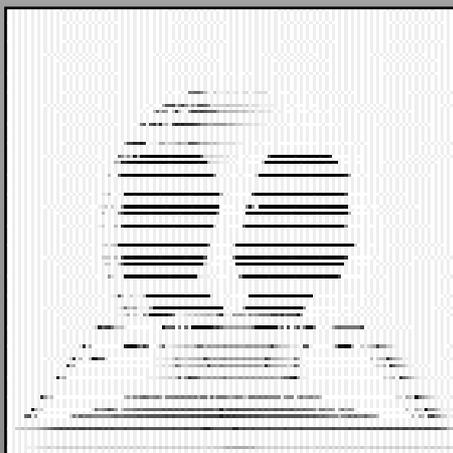


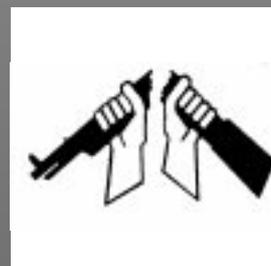
# A Conscientious Objector's Guide to the UN Human Rights System



Emily Miles



*Quaker United Nations Office,  
Geneva*



*War Resisters'  
International*

About this report

This report was commissioned by QUNO, the Quaker United Nations Office in Geneva, and has been published by CONCODOC in London.

## **Quaker United Nations Office, Geneva**

The Religious Society of Friends (Quakers) has had a presence in Geneva since the 1920s, and the Quaker UN Office was established there in the 1940s. Quakers have a long history of being, and working with, conscientious objectors to military service. Quakers have always supported a nonviolent approach to the management and resolution of conflict. Their pacifism is based on the religious belief that there is that of God in every person.

The Quaker UN Office in Geneva has programmes on peace and disarmament, trade and development, and human rights and refugees.

## **CONCODOC**

CONCODOC (Conscription and Conscientious Objection Documentation) is a new, multi-agency initiative to facilitate, commission, publish and compile research on human rights and social concerns in connection to the military and militarism in society. It particularly concerns itself with the provision of data appropriate to the needs of those seeking asylum to escape military persecution.

Also currently available from CONCODOC:

- ◆ Horeman, Bart. 1998. *Refusing To Bear Arms : a world survey of conscription and conscientious objection to military service*. CONCODOC, London. ISBN 0 903517 16 7

Copies available from War Resisters' International, 5 Caledonian Road, London N1 9DX, Britain (Tel +44 20 7278 4040; Fax +44 20 7278 0444; email warresisters@gn.apc.org; Website <http://www.gn.apc.org/warresisters>).

CONCODOC is sponsored by:

## **War Resisters' International**

War Resisters' International (WRI), created in 1921, is a world-wide network of independent organisations, groups and individuals who all accept the WRI declaration: *War is a crime against humanity. I am therefore determined not to support any kind of war, and to strive for the removal of all causes of war*. WRI promotes nonviolent actions against the causes of war, and supports and connects people around the world who refuse to take part in war. Today there are around 80 groups in 35 countries affiliated to WRI.

## **European Bureau for Conscientious Objection**

?????

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The biggest credit must go to Rachel Brett whose idea this was, who supervised the project and who tirelessly read several drafts whilst being extraordinarily busy on the issue of child soldiers.

## Apologies

New resolutions get passed, people move on, new mechanisms are created, phone numbers change... I can't guarantee the accuracy of the information here. The final authority on submitting information to the UN will be the staff person administering that mechanism, and they should be your first — and last — port of call.

**Emily Miles, January 2000.**

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# Foreword

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# Acronyms

<b>CAT</b>	Committee Against Torture
<b>CERD</b>	Committee for the Elimination of Racial Discrimination
<b>CHR</b>	Commission on Human Rights
<b>CO</b>	conscientious objector, or conscientious objection to military service
<b>ECOSOC</b>	UN Economic and Social Council
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NGO</b>	Non-governmental organisation
<b>OP</b>	Operative Paragraph
<b>PP</b>	Preambular Paragraph
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNHCR</b>	(Office of) United Nations High Commissioner for Refugees

# Conscientious objection to military service — can the UN help?

The United Nations can and does play a role in monitoring State practice of the right to conscientious objection to military service.

This handbook describes the ways in which you can use the United Nations when the right to conscientious objection has not been recognised or has been implemented in an unfair manner.

## *The right to conscientious objection has been recognised by the United Nations*

Although the right to conscientious objection is not explicit in either of the key human rights treaties (the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights), it has been recognised as a right by the United Nations. The Commission on Human Rights recognised the right to conscientious objection in 1989, and has reaffirmed the right in four resolutions since then. The Human Rights Committee affirmed the legal basis of the right to conscientious objection in 1993.

## *The UN monitors the way in which conscientious objectors are treated*

But the UN does not just recognise the right for individuals to object to performing military service on the grounds of conscience. The UN also oversees the ways in which conscientious objectors are treated. International law and agreed best practice provides, amongst other things, for non-discrimination, equal remuneration, a fair trial, non-punitive lengths of alternative service, and alternative service of a genuinely civilian character. The UN has a role to play in ensuring fair treatment of conscientious objectors.

## *Cases and state practice can be examined by UN mechanisms*

How can the UN do this? The United Nations has mechanisms for monitoring the maltreatment of conscientious objectors or non-recognition of the right to conscientious objection. Individual cases can be brought to the UN under several case-based procedures. In addition to individual cases, state laws and practice can also be challenged at the UN, through mechanisms for scrutinising the legislation and behaviour of States.

As yet, conscientious objection to military service has not been a subject that preoccupies the United Nations human rights machinery to the same extent as, say, torture or arbitrary execution. The purpose of this handbook is to encourage and enable more people to increase their use of UN human rights machinery for cases of conscientious objection. The standards are in place, but the machinery is not used to ensure that the standards are implemented.

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Certainly, there have been successes. Conscientious objectors without the possibility of alternative service have been mentioned by the Special Rapporteur on Religious Intolerance in his annual report to the Commission on Human Rights. The Human Rights Committee has considered individual cases of conscientious objectors, and regularly asks States questions about their practice with regard to conscientious objection. The Commission on Human Rights regularly passes resolutions elaborating best practice for COs. But there is a visible gap where machinery could be used more effectively to the benefit of conscientious objectors suffering around the world. The main reason for this gap is that the UN procedures are not being supplied with information from non-governmental organisations and concerned individuals.

This handbook is intended to provide the campaigner, the victim and the lobbyist with some of the tools they need to submit information to the UN human rights machinery, including:

- ◆ details of the international standards which recognise the right to conscientious objection;
- ◆ details of the international standards which regulate the practice of the implementation of the right to conscientious objection;
- ◆ information on how the UN mechanisms work;
- ◆ advice on the effectiveness and appropriateness of different mechanisms;
- ◆ advice on what information to put in a submission to the UN;
- ◆ names and addresses of the people to whom information should be sent.

# How to use this book

The UN human rights system is complicated. Different mechanisms have their own processes, requirements and potential outcomes. The system has grown up organically, not in a planned way, so there are many inconsistencies. This means that the quantity of information in this handbook may seem bewildering at first.

## Use the Navigation Bar

A navigation bar is on each page, showing you which section and which subsection of the book you're in. There are four main sections of the handbook: **Before you start**; **Background information on international law for conscientious objectors**; **How to use the UN: rapporteurs, treaty bodies and other mechanisms**; and **Reference Materials**.

The main sections are highlighted in grey, the subsections are white, and the current subsection is highlighted in black.

## Don't read it all in one go

This handbook is meant to be 'dipped into'. It has most of the information you will need to prepare yourself for sending a submission to the UN human rights system. You will need different parts of the book at different stages in your preparation.

For example:

- 1) You may want to start by finding out which international standards apply to conscientious objection. All the information for this is in Section two, 'Background information on international law for conscientious objectors'.
- 2) Then you may decide that you know of a case or you are in a country situation which the UN should hear about. This means you'll need to work out which mechanism is most appropriate for your case. Use the exercise called 'Which process at the UN should I use for my case?' to decide which one. Then use the rest of Section Three to find out more about that particular mechanism. This section is called 'How to use the UN: rapporteurs, treaty bodies and other mechanisms'.
- 3) Having decided which mechanism will receive your submission, you need to find out what format you should send it in. For this, see the section 'Making a Written Submission'.
- 4) Reference materials are available at the back of the book in the fourth section so that you can refer to original texts of law and resolutions without having to look them up.

## Use the glossary

If you are confused by any of the concepts or terminology at any time, check out the 'glossary' at the back of the book in the 'reference materials' section.

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# What outcomes can I expect?

The UN human rights system's purpose is to monitor States' compliance with human rights standards. Given the shortage of financial resources for UN fact-finding, information received from non-State sources like NGOs is vital for this monitoring.

Sending information to the UN is no guarantee that your case will be resolved or the outcome you desire will be achieved. But not sending information to the UN means that the UN does not have a chance to get involved in poor CO practices around the world. The UN has standards relating to conscientious objection. Monitoring those standards relies on information.

There are a series of potential outcomes from sending a submission to the UN

## ***Urgent Action***

A rapporteur communicates swiftly and directly to the government abusing the CO's rights and demands a cessation of a life-threatening or rights-threatening situation.

## ***Communication between the UN and a State***

A rapporteur or working group communicates directly with the relevant State asking for further information on allegations of poor CO practice. A co-operative dialogue can follow.

Or a treaty body will review the practice of a State when the State Party comes before it for one of the regular reporting sessions. Direct questions about CO practice may be asked to diplomats representing that State. A concluding comment to the session, written by the treaty body, might include recommendations for improved State practice in the area of the right to conscientious objection. Once these recommendations have been made, follow-up questions will be asked the next time the State comes before the treaty body.

## ***Publicity for a Case***

The case may be mentioned in a rapporteur's annual report to the Commission and governments, NGOs and press from all round the world will read this.

## ***Ruling on an individual case***

The Human Rights Committee can hear the circumstances of an individual case under its first optional protocol. If they decide in the Complainant's favour, they may recommend action a State should take.

## ***Extra Pressure on a State***

All of these outcomes put pressure on a State to change its practice. Once a case or situation in a country has been highlighted at the UN, the State con-

cerned will feel under pressure from the international community to improve its practice. The pressure can come from an individual rapporteur asking for comments in a case, a treaty body asking diplomats for their comments, or even a local NGO pointing out the difference between a State's voting record at the UN and its internal practice.

There are 6 main ways of increasing pressure on a State.

- ◆ communication with the errant government by a UN-appointed body or individual;
- ◆ press coverage of UN sessions, reports or actions;
- ◆ resolutions of the UN asking for improvements in a State's practice;
- ◆ State-to-State actions — bilateral pressure by diplomats from other influential countries;
- ◆ an investigation launched into the situation of human rights in a country;
- ◆ scrutiny of CO practice by a treaty body.

## ***Will my government respond to the pressure?***

Yes, your government will respond to the pressure. It may refute allegations or ignore criticisms, but this in itself is a response. Sometimes your government will also improve its practice.

There is no way of forcing governments to act as the UN human rights system says it should. There is no international police force, and the UN Charter strictly restricts military intervention by the UN.

However, governments are under obligation to act in line with their international commitments, and most feel this sense of obligation very strongly. This can be seen by their massive attempts to rebut criticism.

*The UN acts like a spotlight. NGOs provide the electricity, the fuel, and work to point the spotlight in a particular direction. A government under the spotlight usually seeks to get out of it.*

Is it generally true that verbal condemnations by the United Nations without sanctions are in fact cost-free to the alleged violator? Consider the Communist Party defections in the wake of the condemnations of Soviet action in Hungary, Czechoslovakia and Afghanistan, the reputed effect on Iranian leaders of the unanimous vote of disapproval of the hostage-taking, the criticism by European allies of American actions in Grenada after the General Assembly vote of condemnation. True, it may be difficult to judge the relative effect of a UN vote compared to other factors or to assess its long-range impact. But the examples given suggest at least the need for caution in assuming that condemnations

*Oscar Schachter, Editorial Comments,  
American Journal of International Law, 1984*

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1

Work out which international law or standards relating to conscientious objection have been violated or

2

Work out which mechanism you should use for your submission by using Section Three. Make sure that the mechanism you have chosen applies to the State you are writing about.

3

Start preparing your submission. Use this section to ensure you follow the rules of procedure for the mechanism or treaty body you have chosen. Also use this section to find out what you should put in your submission. Gather relevant

4

Familiarise yourself with relevant dates and deadlines by contacting the relevant staff person in Geneva at the Office of the High Commissioner for Human Rights. Take these into account in your

Send off your submission and follow up with the appropriate staff person to check that it has arrived.

5

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# Summary of standards which apply to conscientious objection

The right to conscientious objection and rights relating to conscientious objectors can be found in:

1. The Universal Declaration of Human Rights
2. Treaties
3. Resolutions of the Commission on Human Rights and the General Assembly

A summary of the rights and their sources is in the table below.

Right	UDHR	Treaty law	Resolutions of CHR
<i>to conscientious objection</i>	18	ICCPR 18	1998/77, 1995/83, 1993/84, 1991/65
<i>not to be discriminated against</i>	2	ICCPR 2, 26, 18 (Gen Comm 22 para 11) ICESCR 2(2), CERD	
<i>to equal remuneration for equal work</i>	23	ICESCR 7 (a) (i)	
<i>to equal access to promotion</i>	23	ICESCR 7 (c)	
<i>to social security</i>	22	ICESCR 11	
<i>to adequate housing &amp; living conditions</i>	25	ICESCR 11	
<i>highest attainable standard of health</i>		ICESCR 12	
<i>to education</i>	26	ICESCR 13	
<i>to take part in public affairs</i>	21	ICCPR 25	
<i>to life</i>	3	ICCPR 6	1998/77 PP2
<i>to freedom from torture</i>	5	ICCPR 7, CAT	
<i>to liberty of movement</i>	13	ICCPR 12	5

Right	UDHR	Treaty law	Resolutions of CHR/GA
<i>to fair trial by independent tribunal</i>	10	ICCPR 14	1998/7 OP2 and OP3
<i>to presumption of innocence until proven guilty</i>	11(1)	ICCPR 14	
<i>not to undergo heavier penalty than one in force at time of offence</i>		ICCPR 15	
<i>to freedom from arbitrary detention</i>	9	ICCPR 9	1998/77 OP5
<i>to asylum</i>	14	1951 Refugee Convention + 1967 Protocol	1998/77 OP7 + UNHCR handbook GA 33/165
<i>to alternative service</i>			1998/77 OP4
<i>to non-punitive alternative service</i>		ICCPR 18 + Gen Comm 22	1998/77 OP4
<i>to CO on religious or other grounds</i>		ICCPR 18 + Gen Comm 22	1998/77 PP4
<i>to develop CO during service</i>			1998/77 PP5
<i>to be informed by government about possibility of acquiring CO status</i>			1998/77 OP8

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Notes to the table

**CAT** Convention Against Torture {\*\*\* Check \*\*\*}

**CHR** Commission on Human Rights

**GA** General Assembly

**Gen Comm** General Comment of the Human Rights Committee

**ICCPR** International Covenant on Civil and Political Rights

**ICESCR** International Covenant on Economic, Social and Cultural Rights

**PP** Preambular Paragraph

**OP** Operative Paragraph

**UDHR** Universal Declaration on Human Rights

**UNHCR** United Nations High Commissioner for Refugees

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# Standards which recognise the right to conscientious objection

This subsection looks at the standards recognising the right to conscientious objection itself, as found in treaties, resolutions and UN practice.

## *In treaties*

The right to conscientious objection to military service is primarily derived from the right to freedom of thought, conscience and religion. This right is found in article 18 of the 1948 Universal Declaration of Human Rights, and was codified in article 18 of the International Covenant on Civil and Political Rights (ICCPR) in 1966. The right in this instrument is stated as follows:

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.

Article 18, ICCPR

This manifestation of thought, conscience and religion includes conscientious objection to military service on religious, moral, ethical, political and similar grounds.

Article 18 of the Covenant does put some limits on the right, stating that manifestations must not infringe on public safety, order, health or morals. Some states argue that such limitations would permit them to make conscientious objection during time of war a threat to public safety, or mass conscientious objection a disruption to public order, or even that it is a 'moral' duty to serve the state in its military.

Whatever their arguments, the right to conscientiously object is indisputable. In 1993, the Human Rights Committee agreed a General Comment relating to article 18, the article regarding freedom of thought, conscience and religion:

The Covenant does not explicitly refer to a right to conscientious objection, but 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.

UN Doc HRI/GEN/1/Rev.1 at 35 (1994)

A larger extract from the General Comment is in the Reference Materials section of this Handbook, on page 80.

## In resolutions

The most recent resolution of the Commission on Human Rights on the right to conscientious objection to military service was passed in 1998. This resolution

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 and article 18 of the International Covenant on Civil and Political Rights.

The resolution was adopted without a vote, indicating the general support of the member states of the Commission with regard to this matter. The text of the resolution is in the Reference Materials section of this handbook on page 81. It is expected that another resolution will be passed in 2000. Check the Office of the High Commissioner for Human Rights' website for more details: <http://www.unhchr.ch>.

## In practice

One practical example confirms the commitment of the United Nations to recognising the right to conscientious objection to military service. The United Nations Special Rapporteur on Religious Intolerance is mandated to consider 'violations of freedom of thought, conscience and religion or belief' and in particular the question of conscientious objection. He regularly includes questions of conscientious objection in his annual reports to the Commission on Human Rights and the General Assembly.

### Most appropriate mechanism if the right to conscientious objection is not respected

If the right to conscientious objection itself is not respected, the most appropriate body to deal with it will be the Human Rights Committee. If the state in question is not party to the International Covenant on Civil and Political Rights, then other mechanisms will need to be used instead.

See the subsection on the Human Rights Committee at

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# Standards which *expand* on the right to conscientious objection

## *Non-discrimination*

### Non-Discrimination in general

The first article of the Universal Declaration of Human Rights states unequivocally that ‘all human beings are born free and equal in dignity and rights’.

Article 2 asserts:

everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, language, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In article 2 of the International Covenant on Civil and Political Rights (ICCPR), States undertake to respect and ensure the rights in the ICCPR to all individuals:

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, the ICCPR states in article 26 that ‘all persons are equal before the law and are entitled without any discrimination to the equal protection of the law’. By ratifying the treaty, States undertake to ensure that the law prohibits discrimination and will guarantee protection against discrimination to all.

Most appropriate mechanism: Human Rights Committee (see p 36)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) also reaffirms this right to non-discrimination, both in general terms of all the rights in the Covenant and relating to specific rights such as the right to education and the right to equal opportunity of promotion (see below under economic rights).

One Convention entirely about equality is the Convention on the Elimination of Racial Discrimination which simply condemns racial discrimination and expects States Party to pursue a policy of eliminating it.

Most appropriate mechanism: Committee for the Elimination of Racial Discrimination See p

#### Example 1:

In Israel those who lack documents proving they have completed military service are often regarded with suspicion. For instance, they may find it difficult to get employment if they explain why they did not complete their military service and they can be refused loans by credit institutions. Furthermore, Israel conscripts both men and women, but only has legal provisions for female conscripts who want to conscientiously object, not male conscripts.

## Non-discrimination and conscientious objectors

The most recent resolution of the Commission on Human Rights on conscientious objection, passed by consensus in 1998, relates non-discrimination to conscientious objection:

6 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.

Resolution 1998/77

The applicability of non-discrimination to conscientious objectors is also made crystal clear by the General Comment 22 of the Human Rights Committee on Article 18 of the ICCPR:

When this right (to conscientious objection) is recognised 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.

### Example 2:

In 1993, the Human Rights Committee considered an individual case against the Netherlands and decided that the exemption of Jehovah's Witnesses from the requirement to perform both military and alternative service, while not providing any possibility for other conscientious objectors to be exempted from alternative service, amounted to dis-

An individual who has been granted the status in law of a conscientious objector cannot be treated differently from another CO purely because the first CO's objection is based on a religious pacifism, and the second is based on a socialist pacifism. Just as there should be no differentiation between conscientious objectors, the General Comment states there should also be no discrimination against conscientious objectors because of their failure to perform military service.

Most appropriate mechanism: Human Rights Committee (see p36)

## Possibilities for action

Is it discrimination when alternative service lasts longer than military service? Although the official view of the Human Rights Committee on this matter is that, where there is no requirement to prove the conscientious objection, an alternative service of twice the length of military service is fair (View on *Järvinen v Finland*), individual members have stated opposing opinions. When France told the Committee in 1997 that the alternative service was twice the length in order that people could prove their convictions, one committee member responded by asserting that there were surely fairer ways for people to prove their convictions. (CCPR/C/SR.1599 at 58). Following on from this line of thinking, where a State undergoes a complicated and long process to test an individual's convictions such as that employed by Italy, a longer alternative service is likely to be considered unnecessarily punitive. This element of discrimination in relation to conscientious objection needs further testing. This can be done by submitting information on the practice of a State Party to the ICCPR to the Human Rights Committee prior to the state's regular report to the committee.

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States Parties to the Covenant on Economic, Social and Cultural Rights recognise the principle of equal remuneration for work of equal value ‘without distinction of any kind’ (ICESCR article 7 (a) (i)). This is a codification of the Universal Declaration on Human Rights statement that ‘Everyone, without any discrimination, has the right to equal pay for equal work’ (UDHR Article 23).

The International Covenant on Economic, Social and Cultural Rights also outlines rights to equal access to promotion: ‘equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence’ (ICESCR article 7 (c)).

## Social security, housing and health

Everyone has ‘the right to social security, including social insurance’ (ICESCR article 9, UDHR article 22). Everyone has the right to an adequate standard of living, ‘including adequate food, clothing and housing, and to the continuous improvement of living conditions’ (ICESCR article 11, UDHR article 25) and everyone has the right to enjoy the highest attainable standard of physical and mental health (ICESCR article 12). Conscientious objectors should not, therefore, be denied these rights purely because of their non-performance of military service.

Most appropriate mechanism: Committee on Economic, Social and Cultural Rights (see p42), or country-specific rapporteurs (see p57)

## Education

Everyone also has the right to education (ICESCR article 13, UDHR article 26). Primary education ‘shall be compulsory and available free to all’ (ICESCR article 13(a)), and higher education ‘shall be made equally accessible to all’ (ICESCR article 13 (c), UDHR article 26).

### Example 3:

Ukraine might have problems in satisfying the right to education. Here, access to state-run education institutions may be rejected without a military document proving completion

Most appropriate mechanism: the special rapporteur on education or country-specific rapporteurs (see p57)

### Example 4:

In the USA, for example, non-registrants for the draft are denied federal financial aid for education and for job training, and are barred from federal government employment, and this could be conceived as

## Non-discrimination and political rights

Reinforcing non-discrimination in another way, article 25 of the ICCPR recognises the right to take part in public affairs, to vote and to be elected, and to have access to public services on terms of equality with all other citizens. (Also in article 21 of the UDHR).

Most appropriate mechanism: Human Rights Committee (see p36)

## Right to life

Article 3 of the Universal Declaration on Human Rights recognises the right to life. The 1998 Commission on Human Rights resolution on conscientious objection to military service mentions that ‘everyone has the right to life’.

Article 6 of the ICCPR also recognises the right to life and gives certain caveats for the use of the death penalty, including that it can only be used for ‘the most serious crimes’.

**Example 5:**

Draft evaders and deserters in Iraq have often suffered the punishment of branding on the forehead and amputation of an ear. In Bolivia, those who do not obey call-up are not imprisoned but are liable to face administrative penalties and psychological threats. These are both

Most appropriate mechanism: Human Rights Committee (see p36) or special rapporteur on summary executions (see p45)

### **Freedom from torture**

Freedom from 'torture and cruel, inhuman or degrading treatment or punishment' (ICCPR, article 7, UDHR, article 5) is a right from which States Parties to the ICCPR are not allowed to derogate even in times of war or during states of emergency. It has also been defined and

expanded on in the Convention against Torture.

Most appropriate mechanism: Committee Against Torture (see p42) or special rapporteur on torture (see p47)

### **Freedom of movement**

The ICCPR and UDHR assure the right to liberty of movement and freedom to choose residence, and the right to leave any country including your own, except for reasons of national security and public order (ICCPR article 12, UDHR article 13).

Most appropriate mechanism: Human Rights

**Example 6:**

When a Moroccan man applies for a passport, his military situation is checked. Those who have not performed military service will have difficulty obtaining a passport. Similarly Eritreans who have not completed their military service cannot travel abroad. As yet, cases where governments limit the travel of COs have not been tested against the human

Committee (see p36) or country-specific rapporteurs (see p57)

### **Trials, tribunals and punishment**

Article 14 of the ICCPR ensures the right to a fair, public and prompt trial by

**Example 7:**

In Germany, the consideration of the validity of an objection is undertaken by an independent commission and appeals against decisions go to an administrative court. Switzerland has a more Ministry of Defence-influenced system, where the commission which considers applications for exemption of military service is appointed by the Ministry of Industry and Labour, but the Ministry of Defence has a say in who the members of the commission will be. The USA, on the other hand, recognises the possibility of military personnel developing a conscientious objection to service, but the final decision on an application is taken by the headquarters of the military service concerned. This is not so clearly independent or

an independent and impartial tribunal (also in UDHR article 10), the right to be presumed innocent until proven guilty (also in UDHR article 11(1)), the

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right to appeal against conviction, and the right not to be tried or punished again for an offence for which you have already been finally convicted or acquitted. Article 15 protects a criminal from undergoing a heavier penalty than the one that was in force at the time a crime was committed.

### Impartial tribunals

In a manner more specific to conscientious objectors, the 1998 Commission on Human Rights resolution on Conscientious Objection to Military Service welcomes the fact that some States 'accept claims of conscientious objection as valid without inquiry' (such as Finland) and calls upon States to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case.

### Is a military tribunal 'impartial'?

Whether a military tribunal which decides the validity of a conscientious objection could be considered 'fair', 'independent and impartial' is doubtful.

Most appropriate mechanism: Human Rights Committee (see p36) or special rapporteur on the independence of judges and lawyers (see p49)

### Retrial and repunishment for the same offence

Article 14(7) of the ICCPR states that:

No one shall be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and procedure of each country.

This means that once someone has been tried and punished for his or her conscientious objection to military service, they cannot be retried and repunished for the same reason.

In 1998, the Commission on Human Rights resolution on the right to conscientious objection stated for the first time:

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.

1998/77 OP5

Most appropriate mechanism: Human Rights Committee (see p36)

### Freedom from arbitrary detention

Freedom from arbitrary detention or arrest (ICCPR article 9 and UDHR article 9) is a right which applies where a right to a fair trial has been violated, the detention is invalid, and to prisoners of conscience. Many conscientious objectors detained for not performing military service are prisoners of conscience.

This 1998 Commission on Human Rights resolution also stated that conscientious objectors should not be imprisoned for refusing to perform military service:

States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment for failure to

Before you start

## Right to asylum

In certain circumstances, conscientious objectors have the right to asylum in other countries.

The office of the UN High Commissioner for Refugees (UNHCR) issues a Handbook on Procedures and Criteria for Determining Refugee Status. The UNHCR handbook is agreed to by Member States of the UN.

The handbook considers refugees who are military deserters or conscientious objectors to military service. The handbook makes it clear that anyone deserting or evading the draft because of dislike of military service or fear of combat is not entitled to be a refugee.

Refugee status can, however, be granted for other reasons. In general terms, the handbook states:

There are cases where the necessity to perform military service may be the sole ground for a claim to refugee status, ie when a person can show that the performance of military service would have required his participation in military action which is contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.

UNHCR Handbook, p40

### Grounds for a CO to be granted asylum

The Handbook defines these 'genuine political, religious or moral convictions' as follows:

- ◆ the military action the person is evading has been condemned by the international community as contrary to basic rules of human conduct;
- ◆ the applicant for refugee status has religious convictions against performing military service and has already encountered difficulties due to his or her anti-militarist religious convictions;
- ◆ 'genuine reasons of conscience'.

Asylum can also be granted if:

- ◆ the deserter or draft evader has a well-founded fear of persecution beyond the penalty for desertion.

The UNHCR handbook suggests that a volunteer recruit to an army is less likely to have genuine objections to military service; this is not in line with the most recent Commission on Human Rights resolution, which recognises that recruits can form a conscientious objection during service.

### Resolutions of the UN which affirm COs' right to asylum

The 1998 Commission on Human Rights resolution recalls in its preamble that 'article 14 of the Universal Declaration of Human Rights ... recognizes the right of everyone to seek and enjoy in other countries asylum from persecution' and then:

Encourages States, subject to the circumstances of the individual case meeting the other requirements of the refugee definition as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they

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fear persecution owing to their refusal to perform military service and there is no, or no adequate, provision for conscientious objection to military service.

CHR 1998/77 OP7

Those COs, therefore, who fear persecution because of their refusal to perform military service in a country where there is no provision for conscientious objection, can legitimately seek asylum in other countries.

Most appropriate mechanism: special rapporteur on religious intolerance. (see p43)

## Asylum for COs refusing to perform crimes against humanity or war crimes

In 1978, a General Assembly resolution recognised the right of all persons to refuse service in a military or police force used to enforce apartheid. This resolution called upon States to grant asylum to those compelled to leave their country because of their conscientious objection to assisting in the enforcement of apartheid through service in military or police forces. (GA 33/165)

COs fleeing their country because of their objection to assisting in these crimes through military service, who do not have the opportunity of alternative service, should therefore be able to seek asylum. They would be fleeing actions 'contrary to the basic rules of human conduct' and 'condemned by the international community' as described by the UNHCR Handbook.

### Which crimes?

Apartheid is one of the crimes against humanity listed in the Statute of the new International Criminal Court, and in 1973 it was declared as a crime against humanity in the 'Convention on the Crime of Apartheid'. Other crimes against humanity include genocide (outlawed by treaty in 1948) and torture (outlawed by treaty in 1984). The list in the statute of the International Criminal Court is as follows, although most of these crimes against humanity are such through customary international law, rather than having been deemed as such by treaty. (NB this statute has yet to enter into force but was agreed by states in 1998.)

Any of the following acts when committed as part of a wide-spread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization ;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible ;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Most appropriate mechanism: Human Rights Committee (see p36)  
or country-specific rapporteurs (see p57)

## Alternative Service Provision

Recommendations for alternative service provision are included in the 1998 Commission on Human Rights resolution on conscientious objection to military service. The resolution:

Reminds States with a system of compulsory military service, where such provision has not already been made, of its recom-

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# How to use the UN: rapporteurs, treaty bodies and other mechanisms

# Making a written submission

The information that you send to the UN will be in written form and this document is called your submission. Putting the right information in this submission is essential to your success.

General guidelines for written submissions are outlined below. Some mechanisms have special forms for submitting information, especially about individual cases. Details about these are listed under each individual mechanism.

## Length

Your submission is going to be read by the UN staff member servicing the rapporteur, working group or treaty body to whom you send it, and by the rapporteur or experts themselves. All of them will be unable to read pages and pages of documents, so it is best to keep your submission length to a maximum of four pages, excluding appendices (such as documents forming evidence for your case, or signatures of authority for you to act on behalf of a CO).

Put a short, one page summary at the front of the submission with key points, so that the recipients can at least skim this to get an idea of the nature of the submission.

## Content

In the submission you should include the following information:

1. Which mechanism should be considering the submission.
2. Summary of submission.
3. Address to be used in case of further communication including fax numbers and email.
4. Your credentials — e.g. ‘We are an NGO with x years of experience working with conscientious objectors’.
5. The State against which the complaint is being made.
6. List the relevant articles of treaty law or the relevant international standards that have allegedly been violated. Quote chapter and verse from relevant resolutions or mandates of mechanisms.
7. A detailed description of facts substantiating the allegations. This will include as much relevant and specific information as possible such as:
  - ◆ relevant domestic laws and regulations;
  - ◆ times, dates, places;
  - ◆ name, rank and description of people involved (such as police, judges at a trial or tribunal);
  - ◆ names and addresses of witnesses or people with special knowledge of events.
8. Avoid political or ideological observations unless these relate to the reasons for a conscientious objection. Do not be abusive or rude in the submission.
9. If possible, give the desired outcome of the submission, such as:
  - ◆ allowing an individual to perform an alternative service;
  - ◆ a declaration from a rapporteur that human rights have been violated;
  - ◆ a question to be asked of a State when it is in front of a treaty body;
  - ◆ a conscientious objector to be released from detention.

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10. Attach any supporting documentation such as texts of laws and regulations, newspaper cuttings, photographs, official government documents, etc.
11. Don't assume that those reading your submission will know the country in question well. Explain acronyms or other terminology which may be opaque to those who aren't 'in the know'.
12. Sign and date the submission.

### For individual cases or several individual cases:

1. Name of the victim(s) and name of the author. Neither can be anonymous to the mechanism but if you wish you can ask the mechanism to suppress the name of the victim and/or the author.
2. Address, date of birth and nationality of victim(s) and author.
3. Justification for acting on behalf of the victim if applicable — e.g. you are their legal representative, or you have been asked by the victim, the victim's lawyer, or the victim's family to make a submission.
4. Statement as to whether the matter is being dealt with by another international procedure of investigation or settlement.
5. Describe steps taken to exhaust domestic remedies. If this has not been done, explain why the present means of domestic redress are inadequate. For example, a pattern of acts may show that the law is rarely respected, or long delays in the justice system in the country in question are typical, making remedies effectively useless.
6. Attach any supporting documentation such as affidavits from witnesses, birth certificates, passports, medical reports, letters of authority, etc.

### Presentation

You are competing with other NGOs who are also making submissions, and you want your submission to grab attention and be remembered. Consider changing the colour of your cover, consider the readability of the submission, and anything else that would make it distinctive such as the quality of the paper, or the font used in the headings.

### Language

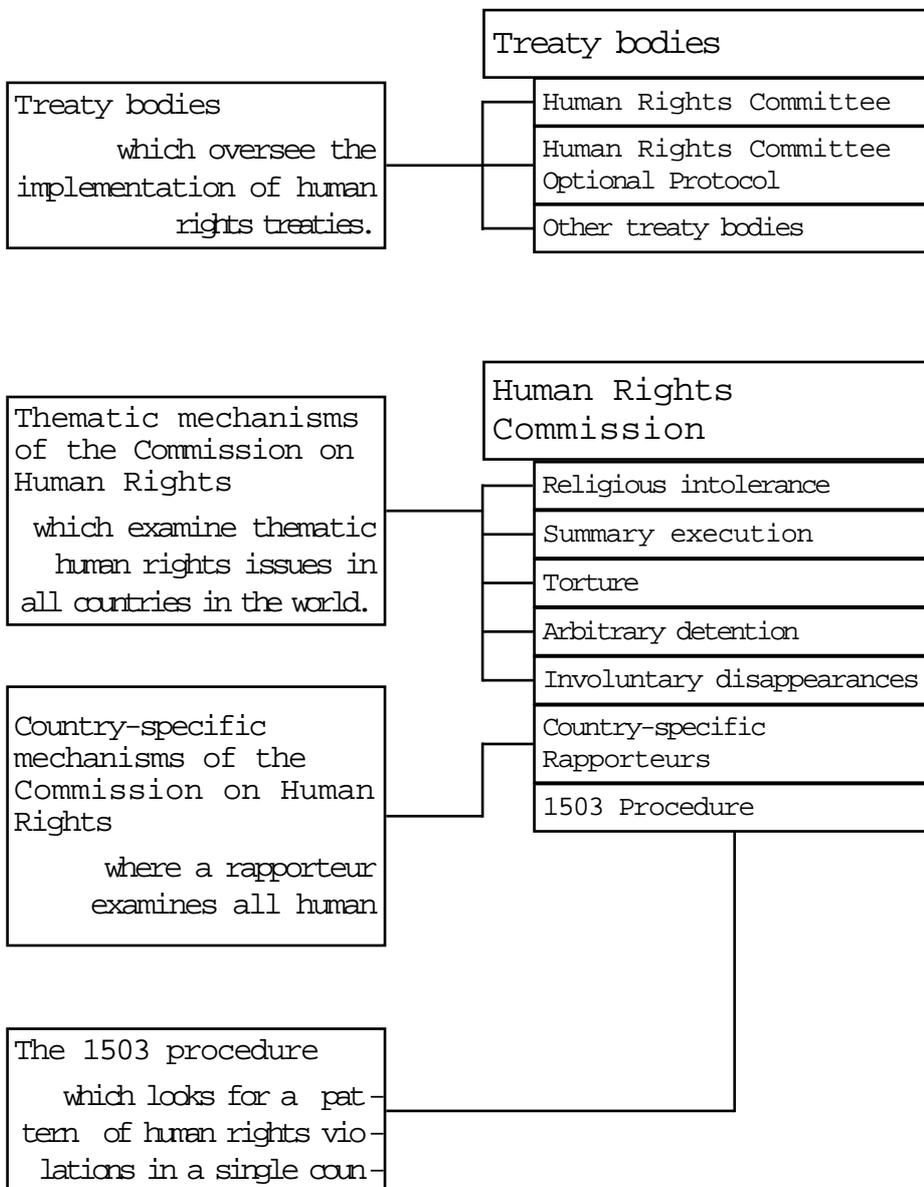
The submission should be in one of the six UN languages — English, French, Spanish, Russian, Arabic or Chinese. In reality, it is better to write the submission in English, French or Spanish, or try to provide a translation into one of these languages.

# Which process at the UN should I choose for my case?

## Quick reference

### Four types of human rights mechanism

There are four principle types of UN human rights mechanism, and the question of conscientious objection to military service can be considered under any of these. These are:



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## Quick reference

### Which mechanisms deal with which type of information

#### Mechanisms which deal with individual cases:

##### Treaty bodies

- ◆ Human Rights Committee (under ICCPR optional protocol 1)
- ◆ Committee Against Torture individual complaints procedure (under article 14)
- ◆ Committee for the Elimination of Racial Discrimination (under article 22)

##### Commission on Human Rights mechanisms

- ◆ Special rapporteur on Torture
- ◆ Working group on Arbitrary Detention
- ◆ Special rapporteur on extra-judicial, summary or arbitrary executions
- ◆ Working group on enforced or involuntary disappearances
- ◆ Special rapporteur on religious intolerance

#### Mechanisms which can take urgent action:

##### Treaty bodies

- ◆ Human Rights Committee

##### Commission on Human Rights mechanisms

- ◆ Working Group on Arbitrary Detention
- ◆ Special rapporteur on extrajudicial, summary or arbitrary executions
- ◆ Working Group on Enforced, or Involuntary disappearances
- ◆ Special rapporteur on torture

#### Mechanisms which consider state law or practice:

##### Treaty bodies

- ◆ All

##### Commission on Human Rights mechanisms

- ◆ all thematic rapporteurs and working groups, country-specific rapporteurs

#### Mechanisms which consider several individual cases at once:

- ◆ 1503 Procedure

## Working out which mechanism is most appropriate for your submission.

This questionnaire has been designed so that you can work through it and establish which mechanism of the UN human rights system is the most appropriate for your submission. It assumes the following:

- ◆ Treaty bodies are the most effective mechanism to deal with human rights violations;
- ◆ thematic mechanisms of the Commission on Human Rights are the second most effective mechanisms to deal with human rights violations;
- ◆ country-specific mechanisms of the Commission on Human Rights are the third most effective mechanisms to deal with human rights violations;
- ◆ giving an oral or written statement to the Commission on Human Rights is the fourth most effective way of accessing the decision-making power of the UN human rights system;
- ◆ the 1503 procedure is the least effective mechanism to deal with human rights violations.

- 1) Has treaty law been violated? (I.e. the ICCPR, ICESCR or another treaty. See the table on page 16 to find out which treaty laws apply to COs.)  
Yes — go to **2**  
No — go to **12**
- 2) Is the government concerned a party to the treaty? (See Reference Materials section at page 68 for parties to the ICCPR. For other treaties, see <http://www.un.org>)  
Yes — go to **3**  
No — go to **12**
- 3) Is it an individual case you wish to raise?  
Yes — go to **4**  
No — go to **7**
- 4) Is there an individual complaints procedure for the treaty? (see p32)  
Yes — go to **5**  
No — go to **7**
- 5) Is the government concerned a party to the individual complaints procedure of the treaty? (See Reference Materials section at page 77 for parties to the ICCPR Optional Protocol. For other treaties, see the treaties section of the UN website at <http://www.un.org>)  
Yes — go to **6**  
No — go to **7**
- 6) Submit the case under the individual complaints procedure if the case fulfils the criteria of the treaty body (see p32).
- 7) Does the government concerned have any reservations registered for certain articles of the treaty? (See the treaties section of the UN website at <http://www.un.org>)  
Yes — go to **8**  
No — go to **9**
- 8) Will these reservations affect the applicability of the treaty to your case or to the country situation you are concerned about?  
Yes — go to **12**  
No — go to **9**

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9) Is the government concerned likely to appear before the relevant treaty body in the next 12 months? (See <http://www.unhchr.ch> or contact the treaty body secretary to find out.)

Yes — go to 10

No — go to 11

10) Send a submission to the treaty body in time for the oral state report to the treaty body. See the section on ‘Human Rights Committee’ for further details on submitting information to treaty bodies.

11) Can you wait until the next time the government is likely to appear before the treaty body, to submit your information?

Yes — go to 10

No — go to 12

12) This case or country situation cannot be considered by a treaty body. It will have to be considered by a mechanism of the Commission on Human Rights. Is there a thematic mechanism of the Commission on Human Rights with special concern for this human rights violation? (See Reference Materials section at p82)

Yes — go to 13

No — go to 17

13) Has this thematic mechanism reported on any CO cases in the last three or four years? (Check out the details of the mechanisms on pp x-x).

Yes — go to 14

No — go to 16

14) Is this mechanism the special rapporteur on religious intolerance?

Yes — go to 15

No — go to 16

15) Send your submission to the Special Rapporteur on religious intolerance. If it is urgent, highlight this in the submission. Feel free to cite standards in the Commission on Human Rights resolution 1998/77 as well as treaty law or the Universal Declaration on Human Rights.

16) Send your submission to this thematic mechanism. In your submission, you can cite standards from Commission on Human Rights resolution 1998/77 but these cannot form your whole case. You will also need to refer to the UDHR, treaty law and probably the Human Rights Committee’s general comment 22.

17) Is there a rapporteur or expert of the Commission on Human Rights with special concern for the country where the human rights violations you wish to raise were committed?

Yes — go to 18

No — go to 19

18) Send your submission to this rapporteur or expert. In your submission, you can cite standards from Commission on Human Rights resolution 1998/77 but these cannot form your whole case. You will also need to refer to the UDHR, treaty law and probably the Human Rights Committee’s general comment 22.

19) Do you have access to the Commission on Human Rights through a UN accredited NGO?

Yes — go to 20

No — go to 21

- 20)** Consider making an oral or written statement to the Commission on Human Rights or the Sub-Commission on the situation of concern to you. Unfortunately, for the question of conscientious objection to military service, this is one of the least effective ways of raising your information in a UN mechanism. See **21**.
- 21)** Reconsider your case and see if you can frame it in a way that pertains to a particular mechanism of the Commission on Human Rights:
- a) Go to question **12** to go through this process again.
  - or*
  - b) If you are unable to find an appropriate mechanism, go on to question **22**.
  - or*
  - c) If you have already been to question **22** go to **24**.
- 22)** Do you have evidence of several cases of violations of human rights?  
 Yes — go to **23**  
 No — go to **24**
- 23)** Consider sending your submission into the 1503 procedure. In your submission, you are able to refer to the UDHR and treaty law. This mechanism can take a long time to operate and is conducted behind closed doors, so you may find that it is inappropriate to your needs. See **21**.
- 24)** There is no clear avenue for your submission to the Commission on Human Rights or to the treaty bodies.

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# Treaty Bodies:

## Human Rights Committee

Mandate established: 1966	Mandate next up for renewal: n/a						
UN Staff person: Mr Alfred de Zayas adezayas.hchr@unog.ch Td: +41 22 917 9293 Fax: +41 22 917							
Summary of mechanism: Made up of independent experts, the Human Rights Committee oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR see p68 for text). States who have ratified the Covenant are under an obligation to report every few years to the Committee. After submitting a written report, States are questioned orally during a Committee session on its human rights practice, with the aim of achieving a constructive dialogue. At the end of the session the Committee produces a concluding comment which outlines recommendations, and comments on the State s	<table border="1"> <tr> <td>Use for individual</td> <td></td> </tr> <tr> <td>Use for urgent action</td> <td></td> </tr> <tr> <td>Use for state law or prac-</td> <td>✓</td> </tr> </table>	Use for individual		Use for urgent action		Use for state law or prac-	✓
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### 1) Likely results from use of mechanism

If an expert on the Committee is interested in the points you raise, she or he will ask a question of the State about its practice in relationship to conscientious objection. If the Committee then believes it has advice or assistance to give to the State in relation to its practice, it will outline this in its concluding comment. This is an official UN document and will be taken seriously by the State under scrutiny. When the State reappears in front of the Committee, the Committee will be highly likely to ask the State about improvements it has made.

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

Those States who have ratified or acceded to the ICCPR.

### 3) Who can submit information?

Anyone — including NGOs without consultative status, and individuals.

### 4) When should information be submitted?

Ideally, two months before the government's report is due to be discussed. It is worth telephoning the secretary three weeks after you send off the submission to confirm that it has been received. If these materials are received sufficiently in advance, they are sent by mail to the members so that they can prepare better.

NGOs also have the opportunity of appearing before the working group during the Tuesday afternoon of the working group week. Informal luncheons are arranged during the lunch hour prior to the examination of the report. NGOs do not always take advantage of this opportunity.

### 5) Any special rules of procedure for submissions?

No.

## 6) Any special advice for making a submission to this mechanism?

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. Ensure that your executive summary at the beginning is cross-referenced to the main body of the text. Members of the Committee will read this if they read nothing else.

Consider waiting until the government's report is available in order, if possible, to obtain it and read it before making your submission. That way you can counter errors or highlight omissions. You might have to request it from your Ministry of Foreign Affairs or, if that is not possible, from the UN human rights secretariat.

Once the State report is available, if possible, telephone, fax or e-mail the Secretary of the relevant committee to check when the report is likely to be considered. Often the date may slip or the report may be considered earlier than expected.

Be aware of the pattern of periodic reporting. Usually the first report of a State is very comprehensive and subsequent ones will concentrate on the areas the Committee highlighted in its questions at the previous hearing. It might be worth obtaining the earlier reports from the Documentation Unit of the Office of the High Commissioner for Human Rights in Geneva, or try [www.unhchr.ch](http://www.unhchr.ch). You might find that the government in question has a poor history on an issue that you wish to raise, or has ignored previous recommendations of the Committee. It is worth reminding the Committee of its earlier comments where relevant. The Committee's criticism will probably be stronger in circumstances like these.

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.

Consider sending a copy to the government in question. The delegation may come armed to answer the points you raised and you may consider this to be a disadvantage, but it may also encourage the government to address the issues afresh.

## 7) What happens to the submission? How long will it take?

A State will start the process by producing a written report for the Human Rights Committee. The UN has produced a handbook for States on reporting human rights practices. States party to the ICCPR report every few years to the Committee.

States submit their written report some months prior to the Committee session. 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 Commission on Human Rights, or NGOs.

Then, when the State comes up in front of the Committee, the Committee members hear an oral update or introduction, and direct questions to the government representatives present. Usually the Committee takes two or three three-hour sessions to consider one State report and ask questions. At the end of the session, the Committee will produce a concluding comment outlining recommendations and comments on the State's practice and legislation.

Sometimes the members of the Human Rights Committee are open to lobbying

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and you may wish to attend the committee session in New York or Geneva. Advice for doing so is outside the scope of this Handbook but it is worth getting in touch with the International Service for Human Rights if you wish to do this. British Irish Rights Watch has a handbook with some good suggestions too and this is available from their office. (See addresses in Reference Materials section.)

NGO materials (whether with or without consultative status) are received up to the examination of the report.

## 8) How has the mechanism been used in the recent past for conscientious objection?

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* does provide guidance to States for raising the issue in their report to the Human Rights Committee. 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 recognized 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.

Rachel Brett and Jo Constable have found that when a State raises the issue of conscientious objection in its initial report, the Committee will refer to it during meetings, either requesting further clarification on the information provided, or asking direct questions. However, when the State does not raise it, the Committee likewise tends not to mention it. This means that it is even more important for NGOs to provide information to the Committee in these instances.

Questions surrounding conscientious objection have been raised in relation to:

- ◆ whether the right is recognised at all (Jordan, 1994; Cyprus, 1994; Tunisia 1994; Libyan Arab Jamahiriya, 1994);
- ◆ whether individuals have the right to claim conscientious objector status after entering the military (France, 1997; Spain 1996);
- ◆ the process for obtaining conscientious objector status (Argentina, 1994; Brazil, 1996);
- ◆ whether the actual status of conscientious objectors is not being respected (Paraguay, 1995);
- ◆ whether alternative service of twice the length is unfair (France, 1997) and comparative lengths of alternative and military service in general (Cyprus, 1994; Estonia, 1995; Russian Federation, 1995; Slovakia 1997);
- ◆ repeated call-up of conscientious objectors, especially in relation to potential violations of article 14(7) of the ICCPR (Cyprus, 1994);
- ◆ discrimination against those objecting on non-religious grounds (Slovakia, 1997; Ukraine, 1995);
- ◆ registration for conscientious objector status and the grounds on which an individual can claim to be a conscientious objector (Russian Federation, 1995; Slovakia, 1997).

Brett and Constable conclude that there have, however, been substantive omissions by the Committee with regard to the issue of discrimination against conscientious objectors for their failure to perform military service, which was included in the General Comment but has not yet been addressed by the Committee.

# Treaty Bodies:

## Human Rights Committee Optional Protocol

Mandate established: 1966	Mandate next up for renewal: n/a
UN Staff person and Email: Mr Alfred de Zayas adezayas.hchr@unog.ch Tel: +41 22 917 9293 Fax: +41 22 917	
Summary of mechanism: An individual communications procedure of the Human Rights Committee. The committee decides whether cases are violations of the International Covenant on Civil and Political Rights (ICCPR). The procedure is outlined in the first optional protocol of the ICCPR (see	Use for individual ✓
	Use for urgent action* ✓
	Use for state law or prac-

\* Although the Human Rights Committee does not have an urgent action procedure, it does occasionally exercise the ability to intervene urgently in cases which have been submitted to it under the optional protocol. In such a situation, regardless of its final view on the complaint, the Committee can inform the government concerned that interim measures are required to avoid damage to the victim.

### 1) Likely results from use of mechanism

A decision from the Human Rights Committee on your 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 conscientious objector, or releasing him or her from prison.

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

To States who have ratified the first optional protocol to the ICCPR, thereby recognising the competence of the Human Rights Committee to receive and give opinions on individual complaints against themselves. For a list of present States Parties to the protocol, see p77..

### 3) Who can submit information?

The complainant must be under the jurisdiction of a state party to the optional protocol, though anyone can submit information on their behalf.

### 4) When should a communication be submitted?

There is no time limit after the alleged event for receiving information but it is best to submit the communication as soon as possible.

### 5) Are there any special rules of procedure?

Yes. The Human Rights Committee has adopted its own rules of procedure as regards to the admissibility of a communication. These, with brief explanations, are as follows:

- (a) That the communication is not anonymous and that it emanates from an individual or individuals subject to the jurisdiction of a State Party to the Protocol;

i.e. the complainant must be under the jurisdiction of a State which has voluntarily agreed to the authority of the Human Rights Committee to receive individual

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complaints. This means that they must have been present within the territory of the State concerned at the time of the alleged violation, that the act complained of was committed by an agent of the State (such as a government official), or that the conscientious objector has a relevant relationship with the State concerned (for example if the complaint is about a right to a nationality).

- (b) That the individual claims, in a manner sufficiently substantiated, to be a victim of a violation by that State Party of one or more of the rights set forth in the Covenant. Normally, the communication should be submitted by the individual himself or by his representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that he is unable to submit the communication himself;

i.e. There must be sufficient information to establish that the complainant is indeed a victim of a violation of human rights and in particular of a right in the Covenant, and communications must be from the victim or his/her representative.

- (c) That the communication is not an abuse of the right to submit a communication under the Protocol;

For example, the complainant using the mechanism merely to attack the government, or to claim to act in ways which violate the rights of others, such as being racially abusive.

- (d) That the communication is not incompatible with the provisions of the Covenant;

For example, the right to own property would fall outside of the Covenant's scope.

- (e) That the same matter is not being examined under another procedure of international investigation or settlement;

i.e. The issue must not presently be under consideration by, for example, the European Court of Human Rights, or another treaty body.

- (f) That the individual has exhausted all available domestic remedies.

i.e. either the individual has already taken the complaint through the courts, or the individual can show that this is not possible or that obtaining a remedy would be 'unreasonably prolonged'.

## 6) Any special advice for a submission to this mechanism?

The Human Rights Committee has produced a model communication, which does not have to be used but which serves as a useful guide. This is in the Factsheet No. 7, issued by the Office of the High Commissioner for Human Rights, and available over the world-wide web or from the address at the back of this handbook. (See p84)

## 7) What happens to the submission? How long does it take?

The whole process is done in writing; there is no oral hearing or fact-finding mission for this process.

The communication is screened by a member of the UN human rights secretariat who may contact the author for further information, and is then forwarded to a rapporteur of the Human Rights Committee who considers new applications.

The rapporteur considers whether there is sufficient information contained in the communication for the Committee to rule on admissibility, and if there is

sufficient information, s/he submits the communication to the relevant state with a request for observations. The state has two months to respond.

One week before a Committee session, a five-member working group of the Committee meets to decide whether cases are admissible. If all five agree on the admissibility of the case, that is acceptable. The whole Committee has to agree to a case being inadmissible.

Once the case is admitted, the State has a further six months to submit written statements to clarify the matter with the Committee. These are forwarded to the author, who has six weeks to respond.

The Committee adopts 'views' which, although they are not legally binding and have no sanctions for non-compliance, are very morally persuasive. Consensus is the preferred medium for the Committee. The Committee will often go beyond stating whether or not there has been a violation to offer an opinion on the State's obligation in the matter. A rapporteur of the Committee follows up the views by communicating directly with governments, and states must include any measures taken in the light of the views in their subsequent reports to the Committee. The annual report of the Committee lists States who have failed to respond to requests, and those who have cooperated.

Between 1991 and 1997, follow-up information had been received in respect of 125 views. The Committee considered that 30 per cent of the replies received were satisfactory.

## 8) How has the mechanism been used in the recent past for conscientious objection?

There are some figures for the use of the optional protocol in general. The Committee began work under the Optional Protocol in 1977. Since that time until 1997, 765 communications concerning 54 States Parties had been registered for consideration. Of these, 263 had been concluded, including 199 in which violations of the Covenant were found, 242 had been declared inadmissible, 115 had been discontinued or withdrawn, 45 had not yet been concluded, and 100 were at the pre-admissibility stage.

There are a couple of examples where the individual communications procedure has been used for conscientious objector cases.

In 1992 A.R.U., from The Netherlands, submitted a complaint describing how he resisted the draft for military service because of his belief that he would become an accessory to the commission of crimes against peace and the crime of genocide, as he would be forced to participate in the preparation for the use of nuclear weapons. This complaint was held by the Committee to be inadmissible. The Committee believed that the author had not exhausted domestic remedies available as he had not applied for alternative service under the Conscientious Objection Act in The Netherlands. They also decided that he could not claim to be a victim of violations of ICCPR articles 6 and 7 (inherent right to life and freedom from torture) merely by reference to the requirement to do military service.

A decision in 1993 on another communication from 1990 (Brinkhof v The Netherlands) is summarised by Rachel Brett and Jo Constable:

Although rejecting the claimant's case, on the basis that he had not proved his conscientious objection to performing alternative service, the Committee stated that the exemption of Jehovah's Witnesses from the requirement to perform both military and

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## Other Treaty Bodies

### Other treaty bodies are rarely used for CO cases

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 COs are the Human Rights Committee and the special mechanisms of the Commission on Human Rights, 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.

### 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 CERD, ICESCR or 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

- a) 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.unhchr.ch>.
- b) contact the secretary to the Committee. Their names and contact details are as follows:

Name of committee	Secretary s name & contact
Committee on Elimination of Racial Discrimination	Mr Robert Husbands rhusbands.hchr@unog.ch Tel: +41 22 917 9290
Committee on Economic, Social and Cultural Rights	Mr Alexandre Tikhonov atikhonov.hchr@unog.ch Tel: +41 22 917 9321
Committee against Torture	Mr Alessio Bruni abruni.hchr@unog.ch Tel: +41 22 917 9316

All committees share a fax number: +41 22 917 9022.

# Human Rights Commission:

## Special Rapporteur on Religious Intolerance

Mandate established: 1986	Mandate next up for renewal: 2001						
Name of current post holder:	Mr Abdelfattah Amor						
UN Staff person: pgillibert.hchr@unog.ch	Mr Patrice Gillibert Tél: +41 22 917 9332 Fax: +41 22 917 9018						
Summary of mechanism: The mandate is based on the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, and article 18 of the ICCPR. It provides for examination of incidents and governmental action in all parts of the world which are inconsistent with the provisions of the Declaration, and to recommend remedial measures, as appropriate. This includes violations of freedom of thought, conscience, religion or belief. Under this provision, the rapporteur considers the subject of the right to conscientious objection. The rapporteur receives information on this subject and gives an annual report to the Commission on Human Rights highlighting state practice, trends and individual cases. The rapporteur also makes country visits to countries of special interest to his mandate, and reports on these too.	<table border="1"> <tr> <td>Use for individual</td> <td>✓</td> </tr> <tr> <td>Use for urgent action*</td> <td>✓</td> </tr> <tr> <td>Use for state law or prac-</td> <td>✓</td> </tr> </table>	Use for individual	✓	Use for urgent action*	✓	Use for state law or prac-	✓
Use for individual	✓						
Use for urgent action*	✓						
Use for state law or prac-	✓						

\* Urgent allegations are forwarded to governments accompanied by a request for confirmation that a potential human rights abuse is not going to be committed.

### 1) Likely results from use of mechanism

#### a) Individual cases

For individual cases, the rapporteur forwards allegations to governments, and sends governmental responses to the original source for further information. He will not make a judgement on whether a particular allegation has been proven.

#### b) State law and practice

The rapporteur will usually ask governments to comment on information he has received about legislation or official practice. He may highlight a government in his report, an individual case, or request a country visit. He will make recommendations to a government about its practice in his reports.

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

All States, regardless of whether they have ratified a human rights treaty.

### 3) Who can submit information?

Anyone, even without consultative status to ECOSOC, including religious groups and communities. The Special Rapporteur receives information from States, non-governmental organizations and individuals during in-situ visits and for allegations.

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#### 4) When should information be submitted?

Information can be provided at any time but the Special Rapporteur will include in particular a summary of his communications in his next report to the Commission on Human Rights, for those sent before the beginning of November (because of the deadline for submission of his reports to the editors in time for the Commission on Human Rights in March and April).

#### 5) Any special rules of procedure for submissions?

No.

#### 6) Any special advice for making a submission to this mechanism?

No.

#### 7) What happens to the submission? How long will it take?

The special rapporteur receives information on abuses of the right to conscientious objection and transmits it to the government, asking for a response, and appealing to it to safeguard the person's right to religious freedom. Action taken, replies and recommendations are listed in the annual and public report of the rapporteur to the Commission on Human Rights. Priority is given to complaints arising in the current year, and the process of taking the complaints up with the government is continuous.

#### 8) How has the mechanism been used in the recent past for conscientious objection?

The special rapporteur for religious intolerance has the mandate most closely related to conscientious objection to military service and, apart from the special rapporteur on torture, is the only thematic mechanism to have mentioned conscientious objectors in reports in the last couple of years.

There are several examples of this in his reports. In 1996, the rapporteur reported on a visit to Greece, where he examined the legislation in Greece for conscientious objection and rehearsed the debate about the nature of citizenship and whether this allows for conscientious objection or alternative service. His report to the Commission in 1997 raised the issue in relation to several countries including the Federal Republic of Yugoslavia, Greece, Cyprus, the Russian Federation, Croatia and Singapore.

In 1997, the Rapporteur reported to the General Assembly on the lack of alternative service provision in Albania, Belarus and Mongolia, the legal time limit for declarations of refusal to undertake military service in Austria, Portugal, the Czech Republic and Slovakia, and the punitive duration of alternative service in Austria, Portugal, Macedonia and Slovakia. The rapporteur reminded States of Commission on Human Rights resolution 1989/59, 'reaffirmed several times', which recognised the right to conscientious objection for the first time, and 1984/93. He referred to the latter because it called 'for minimum guarantees to ensure that conscientious objection status can be applied for at any time'.

The rapporteur's 1998 report refers to problems over conscientious objection in Albania, Belarus, Mongolia, Austria, the Czech Republic, Portugal and Slovakia. In 1999, the rapporteur mentions COs in the Russian Federation, Romania and Turkmenistan.

# Human Rights Commission:

## Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

Mandate established: 1982	Mandate next up for renewal: 2001						
Name of current post holder:	Ms Asma Jahangir						
UN Staff person: hstenman.hchr@unog.ch	Mr Henrik Stenman Tél: +41 22 917 9128 Fax: +41 22 917						
Summary of mechanism: To examine, report upon, take the necessary steps to prevent, and make recommendations for the prevention of violations of the right to life arising from the death penalty, deaths in custody, deaths due to use of force by law enforcement of officials, death threats and fear of execution carried out without the sanction of the courts, violations of the right to life during armed conflicts, expulsions to a country where a person's life is in danger, genocide, failure to investigate violations of the right to life, and failure to compensate victims of such violations. The rapporteur receives information on this subject and gives an annual report to the Commission on Human Rights highlighting state practice, trends and individual cases. The rapporteur also makes country visits to countries of	<table border="1"> <tr> <td>Use for individual</td> <td>✓</td> </tr> <tr> <td>Use for urgent action</td> <td>✓</td> </tr> <tr> <td>Use for state law or prac-</td> <td>✓</td> </tr> </table>	Use for individual	✓	Use for urgent action	✓	Use for state law or prac-	✓
Use for individual	✓						
Use for urgent action	✓						
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### 1) Likely results from use of mechanism

As for the special rapporteur on religious intolerance.

### 2) To which states does the mechanism apply?

All — even those who have not ratified a human rights treaty.

### 3) Who can submit information?

Only NGOs in consultative status with ECOSOC can submit information

### 4) When should information be submitted?

As for the special rapporteur on religious intolerance.

### 5) Any special rules of procedure for submissions?

No.

### 6) Any special advice for making a submission to this mechanism?

No.

### 7) What happens to the submission?

The special rapporteur receives information from NGOs and individuals and transmits it to the government concerned, asking for a response. If the case is urgent, the rapporteur appeals to the government to safeguard the person's

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right to life. Action taken, replies and recommendations are listed in the annual and public report of the rapporteur to the Commission on Human Rights. Priority is given to complaints arising in the current year, and the process of taking the complaints up with the government is continuous.

### 8) How has the mechanism been used in the recent past for conscientious objection?

The rapporteur has not reported on CO cases in recent years.

# Human Rights Commission:

## *Special Rapporteur on Torture, Cruel, Inhuman or Degrading Treatment or Punishment.*

Mandate established: 1985	Mandate next up for renewal: 2001						
Name of current post holder:	Sir Nigel Rodley						
UN Staff person: aparra.hchr@unog.ch	Mr Alan Parra Tél: +41 22 917 9222 Fax: +41 22 917 9006						
Summary of mechanism: To examine questions relevant to torture, and cruel, inhuman or degrading treatment or punishment, to seek and receive credible and reliable information on such questions, to make urgent appeals for clarification to governments on behalf of individuals who may be being or be at risk of being tortured, to make recommendations to governments to alert them to acts of torture and advise them on preventing such acts, and to make investigative visits to countries. The rapporteur receives information on this subject and gives an annual report to the Commission on Human Rights highlighting state practice, trends and individual cases. The rapporteur also makes country visits to countries of special interest to his mandate,	<table border="1"> <tr> <td>Use for individual</td> <td>✓</td> </tr> <tr> <td>Use for urgent action*</td> <td>✓</td> </tr> <tr> <td>Use for state law or prac-</td> <td>✓</td> </tr> </table>	Use for individual	✓	Use for urgent action*	✓	Use for state law or prac-	✓
Use for individual	✓						
Use for urgent action*	✓						
Use for state law or prac-	✓						

\* The special rapporteur on torture will act urgently in cases where there is evidence that someone has been arrested and there is a fear that s/he will be subjected to torture.

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

As for the special rapporteur on religious intolerance.

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

The special rapporteur on torture has universal scope, and so states to which the rapporteur addresses his appeals do not have to be party to any specific human rights conventions.

### 3) Who can submit information?

Anyone.

### 4) When should information be submitted?

As for the special rapporteur on religious intolerance.

### 5) Any special rules of procedure for submissions?

None for information on State practice or individual cases. There are criteria for the rapporteur to intervene in urgent actions, however.

Evidence proving that someone is in danger of being tortured may take the form of eyewitness accounts from relatives, lawyers, doctors, etc, who have seen the detainee's physical condition, or may spring from the fact that the person is being kept incommunicado, which is recognised as being a situation

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conducive to torture.

The special rapporteur will have regard to the following factors:

- a) the previous reliability of the source of the information;
- b) the internal consistency of the information;
- c) the consistency of the information with information on other cases from the country in question;
- d) the existence of authoritative reports of torture practices from national sources, such as official commissions of inquiry;
- e) the findings of other international bodies, such as UN country rapporteurs and representatives, the Human Rights Committee, the Committee against Torture etc;
- f) the existence of national legislation, such as that permitting prolonged incommunicado detention, that can have the effect of facilitating torture; and
- g) the threat to the potential victim of extradition or deportation, directly or indirectly, to a state or territory where one or more of the above elements is present.

The rapporteur asks the government to give assurances that the detainee's physical and mental integrity will be guaranteed.

### 6) Any special advice for making a submission to this mechanism?

No.

### 7) What happens to the submission? How long will it take?

The special rapporteur receives information from NGOs and individuals and transmits it to the government concerned, asking for a response. If the case is urgent, the rapporteur appeals to the government to safeguard the person's physical and mental integrity. Action taken, replies and recommendations are listed in the annual and public report of the rapporteur to the Commission on Human Rights. Priority is given to complaints arising in the current year, and the process of taking the complaints up with the government is continuous.

### 8) How has the mechanism been used in the recent past for conscientious objection?

The Special Rapporteur on Torture was the only rapporteur in 1997 and 1998 who acted on cases relating to conscientious objectors being tortured.

In 1998, the Rapporteur reported the case of Uvanchaa Dozur-ool Mongushevich, a novice monk from St. Petersburg, who was drafted into the army in spite of his conscientious objection and severely beaten by fellow soldiers. In 1997, he described a case in Paraguay where a member of the Conscientious Objection Movement who was travelling to a workshop on conscientious objection was tied up at knife point by a division of the army and made to give information on the conscientious objection movement in the country. He also reported three other cases of conscientious objectors in Paraguay who were arrested, beaten and subjected to harassment.

In 1999, the rapporteur visited Turkey and reported the case of Cemir Doan who was detained because he had not done his military service.

# Human Rights Commission:

## Special Rapporteur on the Independence of Judges and Lawyers

Mandate established: 1994	Mandate next up for renewal: 2000						
Name of current post holder: Mr Dato Param Cumaraswamy							
UN Staff person: Mr Alan Parra aparra.hchr@unog.ch Tel: +41 22 917 9222 Fax: +41 22 917 9006							
Summary of mechanism: The rapporteur investigates and reports on attacks on the independence of judges, lawyers and officials of courts. He recommends proposals for protecting and enhancing the independence of judges, lawyers and court officials, and studies topical questions relating to his mandate. He reports regularly to the Commission on	<table border="1"> <tr> <td>Use for individual</td> <td>✓</td> </tr> <tr> <td>Use for urgent action</td> <td></td> </tr> <tr> <td>Use for state law or prac-</td> <td>✓</td> </tr> </table>	Use for individual	✓	Use for urgent action		Use for state law or prac-	✓
Use for individual	✓						
Use for urgent action							
Use for state law or prac-	✓						

### 1) Likely results from use of mechanism

As for the special rapporteur on religious intolerance.

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

All, regardless of any ratification of human rights treaties.

### 3) Who can submit information?

Anyone.

### 4) When should information be submitted?

The process of taking up cases with governments is continuous. However, for inclusion in that year's report to the Commission, communications and submissions should be with the rapporteur by October of any year.

### 5) Any special rules of procedure for submissions?

No.

### 6) Any special advice for making a submission to this mechanism?

No.

### 7) What happens to the submission? How long will it take?

The rapporteur communicates complaints to the relevant government and asks for a response. Complaints sent and communications received are reported in the annual public report of the rapporteur to the Commission on Human Rights.

### 8) How has the mechanism been used in the recent past for conscientious objection?

This rapporteur has not reported on any CO cases in recent years. However, this mechanism would be an obvious choice for cases of military tribunals, testing their impartiality.

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# Human Rights Commission:

## Special Rapporteur on the Freedom of Opinion and Expression

Mandate established: 1993	Mandate next up for renewal: 2002
Name of current post holder: Mr Abid Hussain	
UN Staff person: Ms Martine Anstett manstett.hchr@unog.ch Td: +41 22 917 9110 Fax: +41 22 917 9003	
Summary of mechanism: The rapporteur monitors discrimination, threats, violence, harassment, persecution and intimidation of people exercising or promoting the right to freedom of expression. He communicates complaints to governments and seeks assurances that the right to freedom of expression will be respected in individual cases. He reports annually on his activities to the Commission on Human Rights.	Use for individual <input checked="" type="checkbox"/>
	Use for urgent action <input type="checkbox"/>
	Use for state law or prac- <input checked="" type="checkbox"/>

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

As for the special rapporteur on religious intolerance.

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

All, regardless of ratification of any human rights treaties.

### 3) Who can submit information?

Anyone.

### 4) When should information be submitted?

The process of taking up complaints with governments is continuous. However, for inclusion in that year's report, complaints should be received by October of the same year.

### 5) Any special rules of procedure for submission?

The rapporteur stated in his 1999 report the following:

Guidelines for the submission of information to the Special Rapporteur

In order for the Special Rapporteur to be able to take action regarding a communication on a case or incident, the following information, as a minimum, must be received.

1. Allegation regarding a person or persons
  - ◆ As detailed a description of the alleged violation as possible, including date, location and circumstances of the event;
  - ◆ Name, age, gender, ethnic background (if relevant), profession;
  - ◆ Views, affiliations, past or present participation in political, social, ethnic or labour group/activity;
  - ◆ Information on other specific activities relating to the alleged violation.

2. Allegation regarding a medium of communication
  - ◆ As detailed a description of the alleged infringement on the right as possible, including date, location and circumstances of the event;
  - ◆ The nature of the medium affected (e.g. newspapers, independent radio), including circulation and frequency of publication or broadcasting, public performances, etc;
  - ◆ Political orientation of the medium (if relevant).
3. Information regarding the alleged perpetrators
  - ◆ Name, State affiliation (e.g. military, police) and reasons why they are considered responsible;
  - ◆ For non-State actors, description of how they relate to the State (e.g. cooperation with or support by State security forces);
  - ◆ If applicable, State encouragement or tolerance of activities of non-State actors, whether groups or individuals, including threats or use of violence and harassment against individuals exercising their right to freedom of opinion and expression, including the right to seek, receive and impart information.
4. Information related to State actions
  - ◆ If the incident involves restrictions on a medium (e.g. censorship, closure of a news organ, banning of a book, etc.), the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, and steps taken to seek domestic remedy;
  - ◆ If the incident involves arrest of an individual or individuals, the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, location of detention if known, information on provision of access to legal counsel and family members, steps taken to seek domestic remedy or clarification of person's situation and status;
  - ◆ If applicable, information on whether or not an investigation has taken place and, if so, by what ministry or department of the Government and the status of the investigation at the time of submission of the allegation, including whether or not the investigation has resulted in indictments.
5. Information on the source of the communications
  - ◆ Name and full address;
  - ◆ Telephone and fax numbers and e-mail address (if possible);
  - ◆ Name, address, phone/fax numbers and e-mail address (if applicable) of person or organization submitting the allegation.

Note: In addition to the information requested above, the Special Rapporteur welcomes any additional comments or background notes that are considered relevant to the case or incident.

## 6) Any special advice for making a submission to this mechanism?

The special rapporteur is particularly interested in hearing both follow-up to submissions previously sent, and about the root causes of violations. In his 1999 report to the Commission he stated the following:

Follow-up

The Special Rapporteur attaches great importance to being kept

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informed of the current status of cases and thus very much welcomes updates of previously reported cases and information. This includes both negative and positive developments, including the release of persons detained for exercising their rights to freedom of opinion and expression and to seek, receive and impart information, or the adoption of new laws or policies or changes to existing ones that have a positive impact on the realization of the rights to freedom of opinion and expression and information.

Root causes

In order to carry out his work regarding the root causes of violations, which is of particular importance to the Special Rapporteur, he is very much interested in receiving information on and/or texts of draft laws relating to or affecting the rights to freedom of opinion and expression and to seek, receive and impart information. The Special Rapporteur is also interested in laws or government policies relating to electronic media, including the Internet, as well as the impact of the availability of new information technologies on the right to freedom of opinion and expression.

### 7) What happens to the submission? How long will it take?

The rapporteur communicates complaints to the relevant government and asks for a response. Complaints sent and communications received are reported in the annual public report of the rapporteur to the Commission on Human Rights.

### 8) How has this mechanism been used in the recent past for conscientious objection?

This mechanism has not been used recently for CO cases. This does not mean that it should not be used, and the mandate has potential for use by COs. For instance, if an individual has been prosecuted for distributing leaflets about the right to conscientious objection in a country where the right is not recognised, and that individual was not a conscript, then this might fall under the remit of this rapporteur. The mandate needs to be tested in this manner.

# Human Rights Commission:

## Working Group on Arbitrary Detention

Mandate established: 1991	Mandate next up for renewal: 2000	
UN Staff person: mschmidt.hchr@unog.ch    Mr Markus Schmidt Tel: +41 22 917 9258    Fax: +41 22 917		
Summary of mechanism: Examines cases of arbitrary detention, which encompasses cases where there is no legal basis for the detention, prisoners of conscience, and cases where the right to a fair trial has been so badly violated, it makes the subsequent detention invalid. Examples of the kind of issues the Working Group examines include:	Use for individual	✓
	Use for urgent action*	✓
	Use for state law or prac-	
<ul style="list-style-type: none"> <li>◆ detention arising from a fundamental breach of human rights such as freedom of expression or freedom of thought, conscience and religion;</li> <li>◆ excessive time being spent on remand before being brought to trial;</li> <li>◆ where a person is detained after they should have been released;</li> <li>◆ house arrest.</li> </ul>		

\* Urgent actions: The Working Group on Arbitrary Detention will only act urgently where there is reason to believe that someone is being detained arbitrarily and that as a result their health or their life may be in danger, or where there is some other compelling reason for urgent action.

The action takes the form of transmitting the communication (sending a copy of the complaint) to the relevant Minister for Foreign Affairs, accompanied by an urgent appeal to the government to safeguard the person's right to life and physical integrity.

### 1) Likely results from use of mechanism

The results are very similar to those for the special rapporteur for religious intolerance. In addition, the Working Group is able to investigate cases and give opinions on them. These opinions are reported annually to the Commission on Human Rights.

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

All, regardless of ratification of human rights treaties.

### 3) Who can submit information?

The working group can only receive information from individuals, their families and representatives. This said, they reported in 1995 that 74% of cases were brought to them by international NGOs, 23% from national NGOs and only 3% from families.

### 4) When should information be submitted?

The process of taking up cases with governments is continuous.

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### 5) Any special rules of procedure for submissions?

No.

### 6) Any special advice for making a submission to this mechanism?

This will be a natural recipient of many CO cases. The Working Group does have a questionnaire in which it would like communications to be formatted and this is available from the secretary to the group. Minimum information should include

- ◆ 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.

### 7) What happens to the submission? How long will it take?

Complaints are sent to governments who have up to 90 days to make their reply. Once the working group has received the reply, they can recommend that the government remedies the situation, and their recommendations are reported to the Commission on Human Rights in their annual public report.

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 18 months.

### 8) How has the mechanism been used in the recent past for conscientious objection?

Although the working group on arbitrary detention would be a natural mechanism to consider CO cases, it does not seem to have been used for this purpose yet.

# Human Rights Commission:

## Working Group on Enforced or Involuntary Disappearances

Mandate established: 1980	Mandate next up for renewal: 2001						
UN Staff person: Tel: +41 22 917 9289	Mr Miguel De la Lama Fax: +41 22 917 9006						
Summary of mechanism: To receive and examine reports of people who have disappeared from relatives or NGOs acting on their behalf, to transmit those reports to governments and ask them to investigate and report back to the Working Group, to monitor States compliance with the UN Declaration on the Protection of All Persons from Enforced Disappearances, and to visit countries in order to investigate and to make recommendations for the prevention of and remedies for dis-	<table border="1"> <tr> <td>Use for individual</td> <td>✓</td> </tr> <tr> <td>Use for urgent action*</td> <td>✓</td> </tr> <tr> <td>Use for state law or prac-</td> <td></td> </tr> </table>	Use for individual	✓	Use for urgent action*	✓	Use for state law or prac-	
Use for individual	✓						
Use for urgent action*	✓						
Use for state law or prac-							

\* For urgent action: The Working Group communicates the complaint to the relevant government and appeals to it to seek information as to the location and well-being of the missing person.

### 1) Likely results from use of mechanism

As for the special rapporteur on religious intolerance.

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

All, regardless of ratification of any human rights treaties.

### 3) Who can submit information?

Governments, intergovernmental organisations, humanitarian organisations and 'other reliable sources' can submit information. Usually relatives of the victim and NGOs acting on their behalf submit information.

### 4) When should information be submitted?

Complaints are taken up with governments continuously.

### 5) Any special rules of procedure for submissions?

The Working Group will allow submissions if it includes the following information:

- Full name of the missing person;
- Date of disappearance, i.e. day, month and year of arrest or abduction or day, month and year when the missing person was last seen;
- Place of arrest or abduction or where the missing person was last seen;
- Parties presumed to have carried out the arrest or abduction or to hold the missing person in unacknowledged detention; and
- Steps taken to determine the fate or whereabouts of the disappeared person, or at least an indication that efforts to use domestic remedies were frustrated or otherwise inconclusive.

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## 6) Any special advice for making a submission to this mechanism?

There is a questionnaire available from the staff person administering this committee which you can use to structure your submission. However, submissions are accepted when not in the form of the questionnaire, so it is dispensable.

## 7) What happens to the submission?

The working group meets three times a year, at least one of these times being outside Geneva. Submissions can be made to it at any time. It handles submissions by transmitting the complaint to the government and seeking information as to the location and well-being of the missing persons.

## 8) How has the mechanism been used in the recent past for conscientious objection?

The working group does not appear to have considered any cases relating to conscientious objection in recent years.

# Human Rights Commission:

## Country-Specific Mechanisms

Names of current country-specific mechanisms and their hold-	
◆ Afghanistan (Mr Kamal Hossain)	◆ Iraq (Mr Andreas Mavrommatis)
◆ Bosnia and Herzegovina, Republic of Croatia and the Federal Republic of Yugoslavia (Mr Jiri Dienstbier)	◆ Myanmar (Mr Rajsomer Lallah)
◆ Burundi (Ms Marie-Therese Aissata Keita)	◆ Occupied Arab Territories including Palestine (Secretary-General)
◆ Cambodia (Mr Thomas Hammarberg)	◆ Occupied Palestine (Secretary-General)
◆ Cyprus (Secretary-General)	◆ Palestinian Territories since 1967 (Mr Giorgio Giacomelli)
◆ Democratic Republic of Congo (Mr Roberto Garreton)	◆ Somalia (Ms Mona Rishmawi)
◆ East Timor (Secretary-General)	◆ Syrian Golan (Secretary-General)
◆ Equatorial Guinea (Mr Gustavo Gallon Giraldo)	◆ Southern Lebanon and Western Bekaa (Secretary-General)
◆ Haiti (Mr Adama Dieng)	◆ The Sudan (Mr Leonardo Franco)
◆ Kosovo (Secretary-General)	
◆ Iran (Mr Maurice Copithorne)	
	<i>Notes:</i>
	◆ Because these mechanisms are only established on a one-year basis, the list of countries can change relatively rapidly.
	◆ Sometimes the Secretary-General is asked
UN Staff persons: See Reference Material section (p83) for contact names and addresses.	

<p>Summary of mechanism: Country-specific rapporteurs, special representatives of the Commission on Human Rights or the Secretary-General, and independent experts, are mandated to examine the situation of human rights in a particular country. Their mandates are usually renewed on an annual basis. They examine all human rights in that country and so consider the spectrum of civil, political, economic, social and cultural rights. They report annually and publicly to the Commission on Human Rights. They seek information from NGOs and others, and try to visit the country, or countries surrounding the</p>	Use for individual	✓
	Use for urgent action	✓
	Use for state law or prac-	

### 1) Likely results from use of mechanism

Rapporteurs will highlight certain information in their reports to the Commission, and will take up cases and situations with the government of the country concerned, with a view to a constructive dialogue on the human rights situation in that country. Some rapporteurs are also invited to make reports to the General Assembly if the country is of pressing concern to the UN.

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

Only to the State or territories which are named in the mandate. The country rapporteur or expert will give due consideration to that country's international human rights obligations under treaty law, but will also refer to other customary law when making recommendations to that state.

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### 3) Who can submit information?

Anyone.

### 4) When should information be submitted?

All country-specific mechanisms work throughout the year on their countries. It would be worth getting in touch with the secretary to the rapporteur or expert to find out if any visits are being made as this might mean your submission takes on more significance in timing, or you might be able to meet with the rapporteur when they visit. The rapporteurs and experts will write their reports to the Commission on Human Rights around November or December of each year.

### 5) Any special rules of procedure for submissions?

No.

### 6) Any special advice for making a submission to this mechanism?

You will see from point 8 that the coverage of conscientious objection by country-specific mechanisms is not as good as it could be. It is also true that the rapporteurs have a much wider remit over a variety of human rights than the thematic mandates. It is therefore advisable to be thorough in referring to international standards and treaty law when contacting these rapporteurs. Refer to General Comment 22 of the Human Rights Committee as well as Commission on Human Rights resolution 1998/77, alongside treaty law.

### 7) What happens to the submission? How long will it take?

The rapporteurs and experts will take up cases and situations with the government concerned and seek assurances that human rights will not be abused. This is done continuously.

### 8) How has the mechanism been used in the recent past for conscientious objection?

Thus far, in general, it has only been forced conscription and the consequences of desertion or avoiding military service which make it into the reports. Examples can be seen in the reports on Sudan, Iraq, Myanmar, the territory of the Former Yugoslavia and Afghanistan.

#### Iraq

The rapporteur for Iraq goes into detail in his General Assembly reports about the punishments of ear amputation and forehead branding for desertion, asking in 1995 for the Government of Iraq to abrogate immediately 'any and all decrees that prescribe cruel and unusual punishment or treatment'. The rapporteur reports in 1996 that Presidential Decree 81 stopped this practice.

#### Myanmar

For Myanmar, the rapporteur gives information about executions of civilians who resist becoming porters for the army or providing services for the army, and porters trying to escape who reportedly had hot water poured over them. In one of his recent Commission on Human Rights reports, the rapporteur looks at torture of those unable to carry the required load when forced to porter for the army.

## Afghanistan

Forced conscription is mentioned in reports on Afghanistan where the rapporteur 'was... informed about the conscription of men aged 19 to 39 with no exemptions, which partly accounted for an alleged desertion rate of 30 percent'. In 1998, in a report to the Commission on Human Rights, forced conscription is mentioned again because of a 'conspicuous absence of young men' in certain villages and that some villages had established observation posts to watch out for conscription teams.

## Sudan

The rapporteur on the Sudan has reported to the General Assembly the practice of rounding up children from major towns and sending them to special camps where in some cases they are trained by the military.

## Former Yugoslavia

In the 1994 General Assembly/Security Council report on the territory of the Former Yugoslavia, there is a section devoted to the draft, military service and conscientious objection, mostly in Croatia. The rapporteur reports forced recruitment, detention as punishment for those who refused to be mobilized and charged under Croatia's criminal code, and the fact that there are not long enough periods of application for conscientious objection. However, more recent reports on this region to the Commission on Human Rights have not mentioned the subject of conscientious objection.

## Country-specific mechanisms which have not mentioned conscientious objections

Alongside those who do mention forced conscription, it is worth considering those country rapporteurs who have thus far refrained from mentioning it. In 1997 and 1998, for example, the Commission on Human Rights heard reports from 23 rapporteurs and independent experts on country situations. It is not that there have been no cases of conscientious objectors who have been badly treated in these countries. The War Resisters' International report, *Refusing to Bear Arms*, reports that there have been problems for conscientious objectors in 17 of the States covered by rapporteurs of the Commission in 1997 and 1998. The country-specific rapporteurs either do not know that COs face difficulties in these countries, or they are ignoring this fact. The rapporteurs and experts will not be sensitised to the CO issue unless NGOs who work with COs and COs themselves send more information about the situations in those countries.

## General comments on coverage of conscientious objection by country-specific mechanisms

It seems that it is only in the worst cases of forced conscription that the issue is brought to the General Assembly or the Commission on Human Rights. Rapporteurs tend not to delve into the shades of grey around the right to conscientiously object to military service such as whether an impartial tribunal has established the right to conscientious objection, or whether there is a provision for alternative service — let alone whether that alternative service is non-punitive. Neither do the rapporteurs examine discrimination against those who have not completed their military service. Again, country specific mechanisms are perhaps not receiving information from NGOs to this effect.

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# Human Rights Commission

## The 1503 Procedure

Mandate established: 1970, by resolution 1503 of ECOSOC	Mandate next up for renewal: n/a
--	-------------------------------------

UN Staff person: Ms Eleanor Solo  
 esolo.hchr@unog.ch Tel: +41 22 917 9256 Fax: +41 22 917 9011

Summary of mechanism: A confidential procedure of the Sub-Commission and the Commission on Human Rights aimed at identifying consistent patterns of gross human rights violations. If such a pattern is detected in a country, then that country comes under the scrutiny of the Commission on Human Rights. The mechanism considers all	Use for individual	✓
	Use for urgent action	
	Use for state law or prac-	

### 1) Likely results from use of mechanism

If the Commission on Human Rights is examining a country under the 1503 Procedure, they will either appoint an independent expert or rapporteur on the country, ask the government for more information, and/or recommend action to ECOSOC, or drop the case. Once the Commission has chosen its line of action, the chairperson of the Commission publicly announces which countries have been under consideration, and whether consideration has been terminated, but not what other action is being taken.

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

All, regardless of ratification of human rights treaties.

### 3) Who can submit information?

Anyone. NGOs do not have to have consultative status with ECOSOC, but they do have to be acting in good faith with recognized principles of human rights, and be able to show direct, reliable evidence of the situation they are describing.

### 4) When should information be submitted?

Preferably by July of each year, though the process of consideration is ongoing.

### 5) Any special rules of procedure for submissions?

Yes. There are criteria for applications:

- ◆ anonymous communications are inadmissible;
- ◆ communications based on mass media reports are inadmissible;
- ◆ communications are inadmissible if they are counter to the principles of the UN Charter or if they show political motivations;
- ◆ the repeated submission of communications dealt with elsewhere by the UN is not acceptable;
- ◆ each communication must describe the facts, the purpose of the communication and the specific rights violated, with references to the treaties or international standards.

## 6) Any special advice for making a submission to this mechanism?

The advantage of the 1503 Procedure is that it has universal application to all UN Members, regardless of which human rights treaties they have ratified. In addition, those submitting information do not have to be in consultative status with ECOSOC. Although the Procedure is confidential, Commission Members do end up reading the files of those States who end up on the concern list and so at least 53 states will know about the human rights violations going on in a particular State. And, if the State is really of concern to the Commission, action such as collecting further information, or liaison with and assistance to the Government, will be initiated.

The disadvantages are that the procedure takes place with limited public scrutiny, is very lengthy and there is little confirmation of success to individuals or NGOs who have submitted specific information. The information sent to the 1503 Procedure has to be considered as contributing to a larger picture.

## 7) What happens to the submission? How long will it take?

When a communication is received at the Office of the High Commissioner for Human Rights, it is forwarded to the government concerned who then have 12 weeks to reply. The communication and any replies from governments are summarised for a monthly confidential list for the Working Group of five experts from the Sub-Commission.

This Working Group 'on communications' meets for two weeks prior to the Sub-Commission, in July, to review the list. If three or more experts agree that communications reveal a consistent pattern of violations in a certain country, that country situation is forwarded to the Sub-Commission for consideration.

The Sub-Commission meets in a closed session to decide which situations should be forwarded to the Commission on Human Rights.

A working group consisting of five members of the Commission recommends whether to appoint an independent expert or rapporteur on the country, to ask the government for more information, or to request the Secretary-General to liaise with the country concerned, or to drop the case. The Commission, together with the government concerned, meets in closed session and makes the final decision about any action.

Once the Commission has done this, the chairperson will publicly announce which countries have been under consideration and whether consideration has been terminated.

The process to the Commission can take up to 18 months because of the timing with the Sub-Commission, deadlines to ensure documents are translated, and the period of reply from governments, and then outcomes vary depending on the political attitude to the country under scrutiny. If, for instance, the Commission asks a government for more information, that may mean another year before substantive action is even considered.

The Sub-Commission Working Group on Communications dealt with over 350,000 complaints of violations of human rights between 1972 and 1988 alone, and thousands of replies from governments.

## 8) How has the mechanism been used in the recent past for conscientious objection?

It is not possible to know if this procedure has been used for CO cases because the procedure is confidential.

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# Human Rights Commission:

## NGO Statements and Country Resolutions

Although this handbook is primarily about submitting written information to the UN human rights system, it is appropriate to mention two other ways that NGOs can influence the Commission on Human Rights: making written and oral statements to the Commission, and influencing the content of country resolutions.

### NGO Statements

During the annual session of the Commission on Human Rights, individuals who have been accredited by NGOs who have consultative status with ECOSOC can make oral interventions, and can circulate written statements.

Oral interventions can attract press attention, made as they are in public meetings, and can show state delegates the extent of nongovernmental support. However, there are drawbacks. Usually the effectiveness of an intervention is inversely proportional to the number of interventions made by an NGO, and the number of interventions made by the NGO community. Internationally renowned NGOs are listened to more attentively than less well-known NGOs, though country delegations do listen carefully for allegations against their own government. An intervention at the Commission should really be seen in the context of a larger strategy of an NGO; it should not be the only goal.

Written statements are useful for getting specific proposals such as a draft text or new standard into an official UN document, and circulated to delegates at the meeting in the official languages of the UN. Again, such an initiative should only be considered in the context of a larger strategy of an NGO, because a written statement's effectiveness is limited in and of itself.

### Country Resolutions

Country resolutions will ask for specific improvements in individual country situations.

Each resolution is tabled by a State and it is this State which oversees the drafting of the resolution, consulting with other members and observers of the Commission to do so. The starting point for the wording of a resolution is usually the resolution most recently passed by the Commission, which the drafters will try and make stronger or weaker depending on the situation and the politics of that year's Commission.

Recently country resolutions have not included directions on conscientious objection but there should be scope for its inclusion given that so many countries have problems in this area.

[Roles are] played by groups and individuals outside governments who are dedicated to causes and take part indirectly in UN deliberations as lobbyists or activists. While their influence varies with cause and case, it seems reasonable to suppose that their actual role in the political and technical aspects of UN law-making is

*Oscar Schachter, The UN Legal Order: an Overview in Joyner (ed.) The United Nations and International Law*

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## 1503 Procedure

A confidential Procedure of the Sub-Commission and Commission on Human Rights, aimed at identifying patterns of gross violations of human rights. If such a pattern is detected in a country, that country ultimately comes under the scrutiny of the Commission on Human Rights in a closed, Members-only session.

## Accede

Essentially the same as to ratify (to a treaty).

## Article

Articles are the clauses which make up treaties.

## Commission on Human Rights

The Commission on Human Rights is a political body made up of 53 Member States of the UN, elected by ECOSOC to a three-year term to be regionally representative. It meets annually for a period of six weeks in March and April. It considers a long agenda covering both economic, social and cultural rights, and civil and political rights. At the end of its session, the Commission adopts resolutions on countries and issues of concern to its Members.

## Consultative Status

Non-governmental organisations with consultative status have certain rights at the United Nations. Their representatives can gain access to UN buildings without special permission and at certain meetings, such as the Commission on Human Rights, they can circulate written documents, make oral interventions and observe proceedings.

Consultative status was established in the UN Charter under article 71 which says that the Economic and Social Council can make arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. A committee of Member States considers applications.

## Conscientious Objection

For the purposes of this handbook, conscientious objection refers to conscientious objection to military service, not to, for example, a doctor's conscientious objection to performing abortions.

In a State where there is conscription into the military, some conscripts refuse to perform military service for reasons of conscience. They are conscientious objectors (COs).

## Covenant

A covenant is another word for a treaty. The International Covenant on Civil and Political

Rights and the International Covenant on Economic Social and Cultural Rights are two examples of covenants.

## Country-Specific Rapporteurs

The Commission on Human Rights appoints rapporteurs, independent experts and representatives to find out information and report annually and publicly on country situations of concern to the Commission. On request, they also report to the General Assembly. They usually make recommendations to the government of the country they are studying and often try and visit to talk with officials and NGOs and gather information.

## Customary International Law

This is law based on the actual practice of states and their 'opinio juris sive necessitatis' (or the legal obligations states believe themselves to be under when acting). For something to be considered to be customary law, it is understood that the practice must be widespread. Customary law is sometimes codified into treaties.

## Declaration

A resolution of the General Assembly of a declaratory nature, often clarifying points of international law.

## ECOSOC or the UN Economic and Social Council

The UN Economic and Social Council consists of 53 Member States elected by the General Assembly. It studies international economic, social, cultural, educational health and related matters and may make recommendations to any such matters to the General Assembly. It is the body to which the Commission on Human Rights reports.

## Enter into Force

When a treaty, charter or covenant becomes legally binding on states who have ratified or acceded to it. Usually the instrument will have a clause stating when this will happen. E.g. 'This Covenant shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations'.

## Expert

For the purposes of this handbook, 'experts' are people of excellent reputation in their field who have been elected or appointed by a UN body to give independent opinions or reporting on human rights. Experts are not part of a government, although they are nominated by their own governments. Examples of experts are members of the

treaty bodies, special Rapporteurs, and members of the Sub-Commission.

#### General Assembly

The General Assembly consists of representatives of all members of the United Nations and is able to discuss any aspect of the Charter of the United Nations except peace and security matters, which are considered by the Security Council. The General Assembly's resolutions are recommendatory rather than binding on the UN. ECOSOC reports to the General Assembly.

#### General Comment

Treaty bodies issue statements from time to time on how an aspect of the treaty they oversee should be interpreted. This is called a General Comment. The General Comment will have been agreed on by all experts on the Committee. States are expected to follow the provisions of the General Comment when implementing the treaty.

A General Comment allows the treaty body to go into more detail over the interpretation of one article and provides an authoritative interpretation.

The General Comment referred to in this handbook is General Comment 22 of the Human Rights Committee (the relevant text of which is in the Reference Materials section). This describes how the right to conscientious objection to military service is implicit in Article 18 of the International Covenant on Civil and Political Rights.

#### Human Rights Committee

The Human Rights Committee is a quasi-judicial body of 18 members who oversee the implementation of the International Covenant on Civil and Political Rights. The members are 'of high moral character and recognised competence in the field of human rights' and they meet three times a year to hear periodic reports from States who are parties to the Covenant. The Committee questions the State on its human rights record and makes suggestions for improving legislation and practice. It also adopts 'General Comments' guiding the interpretation of particular articles of the Covenant, and gives 'views' on complaints from individuals claiming their human rights have been violated by a state Party to the Optional Protocol of the Covenant.

#### Independent Expert

See Expert.

#### International Covenant on Civil and Political Rights (ICCPR)

This covenant outlines rights relating to imprisonment, trials and tribunals, elections and freedom of religion and expression. The

covenant was agreed in 1966 and entered into force in 1976. The full text of the covenant can be found in the Reference Materials section.

#### International Covenant on Economic, Social and Cultural Rights (ICESCR)

This covenant outlines rights relating to work, social security, education, health, language and culture. The covenant was agreed in 1966 and entered into force in 1976.

#### Mechanism

Any process of the UN human rights system which receives and considers information about State practice. Mechanisms referred to in this handbook are rapporteurs, working groups, the 1503 procedure and treaty bodies.

#### Member State

The United Nations has 188 Member States. These are States that have ratified or acceded to the Charter of the UN and therefore have voting rights in the General Assembly.

#### Operative Paragraph

See 'resolution'.

#### Optional Protocol

The Optional Protocol referred to in this book is the first protocol to the International Covenant of Civil and Political Rights. If a state ratifies this Covenant it can choose to ratify the Optional Protocol as well.

By ratifying this Optional Protocol, the State Party recognises the competence of the Human Rights Committee to consider and decide on individual complaints. The Committee looks at cases submitted by individuals or their representatives and decides if the Covenant has been breached by the State party. If the Committee decides that it has, it will often recommend actions that the State should take for reparation. A list of States Parties to the Optional Protocol is in the 'Reference Materials' section of this handbook..

#### Preambular Paragraph

See resolution.

#### Procedure

A type of mechanism which has a very rigid and rules-based process for considering information, with a fixed range of outcomes. In this handbook, the procedures referred to are the 1503 procedure, the first Optional Protocol to the ICCPR, and other individual complaints procedures of other treaty bodies.

#### Rapporteur

An expert appointed by the Commission on Human Rights to report regularly on a chosen subject. Rapporteurs of the Commission are

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either thematic, with a world-wide mandate, or country-focused with a rights-wide mandate. For example, a thematic rapporteur might consider the question of torture around the world. A country rapporteur might consider the situation of all human rights in Sudan.

### Ratify

When a State officially informs the United Nations that it accepts the legal obligations contained in an international treaty. The State does this by depositing its instruments of ratification in the place specified by the treaty, for example with the Secretary-General of the UN. Once the treaty has entered into force, states who have ratified the treaty are bound by it. At the time of ratification, states will often record their reservations to certain parts of the treaty.

### Refugee

The UN definition of a refugee can be found in the 1951 Refugee Convention and its 1967 Protocol. Essentially a refugee is someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself or herself of the protection of that country.

### Regional Representation

When a body of the UN (such as ECOSOC, treaty bodies or the Commission on Human Rights) is smaller than the General Assembly, its appointees must be regionally representative.

### Resolution

For the purposes of this handbook, a resolution is a text drafted and voted on by member states in the General Assembly or the Commission on Human Rights. A resolution usually has two parts: a more retrospective preamble (made up of preambular paragraphs) reiterating agreed concepts or reminding readers of previous studies or resolutions, and an 'operative' section (made up of operative paragraphs). The operative paragraphs list decisions, recommendations or requests of the body. Each body will have its own rules about the size of the majority required for a resolution to be passed by a vote.

Resolutions, for example of the Commission on Human Rights or of the General Assembly, though not binding, can have normative value. They can provide evidence for establishing the existence of a rule or customary practice and are politically persuasive.

### Security Council

The Security Council consists of 15

Members of the UN. The United Kingdom, the United States of America, France, China and the Russian Federation make up five permanent members and the General Assembly elects the remaining 10 Members for a term of two years. It was established to carry primary responsibility for the maintenance of international peace and security. It reports annually to the General Assembly and its decisions are binding on member states of the UN.

### Sub-Commission

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities is made up of 26 independent experts who are elected by the Commission on Human Rights. It meets for four weeks every August. It can be thought of as the Commission's 'think tank'. It also has a standing agenda considering country-specific situations, reports from its experts preparing studies and from its working groups. NGOs in consultative status with ECOSOC can also make oral and written statements to it.

### Submission

The written material sent by you as an NGO or individual to the Rapporteur, treaty body or Working Group you think will be most likely to act on your information.

### State Party

A state which has ratified or acceded to a treaty, covenant or protocol.

### Thematic Rapporteur

An independent expert appointed to the Commission on Human Rights to consider a human rights theme. Thematic Rapporteurs collect information on their theme, communicate directly with governments in light of the information received and report annually and publicly to the Commission.

### Treaty

Multilateral Treaties are international agreements agreed and adopted by States. They are legally binding on a State if the State has expressly agreed to be a party to (or 'ratified') them, and once the treaty has entered into force — usually when a certain number of States have ratified the treaty. Examples of treaties include the Charter of the United Nations, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

### Treaty Body

There are six bodies created to oversee the implementation of six human rights treaties. The most prestigious of these is the Human Rights Committee, which oversees the implementation of the International Covenant on

Civil and Political Rights. The committees are composed of independent experts and meet two or three times a year to consider State reports. The other five treaty bodies are:

- ◆ the Committee on Economic, Social and Cultural Rights, overseeing the International Covenant on Economic, Social and Cultural Rights;
- ◆ the Committee for the Elimination of Racial Discrimination, overseeing the Convention for the Elimination of Racial Discrimination;
- ◆ the Committee for the Elimination of Discrimination Against Women, overseeing the Convention bearing the same name;
- ◆ the Committee against Torture, overseeing the implementation of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- ◆ the Committee on the Rights of the Child, overseeing the implementation of the Convention on the Rights of the Child.

There is also a treaty body on migrant workers

but this treaty has yet to enter into force.

#### United Nations

The UN was founded in 1945 to end ‘the scourge of war’ with the UN Charter. It is currently made up of 188 Member States. The UN has various bodies and agencies charged with overseeing particular aspects of its work. It also has an assembly where all Member States vote and a Security Council.

#### Universal Declaration of Human Rights

This Declaration was passed in 1948 as a General Assembly resolution by the member states of the UN. It is a list of the rights which should be enjoyed by all people, everywhere. It is not a treaty to be voluntarily ratified by member States but a set of minimum standards. The full text can be found on the worldwide web at <http://www.unhchr.ch>.

#### Working Group

For the purposes of this handbook, working groups are mechanisms of the Commission on Human Rights which act to all intents and purposes like a thematic Rapporteur. They are usually made up of five independent

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# International Covenant on Civil and Political Rights

Source:

[http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm)

*It is recommended that you check this information against an up-to-date source.*

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**

**Entry into force 23 March 1976, in accordance with Article 49**

States parties:

Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, France, Former Yugoslav Republic of Macedonia, Gabon, Gambia, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, São Tome and Príncipe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United

Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## PART I

### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
- To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - To ensure that the competent authorities shall enforce such remedies when granted.

#### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

#### Article 4

- In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
- No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
- Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

#### Article 5

- Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

#### Article 6

- Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
- When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
- Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
- Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

- No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
- No one shall be held in servitude.
- No one shall be required to perform forced or compulsory labour;
  - Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
  - For the purpose of this paragraph the term

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“forced or compulsory labour” shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
  - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
  - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate

to their age and legal status.

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

#### Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

#### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the

preparation of his defence and to communicate with counsel of his own choosing;

- (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
  6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
  7. No one shall be liable to be tried 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.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### 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.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary

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in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic

elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

- (c) To have access, on general terms of equality, to public service in his country.

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

## PART IV

### Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

### Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

### Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to sub-

mit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within

six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

#### Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
  - (a) Twelve members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.

#### Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the

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rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
  - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
  3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
  4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
  5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

### Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
  - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
  - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either

State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
  - (d) The Committee shall hold closed meetings when examining communications under this article;
  - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
  - (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
  - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
  - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
    - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
    - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

## Article 42

1.
  - (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
  - (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
  - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
  - (b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
  - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's

report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

## Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

## Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

## Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

## PART V

## Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present

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Covenant.

#### Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

#### PART VI

#### Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

#### Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Source: [http://www.unhcr.ch/html/menu3/b/a\\_opt.htm](http://www.unhcr.ch/html/menu3/b/a_opt.htm).

# Optional Protocol I to the International Covenant on Civil and Political Rights

*It is recommended that you check this information against an up-to-date source.*

**Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966**

**Entry into force 23 March 1976, in accordance with Article 9**

States parties:

Algeria, Angola, Argentina, Armenia, Australia, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Finland, the Former Yugoslav Republic of Macedonia, France, Gambia, Georgia, Germany, Greece, Guinea, Guyana, Honduras, Hungary, Iceland, Ireland, Italy, Jamaica, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mongolia, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, Spain, Sri Lanka, Suriname, Sweden, Tajikistan, Togo, Trinidad and Tobago, Turkmenistan, Uganda, Ukraine, Uruguay, Uzbekistan, Venezuela, Yugoslavia, Zambia.

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

## Article I

A State Party to the Covenant that becomes a Party

to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

## Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

## Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

## Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

## Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
  - (a) The same matter is not being examined under another procedure of international investigation or settlement;
  - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the

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State Party concerned and to the individual.

### Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

### Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

### Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

### Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

### Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

### Article 11

1. A Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate

any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

### Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

### Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under article 8;
- (b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
- (c) Denunciations under article 12.

### Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

# UNHCR Handbook

## Chapter 5 Section B

167. In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The penalties may vary from country to country and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader.

168. A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution.

169. A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.

170. There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military

action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.

171. Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.

172. Refusal to perform military service may also be based on religious convictions. If an applicant is able to show that his religious convictions are genuine, and that such convictions are not taken into account by the authorities of his country in requiring him to perform military service, he may be able to establish a claim to refugee status. Such a claim would, of course, be supported by any additional indications that the applicant or his family may have encountered difficulties due to their religious convictions.

173. The question as to whether objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in the light of more recent developments in this field. An increasing number of States have introduced legislation or administrative regulations whereby persons who can invoke genuine reasons of conscience are exempted from military service, either entirely or subject to their performing alternative (i.e. civilian) service. The introduction

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of such legislation or administrative regulations has also been the subject of recommendations by international agencies. In the light of these developments, it would be open to Contracting States, to grant refugee status to persons who object to performing military service for genuine reasons of conscience.

174. The genuineness of a person's political, religious or moral convictions, or of his reasons of conscience for objecting to performing military serv-

ice, will of course need to be established by a thorough investigations of his personality and background. The fact that he may have manifested his views prior to being called to arms, or that he may already have encountered difficulties with the authorities because of his convictions, are relevant considerations. Whether he has been drafted into compulsory service or joined the army as a volunteer may also be indicative of the genuineness of his convictions.

## General Comment 22 of the Human Rights Committee on ICCPR article 18 (Extract)

11. Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such a right derives from their freedoms under article 18. In response to such claims, 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 it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection but 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 religious or belief. 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. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative service.

# Commission on Human Rights Resolution 1998/77

The Commission on Human Rights Bearing in mind that it is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person, as well as the right to freedom of thought, conscience and religion and the right not to be discriminated against,

Recalling its previous resolutions on the subject, most recently 1995/83 of 8 March 1995, in which it 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 well as article 18 of the International Covenant on Civil and Political Rights and General Comment No. 22(48) of the Human Rights Committee,

Having considered the report of the Secretary-General (E/CN.4/1997/99),

Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives,

Aware that persons performing military service may develop conscientious objections,

Recalling 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,

1. 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 and article 18 of the International Covenant on Civil and Political Rights;

2. Welcomes the fact that some States accept claims of conscientious objection as valid without inquiry;
3. Calls upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;
4. Reminds States with a system of compulsory military service, where such 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 a non-combatant or civilian character, in the public interest and not of a punitive nature;
5. Emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls 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;
6. Reiterates 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;
7. Encourages States, subject to the circumstances of the individual

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case meeting the other requirements of the refugee definition as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service and there is no, or no adequate, provision for conscientious objection to military service;

8. Affirms the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service;
9. Requests the Secretary-General to transmit the present resolution to Governments, the specialized agencies and relevant intergovernmental and non-governmental organizations and to include the

right to conscientious objection to military service in the public information activities of the United Nations, including the United Nations Decade for Human Rights Education;

10. Also requests the Secretary-General to collect information from Governments, the specialized agencies and intergovernmental and non-governmental organizations on recent developments in this field and to submit a report, within existing resources, to the Commission on Human Rights at its fifty-sixth session;
11. Decides to consider this matter further at its fifty-sixth session under the agenda item "The question of conscientious objection to military service".

58th meeting

22 April 1998

[Adopted without a vote]

## List of past and present thematic and country-specific mechanisms of the Commission on Human Rights

### Thematic Mechanisms

- ◆ adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (special rapporteur)
- ◆ arbitrary detention (working group)
- ◆ children in armed conflict (Special Representative of the Secretary-General)
- ◆ contemporary forms of racism, racial discrimination, xenophobia and related intolerance (special rapporteur)
- ◆ effects of foreign debt on the full enjoyment of economic, social and cultural rights (special rapporteur)
- ◆ extrajudicial, summary or arbitrary executions (special rapporteur)
- ◆ enforced or involuntary disappearances (working group)
- ◆ freedom of opinion and expression (special rapporteur)

- ◆ human rights and extreme poverty (independent expert)
- ◆ human rights and forensic science (Mandate entrusted to the Office of the High Commissioner for Human Rights)
- ◆ human rights and HIV/AIDS (mandate entrusted to the Secretary-General)
- ◆ human rights and mass exoduses (mandate entrusted to the Secretary-General)
- ◆ human rights of migrants (special rapporteur)
- ◆ human rights and structural adjustment policies (independent expert)
- ◆ independence of judges and lawyers (special rapporteur)
- ◆ internally displaced persons (representative of the Secretary-General)
- ◆ enforced or involuntary disappearances (mandate entrusted to the

- Secretary-General)
- ◆ religious intolerance (special rapporteur)
- ◆ right to education (special rapporteur)
- ◆ right to development (independent expert)
- ◆ right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms (independent expert)
- ◆ sale of children, child prostitution and child pornography (special rapporteur)
- ◆ torture (special rapporteur)
- ◆ use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (special rapporteur)
- ◆ violence against women, its causes and consequences (special rapporteur)

#### Country-Specific Mechanisms

- ◆ Afghanistan (special rapporteur)
- ◆ Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (special rapporteur)
- ◆ Burundi (special rapporteur)
- ◆ Cambodia (Special Representative of the Secretary-General)
- ◆ Cyprus (mandate entrusted to the Secretary-General)
- ◆ Democratic Republic of the Congo (special rapporteur)
- ◆ East Timor (mandate entrusted to the Secretary-General)
- ◆ Equatorial Guinea (Special Representative of the Commission on Human Rights)
- ◆ Haiti (independent expert appointed by the Secretary-General)
- ◆ Iraq (special rapporteur)
- ◆ Islamic Republic of Iran (Special Representative of the Commission on Human Rights)
- ◆ Kosovo (mandate entrusted to the Secretary-General)
- ◆ Myanmar (special rapporteur)
- ◆ Palestinian territories occupied since 1967 (special rapporteur)
- ◆ Occupied Arab territories, including Palestine (mandate entrusted to the Secretary-General)
- ◆ Occupied Palestine (mandate entrusted to the Secretary-General)
- ◆ Occupied Syrian Golan (mandate entrusted to the Secretary-General)
- ◆ Southern Lebanon and western Bekaa (mandate entrusted to the Secretary-General)
- ◆ Rwanda (Special Representative of the Commission on Human Rights)
- ◆ Somalia (independent expert appointed by the Secretary-General)
- ◆ Sudan (special rapporteur)

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# Contact Addresses

International non-governmental organisations working with or for conscientious objectors

**Quaker United Nations Office**  
Quaker House, 13 Ave du Mervelet, 1209 Geneva, Switzerland (Tel: +41 22 748 48 00; Fax: +41 22 748 48 19; Email: [quno@mbox.unicc.org](mailto:quno@mbox.unicc.org); Web: <http://www.quaker.org/quno>).

**War Resisters International**  
5 Caledonian Road, London N1 9DX, UK (Tel: +44 20 7278 0444; Fax: +44 20 7278 4040; Email: [warresisters@gn.apc.org](mailto:warresisters@gn.apc.org); Web: <http://www.gn.apc.org/warresisters>).

**European Bureau of Conscientious Objection**  
Brussels Liaison Office: av. Jan Stobbaerts 81 A, B-1030 Brussels, Belgium (Tel: +32 2 2157908; Fax: +32 2 2456297; Email: [ebcobrussels@ifias.net](mailto:ebcobrussels@ifias.net)).

**Amnesty International**  
International Secretariat, 1 Easton Street, London WC1X 8DJ, UK (Tel: +44 20 7413 5500; Fax: +44 20 7956 1157; Email: [amnestyis@amnesty.org](mailto:amnestyis@amnesty.org); Web: <http://www.amnesty.org>).

**International Service for Human Rights**  
1 Rue de Varembe, PO Box 16, CH-1211 Geneva CIC, Switzerland (Tel: +41 22 733 5123; Fax: +41 22 733 0826).

**United Nations**  
Office of the High Commissioner for Human Rights, United Nations Office in Geneva, 1211 Geneva 10, Switzerland (Tel: +41 22 917 1234; Fax: +41 22 917 9003; Email: [webadmin@hchr.unog.ch](mailto:webadmin@hchr.unog.ch); Web: <http://www.unhchr.ch>).

**Professional staff who assist thematic mechanisms and treaty bodies**

For the contact details of staff who service thematic mechanisms and treaty bodies, see the relevant sub-sections of section 3.

**Professional staff who assist country-specific rapporteurs**

**Afghanistan**

Ms Darka Topali ([dtopali.hchr@unog.ch](mailto:dtopali.hchr@unog.ch); Tel: +41 22 917 9243; Fax: +41 22 917 9003).

**Burundi**

Ms Brigitte Lacroix ([blacroix.hchr@unog.ch](mailto:blacroix.hchr@unog.ch); Tel: +41 22 917 9133; Fax: +41 22 917 9003).

**Cambodia**

Ms Hannah Wu ([hwu.hchr@unog.ch](mailto:hwu.hchr@unog.ch); Tel: +41 22 917 9295; Fax: +41 22 917 9003).

**Cyprus**

Mr Edward Flynn ([eflynn.hchr@unog.ch](mailto:eflynn.hchr@unog.ch); Tel: +41 22 917 9138; Fax: +41 22 917 9005).

**Democratic Republic of Congo**  
Ms Fatou Houel ([fhoul.hchr@unog.ch](mailto:fhoul.hchr@unog.ch); Tel: +41 22 917 9107; Fax: +41 22 917 9303).

**East Timor**

Mr Mustafa Rajkhan Osama ([orajkhan.hchr@unog.ch](mailto:orajkhan.hchr@unog.ch); Tel: +41 22 917 9156; Fax: +41 22 917 9003).

**Equatorial Guinea**

Ms Benedetta Odorisio (Tel: +41 22 917 9158; Fax: +41 22 917 9003).

**Former Yugoslavia**

Mr Edward Flynn ([eflynn.hchr@unog.ch](mailto:eflynn.hchr@unog.ch); Tel: +41 22 917 9138; Fax: +41 22 917 9005).

**Haiti**

Mr Norberto Frydman ([nfrydman.hchr@unog.ch](mailto:nfrydman.hchr@unog.ch); Tel: +41 22 917 9248 Fax: +41 22 917 9005).

**Kosovo**

Mr Edward Flynn ([eflynn.hchr@unog.ch](mailto:eflynn.hchr@unog.ch); Tel: +41 22 917 9138; Fax: +41 22 917 9005).

**Iran (Islamic Republic of)**

Mr Ayush Bat-Erdene ([abat-erdene.hchr@unog.ch](mailto:abat-erdene.hchr@unog.ch); Tel: +41 22 917 9286; Fax: +41 22 917 9018).

**Iraq**

Mr Karim Gehzraoui Ramel ([kghezraoui.hchr@unog.ch](mailto:kghezraoui.hchr@unog.ch); Tel: +41 22 917 9147; Fax: +41 22 917 9018).

**Myanmar**

Mr Karim Gehzraoui Ramel ([kghezraoui.hchr@unog.ch](mailto:kghezraoui.hchr@unog.ch); Tel: +41 22 917 9147; Fax: +41 22 917 9018).

**Occupied Territories including Palestine**

Ms Darka Topali ([dtopali.hchr@unog.ch](mailto:dtopali.hchr@unog.ch); Tel: +41 22 917 9243; Fax: +41 22 917 9003).

**Rwanda**

Mr Ireneo Namboka ([inamboka.hchr@unog.ch](mailto:inamboka.hchr@unog.ch); Tel: +41 22

**Somalia**

Ms Giorgia Passarelli ([gpassarelli.hchr@unog.ch](mailto:gpassarelli.hchr@unog.ch); Tel: +41 22 917 9101; Fax: +41 22 917 9003).

**Southern Lebanon and West Bekaa**

Ms Darka Topali ([dtopali.hchr@unog.ch](mailto:dtopali.hchr@unog.ch); Tel: +41 22 917 9243; Fax: +41 22 917 9003).

**Sudan**

Mr Salem Mezhoud ([smezhoud.hchr@unog.ch](mailto:smezhoud.hchr@unog.ch); Tel: +41 22 917 9341; Fax: +41 22 917 9003).

**Syrian Golan**

Ms Darka Topali ([dtopali.hchr@unog.ch](mailto:dtopali.hchr@unog.ch); Tel: +41 22 917 9243; Fax: +41 22 917 9003).

# Recommended publications

**AMNESTY INTERNATIONAL** *The United Nations Thematic Mechanisms: An Overview of their Work and Mandates.* AI index: 10R 40/16/99. Available from International Secretariat, 1 Easton Street, London, WC1X 0DW, UK.

**BRETT, Rachel and Jo Constable** *The Human Rights Committee and the Right to Conscientious Objection to Military Service.* Quaker United Nations Office, September 1997. Available in English and German from Quaker United Nations Office, Ave du Mervelet 13, 1209 Geneva, Switzerland; tel: +41 22 748 48 00; fax +41 22 748 48 19; email: [quno@mbox.unicc.org](mailto:quno@mbox.unicc.org); website: <http://www.quaker.org/quno>.

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Before you start

Background information on international law for COs

How to use the UN: rapporteurs, treaty bodies and other mechanisms

Reference materials

Glossary

Text of ICCPR

Text of ICCPR optional protocol

Text of UNHCR handbook

Text of General Comment 22

Text of Commission on Human Rights resolution 1998/77

List of Commission mechanisms

Contact Addresses

Recommended publications