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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## **Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards**

### **Report of the Office of the United Nations High Commissioner for Human Rights\*\***

#### *Summary*

In the present report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) builds upon submissions received from stakeholders and on the analytical report submitted by OHCHR to the Human Rights Council at its thirty-fifth session (A/HRC/35/4). It reaffirms briefly the international legal framework outlined in that report, points to some implementation gaps, then provides information on current trends and developments relevant to conscientious objections since 2017. It subsequently outlines different approaches for obtaining the status of conscientious objector to military service and their associated challenges. OHCHR concludes the report by proposing the minimum criteria that should be respected in application procedures for obtaining the status of conscientious objector to military service.

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\*\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. In its resolution 36/18, the Human Rights Council requested the Office of the United Nations High Commissioner of Human Rights (OHCHR) to prepare, in consultation with all States and the relevant intergovernmental organizations, United Nations agencies, funds and programmes, special procedures, treaty bodies, national human rights institutions and non-governmental organizations, a report on different approaches and challenges with regard to the application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards.
2. In a note verbale and letters dated 12 October 2018, OHCHR invited stakeholders to provide any relevant information pursuant to the request made by the Human Rights Council in its resolution 36/18. Contributions were received from 13 Member States, eight non-governmental organizations and one special procedure mandate holder.<sup>1</sup>
3. The right to conscientious objection to military service is based on article 18 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of thought, conscience and religion or belief. While the Covenant does not explicitly refer to a right to conscientious objection, in 1993, the Human Rights Committee, in its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, stated that such a right could be derived from article 18 inasmuch as the obligation to use lethal force might seriously conflict with freedom of conscience and the right to manifest one's religion or belief.
4. Although the Commission on Human Rights, the Human Rights Council, the special procedures of the Council, the Human Rights Committee and regional human rights courts have recognized the right to conscientious objection to military service, those seeking to exercise that right continue to face challenges. A number of States still do not recognize such a right, and as a result do not have in place provisions for conscientious objection to military service. Failure to recognize this right may lead to further violations for conscientious objectors, including arbitrary detention. In States that recognize the right to conscientious objection, implementation gaps impeding the full exercise of the right remain. These gaps, together with human-rights compliant procedures to overcome them, will be examined below (see paras. 10–59).

## II. Current trends and new developments

5. Since the previous quadrennial analytical report of the Office of the High Commissioner on conscientious objection to military service (A/HRC/35/4), human rights mechanisms, and in particular the Human Rights Committee (CCPR/C/TKM/CO/2, paras. 40–41), the Special Rapporteur on freedom of religion or belief (A/HRC/34/50, para. 41), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,<sup>2</sup> the Working Group on Arbitrary Detention (see A/HRC/WGAD/2018/40 and A/HRC/WGAD/2018/69) and the Human Rights Council in the context of the universal periodic review<sup>3</sup> have continued to address relevant issues, highlighting also the consequences of violations of the right to conscientious objection. In its most recent views on individual communications relating to conscientious objection, the Human Rights Committee reiterated its constant jurisprudence according to which the prosecution and conviction of complainants who had refused to perform compulsory military service owing

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<sup>1</sup> For contributions received for the present report, previous reports of the Office of the High Commissioner on conscientious objection to military service, and the guidance published by OHCHR on conscientious objection (*Conscientious Objection to Military Service*, 2012), see [www.ohchr.org/EN/Issues/RuleOfLaw/Pages/ConscientiousObjection.aspx](http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/ConscientiousObjection.aspx).

<sup>2</sup> See OL KOR 2/2018 and OL KOR 4/2018 (joint communications), available from <https://spcommreports.ohchr.org/>.

<sup>3</sup> See A/HRC/36/8, para. 100.84 and Add.1, para. 64; A/HRC/37/11, paras. 132.94–132.105 and Add.1, para. 32.

to their religious belief and conscientious objection had violated the complainants' rights under article 18, paragraph 1 of the Covenant.<sup>4</sup>

6. In a recent report on youth and human rights, the High Commissioner pointed out that conscientious objection to military service concerned young people more than any other group, and regretted the lack of implementation of jurisprudence and of recommendations made in international and regional human rights instruments, and the fact that some States did not recognize or implement fully the right to conscientious objection to military service in practice (A/HRC/39/33, paras. 53–56). At the regional level, the European Youth Forum adopted in November 2018 a comprehensive resolution on the right to conscientious objection to military service, *inter alia* calling upon its member organizations to promote conscientious objection as a “youth right”.<sup>5</sup>

7. The present report coincides with the enactment, drafting or amendment of legislation on conscientious objection in a number of countries. Several national court decisions recognizing the right to conscientious objection have also been issued recently: for example, the Constitutional Tribunal of the Plurinational State of Bolivia, in the operative part of its decision 0265/2016-S2 dated 23 March 2016, urged the legislative assembly to regulate, through specific norms, everything relating to the right to conscientious objection and provisions regarding alternative service to the mandatory military service.<sup>6</sup> In Colombia, a new recruitment law regarding conscientious objector status was adopted in August 2017. In Greece, on 8 March 2019, the Ministry of National Defence presented a bill that regulates, *inter alia*, issues relating to the right of conscientious objection. The bill, open for consultation, has been commented on by civil society organizations,<sup>7</sup> while welcoming the positive provisions contained in the bill, reiterated their concerns over several remaining problematic issues in contravention of international and European human rights law<sup>8</sup> as identified by both United Nations and regional human rights bodies.<sup>9</sup>

8. On 28 June 2018, in a landmark decision, the Constitutional Court of the Republic of Korea ruled that the failure to offer alternative forms of civilian service to conscientious objectors was unconstitutional, and gave the Government until 31 December 2019 to implement an alternative civilian service for conscientious objectors.<sup>10</sup> The Government announced in September 2018 that it was planning to prepare measures for an alternative service system and a proposal to amend the Military Service Act for submission to the National Assembly.<sup>11</sup> On 1 November 2018, the Supreme Court of the Republic of Korea rendered a landmark decision that decriminalized conscientious objection, holding that moral and religious beliefs were valid reasons to object to military service, and ordered the

<sup>4</sup> See for example CCPR/C/124/D/2268/2013, para. 7.4.

See also A/HRC/23/22, paras. 8–13, A/HRC/35/4, paras. 4–8 and OHCHR, *Conscientious Objection to Military Service* (United Nations publication, Sales No. E.12.XIV.3).

<sup>5</sup> See [www.youthforum.org/sites/default/files/publication-pdfs/0160-18\\_Resolution\\_conscientious\\_objection\\_FINAL\\_0.pdf](http://www.youthforum.org/sites/default/files/publication-pdfs/0160-18_Resolution_conscientious_objection_FINAL_0.pdf).

<sup>6</sup> Submission by the Plurinational State of Bolivia.

<sup>7</sup> For example, see [www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2019-04-16-EBCO\\_Press-Release-Greece.pdf](http://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2019-04-16-EBCO_Press-Release-Greece.pdf).

<sup>8</sup> See [www.amnesty.org/en/documents/eur25/0088/2019/en/](http://www.amnesty.org/en/documents/eur25/0088/2019/en/) and [www.ebco-beoc.org/node/453](http://www.ebco-beoc.org/node/453).

<sup>9</sup> See for example CCPR/C/GRC/CO/2, paras. 37–38, A/HRC/33/7, para. 136.15 and 136.16, and A/HRC/35/4, paras. 18, 51, 53 and 54, Special Rapporteur on freedom of religion or belief, communication GRC 3/2016 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22834>); and European Court of Human Rights, *Papavasiliakis v. Greece*, application No. 66899/14, judgment of 15 September 2016.

<sup>10</sup> See response of the Government of the Republic of Korea on communication KOR 2/2018 sent by jointly by the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief. See also [www.loc.gov/law/foreign-news/article/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/](http://www.loc.gov/law/foreign-news/article/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/).

<sup>11</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34327>.

release of 58 conscientious objectors.<sup>12</sup> A draft bill for alternative service was released in December 2018. Civil society organizations and the National Human Rights Commission of Korea have commented on the draft bill and expressed concern at its lack of conformity with international human rights norms and standards and its punitive and discriminatory elements.<sup>13</sup>

9. With regard to conscientious objection in disputed territories not under the Government's control, the Special Rapporteur on freedom of religion or belief noted the absence of provisions in the northern part of Cyprus concerning conscientious objection, and recommended that the de facto authorities recognize the right to conscientious objection to military service and ensure that conscientious objectors had the option of performing alternative civilian service that was compatible with their reasons for conscientious objection, and did not have punitive effects (A/HRC/22/51/Add.1, paras. 68 and 87). In its submission for the analytical report, an organization observed that a "parliamentary committee" was investigating the possibility of instituting alternative service for conscientious objectors in the northern part of the island (A/HRC/35/4, para. 57).<sup>14</sup> Since then, it has been reported that a draft amendment, which includes conscientious objection to military service and introduces alternative service, was submitted to the parliament on 7 January 2019, and that a parliamentary committee had begun to discuss the draft amendment on 13 February 2019.<sup>15</sup>

### **III. Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards**

#### **A. Recognition of the status of conscientious objector to military service without an examination, inquiry or interview**

10. In its resolution 24/17, the Human Rights Council welcomed the practice of some States accepting claims of conscientious objection as valid without any inquiry process. Such a position had already been supported in 1989 by the European Parliament, which adopted a resolution on conscientious objection and alternative service (A3-15/89), in which it declared that "no court and no committee can examine a person's conscience" and argued that "a declaration setting out the individual's motives should suffice in order to obtain the status of conscientious objector". In 1998, the Commission on Human Rights, in its resolution 1998/77, also supported the same approach by welcoming the fact that some States accept claims of conscientious objection as valid without inquiry. This approach is based on the assumption that nobody knows better than the individual concerned whether military service can be reconciled with his or her religion or beliefs; on the fundamental human rights principle of individual self-determination; and on the fact that no court or committee can penetrate and examine someone's conscience.<sup>16</sup>

11. In certain States, such as Austria, Norway and Switzerland, applications for status of conscientious objection to military service are accepted without examination or interview, regardless of the availability of alternative service.

<sup>12</sup> Communication KOR 4/2018, sent jointly by the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief.

<sup>13</sup> See [www.amnesty.org/download/Documents/EUR2500882019ENGLISH.PDF](http://www.amnesty.org/download/Documents/EUR2500882019ENGLISH.PDF), [www.amnesty.org/download/Documents/ASA2503522019ENGLISH.pdf](http://www.amnesty.org/download/Documents/ASA2503522019ENGLISH.pdf), [www.peoplepower21.org/English/1595404](http://www.peoplepower21.org/English/1595404) and <https://en.yna.co.kr/view/AEN20190322009000315>.

<sup>14</sup> Submission by the International Fellowship of Reconciliation.

<sup>15</sup> See [www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2019-01-09-Press-Release\\_EBCO\\_Cyprus\\_Halil.pdf](http://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2019-01-09-Press-Release_EBCO_Cyprus_Halil.pdf).

<sup>16</sup> Submission by the European Bureau for Conscientious Objection.

12. In Norway, applications for conscientious objection to military service are made by signing a standard form available from the Ministry of Justice.<sup>17</sup> Since Norway suspended alternative service in 2011, conscientious objectors are simply exempted from military service. In Switzerland, although applicants have to request an application form from the Ministry of Economic Affairs, they are no longer required to provide any explanation of the reasons for their conscientious objection (but need to state a conflict of conscience with military service),<sup>18</sup> nor to undergo an interview by a commission (in the past, made up of civilians chosen by the Ministry).

## **B. Human-rights compliant application procedures**

13. Besides the system whereby a State accepts a person's claim of conscientious objection as valid without any process, the other existing system is an inquiry based on documentation and other types of evidence. Application procedures and recognition processes are vital to ensure the realization of the right to conscientious objection in practice. The criteria contained in the present section are primarily derived from international standards and jurisprudence, with reference to regional instruments, as relevant. They spell out the requirements for providing alternative service to the individual conscientious objector and are intended to inform the design of application procedures that are compliant with international human rights law. The criteria are intended primarily to provide technical guidance for members of parliament and government officials who may be involved in the drafting of relevant laws or administrative regulations, but also for State officials responsible for their implementation and, ultimately, for civil society organizations monitoring States' compliance with their human rights obligations with respect to the right to conscientious objection to military service.

### **1. Legislative/regulatory framework in place<sup>19</sup>**

14. Countries with military conscription that recognize the right to conscientious objection should have a legislative or regulatory framework in place on conscientious objection to military service so that this right can be effectively exercised (CCPR/C/PRY/CO/2, para. 18).

15. Azerbaijan, while having enshrined the right to conscientious in article 76 (II) of its Constitution, has not yet introduced legislation to give effect to the right to conscientious objection in practice.<sup>20</sup> In 2018, two Jehovah's Witnesses were convicted for conscientious objection to military service and sentenced to a one-year suspended prison term and a year of probation.<sup>21</sup> The Human Rights Committee had recommended that Azerbaijan adopt such legislation without limitation on the category of beliefs, provide for alternative service of a civilian nature for conscientious objectors, and repeal all sanctions against them (CCPR/C/AZE/CO/4, para. 35).

16. In the process of adopting or amending alternative service legislation, some States report on challenges with regard to national security, maintaining equity with conscript soldiers, or preventing abuse of the alternative service system, as well as a lack of national consensus on the matter. In its submission, the Government of Azerbaijan referred to the existing conflict over the Nagorno-Karabakh region and the political difficulties linked to it as a major barrier to enacting legislation on alternative service. While the State clarified

<sup>17</sup> Submission by the Quaker United Nations Office and War Resisters' International.

<sup>18</sup> See submission from InfoDroit.

<sup>19</sup> For a detailed analysis of the legal framework, see Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, 2016), pp. 258–293.

<sup>20</sup> Submissions by Azerbaijan and War Resisters' International. On its accession to the Council of Europe in 2001, Azerbaijan pledged to adopt a law on alternative service, in compliance with European standards, by January 2003; see [www.coe.int/tt/nn/web/commissioner/-/the-right-to-conscientious-objection-to-military-service-should-be-guaranteed-in-all-parts-of-euro-1?desktop=true](http://www.coe.int/tt/nn/web/commissioner/-/the-right-to-conscientious-objection-to-military-service-should-be-guaranteed-in-all-parts-of-euro-1?desktop=true).

<sup>21</sup> Submission by War Resisters' International.

that there had been no registered cases in recent years of refusal to perform military service due to religious identity or legal cases in connection with evading military service for religious reasons, two Jehovah's Witnesses received criminal convictions for their conscientious objection to military service in 2018.<sup>22</sup>

## 2. Availability of information on the right to conscientious objection and transparency of procedures to exercise it

17. In its resolution 24/17, the Human Rights Council affirmed the importance of the availability of information on the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service. It also welcomed initiatives to make such information widely available, and encouraged States, as applicable, to provide information to conscripts and persons voluntarily in the military service about the right to conscientious objection. The right to have access to information held by public bodies is an integral part of the fundamental right of freedom of expression, guaranteed by both the International Covenant on Civil and Political Rights and article 19 of the Universal Declaration of Human Rights and encompassing the freedom to seek, receive and impart information and ideas through any media, regardless of frontiers. The right to freedom of expression and of access to information requires States not to prohibit the dissemination of information on the right to conscientious objection to military service.<sup>23</sup>

18. The Special Rapporteur on freedom of religion or belief has commented on the importance of transparent procedures for conscientious objectors (A/HRC/19/60/Add.1, para 64 (g)). The Human Rights Committee has also stressed the requirement of transparency in both the process and the criteria for granting conscientious objector status, recommending that States adopt specific regulations on conscientious objection so as to ensure that the right can be effectively exercised, and guarantee that information about its exercise is properly disseminated to the entire population (CCPR/C/PRY/CO/2, para. 18). They should clarify the grounds under which applications for an alternative to military service are accepted or rejected, and take relevant measures to ensure that the right to conscientious objection is upheld (CCPR/C/EST/CO/3, para. 14).

19. At the regional level, the Parliamentary Assembly of the Council of Europe set the principle in its resolution 337 (1967) that persons liable for military service should be informed, when notified of their call-up or prospective call-up, of the rights that they are entitled to exercise.

20. National practice shows the variety of approaches used. In Austria, relevant information is sent out with recruitment papers, and the form may be downloaded from the website of the civilian services agency. In Hungary, when conscription was still in force (until 2015), recruitment papers listed the possibility of civilian service without the requirement of a statement of conscientious objection. In the Russian Federation, in order to exercise the right to perform alternative civilian rather than military service, a citizen who is eligible for alternative civilian service on one of three recognized grounds must appear in person at the municipal training office of the military commissariat where the citizen is registered in order to inform authorities of the relevant reason.<sup>24</sup> While persons serving in any of the three branches of the military in the United Kingdom of Great Britain and Northern Ireland are able to apply for a discharge as a conscientious objector, information about how to apply for conscientious objection is not actually in the public domain.<sup>25</sup> This gives ground to the claim by a non-profit research and campaigning organization that many people are unaware of their right to discharge if they develop a conscientious objection.<sup>26</sup>

<sup>22</sup> Ibid. See also [www.forum18.org/archive.php?article\\_id=2415](http://www.forum18.org/archive.php?article_id=2415).

<sup>23</sup> For example, article 318 of the Penal Code of Turkey criminalizes "alienating the public from military service"; in 2013, this was amended to specifically address statements or conduct that "encourage and inspire people to desert or not to participate in military service".

<sup>24</sup> Submission by the Russian Federation.

<sup>25</sup> Submission by the Quaker.

<sup>26</sup> See [www.parliament.uk/documents/joint-committees/human-rights/Briefing\\_from\\_Forces\\_Watch\\_Conscientious\\_objection.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Briefing_from_Forces_Watch_Conscientious_objection.pdf).

Following a freedom of information request placed by War Resisters' International,<sup>27</sup> however, some information was obtained and published on its website. In Cyprus, although there is provision in law for conscientious objection to military service and substitute social service, information about these arrangements and access to them is problematic. Conscripts have no real access to information, and the deadline for applications for substitute service is very short, effectively raising a barrier to access to this right.<sup>28</sup>

### **3. Accessibly, availability and non-discrimination of the application procedure**

#### **(a) Free application procedure**

21. The process for applying for status as a conscientious objector must be free; there should be no charge for the procedure. Many States that recognize conscientious objection do not charge for the application process or require a financial contribution in lieu of military service. The Human Rights Committee has criticized the potential for discrimination when there is a cost attached to exemption from military service. It expressed concern about the exemption fee that can be paid in lieu of doing military service, and the discrimination that may result therefrom (CCPR/C/MNG/CO/, para. 23).

#### **(b) Availability of the application procedure to all persons affected by military service**

22. Given that the right to change one's religion or belief is fundamental to freedom of religion or belief,<sup>29</sup> serving conscripts, but also professional members of the armed forces and reservists, can develop a conscientious objection. Application processes must therefore be open to all persons affected by military service.

23. At the regional level, in recommendation 1518 (2001), the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers invite Member States that had not yet done so to introduce into their legislation the right for professional members of the armed forces to apply for the granting of conscientious objector status. The Committee of Ministers subsequently recommended in its recommendation CM/Rec(2010)4 that professional members of the armed forces be able to leave the armed forces for reasons of conscience.

24. Only a limited number of States recognize the status of conscientious objectors to professional soldiers.<sup>30</sup> With a general trend towards the professionalization of armed forces, recognition of the status of conscientious objection to professional soldiers is an issue deserving further attention. In Greece, while there are no provisions in national legislation recognizing the right to conscientious objection for professional soldiers (A/HRC/35/4, para. 51), a professional member of the armed force may (according to a submission referring to a meeting in October 2018 between the author of the submission and the Ministry of National Defence) quit but has to pay a considerable amount of money to leave before the end of his or her contract.<sup>31</sup> In 2012, the Supreme Court of Georgia ruled that alternative civilian service must be available to those called up for reservist duty.<sup>32</sup> One submitter reported that the Supreme Court's decision had been implemented, with the possibility of those being called up for reservist duty to opt to perform alternative service.<sup>33</sup>

25. One submitter reported that, in Belarus, the Law on Alternative Service was silent about the situation of persons who, after serving in the army, become conscientious objectors. The submission makes reference to the case of a person who, after having served

<sup>27</sup> See [www.wri-irg.org/en/news/2007/modindex-en.htm](http://www.wri-irg.org/en/news/2007/modindex-en.htm).

<sup>28</sup> Submission by War Resisters' International.

<sup>29</sup> See Universal Declaration of Human Rights, art. 18, International Covenant on Civil and Political Rights, art. 18 and Human Rights Committee general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 5.

<sup>30</sup> Submission by the European Organisation of Military Associations. See also OHCHR, *Conscientious Objection to Military Service*, p. 55.

<sup>31</sup> Submission by Amnesty International.

<sup>32</sup> Submission by the Quaker.

<sup>33</sup> Submission by the Office of the General Counsel of Jehovah's Witnesses.

in the military, became a Jehovah's Witness and was summoned in 2018 for reservist training. His request for an exemption was rejected by the military commissariat, as was his appeal to the senior military authorities.<sup>34</sup>

**(c) Selective conscientious objection**

26. Selective conscientious objection<sup>35</sup> is distinct from an objection to participation in any way, military action or armed forces, and accepts the legitimacy of some military action. A selective conscientious objector will object on grounds of conscience to a particular conflict or weapon use. Very few States currently recognize selective conscientious objection.<sup>36</sup> The General Assembly implicitly recognized one type of selective objection in its resolution 33/165, in which it called upon Member States to grant asylum or safe transit to another State to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces. The Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief have also taken up cases of selective conscientious objectors (E/CN.4/2005/6/Add.1, opinion No. 24/2003; A/HRC/23/51, case No. USA 34/2012).

**(d) Non-discrimination on the basis of the grounds for conscientious objection and between groups**

27. The reasons for an individual's conscientious objection are varied and may not be limited to religious beliefs; conscientious objector status must therefore be available for all regardless of the basis of their conscientiously held objection. For example, it must not be limited to specifically named religions, nor limited to religious objection. The Human Rights Council recognized in its resolution 24/17 that conscientious objection to military service derived from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives.

28. In its general comment No. 22, the Human Rights Committee unequivocally stated that there should be no differentiation among conscientious objectors on the basis of the nature of their particular belief. In an *obiter dictum*, the Committee expressed the opinion that the State party should give equal treatment to all persons holding equally strong objections to military and substitute service, and recommended that the State party review its relevant regulations and practice with a view to removing any discrimination in this respect (CCPR/C/48/D/402/1990, para. 9.4).

29. In Finland, applicants can give religious or ethical reasons for the objection. The Human Rights Committee has expressed concern that the preferential treatment accorded to Jehovah's Witnesses was not being extended to other groups of conscientious objectors (CCPR/C/FIN/CO/6, para. 14). It expressed similar concerns in relation to Greece with regard to reports indicating discrimination based on different grounds of objection to service (CCPR/C/GRC/CO/2, para. 37).

30. In its submission, the Russian Federation indicated that, under the Alternative Civilian Service Act, three categories of citizens were entitled to replace military conscription with alternative civilian service: persons whose convictions were in conflict with the performance of military service; those whose faith was in conflict with military service; and persons belonging to indigenous minorities who lead a traditional way of life and who engage in traditional agriculture or a traditional craft. In Kyrgyzstan, conscientious objection to military service is limited to members of registered religious organizations whose teaching prohibits the use of arms. The Human Rights Committee has called upon Kyrgyzstan to ensure that any legal amendments provide for conscientious objection in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers (CCPR/C/KGZ/CO/2, para. 23). In

<sup>34</sup> Ibid.

<sup>35</sup> See OHCHR, *Conscientious Objection to Military Service*, p. 20.

<sup>36</sup> Ibid, p. 58.

Belarus, the new law on substitute service that came in force in 2016 is only available to religious pacifists.<sup>37</sup>

**(e) No time limit on applications**

31. On the basis of the freedom to change one's religion or belief as set out in international human rights law, there can be no defined period in which someone is allowed to exercise their right to conscientious objection. As the Human Rights Council encouraged States in its resolution 24/17, the right to conscientious objection should be recognized at any time, before, during and after performing military service. Consequently, no time limit should be placed on submitting a request to be recognized as a conscientious objector. Explicit standards have been set and recommendations made against applying strict time limits for applying for conscientious objector status by the Special Rapporteur on freedom of religion or belief (A/HRC/35/4, para. 23) and the Human Rights Committee (CCPR/C/79/Add.61, paras. 15 and 20).

32. At the regional level, the Parliamentary Assembly of the Council of Europe,<sup>38</sup> the Committee of Ministers of the Council of Europe<sup>39</sup> and the European Parliament<sup>40</sup> have all recommended that legislation include the right to be registered as a conscientious objector before, during or after conscription or performance of military service.

33. In 2012, in Germany, the Federal Administrative Court ruled that all citizens must have the possibility to refuse military service at any time, regardless of the type of duty in the army.<sup>41</sup> In Switzerland, article 19 of the law on civilian service allows applicants to file a request for admission to civilian service at any time. In Norway, there are no time limits to apply for conscientious objector status.<sup>42</sup>

34. In contravention of human rights standards, strict limits for applying for conscientious objector status apply in a number of States. In Greece, conscripts may avail themselves of the right to conscientious objection until the date they are due to report for military service; applications submitted after enlistment into the armed forces are not accepted.<sup>43</sup> In the Russian Federation, applications must be filed before the beginning of the upcoming draft; applications may, however, be accepted even after the expiry of the time limit, especially if there are compelling reasons for the delay.<sup>44</sup>

**(f) Determination/decision-making process**

35. Application procedures vary greatly: from a written declaration setting out the grounds for the applicant's request to conscientious objection to the holding of personal interviews or hearings before a court or a commission.<sup>45</sup> In all cases, the examination of applications should include all the guarantees necessary for a fair procedure.<sup>46</sup>

*(i) Independence and impartiality of the decision-making authority*

36. The independence and impartiality of the body examining applications are required by international standards and recommendations at both the international and regional levels. In its resolution 24/17, the Human Rights Council called upon States to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service was genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis

<sup>37</sup> Submission by War Resisters' International.

<sup>38</sup> Recommendation 1518(2001), para. 5.1.

<sup>39</sup> Recommendation CM/Rec (2010)4, para. 40 and recommendation No. R (87) 8, paras. 4 and 8.

<sup>40</sup> Resolution on Respect for Human Rights in the European Community (<http://aei.pitt.edu/5756/1/5756.pdf>), para. 49.

<sup>41</sup> Submission by the Quaker.

<sup>42</sup> Ibid.

<sup>43</sup> Submission by Amnesty International.

<sup>44</sup> Alternative Civilian Service Act, sect. 11.

<sup>45</sup> See for example submission by the Russian Federation.

<sup>46</sup> Committee of Ministers of the Council of Europe, Recommendation No. R (87) 8, para. 5.

of the nature of their particular beliefs. The Human Rights Committee has repeatedly expressed its concerns when the assessment of applications is under the control of the Ministry of Defence, especially when military officers are members of the relevant panel or committee, referring to a lack of independence and impartiality. It has also repeatedly recommended placing the assessment of applications for conscientious objector status entirely under or under the full control of civilian authorities.<sup>47</sup>

37. The Special Rapporteur on freedom of religion or belief (formerly the Special Rapporteur on religious intolerance under the Commission on Human Rights) has referred since 1992 to a set of criteria relevant to conscientious objection, including in relation to the decision-making body: namely, that the decision should be made, when possible, by an impartial tribunal set up for that purpose or a by regular civilian court, with the application of all legal safeguards provided for in international human rights instruments. The decision-making body should be entirely separate from the military authorities, and the conscientious objector should be granted a hearing and be entitled to legal representation and to call relevant witnesses (E/CN.4/1992/52, para. 185).

38. At the regional level, both the Parliamentary Assembly and the Committee of Ministers of the Council of Europe have made recommendations on guaranteeing the separation of the decision-making body from military authorities and on ensuring that the composition of that body guarantees maximum independence and impartiality.<sup>48</sup> The Commissioner for Human Rights of the Council of Europe has explicitly recommended the transfer of administrative responsibilities with regard to the granting of conscientious objector status from the Ministry of Defence to an independent civilian department.<sup>49</sup>

39. In Germany, the decision on conscientious objection applications, including ones submitted by professional soldiers, are determined by the Federal Office of Family Affairs and Civil Society Functions, an entirely civilian authority.<sup>50</sup> In Switzerland, applications are filed with the Ministry of Economic Affairs.

40. The examples described below of legislation and practice for the review of conscientious objection applications fail to meet the standards of an impartial and independent review process set by international law.

41. In Greece, the lack of independence and impartiality of the special committee that examines applications for conscientious objection has been raised as a concern by the Human Rights Committee (CCPR/C/GRC/CO/2, paras. 37–38).<sup>51</sup> A bill that regulates, *inter alia*, issues relating to the right to conscientious objection, was made available for public consultation in March 2019 (see para. 7 above), but remains problematic, given that, despite the new composition of the five-membered special committee with the inclusion of only one military officer (rather than of two), the assessment of applications for conscientious objections status is still not under the full control of civilian authorities.

42. Pursuant to the law regulating various fields of military recruitment, including applications for conscientious objection, adopted in Colombia in 2017, the commission evaluating an applicant's statement and conducting an interview is composed of four officials from the relevant military district authority (a medical doctor, a psychologist, a lawyer and a commander) and one representative of the Public Ministry. With such a

<sup>47</sup> Submission by European Bureau for Conscientious Objection, referring to CCPR/C/GRC/CO/2, paras. 37–38, CCPR/CO/83/GRC, para. 15, CCPR/C/RUS/CO/6, para. 23 and CCPR/C/ISR/CO/3, para. 19.

<sup>48</sup> See Parliament Assembly of the Council of Europe, recommendation 337 (1967), and Committee of Ministers of the Council of Europe, recommendation No. R(87)8.

<sup>49</sup> Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Hellenic Republic (CommDH(2002)5), para. 18.

<sup>50</sup> Submission by the Quaker and by the European Bureau for Conscientious Objection.

<sup>51</sup> Submissions by War Resisters' International and Amnesty International. See also the joint statement made by the European Bureau for Conscientious Objection and War Resisters' International ([www.wri-irg.org/en/story/2017/greece-conscientious-objectors-boycott-conscience-examination-committee](http://www.wri-irg.org/en/story/2017/greece-conscientious-objectors-boycott-conscience-examination-committee)).

composition, the examination commission fails to meet standards of impartiality and independence.<sup>52</sup>

43. In its concluding observations on the fourth periodic report of Israel, the Human Rights Committee expressed its concern at the proceedings before the special committee in charge of recommending to competent authorities whether to grant or reject an individual's application for exemption from compulsory military service for reasons of conscience and at the special committee's lack of independence, given that its membership comprised only one civilian member (CCPR/C/ISR/CO/4, para. 23).

44. In the Russian Federation, conscientious objectors must apply to the draft board for alternative civilian service. The draft board, which by law is separate from the military commission, makes decisions regarding call-ups to military service and evaluates applications for alternative civilian service. The military commission organizes conscription, sends summons to draftees, and keeps a record of draftees. In practice, however, it has been reported that the draft board is dependent on the military commission and cannot take impartial decisions.<sup>53</sup>

(ii) *Good faith determination process*

45. While it is not a requirement that all applications result in the granting of the status of conscientious objection to military service, the criteria applied must be reasonable and any information requested relevant to the issue. Given the breadth of beliefs upon which conscientious objection to military service can be based, it would not be appropriate to have a closed list of factors that could "prove" conscientious objection. Any exploration of a person's beliefs through written application or in-person interview or hearing should be manifestly reasonable.<sup>54</sup>

46. Some States apply formal requirements and conditions resulting in automatic disqualifications. In its submission, Amnesty International pointed out the formal requirements and conditions in Greek laws resulting in the disqualification of certain persons. Such disqualifying conditions included obtaining a permit to carry a weapon or having applied for such permit; participating in individual or collective activities held during shooting events, hunting and similar activities relating to the use of weapons; and conviction for a crime relating to the use of weapons, ammunition or unlawful violence, or a pending criminal proceeding for these facts. Similarly, in Austria, an application may be rejected if the applicant has been convicted for a criminal offence, is employed by the State police or has a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated.<sup>55</sup>

47. When a State has disqualifying conditions in its application procedures, it should at a minimum reconsider them carefully, given their automatic character. Evidence of a criminal offence, in particular if no arms are involved, or having a gun licence for hunting, may not be directly relevant to whether a person is willing to use lethal force against other human beings. In the case of a pending criminal proceeding, the presumption of innocence applies. Disqualifying conditions should take into account the fact that the right to conscientious objection applies also to partial or selective objectors who believe that the use of force is justified in some circumstances but not in others (A/HRC/35/4, para. 15). Some of the disqualifying conditions should be at least treated as rebuttable presumptions, and applicants should be provided with an opportunity to explain their motives.<sup>56</sup> The right to change one's beliefs should also be taken into consideration.

48. On the basis of information provided by civil society working in Israel, one submitter reported a practice of questioning and interpretation of past behaviours that, in its

<sup>52</sup> Submission by War Resisters' International. See also [www.justapaz.org/noticias-justapaz/somos-informacion-justapaz/justapaz-hoy/543-informe-la-objecion-deconciencia-en-el-primer-ano-de-aplicacion-de-la-ley-de-reclutamiento](http://www.justapaz.org/noticias-justapaz/somos-informacion-justapaz/justapaz-hoy/543-informe-la-objecion-deconciencia-en-el-primer-ano-de-aplicacion-de-la-ley-de-reclutamiento).

<sup>53</sup> Submission by the Movement of Conscientious Objection.

<sup>54</sup> See submission by the Quaker.

<sup>55</sup> See [www.wri-irg.org/sites/default/files/public\\_files/Rrtk-update-2016-Austria.pdf](http://www.wri-irg.org/sites/default/files/public_files/Rrtk-update-2016-Austria.pdf).

<sup>56</sup> OHCHR, *Conscientious Objection to Military Service*, p. 54; submission by Amnesty International.

view, demonstrated a process that was not in good faith.<sup>57</sup> For example, lines of questioning included whether an applicant had worked as a waiter in a restaurant serving meat. A positive answer to such a question led to a determination that a pacifist belief could not be strongly held if the person was willing to serve meat. Similar questioning has been reported with regard to wearing leather. Other lines of questioning included whether the applicant would be willing to provide assistance to a wounded soldier, with a positive answer being interpreted as a willingness to support military operations.

(iii) *Timeliness of decision-making and status determination process*

49. The process for the consideration of any claim of conscientious objection should be timely so that applicants are not left waiting for an unreasonable length of time for a decision. In general, the preferred practice is to complete the consideration of any claim of conscientious objection, including appeals, before conscripts are enrolled in the armed forces. For this to be possible, either the time limit for claims is such that the claim may be considered before actual call-up, or a provision has to be made to suspend call-up until the completion of the claim.<sup>58</sup> This should, however, be without prejudice to the right to develop conscientious objection at any time, whether before, during or after military service.

50. In Finland, section 13 of the Non-Military Service Act (2007) requires applications to be processed without delay. A conscript who applies for non-military service will be discharged immediately.<sup>59</sup> In the Russian Federation, applications for permission to perform alternative civilian service are examined within a month of the deadline for its submission. This time limit may be extended by a month if the commission requests additional documents. A judicial appeal may be filed against a refusal of the call-up commission to permit alternative civilian service. In such cases, implementation of the decision is stayed until the court makes a final decision (Alternative Civilian Service Act, sect. 15).

51. A number of States (Norway and Slovenia, for example) explicitly allow for more rapid processing of applications received from those who are already serving in the armed forces. In Norway, all duties involving the bearing of arms are suspended upon application from a serving conscript for recognition as a conscientious objector pending the decision on the application, which must be made within four weeks.<sup>60</sup>

(iv) *Appeal (right of access to justice)*

52. In line with the right of access to justice, applicants must have access to appeal if their application is rejected. After any decision on conscientious objector status, applicants should have the right to appeal to an independent and civilian judicial body (A/HRC/35/4, para. 64).<sup>61</sup>

53. In the Russian Federation, a judicial appeal may be filed against a refusal of the call-up commission to permit alternative civilian service. In such cases, implementation of the decision is stayed until the court has made a final decision (Alternative Civilian Service Act, sect. 15).<sup>62</sup> In Germany, any decision made by the Federal Office of Family Affairs and Civil Society Functions may be challenged in court.<sup>63</sup>

<sup>57</sup> Submission by the Quaker based on information provided by the non-governmental organization New Profile.

<sup>58</sup> OHCHR, *Conscientious Objection to Military Service*, p. 52.

<sup>59</sup> Submission by the Quaker.

<sup>60</sup> OHCHR, *Conscientious Objection to Military Service*, p. 53.

<sup>61</sup> See also CCPR/C/ISR/CO/4, para. 23.

<sup>62</sup> Submission of the Russian Federation.

<sup>63</sup> Submission of the Quaker.

#### 4. Alternative service

54. In its resolution 1998/77, the Commission on Human Rights set out criteria for alternative service: there should be various forms of alternative service,<sup>64</sup> which must be compatible with the reasons for the conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature.

##### (a) Compatibility of the alternative service with the reasons for conscientious objection

55. If a person objects to bearing arms but is not opposed to unarmed military service, a non-combatant service in the military could be regarded as compatible with the reasons for the conscientious objection. In such cases, clerical or medical assignments within the military would be proposed. For those who object to any participation in the armed forces, however, alternative service should be of a civilian character; the tasks to be performed in the alternative service should be compatible with the grounds on which the conscientious objection is based (CCPR/CO/79/RUS, para. 17). For example, in Switzerland, positions serving public interests may often be found in health, social work, educational and emergency services, as well as in agricultural and environmental, cultural and international cooperation programmes. The short training programmes provided are mandatory or available to persons performing civilian service.<sup>65</sup>

##### (b) Non-punitive conditions and duration alternative service

56. Conscientious objectors performing alternative service should not have fewer social and financial rights than persons performing military service. Legislative provisions or regulations taking into account periods of military service for employment, career or pension purposes should apply for alternative service.<sup>66</sup> The Human Rights Committee has found that the requirement to perform alternative service outside places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organizations, and restrictions on freedom of movement for the persons concerned were punitive in nature (CCPR/C/RUS/CO/6, para. 23).

57. Any duration of alternative service longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria (A/HRC/35/4, para. 64). The Human Rights Committee has consistently encouraged States to ensure that the length of service alternative to military service required for conscientious objectors was not punitive in nature (see for example CCPR/C/AUT/CO/5, CCPR/C/BOL/CO/3, CCPR/C/FIN/CO/6, CCPR/C/GRC/CO/2 and CCPR/C/UKR/CO/7). Alternative civilian service that is longer than the duration of military service infringes articles 18 and 26 of the Covenant if not based on reasonable and objective grounds, such as the nature of the specific service concerned or the need for special training in order to accomplish that service.<sup>67</sup>

58. In some States, alternative service is significantly longer than military service; in Switzerland, for example, civilian service is one and a half times longer than military service; the fact that a person accepts to serve longer is considered “proof” of the person’s motivation.<sup>68</sup> After the abolition of the examination of conscience, however, the Government of Switzerland has considered, in order to contain the number of admissions to alternative service, introducing in its Alternative Service Law a number of measures aimed at reducing the attractiveness of alternative service.<sup>69</sup> In the Russian Federation, the duration of alternative civilian service is generally 1.5 to 1.75 times longer than the length of military conscription established by the Federal Military Duty and Military Service Act.

<sup>64</sup> The draft bill on alternative services in the Republic of Korea only provides for work inside correctional facilities.

<sup>65</sup> Submission by Infodroit.ch legal clinic.

<sup>66</sup> OHCHR, *Conscientious Objection to Military Service*, p. 43.

<sup>67</sup> CCPR/C/67/D/666/1995, para. 10.3.

<sup>68</sup> Submission by InfoDroit.

<sup>69</sup> *Ibid.* See also [www.zivi.admin.ch/zivi/fr/home/dokumentation/medienecke/nsb-news\\_list.msg-id-74060.html](http://www.zivi.admin.ch/zivi/fr/home/dokumentation/medienecke/nsb-news_list.msg-id-74060.html) and [www.civiva.ch/fileadmin/user\\_upload/CIVIVA\\_Positionspapier\\_Mai\\_2017\\_FR.pdf](http://www.civiva.ch/fileadmin/user_upload/CIVIVA_Positionspapier_Mai_2017_FR.pdf).

In Kyrgyzstan, the length of alternative service (three years) is twice the duration of military service.<sup>70</sup> The Human Rights Committee expressed concern at the difference in Belarus in the length of alternative service compared with military service between those with and those without higher education, with alternative service for the latter category being twice as long as military service. It also expressed its concern at the discriminatory and punitive aspects of this difference (CCPR/C/BLR/CO/5, para. 47). In the Republic of Korea, the draft bill on alternative service sets the length of alternative service at twice that of military service.

#### **5. Freedom of expression for conscientious objectors and those supporting them**

59. In its resolution 24/17, the Human Rights Council urged States to respect freedom of expression of those who support conscientious objectors or who support the right of conscientious objection to military service. The Human Rights Committee has expressed concerns about the possibility that objectors' personal information may be disclosed online (CCPR/C/KOR/CO/4, para. 44). Social barriers and stigma against those seeking to exercise the right to conscientious objection can impede its implementation.<sup>71</sup> One submitter referred to attempts to exert psychological pressure on draftees by the use of derogatory language and discriminatory and homophobic statements, or even threats of criminal prosecution, with are other factors impeding access to this right. Allegations that draftees were being dissuaded from pursuing the examination of their requests and that their right to present their argument were not respected were also mentioned.<sup>72</sup>

### **IV. Conclusions and recommendations**

60. **There are different approaches and human rights challenges with regard to application procedures for obtaining the status of conscientious objector to military service. To be in line with international human rights norms and standards, such application procedures should comply, as a minimum, with the criteria given below.**

**(a) Availability of information**

**All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status.**

**(b) Cost-free access to application procedures**

**The process for applying for status as a conscientious objector should be free, and there should be no charge for any part of the whole procedure.**

**(c) Availability of the application procedure to all persons affected by military service**

**The right to conscientious objection should be recognized for conscripts, for professional members of the armed forces and for reservists.**

**(d) Recognition of selective conscientious objection**

**The right to object also applies to selective objectors who believe that the use of force is justified in some circumstances but not in others.**

**(e) Non-discrimination on the basis of the grounds for conscientious objection and between groups**

**Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; there should be no discrimination between groups of conscientious objectors.**

<sup>70</sup> Submission by War Resisters' International.

<sup>71</sup> Emily Graham, "Conscientious objectors to military service: punishment and discriminatory treatment", Quaker United Nations Office, May 2014.

<sup>72</sup> Submission by the Movement of conscientious objectors.

(f) **No time limit on applications**

No time limit should be applicable for the submission of a request to be recognized as a conscientious objector. Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service.

(g) **Independence and impartiality of the decision-making process**

Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities.

(h) **Good faith determination process**

Application procedures should be based on reasonable and relevant criteria, and should avoid the imposition of any conditions that would result in the automatic disqualification of applicants.

(i) **Timeliness of decision-making and status pending determination**

The process for consideration of any claim of conscientious objection should be timely so that applicants are not left waiting for an unreasonable length of time for a decision. As matter of good practice, all duties involving the bearing of arms should be suspended pending the decision.

(j) **Right to appeal**

After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body.

(k) **Compatibility of alternative service with the reasons for conscientious objection**

Alternative service, whether of a non-combatant or civilian character, should be compatible with the reasons for conscientious objection.

(l) **Non-punitive conditions and duration of alternative service**

The conditions for alternative service should be neither punitive nor have a deterrent effect. Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria. Equalizing the duration of alternative service with military service should be considered a good practice.

(m) **Freedom of expression for conscientious objectors and those supporting them**

The personal information of conscientious objectors should not be disclosed publicly by the State, and their criminal records should be expunged. States should neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political or social rights nor stigmatize them as “traitors”. Those who support conscientious objectors or who support the right of conscientious objection to military service should fully enjoy their freedom of expression.