

CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 136th Session of the Human Rights Committee for the attention of the Country Report Task Force on:

VENEZUELA

(Military service, conscientious objection and related issues)

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Basic Information

POPULATION (November 2021, estimated ¹)	29,069,000
Males annually reaching recruitment age (approx) ² :	238,366
MILITARY RECRUITMENT: Registration obligatory for both males and females; length of service 18 months, but only a small proportion actually serve (see text)	
MINIMUM AGE³: 18,	
CONSCIENTIOUS OBJECTION: No provision	
ARMED FORCES: Active strength, November 2021 ⁴ :	123,000
compared to the male population reaching recruitment age	51.6%
MILITARY EXPENDITURE: US \$ equivalent, estimated 2018 ⁵	\$764m
Per capita	\$26
As % of GDP	0.2%

1 Source: The Military Balance 2022 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

2 Ibid: - calculated from the quoted proportion of the 2020 population which were males between the ages of 15 and 19.

3 Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers. London, September 2012.

4 The Military Balance 2022, op cit.

5 Stockholm International Peace Research Institute – SIPRI, April 2022. 2018 is the latest year for which meaningful figures are available.

The Issue in the Human Rights Committee

In its concluding observations on the Third Periodic Report of Venezuela under the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee “notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.” and recommends **“The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.”**⁶

For reasons which are not made clear, Venezuela chose in the Fourth Periodic Report to address this observation, with its specific reference to article 18, in the section dealing with article 27 (minorities).

It pointed out that “... article 61 of the Constitution of the Bolivarian Republic of Venezuela states that everyone has the right to freedom of conscience and to express it, unless such practice affects their personality or constitutes a criminal offence. It likewise stipulates that conscientious objection may not be invoked to avoid compliance with the law or prevent others from complying with the law or from exercising their rights.”⁷

The State Report continues:

“The Supreme Court determined the scope of this article in a significant decision stating that freedom of conscience comprises several aspects, namely: freedom to believe or not to believe and/or to hold one’s own convictions; freedom to express such beliefs and convictions; and the guarantee that one will not be compelled to act against one’s own convictions, this being the basis for conscientious objection

“Expanding on this idea, the Supreme Court takes the view that conscientious objection refers to non-compliance with a legal duty for reasons of conscience that prevent a person from acting in a manner prescribed by law, the best example of which being an objection to perform military service. Nevertheless, conscientious objection cannot be considered in general terms, since that would connote open disobedience to any legal requirement, which would be tantamount to condoning an utter disregard for the rule of law.

“In accordance with the determination of the Supreme Court, freedom of conscience cannot be validly expressed: if the expression of conscience affects the personality of the right holder; if the expression of conscience constitutes a criminal offence; if conscientious objection is invoked to avoid compliance with the law, prevent others from complying with the law or prevent others from exercising their rights: an example of this would be the invoking of conscientious objection to impair a fundamental right such as the right to life.

“The aforementioned decision also addresses the issue of religious freedom, noting that there is a long tradition of such freedom in Venezuela, where it is a fundamental right that ensures everyone of the real possibility of practising their religion freely, both individually and in association with other persons, without being subjected to discrimination or different legal treatment because of their beliefs, as stipulated in article 59 of the Constitution of the Bolivarian Republic of Venezuela.”⁸

The List of Issues on the Fourth Periodic Report followed up on this by inviting Venezuela “in the light of the Committee's previous observations and the information contained in the State party report” to “describe the measures taken, in law and practice, to permit conscientious objection to military service and provide civilian service as an alternative.”⁹

6 UN Document CCPR/CO/71/VEN of 26 April 2001, para.26

7 CCPR/C/VEN/4, 29th April 2013, para 154.

8 Ibid, paras 155 – 158, quoting “Case law of the Supreme Court, Constitutional Chamber, Decision No. 1431 of 14 August 2008, Justice Carmen Zuleta de Merchán.”

9 CCPR/C/VEN/Q/4, 20th November 2014, para 19.

Venezuela's response was first to quote Article 134 of the (1888) Constitution, which states that "All persons, in conformity with the law, have the duty to provide the civilian or military service necessary for the defence, preservation and development of the country, or in the face of national disasters. No-one may be subjected to forced recruitment...".¹⁰ It refers to amendments made in 2009 to the Armed Forces and Conscription Laws,¹¹

It continued:

"The procedure for military enlistment, as set out in the aforesaid Law, is as follows: Venezuelans of either sex and eligible age who wish to comply with the constitutional duty to perform military service report voluntarily to their local Military Recruitment Office. There they will undergo a psychological examination to identify whether they have been coerced, in which case they will be granted the right and access to the procedures to withdraw their enlistment"¹²

"(...).no security service or State official is authorised to coerce Venezuelans, whether or not of military age, into fulfilling the obligation to comply with military recruitment and enlistment requirements."¹³

, Public awareness campaigns make known the date and place at which those wishing to enlist for military service should report and the rewards and responsibilities involved in doing so.¹⁴

"Subsequently, those enlisted undergo medical, dental, social and psychological tests in order to determine whether or not they are fit to perform military service, and in what capacity".¹⁵

From these responses, it would seem that Venezuela, like some other States in the region (Chile, Peru) had in practice accepted the reality that the actual manpower demands of its armed forces can be filled by those who put themselves forward voluntarily. This made unlikely any actual cases of conscientious objection, so it is not surprising that the Committee did not follow up on the issue. (As long ago as 1998 it was reported that only some 20% of those registered for military service were actually recruited.)¹⁶ Military service does not seem to be mentioned at all in the Fifth Periodic Report.

10 Informal rough translation. The full Article in Spanish reads "Toda persona, de conformidad con la ley, tiene el deber de prestar los servicios civil o militar necesarios para la defensa, preservación y desarrollo del país, o para hacer frente a situaciones de calamidad pública. Nadie puede ser sometido a reclutamiento forzoso. Toda persona tiene el deber de prestar servicios en las funciones electorales que se les asignen de conformidad con la ley".

11 Published in the Official Gazette Nº 39359 (21st October 2009)

12 CCPR/C/VEN/Q4/Add.1, 5th March, 2015, para 240 – informal rough translation. The full Spanish text reads: "El procedimiento para el alistamiento militar, contenido en la referida Ley y su Reglamento, es el siguiente: Las venezolanas y los venezolanos en edad militar que deseen cumplir con el deber constitucional de prestar el servicio militar se dirigen de forma voluntaria a la Circunscripción Militar de Alistamiento de su jurisdicción. Una vez en la Circunscripción Militar de Alistamiento, se le practica un examen psicológico, mediante el cual se puede determinar si fue coaccionado o no; si resultase positivo, se le otorga la facultad de retirarse, pudiéndose dirigir al Ministerio Público para que tomen las acciones correspondiente."

13 *Ibid.*, para 241 – informal rough translation. The full Spanish text reads: "En la República Bolivariana de Venezuela, ningún organismo de seguridad o ente oficial del Estado está autorizado para coaccionar a las venezolanas y a los venezolanos en edad militar o no, a los fines de obligarlos a concurrir a las circunscripciones militares de alistamiento."

14 *Ibid.*, para 242 – rough summary. The full Spanish text reads: "A través de las campañas anteriormente mencionadas, se hace del conocimiento público la fecha y el lugar donde deben acudir las venezolanas y los venezolanos en edad militar que deseen alistarse en el servicio militar de la Fuerza Armada Nacional; asimismo, se les informa los beneficios y responsabilidades que ello implica."

15 *Ibid.*, para 243 – rough summary. The full Spanish text reads: "Posteriormente, los alistados son sometidos a exámenes médicos, odontológicos, sociales y psicológicos de selección; a los fines de determinar, si son aptos o no, para prestar el servicio militar. Al ser seleccionados son asignados al componente del cual dependerán hasta obtener el licenciamiento."

16 Horeman, B. & Stolwijk, M., *Refusing to Bear Arms*, War Resisters International, London, 1998 (http://wri-irg.org/programmes/world_survey/country_report/en/Venezuela)

The Current Situation

Venezuela nominally retains a system of obligatory military service. Under the 2009 Law on Conscription and Military Enlistment (*Ley de Conscripcion y Alistamiento Militar*), which received parliamentary approval on 6th October 2009 and replaces the Law of 1978,¹⁷ the obligation to register for military service within 60 days of the eighteenth birthday was extended to women as well as men, and the upper age limit of military liability was increased from 50 to 60. A further Law (No. 39,553) of 16th November 2010 “renormalised” military registration. This was repealed by Law No. 40,440 of 25th June 2014, which halved the upper age limit to 30, but stipulated that it applied to all Venezuelans by birth or naturalisation, whether or not resident. All those registered can be called upon to form part of the annual “replacement quota”.

Article 5 prohibits “forced recruitment”, and sets out sanctions against those who either order or carry out such recruitment. Previously, military recruitment, as in neighbouring Colombia, had largely taken the form of “batidas”, where young men were seized on the streets.

This does not however make military service voluntary; persons who fail to respond to call-up as part of the replacement quota will be prosecuted for evasion, as will those who fail to register within the stipulated time. The provisions are, unusually in our experience, also made applicable to public and private entities and “legal persons”, who likewise are subject to prosecution for evasion in the event of any non-cooperation with the authorities responsible for recruitment. Not required to register are persons with certificates from the Venezuelan Social Security Institute¹⁸ of permanent or temporary disability, of marriage or “domestic partnership”, or who can provide evidence that they are the sole breadwinner in a household, or those “remanded into custody with a conviction”. (Article 71 gives a discretion to “the evaluating public official” to release those who are discovered on call-up to fulfil one of these conditions; Article 89 further provides for subsequent withdrawal for medical or social reasons.)

There are no provisions for conscientious objectors, but in another feature apparently unique to Venezuela, university students can apply under Article 83, not as elsewhere for a shorter period of military service, but instead to perform a civilian alternative service.

The military enlistment process is carried out 3 times a year (January, May, September) and will be evenly distributed among the regular components of the Armed Forces: army, navy, national guard, air force, and militia. The duration of military service had been set by the 1978 Law (Art.15) at 18 months, during which employers are obliged to hold open the conscript’s previous post.¹⁹

Individual sanctions under the Law are all in the nature of fines expressed in “tax units” (TU) (We refrain from attempting to quote a contemporary hard currency equivalent; in 2008 it was reported that fines in the region of US\$350 were being contemplated):

for non-registration (Article 100) between 5 and 15 TU

for failure to update information (Article 102) between 5 and 10 TU

for failure to respond to call-up (Article 105) between 50 and 100 TU.

In addition, there is a complicated range of sanctions which can be imposed on corporate entities or other legal persons for failure to cooperating in enforcing the military registration system; such

17 War Resisters International, “Venezuela: New military service law introduced military duties for women, CO Update No.52, (November/December 2009), (<http://wri-irg.org/node/9189>).

18 Such certification is reportedly more narrowly available than, for instance, that which enables individuals to be counted towards an employer’s quote of 5% disabled – thus someone may count as disabled for employment but not for military purposes.

19 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004 (London, 2004)

finances may amount to between 300 and 500 TU, plus the opening of an administrative procedure. The 2009 Law imposed a requirement apparently new to Venezuela, although well-known elsewhere in the region, to make employment or contracting in the public or the private sector (Art. 44), obtaining a driver's licence (Art. 45) and receiving an academic degree (Art. 47) all conditional on the presentation of the certificate of registration of the natural person or proof that he/she had already performed military service.

A number of organisations and individuals, notably the human rights organisation *Provea*, campaigned against the 2009 Law, on the grounds (among others) that this omission was unconstitutional.²⁰ “The constitution of 1999 recognises the right to conscientious objection in an ambiguous way.”²¹ Although there have been no reports of the enlistment or imprisonment of conscientious objectors to military service, would-be conscientious objectors are not unknown; no fewer than 34 declared themselves in 1997.²²

Military Training in Schools and Military Service

Venezuela ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 23rd September 2003, but its Initial Report under that Optional Protocol was not considered by the Committee on the Rights of the Child until September 2014. The four paragraph declaration which Venezuela made on ratification ends “No Venezuelan under the age of 18 has military obligations or the duty to register for military service,” and no doubt has been raised about the accuracy of this statement. The Committee on the Rights of the Child did however raise some concerns about repeated reports of the recruitment of children in border areas by illegal armed groups operating in neighbouring Colombia, and about the militarisation of the education system.

In 1981 “pre-military training” was added as an optional subject in the curriculum for the last two years of secondary school, typically for pupils aged between 15 and 17. In 1999, this became compulsory.

The secondary education system also includes both state and private military schools, “under the authority of the Ministry of Defence”, which admit students from the age of 14. Under Article 63 of the 1978 Law on Military Recruitment, students at such schools who attend military instruction courses approved by the Ministry of Defence are thereby deemed to have fulfilled the obligatory military service requirement.²³ As far as is known, the 2009 Act retains this provision, which raises particular questions about the nature of such courses and whether their existence is in conformity with Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

In the Second Periodic Report under the Convention on the Rights of the Child itself, Venezuela makes reference to an article of the Protection of Children and Adolescents (Organisation) Act, which bans the provision of weapons, ammunition and explosives to children and adolescents.²⁴ The question arises of whether the training provided at military schools enjoys special exemption

20 War Resisters International, “Venezuela: Government backs down regarding compulsory registration for military service” CO Update No.61, (November/December 2010) (<http://wri-irg.org/node/11640>)

21 Uzcategui, R. “The militarisation of everyday life in Venezuela”, in Sowing seeds: the militarisation of youth and how to counter it, (War Resisters' International, London), June 2013, pp29-34 at p34.

22 Horeman & Stolwijk, op cit

23 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, , op cit

24 CRC/C/VEN2, 5th April 2007, para 291.

from these provisions.

In its Concluding Observations on Venezuela's Initial Report under the Optional Protocol the Committee on the Rights of the Child stated:

"The Committee is concerned about:

(a) Reports that mandatory pre-military instruction is part of the curricula in regular schools and vocational education;

(b) The Ministry of Defence resolution of 2011 enacting a comprehensive military education plan, which includes the subject "Comprehensive Defence Education" as a part of the compulsory curricula in regular schools. The Committee is deeply concerned that the resolution appoints the civilian armed forces ("Bolivarian militias") as the entity responsible for implementing this subject in schools.

"The Committee urges the State party:

- (a) To explicitly prohibit pre-military instruction in regular schools and vocational education;
- (b) To amend the Ministry of Defence resolution of 2011 enacting the comprehensive military education plan with the aim of ensuring that training relating to military issues is removed from the curricula of regular schools and that all subjects in the curricula are delivered by qualified civilian teachers.²⁵

The Committee on the Rights of the Child did not address the question of civil defence service in the National Bolivarian Militia, which are being enthusiastically expanded as the fifth component of national defence, and is expected eventually to include several million citizens. Little is known about recruitment into this militia, but there have been some reports of coerced recruitment. It is not known what, if any, safeguards exist against juvenile recruitment into this militia, nor whether, if recruited, children receive weapons training.²⁶

25 CRC/C/OPAC/VEN/CO/1, 3rd November 2014, paras 22,23.

26 See Child Soldiers Coalition, Louder than Words, op cit, p35.

Suggestions for the List of Issues

What steps has the State Party taken in response to the earlier Concluding Observation (CCPR/CO/71/VEN, para.26) to institute a non-punitive and non-discriminatory civilian alternative service for conscientious objectors to military service?

What action has the State party taken to prohibit all pre-military instruction in the educational system, in line with the Concluding Observations of the Committee on the Rights of the Child on its Initial Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/VEN/CO/1, para 23.)?

It was reported in the past that students at military schools who attend military instruction courses approved by the Ministry of Defence, even before the age of eighteen, were thereby deemed to have fulfilled the obligatory military service requirement. Is this still the case, and if so how does the State party reconcile this with Article 2 of Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict?

What safeguards exist to prevent the recruitment of children into the National Bolivarian

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