

CONSCIENCE AND PEACE TAX INTERNATIONAL

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COLOMBIA

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Executive Summary

1. This submission highlights a number of linked human rights concerns in Colombia.
2. The submission was prepared in March 2023 and incorporates the latest information available to CPTI at that time.
3. The principal issues raised are:
 - shortcomings of the procedures for the recognition of conscientious objectors to military service, and in their implementation
 - irregularities in military recruitment procedures.

Background

4. Colombia currently retains a system of obligatory military service for male citizens and for many years, was notorious for its refusal to recognise the right of conscientious objection.
5. In October 2009, however, the Colombian constitutional court ruled that in fact this right was guaranteed under the constitution, read in conjunction with Colombia's international treaty obligations, and that the absence of procedures whereby it could be exercised was a serious omission, and called upon the Congress to bring in legislation to this end within two years.
6. Pending specific legislation, the Court considered that, given the fundamental nature of the right to conscientious objection, it could be enforced in an individual case of imminent conscription by means of a "*tutella*" action, indicating the incompatibility of certain activities inherent to military service with the proven, serious and real conscientious objections adduced.ⁱ
7. Over the following years, a small number of conscientious objectors indeed achieved exemption from military service by way of *tutella* actions in the courts, but usually retrospectively.
8. However, despite a number of proposals being brought forward over the following years, it was not until August 4, 2017, the year before Colombia's review under the third cycle of the UPR, that provisions were finally put into place under Act 1861/2017 amending Act 43 of 1993. This great step forward was followed in October 2022 by the passage at first reading in the national Assembly of a Bill which would potentially phase out obligatory military service altogether by 2030.
9. Meanwhile, however, concerns persist about the compatibility of the current provisions with the international standards, about shortcomings in its implementation, and about irregularities in military recruitment procedures., which affect all those entitled to exemptions, including conscientious objectors who are typically not given the opportunity to make the necessary applications before incorporation into the armed forces.
10. Under Act 1861/2017 all young men must at the age of 18 enrol in the digital platform of the military recruitment system. (para 77).
11. 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. (para 78)

12. The Commission is chaired by the recruitment director of the military district and comprises otherwise a military doctor and psychologist, the legal advisor to the military district and a delegate of the civil administration. Within a maximum of fifteen days after the submission of the, the Commission shall summon the applicant to an in person audience. The Commissions's decision shall be given in writing outlining in detail its reasoning. In the event of denial of the application, the applicant shall be informed of appeal possibilities and procedures. (para 79)

13. Appeals are considered by a National Commission, which mirrors in its composition of the district commissions. (para 80)

14. There is an enormous gap in these provisions. It is not stated what happens if someone does not register on the online platform. How is he to be traced?

15. Obviously, this procedure does not meet the highest international standards, which state that declarations of conscientious objection should be accepted without enquiry.

16. Otherwise the biggest shortcoming is that, as the ombudsman has pointed out, the special commission set up to assess applications lacks independence and impartiality, being comprised of four members of the military and only one civilian, who thus has no influence on decisions taken are essentially military ones. The commission is reluctant to accept objections based on other than narrowly religious grounds, objectors who cite reasons of pacifism, environmental grounds, or connected with LGBTI identity are routinely rejected. Moreover, the objector is not allowed in the hearing to be accompanied by a legal representative or a supporter from a human rights organisations.

17. Alleged shortcomings in the practical implementation of the procedures include

- that the relevant web page for registration is frequently unavailable, and on other occasions misfunctions
- that information about the possibility of applying for exemption on the grounds of conscientious objection is not widely disseminated, in contravention of Article 17, Paragraph 1 of the Act
- that not all districts follow the regulations in setting up the Interdisciplinary Commission, so that sometimes hearings are attended by only three or four of the members.
- there is no oversight of the functioning of the Commissions
- information on appeal possibilities is not always forthcoming
- the strict timing set out in the legislation is not always followed; some cases have taken more than six months to resolve
- (exacerbating the former shortcoming) the provision in Paragraph 1 of Article 77 that application for recognition as a conscientious objector should have a suspensory effect on the recruitment process is often ignored, with the result that conscientious objectors can find themselves incorporated in the army while their application is still before the Commission
- registering conscientious objectors as members of the reserve, contrary to the Article 52 of the Act as well as to the general principle that the right of conscientious objection to military service applies at all times, not just at the moment of conscription.

Irregularities in recruitment procedures

18. It is paradoxical that with the end of the armed conflict against the FARC Colombia should have considered it necessary steadily to increase its annual military recruitment targets.. Moreover, in response to the problems caused by the Covid pandemic, decree 514/2020 temporarily increased the duration of military service by three months. In 2020, only 39,000 youths were called up to military service as against a target of 60,000. The response was to raise the 2021 target to an unprecedented 81,000, in order to include those who had been “missed” – an interesting concept, given that in fact over 400,000 young men reach recruitment age each year.

19. This resulted in the setting of arbitrary targets for military recruitment offices – incompatible with ensuring that no more persons were recruited than were liable, and something of a reversion to old habits.

20. In Colombia, arbitrary detentions, or raids popularly called “*batidas*” were declared unconstitutional by the Constitutional Court in 2014 and, in 2017 were explicitly prohibited in Law 1861 (Article 4 Paragraph 2), following earlier decisions of the Constitutional Court.

21. In 2016, the Human Rights Committee, while not repeating its earlier concerns about the delay in implementing the Constitutional Court’s recommendation regarding conscientious objection to military service, had addressed this issue:

“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.”ⁱⁱ

22. Reports from the organisations *Accion Colectiva de Objetores y Objetoras fe Conciencia (ACOOC)* and *Asociacion Cristiana Menonita para Justicia, Paz y Accion Noviolenta (JUSTAPAZ)*, which advise and support conscientious objectors, however reveal that many abuses continue to take place in the context of “days of incorporation”, in which soldiers go out to the streets to give information to young people about the process of military service.

23. The information provided in “days of incorporation” notably omits any mention of the possibility of exemption on grounds of conscientious objection. Nor is the on-line registration process mentioned. Instead, young men are encouraged to report without delay to their local recruitment office. Not mentioned is that under the Act recruits, even when summoned to report, have ten working days in which to gather the necessary documentary evidence to support a claim for exemption.

24. Under Law 1861/2017, military personnel are not entitled to demand identity documents in the street. Military sources claim however that there is no other way to track those who do not follow the correct procedures to register on-line, and widely ignore this prohibition. Those conducting such checks often seem unaware that they have no power to compel young men to report to the recruitment office, nor to force them to do so by confiscating their identity documents. Evidence of entitlement to exemption or deferral is largely overlooked in such circumstances. For example in 18 of 21 cases denounced by ACOOC in 2021, valid certification of student status was not accepted.

25. There is reportedly an automatic assumption on the part of the military authorities that whenever a young man reports to the recruitment office he is willing to be recruited forthwith; many arbitrary enlistments result. Those from disadvantaged areas, both urban and rural, are particularly at risk of being precipitately enlisted in this way.

26. A final difficulty faced by young men in certain regions is that they cannot return home once they are incorporated into the Army Nacional, since they may be victims of other armed actors who are operating in the area (ELN, CLAN DEL GOLFO etc).

The New Proposals

27. Under the Bill brought forward by Colombia's former chief peace negotiator with the FARC guerrillas, and current Senator, Humberto de la Calle, together with National Assembly member Daniel Carvalho, are looking to replace the obligation to perform military service with the option that young men from low-income households could be replaced by opting for "social service for peace." The so-called "social service for peace" means that instead of recruits being sent to conflict areas, they could volunteer for the same amount of time 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."

28. 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.. Despite opposition from the right-wing *Centro Democrático* party, the Senate approved the Bill on first reading on 25th October, 2022.ⁱⁱⁱ

Any proposal which would have the effect of reducing the excessive militarisation of Colombia must be welcome, but at this stage details are sketchy, and a number of serious questions arise.

29. First, the time scale for implementing the change would appear to be very long. What would happen in the interim?

30. Second, there would be severe questions if the "social service for peace" were in any way obligatory, rather than simply being accepted as discharging any military service obligation. 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, which exempts "any service of a military character (...) and any national service required by law of conscientious objectors". The current proposals make no reference to conscientious objection.

31. Third, in this respect 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.^{iv} 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.

32. Fourth, it has not been indicated that the new service would be completely independent of military control; indeed, particularly the reference to "peacekeeping" raises the question of whether it would be entirely civilian in nature.

33. Fifth, for the above reasons, and because of the possibility would be maintained of reimposing conscription in time of war or national emergency, it is essential that conscientious objection provisions be maintained.

34. Sixth, as it is described as an option for the lower socio-economic classes, what guarantee if any is there that it would make the obligatory service system any less socially regressive. There is no mention of the abolition of the *libreta militar* which bears a considerable responsibility for this. This document is essential for various official purposes, for instance to obtain a passport or for employment in the formal economy, and therefore for full exercise of civic rights, however this requirement has no administrative justification, as can be seen from the fact that it does not apply to women. Made freely available to those who have performed military service, it has to be bought by those who have been exempted, and (at a higher price) to regularise the status of *remisos* who reach the age limit without having ever registered.

35. Seventh, the proposals as described contain no fresh safeguards against irregular recruitment practices, and thereby no guarantee that military service would in fact become purely voluntary.

Previous UPR Cycles

36. Questions regarding military recruitment and conscientious objection were raised only in the first two cycles of the UPR. Although it was not made explicit, by the time of the Third Cycle review these had been answered by the promulgation of Act No. 1861/2017.

37. In the First Cycle (2008): “Following the concern expressed by the Human Rights Committee in 2004 that Colombia does not allow conscientious objection to military service, Slovenia recommended that Colombia (a) recognize this right in law and practice and ensure that recruitment methods allow it. The State should guarantee that conscientious objectors are able to opt for alternative service, the duration of which would not have punitive effects.”^v Somehow this failed to be listed among the recommendations, and no reply is recorded.

37. Slovenia followed up with an advance question in the Second Cycle (2013): ““Considering that liberty of conscience in Colombia is protected by the Constitution (Art 18), we would be interested to know if the government adopted any specific legislation that refers to or regulates the right to conscientious objection with regard to military service?” No answer was given in the working group, and the issue did not feature in the discussion.

Suggested recommendations

38. To encourage the State Under Review to accelerate consideration of proposals to abolish obligatory military service, while taking care not to substitute one obligation for another, and continuing to safeguard the right of conscientious objection to military service.

39. That it change the composition of the Interdisciplinary Commission which considers applications for exemption from military service on the grounds of conscientious objection so that it is impartial and completely independent of the military.

40. That it ensure that *all* military recruitment is conducted through the proper channels, not by random challenges in the street.

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<http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM>
 - ii CCPR/C/COL/CO/7 17 November 2016, paras 34, 35.
 - iii 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/>
 - v Suarez, A. “Women enlist in Colombia’s army for the first time in 25 years”, AP, 8th March 2023
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