

**INTERNATIONAL FELLOWSHIP OF RECONCILIATION (IFOR)
and
CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)**

**Submission to the 107th Session of the Human Rights Committee for the
attention of the Country Report Task Force on BOLIVIA**

(Military service, conscientious objection and related issues)

Prepared: December 2012.

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Summary

The principal issues raised in this submission are:

Bolivia's failure to introduce legal provision exempting conscientious objectors from military service and from the dedicated "military tax" required of those who have not performed such service

Discrimination against male citizens who for any reason have not performed military service

Recruitment of persons aged under 18 into various forms of military service

It is suggested that in the List of Issues Bolivia be asked:

what action it is taking to implement the undertakings made in the Friendly Settlement before the Inter-American Commission in the case of *Bustos*, that, in accordance with international human rights law, it would bring in military recruitment legislation including provision for the right of conscientious objection to military service.

to indicate whether it intends to repeal the discriminatory requirement whereby individuals who qualify for exemption from military service are required to pay a special tax in order to receive the *libreta militar*; to comment on reports that it is necessary for male citizens to produce the *libreta militar* in order to graduate from higher education or to obtain a passport, and if this is the case to justify this requirement.

whether, in accordance with the spirit of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, it intends to further raise recruitment ages so that no person under the age of 18 will be able to enter any form of military or "pre-military" service or training.

BOLIVIA: Basic information

Population (November 2011, estimated¹) **10,031,000**

Conscription introduced 1880

All male citizens liable from the age of 19 to (nominally) 45.

Duration of service: 12 months

NO provisions for conscientious objectors.

Minimum recruitment age²: 17 (for “voluntary pre-military service”)

Manpower reaching “militarily significant age” in 2010³: 108,334

Armed forces active strength, November 2011(of whom conscripts):⁴ 46,100 (25,000–54.2%)
as a percentage of the number of men reaching “military age” 42.6% (23.1%)

Military expenditure US \$m equivalent, 2011⁵ 312

Per capita \$35
As % of GDP 1.7%

¹ Source: The Military Balance 2012 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

² 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.

³ Source: CIA World Factbook. <https://www.cia.gov/library/publications/the-world-factbook/index.html> . The male population reaching “militarily significant age” - defined by the source as 16 - is more meaningful than total population in assessing the comparative impact of military recruitment in different countries.

⁴ The Military Balance 2012 (International Institute of Strategic Studies, London)

⁵ Stockholm International Peace Research Institute (SIPRI), April 2012

Background

Bolivia maintains a system of obligatory military service. This was until recently regulated by the 1976 National Defence Service Act (*Ley Servicio Nacional Defensa*). In March 2008 the Chamber of Deputies approved a new draft Military Service Act (*Ley de Servicio Militar*) and it was passed to the Senate for approval. As of May 2011 it was still awaiting debate in the Senate. At the time of writing there has not been any indication of any further progress.

All male citizens become liable for obligatory military service of one year from the age of 19 (Article 22). Although the liability persists to the age of 45, military service in practice is usually performed by those aged 19 to 21. Women aged 19 to 35 with no children are, in time of war or national emergency, liable to service for up to two years in the Female Auxiliary Service, where they would carry out "production activities".

Under the 1976 Law, postponement is possible for men who are studying or living abroad. Exemption may be granted to those who are physically disabled or mentally incapacitated, who are the only son of a widow or of parents aged over 70, who are themselves married or widowers and have children, whose fathers died in international armed conflict or during military service, to theology students, and to miners working underground. Although the law states that even those exempted must receive three month's military training, this is reportedly not enforced. There is no exemption from military service for conscientious objectors.

On completion of military service or other regularisation of their military situation, male Bolivians are issued with the "*libreta militar*". This document is required in order to enter university or obtain a passport. Those who have been exempted from military service are (under Article 77 of the Military Service Act) obliged to pay a one-off "military tax" in order to receive the *libreto militar*. Under Article 79, failure to do so incurs a fine and arrest. The level of the tax was reported in 1998 as being between \$200 and \$400 (US).

The "Bustos case"

The military service requirement and the "military tax" were in 2004 challenged in a petition brought before the Inter-American Commission on Human Rights (IACHR) on behalf of Alfredo Díaz Bustos. Bustos, a Jehovah's Witness, had explained that he was unable, on grounds of conscience, to perform military service. The military recruitment office were not prepared to exempt him on these grounds, but were able to find medical grounds, and demanded that he pay the military tax. He sought a re-classification of his exemption and also a recognition that "his beliefs which do not permit him to receive military instruction also forbade him to make financial payments to institutions of that nature". He also alleged discrimination on the grounds that "Article 49(i) of the National Defense Service Act states that in peacetime, clergy, seminarians, religious, and novices are exempt from military service" but although dispensation was granted to Catholic theological students, it was not applied to his equivalent role as "a Ministerial Servant and as such (...) Assistant Principal of the Theocratic Ministry School that operates in La Paz Kingdom Hall of the Jehovah's Witnesses". This aspect of his petition was however not addressed in eventual Friendly Settlement.

In a Friendly Settlement before the IACHR in October 2005, the Bolivian State, represented by the Ministry of Defence, agreed:

- "a) to give Alfredo Díaz Bustos his document of completed military service within thirty working days after he submits all the required documentation to the Ministry of Defense;
- b) to present the service document free of charge, without requiring for its delivery payment

- of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not;
- c) at the time of presentation of the service record, to issue a Ministerial Resolution stipulating that in the event of an armed conflict Alfredo Díaz Bustos, as a conscientious objector, shall not be sent to the battlefield nor called as an aide
- d). Include, in accordance with international human rights law, the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces;
- e) Encourage, together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service;⁶

As the IACHR noted in its Annual Report the following year, the first three items of this agreement, those which affected Bustos' individual situation, were honoured promptly, but no action had been taken on the two more general undertakings. Indeed, in direct contravention of item (d) of the Friendly Settlement Agreement, the draft Military Service Act passed by the Chamber of Deputies in March 2008 contained no provisions for conscientious objectors. As such it was criticised by Bolivia's ombudsperson, Waldo Albarracín.⁷

The latest follow-up report, in the IACHR's Annual Report for 2011, concludes that the Friendly Settlement Agreement has still been implemented in part only, and indicates that "the Commission will continue to monitor the pending items."⁸ Bolivia had prided itself on its ratification of the Ibero-American Convention on Rights of Youth, Article 12 of which reads: "1. Youth have the right to make conscientious objection towards obligatory military service. 2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service."⁹ The petitioner however pointed out that far from doing anything to bring its national legislation into accordance with this provision, Bolivia had in fact entered a reservation to this article at the time of ratification.¹⁰ The State conceded that no reference to a right of conscientious objection to military service was included in the new Constitution which took effect in 2007, but made repeated references to the progress of the draft Military Service Act¹¹ – again it was the petitioner who had to draw to the attention of the Commission that the draft did not in fact include any provisions relating to conscientious objection.¹²

The petitioner did not comment on the State's assertion that Ministerial Resolution No. 1062 of December 28, 2010, ordering that "the Reserve Officer Passbook be granted to personnel providing Outreach and Social Integration Service in the context of Paid Military Service" represented compliance with the Friendly Settlement Agreement, as it "gives young people the opportunity to serve their country according to their aptitudes and academic training and with respect for their professed beliefs".¹³ From the little information given, it is not clear that this option is openly available on the grounds of conscience; moreover it explicitly relates to a particular posting within the overall context of military service, which is in no way in accordance with the international standards relating to conscientious objection to military service.

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Inter-American Commission on Human Rights: REPORT N° 97/05; PETITION 14/04; FRIENDLY SETTLEMENT; ALFREDO DÍAZ BUSTOS – BOLIVIA October 27, 2005, para 16, I, d and e

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["Defensor objeta Ley de](#)

[Servicio Militar", Los Tiempos 28th March 2008](#)

⁸ Annual Report of the Inter-American Commission on Human Rights, 2011; Chapter 3 (D), paragraph 239.

⁹ Ibid, para 233.

¹⁰ Ibid, para 236.

¹¹ Ibid, pars 233 and 237.

¹² Ibid, para 238.

¹³ Ibid, para 237.

The *libreta Militar*: discrimination against those who do not perform military service

The general clauses of the Friendly Settlement in Bustos do not address the role of the *libreta militar*. However the ombudsman, in his comments on the 2008 draft law, criticised the interference with fundamental rights of the requirement to produce the *libreta militar* “in processing personal documents and to access work and education”.¹⁴ It may be noted that conscientious objectors and others who *refuse* to perform military service do not receive the *libreta militar* and are thus debarred from these rights. The fact that female citizens can access these rights although they are not eligible for the *libreta militar* shows that it is not administratively necessary.

Moreover it is discriminatory that those who are exempted from military service, for example for health or family responsibility reasons, should be required to pay a substantial tax to receive a document which is free to those who have performed military service, and that the imposition of this earmarked military tax on a conscientious objector can be, depending on the nature of the individual's objection, no less a violation of the freedom of thought, conscience and belief than the requirement to undertake military training and perform armed military service.

In these respects, Bolivia might be encouraged to follow the example of Ecuador, which had a similar system, but which reported to the Human Rights Committee in 2009 that the *libreta militar* was no longer required for civil purposes.¹⁵

Military service for persons aged less than 18 years

Voluntary “Pre-Military Service”, (*Servicio Premilitar*) was reintroduced by Supreme Decree 24527 of 17 March 1997. Initially for males living in cities and in the final year (*Cuarto Medio*) of secondary education, it was extended to both males and females. It involves “literacy and other training courses, and attending military instruction every Saturday and during holidays for 12 months (...). Since military service gave conscripts access to training and education they might not have elsewhere, voluntary pre-military service was an attractive option for some young people.”¹⁶

On its accession to the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict (OPCAC), on 22nd December 2004, Bolivia declared “that, under its legislation in force, the minimum age for compulsory military service in the armed forces is 18 years. As for pre-military service, it is a voluntary alternative available for young persons from the age of 17 years.”. Although not expressed as such, it appears that this represented a commitment to raise the minimum age limit; the pre-military service had previously been open to all 15 to 19 year olds with a basic minimum secondary education.

Bolivia has not yet reported under the OPCAC, and the only reference to military service in its Fourth Periodic Report under the Convention itself (CRC/C/BOL/4, 25 March 2009) is to repeat this declaration. Beyond encouraging Bolivia to submit its Initial Report under the Optional Protocol (which had been due in 2007)¹⁷ the Committee does not seem to have addressed the issue. (At the time of writing, the Initial Report is still awaited).

Proof of the performance of military service *or* voluntary pre-military service is reportedly a pre-

¹⁴ See note 7.

¹⁵ CCPR/C/EQU/Q5/Add.1, 17th September 2009, page 51 (answer to Q.24).

¹⁶ Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London), p68.

¹⁷ CRC/C/BOL/CO.4, 16th October 2009 para 90

requisite of obtaining a university degree or professional qualification, or, for any male aged between 17 and 55, of leaving the country.¹⁸ This, in conjunction with what is known about the *libreta militar* implies one of two things: either at a time before they have completed military service young males *including those aged 17* are subject to additional civic disadvantages if they have not performed this supposedly voluntary service, or the “voluntary pre-military service” itself in fact is sufficient for the issue of the *libreta militar*, in which case it is really an arrangement to permit the performance of obligatory military service before the age of 18.

The latter interpretation had been indicated at the time when the pre-military service was first introduced. That year, in its Second Periodic Report under the Convention on the Rights of the Child, Bolivia stated “Because of recurring complaints in recent years concerning cases of maltreatment, including the death of conscripts in barracks, this year pre-military service was reintroduced for male students in their final years. Under these provisions future graduates receive military training at weekends and during vacations, but economic discrimination still exists, since the students who opt for this type of service must pay for their own uniforms and food”.¹⁹

Cadets who complete one or more years of study at the Navy Military School, are also deemed to have fulfilled their military obligations. Again, the age of admission is apparently now 17, in line with Bolivia's declaration on ratifying the OPCAC – it had previously been 16.

In the case both of “voluntary pre-military service” and cadetships at the Navy Military School, it is to say the least questionable whether the nature of the service ceases to be obligatory simply because there is a voluntary element in precisely how and when it is undertaken. The ombudsman, in his comments on the 2008 draft law,²⁰ criticised elements which would make “children of 16, 17 and 18 years old fight for the flag, in contravention of the UN Convention on the Rights of the Child”.

¹⁸ Child Soldiers Global Report 2008, op cit, p.67.

¹⁹ CRC/C/65/Add.1, 1st December 1997, para 153.

²⁰ See note 7 above.