

CONSCIENCE & PEACE TAX INTERNATIONAL (CPTI)

Submission to the 138th Session of the Human Rights Committee

COLOMBIA

(Military service, conscientious objection and related issues)

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Basic Information

POPULATION (November 2022, estimated ¹)	40,059,000
Males annually reaching recruitment age (approx) ² :	320,472
MILITARY SERVICE: Conscription of male citizens has applied at least since the Obligatory Military Service Act of 1945 (the earlier history has not been traced). Act 1861 of 4th August 2017 replaced Act 48/1993 as the applicable legislation. Duration: 18 months (12 months, without a vocational training component, for graduates) Minimum recruitment age: 18 (but students may enrol in military schools from 16) ³ Conscientious objection: Recognised by Constitutional Court decision C728 of 2009 ; legal provisions introduced in Act 1861/2017 but implementation imperfect (see text)	
ARMED FORCES: Active strength, November 2022 ⁴ : compared to the male population reaching recruitment age	255,950 79.9%
MILITARY EXPENDITURE: US \$ equivalent, estimated 20225 Per capita As % of GDP	\$9,938m \$193 3.1%

¹ Source: The Military Balance 2023 (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 2022 population which were males between the ages of 15 and 19.

³ 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, p146,

⁴ The Military Balance 2023, op cit.

⁵ Stockholm International Peace Research Institute – SIPRI, April 2023.

Summary

The situation regarding conscientious objection to military service in Colombia has improved considerably with the passing of the revised military service law, no. 1861 of 4th August 2017.

Nevertheless, major concerns remain as to whether the implementation of the Law is in accordance with international standards, also with regard to the persistence of irregular recruitment practices, amounting in some cases to arbitrary detention, and discrimination in the access to, and the civic disadvantages of non-possession of the *libreta militar*, the certificate of military service.

In its Eighth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR), Colombia does not appear to address either the issue of conscientious objection to military service, raised in the the Human Rights Committee's Concluding Observations on its Sixth Periodic Report or that of forced recruitment, raised in the Concluding Observations on the Seventh Periodic Report.

In the subsequent List of Issues, the Human Rights Committee asks:

"In the light of the Committee's previous concluding observations (para. 35) concerning arbitrary detention for the purpose of military recruitment, please provide information on the steps taken to prevent persons from being arbitrarily detained for this purpose, including statistical information on such cases (number of investigations opened, trials and penalties). Please also provide information on the steps taken to: (a) ensure respect for the right to conscientious objection to military service enshrined in Act No. 1861 of 2017, set up a flexible procedure for the determination of military status and provide guarantees of non-discrimination; (b) ensure the impartiality and independence of the Interdisciplinary Commission on Conscientious Objection in its consideration of applications by conscientious objectors; and (c) establish a civilian alternative to compulsory military service outside the military sphere."⁶

In reply, the State Party first refers to an annexed table giving details of demobilisations of minors associated with armed criminal groups,⁷ which although of interest in themselves do not address the question posed, and then continues (Google translation, the original being available in Spanish only):

"Likewise, the Directorate of Incorporation¹ of the National Police indicated that, in compliance with Law 1861 of 2017, ARTICLE 15. "Provision of compulsory military service. Compulsory military service will be provided as "Literal D) "Police Assistant in the National Police", the Directorate of Incorporation, makes the disclosure of the call for Police Assistant at the national level, this in order to capture the attention of the young people who must define their military situation, who voluntarily approach the Incorporation Groups, where they formalize their registration in the call by filling out the "VOLUNTARY MILITARY SERVICE FORM". However, citizens can advance the process of recognition of their conscientious objection, through the Interdisciplinary Commission created for that purpose."⁸

It is perhaps clearer in the original Spanish that it is the enrolment that is voluntary. The service itself of course remains obligatory. And it is known that the Interdisciplinary Commission is the body to which claims for exemption on the basis of conscientious objection should be addressed ; nothing is said in the reply about measures to ensure its independence and impartiality.

⁶ CCPR/C/COL/Q/8, 10th October 2022, para 22

⁷ CCPR/C/COL/RQ/8, 3rd April, 2023

⁸ Ibid, para 80

What is not clear is why the answer focusses only upon the possibility of fulfilling the obligatory military service requirement within the police. If the implication is that service in the police is a suitable alternative for conscientious objectors it must be observed that such service, presumably armed, is unlikely in most cases to be compatible with the reasons for objection.

Historical Background

Independence from Spain following Bolivar's victory at the Battle of Boyaca in 1819 led to the formation of Gran Colombia, incorporating also the modern territories of Venezuela, Ecuador and Panama. This unwieldy union broke up in 1830, but Panama remained part of Colombia until 1903, when it gained independence with assistance from the USA, which had long envisaged the creation of a canal across the isthmus.

Colombia's independent history has been marked by a series of civil wars first between liberals and conservatives, culminating in "La Violencia" of 1946 – 56, which claimed over 200,000 lives, and subsequently, with probably at least an equivalent death toll, against Marxist guerrilla groups, the first of which, the *Ejercito de Liberacion Nacional* (ELN) emerged in 1964. At the end of the 20th Century, the largest of these groups, the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) was in effective control of an area in and around the southern department of Cauca often described at the time as "about the size of Switzerland". The situation was further complicated by the creation by landowning interests of "self defence movements" or "paramilitaries" which eventually banded together into the AUC [*Autodefensores Unidas Colombianas*]. Independently of, but often in close collaboration with, the armed forces, these fought against the revolutionary guerrilla movements, but they were also responsible for much repression of the civilian population, notably the "peace communities" which sought to distance themselves from both sides in the conflict and to exclude all arms from their territories. Both the paramilitaries and the guerrilla also became heavily involved in purely criminal violence connected to the illicit coca trade. Among the numerous human rights violations perpetrated by all parties to the armed conflict, particularly notorious were the *falsos positivos* – generally homeless young men kidnapped in the cities by the armed forces, taken to remote locations, typically dressed in guerrilla-style combat fatigues and then killed and passed off as guerrillas killed in battle; in 2021 an enquiry set up under the peace deal with the FARC concluded that more than 6,400 such killings had taken place at the peak of the practice between 2002 and 2008 – at the time of writing detailed evidence is being taken by the Special Jurisdiction for Peace set up to try offences committed during the conflict.

In December 2003, the government reached a peace deal with the AUC, which subsequently formally disbanded, although various armed groups carrying forward its traditions have reappeared from time to time, and in August 2017 after several false dawns, a final end to the conflict against the FARC, whose civilian wing was henceforth to be represented in the national assembly, was announced. Negotiations towards a peace deal with the ELN continue.

Since the peace agreement with the FARC, recruitment into the Colombian armed forces has not diminished – indeed according to information provided by General Arturo Sanchez in national media, "every year, the army incorporates four minimum groups, for a total of 64,000 soldiers. In 2021, the number of recruits will rise by around 50% (...) A total of about 81,000 men will enter the army in 2021 to carry out their compulsory military service. This measure is taken in order to compensate for the staff of soldiers (...) that was not incorporated in 2020 due to the Covid-19

pandemic.”⁹ Local sources report that this was associated with an alarming resurgence of forced recruitment.

Military expenditure, which dipped at the time of the agreement, has also picked up again; in 2020 and 2021 it was in both nominal and real terms the highest it had ever been, and at a per capita level of 3.4% which was exceeded in only occasional years during the armed struggle – and is 40% higher than that of any other country in Central or South America.

Nor has the level of violence in the country significantly diminished: according to COALICO (the Colombian Coalition against the involvement of children in armed conflict, between January and June 2020, 226 armed conflict events were recorded, of which 126 directly affected children and adolescents. Reports from for example the Peace community of San Jose de Apartado indicate that in places the successors of the AUC paramilitaries have moved into territory vacated by the guerrillas. Also, an atmosphere of impunity for powerful economic interests persists – assassinations of trade unionists and grassroots environmental and human rights campaigners are among the most numerous in the world. In 2021, 145 such murders were reported; in the first three months of 2022 there were a further 52.¹⁰

Obligatory Military Service in Colombia

Recruitment into the Colombian armed forces is now governed by the provisions of Law 1861/2017 replacing Law 48/1993. The normal duration of military service is eighteen months, with the possibility of a three-month extension, but for graduates it is reduced to twelve months, without a vocational training component.(Article 13) The service may be performed in the armed forces, the national police or the prison service. (Article 15)

Under Article 4, all Columbian men (a sub-paragraph states that military service for women is voluntary, although the State reserves the right to require such service should it become necessary.)

“are obliged to define their military situation from the date they achieve majority...” Under Article 17 “The Organization for Recruitment and Mobilization is responsible on a yearly basis for enrolling those Colombian citizens who are called to resolve their military status within said period of time, once they have become of age. Once enrollment has been carried out, the citizen will be able online to obtain a certificate online that he has begun the process of resolving his military status.

After registration there is a “psychophysical examination” – a second examination may be required by the authorities or requested by the potential recruit; a third takes place within 90 days of incorporation into service. If numbers eligible exceed local requirements, and once willing recruits have been identified, the remaining places are filled by means of a public ballot. (Article 22) (It is believed that participation in the ballot was formerly mandatory, with the effect that some who would have willingly performed military service were excluded; however, if this was indeed so, the anomaly has now been rectified.) After the ballot, conscripts are notified of the day when they must report for “incorporation”, which must be after the individual’s eighteenth birthday and at least a day before his twenty-fourth. (Article 23). It seems that claims for exemption are not considered until after the ballot, but they must be lodged not later than fifteen days before the date of incorporation. No one is obliged to claim an exemption to which he would be entitled – in general, subject to passing the medical examination, those eligible for exemption are free to sign up

⁹ -Information recorded on 4/24/2022 from <https://www.rcnradio.com/recomendado-del-editor/en-un-47-se-incrementara-el-numero-de-personas-que-prestaran-el-servicio> ;

¹⁰ <https://www.bbc.com/news/world-latin-america-61238539>, 27th April 2022

voluntarily (whereupon, of course, they became subject to the same rules and military discipline as those who have been obliged to serve).

In general, those who have been exempted, unless rejected on medical grounds or members of special categories such as indigenous people, have sixty days in which to settle the “military compensation fee” (Articles 25 and 26). This tax is now set by means of a complicated means-tested calculation; it may not exceed forty times the minimum monthly wage. If applicable, it is however levied at the same rate irrespective of the grounds for exemption – it is collected directly by the Ministry of Defence and applied to that ministry’s budget. Article 73 however authorises the establishment of “special days” which those who have not yet regularised their military situation may attend for the purposes of doing so, with the incentive that the compensation fee will be reduced by up to 60% and any fines due by up to 90%.

Colombians resident abroad are required to register, and may be subject to military service on their return. Dual nationals, and “Colombians by adoption” are exempt if they have satisfied an equivalent requirement elsewhere. (Articles 29-33).

Military service may be postponed while a brother is already serving, while serving a penal sentence, while still in full-time education, including officer or nco training facilities and higher education.

On completion of service, a conscript becomes eligible to receive the *libreta militar* which functions as an essential ID document. The precise procedures are set out in Articles 39 to 42. The charge for this may not exceed 15% of the monthly minimum wage; it was also envisaged in the Law that an electronic version would become available free of charge.

Until the age of 50, all those who have “defined their military service”, are classified as reserves. Those who have actually performed military service become “first class reserves”, those who have not “second class reserves”. (Articles 53 and 54)

Conscientious objection to military service

For many years, Colombia expressly refused to recognise the right of conscientious objection to military service, supported by a series of rulings by its Constitutional Court that the constitutional provision requiring military service trumped that supposedly guaranteeing the freedom of conscience. In 2009, however, in ruling C-278, the Court overturned its previous jurisprudence. Noting *inter alia* the developing jurisprudence of the UN Human Rights Committee, it ruled that Colombia’s international human rights treaty obligations *required* it to recognise the right; it called on the National Assembly within two years to promulgate legislation implementing procedures for its recognition, and asserted that in the interim conscientious objectors could obtain recognition by means of a *tutela* action in the courts.

In its Concluding Observations on Colombia’s Sixth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR), the UN Human Rights Committee noted “with satisfaction Constitutional Court ruling ruling C-728 of 2009 exhorting Congress to regulate conscientious objection to military service, (...), which represents progress in the implementation of the Committee’s earlier recommendation of 2004” but was “still concerned by the lack of progress on the introduction of the necessary legislative amendments for recognizing conscientious objection...” and recommended that “The State party should, without delay, adopt legislation

recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects...”.¹¹

In the section of Colombia's Seventh Periodic Report dealing with Article 18 reference is made under the sub-heading “Judicial developments” to Ruling C-728 and the subsequent T-018 of 2012, which stated that “despite the absence of regulatory provisions on the subject, in articles 18 and 19 and the constitutional corpus, it was possible to conclude as to the existence of the right of individuals to refuse to perform military service on grounds of conscience.”¹² (Implying an acceptance that conscientious objection to military service is protected not just under Article 18 of the ICCPR, but also under Article 19, so that advocacy of the right is not criminalised.) Sadly, however, mention of the issue is tellingly absent under the sub-headings “Legislative developments” and “Administrative developments”.

The List of Issues on the Seventh Periodic Report returned to this question:

“ While it takes account of the information contained in paragraph 163 of the State party report, the Committee would appreciate receiving information about measures taken to implement its previous recommendation (...) that the State party should adopt legislation recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects.”¹³

In reply, Colombia refers to Ministry of Defence Directive 0280 of January 2015, drafted in association with the Ombudsman's office, concerning all forms of military recruitment, including “the handling of applications from conscientious objectors”¹⁴, and the handbook and guidelines on the definition of the military situation of citizens¹⁵ issued by the Ombudsman's office the following month. “Thus are imparted clear and precise instructions concerning recruitment procedures which observe and respect citizens' rights.”¹⁶ In producing these documents, the ombudsmans office had collaborated closely with conscientious objectors organisations. Presumably satisfied with this indication of progress, the Committee did not return to the issue in its concluding observations.

Before and following ruling C-728 a number of legislative initiatives were in fact made by individual members of the National Assembly.¹⁷ None however progressed, often getting bogged down in efforts to cover simultaneously conscientious objection to military service and conscientious objection to complicity in the conduct of abortions.

The Courts, however, meanwhile consistently upheld the right. Following Constitutional Court ruling C-728, there were a number of successes in obtaining court orders to release conscientious objectors from the military, including by our partner organisation *ACOOC (Acción Colectiva de Objectores y Objectoras de Conciencia)* in the case of José Luis Peña Rueda, but only after two applications to lower courts to submit a *tutela* action had been turned down. Even in the most clear-cut case, that of Juan Diego Agudelo, whose status as a conscientious objector was recognised, following a *tutela* action, by a court in the municipality of Andes in Antioquia province, this mechanism could not prevent recruitment, because of the second issue - the prevalence of irregular forms of recruitment, which will be discussed below. In June 2014 Mario Andrés Hurtado Cardozo was granted a *tutela* by the municipality of Soacha, near Bogotá, the very

¹¹ CCPR/C/COL/6/CO, 4th August 2010, para 22.

¹² CCPR/C/COL/7, submitted 22nd December 2014, published 4th April 2015, para 163.

¹³ CCPR/C/COL/Q/7, 26th April 2016, para 23.

¹⁴ *Gestión Solicitudes Objectores de Conciencia*

¹⁵ *Protocolo de Atención y Orientación para la definición de la situación militar de ciudadanos*

¹⁶ *De esta manera, se imparten instrucciones claras y precisas sobre los procedimientos de reclutamiento, con observancia y respeto de los derechos de los ciudadanos.*

¹⁷ *Proyectos de ley nos 102 - 2008, 115 - 2010, 2 - 2012 and 20 - 2015.*

first non-religious conscientious objector to receive a *tutela* in this way. The following month Magistrate Jorge Pretelt called on the military to form an 'interdisciplinary group' to assess the case of Julián Enrique Rojas Rincón, a Christian pacifist, who although he had not personally been required to bear arms objected to his rôle in providing logistical support to those who did.¹⁸ And in decision T-445/14 released in January 2015 in response to a case brought by two conscientious objectors who had been forcibly recruited, the Constitutional Court ordered the National Recruitment Office to: resolve applications for CO within 15 days; to publish a booklet that notifies youth of their grounds for exemption, deferral, and their right to CO; and to end the practices of arbitrary detention, including *batidas* (see below), and confirmed that the right to claim conscientious objector status does not end with incorporation in the military. The Court also asked the Army to report within six months on the implementation of these instructions.¹⁹ These two judicial rulings seem to have presaged the procedures for the assessment of claims of conscientious objection set out in 2017 in Articles 77 to 80 of the revised military service law, no. 1861 of 4th August 2017, which finally ended the lack of legislative provision.

In Article 4 of the Law,²⁰ to the previous formula: “All Colombians are obliged to take up arms when public needs demand it, to defend national independence, and public institutions”, is added not only a general reference to exemptions but also the words “except for those who exercise the fundamental right of conscientious objection”. For the first time, conscientious objection is listed among the grounds for exemption (Article 12)²¹, and in Article 17, regarding registration for military service, establishments of secondary education, which are responsible for informing students in their last year about the process, are expressly charged to include “their right to conscientious objection to military service.” Furthermore, in Article 52, regarding reserve service, it is stipulated that “Conscientious objector citizens recognized by the competent authority created for this purpose by this law, will not be part of the category of reservists, as a guarantee of their constitutional right at all times.” Article 71(j) further specifies that conscientious objectors who complete the procedure for recognition after incorporation will thereupon be “dismissed”.

Under Article 77, a two-tier system is set up, comprising an “Interdisciplinary Commission on Conscientious Objection” at the level of the military district, which is to hear and decide “declarations of conscientious objection” at the first instance, reporting to a national “Commission on Conscientious Objection”. Each district Interdisciplinary Commission comprises “the commander of the corresponding military district, a Psychophysical Aptitude Committee made up of a doctor and a psychologist, the legal adviser of the Military District and a delegate from the Public Ministry”; the national Commission, likewise, comprises “the Director of Recruitment of the National Army, a delegate from the Public Ministry, a Psychophysical Aptitude Committee made up of a doctor and a psychologist, and a legal adviser from the Recruitment Directorate.”

Article 78 states that those seeking recognition as conscientious objectors must submit a verbal or written application to the Interdisciplinary Commission. The convictions must be based on religious, ethical and philosophical reasons, which must be deep, fixed and sincere, that is, they must not be trivial approaches, easy to modify or used only to evade provision of military service. Documents and evidence that prove the sincerity of the objector's convictions must be provided with the application.

¹⁸ War Resisters' International, [CO Update No. 84](#), September-October 2014

¹⁹ War Resisters' International, [CO Update No 86](#), January-March 2015,

²⁰ The text of all direct quotations from the Law has been obtained using “Google Translate”.

²¹ In addition to conscientious objectors, exemptions apply as before to: only children, sole breadwinners, close relatives of those killed or disabled during service in the armed forces, ministers of religion, those living in a marital relationship (legal or de facto) or who are fathers, persons “in a situation of permanent physical, mental, or sensory disability”, indigenous people, men who have subsequently changed gender, those registered on protection programmes eg. for victims of the armed conflict, *conscientious objectors*, and those demobilised in the peace agreements.

Under Article 79, it is stipulated that an application for recognition as a conscientious objector will have a suspensory effect upon the military recruitment process.

Of course the creation of a legal procedure for the recognition and exemption of conscientious is to be welcomed, but in important respects this particular legislation falls short of international standards. The Commissions are not independent of the military; they are under the Ministry of Defence, and of the membership only the delegate from the Public Ministry is by definition a civilian. They were criticised as lacking independence and impartiality in the report of the High Commissioner for Human Rights office in Colombia to the Human Rights Council in 2019;²² similar criticisms were made by the Constitutional Court in Judgement C-370 of 2019. In the Universal Periodic Review the previous year, without specifically commenting on the Law, Croatia had recommended that Colombia “establish an independent and impartial application and decision-making procedure for implementing the right to conscientious objection to military service”, a recommendation which was noted by Colombia.²³ None of the members are particularly qualified to assess the moral, ethical or theological arguments which might be put forward by a conscientious objector (in so far as the examination of an individual’s conscience can ever be done satisfactorily by a third party); by contrast the inclusion of a psychologist implies a tendency to regard conscientious objection as a psychiatric disorder. It is not clear where the decision lies to refer an individual case to the Commission. The process is to be based on written documentation, even in the case of a declaration originally made orally (Article 79); it is not clear to what extent there is a right for the objector or his representatives to be heard before the Commission, or what appeal possibilities may exist.

It is also alleged that the Commission is strongly biased in favour of objectors on religious grounds, who account for about four fifths of applicants; the implication being that non-religious objectors often decide simply to seek to avoid detection. In the follow-up to cases of conscientious objectors by the Collective Action of Conscientious Objectors (ACOOO) and other Colombian organizations such as (Justapaz) the absence of procedures compliant with technical and legal criteria consistent with real guarantees for the exercise of the right to conscientious objection has become evident, due in particular to the lack of an interdisciplinary approach by professionals who are also part of the military. It is indeed alleged that the hostility of the Commission and delays in the treatment of applications cause many objectors instead to opt for seeking exemption on psychiatric grounds, or to corruptly purchase a *libreta militar*.

We do not have details of the number of conscientious objection claims which have been treated under the Law, but a figure of 22 in 2021 has been quoted.

Another concern is to what extent the procedures and timetables so carefully set out in the Law are followed in practice, particularly when there is not a surplus of candidates to make the holding of a ballot necessary. If the recruitment process is so hurried as to prevent a recruit making out a claim for exemption based on conscientious objection or any other grounds, all the safeguards in the Law are worthless.

The most recent case documented by War Resisters’ International illustrates this. On 2nd September, 2019, Brayan Estiven González Blanco presented himself to Military District 51 in Bogotá in order to start the process to “resolve his military situation”. His identity document was retained, and following psychophysical aptitude tests he was transferred that day in a military vehicle to the Batallón Especial Energético y Vial No. 13, located in the municipality of Ubalá, Cundinamarca, where he was enlisted, without any indication of his rights or information about

²² A/HRC/41/23, para. 42

²³ A/HRC/39/6, 9th July 2018, para 121.23

grounds for exemption from compulsory military service, and giving him no opportunity to deliver the documents identifying him as a student and a conscientious objector.

In February 2020, he finally obtained temporary leave in order to request advice and support from the Collective Action of Conscientious Objectors (ACOOO) in legal action seeking recognition as a conscientious objector. On his return to the Battalion, he reports that he experienced threats and psychological pressure; he therefore he filed a petition before the Ombudsman's Office requesting its urgent intervention. The Ombudsman's Office issued a request addressed to the Directorate of Recruitment and Reserve Control, for the release of this recruit in view of the irregularities in the case, which it documented.

On February 19th, 2020, the Facativá Military District No. 46 set March 9th as the date to hold the Interdisciplinary Territorial Commission. However, Gonzalez Blanco was not released pending the hearing, as stipulated in the Law, and indeed the first he heard of the hearing was when he was informed that his request for recognition as a conscientious objector had been rejected. ACOOC immediately filed appeals, but consideration of these was postponed on grounds of the Covid emergency.

On June 24th 2020, a petition was filed before the Administrative Court requesting the protection in this case of the rights of free movement, due process, and conscientious objection, all of which had been disregarded as a result of the incorrect recruitment procedure that had been carried out. On July 7th Court ordered his release until completion of the entire process regarding his conscientious objection.

On July 12th, the Directorate of Recruitment, seemingly without re-examining the facts, confirmed the decision taken at first instance not to recognize Gonzalez Blanco as a conscientious objector. Rather than face charges of desertion he returned to his battalion on the expiry of his fifteen-day leave, and continued for the remainder of his term of service to resist to the best of his ability – refusing to obey orders, wear uniform or bear or use arms, suffering psychological harassment and repeated punishments as a result.²⁴

Civilian service

It might also be noted that Law 1861 does not establish an alternative civilian service for conscientious objectors, as had been recommended by the Human Rights Committee. Such a service is a compensating obligation which may be imposed by the State, rather than part of the right of conscientious objection, and when it is established often leads to the problem of how to handle “total objectors”, whose consciences will not permit what they still consider a compromise with the military system.

It is unclear to what extent the “social service for peace”, legislative proposals for which were brought forward in the Autumn of 2022, is intended to fill this gap.

Under the Bill submitted by Colombia's former chief peace negotiator with the FARC guerrillas, and current Senator, Humberto de la Calle, together with National Assembly member Daniel

²⁴ War Resisters' International, 23rd September 2020 <https://wri-irg.org/en/programmes/rrtk/co-action-alert/2020/colombia-brayan-gonzalez-conscientious-objector-continues>

Carvalho, and approved by the Senate on first reading on 25th October, 2022.²⁵ this would enable recruits to volunteer for a duration equal to that of military service spent in rural communities implementing post-conflict projects and acting as peace-keepers. Article 216 of the country's Constitution would be modified to read: "The Public Armed Forces will be made up exclusively of the Military and National Police. Compulsory military service will only be allowed in cases of foreign war or internal commotion."

It is interesting that Senator de la Calle introduced the measure as specifically for young men from the lowest socio-economic groups – *estratos* 1,2 and 3 – openly admitting that "Compulsory military service, in practice, only covers young people from the poorest families. Only 2 per cent of all conscripts correspond to higher income strata: 4, 5 and 6. This is an extraordinarily inequitable structure," (It is of course also in stark contrast to the legal situation, whereby the obligation is universal.) This change, he claimed, would make the country's armed forces more professional.

It may also be noted that no explicit reference was made to conscientious objectors, without which such a service might fall foul of the ILO's Forced Labour Convention and the equivalent provisions in Article 8 of the International Convention on Civil and Political Rights, where the exemption is for "any service of a military character (...) and any national service required by law of conscientious objectors". On the other hand, such is the strict military control of the system that the service cannot by any stretch of the imagination be considered civilian, and thus compatible with most conscientious objections, as the international standards demand. And it is ominous that there are hints that the service would apply also to women. Combined with the fact that for the first time in many years, in February 2023 the military service obligatory for men was made voluntarily available to women, with a cohort of 1,296 women enlisting, it would be a backward step if the proposals in fact had the result that obligatory service of one sort or another was extended to a greater proportion of the population.²⁶

It appears that these proposals may already be implemented. In a case accompanied by our local partner organisation *Accion Colectiva de Objetores y Objetoras de Conciencia* the Legal Adviser of Zone 13, advised denial of recognition because that the petitioner refused such a service under the control of the military and under the military command structure, thus effectively constituting unarmed military service.²⁷

Irregular recruitment practices

Even when the formal procedures are ostensibly followed, persons who ought to be exempt are not infrequently recruited. As well as the case of Brayan Estiven González Blanco, one might quote the case of Cristian Andrés Cortés Calderón, whose recruitment once he had reached the age of liability even though he was yet to complete secondary education was overturned by the Constitutional Court²⁸ or Diego Fernando Blanco López, who was not only a declared conscientious

²⁵ Information from "Colombia debates eliminating obligatory military service", The City Paper, Bogota, 26th October 2022 <https://thecitypaperbogota.com/news/colombia-debates-eliminating-obligatory-military-service/>

²⁶ Suarez, A. "Women enlist in Colombia's army for the first time in 25 years", AP, 8th March 2023 <https://apnews.com/article/colombia-women-soldiers-army-draft-compulsory-military-service-south-america-35a264d51623a2930331902e322bac2a>

²⁷ Resolution No. 2023482000489641 March 8, 2023 Ministry of National Defense, General Command of the Military Forces, National Army District, Military No. 59. Page 3 "intervention of the Public Ministry. Leaves for the record to the petitioner that his function within these proceedings is to GUARANTEE THAT THIS RIGHTS OF A PROCEDURAL NATURE ARE RESPECTED"

²⁸ Sentencia T-004/16, 19th January 2016,

objector but also had the right to postpone as a student.²⁹ There have been cases in which irregular acceleration of the recruitment process have taken up to four months to be resolved.³⁰

Recruitment is in practice mainly enforced by spot-checks of the “military situation” of young men, carried out by the recruitment authority under Article 50 of Decree 2048. Persons who are not carrying appropriate documentation are required to present themselves at a specific place and time in order to “regularise” their military situation. In practice, a large proportion of such checks historically crossed the boundary of what was legally permitted, and degenerated into what are generally known as *batidas*, in which young men were systematically stopped wherever they might gather in numbers in public places, characteristically at the ticket barriers of rapid transit networks in the cities, or by random stopping of buses in the rural areas, and those who could not on the spot provide documentary certification of their military status were loaded into army trucks and taken forthwith to units into which they were incorporated.. By their nature, such methods of recruitment do not spare those who are not subject to military service, or who are entitled to exemption.

In 2008, the UN Working Group on Arbitrary Detention (WGAD) considered the cases of three young men, two of them conscientious objectors, who had been forcibly recruited in *batidas*. It found that in all three cases “the deprivation of liberty (...) was arbitrary, being in contravention of article 9 of the ICCPR”,³¹ and that in the cases of the conscientious objectors it was also in contravention of Article 18, pointing out that “The detention of individuals who expressly declare that they are conscientious objectors has no juridical foundation or legal basis and their enrolment in the army against their will is in clear contradiction with the promptings of their conscience and can be in violation of article 18 of the International Covenant on Civil and Political Rights. Failure to make provision for the right to conscientious objection may violate that article.”³² Although, given that military service in Colombia remains obligatory, it is of course in order to monitor the fulfilment of individuals' military obligations; however the WGAD pointed out that the penalties established in Colombian law for non-compliance with the recruitment requirements “are exclusively of a pecuniary nature (...) In no case are arrest, detainment and enrolment in the army against one's expressly declared will authorized.”³³

The UN High Commissioner for Human Rights' report to the 19th Session of the Human Rights Council stated that during 2010 her office in Colombia had “observed irregular, and in some cases clearly illegal practices in the military recruitment process” and recommended that “these practices should be discontinued as soon as possible. Rapid development of mechanisms to regulate military service, including conscientious objection, with full respect for human rights, is urged.” The linkage made to conscientious objection is particularly relevant; such procedures by definition do not allow space for the elaboration of a claim of conscientious objection. Her report the following year observed, “Illegal practices in military recruitment procedures continued without effective control in several cities, such as Bogotá, Bucaramanga, Cali and Medellín.”

In a decision of November 22nd 2011, the Colombian Constitutional Court effectively gave its own endorsement to the WGAD's interpretation of the legal situation.³⁴ The Court clarified that only those who are classified as “*remisos*”, having failed to report for duty when personally called up in accordance with Article 20 of Act 48-1993, may be apprehended by the military in order to perform their military service. The power to “compel” compliance with the obligation, which is mentioned

²⁹ War Resisters' International, CO Update 93, January-April 2017

³⁰ See, for instance *Defensoría del Pueblo - Regional Boyacá* regarding the cases of Nillín Alexander Pérez, Cristian Javier Pérez and Holan Steven Mayorga Vanegas.

³¹ Working Group on Arbitrary Detention, Opinion No.8/2008, 9th May, 2008, para 24.

³² Ibid, para 23.

³³ Ibid, para 22.

³⁴ Decision C-879 of 22nd November, 2011.

in Article 14 of the Act is constitutional only "if it is understood in the sense that someone who has not complied with the obligation to register to define his military situation can be held momentarily while this situation is verified and he registers, a process which does not require any formalities." The Court further elaborates that this may not include transporting the person to barracks or a military district headquarters, holding him for a health examination, nor immediately incorporating him in the armed forces.

Batidas became less frequent since this decision, but did not disappear.

The issue was raised in the consideration of Colombia's Seventh Periodic Report under the ICCPR. The Concluding Observations included:

"While welcoming the decisions of the Constitutional Court in which it concludes that the practice of indiscriminate round-ups with the aim of identifying young persons who have failed to resolve their military status and taking them to assembly points entails carrying out arbitrary arrests (judgments Nos. C-879 of 2011 and T-455 of 2014), and the State party's assertion that this practice does not take place, the Committee is concerned by reports of cases recorded during the period under review (art. 9).

"The State party should adopt stronger measures to ensure that no one is detained arbitrarily, particularly for the purpose of military recruitment, by, inter alia, improving the training provided to members of the security forces; that all allegations of arbitrary detention are investigated promptly, thoroughly and impartially; and that the perpetrators are prosecuted and punished."³⁵

Sub-paragraph 2 of Article 4 of Law 1861/2017 states categorically: "For no reason will the public force be allowed to carry out arrests or surprise operations to apprehend Colombians who at that time had not presented themselves or provided their mandatory military service." Moreover, Article 66, concerning information supplied to the recruitment directorate concerning those eligible for conscription, expressly states "This information will be confidential and its use will be exclusively for purposes of defining the military situation and may not be used as input for irregular recruitment or surprise arrests of citizens."

Nevertheless, spot checks continue to take place – and for instance in 2022 were explicitly authorised within the mass transit system of the capital, Bogota, with the sole proviso "Procedures carried out by members of the National Army with the System are the sole responsibility of the National Army"³⁶. Even if such checks respect the prohibition on arbitrary detention, they typically use questionable methods to lure young men to recruitment centres, such as confiscation of identity documents or false threats of criminal prosecution. At that point they encounter the institutionalised assumption that anyone who presents himself "voluntarily" to a recruitment centre is deemed to be showing himself available for recruitment. It is reported also that when a youth falls into such a process, any declaration of conscientious objection, together with the suspensory effect of such a declaration stipulated by law, tends to be overlooked.

Discrimination against those who do not hold the *libreta militar*

Article 36 of Law 48/1993 (as amended by Decree 2150/1995), stipulated that all male Colombians must show that they have "resolved their military situation" before they may:

- "a) enter into contracts with any public entity;
- b) enter into an administrative career;

³⁵ CCPR/C/COL/CO/7, 17th November 2016, paras 34 and 35.

³⁶ Authorization for procedures within the Mass Transport System, February 2021, upon petition from Frigate Lieutenant Andrea Parra Mahecha, issued by Empresa de Transporte del Tercer Milenio Transmilenio S.A., dated Oct. 2, 2022-EE02040.

- c) assume public office,
- d) obtain a professional degree from any school of higher education”

Article 37 added: “No national or foreign company, official or private, established or hereafter established in Colombia, may have employment relations with adult persons who have not resolved their military situation.”

With the exception of members of indigenous communities and those with permanent physical disabilities, men who for whatever reason do not perform obligatory military service are required to pay a “compensation fee” set by the military authorities before they can receive the requisite proof – the *libreta militar*. Males who for whatever reason have not performed military service and have not paid the “compensation quota” are effectively condemned to live permanently outside the formal economy, and are debarred from running for public office.

Not only does such a fee penalise in a discriminatory fashion those with good reason for exemption from military service, it also encourages and helps to conceal the widespread sale of exemptions by corrupt recruiters. Moreover, it represents a direct commutation of military service into a financial contribution; Conscience and Peace Tax International argues strongly that refusal of such payment is a manifestation of conscience just as valid as refusal personally to bear arms.

After a long campaign spearheaded by Bogota conscientious objectors Julian Andrés Ovalle Fierro and Diego Carreño Neira an initiative in the Senate removed the requirement to present the *libreta militar* in order to graduate from a higher education institution, and early the following year, after a five-year delay, Diego Carreño Neira became the first person openly to graduate without a *libreta militar*.³⁷ Meanwhile, following a *tutela* brought by conscientious objector Martin Rodriguez against the *Universidad Nacional* in Medellin, it was established that Universities had no right to obtain confirmation that young men had “regulated their military status” before allowing them to matriculate. These decisions were reflected in Article 34.3 of Law 1861/2017, which states “The definition of the military situation will not be a requirement to obtain any educational degree”.

The new Law also slackens the employment requirements. While Article 42 confirms “The military situation must be accredited to hold public office, work in the private sector and enter into contracts for the provision of services as a natural person with any public law entity.”, it continues that “Without prejudice to the previous obligation, public or private entities may not require the citizen to present a military card to enter a job.” Nevertheless, this is valid only for eighteen months, after which the employer becomes liable to penalties if it is found that the employee is not duly accredited.

It remains the case that men who for whatever reason do not hold the *libreta militar* are condemned to the condition once described by the European Court of Human Rights (with regard to Turkey) as “civil death”. Conscientious objectors also complain that the “compensation fee” they have to pay to obtain such a document, even if they are willing to do so, is of an equivalent amount to that which must be paid by “*remisos*” – persons who have for no valid reason failed to perform military service – in order to regularise their situation. That there is no allowance for the legitimacy of conscientious objection might be considered punitive.

Law 1780 was issued with the aim of overcoming barriers of access to the labour market with the Military passbook and the age for providing the service was reduced from 28 to 24, therefore the possibility of hiring unfit young people, exempt or over the age of 24 years became higher. It was only necessary to present a certification from the recruitment authorities of the process, in order to

³⁷ War Resisters’ International, CO Update No 86, January-March 2015,

enter the service for a period of eighteen (18) months, a regulation that was incorporated into Law 1861 in article 42.

Inadequate protection of children against militarisation and involvement in armed conflict

During the years of armed conflict, Colombia became notorious for the use by all sides of child soldiers, forcibly recruited, especially by the FARC, or conscripted into the armed forces with no regard to the legal recruitment age. Children were also widely used as spies, messengers and informers. The country was selected for one of the case studies prepared in conjunction with the 1994 “Machel Report” to the United Nations, which was to lead to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC). Colombia ratified OPAC in May 2005 ; its Initial Report was considered by the Committee on the Rights of the Child (CRC) in June 2010, and was followed up when Colombia's Fourth and Fifth Periodic Reports under the Convention on the Rights of the Child itself were examined in January 2015, the CRC.

The CRC noted “the measures taken to protect children from the armed conflict”, but remained “deeply concerned” about its continuing impact, “mostly affecting rural, indigenous and Afro-Colombian children and children from marginalized urban areas.”³⁸

Among other issues, the CRC remained “particularly concerned” about:

“The continuous recruitment of children by non-State armed groups.”

“The heavy recruitment of children by the “BACRIM” (criminal gangs based on the officially demobilised illegal “paramilitary” AUC (*Autodefensas Unidas de Colombia*) and by reports “that some of these children are prosecuted by the State party as criminals and not treated as victims, and are therefore not included in the programme of the Colombian Family Welfare Institute for demobilized children.”

“Girls recruited being subjected to serious sexual violence in a repeated and systematic manner, including rape, sexual slavery and exploitation, forced pregnancy and abortion, and the passing on of sexually transmitted diseases.”

“The numerous violations of children’s rights allegedly committed by the police and armed forces, in particular sexual violence, and the continuing use of children for intelligence-gathering activities.”

“The very low number of prosecutions for offences under the Optional Protocol.”

The CRC recommended a strengthening of preventive and protection mechanisms; also that Colombia should “undertake every effort to ensure the demobilization and effective reintegration of children recruited and/or used in hostilities”, “urgently and thoroughly investigate all offences under the Optional Protocol, including those related to sexual violence and those allegedly committed by the police and armed forces, prosecute the alleged perpetrators, adequately punish those convicted and compensate the child victims and their families”, “enforce the existing institutional directives aimed at protecting children’s rights, particularly the directives ordering the suspension of all civilian-military activities involving children, which should include those conducted by the police, and prohibiting the use of children for military intelligence gathering”, and “as mandated by the Constitutional Court (C-781 of 2012), consider as victims all children recruited and/or used by the BACRIM and all children recruited and/or used in hostilities by other non-State armed group, and ensure that they are included in the Colombian Family Welfare Institute’s programme for demobilized children and that they receive adequate reparation.”

³⁸ All quotations from CRC/C/COL/CO/4-5, adopted 30th January 2015, published 6th March 2015, para 65.

In the section dealing with the education system, the CRC expressed concern about “teachers’ exposure to an increasing number of death threats and violence, attacks against schools, military bases and military units near schools, the occupation of schools and school study visits to military centres against directives”,³⁹ and recommended that Colombia “closely monitor compliance with directives prohibiting civilian-military activities, the occupation of schools and other actions that put the educational community at risk, and sanction those who do not comply with them”, and also that it ensure “that schools are built far away (...) from military targets”.⁴⁰

Suggested questions

The Committee would welcome details of the number of cases which have been examined by the Commissions on Conscientious Objection set up under Law 1821/2007 and the decisions reached, including if possible an analysis of the outcomes where applicants quoted different religious affiliations, or none, as grounds for their objection. Do applicants have the right to be heard, are they allowed legal representation, and what possibilities exist to appeal the decisions of this body?

The Committee is alarmed at information received that the cost of the *libreta militar* continues to discriminate against those who have been exempted from military service – in particular by an allegation that the cost of this document to an exempted conscientious objector is the same as that which must be paid in order to regularise his situation by a person who has avoided military service for no valid reason. Is the State Party contemplating action to eliminate this discrimination? Moreover, is the State party examining the experience of its neighbour Ecuador which used similarly to require such a document for ID purposes, but which abolished this requirement without suffering any consequent inconveniences?

The Committee is also alarmed that despite the ruling of the Constitutional Court and its own repeated recommendations, irregular recruitment practices known as *batidas*” reportedly remain widespread and indeed, according to some sources, have recently again increased. Does the State promptly investigate reports of recent or ongoing *batidas* with the intention of bringing the officers responsible before disciplinary or criminal proceedings?

Can the delegation confirm whether the proposed “social service for peace” has now been instituted? Is this seen as providing an alternative service for conscientious objectors, and if so how can this be reconciled with the proposed administration of the scheme, which is entirely within the hands of the military, meaning that it is effectively unarmed military service and thereby acceptable only to a minority of conscientious objectors?

To what extent would the arrangements for recognition and exemption from military service of conscientious objectors remain applicable in times of war or national emergency?

What action is the State Party taking to ensure that the past recruitment of child soldiers is thoroughly investigated with the aim of bringing *all* perpetrators to justice? What action has the State party taken to ensure compliance in all cases with decision C-781/2012 of the Constitutional Court that all children who had been recruited by illegal armed groups should be treated as victims?

³⁹ Ibid, para 51(e).

⁴⁰ Ibid, para 52

