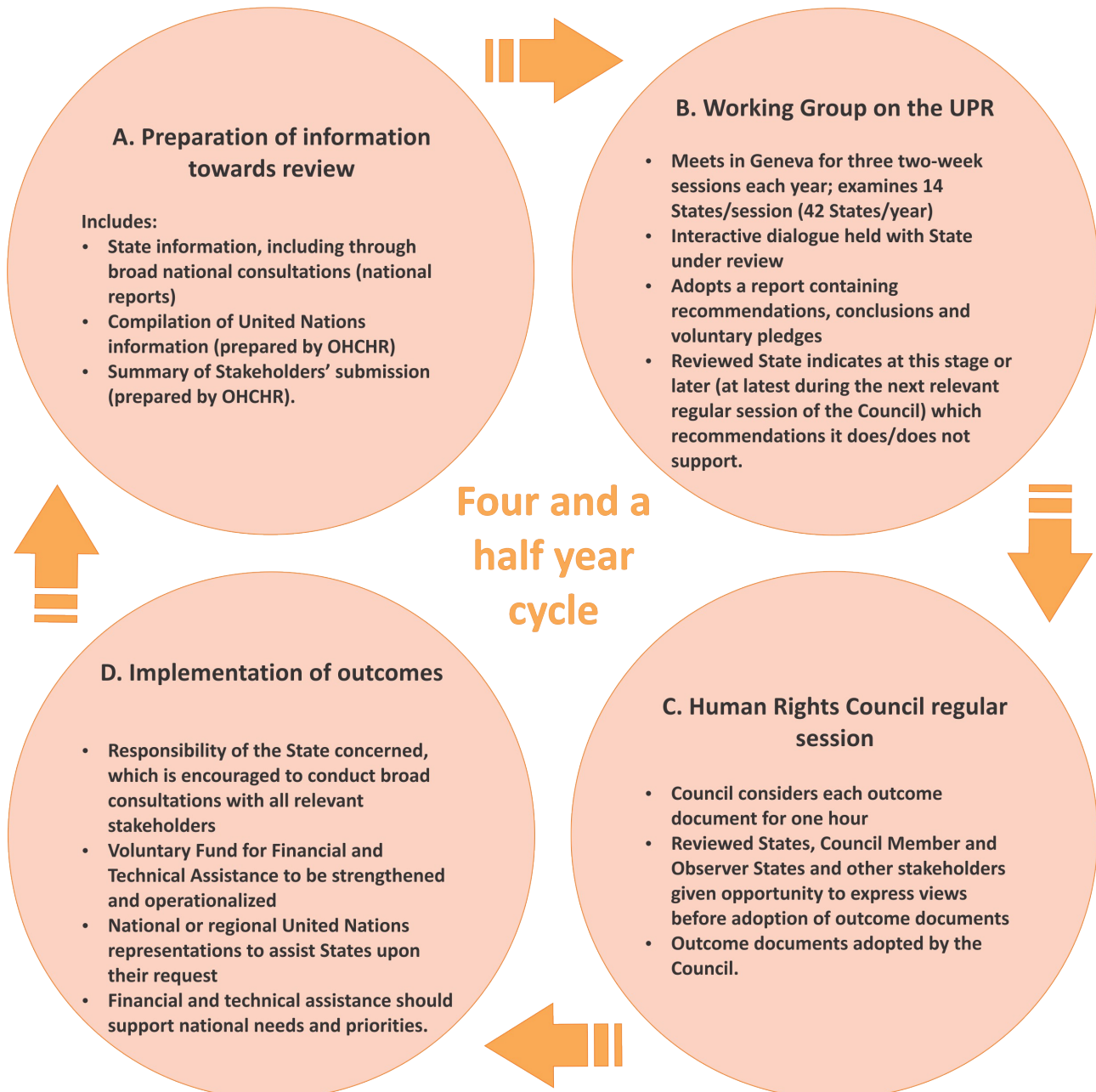
These three documents are usually available on the [OHCHR website](#) ten weeks before the start of the UPR working group.



#### 4. When to submit information?

The Universal Periodic Review Working Group holds three sessions per year dedicated to 14 states each, until the total of all UN members has been reviewed.

### The UPR process



*The UPR process. Source: OHCHR: A Practical Guide for Civil Society. Universal Periodic Review*

According to resolution [A/HRC/RES/5/1](#), “States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders”. If your State is following this procedure, it might be a good idea to get involved in the process, and to lobby for inclusion of the issue of conscientious objection in the State's report. Often, coalitions of national NGOs join forces to submit a joint report. If this is the case, it can be advisable to take part in such a coalition, to make sure that the issue of conscientious objection to military service is included in a broader NGO report. Such a national consultation process is likely to take place about one year before the review.



**8-6 months before the review:** The deadline for the submission of information by NGOs to the OHCHR is about six to eight months before the session. Submissions must be submitted and received by midnight Geneva time (CET) on the day of the given deadline and late submissions are not considered.

About six weeks before the session of each Working Group, the NGO UPR-Info is holding public sessions for NGOs to suggest questions and recommendations. All government delegations are invited to these sessions, and the timing should provide enough time for the delegations to consult with their respective government.

NGOs interested in taking part should contact:

UPR Info  
Avenue du Mail 14  
1205 Geneva, Switzerland  
Phone: + 41 22 321 77 70  
Fax: + 41 22 321 77 71  
Email: [info@upr-info.org](mailto:info@upr-info.org)

As the review itself is an inter-governmental procedure, it is then important to lobby other governments to raise questions and make recommendations to the State under review, either via other States' embassies in your country, or via their permanent missions at the UN in Geneva. Please get in touch if you have specific issues to raise in relation to conscientious objection to military service.

**During the review:** The review itself takes place in a Working Group of the Human Rights Council, which is composed of all UN member States and chaired by the President of the Council. NGOs in consultative status can attend but not take the floor during the review.

The review is prepared by a troika, which is selected by the drawing of lots among members of the Human Rights Council and from different regional groups. The troika receives the written questions and issues raised by States and relays them to the State under review. During the review itself, the members of the troika do not have any specific role. After the review, the troika is responsible for preparing a report of the Working Group, with the involvement of the State under review and assistance by the OHCHR. One of the members of the troika will introduce the report before its adoption at the Working Group.

**3-4 months after the review:** The report of the Working Group is adopted by consensus at a plenary session of the Human Rights Council. During this session, NGOs are allocated a total of 20 minutes for oral statement after the presentations of the State under Review and other States (20min each) and before the outcome report is adopted. Only NGOs in consultative status are allowed to make an oral statement. It is also possible to write a statement as not every NGO can be considered and coalitions of NGOs are generally favoured. These written statements will become official United Nations documents but they have however less impact than an oral statement. There is a deadline of usually two weeks before begin of the session for written statements, and there are very detailed technical instructions for submissions of statements, which have to be submitted by email.

For a webcast of the interactive dialogues please visit: <http://www.un.org/webcast/unhrc/archive.asp?go=080507>.

## 5. Special rules of procedure or advice for making a submission?

As stated in point 3.) The OHCHR asks NGOs to limit their official submission to a five page (2815 words) document, to which other information can be attached. When the information is submitted by a large coalition of NGOs, the official submission can reach ten pages (5630 words). For ease of reference, paragraphs and pages should be numbered. NGOs need to submit their report as a Microsoft Word document by email, and not in any other file format (no PDF), nor on paper.

The second and subsequent cycles of the UPR will focus on the recommendations accepted by the State under review during previous review cycles, and on the development of the human rights situation in the State since the last review. However, any other issues that come within the scope of the Universal Periodic Review can also be raised.

The OHCHR has issues "technical guidelines" for National Human Rights Institutions and NGOs, which they need to follow when submitting information to the UPR. The guidelines for the 2nd cycle (2012-2016) can be found at: <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>.

Submissions should be sent to [uprsubmissions@ohchr.org](mailto:uprsubmissions@ohchr.org). Please send only one submissions relating to one country per email message, and include the name of the NGO or coalition, the country, and the date of the session in the subject line.

For help and questions relating to the Universal Periodic Review, the website of UPR-Info at <http://upr-info.org> has a wealth of advice and information.

## **6. What happens to the submission (how long will it take)?**

If the submission complies with the technical guidelines, it will be made available on the [OHCHR website](http://www.ohchr.org) ten weeks before the start of the UPR working group. Information contained in the submission will hopefully also be included in the OHCHR compilation of information provided by “*other relevant stakeholders*”.

### **Following-up**

After the review, it is important to follow-up on the recommendations accepted by the State, and to monitor their implementation.

States are encouraged to submit a mid-term report on the implementation of UPR recommendation to the Human Rights Council. This provides a further opportunity for lobbying, and NGOs in consultative status can also submit comments in form of a written statement to the Human Rights Council.

## **7. History of the use of the mechanism.**

The issue of conscientious objection was brought up several times during the first cycle of the UPR, for example during the review of Colombia in 2009. Resolution: [A/HRC/10/82](http://www.unhcr.org/refugees/refugees/4a7b1082.html)

The OHCHR has developed a special [database](http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx) for the documentation related to the universal periodic review at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that <i>"we the peoples of the United Nations"</i> are determined (...): <ul style="list-style-type: none"> <li>to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and</li> <li>to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained</li> </ul> <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: <i>"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."</i>  <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All
<b>International Covenant on Economic, Social, and Cultural Rights</b>	3 January 1976	Article 6 guarantees the <i>"right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"</i> . A substitute service that is much longer than military service can be seen as a disproportionate restriction of this right. Article 13 guarantees the right to education.  <a href="http://www2.ohchr.org/english/law/cescr.htm">http://www2.ohchr.org/english/law/cescr.htm</a>	Length/terms of substitute service
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: <p><i>"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</i></p> <p><i>2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</i></p> <p><i>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</i></p> <p><i>4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."</i></p> <a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Interpretations

The resolutions of the Human Rights Council and the former Commission on Human Rights on conscientious objection to military service can be important references for the Universal Periodic Review (see pages 52-54), as can be *Concluding Observations* of the Human Rights Committee (see pages 24-34) or other Treaty bodies.

## Recommendations and Commitments

Name	Date	Synopsis	Categories
<b>Report of the Working Group on the Universal Periodic Review: Paraguay</b>	28 March 2011	<p>“44. Ghana asked about measures taken to respond to requests made by the ILO Committee of Experts on the Application of Conventions and Recommendations and the Human Rights Committee to enforce the legislation prohibiting the recruitment of children by the military. It referred to the gap that existed between men and women’s income at almost all levels, despite legal provisions on equal remuneration. Ghana made recommendations. (...)</p> <p>II. Conclusions and/or recommendations (...)</p> <p>85. The following recommendations enjoy the support of Paraguay which considers that they are already implemented or in the process of implementation: (...)</p> <p>85.35. Ensure the effective exercise of the right to conscientious objection and ensure that no minor (under 18) is recruited into the Armed Forces (Slovenia);</p> <p>85.36. Implement effectively the legislation prohibiting the forced military recruitment of children under the age of 18 (Ghana);</p> <p>85.37. Comply with the legislation prohibiting the forced military recruitment of children (Hungary);</p> <p>85.38. Put in place measures to effectively prevent underage military recruitment (Japan);”</p> <p><a href="http://wri-irg.org/node/20864">http://wri-irg.org/node/20864</a></p>	None
<b>Report of the Working Group on the Universal Periodic Review: Estonia</b>	28 March 2011	<p>“58. Slovakia (...) noted the (...) lack of clear grounds for accepting or rejecting an application for an alternative to military service. Slovakia made recommendations. (...)</p> <p>II. Conclusions and/or recommendations</p> <p>77. The recommendations formulated during the interactive dialogue and listed below have been examined by and enjoy the support of Estonia. (...)</p> <p>77.77. Ensure that the right of conscientious objection to military service is upheld, and clarify the grounds for acceptance or rejection of such claims (Slovakia);”</p> <p><a href="http://wri-irg.org/node/20863">http://wri-irg.org/node/20863</a></p>	Recognition of conscientious objection Discrimination of conscientious objectors
<b>Report of the Working Group on the Universal Periodic Review: Austria</b>	18 March 2011	<p>“93. The following recommendations will be examined by Austria which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:</p> <p>93.47. Raise the age for all enrolments into armed forces to the age of at least 18 years in line with the CRC recommendation (Ghana, Slovakia);”</p> <p><a href="http://wri-irg.org/node/20860">http://wri-irg.org/node/20860</a></p> <p>“93.47 Austria does not accept the recommendation. The option of performing the military service starting at the age of 17 is based solely on the voluntary enlistment of the person concerned and requires the consent of his legal guardian. Neither the direct participation in combat nor the voluntary enlistment for military service in international operations is admissible. Under these provisions, full respect of the entire Convention on the Rights of the Child including its Optional Protocol is guaranteed.”</p> <p><a href="http://wri-irg.org/node/20861">http://wri-irg.org/node/20861</a> (1 June 2011)</p>	None

Name	Date	Synopsis	Categories
<b>Report of the Working Group on the Universal Periodic Review: Georgia</b>	16 March 2011	<p>37. Slovenia took note of the concluding observations of the Human Rights Committee on the issue of conscientious objectors, in particular, the differences between the length of non-military alternative service and military service and asked what steps had been taken to address that difference. Slovenia made recommendations. (...)</p> <p>II. Conclusions and/or recommendations</p> <p>105. The recommendations formulated during the interactive dialogue and listed below have been examined by Georgia enjoy the support of Georgia: (...)</p> <p>105.63. Reduce the length of alternative service for conscientious objectors so that it is the same length as the military service (Slovenia);</p> <p><a href="http://wri-irg.org/node/20862">http://wri-irg.org/node/20862</a></p>	Length/terms of substitute service
<b>Report of the Working Group on the Universal Periodic Review: Eritrea</b>	4 January 2010	<p>Recommendations were made on the indefinite prolongation of the military service of conscripts (by Canada (58) and the United Kingdom (60)), the non-recognition of the right of conscientious objection to military service (mentioned by Slovenia (59), and Argentina (57)), and abuses within the National Service programme (referred to by the USA (62) and the United Kingdom (61))</p> <p>Also that it take effective measures to protect under-18s from recruitment, (by Germany (56), Argentina (57), the United Kingdom (61), the USA(62), Poland (63) and Ghana (64)).</p> <p><a href="http://wri-irg.org/node/20858">http://wri-irg.org/node/20858</a></p> <p>Eritrea rejected all recommendations related to military service, possibly with the exception of those relating to sexual exploitation and violence against women in the Armed Forces.</p> <p><a href="http://wri-irg.org/node/20859">http://wri-irg.org/node/20859</a> (8 March 2010)</p>	Recognition of conscientious objection
<b>Report of the Working Group on the Universal Periodic Review: Uzbekistan</b>	11 March 2009	<p>“Slovenia asked (a) what steps the Government was taking to ensure that all individuals with a conscientious objection to military service are able to exercise this right and not only those belonging to recognized religious groups whose beliefs require such refusal; (...) Slovenia recommended that Uzbekistan (d) ensure that conscientious objection to military service is available to individuals irrespective of their religion or belief, that the process for consideration applications is under civilian control and to provide a non-punitive civilian alternative service; (b) respond soon to these requests (of special procedures to visit the country) in a positive way.”</p> <p>“Uzbekistan indicated that it would study the conformity of the (...) recommendations with the national legislation.”</p> <p><a href="http://wri-irg.org/node/20856">http://wri-irg.org/node/20856</a></p> <p>“17. According to the article 22, paragraph 1, page 1 of the Law “On general military duty and military service” recruits are released from military duty and military service in a mobilization invocatory reserve during the peacetime:</p> <p>(a) If recognized unfit for military service due to health problems;</p> <p>(b) If one of near relatives (brother, sister) has died during the military service;</p> <p>(c) If he/she has a holy order in one of the registered religious organizations.</p> <p>18. According to the article 37, paragraph 2 of above-mentioned Law, citizens at the age from 18 to 27, listed in military registry and</p>	Recognition of conscientious objection Discrimination of conscientious objectors

Name	Date	Synopsis	Categories
<b>Report of the Working Group on the Universal Periodic Review: Israel</b>	9 January 2009	<p>subject to draft, have the right to choose alternative service if they are members of registered religious organizations and there dogma prohibits the use of weapons and service in the army.”  <a href="http://wri-irg.org/node/20857">http://wri-irg.org/node/20857</a> (13 March 2009)</p> <p>"Slovenia noted with concern the information in the OHCHR compilation and stakeholders' reports on the refusal to the right to conscientious objection, part of the right to freedom of thought, conscience and religion, and on imprisonment in this regard. It asked if Israel intended to review this, and recommended ceasing imprisoning conscientious objectors and considering granting the right to conscientious objection to serve instead with a civilian body independent of the military."  <a href="http://wri-irg.org/node/20850">http://wri-irg.org/node/20850</a></p> <p>"461. Israel had also taken upon itself to promote the following items from the Council's recommendations:" (...)          "(h) Granting the right to those who object to serve in the army on conscientious grounds to serve instead with a civilian body independent of the military, such as in the form of the newly established and strengthened Public Commission for National Civil Service;"  <a href="http://wri-irg.org/node/20851">http://wri-irg.org/node/20851</a> (19 March 2009)</p>	Recognition of conscientious objection
<b>Report of the Working Group on the Universal Periodic Review: Colombia</b>	9 January 2009	<p>Slovenia recommended that Colombia should recognise the right of conscientious objection to military service “in law and practice and ensure that recruitment methods allow it (and) guarantee that conscientious objectors are able to opt for alternative service, the duration of which would not have punitive effects.”  <a href="http://wri-irg.org/node/20848">http://wri-irg.org/node/20848</a></p> <p>Colombia rejected this recommendation, arguing that “The Colombian Constitution and the legal framework establish that all citizens have the obligation to enrol in the military service when the circumstances so require to defend the National sovereignty and the public institutions and to provide security conditions for all citizens. This obligation has been upheld on several occasions by the jurisprudence of the Constitutional Court.”  <a href="http://wri-irg.org/node/20849">http://wri-irg.org/node/20849</a> (13 January 2009)</p>	Recognition of conscientious objection
<b>Report of the Working Group on the Universal Periodic Review: Serbia</b>	8 January 2009	<p>During the Universal Periodic Review the question of arrangements for conscientious objectors to military service was raised by both the Russian Federation and Slovenia. Replying to the Russian Federation's question in the December 2008 Working Group, Serbia reported: “According to the Constitution, conscientious objectors could serve their military duty without the obligation to carry weapons. There were 1,730 institutions and organizations for civil service. The civil service lasted nine months and 49 per cent of conscripts had opted for it.”</p> <p>Slovenia made a number of specific recommendations: “that Serbia restore civilian control to decision-making in relation to applications for conscientious objection to military service, to extend the time limit for applications to be made, remove the exclusion of all those who have ever held a firearms licence from being recognized as conscientious objectors, and equalize the length of alternative and military service.”  <a href="http://wri-irg.org/node/20852">http://wri-irg.org/node/20852</a></p> <p>Serbia's response to these recommendations:</p>	Length/terms of substitute service Discrimination of conscientious objectors



Name	Date	Synopsis	Categories
		<p>"Certain proposals and recommendations of the Republic of Slovenia have already been incorporated into the Draft Law on Civilian Service, which is in parliamentary procedure. With the passage of that law, civil control regarding civilian service would be laid out in detail, so that the members of the Appeals Commission shall not be members of the Ministry of Defense, except for the Commission president. This will reduce the possibilities of abuse on the part of the First Instance Commissions and organizations or institutions, thereby ensuring total civil control over civilian service."</p> <p>"The equalization of military and civilian service <b>is not possible</b>, because a soldier serving armed military duty spends an uninterrupted six months in his unit, while a person in civilian service spends eight hours in his assigned organization or institution, is free on weekends and has the right to regular and awarded leave. The proposal "to invalidate the exception of those who have held weapon permits from the right to conscientious objection" is in absolute collision with the arguments of the institution of conscientious objection and, thus, <b>cannot be accepted</b>."</p> <p><a href="http://wri-irg.org/node/20853">http://wri-irg.org/node/20853</a> (18 March 2009)</p>	
Report of the Working Group on the Universal Periodical Review: Turkmenistan	6 January 2009	<p>"Slovenia enquired about the Government's recognition of conscientious objection to military service. It recommended that Turkmenistan recognize this and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors. (...)"</p> <p><a href="http://wri-irg.org/node/20854">http://wri-irg.org/node/20854</a></p> <p>"555. Concerning the recommendation to recognize conscientious objection to military service and with respect to recognizing the right of persons renouncing military service on religious grounds, Turkmenistan provided information that conditions existed that allowed for guaranteeing the right to freedom of religion and the fulfilment of military duty by serving in non-military structures of the Ministry of Defence, such as medical and construction units. Turkmenistan also indicated that the process of improving the legislation on religious organizations was ongoing."</p> <p><a href="http://wri-irg.org/node/20855">http://wri-irg.org/node/20855</a> (19 March 2009)</p>	Recognition of conscientious objection Repeated punishment of conscientious objectors
Report of the Working Group on the Universal Periodical Review on the Republic of Korea	29 May 2008	<p>In the Working Group "Slovenia noted the recommendation by the Human Rights Committee that the Republic of Korea recognize the right of conscientious objectors to be exempted from military services. The Committee found a violation of article 18, paragraph 1, of ICCPR in two individual communications. Slovenia recommended that the Republic of Korea follow up on the Committee's recommendation to provide the authors of these communications with an effective remedy. It also recommended recognizing the right of conscientious objection by law, to decriminalize refusal of active military service and to remove any current prohibition from employment in government or public organizations." The United Kingdom recommended "that active steps be taken to introduce alternatives to military services for conscientious objectors."</p> <p>The Republic of Korea did not explicitly accept these recommendations, but reported that it had "announced a new programme to give conscientious objectors the opportunity to participate in alternative in civilian service, in September 2007. For the implementation of the new system", the statement continued, "the Government has to revise the Military Service Act, and considers submitting a revised Act to the National Assembly this year."</p> <p><a href="http://wri-irg.org/node/20846">http://wri-irg.org/node/20846</a></p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Report of the WG on the Universal Periodic Review on Finland</b>	23 May 2008	In its written responses at the time of adoption of the report, the Republic of Korea stated with regard to both recommendations only that “ <i>Alternative service programs for conscientious objectors are currently being studied.</i> ” (25 August 2008) <a href="http://wri-irg.org/node/20847">http://wri-irg.org/node/20847</a>	Length/terms of substitute service
		In the Working Group, the United Kingdom “welcomed the attempts to end discrimination against conscientious objectors through the reforms of the Non-Military Service Act. [but] encouraged Finland to go further in reducing the duration of non-military service and to establish parity between the length of non-military service and the average, rather than the longest possible, length of military service.” Although the issue was not included among the formal responses to recommendations, the Finnish delegation did respond to the United Kingdom's comments during the Working Group dialogue itself, stating that “On the important question on the length of the Finnish non-military service that has recently been shortened and is now equal to the longest duration of military service, under the Military Services Act, [...] the Finnish Constitutional Committee of Parliament [had] compared the burden of non-military and military services and the overall burden irrespective of the length was assessed to be more or less equal between the two forms of services and this is the reasoning behind the length of non-military service.” <a href="http://wri-irg.org/node/20845">http://wri-irg.org/node/20845</a>	

## Contact

### OHCHR address:

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Email: [uprsubmissions@ohchr.org](mailto:uprsubmissions@ohchr.org)

<http://www.ohchr.org/EN/AboutUs/Pages/ContactUs.aspx>

### Further reading:

- OHCHR: *A Practical Guide for Civil Society: Universal Periodic Review*, January 2012, <http://www.ohchr.org/EN/HRBodies/UPR/Documents/PracticalGuideCivilSociety.pdf>
- OHCHR: *Universal Periodic Review: information and guidelines for relevant stakeholders' written submissions*, November 2011, <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>
- OHCHR: *Information Note for National Human Rights Institutions on the 2nd Cycle of the Universal Periodic Review*, October 2011, <http://www.ohchr.org/Documents/HRBodies/UPR/InfoNoteNHRIUPR2ndCycle.pdf>
- OHCHR: *Basic facts about the UPR*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, accessed 13 August 2012
- UPR-Info.org: *New modalities for the second cycle*, November 2011, [http://www.upr-info.org/IMG/pdf/new\\_upr\\_modalities\\_second\\_cycle.pdf](http://www.upr-info.org/IMG/pdf/new_upr_modalities_second_cycle.pdf)
- UPR-Info.org: *The role of NGOs at the UPR*, May 2012, [http://www.upr-info.org/IMG/pdf/timeline\\_ngo\\_participation\\_e.pdf](http://www.upr-info.org/IMG/pdf/timeline_ngo_participation_e.pdf)
- UPR-Info.org and NGO group for the CRC: *NGO written submission for the Universal Periodic Review. Information for NGOs*, February 2012, [http://www.upr-info.org/IMG/pdf/upr\\_factsheet\\_2\\_ngo\\_submission\\_e.pdf](http://www.upr-info.org/IMG/pdf/upr_factsheet_2_ngo_submission_e.pdf)
- Save the Children: *Universal Periodic Toolkit: A guide for country programmes*, February 2012, [http://www.upr-info.org/IMG/pdf/save\\_the\\_children\\_upr\\_toolkit\\_2011\\_en.pdf](http://www.upr-info.org/IMG/pdf/save_the_children_upr_toolkit_2011_en.pdf)



## Human Rights Council Special Procedures

### Summary:

“Special procedures” is the name given to the mechanisms of the Human Rights Council to monitor human rights violations in specific countries or examine global human rights issues. There are basically two different mandates:

State law & practice	✓
Individual cases	✓
Urgent action	✓
Only under-18s	

- **Thematic mandates:** these cover special themes or aspects of human rights. The two most relevant for conscientious objection are the *Working Group on Arbitrary Detention* (see page 79) and the *Special Rapporteur on Freedom of Religion or Belief* (see page 69). However, others might also be relevant in cases of recruitment, detention, maltreatment or other issues around conscientious objection, such as the *Special Rapporteur on the situation of human rights defenders* (see <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>), the *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (see <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>), the *Special Rapporteur on the right to Education* (see <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx>) and the *Special Rapporteur on Freedom of Expression* (see <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>). An overview of the thematic mandates is available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>.
- **Country mandates** cover certain countries or regions. They can be relevant if there is a country mandate for your country. An overview of country mandates is available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>.

The principal functions of Special Procedures are:

- analysing the relevant thematic issue or country situation, including visits to countries;
- advising on the measures which should be taken by the relevant Government(s) or other actors;
- alerting the UN agencies, in particular the Human Rights Council, and the public to the need to address specific situations and issues;
- advocating on behalf of victims of human rights violations through measures such as urgent action and by calling upon States to respond to specific allegations and provide redress;
- activating and mobilising the international and national communities and the Human Rights Council to address particular human rights issues, and to encourage cooperation among Governments, civil society, and inter-governmental organisations;
- following up on recommendations

In individual cases they can send so called *communications* (urgent appeals and letters of allegation) on alleged violations of human rights to the Governments concerned.

They present their [annual reports](#), as well as reports on country visits and thematic studies to the Human Rights Council and [selected documents](#) to the GA. All special procedures jointly produce a communications report for each session of the Human Rights Council, which includes letters of allegation and urgent appeals, and responses received from governments.

### 1. Likely results from use of mechanism

In individual cases, the mandate holder may send either an urgent appeal or a letter of allegation (of human rights violations) to the Government of the state concerned. Depending on the response received from the Government, the mandate holder will decide on further steps to take.

As a general rule, the existence and content of both urgent appeals and letters of allegation remain confidential until a summary of such communications and the replies received from the State concerned are included in the joint communications report of all special procedures to the Human Rights Council. The joint communications report also includes links to the original urgent appeal or letter of allegation, and - if available - to the Government's response.

The Special Procedures can be used for complaints about state law and practice. The mandate holder may raise these issues as and when he or she thinks it appropriate.

The mandate holders of the Special Procedures conduct country visits, during which they meet with representatives of the State, but also with NGOs. The Special procedures can only visit countries which have agreed to their request for invitation. Some countries have issued "[standing invitations](#)", which means

that they are, in principle, prepared to receive a visit from any special procedures mandate holder. As of the end of December 2011, 90 States had extended standing invitations to the special procedures. After their visits, special procedures' mandate-holders issue a mission report containing their findings and recommendations.

## **2. To which States does the mechanism apply?**

All states

## **3. Who can submit information?**

Everybody.

## **4. When should information be submitted?**

Information on individual cases should be submitted as soon as possible, especially in cases where an urgent action by the Special Procedure is desired.

For information on State law and practice information can be submitted at any time. It is also advisable to watch out for visits of a relevant Special Procedure to your country, and to submit information timely before a scheduled visit, and to attempt to schedule a meeting during the visit. A coalition of NGOs might have a higher chance to have a meeting during a country visit than an individual NGO so far unknown to the Special Procedure.

## **5. Are there any special rules of procedure?**

Information can be submitted by post or electronically, but anonymous submissions will not be considered. In individual cases, submissions to the Special Procedures are not a quasi-judicial procedure, which means that they are not meant to replace national or international legal procedures. Therefore, there is no need for domestic remedies to be exhausted.

Allegations of human rights violations should contain clear and concise details of the details of the case, the name and other identifying information regarding the individual victim(s), information as to the circumstances including - if available - date and place of incidents and alleged perpetrators, suspected motives, and any steps already taken at the national, regional or international level regarding the case(s).

## **6. What happens to a submission (how long will it take)?**

Mandate holders of the Special Procedures may acknowledge receipt of information from individuals and organisations, but they often do not do so. They are also not required to inform those who provide information about any subsequent measures they have taken - and they often don't.

In case of request for an urgent action, the Quick Response Desk of the Special Procedures Division of the OHCHR coordinates the sending of communications by all mandates. Governments are generally requested to provide a substantive response to urgent appeals within 30 days. Only in appropriate cases a mandate holder may decide to make such urgent appeals public by issuing a press release.

Governments are usually requested to respond to letters of allegation of human rights violations within two months.

A summary of urgent appeals and letters of allegation and responses from Governments is usually included in the joint communications report of the Special Procedures to the Human Rights Council. This will include the names of the victims, unless there are specific reasons why the names of the victims should remain confidential. In this case, explain those reasons in your initial submission.

The joint communications reports can be accessed at

<http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

**Legal basis**

<b>Name</b>	<b>Entry into force</b>	<b>Synopsis</b>	<b>Categories</b>
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that <i>"we the peoples of the United Nations"</i> are determined (...): to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained  <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: <i>"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."</i>  <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All
<b>International Covenant on Economic, Social, and Cultural Rights</b>	3 January 1976	Article 6 guarantees the <i>"right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"</i> . A substitute service that is much longer than military service can be seen as a disproportionate restriction of this right. Article 13 guarantees the right to education.  <a href="http://www2.ohchr.org/english/law/cescr.htm">http://www2.ohchr.org/english/law/cescr.htm</a>	Length/terms of substitute service
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: <i>"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."</i>  <a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Contacts

How to send information on alleged human rights violations to Special Procedures:

Special Procedures Division

c/o OHCHR-UNOG

8-14 Avenue de la Paix 1211

Geneva 10

Switzerland

Fax: +41-22-917 90 06

### For urgent actions:

E-mail: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

<http://www2.ohchr.org/english/bodies/chr/special/index.htm>

For further information, or to submit information (other than specific information on alleged human rights violations), please contact: [spdinfo@ohchr.org](mailto:spdinfo@ohchr.org)

## Further reading

- OHCHR website on Special Procedures:  
<http://www2.ohchr.org/english/bodies/chr/special/index.htm>
- OHCHR: *Special procedures of the Commission on Human Rights: Urgent appeals and letters of allegation on human rights violations*, April 2005,  
[http://www.ohchr.org/Documents/HRBodies/SP/LeafletCommunications\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/SP/LeafletCommunications_en.pdf)
- Annual Meeting of special procedures: *Manual of Operations of the Special Procedures of the Human Rights Council*, August 2008,  
[http://www.ohchr.org/Documents/HRBodies/SP/Manual\\_Operations2008.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf)

## Special Rapporteur on Freedom of Religion or Belief

State law & practice	✓
Individual cases	✓
Urgent action	✓
Only Under-18s	

### Summary:

The *Special Rapporteur on freedom of religion or belief* is an independent expert appointed by the UN Human Rights Council. It was formerly known as the *Special Rapporteur on Religious Intolerance* and was originally created by the UN Commission on Human Rights.

The mandate is primarily based on article 18 of the *Universal Declaration of Human Rights*, article 18 of the *ICCPR* and the *1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*.

The mandate holder is appointed to identify and examine incidents and governmental actions in all parts of the world which are inconsistent with the enjoyment of the right to freedom of religion or belief. The Special Rapporteur recommends remedial measures as appropriate which includes transmitting urgent appeals (to try to prevent human rights violations) and letters of allegation (about events which have occurred) to States. Furthermore the mandate holder undertakes fact-finding country visits and submits reports on them to the Human Rights Council and General Assembly as well as annual reports, highlighting state practice, trends and individual cases, and thematic studies.

As conscientious objection as a human rights falls under the right to freedom of thought, religion, or belief, the Special Rapporteur on Freedom of Religion and Beliefs has the mandate most closely related to conscientious objection to military service, and takes up most regularly issues of conscientious objection. Cases of non-religious conscientious objectors might however, be a little more difficult, although theoretically they fall under the mandate.

### 1. Likely results from use of mechanism

#### a) Individual cases

After the Special Rapporteur has received information on cases of alleged human rights violations, the mandate holder might either send an urgent appeal or a letter of allegation to the Government of the state concerned. Depending on the response received from the Government, the Special Rapporteur will decide on further steps to take.

As a general rule, the existence and content of both urgent appeals and letters of allegation remain confidential until a summary of such communications and the replies received from the State concerned are included in the joint communications report of all special procedures to the Human Rights Council. The joint communications report also includes links to the original urgent appeal or letter of allegation, and - if available - to the Government's response.

#### b) State law and practice

The Special Rapporteur on Freedom of Religion or Beliefs also receives information on state law and practice, and raises issues with a state concerned either in communications, or during a state visit. The Special Rapporteur might make recommendations in the Annual Report, or in a report on a state visit. For example, in the interim report to the UN General Assembly from July 2009 the Special Rapporteur noted that "*Conscientious objection to perform military service is another issue of concern in some States. The Special Rapporteur welcomes the fact that a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced compulsory military service with alternative national service. However, certain domestic legislation remains problematic in terms of the eligibility to and conditions of conscientious objection. The Special Rapporteur recommends a thorough review of these laws from the perspective of their compliance with international standards and best practices.*" (see <http://wri-irg.org/node/20274>)

Following a visit to Azerbaijan, the Special Rapporteur "*urge(d) the Government to honour its commitment made before the Council of Europe and to adopt legislation on alternative service in pursuance to the provisions of its own Constitution, which guarantees such a right.*" (see <http://wri-irg.org/node/20254>) Following a country visit to Turkmenistan, the Special Rapporteur recommended: "*The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of "ne bis in idem", as enshrined in article 14 (7) of the International*

*Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country.”* (see <http://wri-irg.org/node/20252>)

## **2. To which States does the mechanism apply?**

All States

## **3. Who can submit information?**

Everybody

## **4. When to submit information?**

Information on individual cases should be submitted as soon as possible, especially in cases where an urgent action by the Special Procedure is desired.

For information on State law and practice information can be submitted at any time. It is also advisable to watch out for a visit of the Special Rapporteur to your country, and to submit information timely before a scheduled visit, and to attempt to schedule a meeting during the visit. A coalition of NGOs might have a higher chance to have a meeting during a country visit than an individual NGO so far unknown to the Special Rapporteur.

## **5. Are there any special rules of procedure?**

Information can be submitted by post or electronically, but anonymous submissions will not be considered. In individual cases, submissions to the Special Procedures are not a quasi-judicial procedure, which means that they are not meant to replace national or international legal procedures. Therefore, there is no need for domestic remedies to be exhausted.

Allegations of human rights violations should contain clear and concise details of the details of the case, the name and other identifying information regarding the individual victim(s), information as to the circumstances including - if available - date and place of incidents and alleged perpetrators, suspected motives, and any steps already taken at the national, regional or international level regarding the case(s). To facilitate the submission of allegations of human rights violations, the Special Rapporteur has produced a model questionnaire, which is available at

<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Complaints.aspx>.

## **6. What happens to the submission (how long will it take)?**

The Special Rapporteur may acknowledge receipt of information from individuals and organisations if requested to do so, but they often this does not happen. The Special Rapporteur is also not required to inform those who provide information about any subsequent measures they have taken.

In case of request for an urgent action, the Quick Response Desk of the Special Procedures Division of the OHCHR coordinates the sending of communications by all mandates. Often communications are sent as joint communications of several special procedures. Governments are generally requested to provide a substantive response to urgent appeals within 30 days. Only in appropriate cases a mandate holder may decide to make such urgent appeals public by issuing a press release.

Governments are usually requested to respond to letters of allegation of human rights violations within two months.

A summary of urgent appeals and letters of allegation and responses from Governments is usually included in the joint communications report of the Special Procedures to the Human Rights Council. This will include the names of the victims, unless there are specific reasons why the names of the victims should remain confidential. In this case, explain those reasons in your initial submission.

The joint communications reports can be accessed at

<http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

With the introduction of the joint communications report, the Special Rapporteur does no longer add observations to urgent appeals or letters of allegations, and responses received from governments.

## **7. History of the use of the mechanism.**

The special rapporteur for religious intolerance has the mandate most closely related to conscientious objection to military service and is the thematic mechanism to most regularly taking up issues of conscientious objection.

The Special Rapporteur has been informed of the violation of the right to conscientious objection of individual conscientious objectors in several cases, such as cases from Armenia, Turkmenistan, Eritrea, Azerbaijan, among others (see “case law”, below). The issue of conscientious objection has also been



raised by the Special Rapporteur during several country visits.

In the past, the Special Rapporteur on Freedom of Religion or Belief has drawn governments' attention to explicit international law (see "legal basis"), and urged governments to comply with international standards by recognising the right to conscientious objection. In several reports, the Rapporteur stressed the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights.

## Legal Basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that " <i>we the peoples of the United Nations</i> " are determined (...): to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained  <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: " <i>Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.</i> "  <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: "1. <i>Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</i> 2. <i>No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</i> 3. <i>Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</i> 4. <i>The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.</i> "  <a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Interpretations

Name	Date	Synopsis	Categories
<b>Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief</b>	25 November 1981	<p>Article 1 on the Declaration states:</p> <p>“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p> <p>2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.</p> <p>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”</p> <p><a href="http://www.un.org/documents/ga/res/36/a36r055.htm">http://www.un.org/documents/ga/res/36/a36r055.htm</a></p>	All

The resolutions of the *Human Rights Council* and the former *Commission on Human Rights* on conscientious objection to military service can be important references for the Special Rapporteur on Freedom of Religion or Belief (see pages 52-54), as can be the *Concluding Observations* of the Human Rights Committee (see pages 24-34) or other Treaty bodies.

## Reports and Observations

Name	Date	Synopsis	Categories
<b>Armenia. Alleged arbitrary detention and harassment of members of the Jehovah's Witnesses community.</b>	23 February 2012	<p>According to the information received, members of the Jehovah's Witnesses community had been facing harassment, as well as the imprisonment of the following 72 Jehovah's Witnesses: (...) The individuals have reportedly been charged under the Armenian Criminal Code for their conscientious objection to military service on religious grounds. Reportedly, a further three had been held in pretrial detention. On 19 July 2011, Garegin Avetisyan was allegedly convicted as a conscientious objector, sentenced and arrested for refusing military service.</p> <p><a href="http://wri-irg.org/node/20882">http://wri-irg.org/node/20882</a></p>	Recognition of conscientious objection
<b>Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, on his mission to the Republic of Moldova</b>	27 January 2012	<p>“A. Recommendations for the authorities of the Republic of Moldova</p> <p>(...)</p> <p>84. The Government should continue to recognize the right to conscientious objection in law and in practice, and ensure that the relevant legislation is implemented in a non-discriminatory manner.</p> <p>(...)</p> <p>87. The “authorities” of the Transnistrian region of the Republic of Moldova are additionally urged:</p> <p>(...)</p> <p>(c) To cease without delay practices of detaining persons objecting on grounds of religion or conscience to military service, as well as to develop rules for alternative service for such conscientious objectors;”</p> <p><a href="http://wri-irg.org/node/20251">http://wri-irg.org/node/20251</a></p>	Recognition of conscientious objection



Name	Date	Synopsis	Categories
<b>Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt: Mission to Paraguay</b>	26 January 2012	<p>“VI. Conclusions and recommendations (...) 58. (...) To date, Paraguay has respected conscientious objection to military service, and it is to be hoped that this practice will continue under Law No. 4.013. (...) 64. Against the background of these general observations, the Special Rapporteur encourages the Government: (...) (g) To continue to recognize the right to conscientious objection in law and in practice; this includes the independent functioning of the newly established National Council on Conscientious Objection, ensuring fair and transparent procedures while maintaining non-punitive principles for alternative non-military civilian service.”</p> <p><a href="http://wri-irg.org/node/15543">http://wri-irg.org/node/15543</a></p>	Recognition of conscientious objection
<b>Turkmenistan: Urgent appeal sent on 12 February 2010 jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention</b>	14 February 2011	<p>The Special Rapporteur would like to reiterate the observations and recommendations on the issue of conscientious objection in his predecessor's country report on Turkmenistan (see A/HRC/10/8/Add.4, paras. 17, 50-51, 61 and 68). In paragraph 68 of the country report, the Special Rapporteur recommended that “the Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of “ne bis in idem”, as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or HRC/16/53/Add.1 she has already been convicted or acquitted in accordance with the law and penal procedure of each country.”</p> <p><a href="http://wri-irg.org/node/20883">http://wri-irg.org/node/20883</a></p>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<b>Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Mission to Turkmenistan</b>	12 January 2009	<p>“68. The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of “ne bis in idem”, as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country.”</p> <p><a href="http://wri-irg.org/node/20252">http://wri-irg.org/node/20252</a></p>	Recognition of conscientious objection Repeated punishment of conscientious objectors

Name	Date	Synopsis	Categories
<b>Turkmenistan Communication sent on 17 July 2007</b>	28 February 2008	<p>The communication concerned the cases of two conscientious objectors imprisoned for refusing military service.</p> <p><i>“251. The Special Rapporteur regrets that she has not received a reply from the Government concerning the above mentioned allegation. She would like to refer to Resolution 1998/77 of the Commission on Human Rights, which draws attention to the right of everyone to have conscientious objections to military service. The Human Rights Committee recently observed “that while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief” (CCPR/C/88/D/1321-1322/2004, para. 8.3). In line with the Human Rights Committee’s General Comment No. 22, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs when the right to conscientious objection is recognized by law or practice; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.”</i></p> <p><a href="http://wri-irg.org/node/20885">http://wri-irg.org/node/20885</a></p>	Recognition of conscientious objection Discrimination of conscientious objectors
<b>Libya Urgent appeal sent on 13 February 2007 jointly with the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the question of torture</b>	28 February 2008	<p>The case concerned the situation of 430 Eritrean refugees in Libya, the majority conscripts who fled Eritrea to avoid military service. All were detained in Libya. <i>“The 430 individuals are facing imminent deportation to Eritrea. During their detention, Libyan authorities have reportedly beaten and raped or sexually abused some detainees. Concerns were expressed that, should they be forcibly returned to Eritrea, they may be at risk of torture or ill-treatment, as well as for potential persecution with regard to their freedom of thought, conscience and religion. Further concern was expressed for their physical and mental integrity while in detention.”</i></p> <p>(...)</p> <p>The Special Rapporteur “would like to take the opportunity to refer to her last report to the General Assembly where she has dealt with the vulnerable situation of refugees, asylum-seekers and internally displaced persons (see A/62/280, paras. 38-63). A refusal to perform military service in the refugee’s country of origin may give rise to a well-founded fear of persecution and relevant UNHCR documents (see <i>ibid.</i>, para. 58) provide that refugee status may be established if the refusal to serve is based on genuine political, religious or moral convictions or valid reasons of conscience. In conscientious objector cases, a law purporting to be of general application in the country of origin may be persecutory where it impacts differently on particular groups, where it is applied in a discriminatory manner or where the punishment is excessive or disproportionately severe or where it cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions.”</p> <p><a href="http://wri-irg.org/node/20886">http://wri-irg.org/node/20886</a></p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Eritrea Communication sent on 11 October 2007 jointly with the Special Rapporteur on the question of torture</b>	28 February 2008	<p>"95. The Special Rapporteur regrets that she has not received a reply from the Government concerning the above mentioned allegation. She wishes to stress that the right of conscientious objection is a right which is closely linked with freedom of religion of belief. The Special Rapporteur would like to draw the Government's attention to paragraph 5 of resolution 1998/77 of the Commission on Human Rights, which emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment. Imprisoning conscientious objectors for more than 13 years is clearly a disproportionate measure which violates the individuals' right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights (ICCPR)."</p> <p><a href="http://wri-irg.org/node/20887">http://wri-irg.org/node/20887</a></p>	Recognition of conscientious objection Repeated imprisonment of conscientious objectors
<b>Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Addendum: Mission to Tajikistan</b>	27 November 2007	<p>"The Special Rapporteur is concerned that the Government of Tajikistan does not recognize the right to conscientious objection to compulsory military service. She would like to reiterate the recommendation of the Human Rights Committee that the Government take all necessary measures to recognize the right of conscientious objectors to be exempted [7] from military service. In line with the Human Rights Committee's general comment No. 22 (1993), when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. Furthermore, the Special Rapporteur encourages the Government to ensure that no legislation is adopted which overstates the permissible limitations on the freedom to manifest one's religion or belief, especially with regard to the issue of conscientious objection to compulsory military service."</p> <p><a href="http://wri-irg.org/node/20275">http://wri-irg.org/node/20275</a></p>	Recognition of conscientious objectors Discrimination of conscientious objectors
<b>Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir</b>	20 July 2007	<p>"The first mandate-holder, Mr. Angelo Vidal d'Almeida Ribeiro, developed a set of criteria concerning cases of conscientious objection (E/CN.4/1992/52, para. 185). Conscientious objectors should be exempted from combat but could be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection, should such service exist in their country. To avoid opportunism, it would be acceptable if this service were at least as onerous as military service, but not so onerous as to constitute a punishment for the objector. They could also be asked to perform alternative service useful to the public interest, which may be aimed at social improvement, development or promotion of international peace and understanding. Conscientious objectors should be given full information about their rights and responsibilities and about the procedures to be followed when seeking recognition as conscientious objectors, bearing in mind that application for the status of conscientious objector has to be made within a specific time frame. The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or a by a regular civilian court, with the application of all the legal</p>	Recognition of conscientious objection Discrimination of conscientious objectors Length/terms of substitute service

Name	Date	Synopsis	Categories
		<p>safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing, and be entitled to legal representation and to call relevant witnesses.”</p> <p><a href="http://wri-irg.org/node/20276">http://wri-irg.org/node/20276</a></p>	
<b>Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. Addendum - Mission to Azerbaijan</b>	18 October 2006	<p>“101. Regarding the right to conscientious objection, the Special Rapporteur urges the Government to honour its commitment made before the Council of Europe and to adopt legislation on alternative service in pursuance to the provisions of its own Constitution, which guarantees such a right.”</p> <p><a href="http://wri-irg.org/node/20254">http://wri-irg.org/node/20254</a></p>	Recognition of conscientious objection
<b>Armenia Communication sent on 9 June 2005</b>	27 March 2006	<p>“10. The Special Rapporteur is grateful for the Government’s response. She would like to draw the Government’s attention to Paragraph 5 of Resolution 1998/77 of the Commission on Human Rights, which emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment.</p> <p>11. Moreover, she notes that the Human Rights Committee has encouraged States to ensure that the length of alternative service does not have a punitive character, in comparison to the duration of regular military service. (See inter alia CCPR/CO/83/GRC, paragraph 15). Noting Armenia’s commitment regarding alternative service further to its accession to the Council of Europe, she encourages the Government to initiate a review the law from the perspective of its compliance with international standards and best practices.”</p> <p><a href="http://wri-irg.org/node/20888">http://wri-irg.org/node/20888</a></p>	Recognition of conscientious objection
<b>Azerbaijan: Communication sent on 17 March 2005</b>	27 March 2006	<p>“25. The Special Rapporteur is grateful for the detailed response regarding Mr. Mahir Baghirov. However, she would like to refer the Government’s attention to Article 1 of Resolution 1998/77 of the Commission on Human Rights, which draws attention to the right of everyone to have conscientious objections to military service. This right is not, and should not be, limited to clerics and students of religious schools. She encourages the Government to review its legislation on alternative service, in accordance with international standards and best practices.”</p> <p><a href="http://wri-irg.org/node/20889">http://wri-irg.org/node/20889</a></p>	Recognition of conscientious objection
<b>Communication: Government: Greece, sent on 9 June 2005</b>	27 March 2006	<p>“138. The Special Rapporteur is grateful for the Government’s detailed response to her communication. However, she notes with concern the strict time limits for applying for conscientious objector status . In this regard, she draws the Government’s attention to Council of Europe Recommendation 1518(2001), which invites member states to introduce into their legislation “[t]he right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service”. This acknowledges that conscientious objection may develop over time, and even after a person has already participated in military training or activities.”</p> <p><a href="http://wri-irg.org/node/20890">http://wri-irg.org/node/20890</a></p>	Time limit for CO applications

Name	Date	Synopsis	Categories
<b>Republic of Korea: Communication sent on 24 May 2005</b>	27 March 2006	<p>"292. The Special Rapporteur had received reports that 1030 Jehovah's witnesses were jailed in the Republic of Korea because they refused to do military service for reasons related to their religious belief." (...)</p> <p>"305. The Special Rapporteur is grateful for the Government's detailed response. She has also taken note of the Government's position on conscientious objectors through the third periodic State Party Report, which it submitted to the Human Rights Committee in February 2005 (CCPR/C/KOR/2005/3). While she notes that military service may sometimes be necessary for purposes of national security she would like to draw the Government's attention to paragraph 11 of General Comment 22 of the Human Rights Committee which provides that although the International Covenant on Civil and Political Rights "does not explicitly refer to a right to conscientious objection, the Committee believes that such a right can be derived from article 18, inasmuch 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;"</p> <p><a href="http://wri-irg.org/node/20891">http://wri-irg.org/node/20891</a></p>	Recognition of conscientious objection
<b>Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief Addendum 1 Situation in Turkey</b>	11 August 2000	<p>"139. Finally, in accordance with the resolutions of the Commission on Human Rights (for example Resolution 1998/77 recognizing the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion) and General Commentary No. 22 (48) of 20 July 1993 of the Commission on Human Rights, and on the basis of the Turkish Constitution, which enshrines freedom of belief, the Special Rapporteur believes that regional characteristics and tensions are not sufficient to justify, in Turkey or anywhere else, a categorical rejection of conscientious objections, and recommends that legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs."</p> <p><a href="http://wri-irg.org/node/20892">http://wri-irg.org/node/20892</a></p>	Recognition of conscientious objection
<b>Communications report, South Korea</b>	15 February 2000	<p>"87. The Special Rapporteur, while understanding the concerns of the Republic of Korea, wishes to recall that the United Nations Commission on Human Rights, in several resolutions, such as resolution 1998/77, recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the International Covenant on Civil and Political Rights and General Comment No. 22 (48) of the Human Rights Committee. It also reminded States with a system of compulsory military service, where such a provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of non-combatant or civilian character, in the public interest and of not punitive nature. Moreover, it should be pointed out pursuant to article 4 of the International Covenant on Civil and Political Rights, freedom of belief cannot be subject to limitations, on the understanding that it is distinct from freedom to manifest a belief, which can be subject to limitations as provided for by international law."</p> <p><a href="http://wri-irg.org/node/20893">http://wri-irg.org/node/20893</a></p>	Recognition of conscientious objection



Name	Date	Synopsis	Categories
<b>Report of the Special Rapporteur on freedom of religion or belief - Country visit to Greece</b>	7 November 1996	<i>"40. The Special Rapporteur draws attention to resolution 1989/59 of 8 March 1989 of the Commission on Human Rights of the United Nations, reaffirmed inter alia in 1991 (resolution 1991/65 of 6 March 1991) and in 1993 (resolution 1993/84 of 10 March 1993), which recognizes "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights" (para. 1) and which recommends to Member States "with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service" (para. 3) which "should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature" (para. 4)."</i> <a href="http://wri-irg.org/node/20253">http://wri-irg.org/node/20253</a>	Recognition of conscientious objection
<b>Interim report on the elimination of all forms of religious intolerance prepared by the Special Rapporteur of the Commission on Human Rights</b>	16 October 1997	<b>3. The right of conscientious objection</b> 77. With regard to the third category of violations, the Special Rapporteur wishes to stress that the right of conscientious objection is a right which is closely linked with freedom of religion. 78. The Special Rapporteur considers it necessary to remind States of Commission on Human Rights resolution 1989/59, reaffirmed several times, which recognizes the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights. The Commission therefore recommends to States with a system of compulsory military service, where such provision has not already been made, that they introduce for conscientious objectors various forms of alternative service which should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature. In its resolution 1984/93 on conscientious objection to military service, the Commission on Human Rights also called for minimum guarantees to ensure that conscientious objection status can be applied for at any time. <a href="http://wri-irg.org/node/20881">http://wri-irg.org/node/20881</a>	Recognition of conscientious objection Time limit for CO applications

## Contact

The complaint should be sent to:

Special Rapporteur on freedom of religion or belief  
c/o Office Of the High Commissioner for Human Rights  
United Nations at Geneva  
8-14 Avenue de la Paix  
1211 Geneva 10  
Switzerland  
Fax: (+41 22) 917 90 06

E-mail: [freedomofreligion@ohchr.org](mailto:freedomofreligion@ohchr.org) or to [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org) (please include in the subject box: Special Rapporteur on freedom of religion or belief)

Model Questionnaire English: <http://www2.ohchr.org/english/issues/religion/docs/questionnaire-e.doc>

## Further reading:

- <http://www2.ohchr.org/english/issues/religion/complaints.htm>
- <http://www2.ohchr.org/english/issues/religion/l3k.htm>

## Working Group on Arbitrary Detention

### Summary:

The Working Group on Arbitrary Detention, established as a *Special Procedure* in 1991, under the mandate of the former UN Commission on Human Rights (replaced by the Human Rights Council in 2006), investigates cases of arbitrarily detained people worldwide. It receives information regarding alleged cases of arbitrary detention by the individuals directly concerned, their families, their representatives or NGOs, and sends urgent appeals and communications to the concerned Governments to clarify the conditions of those allegedly detained. Under this mandate the Working Group on Arbitrary Detention considers cases without legal basis for the detention, cases where the right to a fair trial has been so badly violated that it makes the subsequent detention invalid, and cases of prisoners of conscience.

State law & practice	✓
Individual cases	✓
Urgent action	✓
Only Under-18s	

Examples of the kind of issues the Working Group examines include:

- detention arising from a fundamental breach of human rights such as freedom of expression or freedom of thought, conscience and religion;
- excessive time being spent on remand before being brought to trial;
- where a person is detained after they should have been released;
- house arrest.

Furthermore it conducts country visits to countries that issued an invitation and presents [annual reports](#) to the Human Rights Council.

There is an online database of documents of the Working Group at <http://www.unwgadatabase.org/un/>.

### 1. Likely results from use of mechanism

#### a) Individual cases

After the Working Group on Arbitrary Detention has received information on cases of alleged arbitrary detentions, it might send either an urgent appeal or a letter of allegation to the government concerned. When the Working Group decides to issue an opinion on a case, a response received from a government will be forwarded to the original source for comment. These opinions are reported to the Human Rights Council and are published on the website of the Working Group at [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=117](http://ap.ohchr.org/documents/dpage_e.aspx?m=117) and in the online database at <http://www.unwgadatabase.org/un/>.

Opinions of the Working Group on Arbitrary Detention are quasi-judicial, in that they are not legally binding, but are argued like a legal decision, and will be taken into account by other UN special bodies, such as the Human Rights Committee.

#### Urgent action

In cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the alleged violations may be time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims in the event of the continuation of the detention, the Working Group transmit an urgent appeal to the Government. An urgent appeal does not prejudice any Opinion the Working Group might subsequently render in the case.

#### b) State law and practice

While the focus of the mandate of the Working Group on Arbitrary Detention is on individual cases, it also considers state law and practice. The Working Group on Arbitrary Detention conducts at least two country visits annually, during which it will discuss issues around arbitrary detention with the government of the country. Following a country visit, the Working Group will make observations on the information received from the government, NGOs and individuals, and will make recommendations to the government. Reports of visits are made available online at <http://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>, and are submitted to the Human Rights Council.

### 2. To which States does the mechanism apply?

All States.



### 3. Who can submit information?

Everybody

### 4. When to submit information?

Information on individual cases should be submitted as soon as possible, especially in cases where an urgent action by the Working Group on Arbitrary Detention is desired.

Information on State law and practice can be submitted at any time, but is especially relevant before a planned country visit by the Working Group.

### 5. Special rules of procedure or advice for making a submission?

According to the revised methods of work of the Working Group, submission need to be in writing, and need to include the name and address of the person and/or organisation submitting the information.

A communication should include as a minimum:

- date of arrest
- place of detention
- formal charges, if any
- access to counsel/outside organization/family, etc
- date of presentation to a judge, if applicable
- date and information about trial, if applicable.

The Working Group prefers to receive information using its model questionnaire, which is available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

### 6. What happens to the submission (how long will it take)?

After receiving information on a case of arbitrary detention, the Working Group will send a communication to the Government concerned, which will include the information that the Working Group is authorised to render an opinion on the case. The Government is requested to reply within 60 days to this letter, but can request an extension of no more than one month. A reply received by the Working Group will be forwarded to the source for comment.

Depending on the information received, the Working Group can take one of the following measures:

- if the person has been released, the case might be filed, but the Working Group reserves the right to render an opinion, whether or not the person has been released;
- if the Working Group considers that further information is required, it can keep the case pending and request further information;
- if the Working Group has sufficient information, it will render an opinion, which can either state that the detention was arbitrary, or not. Even in the absence of a State's response, the Working Group can render an opinion, if it considers the information received from the source to be sufficient.

Depending on the complexity of the case, the time it takes the Working Group to come to a final decision varies **between 6 months and 24 months**.

Any opinion is sent first to the Government concerned, and two weeks later to the source.

Opinions are published in an addendum to the Working Group's annual report to the Human Rights Council, and are also available on the website of the Working Group at

<http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx> and <http://www.unwgadatabase.org/>.

In exceptional cases, the Working Group can reconsider an Opinion on the request of the source or the government, for example if the facts have changed or have to be considered as entirely new, so that the Working Group would come to a different opinion would it have been aware of the facts at the time. Governments can only request a review if they replied to the original allegation within the above mentioned time limit.

In an urgent case scenario the Working Group sends an urgent appeal to the Government concerned in order to ensure that the detained person's right to life and to physical and mental integrity are respected. The government will be urged to safeguard the right not to be arbitrarily deprived of one's liberty.

An urgent appeal to a Government does in no way prejudice the Working Groups final assessment of the case, unless the arbitrary character of the deprivation of liberty has already been determined.

Urgent appeals and responses received by governments will be included in the regular joint communications report of all Special Procedures to the Human Rights Council, and are available online at <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

## 7. History of the use of the mechanism.

The Working Group on Arbitrary Detention has been successfully used by conscientious objectors. Its first known opinion was on the case of Turkish conscientious objector Osman Murat Ülke (Opinion 36/1999), who was imprisoned repeatedly for disobeying orders. In line with the international standards at the time, the Working Group considered any detention from the second detention on as arbitrary, contrary to the principle of ne-bis-in-idem. The Turkish government requested a review of this Opinion in 2000, but the Working Group upheld its original opinion (see Report of the Working Group on Arbitrary Detention, 20 December 2000).

In 2003, the Working Group rendered a similar opinion on five cases from Israel.

Following the development of the jurisprudence of the Human Rights Committee, from 2008 on the Working Group considered any detention of a conscientious objector as arbitrary (see Opinion No 8/2008 [Colombia] and Opinion 16/2008 [Turkey]).

In its Opinion No 8/2008, the Working Group also came to the conclusion that the widespread practice of "batidas" in Colombia (raids on young people in public places) in order to establish the military status of young people and their subsequent transfer to military barracks constitutes arbitrary detention. It then raised this issue also with the Government of Colombia during its country visit from 1-10 October 2008 (see Report on the Mission to Colombia, 16 February 2009).

## Legal Basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that "we the peoples of the United Nations" are determined (...): to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." <a href="http://www2.ohchr.org/english/law/ccpr.htm">http://www2.ohchr.org/english/law/ccpr.htm</a>	All

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Interpretations

Name	Date	Synopsis	Categories
<b>Recommendation 2: detention of conscientious objectors</b>	20 December 2000	<i>"The Working Group recommends that all States that have not yet done so adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed, in accordance with an established procedure, and that, pending the adoption of such measures, when de facto objectors are prosecuted, such prosecutions should not give rise to more than one conviction, so as to prevent the judicial system from being used to force conscientious objectors to change their convictions."</i>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<a href="http://wri-irg.org/node/9173">http://wri-irg.org/node/9173</a>			

## Case law (Opinions and Reports)

Name	Date	Synopsis	Categories
<b>Opinion No 50/2011 (Egypt)</b>	2 September 2011	<p>18. Finally, the Working Group finds no specific facts capable of justifying Mr. Sanad's detention. The only reasonable explanation is that Mr. Sanad's detention is due to his criticism of the military and the police in the country. Recently, he had criticized the army in a series of articles available on the Internet. His complaints to the police and security regarding acts of public violence against him have been of no avail. It follows that Mr. Sanad's deprivation of liberty is also arbitrary falling into category II of the categories applicable to the consideration of cases submitted to the Working Group.</p> <p><b>Disposition</b></p> <p>19. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Maikel Nabil Sanad is arbitrary and constitutes a breach of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, falling into categories II and III of the categories applicable to the cases submitted to the Working Group.</p> <p>20. The Working Group requests the Government to take the necessary steps to remedy the situation, which would include the immediate release of Mr. Sanad and the provision of adequate reparation to him.</p> <p><a href="http://wri-irg.org/node/20894">http://wri-irg.org/node/20894</a></p>	None
<b>Report of the Working Group on Arbitrary Detention Addendum Mission to Armenia</b>	17 February 2011	<p><b>Armenia:</b></p> <p>68. The Working Group also received information regarding the arrest and imprisonment of 80 conscientious objectors of the Jehovah Witness faith. In recent years, young men of this faith have been imprisoned due to their refusal to enlist in the military and participate in the alternative civil service offered to enlistment. The Working Group was told that the alternative civil service, established by a 2003 Act, is not functioning in practice. The Ministry of Defence in Armenia has expressed its readiness to discuss the possibility of reducing the length of alternative service to an acceptable limit.</p> <p><a href="http://wri-irg.org/node/20895">http://wri-irg.org/node/20895</a></p>	Recognition of conscientious objection Length/terms of substitute service

Name	Date	Synopsis	Categories
<b>Turkmenistan: Urgent appeal sent on 12 February 2010 jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention</b>	14 February 2011	The Special Rapporteur would like to reiterate the observations and recommendations on the issue of conscientious objection in his predecessor's country report on Turkmenistan (see A/HRC/10/8/Add.4, paras. 17, 50-51, 61 and 68). In paragraph 68 of the country report, the Special Rapporteur recommended that <i>"the Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of "ne bis in idem", as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or HRC/16/53/Add.1 she has already been convicted or acquitted in accordance with the law and penal procedure of each country."</i>  <a href="http://wri-irg.org/node/20883">http://wri-irg.org/node/20883</a>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<b>Report of the Working Group on Arbitrary Detention. Addendum: Mission to Colombia</b>	16 February 2009	"66. The Working Group notes with concern the arrests carried out by military personnel, in particular the practice of round-ups, despite the fact that the army does not have legal powers to do so. On some occasions, soldiers have orders to arrest a few persons, but arrest many more. One variation is forced enlistment: mass detentions of young persons with a view to checking their military status. Those who are deemed to have failed to register, to respond to being called up or to have performed military service are taken to the barracks for forced recruitment. The Deputy Minister of Defence declared that every young male must carry on his person his military service record or the document confirming the postponement of his military service because military service is not only the right, but the obligation of all male citizens. By and large, it is not the army, but illegal armed groups who forcibly recruit minors. The Working Group considered complaints from conscientious objectors who said that their objections were not taken into account. The Working Group has already deemed that the refusal to recognize the right of conscientious objection contravenes international human rights law."  <a href="http://wri-irg.org/node/20896">http://wri-irg.org/node/20896</a>	Recognition of conscientious objection
<b>Opinion No 8/2008 (Colombia)</b>	7 August 2008	The Working Group on Arbitrary Detention declared in its Opinion No 8/2008 (Colombia) the practice of recruitment in the form of raids (batidas), and the recruitment of conscientious objectors a form of "arbitrary detention".  <a href="http://wri-irg.org/node/10513">http://wri-irg.org/node/10513</a>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Opinion No. 16/2008 (Turkey)</b>	19 July 2008	The deprivation of liberty of Mr. Halil Savda during the periods between 16 and 28 December 2004, between 7 December 2006 and 2 February 2007, as well as between 5 February and 28 July 2007 was arbitrary. His deprivation of liberty since 27 March 2008 is also arbitrary, being in contravention of articles 9 and 18 of the Universal Declaration of Human Rights and of articles 9 and 18 of the International Covenant on Civil and Political Rights".  <a href="http://wri-irg.org/node/272">http://wri-irg.org/node/272</a>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<b>Opinion No 24/2003 (Israel)</b>	28 November 2003	The second and subsequent deprivations of liberty of Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi are contrary to article 14, paragraph 7, of the International Covenant on Civil and Political Rights. The non-observance of the international norms relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary nature, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.  <a href="http://wri-irg.org/node/6481">http://wri-irg.org/node/6481</a>	Repeated punishment of conscientious objectors
<b>Report of the Working Group on Arbitrary Detention</b>	20 December 2000	44. By note of 31 October 2000, the Government of Turkey challenged the Working Group's Opinion No. 36/1999 (O. Murat Ülke). It argues that rather than evaluating the activities for which Mr. Ülke was convicted as "single offences" (i.e. consisting of a single action and its uninterrupted continuing results), one should interpret Mr. Ülke's consistent refusal to perform his military service as "continuing offences": every time he was deprived of his liberty the "continuity" of his offence was broken, and every new refusal to perform military service constituted another new offence for which he was once again convicted and deprived of liberty. (...) 48. The objections of the Government were considered by the Working Group at its twenty-ninth session. The Working Group believes that its Opinion is founded on a solid legal basis consistent with accepted jurisprudential norms.  <a href="http://wri-irg.org/node/20897">http://wri-irg.org/node/20897</a>	Repeated punishment of conscientious objectors
<b>Opinion No 36/1999 (Turkey)</b>	2 December 1999	It follows that the Working Group considers that Mr. Ülke's detention from 7 October to December 1996 was not arbitrary. Regarding the other periods, and in view of the foregoing, the Working Group considers that Mr. Ülke's detention is arbitrary, it having been ordered in violation of the fundamental principle non bis in idem, a principle generally recognized in countries where the rule of law prevails as being one of the most essential guarantees of the right to a fair trial. In the light of the foregoing, the Working Group expresses the following opinion: The deprivation of liberty of Mr. Osman Murat Ülke from October to December 1996 was not arbitrary. His detention since 28 January 1997 is, however, arbitrary, being contrary to article 10 of the Universal Declaration of Human Rights, and it falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group. <a href="http://wri-irg.org/node/1600">http://wri-irg.org/node/1600</a>	Repeated punishment of conscientious objectors

**Contact:**

For an individual case or cases, the communication should be sent, if possible accompanied by the model questionnaire prepared for this purpose, to:

Working Group on Arbitrary Detention  
c/o Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14, avenue de la Paix  
1211 Geneva 10, Switzerland  
facsimile: +41-22-9179006  
e-mail: [wgad@ohchr.org](mailto:wgad@ohchr.org)

Communications requesting the Working Group to launch an urgent appeal on humanitarian grounds should be sent to the above address, preferably by e-mail or facsimile.

**Further reading:**

- Working Group on Arbitrary Detention: *Revised working methods*, [http://www.ohchr.org/Documents/Issues/Detention/WGAD\\_RevisedMethodsofWork.pdf](http://www.ohchr.org/Documents/Issues/Detention/WGAD_RevisedMethodsofWork.pdf), accessed 23 August 2012



## Human Rights Council Complaint Procedure

### Summary:

The Complaint Procedure of the Human Rights Council is a confidential procedure to address consistent patterns of gross and reliably attested human rights violations. It is therefore not suitable for individual cases except when they are representative of a pattern of reliably attested human rights violations.

The Complaint Procedure is of confidential nature and the lodging of communications should not be made public. While the complainant might be informed whether a complaint has been taken up by the procedure, the steps taken and the outcome of the complaint remain confidential, unless the Human Rights Council decides to consider the complaint in public.

The Complaint Procedure was introduced by resolution 5/1 of the Human Rights Council - [UN Human Rights Council: Institution Building](#) - from 18 June 2007, and replaces the former 1503 procedure.

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

### 1. Likely results from use of mechanism

If a complaint is taken up after initial screening by the Working Group on Communications, the allegation of human rights violations will be transmitted to the State concerned. A Working Group of the Human Rights Council (the Working Group on Situations) will then consider the complaint and the reply received from the State, and make a recommendation to the Human Rights Council, which will consider the report of the Working Group in a confidential manner, unless the Council decides otherwise.

The Human Rights Council can take one of the following measures:

- to discontinue considering the situation, if no further action is needed;
- to keep the situation under review, and request further information from the State concerned;
- to keep the situation under review and appoint an independent expert to monitor the situation and report back to the Council;
- to discontinue reviewing the situation under the confidential complaint procedure in order to take up a public consideration;
- to recommend to the OHCHR to assist the State concerned.

### 2. To which States does the mechanism apply?

All States.

### 3. Who can submit information?

A complaint through the Complaint Procedure can be lodged by Individuals as well as NGOs with or without consultative status to the Human Rights Council. Anonymous complaints can however not be considered.

### 4. When to submit information?

A complaint can be lodged at any time. However, domestic remedies have to be exhausted, unless such remedies would be ineffective or unreasonably prolonged. The complaint should also not refer to a pattern of human rights violations already being dealt with by one of the Special Procedures, a treaty body or other United Nations or similar regional complaints procedure.

### 5. Special rules of procedure or advice for making a submission?

The Complaint Procedure can only process complaints submitted in writing. It is advisable to limit the complaint to **10-15 pages** to which additional information may be submitted at a later stage.

As anonymous complaints cannot be admitted it is crucial to include identification of the person(s) or organisation(s) submitting the communication (this information will be kept confidential, if requested).

Complaints submitted to the Complaint Procedure should include a description of the relevant facts in as much detail as possible, providing names of alleged victims, dates, location and other evidence.

They should also include the purpose of the complaint and the rights allegedly violated.

All communications found to be manifestly ill-founded or anonymous will be discarded.



## 6. What happens to the submission (how long will it take)?

After an initial screening and a decision on the admissibility of a complaint by the Working Group on Communications, a request for information will be sent to the State concerned, which shall reply no later than three months after the request has been made. If necessary, this deadline may however be extended. The Working Group on Situation will then prepare a report to the Human Rights Council, usually in the form of a draft resolution or decision on the situation referred to in the complaint. It may also decide to keep the situation under review and request further information.

The Human Rights Council will decide on the measures to take in a confidential manner as needed, but at least once a year. As a general rule, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not exceed 24 months.

All material provided by individuals as well as the replies by the Governments remain of confidential nature during and after the consideration by the Complaint Procedure. This also applies to decisions taken at the various stages of the procedure.

Therefore it is important to do not publicly state that you have submitted a case to the Complaint Procedure.

## 7. History of the use of the mechanism.

To the knowledge of the authors, this mechanism has not yet been used for the issue of conscientious objection. However, it might have influenced the decision of the Human Rights Council to appoint a Special Rapporteur on Eritrea in 2012.

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the United Nations</b>	24 October 1945	The preamble to the Charter of the United Nations states that <i>"we the peoples of the United Nations"</i> are determined (...): to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained  <a href="http://www.un.org/aboutun/charter/">http://www.un.org/aboutun/charter/</a>	All
<b>Universal Declaration of Human Rights</b>	10 December 1948	Article 18 of the Universal Declaration of Human Rights: <i>"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."</i>  <a href="http://www.un.org/en/documents/udhr/index.shtml">http://www.un.org/en/documents/udhr/index.shtml</a>	All
<b>International Covenant on Civil and Political Rights</b>	23 March 1976	Article 18: <i>"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."</i>	All

*4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."*

<http://www2.ohchr.org/english/law/ccpr.htm>

For more, see at <http://www2.ohchr.org/english/law/index.htm>

## Contact

Communications intended for handling under the Council Complaint Procedure may be addressed to:

### Human Rights Council and Treaties Division

Complaint Procedure  
OHCHR-UNOG  
1211 Geneva 10, Switzerland  
Fax: +41-22-917 90 11  
E-mail: [CP@ohchr.org](mailto:CP@ohchr.org)

### Further reading:

- Office of the High Commissioner for Human Rights: *United Nations Human Rights Council. Complaint Procedure*, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>, accessed 24 August 2012
- Council resolution 5/1, *Institution-building of the United Nations Human Rights Council*, 18 June 2007, para 85-109, [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc)
- ISHR and Friedrich-Ebert-Stiftung (FES): *A New Chapter for Human Rights: Chapter 5 - Complaints Procedure*, 2006, <http://olddoc.ishr.ch/handbook/Chpt5.pdf>

## Africa

### Overview

In Africa there are two regional human rights systems potentially of interest to conscientious objectors to military service: the *African Union* and especially its *African Commission on Human and Peoples' Rights* and the *African Committee of Experts on the Rights and Welfare of the Child* as bodies covering the entire African continent, and the *Economic Community Of West African States* (ECOWAS) and its *Community Court of Justice* as a sub-regional mechanism.

The African Union grew out of the Organisation for African Unity (OAU), and was founded in 1999. One of its objectives is to “*promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments*”. While one of the organs of the African Union is the *African Court on Human and Peoples' Rights*, individuals can only bring cases if a State party has made a declaration that this is the case. As of April 2012, only five states had made such a Declaration. Those countries are [Burkina Faso](#), [Ghana](#), [Malawi](#), [Mali](#), and [Tanzania](#). Therefore, the African Court is presently not included in this guide. More information on the African Court on Human and Peoples' Rights is available at <http://www.african-court.org>.

A list of member states of the African Union is available at [http://www.au.int/en/member\\_states/countryprofiles](http://www.au.int/en/member_states/countryprofiles).

While the *Economic Community Of West African States* (ECOWAS) is mainly a organisation for economic cooperation, its *Community Court of Justice* has jurisdiction to determine cases of violations of human rights that occur in any Member State of ECOWAS.

A list of member states of ECOWAS is available at [http://www.courtecowas.org/site/index.php?option=com\\_content&view=article&id=51&Itemid=16&lang=en](http://www.courtecowas.org/site/index.php?option=com_content&view=article&id=51&Itemid=16&lang=en).

Other sub-regional institutions are less relevant to human rights, and especially to conscientious objection to military service.

At the time of writing, the *East African Court of Justice* (EACJ) of the *East African Community* has no jurisdiction over human rights. The Council of the East African Community, however, might extend the Court's jurisdiction at a later date. More information on the East African Court of Justice can be found at <http://www.eacj.org>. Information on the *East African Community* and a list of member states can be found at <http://www.eac.int/>.

The *Court of Justice of the Common Market for Eastern and Southern Africa* (COMESA) does not have jurisdiction over human rights issues, as the treaty establishing COMESA does not include human rights. Information on COMESA is available at <http://about.comesa.int>.

The *Southern African Development Community Tribunal* (SADC Tribunal) has some jurisdiction over human rights, although it is not a human rights court *per se*. The Tribunal has ruled that it does have jurisdiction to entertain human rights matters as one of the principles of the Southern African Development Community is the observance of human rights, democracy and rule of law. More information on the SADC Tribunal is available at <http://www.sadc-tribunal.org>.

To our knowledge none of the African human rights systems has so far been used to advance the right to conscientious objection to military service in an African country. There is no established standard relating to conscientious objection under any of the African system, so they should be used with caution. If you want to engage in standard setting in one of the African human systems, we recommend that you get in touch with one of the organisations listed below:

- Quaker United Nations Office, Geneva
- War Resisters' International

## African Commission on Human and Peoples' Rights: Overview

The African Charter on Human and Peoples' Rights (ACHPR) from 1981, which entered into force in 1986, is Africa's oldest human rights instrument, and established the African Commission on Human and Peoples' Rights.

Article 8 of the ACHPR states: "*Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.*" The right to conscientious objection to military service could be derived from this article, similar to article 18 of the ICCPR and article 9 of the ECHR.

Other potentially relevant provisions of the ACHPR are article 2 (non-discrimination), article 5 (freedom from torture), article 7 (right to fair trial), article 10 (right of association), and article 16 (right to education), among others. The full text of the ACHPR is available at

<http://www.achpr.org/instruments/achpr/>.

The African Commission is officially charged with three major functions:

- the protection of human and peoples' rights
- the promotion of human and peoples' rights
- the interpretation of the African Charter on Human and Peoples' Rights

It consists of 11 members elected by the AU Assembly from experts nominated by the state parties to the Charter.

Similar to the Treaty bodies of the United Nations and the Human Rights Council, the African Commission has established several procedures to monitor and protect human rights, such as:

- a State reporting procedure
- a Communication procedure
- Special Mechanisms

The Special Mechanisms also undertake country visits to explore and discuss the human rights situation in a specific country.

Relevant Special Mechanisms might be:

- The Special Rapporteur on Freedom of Expression and Access to Information (<http://www.achpr.org/mechanisms/freedom-of-expression/>);
- The Special Rapporteur on Human Rights Defenders (<http://www.achpr.org/mechanisms/human-rights-defenders/>); and
- The Committee for the Prevention of Torture in Africa (<http://www.achpr.org/mechanisms/cpta/>).

An overview of the Special Mechanisms is available at <http://www.achpr.org/mechanisms/>.

The present Commissioner is Catherine Dupe Atoki (since 2007).

### Contact

African Commission on Human and Peoples' Rights  
31 Bijilo Annex Layout, Kombo North District  
Western Region  
P.O. Box 673 Banjul  
The Gambia  
Tel: +220-441 05 05, 441 05 06  
Fax: +220-441 05 04  
E-mail: [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)  
Website: <http://www.achpr.org/>

## African Commission on Human and Peoples' Rights: State Reporting Procedure

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

### Summary

Under the ACHPR, states are required to submit reports to the African Commission on measures taken to ensure that the rights enshrined in the African Charter are being implemented. The state reporting procedure is considered as a dialogue, in which the state concerned and the African Commission exchange their views. The state report is published by the African Commission prior to the session, to give civil society the opportunity to comment on the report of the state.

The state report is reviewed in public, and following the dialogue the African Commission will issue "Concluding Remarks/Observations" to the state concerned. The state's report and the Concluding Remarks/Observations are transmitted to the AU Assembly of Heads of State and Government, and are only later published by the African Commission.

So far, conscientious objection to military service has not been addressed by the African Commission.

### 1. Likely results from the use of this mechanism

During the examination of State reports, the African Commission also draws on information provided by NGOs, and can raise issues based on information from NGOs. It might then include the issue in its Concluding Observations and make recommendations to the State concerned. The Concluding Observations will be transmitted to the State concerned and form part of the African Commission's Activity Report.

### 2. To which States does this mechanism apply?

The mechanism applies to those States who have ratified the African Charter on Human and Peoples' Rights.

### 3. Who can submit information?

According to rule 74 of the Rules of Procedure of the African Commission, "any interested party wishing to contribute to the examination of the Report and the human rights situation in the country concerned" can send in a contribution. This is not limited to NGOs with observer status with the African Commission.

### 4. When to submit information?

Information has to be submitted to the African Commission at least 60 days before the examination of a State's report. However, as the Secretariat of the African Commission has to transmit a list of questions to the State concerned at least six weeks before the session, it is advisable to submit information at least 3-4 months before examination of a State report.

Information on upcoming sessions of the African Commission is available at <http://www.achpr.org/sessions/>. Information on specific States, including State reports, Concluding Observations by the African Commission, and NGO reports, is available at <http://www.achpr.org/states/>. However, on the website it often says "Concluding Observations: available", without giving a link.

### 5. Any special advice for making a submission to this mechanism?

Although there is no set format for NGO reports, it is useful to organise the structure of the report around the rights enumerated in the African Charter on Human and Peoples' Rights. It is important to make reference to the State report, or to the lack of a state report, and to comment on the information provided by the State.

Although the framework of reference for the African Commission is the African Charter on Human and Peoples' Rights, it might be useful to refer to the standards and jurisprudence developed by other human rights systems in relation to conscientious objection to military service, as this issue has so far not been dealt with by the African Commission.

It can be useful to draft suggested questions to be posed by commissioners, organised by theme and relevant charter provisions and include these in the NGO report.

### Lobbying before and during the session

It is advisable to not only submit a report, but to engage with the African Commission prior, during, and after the consideration of a State's report. It can be useful to identify the commissioner responsible for your country and to seek to forge a collaborative relationship and engagement throughout the process.

Under normal circumstances, the commissioner responsible for promotional activities in the State concerned will also be the rapporteur to lead the discussion on the report.

NGOs may also take advantage of the ability of organisations with observer status to make comments on other agenda items to address the content of a particular State party's report. Many issues raised by the reports can be addressed either through the agenda item on the general situation of human rights in Africa or in one of the thematic agenda items.

#### Formal and informal NGO briefings

NGOs may also want to consider the organisation of side events or private briefings for commissioners as alternative fora for engaging in discussion on the content of State reports.

### 6. Special rules of procedure or advice for making a submission?

No

### 7. What happens to the submission (how long will it take)?

The African Commission examines 3-4 State reports during each of its regular sessions. The Secretariat of the Commission prepares a list of questions, based on information received by the State and from other sources, including NGOs. This list of questions will be transmitted to the State concerned at least six weeks before the session, together with a request to send a "highly qualified official" to the session. The consideration of the State's report happens during a public meeting of the African Commission, in the form of a dialogue with the representative(s) of the State concerned. Following the dialogue, the Commission meets in a closed session to discuss its comments and recommendations.

The state's report and the Concluding Remarks/Observations are transmitted to the AU Assembly of Heads of State and Government, and are only later published by the African Commission.

### 8. History of the use of this mechanism

This mechanism has so far not been used for conscientious objection to military service.

#### Legal basis

Name	Entry into force	Synopsis	Categories
<b>African Charter on Human and Peoples' Rights</b>	21 October 1986	Article 8 of the ACHPR states: " <i>Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.</i> " The right to conscientious objection to military service could be derived from this article, similar to article 18 of the ICCPR and article 9 of the ECHR. Other potentially relevant provisions of the ACHPR are article 2 (non-discrimination), article 5 (freedom from torture), article 7 (right to fair trial), article 10 (right of association), article 16 (right to education), among others.	All

<http://www.achpr.org/instruments/achpr/>

#### Case law (Jurisprudence)

[none we are aware of]

#### Contact

African Commission on Human and Peoples' Rights  
31 Bijilo Annex Layout, Kombo North District  
Western Region P.O. Box 673 Banjul  
The Gambia  
Tel: +220-441 05 05, 441 05 06  
Fax: +220-441 05 04  
E-mail: : [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)  
Website: <http://www.achpr.org/>

**Further reading:**

- African Commission on Human and Peoples' Rights: *Rules of Procedure of the African Commission on Human and Peoples' Rights*, 2010, [http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules\\_of\\_procedure\\_2010\\_en.pdf](http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf), accessed 30 August 2012
- African Commission on Human and Peoples' Rights: *Information Sheet No 4: State Reporting Procedure*, 2002, [http://old.achpr.org/english/information\\_sheets/ACHPR%20inf.%20sheet%20No.4.doc](http://old.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20No.4.doc), accessed 30 August 2012
- Institute for Human Rights and Development in Africa/International Service for Human Rights: *A Human Rights Defenders' Guide to the African Commission*, 2012, [http://www.ishr.ch/document-stuff/browse-documents/doc\\_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights](http://www.ishr.ch/document-stuff/browse-documents/doc_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights), accessed 30 August 2012
- Conectas Human Rights: *Road map for civil society engagement: State reporting procedure of the African Commission on Human and Peoples' Rights*, September 2011, [http://www.conectas.org/arquivos/Conectas\\_Roadmap\\_AfricanCommission\\_ENG.pdf](http://www.conectas.org/arquivos/Conectas_Roadmap_AfricanCommission_ENG.pdf)



## African Commission on Human and Peoples' Rights: Communication Procedure

State law & practice	
Individual cases	✓
Urgent action	✓
Only Under-18s	

### Summary

Under Articles 55 and 56 of the African Charter on Human and Peoples' Rights, anyone can submit information or communications to the African Commission. By submitting a communication to the African Commission, victims of human rights abuses who for one reason or another could not obtain justice in their countries after exhausting all the available legal remedies may obtain help. A case that has been submitted to the African Commission should not at the same time be submitted to another international human rights system. Before the African Commission investigates the substance of a complaint, it will bring the complaint to the attention of the State concerned. However, the complainant can specify that he or she wishes to remain anonymous (although the complaint itself cannot be submitted anonymously). Before a decision on the merits of the complaint, the African Commission may request from the State concerned to take provisional measures to prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands. After investigating a complaint, the African Commission makes a recommendation to the State(s) concerned, to ensure that the occurrences of human rights violations are investigated, that the victim(s) is compensated (if necessary) and that measures are taken to prevent the recurrence of human rights violations. The African Commission also offers its "Good Office" to achieve a friendly settlement of the case. The African Commission's recommendations are submitted to the Assembly of Heads of State and Government of the African Union for adoption. All measures taken by the African Commission remain confidential, unless the Assembly decides otherwise. However, a report will be published following the adoption by the Assembly.

### 1. Likely results from use of mechanism

Following the submission of a communication, the African Commission will first take a decision on admissibility. If a complaint is found admissible, the African Commission will investigate the complaint and take a decision on the merits of the case, and make recommendations to the State concerned. This may include compensation to the victim(s) of human rights violations and measures to prevent a recurrence. To prevent irreparable harm to the victim or victims of the alleged violation as urgently as the situation demands, the African Commission may request from the State concerned to take provisional measures before a decision on the merits of the complaint. Besides a decision on the merits, the African Commission is also available to achieve a friendly settlement of the case. The African Commission's recommendations are submitted to the Assembly of Heads of State and Government of the African Union for adoption. All measures taken by the African Commission remain confidential, unless the Assembly decides otherwise. However, a report will be published following the adoption by the Assembly.

### 2. To which States does this mechanism apply?

This mechanism applies to all States parties to the African Charter on Human and Peoples' Rights (ACHPR). An overview of the status of ratification of the African Charter is available at <http://www.achpr.org/instruments/achpr/ratification/>. A complaint can be brought against any State which had jurisdiction over the victim at the time of the violation, and which has at the same time ratified the African Charter.

### 3. Who can submit information?

Under article 55 of the African Charter, the African Commission can receive communications from anyone, including individuals or NGOs. While the complainant can request to remain anonymous, a complaint cannot be submitted anonymously. It needs to include name and address of the complainant and needs to be signed.

### 4. When to submit information?

A complaint should be submitted to the African Commission within a reasonable period from the time local remedies are exhausted. After the exhaustion of local remedies, or where the complainant realises that such remedies shall be unduly prolonged, he or she can submit the complaint to the African Commission.

immediately. The African Charter does not give a time limit but talks of reasonable time. It is therefore always advisable to submit a complaint as early as possible.

## 5. Special rules of procedure or advice for making a submission?

### How to write a complaint:

The communication procedure of the African Commission is straightforward, and does not require legal representation. A complaint can be brought by the victim of alleged human rights violations, or by another person acting on his or her behalf, or any group of people, including NGOs.

For a complaint to be admissible, it needs to meet the following requirements:

- The name, nationality, and signature of the person or persons filing it, or in the case of NGOs the name(s) and signature(s) of the legal representatives;
- whether the complainant wishes his or her identity to be withheld from the State concerned
- an address for correspondence, possibly including fax and/or email;
- a detailed description of the alleged human rights violations, specifying date, place, and nature of the alleged violations;
- the name(s) of the State(s) alleged to have violated the African Charter;
- any steps taken to exhaust domestic remedies, or an explanation why an exhaustion of domestic remedies would be unduly prolonged or ineffective;
- an indication that the complaint has not been submitted to another international settlement proceeding.

It is advisable to refer to the provisions of the African Charter that are alleged to have been violated, although this is not strictly necessary. Infosheet No 2 of the African Commission includes guidelines for the submission of communications (see

[http://www.achpr.org/files/pages/communications/guidelines/achpr\\_infosheet\\_communications\\_eng.pdf](http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf)).

### Emergency procedures:

A communication should indicate if the victim's life, personal integrity or health is in imminent danger. In such an emergency, the African Commission has the power to adopt provisional measures, urging the State concerned not to take any action that will cause irreparable damage to the victim until the case has been heard by the African Commission. The African Commission can also adopt other urgent measures as it sees fit.

## 6. What happens to the submission (how long will it take)?

Once a communication has been submitted to the Secretariat of the African Commission, it will be registered and the Secretariat will acknowledge receipt of the communication.

As a first step, the African Commission has to be “seized” by the communication, which means it decides to deal with it, at the latest during the first session following receipt of the communication. After the African Commission has been seized by a communication, the complainant and the State party are informed, and have three months to comment on the communication, and on its admissibility. At the next session of the African Commission, a decision will be taken as to the admissibility of the complaint.

After a complaint has been declared admissible, the African Commission will either seek to obtain a friendly settlement, or decide on the merits of the case. If a friendly settlement is reached, a report containing the terms of the settlement is presented to the African Commission at its session. This will automatically bring consideration of the case to an end.

If there is no friendly settlement, the Secretariat of the African Commission prepares a draft decision on the merits taking into account all the facts at its disposal. This is meant to guide the Commissioners in their deliberations. During the session of the African Commission, the parties are liberty to make written or oral presentations. Some States send representatives to the African Commission's sessions to refute allegations made against them. NGOs and individuals are also granted audience to make oral presentations. However, there is no requirement to make oral presentations, or to be present at the session - written submissions are sufficient.

Finally, the African Commission will decide whether there has been a violation of the African Charter or

not. If it finds on a violation of the Charter, it will make recommendations to the State concerned.

If a violation is found, the recommendations of the African Commission will include the required action to be taken by the State party to remedy the violation.

The mandate of the African Commission is quasi-judicial and as such, its final recommendations are not in themselves legally binding on the States concerned.

These recommendations are included in the Commissioner's Annual Activity Reports which are submitted to the AU Assembly of Heads of State and Government in conformity with article 54 of the Charter. If they are adopted, they become binding on the States parties and are published.

## 7. History of the use of this mechanism

To the knowledge of the authors of this guide, this mechanism has so far not been used in a case of conscientious objection to military service.

It is therefore highly recommended that you get in touch with the authors if you want to engage in standard setting with the African Commission.

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>African Charter on Human and Peoples' Rights</b>	21 October 1986	Article 8 of the ACHPR states: " <i>Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.</i> " The right to conscientious objection to military service could be derived from this article, similar to article 18 of the ICCPR and article 9 of the ECHR. Other potentially relevant provisions of the ACHPR are article 2 (non-discrimination), article 5 (freedom from torture), article 7 (right to fair trial), article 10 (right of association), article 16 (right to education), among others.	All

<http://www.achpr.org/instruments/achpr/>

## Case law (Jurisprudence)

None at the time of writing

## Contact:

African Commission on Human and Peoples' Rights

PO Box 673

Banjul

The Gambia

Tel: +220-441 05 05, 441 05 06

Fax: +220-441 05 04

E-mail: : [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)

Website: <http://www.achpr.org/>

## Further reading:

- African Commission on Human and Peoples' Rights: *Rules of Procedure of the African Commission on Human and Peoples' Rights*, 2010, [http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules\\_of\\_procedure\\_2010\\_en.pdf](http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf), accessed 30 August 2012
- African Commission on Human and Peoples' Rights: *Guidelines for submission of communications*, [http://www.achpr.org/files/pages/communications/guidelines/achpr\\_infosheet\\_communications\\_eng.pdf](http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf), accessed 30 August 2012
- African Commission on Human and Peoples' Rights, *Information Sheet No. 3: Communication Procedure*, <http://www1.umn.edu/humanrts/africa/achpr-infosheet3.html>, accessed 3 October 2012
- Institute for Human Rights and Development in Africa/International Service for Human Rights: A

*Human Rights Defenders' Guide to the African Commission*, 2012,  
[http://www.ishr.ch/document-stuff/browse-documents/doc\\_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights](http://www.ishr.ch/document-stuff/browse-documents/doc_download/1432-a-human-rights-defenders-guide-to-the-african-commission-on-human-and-peoples-rights), accessed 30 August 2012

- Conectas Human Rights: *Road map for civil society engagement: State reporting procedure of the African Commission on Human and Peoples' Rights*, September 2011,  
[http://www.conectas.org/arquivos/Conectas\\_Roadmap\\_AfricanCommission\\_ENG.pdf](http://www.conectas.org/arquivos/Conectas_Roadmap_AfricanCommission_ENG.pdf)

## African Committee of Experts on the Rights and Welfare of the Child: State Reporting Procedure

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	✓

### Summary

The *African Committee of Experts on the Rights and Welfare of the Child* (ACERWC) draws its mandate from articles 32-46 of the *African Charter on the Rights and Welfare of the Child* (ACRWC). It was established in July 2001. Part of the mandate of the ACERWC is the monitoring the implementation of the ACRWC. To do so, the ACERWC receives and examines the reports submitted by State parties on the measures they have adopted to give effect to the provisions of the Charter as well as the progress achieved in the exercise of the rights recognised (article 43). Initial State reports were supposed to be submitted within two years of entry into force of the ACRWC, and periodic reports every three years thereafter. An overview of the status of state reports is available on the website of the ACERWC at <http://acerwc.org/state-reports/>. The due dates of initial reports are available at <http://www.africa-union.org/child/Due%20date%20of%20Submission%20of%20Reports.pdf>.

The ACERWC examines a State report in a public plenary session, based on information included in the report of the State, and other information received by NGOs. Following the examination of the State report, the Committee of Experts produces Concluding Observations and Recommendations, which should be implemented by the State party. The Concluding Observations and Recommendations are also included in the report of the ACERWC to the AU Assembly of Heads of State and Government.

So far, conscientious objection to military service has not been addressed by the African Committee of Experts on the Rights and Welfare of the Child. The issue of recruitment of minors has only briefly been addressed during the examination of the report of Uganda.

### 1. Likely results from the use of this mechanism

During the examination of State reports, the African Committee of Experts on the Rights and Welfare of the Child also draws on information provided by other AU agencies and by NGOs, and can raise issues based on information received from NGOs. The ACERWC might then include the issue in its Concluding Observations and make recommendations to the State concerned. The Concluding Observations and Recommendation will be transmitted to the State concerned and form part of the Committee of Experts' report to the AU Assembly of Heads of State and Government.

### 2. To which States does this mechanism apply?

The mechanism applies to those States that have ratified the African Charter on the Rights and Welfare of the Child. A table of ratifications of the ACRWC is available at <http://acerwc.org/ratifications/>.

### 3. Who can submit information?

According to rule 69 of the *Rules of Procedure of the ACERWC*, “the Committee may invite the .... NGOs and CSOs, in conformity with Article 42 of the Children's Charter, to submit to it reports on the implementation of the Children's Charter and to provide it with expert advice in areas falling within their scope of activity”

### 4. When to submit information?

Once a State party has submitted its State report to the ACERWC, the report is a public document and will be made available on the website of the ACERWC at <http://acerwc.org/state-reports/>. It is important to submit an NGO report - either a joint NGO report, or an individual NGO report highlighting specific issues - not too long after the publication of the State report, but certainly before the Pre-Session Working Group that will consider the State report.

### 5. Any special advice for making a submission to this mechanism?

The ACERWC has so far not issued guidelines for NGO reports. However, the Committee of Experts has elaborated guidelines and main themes for State reports, and it is useful to structure an NGO report around the same themes (or some of them). The themes are:

- General measures of implementation of the ACRWC
- Definition of the child
- General principles

- Civil rights and freedoms
- Family environment and alternative care
- Health and welfare
- Education, leisure and cultural activities
- Special protection measures
- Responsibilities of the child.

Issues of conscientious objection to military service and related discrimination, and of recruitment, can be raised under the ACRWC, especially in relation to article 9 (Freedom of Thought, Conscience, and Religion), Article 11 (Education), and Article 22 (Armed Conflicts) of the Charter. Article 22 of the ACRWC states that States “*shall ... refrain in particular from recruiting any child*”.

It can be useful to draft suggested questions to be posed by the Committee of Experts, organised by theme and relevant charter provision and include these in the NGO report.

### **Participation in the pre-session Working Group**

Although the pre-session Working Group meets in private, the Committee of Experts can invite representatives of NGOs with Observer Status at the ACERWC to participate in it. It is therefore important to state in the cover letter when submitting the NGO report that you wish to participate in the pre-session Working Group. However, this is not a guarantee that you will be able to do so. It is also possible to lobby members of the Committee of Experts informally outside of the formal sessions of the pre-session Working Group.

### **Lobbying before and during the session**

It is advisable to not only submit a report, but to engage with the African Committee of Experts on the Rights and Welfare of the Child prior, during, and after the consideration of the State's report. Following receipt of the State's report, the Committee of Experts appoints a Rapporteur from among its members, and it can be useful to engage with the Rapporteur responsible for your State's report, who will examine the State's report and information submitted by NGOs, and prepare a list of issues.

NGOs with Observer Status are allowed to attend the public meeting of the Committee of Experts, but are not allowed to speak.

## **6. What happens to the submission (how long will it take)?**

After the ACERWC receives a State's report, it will be published on its website at <http://acerwc.org/state-reports/>. The Committee of Experts will also assign a Rapporteur from among its members, who is responsible for the examination of the State's report and other information received, including information submitted by NGOs. The Rapporteur will draft a list of issues for discussion at the pre-session Working Group, which will decide on the list of issues.

The examination of the State's report happens during a public session of the Committee of Experts in the form of a dialogue with the representative(s) of the State concerned. NGOs with Observer Status can attend the session, but are not allowed to speak. Following the dialogue, the Committee of Experts meets in a closed session to discuss its Concluding Observations and Recommendations.

The Concluding Observations and Recommendations are transmitted to the State concerned, and are included in the report of the Committee of Experts to the AU Assembly of Heads of State and Government. They are also published on the website of the ACERWC.

## **7. History of the use of this mechanism**

This mechanism has so far not been used for conscientious objection to military service. Issues of recruitment of minors have so far not been raised systematically by the ACERWC, although they were raised during the examination of the report of Uganda, and in the Concluding Observations and Recommendations on Uganda.



## Legal basis

Name	Entry into force	Synopsis	Categories
<b>African Charter on the Rights and Welfare of the Child</b>	27 November 1999	Article 9 (Freedom of Thought, Conscience, and Religion), Article 11 (Education) Article 22 (2) “ <i>States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.</i> ”  <a href="http://acerwc.org/acerwc-charter-full-text/">http://acerwc.org/acerwc-charter-full-text/</a>	None

## Concluding Observations and Recommendations

Name	Date	Synopsis	Categories
<b>Recommendations and Observations sent to the Government of the Republic of Uganda</b>	28 March 2011	“Article 22: ARMED CONFLICTS: The Committee observes that the Report doesn’t provide enough data on the status of child soldiers in Uganda, it recommends consequently that more information should be mentioned in the next reports.”  <a href="http://wri-irg.org/node/20931">http://wri-irg.org/node/20931</a>	None

## Contact

The African Committee of Experts on the Rights and Welfare of the Child  
Commission of the African Union  
African Union Headquarters  
Social Affairs Department  
P.O. Box 3243  
W21 K19 Addis Ababa  
Ethiopia  
Tel. +251-1-551 35 22  
Fax +251-1-553 57 16  
Email [cissem@africa-union.org](mailto:cissem@africa-union.org)  
Website: <http://acerwc.org/>

## Further reading

- African Committee of Experts on the Rights and Welfare of the Child: *Rules of procedure*, 2004, <http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Rules-of-procedure-English.pdf>, accessed 10 October 2012
- African Committee of Experts on the Rights and Welfare of the Child: *Procedure for the Consideration of State Party reports*, 2008, <http://www.acerwc.org/wp-content/uploads/2012/02/ACERWC-Procedure-for-State-reports-English.pdf>, accessed 10 October 2012
- African Committee of Experts on the Rights and Welfare of the Child: *Criteria for granting observer status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations (NGOs) and Associations*, 2011, <http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Criteria-for-Oberserver-Status-English.pdf>, accessed 10 October 2012
- Save the Children Sweden/Plan: *Advancing Children’s Rights. A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child*, 2009, <http://www.crin.org/docs/Advancing%20Children%27s%20Rights%20-%20CSO%20Guide%20to%20the%20ACERWC.pdf>, accessed 10 October 2012



## African Committee of Experts on the Rights and Welfare of the Child: Communication Procedure

State law & practice	
Individual cases	✓
Urgent action	✓
Only Under-18s	✓

### Summary

Under Article 44 of the *African Charter of the Rights and Welfare of the Child*, any correspondence or any complaint from a State, individual or NGO denouncing acts that are prejudicial to the right or rights of the child shall be considered as communication. However, by 2011 the ACERWC had only received two communications, and had made a decision on one of these two.

A communication can be presented by individuals, including the child which has been a victim of a human rights violation or his/her parents of legal representatives, by witnesses, a group of individuals or by an NGO recognised by the African Union, a member State of the African Union, or by any institution of the United Nations system. A communication has to be in writing and cannot be submitted anonymously.

A communication can only be submitted after domestic remedies have been exhausted, and if the same issue has not been considered according to another investigation, procedure, or international regulation. As an urgent measure, the Committee of Experts can make a request to the State party concerned to take provisional measures necessary to prevent any other harm to the child or children who would be victims of violations of the Charter.

After investigating a complaint, the Committee of Experts makes a recommendation to the State(s) concerned to ensure that measures are taken to prevent the recurrence of violations of the Charter.

### 1. Likely results from the use of this mechanism

Following the submission of a communication, the Committee of Experts will first take a decision on admissibility. If a complaint is found admissible, the Committee of Experts will investigate the complaint and take a decision on the merits of the case, and make recommendations to the State concerned. This may include compensation to the victim(s) of violations of the African Charter of the Rights and Welfare of the Child and measures to prevent a recurrence.

To prevent irreparable harm to the victim or victims of alleged violations of the ACRWC as urgently as the situation demands, the Committee of Experts may request from the State concerned to take provisional measures before a decision on the merits of the case, but after the complaint has been found admissible.

### 2. To which States does this mechanism apply?

The mechanism applies to those States that have ratified the African Charter on the Rights and Welfare of the Child, and have not entered a reservation to article 44. At the time of writing, Egypt is the only State party to the ACRWC that does not consider itself bound by article 44. A table of ratifications of the ACRWC is available at <http://acerwc.org/ratifications/>.

### 3. Who can submit information?

A communication can be presented by individuals, including the child which has been a victim of a human rights violation or his/her parents of legal representatives, by witnesses, a group of individuals or by an NGO recognised by the African Union, a member State of the African Union, or by any institution of the United Nations system.

A communication can also be presented by a State party to the ACRWC, and also by a State that is not party to the ACRWC, if it is in the best interest of the child.

The guidelines for the consideration of communications do not mention anonymity of the complainant, but it is likely that similar rules apply as for communications to the African Commission on Human and Peoples' Rights.

### 4. When to submit information?

A communication should be submitted to the African Committee of Experts on the Rights and Welfare of the Child within a reasonable period from the time local remedies have been exhausted. After exhaustion of local remedies, or where the complainant realises that such remedies shall be unduly prolonged, he or she can submit the complaint to the Committee of Experts immediately.

The ACRWC does not give a time limit but talks of reasonable time. It is therefore advisable to submit a complaint as early as possible.

### 5. Special rules of procedure or advice for making a submission?

**How to write a complaint:**

The communication procedure of the Committee of Experts is straightforward, and does not require legal representation. A complaint can be brought by the victim(s) of alleged violations of the ACRWC or their parents, or by another person acting on their behalf, or a group of individuals, including an NGO recognised by the African Union, a member State of the African Union, or by any institution of the United Nations system. If your NGO does not fulfil the last criteria, it is advisable to submit a complaint as a group of individuals.

For a complaint to be admissible, it needs to meet the following requirements:

- it needs to include the name(s), nationality, and signature(s) of the person or persons filing it, or in case of an NGO filing the complaint the name(s) and signature(s) of the legal representatives, and evidence of the status of the NGO;
- whether or not the complainant wishes his or her identity to be withheld from the State concerned, and why;
- an address for correspondence, possibly including fax and/or email;
- a detailed description of the alleged violations of the ACRWC, specifying date, place, and nature of the alleged violations;
- the name(s) of the State(s) alleged to have violated the African Charter of the Rights and Welfare of the Child;
- any steps taken to exhaust domestic remedies, or an explanation why an exhaustion of domestic remedies would be unduly prolonged or ineffective;
- an indication that the complaint has not been submitted to another international settlement proceeding.

It is advisable to refer to the provisions of the African Charter of the Rights and Welfare of the Child that are alleged to have been violated, although this is not strictly necessary. The *Guidelines for the Consideration of Communications provided for in Article 44 of the African Charter on the Rights and Welfare of the Child*

(<http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>)

include some helpful information.

**Emergency procedures:**

According to Article 2 IV of the Guidelines, the Committee of Experts “*may forward to the State party concerned, a request to take provisional measures that the Committee shall consider necessary in order to prevent any other harm to the child or children who would be victims of violations*”.

**6. What happens to the submission (how long will it take)?**

Once a complaint has been received by the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child, the Secretary will register it and make a summary, which will be circulated to all members of the Committee of Experts.

Before each session, a Working Group of the Committee of Experts will consider the admissibility of a complaint. The Committee of Experts will then decide on the admissibility during a regular session.

After a complaint has been declared admissible, the Secretariat will communicate this to the complainant(s). A communication will then also be sent to the State(s) concerned, with a request to comment on the communication in writing within three months.

Following this, the Committee of Experts or the Working Group may request additional information from the State(s) concerned or the complainant(s).

The Committee of Experts may request the presence of representatives of the State(s) concerned and/or the complainant(s) in order to give additional clarifications relating to the communication. If one party is invited, the other party shall also be invited to be present and to make its observations, if it so wishes. The meeting of the Committee of Experts during which the complaint is considered is held in private.

According to article 3 of the Guidelines, the Committee of Experts “*should take measures to ensure the effective and meaningful participation of the child or children concerned by the consideration of the validity of the communications and its author*”. It is unclear what that means in practice.

Following the consideration of the complaint, the Committee of Experts will make a decision on the

merits, either finding that the ACRWC has not been violated, or finding on a violation of the Charter, and making recommendations to the State(s) concerned. This may include compensation to the victim(s) of violations of the African Charter of the Rights and Welfare of the Child and measures to prevent a recurrence.

One of the members of the Committee of Experts will also be designated to monitor the decision, and will regularly report to the Committee of Experts.

The decisions of the Committee of Experts will then be submitted to Assembly of the Heads of State and Government of the African Union, and will be published after consideration by the Assembly.

## 7. History of the use of this mechanism

This mechanism has so far not been used for conscientious objection to military service, nor for issues of military recruitment of minors.

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>African Charter on the Rights and Welfare of the Child</b>	27 November 1999	Article 9 (Freedom of Thought, Conscience, and Religion), Article 11 (Education) Article 22 (2) " <i>States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child.</i> " <a href="http://acerwc.org/acerwc-charter-full-text/">http://acerwc.org/acerwc-charter-full-text/</a>	None

### Case law (Jurisprudence)

[None]

### Contact

The African Committee of Experts on the Rights and Welfare of the Child  
Commission of the African Union  
African Union Headquarters  
Social Affairs Department  
P.O. Box 3243  
W21 K19 Addis Ababa  
Ethiopia  
Tel. +251-1-551 35 22  
Fax +251-1-553 57 16  
Email [cissem@africa-union.org](mailto:cissem@africa-union.org)  
Website: <http://acerwc.org/>

### Further reading:

- African Committee of Experts on the Rights and Welfare of the Child: *Rules of procedure*, 2004, <http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Rules-of-procedure-English.pdf>, accessed 10 October 2012
- African Committee of Experts on the Rights and Welfare of the Child: *Guidelines for the Consideration of Communications provided for in Article 44 of the African Charter on the Rights and Welfare of the Child*, 2011, <http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Guidelines-on-Communications-English.pdf>, accessed 10 October 2012
- African Committee of Experts on the Rights and Welfare of the Child: *Criteria for granting observer status in the African Committee of Experts on the Rights and Welfare of the Child to Non-Governmental Organisations (NGOs) and Associations*, 2011, <http://acerwc.org/wp-content/uploads/2011/03/ACERWC-Criteria-for-Observers-Status-English.pdf>, accessed 10 October 2012
- Save the Children Sweden/Plan: *Advancing Children's Rights. A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child*, 2009, <http://www.crin.org/docs/Advancing%20Children's%20Rights%20-%20CSO%20Guide%20to%20the%20ACERWC.pdf>, accessed 10 October 2012

## ECOWAS Community Court of Justice

### Summary

According to the Supplementary Protocol from 19 January 2005, “*the Court has jurisdiction to determine cases of violations of human rights that occur in any Member State.*” There is no requirement to exhaust domestic remedies, meaning individuals do not need to pursue national judicial remedies before bringing a claim to the ECOWAS Court of Justice. Rather, the principal requirements are that the application not be anonymous and that the matter is not pending before another international court.

A case can be brought by anyone under the jurisdiction of a member state of the *Economic Community of West African States* (ECOWAS). However, according to article 12 of the Protocol establishing the Court of Justice, representation by an agent or lawyer is required.

The reference framework of the Community Court of Justice are the *African Charter on Human and Peoples' Rights* (ACHPR), as well as other universal instruments for the protection of human rights adopted by the United Nations.

Proceedings before the court consist of written and oral proceedings, after which the Court will hand down its judgment in open Court. Judgements of the Court are binding on each Member State, institutions of ECOWAS and on individuals.

More information is available at the website of the Community Court of Justice at <http://www.courtecowas.org/>.

State law & practice	
Individual cases	✓
Urgent action	✓
Only Under-18s	

### 1. Likely result from the use of this mechanism

Following the filing of a case with the Community Court of Justice, the Court will appoint a Judge-Rapporteur, who will prepare the case for the Court, and make recommendations regarding what inquiries might be needed, which might include further documents, oral testimony, expert reports, or site visits. Following the completion of the preparatory inquiry, a date for the oral procedure will be set by the Court, which might involve the hearing of witnesses. This session will be public.

After the conclusion of the oral procedure, the Court will deliberate on the judgment in closed session, and deliver its judgment in open Court.

**Urgent action:** According to article 20 of Protocol A/P.L/7/91 on the Community Court of Justice, “*the Court, each time a case is brought before it, may order any provisional measures or issue any provisional instructions which it may consider necessary or desirable.*”

When filing a case with the Community Court of Justice, it is possible - in a separate document - to also file an application for interim measures. Such an application should be referred to the Court by the President within 48 hours after it has been lodged.

Articles 79-86 of the Rules of Procedure deal in more detail with interim measures.

### 2. To which States does this mechanism apply?

The mechanism applies to those States that are members of the Economic Community of West African States (ECOWAS). A list of member States is available at <http://ecowas.int/>.

### 3. Who can submit information?

According to article 10 of Protocol A/SP.1/01/05, individuals who are subject to the jurisdiction of a member State of ECOWAS can apply to the Community Court of Justice for relief for violation of their human rights.

However, according to article 12 of the Protocol establishing the Court of Justice, representation by an agent or lawyer is required.

### 4. When to submit information?

A case should be filed with the Community Court of Justice as soon as possible, even though neither the Protocol establishing the Court, nor the Rules of Procedures give any time limits in cases of human rights violations. There is no need for the exhaustion of domestic remedies - in fact, the Community Court of Justice stated that it is not an appeal court, so a case should be filed directly with the Community Court of Justice.

## 5. Special rules of procedure or advice for making a submission?

The Community Court of Justice is a proper court, and according to article 12 of the Protocol establishing the Court of Justice, representation by an agent or lawyer is required. Any lawyer representing a victim of human rights violations needs to be authorised to practice before a court of a member State of ECOWAS.

### How to file a case with the Community Court of Justice:

As representation by a lawyer or agent is obligatory when filing a case before the Community Court of Justice, the following is only a brief summary, which should aid a decision on whether to file a case.

While the official languages of the Community Court of Justice are English, French, and Portuguese, a case against a member State needs to be filed in one of the official languages of that State. Articles 32 to 40 of the Rules of Procedure relate to the written procedure before the Community Court of Justice.

An application to the Community Court of Justice needs to include:

- the name and address of the applicant;
- the party against which the application is made (the “defendants”), which - in the case of human rights violations - might be the State;
- the subject matter, which means a clear description of the alleged human rights violations, and which provisions of the ACHPR are alleged to have been violated;
- what kind of order the applicant wants the court to make;
- where appropriate, the nature of any evidence offered in support.

An application to the Community Court of Justice needs to be in writing and signed by the agent or lawyer of the applicant, with five certified copies for the Court plus one copy each for each party to the case.

### Emergency procedures:

Article 20 of Protocol A/P.L/7/91 on the Community Court of Justice establishes that the Court may “*order any provisional measures or issue any provisional instructions which it may consider necessary or desirable*”, thus establishing an emergency procedure. Articles 79-86 of the Rules of Procedure deal in more detail with interim measures.

An application for interim measures or provisional instructions should be made in a separate document at the same time as the main application, and should explain why interim measures or provisional instructions are needed as a matter of urgency. The application should also include what measures or instructions the Court should order.

After lodging of the application, the President shall refer it to the Court within 48 hours. The defendant will also be given a brief period of time to respond to the application.

The Community Court of Justice will then decide on any interim measures or provisional instructions, and make the appropriate order.

## 6. What happens to the submission (how long will it take)?

The Community Court of Justice deals with cases in the order in which they are registered. Following the lodging of a case, the applications will be served on the defendant, who then has one month to reply. However, this time limit can be extended on application.

Following this, the applicant is given one month time to respond to the defence, which then is again given one month to respond to the reply of the applicant.

A Judge-Rapporteur will be in charge of the application, and will produce a preliminary report, which includes recommendation whether a preparatory inquiry or other preparatory steps are needed. This can also include the commissioning of an expert's report.

Based on the report of the Judge-Rapporteur, the Community Court of Justice will decide on the measures of inquiry, which can include:

- the personal appearance of the parties;
- a request for information and for further documents;
- oral testimony;
- the commissioning of an expert's report;
- an inspection of the place or of evidence.

Following the completion of the preparatory inquiry, the Community Court of Justice will fix the date for the opening of the oral procedure, which can then include oral evidence by witnesses in open session of the Court.

After hearing all evidence and the presentations of the parties, the Court will deliberate on its judgment in closed session. The judgment itself will then be delivered in open Court, and it will be binding from the date of its delivery.

It is likely that the process takes more than two years in total.

## 7. History of the use of this mechanism

This mechanism has so far not been used for conscientious objection to military service.

### Legal basis

Name	Entry into force	Synopsis	Categories
ECOWAS Treaty	24 July 1993	Article 4 “Fundamental Principles” of the ECOWAS Treaty includes as principles of ECOWAS: “ <i>g) recognition promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;</i> ”  <a href="http://www.comm.ecowas.int/sec/index.php?id=treaty&amp;lang=en">http://www.comm.ecowas.int/sec/index.php?id=treaty&amp;lang=en</a>	All
Protocol A/P.1/7/91 on the Community Court of Justice, revised by Supplementary Protocol A/SP.1/01/05	6 July 1991	The Protocol establishes the Community Court of Justice with “ <i>any powers conferred upon it, specifically by the provisions of this Protocol</i> ”.  Articles 9, as amended by the Supplementary Protocol A/SP.1/01/05 includes: “ <i>The Court has jurisdiction to determine case of violation of human rights that occur in any Member State.</i> ”  <a href="http://www.courtecowas.org/site2012/pdf_files/protocol.pdf">http://www.courtecowas.org/site2012/pdf_files/protocol.pdf</a>	None

### Case law (Jurisprudence)

[None]

### Contact:

Community Court of Justice - ECOWAS

10 Dar Es Salaam Crescent,  
Off Aminu Kano Crescent, Wuse II,  
Abuja,  
Nigeria.

Tel: +234-9-5240781

Fax: +234-9-6708210

Email : [information@courtecowas.org](mailto:information@courtecowas.org) or [info@courtecowas.org](mailto:info@courtecowas.org) or [president@courtecowas.org](mailto:president@courtecowas.org)

Website: <http://courtecowas.org>

### Further reading:

- Community Court of Justice: *Protocol A/P.1/7/91 on the Community Court of Justice*, 6 July 1991, [http://www.courtecowas.org/site2012/pdf\\_files/protocol.pdf](http://www.courtecowas.org/site2012/pdf_files/protocol.pdf), accessed 22 December 2012
- Community Court of Justice: *Supplementary Protocol A/SP.1/01/05 amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 paragraph 1 of the English version of the said Protocol*, 19 January 2005, [http://www.courtecowas.org/site2012/pdf\\_files/supplementary\\_protocol.pdf](http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf), accessed 22 December 2012
- Community Court of Justice: *Rules of Procedure*, August 2003,



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- Justice H.N. Donli - Past President/Judge: *The Law, Practice, and Procedure of the Community Court of Justice - Meaning and Implication*. Paper presented by the President of the Community Court of Justice, ECOWAS Hon. Justice H.N. Donli at the Workshop on the Law, Practice and Procedure of the Community Court of Justice - ECOWAS, organised by the West African Human Rights Forum, 7-9 December 2006, Bamako, Mali, <http://www.crin.org/docs/ECOWASmeaning.doc>, accessed 11 October 2012
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- Andrew W. Maki: *ECOWAS Court and the Promise of the Local Remedies Rule*, in: The Human Rights Brief, November 2009, <http://hrbrief.org/2009/11/ecowas-court-and-the-promise-of-the-local-remedies-rule/>, accessed 11 October 2012
- Jeneba Kamara: *The Law and Practice of the ECOWAS Community Court of Justice*, in: Centre for Accountability and Rule of Law, 26 May 2006, <http://www.carl-sl.org/home/articles/132-the-law-and-practice-of-the-ecowas-community-court-of-justice>, accessed 11 October 2012
- Adewale Banjo: *The ECOWAS Court and the Politics of Access to Justice in West Africa*, in: Africa Development, Vol. XXXII, No. 1, 2007, pp.69-87, <http://www.ajol.info/index.php/ad/article/viewFile/57155/45547>, accessed 11 October 2012
- M.T. Ladan: *Access to justice as a Human Rights under the ECOWAS Community Law*, A Paper presented at: The Commonwealth Regional Conference on the Theme: - The 21<sup>st</sup> Century Lawyer: Present Challenges and Future Skills, Abuja, Nigeria, 8-11 April 2010, [http://www.abu.edu.ng/publications/2009-07-12-135031\\_3901.docx](http://www.abu.edu.ng/publications/2009-07-12-135031_3901.docx), accessed 11 October 2012
- Solomon T. Ebrobah: *A critical analysis of the human rights mandate of the ECOWAS Community Court of Justice*, Danish Institute for Human Rights, Research Partnership 1/2008, [http://www.escri-net.org/usr\\_doc/S\\_Ebrobah.pdf](http://www.escri-net.org/usr_doc/S_Ebrobah.pdf), accessed 11 October 2012





## The Americas

All States of the Americas are members of the *Organization of American States*. The Charter of the Organization of American States (see [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm)) establishes in article 106 the “*Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.*”

The Inter-American Commission on Human Rights (IACHR) is the principal organ of the OAS in relation to human rights, carrying out thematic activities and initiatives, preparing reports on the human rights situation in a certain country or on a particular thematic issue, and processing and analysing individual petitions in cases of alleged human rights violations.

The legal framework of the IACHR is either the 1948 *Declaration of the Rights and Duties of Man* (the American Declaration - see <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>), or the *American Convention on Human Rights* of 1969 (see <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>), or other relevant inter-American human rights treaties.

The second relevant human rights related organ of the OAS is the *Inter-American Court of Human Rights*, established in 1979 (see <http://www.corteidh.or.cr>). It is not possible to bring a case directly to the Inter-American Court - only the Inter-American Commission can do so, and only for those States members of the OAS that have accepted the jurisdiction of the Court.

Part of the mandate of the IACHR is also to observe the general situation of human rights in the Member States and publish, when it deems appropriate, reports on the situation in a given Member State.

A much more recent regional instrument is the *Ibero-American Convention on the Rights of Youth* from 11 October 2005 (English: <http://scout.org/content/download/22369/200853/file/IBEROAMERICAN%2520CONVENTION.pdf>). This convention, which applies to young people between 15 and 24 years, recognises in article 12 explicitly the right to conscientious objection to obligatory military service. Article 35 paragraph 4 also establishes that the national authorities competent for public youth policy shall submit to the Secretary-General of the *Ibero-American Youth Organisation* (<http://www.oij.org>) a biannual report on the progress made in achieving the observance of the provisions of the convention. However, there is no review procedure.

## Inter-American Commission on Human Rights: Overview

State law & practice	✓
Individual cases	✓
Urgent action	
Only Under-18s	

The [Inter-American Commission on Human Rights \(IACHR\)](http://www.oas.org/dil/treaties_B-31_Protocol_of_Buenos_Aires.htm) was created by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States (OAS) in Santiago, Chile, in 1959, and began working in 1960. It became one of the principal organs of the OAS with the Protocol of Buenos Aires from 1967, which amended the Charter of the OAS.

The Protocol of Buenos Aires (see [http://www.oas.org/dil/treaties\\_B-31\\_Protocol\\_of\\_Buenos\\_Aires.htm](http://www.oas.org/dil/treaties_B-31_Protocol_of_Buenos_Aires.htm)) transformed the Inter-American Commission into a formal organ of the OAS and prescribed that the Commission's principal function should be "*to promote the observance and protection of human rights*" (Articles 53 and 106 OAS Charter – see

[http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm)).

The Inter-American Commission is characterised by a unique "dual role", which reflects its origin as a Charter based body and later transformation into a treaty body when the *American Convention on Human Rights* (ACHR) came into force. As an OAS Charter organ the Inter-American Commission performs functions in relation to all member states of the OAS (Article 41 ACHR) and as a Convention organ its functions are applicable only to States parties to the American Convention on Human Rights (ACHR).

The Inter-American Commission on Human Rights has three principal functions:

- monitoring and investigating the situation of human rights in the Americas, which includes the production of country reports on the situation of human rights (see <http://www.oas.org/en/iachr/reports/country.asp>) or thematic reports (see <http://www.oas.org/en/iachr/reports/thematic.asp>). However, unlike in the United Nations or the African human rights system, there is no periodic reporting by States;
- dealing with individual petition on alleged violations of human rights. This can involve trying to find an amicable solution, or referring a case to the *Inter-American Court of Human Rights* for those countries that have accepted the Court's jurisdiction;
- Thematic or special *rappoteurships*, whose role is the monitoring and strengthening of specific aspects of human rights. Offices of rapporteurs "*may function as thematic rapporteurships, assigned to a member of the Commission, or as special rapporteurships, assigned to other persons designated by the Commission.*" (see <http://www.oas.org/en/iachr/mandate/rappoteurships.asp>)

The dual role of the Inter-American Commission on Human Rights means that it also has two different human rights charters as reference. All member states of the OAS have signed and ratified the [American Declaration of the Rights and Duties of Man](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm) of 1948. Article III of the American Declaration protects freedom of religion: "*Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.*" However, there is no reference to freedom of conscience in the American Declaration.

For those countries that have ratified the [American Convention on Human Rights](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm) of 1969. Article 12 of the American Convention protects freedom of thought, conscience, and religion:

- "1. *Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.*
- "2. *No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.*"

The list of countries that have ratified the American Convention is available at

[http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

The American Convention also establishes the [Inter-American Court of Human Rights](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm). However, in addition to ratifying the American Convention, a State party must voluntarily submit to the Inter-American Court's jurisdiction for it to be competent to hear a case involving that state. Cases can only be brought by a State party or by the Inter-American Commission on Human Rights.

Some of the Rapporteurships of the Inter-American Commission on Human Rights can also be useful in cases of conscientious objection to military service, or in raising issues around the violation of human rights of those campaigning for the rights to conscientious objection to military service. These are:

- Special Rapporteurship for Freedom of Expression (see <http://www.oas.org/en/iachr/expression/index.asp>)

- Rapporteurship on the Rights of the Child (see <http://www.oas.org/en/iachr/children/>)
- Rapporteurship on Human Rights Defenders (see <http://www.oas.org/en/iachr/defenders/default.asp>)

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the Organization of American States</b>	13 December 1951	Article 106 of the Charter establishes the Inter-American Commission on Human Rights: <i>"There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters. An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters."</i>  <a href="http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm">http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm</a>	All
<b>Declaration of the Rights and Duties of Man (the American Declaration)</b>	30 April 1948	Article III of the American Declaration guarantees freedom of religion: <i>"Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private."</i>  <a href="http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm">http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm</a>	All
<b>American Convention on Human Rights (American Convention)</b>	18 July 1978	Article 12 of the American Convention protects freedom of thought, conscience, and religion: <i>"1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.  2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.  3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others."</i>  <a href="http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm">http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm</a>	All
<b>American Convention on Human Rights, Article 62: Recognition of the Jurisdiction of the Court</b>	18 July 1978	According to article 62 of the American Convention, "a State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention." (...) 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement." <a href="http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm">http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm</a>	None

**Contact:**

Inter-American Commission on Human Rights  
Organization of American States  
1889 F St NW  
Washington, D.C., 20006  
United States of America  
Telephone: +1-202-458 6002  
Fax: +1-202-458 3992 / +1-202-458 3650 / +1-202-458 6215  
E-mail: [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

**Further reading:**

- Organization of American States: *Basic Documents Pertaining to Human Rights in the Inter-American System* (Updated to July 2003), <http://www.corteidh.or.cr/docs/libros/Basingl01.pdf>, accessed 15 October 2012
- Inter-American Commission on Human Rights: *Petition and Case system. Informational brochure*, 2010, [http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto\\_eng.pdf](http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf), accessed 12 October 2012
- Icelandic Human Rights Centre: *The Organization of American States*, <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/humanrightsfora/theorganizationofamericanstates/>, accessed 15 October 2012

## Inter-American Commission on Human Rights: Petition procedure

### Summary

According to article 23 of the Rules of Procedure of the Inter-American Commission on Human Rights, *“any person or group of persons or non-governmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights”*.

A petition can only be lodged after domestic remedies have been exhausted, and has to be lodged within six months after the final judgment. In addition, the subject of the petition or communication should not be pending in another international settlement procedure.

For those member States of the OAS that have ratified the *American Convention on Human Rights*, this will be the legal reference for evaluating a petition. For those who did not, it will be the 1948 *Declaration of the Rights and Duties of Man* (the American Declaration). In addition, any additional Inter-American human rights protocol ratified by a State can form the basis of a petition.

After a petition has been declared admissible, the Inter-American Commission proceeds to analyse the alleged human rights violations in detail. It might also attempt to reach a “Friendly Settlement” between the parties concerned. If the Inter-American Commission finds a violation of rights protected under the relevant human rights treaty, it will issue a report on the merits, which will include recommendations to the State aimed at ending the human rights violations, making reparations, and/or making changes to the law.

If a State does not comply with the recommendations of the Inter-American Commission, the Commission may decide to publish the case or to refer it to the Inter-American Court of Human Rights, if it concerns a State party that has accepted the Court's jurisdiction.

State law & practice	
Individual cases	✓
Urgent action	✓
Only Under-18s	

### 1. Likely result from the use of this mechanism

Following receipt of a petition by the Inter-American Commission on Human Rights, the Inter-American Commission will first decide on the admissibility of the petition. If a petition is found admissible, the Inter-American Commission might try to negotiate a friendly settlement between the parties concerned, or - if this is unsuccessful or the parties do not want it - proceed to a decision on the merits of the case. If the Inter-American Commission finds on a violation of rights protected under the relevant human rights treaty, it will issue a report on the merits, which will include recommendations to the State aimed at ending the human rights violations, making reparations, and/or making changes to the law. This report will be transmitted to the State concerned.

If the State does not comply with the recommendations of the Inter-American Commission within three months, the Commission will either refer the case to the Inter-American Court (if it concerns a State party that has accepted the Court's jurisdiction in accordance with article 62 of the American Convention), or publish a final report with final conclusions and recommendations.

**Urgent action:** According to article 25 of the Rules of Procedure, *“in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.”*

### 2. To which States does this mechanism apply?

The mechanism applies to all member States of the Organization of American States (OAS), albeit with variations. While the Inter-American Commission on Human Rights will deal with petitions related to human rights violations from all member States of the OAS, the procedure and the legal framework depend on what Inter-American treaties a State is party to.

A list of member States of the OAS is available at [http://www.oas.org/en/member\\_states/default.asp](http://www.oas.org/en/member_states/default.asp).

### 3. Who can submit information?

According to Article 44 of the American Convention on Human Rights, *“any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party”*.

There is no need for a lawyer, but it is possible to be represented by a lawyer.

#### 4. When to submit information?

A petition can only be lodged after domestic remedies have been exhausted, and has to be lodged within six months after the final judgment. In addition, the subject of the petition or communication should not be pending in another international settlement procedure.

#### 5. Special rules of procedure or advice for making a submission?

While the petition procedure of the Inter-American Commission is straightforward, and does not require legal representation, it is advisable to read the Commission's information brochure on the "Petition and Case system", which also includes a form that can be helpful when submitting a case (see [http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto\\_eng.pdf](http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf)).

A petition can be filed by any person, or group of persons, or by any NGO legally recognised in one or more member states of the OAS.

#### How to write a petition?

For a petition to be admissible, it needs to meet the following requirements:

- It needs to include the name(s), nationality, and signature(s) of the person(s) filing the petition, or if it is submitted by an NGO, the name and signature of its legal representative;
- whether the person filing the petition wishes his or her identity be withheld from the State concerned;
- an address for receiving communication from the Inter-American Commission, if possible including telephone, fax, and email;
- a detailed description of the alleged human rights violations, specifying date, place, and nature of the alleged violations;
- if possible, the name(s) of the victim(s) and of the public authorities involved in the alleged human rights violations;
- the State responsible for the alleged human rights violations;
- any steps taken to exhaust domestic remedies;
- an indication that the petition has not been submitted to another international settlement proceeding.

In addition, the petition has to be filed within the time limit of six months after exhaustion of domestic remedies. If for some reason domestic remedies cannot be exhausted, because they are unreasonably prolonged or ineffective, then this should be stated in the petition.

#### Emergency procedures:

According to article 25 of the Rules of Procedure, "*in serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case.*"

A request for precautionary measures should be made when submitting a petition, or - should this become relevant after the petition has been submitted - when the need arises.

#### 6. What happens to the submission (how long will it take)?

Upon receipt of a petition by the Secretariat of the Inter-American Commission on Human Rights, the Secretariat will be responsible for the initial processing of the petition, especially checking if it meets the requirements of article 28 of the Rules of Procedure. Should documentation be missing, the Secretariat will contact the person or NGO that submitted the petition and request additional information.

The Secretariat will also register the petition and acknowledge receipt.

Once all requirements are met, the petition will be forwarded to the Inter-American Commission. In serious or urgent cases, the Secretariat will notify the Inter-American Commission immediately.

During the admissibility procedure, the relevant parts of the petition will be forwarded to the State concerned for comments. If the person submitting the petition wants his or her identity be withheld, it will not be transmitted to the State. However, it is usually not possible for the identity of victims of alleged human rights violations to be withheld.



According to article 30 of the Rules of Procedure, the State should respond within two months of the transmission of the request by the Secretariat. This can be extended, but not beyond three months counted from the date of the initial request.

In serious or urgent cases, or when the life of personal integrity of the alleged victim is in real or imminent danger, the Inter-American Commission will request the promptest reply by the State.

Prior to a decision on the admissibility, the Inter-American Commission may request additional information from all parties concerned.

Prior to a regular session of the Inter-American Commission, a Working Group on Admissibility will meet and make recommendations as to the admissibility of petitions. A decision on admissibility will then be made by the Inter-American Commission. Any decision on admissibility or inadmissibility is public and will be included in the Annual Report of the Inter-American Commission. Reports on admissibility or inadmissibility can also be found at [http://www.oas.org/en/iachr/decisions/cases\\_reports.asp](http://www.oas.org/en/iachr/decisions/cases_reports.asp).

Following a decision on admissibility, the Inter-American Commission will proceed to a decision on the merits of the case. First, the petitioners will be given two months to submit additional information to the Inter-American Commission. The relevant parts of these submissions will be transmitted to the State concerned, who will also be given two months to respond.

Prior to a decision on the merits of the case, the Inter-American Commission will then set a time period for the parties to express whether they are interested in initiating the friendly settlement procedure according to article 41 of the Rules of Procedure.

If it deems necessary, the Inter-American Commission may also convene a hearing with the parties. It may also carry out an on-site investigation (article 40 of the Rules of Procedure).

Finally, the Inter-American Commission will deliberate in private on the decision on the merits. If the Inter-American Commission does come to the conclusion that there was no violation of the relevant human rights treaty, the report will say so and will be published with the Annual Report of the Inter-American Commission.

If the Inter-American Commission finds a violation of human rights, it will prepare a preliminary report which includes recommendation to the State concerned, which will be submitted to the State in question with a deadline for reporting on the measures taken to comply with the recommendations. At that time, the report will not yet be published, and the State concerned is also not authorised to publish the report. The petitioner will be notified of the report and that it has been transmitted to the State concerned.

If within three months after transmission of the preliminary report to the State concerned the matter has not been resolved, the Inter-American Commission may issue a final report which includes the opinion of the Commission and final conclusions and recommendations. The final report will again be transmitted to the parties concerned, with a deadline for submitting information as to the compliance with the recommendations.

After the expiration of the deadline, the Inter-American Commission will decide whether or not to publish the final report, and whether to include it in the Commission's Annual Report. Published final reports can be found at <http://www.oas.org/en/iachr/decisions/merits.asp>.

The above procedure applies to all member States of the Organization of American States, whether or not they have ratified the American Convention on Human Rights, and whether or not they have accepted the jurisdiction of the Inter-American Court. However, the legal reference might be different, depending on whether or not a State is party to the American Convention or not. This should be kept in mind when submitting a petition.

### **Inter-American Court of Human Rights**

The following only applies to States Party to the American Convention on Human Rights that have accepted the jurisdiction of the Inter-American Court of Human Rights according to article 62 of the Convention.

Following the adoption of a preliminary report on the merits by the Inter-American Commission, the

original petitioner will be notified about the decision, and will be given one month to present his or her position as to whether the case should be submitted to the Inter-American Court.

A case can be brought to the Inter-American Court either by the Inter-American Commission, or by the State concerned. The Rules and Procedure of the Inter-American Court are available at [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm). From the petitioner's point of view, it is likely that the case will be led by the Inter-American Commission.

A case before the Inter-American Court will normally end with a judgment by the Court, which may include an order to pay reparation to the victim(s) of human rights violations. Judgments of the Inter-American Court are available at <http://www.corteidh.or.cr/casos.cfm?&CFID=1168842&CFTOKEN=75858991>.

## 7. History of the use of this mechanism

The Inter-American human rights system has been used in cases of conscientious objection to military service, but with a mixed outcome. The first case of a conscientious objector filed with the Inter-American Commission was the case of Colombian conscientious objector Luis Gabriel Caldas León in 1995. However, this case was finally archived in 2010, without a decision on the case (see <http://www.cidh.org/annualrep/2010eng/COAR11596EN.doc>).

In 1999, a group of Chilean conscientious objector filed a petition with the Inter-American Commission, alleging a violation of their right to freedom of thought, conscience and religion. In its opinion, the Inter-American Commission denied that a right to conscientious objection existed under the American Convention on Human Rights (see Report No 43/05, <http://wri-irg.org/node/10698>). In 2004, a case was filed by the Ombudsman of Bolivia concerning a conscientious objector from Bolivia. This case ended in 2005 with a friendly settlement (see Report No 97/05, <http://wri-irg.org/node/10700>).

Since the negative decision of 2005 in the case from Chile, the United Nations Human Rights Committee and the European Court of Human Rights have moved forward with the interpretation of the equivalent articles of the *International Covenant on Civil and Political Rights* and the *European Convention on Human Rights* respectively, so it is possible that the Inter-American Commission too could change its interpretation of the American Convention, if presented with a good case. However, we advise anyone wanting to engage in this to contact the authors of this publication.

So far, no case of conscientious objection to military service has been presented to the Inter-American Court of Human Rights.

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>Charter of the Organization of American States</b>	13 December 1951	Article 106 of the Charter establishes the Inter-American Commission on Human Rights: <i>"There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters. An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters."</i>  <a href="http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm">http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm</a>	All
<b>Declaration of the Rights and Duties of Man (the American Declaration)</b>	30 April 1948	Article III of the American Declaration guarantees freedom of religion: <i>"Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private."</i>  <a href="http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm">http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm</a>	All

Name	Entry into force	Synopsis	Categories
<b>American Convention on Human Rights (American Convention)</b>	18 July 1978	Article 12 of the American Convention protects freedom of thought, conscience, and religion: <i>"1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.</i> <i>2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.</i> <i>3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others."</i>  <a href="http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm">http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm</a>	All
<b>American Convention on Human Rights, Article 62: Recognition of the Jurisdiction of the Court</b>	18 July 1978	According to article 62 of the American Convention, "a State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention." (...) <i>3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."</i> <a href="http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm">http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm</a>	None

## Jurisprudence

Name	Date	Synopsis	Categories
<b>Friendly Settlement Alfredo Díaz Bustos v Bolivia</b>	27 October 2005	The case concerned Alfredo Díaz Bustos, a Jehovah's Witness and conscientious objector to military service. He alleged that his "right to conscientious objection has been violated by the State, directly affecting his freedom of conscience and religion, and that the State has failed to fulfill its obligation to respect and ensure the rights established in the American Convention, to which Bolivia is a party." The case concluded with a Friendly Settlement, in which the Bolivian State agreed: <i>"a) to give Alfredo Díaz Bustos his document of completed military service within thirty (30) working days after he submits all the required documentation to the Ministry of Defense;</i> <i>b) to present the service document free of charge, without requiring for its delivery payment of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not;</i> <i>c) at the time of presentation of the service record, to issue a Ministerial Resolution stipulating that in the event of an armed conflict Alfredo Díaz Bustos, as a conscientious objector, shall not be sent to the battlefield nor called as an aide;</i> <i>d) in accordance with international human rights law, to include</i>	Recognition of conscientious objection

*the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces;*

*e) together with the Deputy Ministry of Justice, to encourage congressional approval of military legislation that would include the right to conscientious objection to military service; (...)"*

<http://wri-irg.org/node/10700>

**Cristián Daniel  
Sahli et al v Chile** 10 March  
2005

The case concerned three conscientious objectors from Chile, who alleged *"that the obligation to perform military service constitutes a violation of the freedom of conscience of the young men Sahli, Basso, and Garate, as they have been subjected to restrictive measures that are an attack on their beliefs as to how they should carry out their life plans."*

(...)

*"In those countries that do not provide for conscientious objector status in their law, the international human rights bodies find that there has been no violation of the right to freedom of thought, conscience or religion."*

(...)

*"100. The Commission is of the view that the failure of the Chilean State to recognize "conscientious objector" status in its domestic law, and the failure to recognize Cristian Daniel Sahli Vera, Claudio Salvador Fabrizio Basso Miranda and Javier Andres Garate Neidhardt as "conscientious objectors" to compulsory military service, does not constitute an interference with their right to freedom of conscience. The Commission is of the view that the American Convention does not prohibit obligatory military service and that Article 6(3)(b) of the Convention specifically contemplates military service in countries in which conscientious objectors are not recognized. Consequently, the Commission finds no violation by the Chilean State of Article 12 of the American Convention to the detriment of the petitioners in this case."*

(...)

<http://wri-irg.org/node/10698>

**Alejandro Piché  
Cuca v Guatemala** 6 October  
1993

The case concerned Guatemalan citizen Alejandro Piché Cuca, who on 27 April 1991 was recruited to the military by force.

*"The facts denounced in the communication of January 22, 1992, concerning Mr. Alejandro Piché's forced recruitment into the army are serious violations of the Guatemalan Government's obligation to respect and guarantee the right to personal liberty (Article 7), the protection of human dignity (Article 11) and the right to freedom of movement (Article 22), guaranteed in the American Convention on Human Rights, in connection with Article 1.1 of that same legal instrument."*

(...)

<http://wri-irg.org/node/20933>

Recognition of  
conscientious  
objection

None

## Contact:

Inter-American Commission on Human Rights

1889 F St. NW

Washington, DC, 20006

United States

E-mail: [cidhdenuncias@oas.org](mailto:cidhdenuncias@oas.org)

Electronic form: [https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=S](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=S)

Fax: +1-202-458-3992 or 6215

**Further reading:**

- Organization of American States: *Rules of Procedure of the Inter-American Commission on Human Rights*, Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>, accessed 15 October 2012
- Inter-American Commission on Human Rights: *Petition and Case system. Informational brochure*, 2010, [http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto\\_eng.pdf](http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf), accessed 12 October 2012
- Inter-American Court of Human Rights: *Rules of Procedure*, 2009, [http://www.corteidh.or.cr/reglamento\\_eng.cfm](http://www.corteidh.or.cr/reglamento_eng.cfm), accessed 24 October 2012

## Ibero-American Convention on the Rights of Youth

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

### Summary

The Ibero-American Convention on the Rights of Youth (see English version: <http://scout.org/content/download/22369/200853/file/IBEROAMERICAN%2520CONVENTION.pdf>) was signed in 2005 in the Spanish city of Badajoz, and came into force on 1 March 2008. It applies those States that have ratified it, and is limited to the Ibero-American region, which also includes Spain, Portugal, and Andorra in Europe.

The Ibero-American Youth Convention defines “youth” as young people between the ages of 15 and 24 years.

The Ibero-American Youth Convention recognises explicitly in its article 12 the right to conscientious objection, and prohibits the recruitment of under-18s:

1. *Youth have the right to make conscientious objection towards obligatory military service.*
2. *The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service.*
3. *The States Parties undertake to assure youth under 18 years of age that they shall not be called up or involved, in any way, in military hostilities.*

While there is currently no mechanism to monitor the Ibero-American Youth Convention, ratifying States are required to submit a report every two years to the Secretary General of the *Ibero-American Youth Organisation*. The Secretary General in turn reports to the biannual conference of Ibero-American Ministers with responsibility for youth policy.

### 1. Likely result from the use of this mechanism

As there is presently no monitoring mechanism in relation to the Ibero-American Youth Convention, the best possible outcome is the inclusion of a violation of the Youth Convention in the report of the Secretary General of the Ibero-American Youth Organisation.

### 2. To which States does this mechanism apply?

The mechanism applies to States that have ratified the Ibero-American Convention on the Rights of Youth. A list of countries that have ratified the Youth Convention is available at <http://www.laconvencion.org/index.php?secciones/mapa> (in Spanish).

### 3. Who can submit information?

Anyone can submit information to the Ibero-American Youth Organisation.

### 4. When to submit information?

As there is no monitoring mechanism, there is no clear indication when best to submit information. However, there are two major opportunities:

- after a country submitted its biannual report according to article 35 of the Youth Convention “*on the progress made in achieving the observance of the provisions of the present Convention*“. This can be countered with an NGO report highlighting the violations of the Convention. State reports are available at <http://www.laconvencion.org/index.php?secciones/estudios> (in Spanish, at the bottom of the page)
- In a timely manner before the biannual conference of Ibero-American Ministers with responsibility for youth policy

### 5. Special rules of procedure or advice for making a submission?

There are no special rules or procedures. When submitting a report countering a State's report, it is advisable to refer to the relevant sections of the State's report.

### 6. What happens to the submission (how long will it take)?

As there is no clear mechanism, there is no clear indication what might happen to a submission.

### 7. History of the use of this mechanism

This mechanism has so far not been used for conscientious objection to military service.

## Legal basis

Name	Entry into force	Synopsis	Categories
<b>Ibero-American Convention on the Rights of Youth</b>	1 March 2008	<p>The Ibero-American Youth Convention recognises explicitly in its article 12 the right to conscientious objection, and prohibits the recruitment of under-18s:</p> <p><i>“1. Youth have the right to make conscientious objection towards obligatory military service.</i></p> <p><i>2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service.</i></p> <p><i>3. The States Parties undertake to assure youth under 18 years of age that they shall not be called up or involved, in any way, in military hostilities.”</i></p> <p><a href="http://scout.org/content/download/22369/200853/file/IBEROAMERICAN%2520CONVENTION.pdf">http://scout.org/content/download/22369/200853/file/IBEROAMERICAN%2520CONVENTION.pdf</a></p>	All

## Case law (Jurisprudence)

[None]

## Contact

OIJ - Organización Iberoamericana de Juventud  
 Paseo de Recoletos 8 - 1ª Planta  
 28001 - Madrid (España)  
 Tel +34-91-369 02 84/03 50  
 Fax +34-91-577 50 39  
 Email [oij@oij.org](mailto:oij@oij.org)  
 Web: <http://www.oij.org>

## Further reading

- *Ibero-American Convention on the Rights of Youth* (see: English version: <http://scout.org/content/download/22369/200853/file/IBEROAMERICAN%2520CONVENTION.pdf>  
 Spanish: <http://www.laconvencion.org/>)





## Europe

Europe has a range of European human rights systems, covering virtually all of the European continent, and even reaching beyond Europe.

The *Organisation for Security and Cooperation in Europe* (OSCE) grew out of the Conference for Security and Cooperation in Europe (CSCE). The Helsinki Final Act from 1975 defines “*respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*” as one of the principles guiding the relations between participating States. Consequently, the OSCE monitors the human rights situation in its 56 participating States. The most relevant forum is the annual Human Dimension Implementation Meeting, organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). In addition, the OSCE has a presence in some of its participating States.

The reach of the OSCE goes well beyond Europe, and includes the USA and Canada, and most states of the former Soviet Union, well into central Asia.

The Council of Europe was established in 1949. According to article 3 of its Statutes, every member State must accept the principle “*of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms*”. The main human rights treaty of the Council of Europe is the European Convention on Human Rights.

Within the Council of Europe, there are several institutions of interest to conscientious objectors to military service:

- The *Commissioner for Human Rights* ([http://www.coe.int/t/commissioner/default\\_en.asp](http://www.coe.int/t/commissioner/default_en.asp)) is an independent institution within the Council of Europe, mandated to promote awareness of and respect for human rights in Council of Europe member states. However, the Commissioner for Human Rights does not have a mandate to act on individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals;
- The *European Court of Human Rights* ([http://www.echr.coe.int/ECHR/homepage\\_en](http://www.echr.coe.int/ECHR/homepage_en)) is the Council of Europe's highest human rights court, judging on complaints based on the European Convention on Human Rights;
- The *European Committee of Social Rights* oversees the European Social Charter (<http://www.coe.int/T/DGHL/Monitoring/SocialCharter/>), both via a reporting procedure and via a complaint procedure;
- The *Committee of Ministers* ([http://www.coe.int/t/cm/home\\_en.asp](http://www.coe.int/t/cm/home_en.asp)) is the main decision-making organ of the Council of Europe, and is also tasked with overseeing the implementation of judgements of the European Court of Human Rights. The Committee of Ministers also decides on recommendations on human rights issues, including conscientious objection to military service;
- The *Parliamentary Assembly* of the Council of Europe (<http://assembly.coe.int>) consists of delegates from the Parliaments of member States. The Parliamentary Assembly passes resolutions relevant to human rights, and also has a Committee on Legal Affairs and Human Rights.

The third relevant institution is the European Union ([http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)), which incorporated the *European Charter of Fundamental Rights* into primary European law when it adopted the Lisbon Treaty on 1 December 2009.

The *European Union Agency for Fundamental Rights* (<http://fra.europa.eu/en> - FRA) assists EU institutions and EU Member States in understanding and tackling challenges to safeguarding fundamental rights within the Member States of the European Union by collecting and analysing information from EU Member States.

The *European Parliament* (<http://www.europarl.europa.eu/portal/en>) can be an important body for lobbying, as it passes resolutions on human rights issues, including the right to conscientious objection to military service. The Committee on Civil Liberties, Justice and Home Affairs (<http://www.europarl.europa.eu/committees/en/libe/home.html>) is in charge of human rights within the European Union, while the Subcommittee on Human Rights (<http://www.europarl.europa.eu/committees/en/droi/home.html>) deals with human rights world-wide. On the level of EU government - the European Commission - the European Union established a *EU Special Representative (EUSR) for Human Rights*.

However, the European Union does not really have a mechanism to protect human rights within its member states. Lobbying of the European Parliament or the European Commission is outside the scope of this guide.

# Organisation for Security and Co-operation in Europe (OSCE): Human Dimension Implementation Meeting

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

## Summary

The *Human Dimension Implementation Meeting* (HDIM) is the Organisation for Security and Co-operation in Europe's (OSCE) primary conference to discuss the implementation of so-called "human dimension" commitments of OSCE Member States. The term "human dimension" describes the sets of norms and activities related to human rights, the rule of law and democracy that are regarded within the OSCE as one of the three pillars of its concept of Security and Co-operation in Europe. The founding document of the OSCE, the Helsinki Final Act from 1975, defines "*respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*" as one of the principles guiding the relations between participating States.

NGOs are allowed to fully participate in Human Dimension Implementation Meetings, on an equal footing with government representatives. NGOs and States can make recommendations for action to both the OSCE and to participating States. All recommendations made during a Human Dimension Implementation Meeting are recorded in the final report of the meeting. Recommendations presented by NGOs and participating States are then presented to the OSCE's *Ministerial Council Meeting* in December of the same year.

Recommendations can also be followed up with dedicated *Supplementary Human Dimension Meetings* on specific issues, or with thematic *Human Dimension Seminars*.

## 1. Likely result from the use of this mechanism

During the plenary sessions of Human Dimension Implementation Meetings, the progress made by participating States in implementing their human dimension commitments is examined. NGOs have the opportunity to participate in the discussion and to highlight non-compliance with human dimension commitments, and to make specific recommendations, which will be included in the final report of the meeting.

## 2. To which States does this mechanism apply?

The mechanism applies to States participating in the Organisation for Security and Co-operation in Europe (OSCE). This includes not only European States, but also several Central Asian States plus the USA and Canada. A list of participating States is available at <http://www.osce.org/who/83>.

## 3. Who can submit information?

Any NGO participating in a Human Dimension Implementation Conference can submit information.

## 4. When to submit information?

NGOs wishing to participate in a Human Dimension Implementation Meeting can submit statements, background documents, and other written materials for distribution via the OSCE's Document Distribution System (DDS).

## 5. Special rules of procedure or advice for making a submission?

The objective of the Human Dimension Implementation Conferences is to examine the progress made by participating States in implementing their human dimension commitments. It is therefore important to refer to relevant commitments made when making a submission.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has published Document Preparation Guidelines (see <http://www.osce.org/odihr/92511>). According to the guidelines, only material from participants who are both registered and present at the respective Human Dimension Implementation Conference will be published in the Document Distribution System of the OSCE. Making a submission is therefore only useful when it is also possible to attend the Human Dimension Implementation Meeting.

When making recommendations, it should be clearly stated whether a recommendation is meant for the OSCE, or for participating States.

### Organising a side event

Side events during the official Human Dimension Implementation Meeting are a good opportunity to highlight a specific topic in a more informal setting. NGOs can organise side events during the lunch breaks or evenings. ODIHR will publish the agenda of side events in its conference calendar, if information is received on time.

### Lobbying of delegations

During the Human Dimension Implementation Meeting, it is also possible to meet and lobby the delegation of one's own country, or of another country.

Information on Human Dimension Implementation Meetings is available at <http://www.osce.org/odihr/44078>.

## 6. What happens to the submission (how long will it take)?

Submissions by organisations participating in a Human Dimension Implementation Meeting will be published on the website of the OSCE.

Recommendations will be included in the conference report of the Human Dimension Implementation Meeting in their original form, but might also be summarised in the rapporteur's report of the conference.

## 7. History of the use of this mechanism

In recent years, several NGOs that work on conscientious objection to military service have submitted information and attended Human Dimension Implementation Meetings. WRI has submitted information in 2003 (see <http://wri-irg.org/co/osce-rep.htm>), but then did not participate in the meeting itself, so the submitted information is not available on the OSCE website.

The *European Association of Jehovah's Christian Witnesses* regularly submits information and attends the Human Dimension Implementation Meetings.

### Legal Basis

Name	Entry into force	Synopsis	Categories
<b>Helsinki Final Act</b>	1 August 1975	The founding act of the Conference for Security and Cooperation in Europe included under its principles: "VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief"  <a href="http://www.osce.org/mc/39501?download=true">http://www.osce.org/mc/39501?download=true</a>	All

### Interpretations

Name	Date	Synopsis	Categories
<b>Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel</b>	7 April 2008	Chapter 10 of the Handbook deals with conscientious objection to military service in detail. It summarises the following best practices and recommendations: <ul style="list-style-type: none"> <li>• Information should be made available to all persons affected by military service about the right to conscientious objection to military service, and the means of acquiring conscientious-objector status;</li> <li>• Conscientious objection should be available both for conscripts and for professional soldiers both prior to and during military service, in line with the recommendations of international bodies;</li> <li>• Where a state does not accept a statement of conscientious objection at face value, there should be independent review panels (or where not independent, adequate procedural safeguards should be in place);</li> <li>• Conscientious objectors should not be subject to repeated punishment for failure to perform military service;</li> </ul>	Recognition of conscientious objection Length/terms of substitute service Discrimination of conscientious objectors Time limits for CO applications In-service conscientious objection Selective

Name	Date	Synopsis	Categories
		<ul style="list-style-type: none"> <li>• There should be no discrimination against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil, or political rights;</li> <li>• Alternative service should be compatible with the reasons for the conscientious objection, of a non-combatant or civilian nature, in the public interest and not punitive;</li> <li>• Alternative service should be performed under a purely civilian administration, with no involvement by the military authority;</li> <li>• Those performing alternative service should enjoy the same economic and social rights as those undergoing military service;</li> <li>• The duration of alternative service should be no more than 1 1/2 times the length of military service.</li> </ul> <p><a href="http://wri-irg.org/node/20950">http://wri-irg.org/node/20950</a></p>	objection Repeated punishment of conscientious objectors
<b>Guidelines for Review of Legislation Pertaining to Religion of Belief</b>	28 September 2004	<p>Prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy through Law (VENICE COMMISSION) (...)</p> <p><i>"Conscientious objection to military service. Although there is no controlling international standard on this issue, the clear trend in most democratic States is to allow those with serious moral or religious objections to military service to perform alternative (non-military) service. In any case, State laws should not be unduly punitive for those who cannot serve in the military for reasons of conscience".</i></p> <p><a href="http://wri-irg.org/node/20951">http://wri-irg.org/node/20951</a></p>	Recognition of conscientious objection Length/terms of substitute service
<b>ODIHR: Human Dimension Implementation Meeting. Consolidated Summary, 6-17 October 2003</b>	31 October 2003	<p><i>"Following-up to discussions during the Supplementary Human Dimension Meeting recommendations by many participants included the following:</i></p> <p>(...)</p> <p><i>The OSCE/ODIHR Panel of Experts on Freedom of Religion or Belief is encouraged to continue its work related to study, analysis and dissemination of information, in particular regarding registration requirements for religious communities and conscientious objection to military service. Participating States which had not yet done so should be encouraged by the OSCE to enact the necessary legislation to honor the commitments made in the Copenhagen Document regarding conscientious objection."</i></p> <p><a href="http://wri-irg.org/node/20952">http://wri-irg.org/node/20952</a></p>	Recognition of conscientious objection
<b>ODIHR: Human Dimension Implementation Meeting. Consolidated Summary, 17-27 September 2001</b>	25 October 2001	<p><i>"Participating States which had not yet done so, were urged to enact the necessary legislation to honor the commitments made in the Copenhagen Document regarding conscientious objection."</i></p> <p><a href="http://wri-irg.org/node/20953">http://wri-irg.org/node/20953</a></p>	Recognition of conscientious objection
<b>Document of the</b>	29 June 1990	Paragraph 18 of the Document of the Copenhagen meeting	Recognition of

Name	Date	Synopsis	Categories
<b>Copenhagen meeting of the Conference on the Human Dimension, 5-29 June 1990</b>		<p>of the Conference on the Human Dimension, 5-29 June 1990:</p> <p>“(18) <i>The participating States</i></p> <p>(18.1) <i>note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;</i></p> <p>(18.2) <i>note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;</i></p> <p>(18.3) <i>note the activities of several non-governmental organisations on the question of conscientious objections to compulsory military service;</i></p> <p>(18.4) <i>agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;</i></p> <p>(18.5) <i>will make available to the public information on this issue;</i></p> <p>(18.6) <i>will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions”</i></p> <p><a href="http://wri-irg.org/node/12150">http://wri-irg.org/node/12150</a></p>	conscientious objection

### Contact

OSCE Office for Democratic Institutions and Human Rights  
 UL. Miodowa 10  
 00-251 Warsaw  
 Poland  
 Tel: +48 22 520 06 00  
 Fax: +48 22 520 06 05  
 E-mail: [office@odihr.pl](mailto:office@odihr.pl)

### Further reading:

- OSCE: [Human Dimension Commitments: Thematic Compilation](#), 2005, accessed 24 October 2012
- OSCE ODIHR: *The Human Dimension Implementation Meeting*, second edition 2009, <http://www.osce.org/odihr/20680>, accessed 25 October 2012

# Council of Europe: Commissioner for Human Rights

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

## Summary

The post of the Commissioner for Human Rights of the Council of Europe was created by a resolution of the Committee of Ministers of the Council of Europe on 7 May 1999.

According to the mandate, the Commissioner for Human Rights, shall, besides promoting human rights, and supporting human rights education, “*identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings*”.

As part of the mandate, the Commissioner carries out visits to all member states of the Council of Europe to monitor and evaluate the human rights situation.

While according to article 1 (2) of the mandate “*the Commissioner shall not take up individual complaints*”, he or she can draw conclusions from human rights violations in individual cases. Part of the mandate of the Commissioner for Human Rights is to engage with Human Rights Defenders in the member states of the Council of Europe, and to meet with a broad range of defenders during his or her country visits and to report publicly on the situation of human rights defenders.

The Commissioner for Human Rights publishes opinions, reports on country visits, thematic reports, and annual reports regarding the situation of human rights in the member states of the Council of Europe.

## 1. Likely result from the use of this mechanism

The Commissioner for Human Rights can take up information on the violation of human rights during a country visit, or when drafting a country report. Human rights violations can also be taken up in a thematic report, e.g. on freedom of expression.

## 2. To which States does this mechanism apply?

The mechanisms applies to all member States of the Council of Europe. A list of member States is available at <http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>.

Which human rights treaties and instruments are applicable depends on which instruments have been ratified by the relevant State. The most important human rights treaties are the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights - see <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=005&CM=7&DF=06/11/2012&CL=ENG> for status of ratifications) and the European Social Charter (see <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=035&CM=7&DF=06/11/2012&CL=ENG> for status of ratifications).

## 3. Who can submit information?

The Commissioner for Human Rights can receive information from anyone, but especially from human rights NGOs and from human rights defenders.

## 4. When to submit information?

Information can be submitted at any time. However, it is advisable to check the agenda of the Commissioner for Human Rights, and to submit information prior to a scheduled country visit, possibly at the same time requesting a meeting during the Commissioner's visit.

## 5. Special rules of procedure of advice for making a submission?

There are no special rules for making a submission.

It is advisable to refer to the relevant human rights instruments of the Council of Europe applicable to the State concerned when making a submission. As the mandate of the Commissioner for Human Rights does not include individual complaints, individual cases of human rights violations should mainly be used as examples to highlight patterns of human rights violations.

## 6. What happens to a submission (how long will it take)?

As there is no regular reporting procedure by States, there are no regular intervals for the Commissioner



for Human Rights to publish reports.

For submissions made prior to a country visit, especially if they were followed up with a meeting with the Commissioner, it can be hoped that the Commissioner will take up the issues in his or her report on the country visit. Country reports and other publications of the Commissioner related to countries are available at [http://www.coe.int/t/commissioner/Activities/countryreports\\_en.asp](http://www.coe.int/t/commissioner/Activities/countryreports_en.asp).

Serious situations of human rights violations might be taken up in the Annual Report or Quarterly Report of the Commissioner, or even in an Opinion. Annual and quarterly activity reports are available at [http://www.coe.int/t/commissioner/WCD/annualreports\\_en.asp#](http://www.coe.int/t/commissioner/WCD/annualreports_en.asp#), and Opinions of the Commissioner are available at [http://www.coe.int/t/commissioner/WCD/searchOpinions\\_en.asp#](http://www.coe.int/t/commissioner/WCD/searchOpinions_en.asp#).

### Following-up

If the Commissioner for Human Rights has taken up the issue of conscientious objection, and has made recommendations, it is important to provide information on the implementation of the recommendations made to the Commissioner. The Commissioner publishes follow-up reports to country visits a few years after a country visit, and it is highly recommended to use this opportunity to highlight non-compliance with recommendations.

## 7. History of the use of this mechanism

Although - to our knowledge - this mechanism has not yet been used by conscientious objectors, the Commissioner for Human Rights has taken the issue on board, for example in a blog post from 2 February 2012 (see [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=205](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=205)).

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>Resolution (99) 50, Committee of Ministers</b>	7 May 1999	With Resolution (99) 50, the Committee of Ministers institutes the Council of Europe Commissioner of Human Rights as a “non-judicial institution to promote education in, awareness of and respect for human rights, as embodied in the human rights instruments of the Council of Europe.”  <a href="https://wcd.coe.int/ViewDoc.jsp?id=458513&amp;BackColorInternet=9999CC&amp;BackColorIntranet=FFBB55&amp;BackColorLogged=FFAC75">https://wcd.coe.int/ViewDoc.jsp?id=458513&amp;BackColorInternet=9999CC&amp;BackColorIntranet=FFBB55&amp;BackColorLogged=FFAC75</a>	All
<b>Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights)</b>	3 September 1953	Article 9 of the European Convention guarantees the right to freedom of thought, conscience and religion. It reads: “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm</a>	All
<b>European Social Charter</b>	26 February 1965	Article 1 paragraph 2 of the European Social Charter guarantees “the right of the worker to earn his living in an occupation freely entered upon”. A substitute service that is substantially longer than military service is considered a “disproportionate restriction” of this right.  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm</a>	Length/terms of substitute service

Name	Entry into force	Synopsis	Categories
European Social Charter (revised)	1 July 1999	Article 1 paragraph 2 of the European Social Charter guarantees “the right of the worker to earn his living in an occupation freely entered upon”. A substitute service that is substantially longer than military service is considered a “disproportionate restriction” of this right.  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm</a>	Length/terms of substitute service

## Reports

Name	Date	Synopsis	Categories
Annual Activity Report 2011 by Thomas Hammarberg, Commissioner for Human Rights	17 January 2012	“1.2 Visits. Visit to Armenia. (...) Regarding the right to conscientious objection, the Commissioner emphasised the urgent need to develop a genuinely civilian service option in Armenia, and recommended the release of all conscientious objectors imprisoned because of non-performance of military service.” (CommDH(2012)1) <a href="http://wri-irg.org/node/20938">http://wri-irg.org/node/20938</a>	Recognition of conscientious objection
2nd Quarterly Activity Report 2011 by Thomas Hammarberg, Commissioner for Human Rights (1 April to 30 June 2011)	7 September 2011	“3. Reports and continuous dialogue. Report on Armenia. (...) Regarding the right to conscientious objection, the Commissioner found that there was an urgent need to develop a genuinely civilian service option in Armenia and that all conscientious objectors who are in prison because of non-performance of military service should be released.” CommDH(2011)28  <a href="http://wri-irg.org/node/20939">http://wri-irg.org/node/20939</a>	Recognition of conscientious objection
Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following his visit to Turkey, from 27 to 29 April 2011	12 July 2011	“19. As regards cases concerning convictions for having published statements which were considered to incite abstention from compulsory military service, six judgments of the Court against Turkey await execution. Pursuant to Article 318 of the Criminal Code, the non-violent expression of opinions on conscientious objection is still a criminal offence, similar to the former Article 155 which gave rise to these judgments. The Court held that the fact that an article on conscientious objection was published in a newspaper was an indication that it could not be considered as incitement to immediate desertion. This is in contradiction with Article 318, paragraph 2 of the Criminal Code, according to which the publication itself is an aggravating circumstance. The Commissioner is concerned by the fact that the above provision continues to be applied. He has been informed that in June 2010 four persons were sentenced by an Ankara court to imprisonment ranging from 6 to 18 months for having issued a press release in favour of a conscientious objector, Enver Aydemir.” (CommDH(2011)25) <a href="http://wri-irg.org/node/20940">http://wri-irg.org/node/20940</a>	
Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011	9 May 2011	“The issue of imprisoned conscientious objectors – currently, all of whom are members of the Jehovah’s Witnesses community – has been on the table for many years. Conscientious objectors are not willing to perform an alternative service option which is under the supervision of the military. There is still no alternative to military service available in Armenia which can be qualified as genuinely civilian in nature. The Commissioner strongly believes that conscientious objectors should not be imprisoned and urges the authorities to put in place an alternative civilian service.” (CommDH(2011)12) <a href="http://wri-irg.org/node/20941">http://wri-irg.org/node/20941</a>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Azerbaijan</b>	20 February 2008	<p><i>"B. Conscientious objection to military service</i></p> <p>81. One of the commitments of Azerbaijan upon accession to the Council of Europe in 2001 was to establish an alternative to military service by 2004. To this day, such a legislative framework has not yet been shaped up. A draft law concerning an alternative to the military service was sent for review to the Council of Europe and was sent back to the authorities more than a year ago on 23 October 2006. Obviously, the general atmosphere in the wider region, a recent past of wars and atrocities and ongoing tensions with some neighbours have had the consequence that the issue has not received the treatment it deserves. The Commissioner urges a speedy adoption of a law establishing an alternative civilian service." (CommDH(2008)2)</p> <p><a href="http://wri-irg.org/node/20942">http://wri-irg.org/node/20942</a></p>	Recognition of conscientious objection
<b>Follow-up report on the Hellenic Republic (2002-2005). Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights</b>	29 March 2006	<p><i>"39. The Commissioner is pleased to note that the conditions of the alternative service offered to conscientious objectors in Greece have significantly improved since his visit in 2002 with the adoption of new legislation in 2004, especially as regards the length of such service. It can, however, still be subject to discussion whether an alternative service which lasts almost twice as long as the regular armed service has a punitive character or is genuinely equivalent to military service in terms of hardship and constraints. The Commissioner recommends that the Greek authorities grant conscientious objector status to persons who have already performed a military service in another country if they had no realistic possibility to refuse it or when their experience has been traumatic."</i></p> <p>(CommDH(2006)13)</p> <p><a href="http://wri-irg.org/node/20943">http://wri-irg.org/node/20943</a></p>	Length/terms of substitute service
<b>Follow-up report on Cyprus (2003-2005). Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights</b>	29 March 2006	<p><i>"75. Compulsory military service for Cypriot men lasts 25 months. A new bill on conscientious objection was tabled in Parliament by the Government on 1 July 2005. The Bill foresees the reduction in the length of service for non-armed service in uniform within army precincts from 34 months to 33 months. For non-armed service without a uniform and outside army precincts, the Bill foresees a reduction from 42 to 38 months."</i> (CommDH(2006)12)</p> <p><a href="http://wri-irg.org/node/20944">http://wri-irg.org/node/20944</a></p>	Length/terms of substitute service
<b>Report by Mr Alvaro Gil-Robles, The Commissioner for Human Rights, on his visit to Cyprus, 25-29 June 2003</b>	12 February 2004	<p><i>"40. The term of military service is normally 26 months. Defence Act 2/92 of January 1992 recognises conscientious objection on ethical, moral, humanitarian, philosophical, political or religious grounds. However, the alternative service offered is a very long period of non-armed service; it is for either 34 months to be undergone in uniform within army precincts or for 42 months without a uniform and outside army precincts. These regulations do not correspond to the standards of the Council of Europe. (...)</i></p> <p>CONCLUSIONS AND RECOMMENDATIONS</p> <p>76. (...) - To modify the legal arrangements concerning conscientious objection and alternative service in accordance with the Recommendations of the Committee of Ministers in the matter; in particular, to alter the practice whereby the medical reasons for granting exemption from the obligation to perform military service are recorded on the certificate of exemption."</p> <p>CommDH(2004)2</p> <p><a href="http://wri-irg.org/node/20945">http://wri-irg.org/node/20945</a></p>	Length/terms of substitute service

Name	Date	Synopsis	Categories
Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Hellenic Republic, 2-5 June 2002	17 July 2002	<p><i>"C. Conscientious objectors</i></p> <p><i>17. Another issue concerns conscientious objectors. The many improvements made for some time past are certainly to be welcomed, particularly the implementation of law 2510/1977 and the recognition, in the revised Constitution, of a right to conscientious objection (Interpretative Resolution of 6 April 2001 on Article 4.6 of the Constitution); this development cannot be unrelated to the Tsirlis and Kouloumpas judgments by the European Court of Human Rights. It is nevertheless appropriate to recall Recommendation (87) 8 of the Committee of Ministers on conscientious objection to compulsory military service. I understand that since the right to conscientious objection received constitutional recognition, the reservation entered by Greece concerning this Recommendation has become void and I recall that the Recommendation stipulates inter alia that alternative service shall not be of punitive nature and that its duration shall remain within reasonable limits by comparison with military service. I find, though, that an extra term of 18 months as currently prescribed in Greece constitutes a disproportionate measure in practice, especially in the light of my information that this alternative service is often performed in a hostile atmosphere. It would be advisable to reduce the duration of alternative service to an equitable term by comparison with military service and work along the lines of recommendations from the Greek Ombudsman in order to rectify the disproportionate character of the present legislation.</i></p> <p><i>18. I was informed by the counsel for the accused of the case of seven Jehovah's Witnesses liable to receive prison sentences on account of administrative errors, which they allegedly were not allowed to remedy subsequently, in drawing up their conscientious objector's papers. Likewise, I was informed of criminal proceedings pending against a conscientious objector liable to a prison sentence of several years for insubordination. In general, a custodial sentence for technical defects seems disproportionate to me. In this connection, transfer of administrative responsibilities as regards granting conscientious objector status from the Ministry of Defence to an independent civilian department would doubtless be a step in the right direction."</i></p> <p>CommDH(2002)5</p> <p><a href="http://wri-irg.org/node/20946">http://wri-irg.org/node/20946</a></p>	<p>Recognition of conscientious objection</p> <p>Length/terms of substitute service</p> <p>Discrimination of conscientious objectors</p>

**Contact:**

Office of the Commissioner for Human Rights  
Human Rights' Defenders Programme  
Council of Europe

F-67075 Strasbourg Cedex, FRANCE

Fax + 33-3 90 21 50 53

Email: [commissioner@coe.int](mailto:commissioner@coe.int)

Website: [http://www.coe.int/t/commissioner/default\\_en.asp](http://www.coe.int/t/commissioner/default_en.asp)

## European Court of Human Rights

### Summary

The European Court of Human Rights in Strasbourg is an international human rights court charged with dealing with individual complaints in relation to alleged violations of the European Convention on Human Rights.

Before submitting a complaint to the European Court of Human Rights, domestic remedies have to be exhausted, unless these would be unreasonably prolonged or not effective. The complaint should also not have been submitted to any other procedure of international investigation or settlement.

If a complaint is declared admissible, and the Court decides on the merits of the case, it will either find there has been a violation of specific articles of the European Convention or not. In a case where the Court finds a violation of the Convention, it will usually also award compensation.

Decisions by the European Court of Human Rights are legally binding on the State concerned.

State law & practice	
Individual cases	✓
Urgent action	✓
Only Under-18s	

### 1. Likely results from use of mechanism

The European Court of Human Rights will first take a decision of the admissibility of a complaint, depending on its admissibility criteria. Should the Court find that a complaint is admissible, it will issue a judgment on the merits of the case, either finding that there was a violation of the European Convention on Human Rights, and usually awarding compensation, or finding that there has not been a violation of the Convention.

Following a judgment against a State, the Committee of Ministers of the Council of Europe will monitor the implementation of the judgment by the State concerned.

**Urgent action:** The Court may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the Convention. Interim measures are urgent measures which, in accordance with the established practice of the Court, apply only where there is an imminent risk of irreparable damage. Interim measures are applied only in limited situations: the most typical cases are ones in which there are fears of

- a threat to life (situation falling under Article 2 of the Convention) or
- ill-treatment prohibited by Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment).

More information on interim measures is included in a practical guide published by the European Court, available at

[http://www.echr.coe.int/NR/rdonlyres/5F40172B-450F-4107-9514-69D6CBDECF5C/0/ENG\\_INSTRUCTION\\_P\\_RATIQUE\\_ART39.pdf](http://www.echr.coe.int/NR/rdonlyres/5F40172B-450F-4107-9514-69D6CBDECF5C/0/ENG_INSTRUCTION_P_RATIQUE_ART39.pdf).

### 2. To which States does the mechanism apply?

The European Convention on Human Rights applies to all 47 member States of the Council of Europe. The rights set out in the Convention have to be guaranteed not only to their own citizens but also to everybody in their jurisdiction. A list of member States of the Council of Europe is available at

<http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>.

### 3. Who can submit information?

A complaint (called an “application”) can only be submitted by the victim(s) of alleged human rights violations or their legal representatives. However, NGOs or legal entities can also be the victims of human rights violations (for example in the case of freedom of association).

### 4. When to submit information?

Before submitting a complaint to the European Court of Human Rights, all domestic remedies need to be exhausted. This means that all appeals to courts available in a country need to have been exhausted, including - if possible - an appeal to the Constitutional or Supreme Court. In these appeals, the substance of the violations of the European Convention (not the Convention itself) needs to have been raised.

An application to the European Court of Human Rights needs to be made within six months from the date of the final decision at domestic level (generally the judgment of the highest court). After this time limit an application cannot be accepted by the Court.



## 5. Special rules of procedure or advice for making a submission?

For the initial application to the Court it is not strictly necessary to be represented by a lawyer. However, it might be advisable to already involve a lawyer, as this might increase the chances of your application. About 90% of applications are declared inadmissible by the Court. Application forms are available for download at

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>. On the website of the European Court you can also go through a first admissibility checklist at <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>.

The first application to the European Court should include:

- a brief summary of the facts and of your complaint;
- an indication which of your rights under the European Convention have been violated;
- the domestic remedies you have used;
- copies of the decisions given in your case by all the public authorities concerned; and
- your signature as the applicant, or the signature of your legal representative, plus a form authorising your representative and signed by you.

For an application to be admissible, it is important that:

- the application is made by the victim(s) or their legal representatives;
- the alleged violation has not previously been under investigation by another international settlement procedure, which - in the case of the European Court - are the United Nations Human Rights Committee (individual complaint procedure), the Committee on Freedom of Association of the International Labour Organisation, and the United Nations Working Group on Arbitrary Detention.
- The victim has to have suffered a “significant disadvantage” as a consequence of the violation of his or her human rights.

Before making an application to the European Court, it is advisable to study the *Practical Guide on Admissibility Criteria* published by the Court (see

[http://www.echr.coe.int/NR/ronlyres/B5358231-79EF-4767-975F-524E0DCF2FBA/0/ENG\\_Guide\\_pratique.pdf](http://www.echr.coe.int/NR/ronlyres/B5358231-79EF-4767-975F-524E0DCF2FBA/0/ENG_Guide_pratique.pdf)).

Applications should be sent by registered post to:

The Registrar  
European Court of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex.

An application can be sent by fax first, but should also be sent by post.

While the initial application can be made in any official language of any member State of the Council of Europe, any follow-up communication with the European Court after the Court has given notice to the Government concerned for their observations has to be in one of the official languages of the Court, which are English and French.

As soon as the Court has given notice to the Government for their observations, however, the presence of a lawyer is required.

## 6. What happens to the submission (how long will it take)?

Following the submission of an application to the European Court, first a single judge will screen the application. If the single judge finds that the application is inadmissible, and no further examination is needed, he or she can decide so. The applicant will be notified by letter. The great majority of cases are declared inadmissible by a single judge.

If the single judge does not find the application inadmissible, he or she will forward it to a Committee or to a Chamber for further examination.

A committee of three judges can also find an application inadmissible at any stage of the proceedings. If the case is well covered by case law of the European Court, and no further examination is required, the committee can also find the application admissible and render a judgment on the merits of the case. In both cases, a decision of the committee has to be unanimous.

Decisions by a single judge or by a committee of three judges are final.

Only cases that are not obviously inadmissible will be communicated to the Government of the State concerned. From that time on it is obligatory to be represented by a lawyer.

Usually, the procedure before the European Court of Human Rights is in writing only. Once a chamber has declared an application admissible, the President of the Chamber may invite the parties to the case to submit further written observations and evidence. Both parties will usually given the same time to submit information. While it is possible to request an oral hearing, a decision on this will be taken by the Chamber.

The European Court of Human Rights introduced a new “pilot judgment procedure” in cases that reveal structural or systemic problems in a country party to the European Convention, and where the Court received a number of similar applications. If a case is selected for the pilot judgment procedure, it is dealt with as a matter of priority, while the remaining cases are on hold (more information is available in Rule 61).

Where the Chamber finds that there has been a violation of one of the rights protected by the European Convention of Human Rights, the Chamber may also take a decision on “just satisfaction” (the payment of compensation to the victim), if an application has been made.

### **What happens after the judgement?**

The Court transmits the judgement to the Committee of Minister of the Council of Europe which confers with the country how to execute the judgement. As a consequence of the supervision of the Committee, amendments to legislation are usually made.

### **Referral to the Grand Chamber**

Both, the State concerned and the applicant can request a referral of the case to the Grand Chamber of the European Court within three months of a Chamber judgment. It is important to highlight in such an application the serious questions relating to the interpretation of the European Convention, or the serious issue of general importance.

A panel of five judges of the Grand Chamber will examine the request solely on the basis of the case file, and either accept or refuse it. It does not need to give reasons for the refusal of the request. Should the request be granted, the Grand Chamber will decide the case by means of a judgment.

### **How long does it take?**

The European Court of Human Rights has a huge backlog of cases. Even the first stage - the decision on admissibility - can take well over one year, and a decision on the merits of a case will take considerably longer. Even though the Court aims to decide on important cases within three years, it is highly likely that it will take five years or more.

## **7. History of the use of the mechanism**

The European Court of Human Rights and the former European Commission of Human Rights (abolished in 1998) have been used in a range of cases related to conscientious objection to military service and to military taxation - with mixed success.

As late as in 2011, the Grand Chamber of the European Court of Human Rights overturned the jurisprudence of the former European Commission of Human Rights, and recognised that the right to conscientious objection to military service is protected under article 9 of the European Convention (*Bayatyan v. Armenia*, 23459/03). Since then, the European Court has consolidated its jurisprudence with more cases from Armenia and Turkey.

Previously, the European Court had not evaluated cases brought by conscientious objectors under article 9 of the Convention. In its judgment in the case of Turkish conscientious objector Osman Murat Ülke, the Court ruled that the repeated imprisonment amounted to a “civil death”, and therefore to a violation of article 3 of the European Convention (prohibition of inhuman and degrading treatment).

Several cases of total objectors refusing substitute service were declared inadmissible by the former European Commission of Human Rights (see *Johansen v. Norway* (10600/83)), as were cases complaining about the punitive length of substitute service (see *Tomi Autio v. Finland* (17086/90)). On the latter question, the jurisprudence of the former European Commission of Human Rights is very different to the one of the United Nations Human Rights Committee (see *Foin v. France*).



**Legal basis**

Name	Entry into force	Synopsis	Categories
<b>Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights)</b>	3 September 1953	<p>Article 9 of the European Convention guarantees the right to freedom of thought, conscience and religion. It reads:</p> <p><i>“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</i></p> <p><i>2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”</i></p> <p><a href="http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm</a></p>	All

**Interpretations**

Name	Date	Synopsis	Categories
<b>Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces</b>	24 February 2010	<p>H. Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention on Human Rights.</p> <p>40. Members of the armed forces have the right to freedom of thought, conscience and religion, including the right to change religion or belief at any time. Specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should however comply with the requirements of Article 9, paragraph 2, of the Convention. There should be no discrimination between members of the armed forces on the basis of their religion or belief.</p> <p>41. For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them.</p> <p>42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.</p> <p>43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.</p> <p>44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.</p> <p>45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.</p> <p>46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.</p> <p><a href="http://wri-irg.org/node/10494">http://wri-irg.org/node/10494</a></p>	All

Name	Date	Synopsis	Categories
<b>Recommendation 1518 (2001)</b>	23 May 2001	<p><i>"The Assembly accordingly recommends that the Committee of Ministers invite those member states that have not yet done so to introduce into their legislation:</i></p> <ul style="list-style-type: none"> <li><i>i. the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service;</i></li> <li><i>ii. the right for permanent members of the armed forces to apply for the granting of conscientious objector status;</i></li> <li><i>iii. the right for all conscripts to receive information on conscientious objector status and the means of obtaining it;</i></li> <li><i>iv. genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character."</i></li> </ul> <p><a href="http://wri-irg.org/node/6379">http://wri-irg.org/node/6379</a></p>	<p>Recognition of conscientious objection</p> <p>Length/terms of substitute service</p> <p>Time limits for CO</p> <p>applications in-service objection</p>
<b>Recommendation 1380 (1998): Human rights of conscripts</b>	22 September 1998	<p><i>"2. The Assembly particularly recommends that the Committee of Ministers formulate strict guidelines for the member states on the way the following articles of the European Convention on Human Rights and of the case-law of the European Court on Human Rights should be applied in the specific case of conscripts:</i></p> <ul style="list-style-type: none"> <li><i>a. Article 3 (freedom from inhuman or degrading treatment);</i></li> <li><i>b. Article 4 (freedom from forced or compulsory labour);</i></li> <li><i>c. Articles 5 and 6 (proceedings for complaints; lawful arrest and detention; fair trial by independent and impartial courts);"</i></li> </ul> <p><a href="http://wri-irg.org/node/20954">http://wri-irg.org/node/20954</a></p>	<p>Recognition of conscientious objection</p> <p>in-service objection</p>
<b>Recommendation No. R(87)8 of the Committee of Ministers to member states regarding conscientious objection to compulsory military service</b>	9 April 1997	<p><i>"1. Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service; (...)</i></p> <p><i>8. The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service; (...)</i></p> <p><i>10. Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits;</i></p> <p><i>11. Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.</i></p> <p><a href="http://wri-irg.org/node/6378">http://wri-irg.org/node/6378</a></p>	<p>Recognition of conscientious objection</p> <p>in-service objection</p>
<b>Recommendation 816 (1977) on the right of conscientious objection to military service</b>	6 October 1977	<p>The Assembly,(...)</p> <p>4. Recommends that the Committee of Ministers:</p> <ul style="list-style-type: none"> <li>a. urge the governments of member states, in so far as they have not already done so, to bring their legislation into line with the principles adopted by the Assembly ;</li> <li>b. introduce the right of conscientious objection to military service into the European Convention on Human Rights.</li> </ul> <p><a href="http://wri-irg.org/node/10696">http://wri-irg.org/node/10696</a></p>	<p>Recognition of conscientious objection</p>

Name	Date	Synopsis	Categories
<b>Recommendation 478 (1967) on the right of conscientious objection</b>	26 January 1967	The Assembly, 1. Having regard to its Resolution 337 on the right of conscientious objection, 2. Recommends the Committee of Ministers: (a) to instruct the Committee of Experts on Human Rights to formulate proposals to give effect to the principles laid down by the Assembly in its Resolution 337 by means of a Convention or a recommendation to Governments so that the right of conscientious objection may be firmly implanted in all member States of the Council of Europe ; (b) to invite member States to bring their national legislation as closely as possible into line with the principles adopted by the Consultative Assembly. <a href="http://wri-irg.org/node/10694">http://wri-irg.org/node/10694</a>	Recognition of conscientious objection

## Jurisprudence

Name	Date	Synopsis	Categories
<b>Case of Tarhan v. Turkey (Application no. 9078/06)</b>	17 July 2012	The case concerned the failure to recognise the right to conscientious objection in Turkey. The Court reiterated that the system of compulsory military service allowed for no exceptions on grounds of conscience and resulted in heavy criminal sanctions being imposed on those who refused to comply. It failed to strike a proper balance between the general interest of society and that of conscientious objectors. The penalties, sanctions, convictions and prosecutions imposed on conscientious objectors, when no measures were provided to take account of the requirements of their consciences and convictions, could not be regarded as necessary in a democratic society. Violations of Articles 3 and 9 of the Convention. <a href="http://wri-irg.org/node/20106">http://wri-irg.org/node/20106</a>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<b>Case of Savda v. Turkey (Application no. 42730/05)</b>	12 June 2012	The case concerned the failure to recognise the right to conscientious objection in Turkey. The Court reiterated that the system of compulsory military service allowed for no exceptions on grounds of conscience and resulted in heavy criminal sanctions being imposed on those who refused to comply. It failed to strike a proper balance between the general interest of society and that of conscientious objectors. The penalties, sanctions, convictions and prosecutions imposed on conscientious objectors, when no measures were provided to take account of the requirements of their consciences and convictions, could not be regarded as necessary in a democratic society. Violations of Articles 3 and 9 and a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the military court. <a href="http://wri-irg.org/node/15513">http://wri-irg.org/node/15513</a>	Recognition of conscientious objection Repeated punishment of conscientious objectors
<b>Case of Feti Demirtaş v. Turkey (Application no. 5260/07)</b>	17 January 2012	The objections of the applicant, a Jehovah's Witness, to serving in the armed forces had been motivated by genuinely held religious beliefs that had been in serious and insurmountable conflict with his obligation to perform military service. There had been interference with the applicant's right to manifest his religion or beliefs, stemming from his multiple criminal convictions and from	Recognition of conscientious objection Repeated punishment of conscientious objectors

Name	Date	Synopsis	Categories
		<p>the failure to propose any form of alternative civilian service. It was apparent that the system of compulsory military service in force in Turkey did not strike a fair balance between the interests of society as a whole and those of conscientious objectors. Accordingly, the penalties imposed on the applicant, in circumstances where no allowances had been made for the exigencies of his conscience and beliefs, could not be considered a measure necessary in a democratic society. Lastly, the fact that the applicant had been demobilised did nothing to alter the findings outlined above. Although he faced no further risk of prosecution (in theory, he could have faced proceedings for the rest of his life), he had been demobilised only because of the onset during his military service of a psychological disorder. This further demonstrated the seriousness of the interference complained of.</p> <p>Violation of articles 3, 6 para 1, and 9.  <a href="http://wri-irg.org/node/14663">http://wri-irg.org/node/14663</a></p>	
<b>Case of Tsaturyan v. Armenia</b> (Application no. 37821/03)	10 January 2012	<p>The applicant is a Jehovah's Witness. From 1997 he attended various Jehovah's Witnesses religious services.(...)</p> <p>The Court notes that it has already examined a similar complaint in the case of Bayatyan v. Armenia and concluded that the imposition of a penalty on the applicant, in circumstances where no allowances were made for the exigencies of his conscience and beliefs, could not be considered a measure necessary in a democratic society (see Bayatyan, cited above, §§ 124-125). In the present case, the applicant was similarly a member of Jehovah's Witnesses who sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions and the only reason why he was not able to do so and incurred criminal sanctions was the absence of such an opportunity.  <a href="http://wri-irg.org/node/14662">http://wri-irg.org/node/14662</a></p>	Recognition of conscientious objection
<b>Case of Bukharatyan v. Armenia</b> (Application no. 37819/03)	10 January 2012	<p>The applicant is a Jehovah's Witness. From 1993 he attended various Jehovah's Witnesses religious services and was baptised on 26 June 1994 at the age of 13. (...)</p> <p>In September 1998, when the applicant turned 18, he advised the military commissariat by letter that he refused to serve in the military because of his religious beliefs. At that time, he also left home being afraid that he would be taken to the military by force.(...)</p> <p>The Court notes that it has already examined a similar complaint in the case of Bayatyan v. Armenia and concluded that the imposition of a penalty on the applicant, in circumstances where no allowances were made for the exigencies of his conscience and beliefs, could not be considered a measure necessary in a democratic society (see Bayatyan, cited above, §§ 124-125). In the present case, the applicant was similarly a member of Jehovah's Witnesses who sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions and the only reason why he was not able to do so and incurred criminal sanctions was the absence of such an opportunity.  <a href="http://wri-irg.org/node/14661">http://wri-irg.org/node/14661</a></p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
<b>Case of Erçep v. Turkey</b> (Application no. 43965/04)	22 November 2011	<p>The applicant was a member of the Jehovah's Witnesses, a religious group whose beliefs included opposition to military service, irrespective of any requirement to carry weapons. The applicant's objections had therefore been motivated by genuinely held religious beliefs which were in serious and insurmountable conflict with his obligations in that regard. The system of compulsory military service applicable in Turkey imposed obligations on citizens that were liable to have serious consequences for conscientious objectors. It made no provision for exemption on grounds of conscience and resulted in heavy criminal penalties for persons who, like the applicant, refused to perform their military service. Hence, the interference complained of stemmed not just from the fact that the applicant had been convicted on numerous occasions, but also from the absence of any alternative form of service. Conscientious objectors had no option but to refuse to enrol in the army if they wished to remain true to their beliefs. In doing so they laid themselves open to a kind of "civil death" because of the numerous prosecutions which the authorities invariably brought against them and the cumulative effects of the resulting criminal convictions, the continuing cycle of prosecutions and prison sentences and the possibility of facing prosecution for the rest of their lives. Such a system failed to strike a fair balance between the interests of society as a whole and those of conscientious objectors. Accordingly, the penalties imposed on the applicant, without any allowances being made for the dictates of his conscience and beliefs, could not be regarded as a measure necessary in a democratic society.</p> <p>Conclusion: violation (unanimously).  <a href="http://wri-irg.org/node/14258">http://wri-irg.org/node/14258</a></p>	Recognition of conscientious objection
<b>Case of Bayatyan v. Armenia</b> (Application no. 23459/03)	7 July 2011	<p>A Jehovah's Witness, Mr Bayatyan refused to perform military service for conscientious reasons when he became eligible for the draft in 2001, but was prepared to do alternative civil service. The authorities informed him that since there was no law in Armenia on alternative service, he was obliged to serve in the army. He was convicted of draft evasion and sentenced to prison. Mr Bayatyan complained that his conviction violated his rights under Article 9 and submitted that the Article should be interpreted in the light of present-day conditions, namely the fact that the majority of Council of Europe Member States had recognised the right of conscientious objection. The Court found a violation of Article 9, taking into account that there existed effective alternatives capable of accommodating the competing interests involved in the overwhelming majority of European States and that Mr Bayatyan's conviction had happened at a time when Armenia had already pledged to introduce alternative service.</p> <p><a href="http://wri-irg.org/node/13271">http://wri-irg.org/node/13271</a></p>	Recognition of conscientious objection
<b>Case of Ülke v. Turkey</b> (Application no. 39437/98)	24 January 2006	<p>Mr Ülke refused to do his military service, on the ground that he had firm pacifist beliefs, and publicly burned his call-up papers at a press conference. He was initially convicted of inciting conscripts to evade military service</p>	Repeated punishment of conscientious objectors

Name	Date	Synopsis	Categories
		and, having been transferred to a military regiment, repeatedly convicted for his refusals to wear a military uniform. He served almost two years in prison and later hid from the authorities. The Court found a violation of Article 3 (prohibition of inhuman and degrading treatment), holding in particular that the applicable legal framework did not provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the nature of the legislation Mr Ülke ran the risk of an interminable series of prosecutions and criminal convictions. The constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. <a href="http://wri-irg.org/node/615">http://wri-irg.org/node/615</a>	
<b>Case of Stefanov v. Bulgaria</b> (Application no. 32438/96) - Friendly settlement	3 May 2001	The case was struck off the list after a friendly settlement reached between Mr Stefanov and the Government of Bulgaria, which included that <i>"all criminal proceedings and judicial sentences in Bulgaria of Bulgaria citizens since 1991 (especially but not limited to [Mr I. S. and three other applicants in other cases]) for refusing military service by virtue of their individual conscientious objection but who were willing at the same time to perform alternative civilian service shall be dismissed and all penalties and/or disabilities heretofore imposed in these cases shall be eliminated as if there was never a conviction for a violation of the law, thus the Council of Ministers of the Republic of Bulgaria undertakes the responsibility to introduce draft legislation before the National Assembly for a total amnesty for these cases"</i> . <a href="http://wri-irg.org/node/20711">http://wri-irg.org/node/20711</a>	Recognition of conscientious objection
<b>Case of Thlimmenos v. Greece</b> (Application no. 34369/97)	6 April 2000	A Jehovah's Witness, Mr Thlimmenos was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later he was refused appointment as a chartered accountant on the grounds of his conviction despite his having scored very well in a public competition for the position in question. The Court found a violation of Article 14 in conjunction with Article 9, holding that Mr Thlimmenos' exclusion from the profession of chartered accountant was disproportionate to the aim of ensuring appropriate punishment of persons who refuse to serve their country, as he had already served a prison sentence for this offence. <a href="http://wri-irg.org/node/9170">http://wri-irg.org/node/9170</a>	Repeated punishment of conscientious objectors
<b>Case of Tomi Autio v. Finland</b> (Application no. 17086/90) - inadmissibility decision of Commission	6 December 1991	The case concerned conscientious objector Tomi Auti, who complained about discrimination due to the punitive length of substitute service in Finland. The Commission came to the conclusion that <i>"For the purposes of Article 14 of the Convention, a difference in treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim", or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised".</i>	Length/terms of substitute service



Name	Date	Synopsis	Categories
<b>Case of H.; B. v. The United Kingdom</b> (Application no. 11991/86)	17 July 1986	<p>The Commission is satisfied that the differential treatment in question pursued a “legitimate aim”.</p> <p>Although the duration of substitute service is considerably longer than that of military service the Commission, taking into account the State's margin of appreciation, finds that the differential treatment in question does not amount to a violation of Article 14 read in conjunction with Article 9 of the Convention.</p> <p><a href="http://wri-irg.org/node/20712">http://wri-irg.org/node/20712</a></p> <p>Inadmissibility decision related to conscientious objection to military taxation.</p> <p>“Article 9 (art. 9) primarily protects the sphere of personal beliefs and religious creeds, i.e. the area which is sometimes called the forum internum. In addition, it protects acts which are intimately linked to these attitudes, such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form.</p> <p>However, in protecting this personal sphere, Article 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief: for instance by refusing to pay certain taxes because part of the revenue so raised may be applied for military expenditure...</p> <p>The obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Article 1, First Protocol.</p> <p>The Commission has examined carefully the arguments submitted by the applicants but is unable to find any factor to distinguish this application from those cited above or to lead it to depart from its previous reasoning. The Commission finds therefore that there has been no interference with the applicants' rights guaranteed by Article 9 para. 1 of the Convention. It follows that the complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.</p> <p>For these reasons, the Commission DECLARES THE APPLICATION INADMISSIBLE.”</p> <p><a href="http://wri-irg.org/node/20927">http://wri-irg.org/node/20927</a></p>	CO to military taxation
<b>Case of Johansen v. Norway</b> (Application no. 10600/83)	14 October 1985	<p>Inadmissibility decision by the European Commission of Human Rights, related to total objection.</p> <p><i>“Being a pacifist, the applicant is opposed to military service, and he also objects to civilian service, since the purpose of such service is, in his opinion, to uphold respect for military service. (...)</i></p> <p><i>The applicant has alleged a breach of Article 9 of the Convention, which guarantees to everyone the right to freedom of thought, conscience and religion.</i></p> <p><i>When interpreting this provision, the Commission has taken into consideration Article 4 para. 3(b) of the Convention which inter alia provides that “service exacted instead of compulsory military service” should not be included in the concept of “forced</i></p>	Recognition of conscientious objection



Name	Date	Synopsis	Categories
		<p><i>or compulsory labour". Since the Convention thus expressly recognises that conscientious objectors may be required to perform civilian service it is clear that the Convention does not guarantee a right to be exempted from civilian service (see No. 7705/76, Dec. 5.7.77, D.R. 9 p. 196). The Convention does not prevent a state from taking measures to enforce performance of civilian service, or from imposing sanctions on those who refuse such service.</i></p> <p><i>The Commission refers to its finding under para. 1 and concludes that the applicant's detention cannot be considered contrary to Article 9 of the Convention.</i></p> <p><i>It follows that this aspect of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention."</i></p> <p><a href="http://wri-irg.org/node/20937">http://wri-irg.org/node/20937</a></p>	
<b>Case of N. v. Sweden (Application no. 10410/83) - inadmissibility decision</b>	10 October 1984	<p>A pacifist, the applicant was convicted for refusing to perform compulsory military service. He did not ask for a possibility to perform substitute civilian service. Before the Commission, he alleged to be a victim of discrimination, since members of various religious groups were exempted from service while philosophical reasons such as being a pacifist did not constitute valid grounds for discharging him from his obligation to serve in the army. The Commission declared the case inadmissible. It did not find an appearance of a violation of Article 14 in conjunction with Article 9 of the Convention, stating that it was not discriminatory to limit full exemption from military service and substitute civil service to conscientious objectors belonging to a religious community which required of its members general and strict discipline, both spiritual and moral.</p> <p><a href="http://wri-irg.org/node/20713">http://wri-irg.org/node/20713</a></p>	Recognition of conscientious objection Discrimination of conscientious objectors
<b>Case of C. v. United Kingdom (Application no. 10358/83)</b>	15 December 1983	<p>The applicant complains that the absence of any procedure whereby he may effectively invoke the right to manifest his pacifist beliefs by directing a proportion of the tax due from him for peaceful purposes represents a breach of Articles 9 and 13 of the Convention. (...)</p> <p>The obligation to pay taxes is a general one which has no specific conscientious implication in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Article 1, First Protocol.</p> <p>It follows that Art. 9 does not confer on the applicant the right to refuse on the basis of her conviction to abide by legislation, the operation of which is provided for by the Convention, and which applies neutrally and generally in the public sphere, without impinging on the freedoms guaranteed by Article 9. (...)</p> <p><a href="http://wri-irg.org/node/20936">http://wri-irg.org/node/20936</a></p>	CO to military taxation
<b>Case of X. v. United Kingdom (Application no. 10295/82)</b>	14 October 1983	<p>The applicant, a pacifist, did not wish any portion of her income tax to be used for military purposes. She alleged that the fact that this was not allowed in the United Kingdom violated Art. 9. (...)</p> <p>The obligation to pay taxes is a general one which has no specific conscientious implication in itself. Its neutrality in</p>	CO to military taxation

Name	Date	Synopsis	Categories
		<p>this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Prot. No. 1 Art. 1. It follows that Art. 9 does not confer on the applicant the right to refuse on the basis of her conviction to abide by legislation, the operation of which is provided for by the Convention, and which applies neutrally and generally in the public sphere, without impinging on the freedoms guaranteed by Art. 9.</p> <p><a href="http://wri-irg.org/node/20935">http://wri-irg.org/node/20935</a></p>	
<b>Case of X. v. Germany</b> (Application no. 7705/76)	5 July 1977	<p>A Jehovah's Witness and recognised as a conscientious objector by the competent authorities, the applicant refused to comply with a call-up for substitute civilian service. He was convicted of avoiding service and sentenced to four months in prison, but was granted a stay of execution to negotiate for a service agreement to do social work in a hospital or other institution, which would exempt him from civilian service. As he was unable to arrange for such an agreement, his sentence was enforced in December 1976. The applicant complained of the revocation of the stay of execution, relying on Article 3 (prohibition of inhuman and degrading treatment), Article 7 (no punishment without law) and Article 9.</p> <p>The Commission declared the case inadmissible. It found in particular that since Article 4 § 3(b) expressly recognised that conscientious objectors might be required to perform civilian service in substitution for compulsory military service, it had to be inferred that Article 9 did not imply a right to be exempted from substitute civilian service. With regard to the complaint under Article 7, the Commission underlined that it was for the national legislator to define the offences that may be penalised and found that the Convention did not prevent a state from imposing sanctions on those who refused to perform civilian service. Further, taking into consideration the length of the applicant's sentence, its deferment and his conditional release, the Commission found no convincing argument in support of his allegations of a violation of Article 3.</p> <p><a href="http://wri-irg.org/node/20957">http://wri-irg.org/node/20957</a></p>	Recognition of conscientious objection
<b>Case of X. v. Austria</b> (Application no. 5591/72)	2 April 1973	<p>The applicant complained about his conviction by the Austrian courts for having refused to serve his compulsory military service on grounds of his religious beliefs as a Roman Catholic.</p> <p>The Commission declared the case inadmissible, finding in particular that Article 4 § 3(b) of the Convention, which exempts from the prohibition of forced or compulsory labour "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service" clearly showed that States had the choice whether or not to recognise conscientious objectors and, if so recognised, to provide some substitute service. Article 9 as qualified by Article 4 § 3(b), did not impose on a State the obligation to recognise conscientious objectors and, consequently, to make special arrangements for the</p>	Recognition of conscientious objection

Name	Date	Synopsis	Categories
		exercise of their right to freedom of conscience and religion as far as it affected their compulsory military service. It followed that these Articles did not prevent a State which had not recognised conscientious objectors from punishing those who refused to do military service. <a href="http://wri-irg.org/node/20956">http://wri-irg.org/node/20956</a>	
<b>Case of Grandrath v. Germany</b> (Application no. 2299/64)	12 October 1966	Mr Grandrath, a minister of Jehovah's Witnesses, was a "total objector", seeking to be exempted both from military and from civilian service. He complained about his criminal conviction for refusing to perform substitute civilian service and alleged that he was discriminated against in comparison with Roman Catholic and Protestant ministers who were exempt from this service. The European Commission of Human Rights examined the case under Article 9 (freedom of religion) and under Article 14 (prohibition of discrimination) in conjunction with Article 4 (prohibition of forced or compulsory labour). The Commission concluded that there had been no violation of the Convention, as conscientious objectors did not have the right to exemption from military service, and that each Contracting State could decide whether or not to grant such a right. If such a right was granted, objectors could be required to perform substitute civilian service, and did not have a right to be exempted from it. <a href="http://wri-irg.org/node/20710">http://wri-irg.org/node/20710</a>	Recognition of conscientious objection Discrimination of conscientious objectors

### Contact

European Court of Human Rights  
Council of Europe  
67075 Strasbourg Cedex  
France  
Tel: +33-3-88 41 20 18  
Fax: +33-3-88 41 27 30

### Further reading

- European Court of Human Rights: *The ECHR in 50 questions*. 2012, [http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ\\_ENG\\_A4.pdf](http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_ENG_A4.pdf), accessed 7 November 2012
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- European Court of Human Rights: *Factsheet Conscientious objection. Case-law of the European Commission of Human Rights*, June 2012, [http://www.echr.coe.int/NR/rdonlyres/2053881B-5606-42C4-977E-120AF07B8C73/0/FICHES\\_Objec tion\\_de\\_conscience\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/2053881B-5606-42C4-977E-120AF07B8C73/0/FICHES_Objec tion_de_conscience_EN.pdf), accessed 7 November 2012

## European Committee of Social Rights: State reporting procedure

### Summary of the mechanism

The European Committee of Social Rights (ECSR) is a treaty-based mechanism where a group of 15 human rights experts examines annual reports of States Parties to the European Social Charter. The European Social Charter is a Council of Europe treaty (adopted in 1961 and revised in 1996) which guarantees rights such as non-discrimination. The European Social Charter does not protect the right to conscientious objection, and is therefore irrelevant to the question of recognition of the right to conscientious objection to military service. However, it can be relevant in cases of a punitive substitute civilian service in countries where conscientious objection is recognised.

The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter and renders so-called conclusions for national reports.

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

### 1. Likely result from the use of mechanism

The European Committee of Social Rights evaluates the report of States Parties to the European Social Charter of 1961, the 1998 Additional Protocol to the European Social Charter, or the revised European Social Charter from 1995. Following a decision by the Council of Europe's Committee of Ministers in 2006, under the current reporting system the provisions of both the 1961 European Social Charter and the 1996 Revised European Social Charter have been divided into four thematic groups: "Employment, training and equal opportunities" (which includes article 1 para 2, mostly relevant for substitute service of conscientious objectors), "Health, social security and social protection", "Labour rights", "Children, families, migrants". States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. A calendar of reporting cycles is available at

[http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS_en.asp).

The European Committee of Social Rights evaluates a State's report in light of the relevant provisions of the European Social Charter, and publishes its evaluations and conclusions in a report, which is made available at the end of the reporting cycle on the website of the European Committee of Social Rights (see [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp)).

### 2. To which States does this mechanism apply

The mechanism applies to States that have ratified one of the relevant revisions of the European Social Charter, plus possibly additional protocols:

- the 1961 European Social Charter (see <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=035&CM=1&CL=ENG> for text and ratifications);
- the Additional Protocol of 1988 (see [http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/TreatiesIndex_en.asp) for text and ratifications); and
- the 1996 Revised European Social Charter (see <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG> for text and ratifications).

### 3. Who can submit information?

International NGOs with participatory status of the Council of Europe and national trade unions can submit information to the European Committee of Social Rights.

The procedure for obtaining participatory status is set out in Council of Europe Committee of Ministers resolution Res(2003)8 (see [http://www.coe.int/t/ngo/Articles/Resolution\\_2003\\_8\\_en.asp](http://www.coe.int/t/ngo/Articles/Resolution_2003_8_en.asp)).

In addition, States Parties are requested to forward a copy of their report to national organisations that are members of the international organisations of employers and trade unions invited, under Article 27, paragraph 2, to be represented at meetings of the Governmental Committee.

### 4. When to submit information?

It is advisable to submit information after submission of a State's report.

## 5. Special rules of procedure or advice for making a submission?

Since 2006, reporting has been split into four thematic areas. It is important that a submission refers to the report of the State in question, and is limited to the provisions of the European Social Charter which are being addressed in the relevant reporting cycle.

States are required to submit their reports by 31 October of each year, and the European Committee for Social Rights is supposed to publish its conclusions by the end of the following year.

The reporting calendar is available at

[http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/ReportCalendar/CalendarNRS_en.asp).

## 6. What happens to a submission (how long will it take)?

The European Committee of Social Rights will designate a Rapporteur following the submission of a State's report, whose task it is to prepare for the examination of a State's report.

As part of the reporting procedure, the Committee of Social Rights or a sub-committee set up to do so might organise a meeting with representatives of the State concerned, to which international organisations and international trade unions may be invited, as well as - if the State concerned agrees - representatives of national trade unions of the State concerned. The Executive Secretary will then draft provisional conclusions.

Following the session, the European Committee of Social Rights will adopt its conclusions at the end of each supervision cycle.

If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Council of Europe's Committee of Ministers addresses a recommendation to that state, asking it to change the situation in law and/or in practice.

## 7. History of the use of this mechanism

The authors are not aware that conscientious objector organisations or human rights NGOs have raised the issue of a punitive substitute service within the state reporting procedure of the European Committee of Social Rights. Nevertheless, the ECSR has addressed the issue in several reports, based on article 1 para 2 of the European Social Charter - The right to work, or more specifically the commitment "*to protect effectively the right of the worker to earn his living in an occupation freely entered upon*". The ECSR sees a punitive length of substitute service as a "disproportionate restriction on 'the right of the worker to earn his living in an occupation freely entered upon'", and therefore as a violation of article 1 para 2 of the European Social Charter.

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>European Social Charter</b>	26 February 1965	Article 1 paragraph 2 of the European Social Charter guarantees " <i>the right of the worker to earn his living in an occupation freely entered upon</i> ". A substitute service that is substantially longer than military service is considered a " <i>disproportionate restriction</i> " of this right. <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm</a>	Length/terms of substitute service
<b>Additional Protocol to the European Social Charter</b>	4 September 1992	This Additional Protocol to the European Social Charter from 1988 adds more social and economical rights, but is not relevant to conscientious objection to military service. <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/128.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/128.htm</a>	
<b>European Social Charter (revised)</b>	1 July 1999	Article 1 paragraph 2 of the European Social Charter guarantees " <i>the right of the worker to earn his living in an occupation freely entered upon</i> ". A substitute service that is substantially longer than military service is considered a " <i>disproportionate restriction</i> " of this right. <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm</a>	Length/terms of substitute service

## Conclusions

Name	Date	Synopsis	Categories
<b>European Committee of Social Rights: Conclusions 2008 (Cyprus)</b>	1 December 2008	<p>“Service required to replace military service</p> <p>In its last two conclusions (Conclusions XVI-1 and Conclusions 2004), the Committee maintained that that the duration of the service that replaced compulsory military service, generally twice the length of the military service itself, was excessive. The report contains no information on this point. The Committee therefore considers that the situation is unchanged and is still not in conformity with the Revised Charter.</p> <p>Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if states acknowledge the principle of conscientious objection and institute alternative service instead, they cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty.”</p> <p><a href="http://wri-irg.org/node/20960">http://wri-irg.org/node/20960</a></p>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2008 (Estonia)</b>	1 December 2008	<p>“Service required to replace military service</p> <p>The Committee notes from the report that there have been no changes in the situation it previously considered unsatisfactory, and that the Government has no intention of changing it. Military service lasts 8 months. However it is extended to 11 months for non-commissioned officers, specialists and those undertaking reserve officer training. Alternative military service lasts 16 months.</p> <p>Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty.</p> <p>Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service. Since alternative service may last up to twice the length of military service, the situation in Estonia is not compatible with the Revised Charter.”</p> <p><a href="http://wri-irg.org/node/20961">http://wri-irg.org/node/20961</a></p>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2008 (Finland)</b>	1 December 2008	<p>“Service required to replace military service</p> <p>Under the Military Service Act the length of military service is 180, 270 or 362 days. The duration of unarmed military service is 330 days and of alternative civilian service 395 days.</p> <p>In its previous conclusion (Conclusions XVII-1), the Committee found that the situation was not compatible with the Revised Charter on the grounds that the length of alternative service was more than double the length of compulsory service performed by the majority of conscripts, since at that time 64.2% of conscripts performed 180 days of military service. In its previous conclusion (Conclusions 2006), it noted that the majority of conscripts (52.3%) served at least 270 days and 47.7% served 180 days. The Committee found</p>	Length/terms of substitute service



Name	Date	Synopsis	Categories
		<p>that the situation had altered, but only slightly, and that the length of civilian service remained more than double the minimum period of military service undertaken by almost half of all conscripts.</p> <p>It now notes from the report that there have been no changes in the situation it previously considered not to be in conformity. It therefore finds that the length of alternative civilian service remains a disproportionate restriction on workers' right to earn a living in an occupation freely entered upon. Admittedly, recognised conscientious objectors are in a better position than they would be in countries that do not grant them special status and where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes a replacement service, it cannot make the replacement service longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine, in order to avoid the replacement service being chosen as the most advantageous solution rather than felt as a constraint.”</p> <p><a href="http://wri-irg.org/node/20962">http://wri-irg.org/node/20962</a></p>	
<b>European Committee of Social Rights: Conclusions 2008 (Georgia)</b>	1 December 2008	<p>”Length of service required to replace military service</p> <p>The Committee would emphasise that the length of service carried out to replace military service (alternative service), during which those concerned are denied the right to earn their living in an occupation freely entered upon, must be reasonable (Quaker Council for European Affairs (QCEA) v. Greece, complaint No. 8/2000, decision on the merits of 25 April 2001, §§23-25). The Committee assesses whether the length of alternative service is reasonable by comparing it with the length of military service. For example, where the length of alternative service is over one-and-a-half times that of military service, it considers the situation to be incompatible with Article 1§2 (Conclusions 2006, Estonia). Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty. The Committee notes that in Georgia compulsory military service lasts 18 months and alternative service is the same length for citizens with a higher education and 24 months for all others.”</p> <p><a href="http://wri-irg.org/node/20963">http://wri-irg.org/node/20963</a></p>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2008 (Greece)</b>	1 December 2008	<p>“Service required to replace military service</p> <p>The situation concerning alternative military service has changed significantly since the decision on the merits of 25 April 2001 in collective complaint No. 8/2000 - Quaker Council of European Affairs v. Greece – which found that the situation in Greece was incompatible with Article 1§2 because of the excessive length of alternative service. Armed military service lasts twelve months. Certain conscripts may only serve nine months, others six and some three. There are two forms of replacement for armed military service: unarmed military service and alternative</p>	Length/terms of substitute service



Name	Date	Synopsis	Categories
		<p>service. The two types of service differ in length. The relevant legislation is Acts 3257/29-7-2004 and 3421/13-12-2005, which stipulate that those performing unarmed military service must serve at least one and a half times, and those performing alternative service at least double, the length of armed military service.</p> <p>The ministry of defence has adopted ministerial decree F 420/10/80347/S45/10-3-2006 to implement this legislation. The periods of unarmed military service to replace armed military service are:</p> <ul style="list-style-type: none"> <li>- 18 months for those who would have had to serve a full armed military service of 12 months;</li> <li>- 13 months and 15 days for those who would have had to serve a reduced armed military service of 9 months;</li> <li>- 9 months for those who would have had to serve a reduced armed military service of 6 months;</li> <li>- 4 months and 15 days for those who would have had to serve a reduced armed military service of 3 months.</li> </ul> <p>The Committee considers that these periods of unarmed military service to replace armed military service are compatible with Article 1§2 of the Charter.</p> <p>The periods of alternative service to replace armed military service are:</p> <ul style="list-style-type: none"> <li>- 23 months for those who would have had to serve a full armed military service of 12 months;</li> <li>- 17 months for those who would have had to serve a reduced armed military service of 9 months;</li> <li>- 11 months for those who would have had to serve a reduced armed military service of 6 months;</li> <li>- 5 months for those who would have had to serve a reduced armed military service of 3 months.</li> </ul> <p>The Committee notes that these periods are nearly double the length of armed military service. Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty. Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service. The Committee therefore considers that, even though the situation in Greece has improved significantly, it is still not compatible with Article 1§2 of the Charter.”</p> <p><a href="http://wri-irg.org/node/20964">http://wri-irg.org/node/20964</a></p>	
<b>European Committee of Social Rights: Conclusions 2008 (Moldova)</b>	1 December 2008	<p>“Service required to replace military service</p> <p>In its previous conclusions, the Committee noted that alternative service lasted 24 months, while military service lasted twelve. This prompted the Committee to conclude that the situation was not in conformity with Article 1§2 of the Revised Charter because the length of alternative service excessively restricted the worker’s right to earn a living in an occupation freely entered upon.</p> <p>Although it did not fall within the reference period, the Committee takes due note of the adoption of Act No.</p>	Length/terms of substitute service

Name	Date	Synopsis	Categories
European Committee of Social Rights: Conclusions 2008 (Romania)	1 December 2008	156-XVI of 6 July 2007 on the organisation of (alternative) civil service, which reduces the length of service to twelve months. The Committee considers that, this reform will enable Moldova to be in conformity with Article 1§2 of the Revised Charter on this point. However, the situation was not in conformity with the Revised Charter during the reference period. It asks, however, for the next report to indicate when the law has come into force.” <a href="http://wri-irg.org/node/20965">http://wri-irg.org/node/20965</a>	Length/terms of substitute service
		“Service required to replace military service In its previous conclusions, the Committee found that the situation was not in conformity because alternative service lasted 24 months instead of 12 and this was excessive. It took the view that the additional 12 months during which the persons concerned were deprived of the right to earn a living through freely undertaken work went beyond reasonable limits in relation to the length of military service. The Committee notes that, under Act No. 446/2006, which came into force on 1 January 2007, the length of alternative service is now to be set by a Government decision. According to the report, it is planned to set this at twelve months. Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes a replacement service, it cannot make the replacement service longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine, in order to avoid the replacement service being chosen as the most advantageous solution rather than felt as a constraint. The Committee considers that, this reform will enable Romania to be in conformity with Article 1§2 of the Revised Charter on this point. However, the situation was not in conformity with the Revised Charter during the reference period. It asks, however, for the next report to indicate when the law has come into force.” <a href="http://wri-irg.org/node/20966">http://wri-irg.org/node/20966</a>	
European Committee of Social Rights: Conclusions 2006 (Estonia)	14 March 2007	“Service in place of military service The Committee previously noted that legislation provided for alternative service to compulsory military service, but sought further clarification on the length of such alternative service. In December 2004 the length of alternative service was reduced to between 12 months (minimum) and 18 months (maximum) and is (according to other sources <sup>1</sup> ) currently set at 16 months duration. Military service lasts between eight months (minimum) and 11 months (maximum). The Committee recalls that under Article 1§2 the duration of alternative service may not exceed one and half times the length of military service. The Committee notes that according to the information available to it alternative service may amount to double the length of military service. The situation is therefore not in conformity with the Revised Charter on this point. The Committee refers to its question in the General	Length/terms of substitute service

Name	Date	Synopsis	Categories
<b>European Committee of Social Rights: Conclusions 2006 (Finland)</b>	14 March 2007	<p>Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.”  <a href="http://wri-irg.org/node/20967">http://wri-irg.org/node/20967</a></p> <p>“Service in place of military service  Under the Military Service Act the length of military service is either 180, 270 or 362 days. According to the report the majority of conscripts perform at least 270 days (52.3 %) and 47.7 % perform 180 days. The duration of unarmed military service is 330 days and alternative civilian service 395 days. The Committee has previously found that the situation is not in conformity with the Revised Charter on the grounds that the length of alternative service was more than double the length of compulsory service performed by the majority of conscripts (at that time 64,2 % of conscripts performed 180 days of military service. Although the situation has altered slightly during the reference period, (see above), the Committee notes that it has only altered slightly and that the length of civilian service remains more that double the minimum period of military service which is under taken by almost half of all conscripts.  Therefore the Committee maintains that the length of alternative civilian service remains a disproportionate restriction on a worker’s right to earn a living in an occupation freely entered upon.  The Committee invites the Government to reply to its in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.”  <a href="http://wri-irg.org/node/20968">http://wri-irg.org/node/20968</a></p>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2006 (Greece)</b>	14 March 2007	<p>“Service in place of military service  Since the case of Quaker Council of European Affairs v. Greece Complaint No. 8/2000 decision on the merits 25 April 2001 Greece has been found to be in breach of Article 1§2 on the grounds that the length of service alternative to military service is excessive. The legal regulations governing alternative military service have been amended over the years, although in its previous conclusion the Committee noted that the length of alternative service was still excessive in that it usually represented more than double the length of compulsory military service.  New legislation on this issue has again been introduced during the reference period; those who serve alternative civilian service instead of the average military service (or unarmed military service) are now liable to serve 23 months, instead of 30 months as was set previously (those who serve reduced armed service of nine months are now liable for 17 months instead of 25; those who serve reduced armed service of six months are now liable for 11 months instead of 20 and those who serve reduced armed service of five months are now liable for 3 months instead of 15). The length of full-armed military service is set at twelve months. The Committee notes that the new legislation provide for a significant reduction in the length of alternative service; however it recalls that under Article 1§2 the duration of alternative service may not exceed one and half times the length of military service and consequently the situation in</p>	Length/terms of substitute service

Name	Date	Synopsis	Categories
		Greece can not be considered as being in conformity with Article 1§2 of the Charter." <a href="http://wri-irg.org/node/20969">http://wri-irg.org/node/20969</a>	
<b>European Committee of Social Rights: Conclusions 2006 (Moldova)</b>	14 March 2007	“Service in place of military service According to the report the length of alternative service is 24 months, while the length of military service is 12 months. The Committee recalls that under Article 1§2 the duration of alternative service may not exceed one and a half times the length of military service. The Committee therefore finds that the situation is not in conformity with Article 1§2 of the Revised Charter.” <a href="http://wri-irg.org/node/20970">http://wri-irg.org/node/20970</a>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2006 (Romania)</b>	14 March 2007	“Service to replace military service In its previous conclusions, the Committee considered that the situation was not in conformity because the length of the alternative service to military service, 24 months instead of 12, was excessive. It took the view that the additional 12 months, during which the persons concerned were deprived of the right to earn a living through freely undertaken work, went beyond reasonable limits in relation to the length of military service. There has been no change to this situation therefore the Committee concludes that the situation is not in conformity with the Revised Charter in this respect.” <a href="http://wri-irg.org/node/20971">http://wri-irg.org/node/20971</a>	Length/terms of substitute service
<b>European Committee of Social Rights: Conclusions 2004 (Cyprus)</b>	1 July 2004	“Service required to replace military service In its last conclusion, the Committee considered that the duration of the service that replaced compulsory military service was excessive (Conclusions XVI-1, pp. 98). The report refers in this respect to a document that was to have been forwarded to the Committee by the Ministry of Defence but of which there is no trace. It therefore considers that the situation has not changed.” <a href="http://wri-irg.org/node/20972">http://wri-irg.org/node/20972</a>	Length/terms of substitute service

**Contact:**

Secretariat of the European Social Charter  
Council of Europe  
Directorate general of Human Rights and Legal Affairs  
Directorate of Monitoring  
F-67075 Strasbourg Cedex  
Tel. +33-3-88 41 32 58  
Fax. +33-3-88 41 37 00

## European Committee of Social Rights: Collective Complaint procedure

### Summary of the mechanism:

The 1995 Additional Protocol to the European Social Charter establishes a system of Collective Complaints, which mainly allows trade unions or their international organisations to file collective complaints with the European Committee of Social Rights in relation to non-compliance with the Charter. The Collective Complaint procedure does not establish a system of individual complaints, but is meant for cases of non-compliance in a State's law or practice with provisions of the European Social Charter. If successful, the European Committee of Social Rights will render a decision stating that the State concerned is not in compliance with the European Social Charter, and the Committee of Ministers of the Council of Europe will follow up with a resolution.

State law & practice	✓
Individual cases	
Urgent action	
Only Under-18s	

### 1. Likely results from use of mechanism

If the complaint is declared admissible and upheld by the European Committee of Social Rights, the Committee will take a decision on the merits of the case. This decision will be transmitted to the parties to the complaint, and to the Committee of Ministers of the Council of Europe.

According to article 9 of the 1995 Additional Protocol, if the European Committee of Social Rights “*finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter*”.

The decision of the European Committee of Social Rights will be made public once the Committee of Ministers has passed a resolution, or at latest four months after the decision has been transmitted to the Committee of Ministers. Before this, the parties to the complaint are not allowed to publish the decision.

### 2. To which States does the mechanism apply?

This mechanism only applies to States parties to the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (see <http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm>). The status of ratifications is available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=158&CM=8&DF=&CL=ENG>.

### 3. Who can submit information?

Articles 1 and 2 of the Additional Protocol define in detail the kind of organisations which can submit a collective complaint. These are:

1. International NGOs with participatory status to the Council of Europe, and representative national organisations of employers and trade unions; and
2. national trade unions (if the State does so allow) can lodge a complaint at any time.

In addition to participatory status, the international NGO needs to be competent in the field and be on a list published by the Council of Europe.

A list of organisations is available at

[http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp).

### 4. When to submit information?

A Collective Complaint can be lodged at any time.

### 5. Special rules of procedure or advice for making a submission?

Part VIII of the Rules of the European Committee of Social Rights deal in detail with the Collective Complaint procedure. With few exceptions, a Collective Complaint needs to be submitted in one of the official languages of the Council of Europe (French and English).

A complaint has to be lodged in writing, has to be signed by a representative of the NGO, and needs to state clearly with which provisions of the European Social Charter the State concerned does not comply, and why.

### 6. What happens to the submission (how long will it take)?

A complaint will be registered with the Secretariat, and a member of the European Committee of Social Rights will be appointed to act as Rapporteur.

The State concerned will first be requested to submit written observations as to the admissibility of the Complaint. The complainant may then be invited to respond to the observations submitted by the Government. However, the European Committee of Social Rights can also decide to not involve the State and the complainant, if the complaint is either manifestly admissible or inadmissible. The decision on admissibility will be published on the website of the European Committee of Social Rights.

After a complaint has been declared admissible, the Committee will examine the merits of the case. The Committee will first ask the State concerned to submit written observations on the merits. Following this, the complainant will be given the opportunity to comment on the submission of the State.

International trade union organisations and other States parties to the Revised European Social Charter are also given the opportunity to comment on the submissions. Should one of the parties to the complaint request it, the Committee will decide whether to hold a hearing.

Finally, the European Committee of Social Rights will take a decision on the merits of the case. This decision includes the reasons, and may include dissenting opinions. The decisions will be transmitted to the Committee of Ministers of the Council of Europe. The Committee of Ministers will then pass a resolution based on the decision by the European Committee of Social Rights.

The decision of the European Committee of Social Rights will be made public once the Committee of Ministers has passed a resolution, or at latest four months after the decision has been transmitted to the Committee of Ministers. Before this, the parties to the complaint are not allowed to publish the decision.

## 7. History of the use of the mechanism.

In relation to conscientious objection to military service, the European Committee of Social Rights has only been used once so far (as of July 2010). In the case of Greece, the Quaker Council of European Affairs lodged a complaint (No. 8/2000) regarding the treatment of conscientious objectors in the country. On 25 April 2001 the Committee found that Greece is violating the European Social Charter by keeping conscientious objectors away from the labour market for a time disproportional longer than soldiers and therefore is in breach of Article 1 para 2 of the Charter.

### Legal basis

Name	Entry into force	Synopsis	Categories
<b>European Social Charter</b>	26 February 1965	Article 1 paragraph 2 of the European Social Charter guarantees " <i>the right of the worker to earn his living in an occupation freely entered upon</i> ". A substitute service that is substantially longer than military service is considered a " <i>disproportionate restriction</i> " of this right.  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm</a>	Length/terms of substitute service
<b>Additional Protocol to the European Social Charter Providing for a System of Collective Complaints</b>	1 July 1998	The Additional Protocol to the European Social Charter establishes a system of Collective Complaints  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/158.htm</a>	
<b>European Social Charter (revised)</b>	1 July 1999	Article 1 paragraph 2 of the European Social Charter guarantees " <i>the right of the worker to earn his living in an occupation freely entered upon</i> ". A substitute service that is substantially longer than military service is considered a " <i>disproportionate restriction</i> " of this right.  <a href="http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm</a>	Length/terms of substitute service



## Jurisprudence

Name	Date	Synopsis	Categories
<b>Committee of Ministers: Resolution ResChS(2002)3 Collective Complaint No. 8/2000</b>	6 March 2002	<p><b>Quakers Council for European Affairs against Greece</b> (Adopted by the Committee of Ministers on 6 March 2002 at the 786th meeting of the Ministers' Deputies)</p> <p>The Committee of Ministers, Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, Considering the complaint lodged on 10 March 2000 by the Quakers' Council for European Affairs against Greece, Considering the report submitted to it by the European Committee of Social Rights, in which the length of civilian service served by conscientious objectors in Greece is found not to be in conformity with Article 1, paragraph 2 of the Charter,</p> <ol style="list-style-type: none"> <li>1. takes note that the report of the European Committee of Social Rights has been circulated to the competent authorities including the Parliament and is being translated into Greek;</li> <li>2. takes note of the recent measures including the revision of the Greek Constitution (Official Gazette 84/4/17-4-2001) and the decrease of the length of military service (Official Gazette 1407 – 22 October 2001);</li> <li>3. takes note that the Greek Government undertakes to take the matter into consideration with a view to bring the situation into conformity with the Charter in good time.</li> </ol> <p><a href="http://wri-irg.org/node/20795">http://wri-irg.org/node/20795</a></p>	Length/terms of substitute service
<b>Decision on the merits of Complaint No. 8/2000 by the Quaker Council for European Affairs against Greece</b>	25 April 2001	<p><i>"The Committee observes (...) that the duration of civilian service is 18 months longer than that of the corresponding military service, be it 18, 19 or 21 months, or reduced to 12, 6 or 3 months. A conscientious objector may therefore perform alternative civilian service for a period of up to 39 months. The Committee considers that these 18 additional months, during which the persons concerned are denied the right to earn their living in an occupation freely entered upon, do not come within reasonable limits, compared to the duration of military service. It therefore considers that this additional duration, because of its excessive character, amounts to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon", and is contrary to Article 1 para 2 of the Charter."</i></p> <p><a href="http://wri-irg.org/node/20796">http://wri-irg.org/node/20796</a></p>	Length/terms of substitute service

## Contact:

Secretariat of the European Social Charter  
 Council of Europe  
 Directorate general of Human Rights and Legal Affairs  
 Directorate of Monitoring  
 F-67075 Strasbourg Cedex  
 Tel. +33-3-88 41 32 58  
 Fax. +33-3-88 41 37 00

## Further reading

- European Committee of Social Rights: Rules, 10 May 2011, [http://www.coe.int/t/dghl/monitoring/socialcharter/escrrules/Rules\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/escrrules/Rules_en.pdf), accessed 6 December 2012
- Robin R. Churchill and Urfan Khaliq: *The Collective Complaints System of the European Social Charter: An Effective Mechanism for Ensuring Compliance with Economic and Social Rights?* EJIL (2004), Vol. 15 No. 3, 417-456, <http://ejil.oxfordjournals.org/content/15/3/417.full.pdf>, accessed 6 December 2012



## Contacts



### War Resisters' International

5 Caledonian Road  
London N1 9DX  
Britain  
Tel.: +44-20-7278 4040  
Fax: +44-20-7278 0444  
Email: [concodoc@wri-irg.org](mailto:concodoc@wri-irg.org)  
Web: <http://wri-irg.org>



### Quaker United Nations Office, Geneva

13 Avenue du Mervelet  
1209 Geneva  
Switzerland  
Tel.: +41-22-748 4800  
Fax: +41-22-748 4819  
[quno@quno.ch](mailto:quno@quno.ch)  
<http://www.quno.org>



### Conscience and Peace Tax International

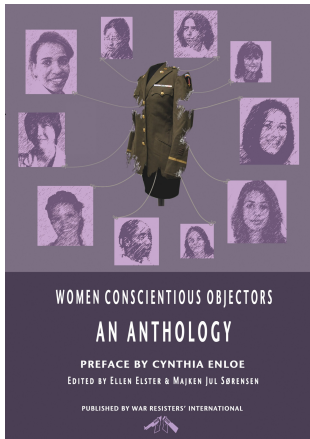
Bruineveld 11  
3010 Leuven  
Belgium  
[cpti@cpti.ws](mailto:cpti@cpti.ws)  
<http://cpti.ws>



### Centre for Civil and Political Rights (CCPR Centre)

Rue de Varembe 1  
PO Box 183  
1202 Geneva  
Switzerland  
Tel: +41-22-33 22 555  
[info@ccprcentre.org](mailto:info@ccprcentre.org)  
<http://www.ccprcentre.org>

## War Resisters' International publications



### **Women Conscientious Objectors - An Anthology**

Ellen Elster & Majken Jul Sørensen (ed.)

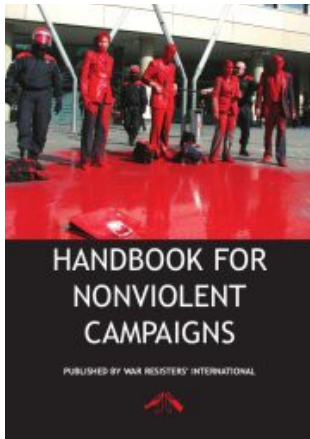
ISBN 978-0-903517-22-5

April 2010, 160 pages, £8.00

Conscientious objectors are generally seen as male – as are soldiers. This book breaks with this assumption. Women conscientiously object to military service and militarism. Not only in countries which conscript women – such as Eritrea and Israel – but also in countries without conscription of women. In doing so, they redefine antimilitarism from a feminist perspective, opposing not only militarism, but also a form of antimilitarism that creates the male conscientious objector as the ‘hero’ of antimilitarist struggle.

This anthology includes contributions by women conscientious objectors and activists from Britain, Colombia, Eritrea, Israel, Paraguay, South Korea, Turkey, and the USA, plus documents and statements.

Online: <http://wri-irg.org/pubs/WomenCOs>



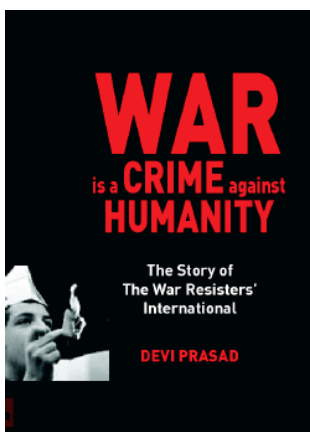
### **Handbook for Nonviolent Campaigns**

ISBN 978-0-903517-21-8

January 2009, 152 pages, £5

Social change doesn't just happen. It's the result of the work of committed people striving for a world of justice and peace. This work gestates in groups or cells of activists, in discussions, in training sessions, in reflecting on previous experiences, in planning, in experimenting, and in learning from others. Preparing ourselves for our work for social justice is key to its success. This Handbook shares what people have already developed in different contexts.

Online: <http://handbook.wri-irg.org>



### **War is a Crime Against Humanity**

#### **The Story of War Resisters' International**

By Devi Prasad

ISBN 978-0-903517-20-1

2005, 558 pages, £18

This history traces the development of the WRI from a movement centrally concerned with individual conscientious objection to war to one which combines this concern with a commitment to promoting collective nonviolent action against both war and oppression.

Online: <http://wri-irg.org/pubs/WarIsACrimeAgainstHumanity>

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ISBN 978-0-903517-25-6

