



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

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Submission to the 97th Session of the Human Rights Committee: October 2009

Conscientious objection to military service and related issues

For the attention of the Country Report Task Force on

COLOMBIA

Submission prepared August 2009

CPTI (Conscience and Peace Tax International) is deeply concerned about a number of severe human rights violations associated with the military recruitment system in Colombia. These are:

Non-recognition of the right of conscientious objection to military service

Forced recruitment, by both the armed forces of the state and non-state actors

Links between the military recruitment and tax systems

Discrimination in education and employment against men who cannot show a *libreta militar*

Safety of human rights defenders

Non-recognition of the right of conscientious objection

In its concluding observations on Colombia's Fifth Periodic Report, the Human Rights Committee "notes with concern that the legislation of the State party does not allow conscientious objection to military service", and recommends, "**The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects.**"¹

The Sixth Periodic Report does not seem to respond to this in any way,

The issue of conscientious objection to military service did however arise during the Universal Periodic Review Working Group on Colombia in December 2008. Colombia chose to reject the recommendation that it should recognize the right of

¹ CCPR/CO/80/COL, 26th May 2004, para 17.

conscientious objection to military service “in law and practice and ensure that recruitment methods allow it (and) guarantee that conscientious objectors are able to opt for alternative service, the duration of which would not have punitive effects.”² Colombia’s argument was that “The Colombian Constitution and the legal framework establish that all citizens have the obligation to enrol in the military service when the circumstances so require to defend the National sovereignty and the public institutions and to provide security conditions for all citizens.”³

It has been argued, in a minority opinion in the Colombian constitutional court,⁴ that the unconditional guarantee of freedom of conscience in the Colombian constitution had to be seen as prevailing over the obligation to perform military service, recognised even in the constitution itself as subject to a number of exceptions. The majority opinion, however, was not even that the two provisions should be weighed equally, but that Article 216, imposing the obligation of military service, should be given absolute priority, and that has been the consistent interpretation of the domestic courts.

This has now been challenged in a petition⁵ before the Constitutional Court, which argues in part that under article 93 of the Constitution, Colombia’s obligations under international treaties to which it is a party, notably the International Covenant on Civil and Political Rights, must prevail over conflicting domestic legislation, and that the jurisprudence of the Human Rights Committee under article 18 of the Covenant makes it clear that it is incumbent on States Parties to the Covenant to examine claims of conscientious objection to military service whether or not there is explicit provision for this in national law.

Conscientious objection in Colombia

Colombia is one of a mere half dozen States where it is known that persons have openly declared themselves as conscientious objectors to military service, but where no legislation or regulations provide for exemption from or alternatives to such service for persons recognised as conscientious objectors.

Over 100 young persons in Colombia have formally and publicly declared themselves to be conscientious objectors to all forms of military and armed activity. Some declarations have been made on the occasion of enlistment, or attempted enlistment, but they are increasingly being registered pre-emptively to forestall any attempt at recruitment, by any party.

In principle, the military authorities have always refused to accept such declarations. No person has been excused military service on the grounds of conscientious objection. Nor have conscientious objectors been directed to unarmed service (which most would not accept, although there is a general willingness to perform some sort

² A/HRC10/82, Paragraph 37(a) (recommendation by Slovenia)

³ (A/HRC/10/82/Add.1, page 4).

⁴ Case 511/94, quoted at length in the response of the *Defensor del Pueblo* to the questionnaire from OHCHR issued in pursuance of Resolution 2002/45 of the Commission on Human Rights.

⁵ Demanda de inconstitucionalidad Expediente No. D-7685, Gina Cabarcas, Antonio Barreto, Daniel Bonilla.

of alternative civilian service following the model established in a large number of countries).

Recruitment of Conscientious Objectors

Recruitment into the Colombian armed forces is governed by the provisions of Law 48/1993, as modified by subsequent legislation. Under Article 10 “All Colombian men are obliged to define their military situation from the date they achieve majority...” “The military situation” is documented in the *libreta militar*. This records whether military service has been performed, and any exemptions or deferments granted - under Article 28 exemptions are granted on medical grounds, to persons who are the only child in their household; those who are responsible for the support of incapacitated or elderly parents, or are orphans responsible for the support of siblings; married men living with their wife; siblings of persons currently serving in the armed forces; children or siblings of persons killed or incapacitated while performing military or police service; persons convicted of serious crimes; priests or members of religious orders and their counterparts in other faiths and denominations; members of indigenous communities; and registered displaced persons (displaced persons are estimated to form almost 10% of the national population). Conscientious objectors do not however figure in the list.

Recruitment should, according to the law, take place at formal recruitment days. If at the time of registration the numbers eligible exceed the numbers required for recruitment, selection is made by ballot. Anecdotal evidence is that even those who have a strong desire to perform military service are entered in the ballot with the others, and may be excluded.

Recruitment is further 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, according to CPTI’s sources, a large proportion - perhaps even the majority - of military recruitment is by means of “*batidas*”, as the checks mentioned above are colloquially known. Young men whose documentation is not in order, or who are not carrying a *libreta militar*, are loaded into army trucks and taken, incommunicado, to military barracks. Those who are not able to convince the recruiters that they should not have been detained are enlisted with immediate effect.

The submission from War Resisters International for this Session of the Human Rights Committee gives evidence from a number of sources in Colombia of *batidas* since the beginning of 2008, and of five conscientious objectors who were seized:

Diego Alexander Pulgarin

Cristian Camilo Henao Suazo

Diego Yesid Bosca Rico

Yeferson Sneider Hernandez Mazo.

Gustavo Munroy

To avoid duplication, the full details are not reproduced here.

WRI also give details of the unresolved case of Alvaro Alfonso Pena Leguizamo who is trying to establish his conscientious objector status through the formal recruitment procedure, and who is currently listed as a “*remiso*”- someone who has failed to respond to the summons to “define his military situation”- despite having reported to the recruitment office on every occasion he was required to do so. A particularly disturbing feature of this case, as well as that of Munroy are the attempts to falsify the official written record.

The repeated prosecution and other harassment of a declared conscientious objector for failure to perform military service was referred to the Inter-American Court of Human Rights in 1995. Luis Gabriel Caldas Leon v Colombia (Case No. 11,596), has however still been neither heard nor dismissed.

More recently, the UN Working Group on Arbitrary Detention has issued an Opinion on the cases of three young men, two of whom were conscientious objectors, who had been seized in *batidas* in previous years:

Carlos Andres Giraldo Hincapié, seized on 4th August 2006

Gonzales Duque, seized on the 8th April 2007

Frank Yair Estrada Marin, seized on 5th May 2007

The Working Group not only found all three instances to constitute arbitrary detention, but that in the cases of Estrada Marín and Giraldo Hincapié the recruitment was also in breach of Article 18 of the International Covenant ⁶ on the grounds that ““The detention of those who have expressly declared themselves conscientious objectors has neither juridical support nor a legal basis, and their incorporation into the army against their will is a clear violation of their affirmation of conscience”.”⁷

A recent encouraging domestic development was the acquittal on desertion charges of Pedro Manuel Sanchez Calix, who had been forcibly recruited in November 2006, and in May 2007 had declared himself a conscientious objector and escaped from his unit. At the time of writing, however, we do not have details of the decision, and the possibility of an appeal by the prosecution has not been ruled out.

Forced recruitment

In Opinion 8/2008, the Working Group on Arbitrary Detention was unequivocal in its comments on *Batidas*:⁸ “In the same way the practice of *batidas*, *redadas* or *levas*,

⁶ Working Group on Arbitrary Detention, Opinion No. 8/2008, Paragraph 24. (“*La privación de libertad de que fueron víctimas los Sres. Estrada Marín, Giraldo Hincapié y González Duque fue arbitraria, ya que se dio en contravención del artículo 9 del Pacto Internacional de Derechos Civiles y Políticos; y en lo que refiere a los Sres. Estrada Marín y Giraldo Hincapié, contravino también el artículo 18 del Pacto Internacional de Derechos Civiles y Políticos, correspondiendo a la categoría I de las categorías aplicadas por el Grupo de Trabajo.*”)

⁷ Ibid, Para 23. (“*La detención contra quienes se han declarado expresamente objetores de conciencia no tiene sustento jurídico ni base legal y su incorporación al ejército contra su voluntad es en clara violencia a sus postulados de conciencia*”) The translation given above is informal ; an official English translation has yet to be issued.

⁸ Ibid (*Tampoco tienen base legal ni sustento jurídico las prácticas de batidas, redadas o levas, con el objeto de detener en las calles y lugares públicos a los jóvenes que no pueden acreditar su situación militar.*)

with the object of detaining in the streets and public places those young men who cannot establish their military status has neither juridical support nor a legal basis.

Very similar methods of forced recruitment have been found by the Inter-American Commission on Human Rights⁹ to be in breach of Articles 7 (right to liberty), 11 (protection of human dignity) and 22 (freedom of movement) of the Inter-American Convention on Human Rights.

These methods are also in themselves contrary to the legislative provisions, and by their very nature can lead to the forced recruitment of persons who should be exempt from military service. However in meetings with groups of local and international NGOs, including CPTI, officials of the civilian legal authorities, the *personaria*, have indicated that they do not believe they have powers to investigate such irregularities committed by the military.

CPTI's Colombian contacts are convinced that the cases which are reported are but the tip of the iceberg. The *batidas* are, they insist, not simply random enforcement checks, but targeted attempts to raise the necessary quota of recruits for the armed forces. It is no accident that they are concentrated in the more disadvantaged areas, whether urban and rural. The armed forces have no desire to round up articulate, educated, middle class youth, who know their rights. The majority of young Colombians, by contrast, have no idea that the *batidas* are contrary to domestic law, have no knowledge of the grounds on which they might be exempt from military service, or are too intimidated to challenge their recruitment.

An unpublished report by Acción Colectiva de Objetores y Objetoras de Conciencia (Bogotá)¹⁰ has documented cases in recent years where registered displaced persons, sole carers for elderly or handicapped parents or younger siblings, or persons with a brother already serving, have been unable to obtain their release having been taken in *batidas*, or where high school graduates (*bachilleres*), who should have been eligible, if at all, for 12 months military service, were placed in units of the regular army or the rural militia where the term of service is 18 or 24 months. In some cases, more than one of these features applied at the same time.

In particular, the practice of recruitment by means of *batidas* carries a particular risk of enlisting persons aged under 18. A youth who may appear to the recruiter to look 18, but who is in fact younger, will (unless a *bachiller*) not be able to show his *libreto militar* for the simple reason that he is not yet eligible to hold one.

A study of the national census of 2005 showed that of a total of 973 persons under the age of 18 listed as resident within military barracks, no fewer than 321 were males aged 17. (The full figures are given in the appendix.) It has to be assumed that the vast majority of the 321 were in fact recruits, a situation which should not have been possible under the law.

⁹ Case 10,975 , Guatemala, 6th October 1993

¹⁰ Gutiérrez Carvajo, C., Parada Abril, M. & Ovalle Fierro, J., Irregularidades en la Definición de la Situación Militar de los Colombianos. (2008, unpublished)

Under Article 2 of Law 548/99, the provision was repealed which had enabled “voluntary” enlistment on obligatory military service before the 18th birthday, and the Declaration lodged by Colombia on ratification of the Optional Protocol to the Rights of the Child on the involvement of children in armed conflict. states: “The military forces of Colombia... do not recruit minors in age into their ranks even if they have the consent of their parents.”¹¹

It must be recognised that in the Colombian situation, “military” recruitment does not take place only into the Government armed forces. A number of armed actors not under the control of the state, and covering a broad spectrum from political to purely criminal activities, also operate, and effectively control parts of the national territory. All recruitment by such groups is illegal. The victims of forced recruitment by these groups, however, do not even have the theoretical possibility of challenging the irregularity of their recruitment, or claiming grounds of exemption. Their biggest problem will be in convincing the authorities of the State, on an individual basis, that their participation was involuntary. Conscientious objectors face a particular difficulty in that their refusal to join any one party to the armed conflict within the country is all too often interpreted as active support of the “other side”.

Links between the military recruitment and tax systems

CPTI has particular concerns that those who are exempted from military service, for whatever reason, with the exception of members of indigenous communities and those with permanent physical disabilities, are required to pay a “compensation fee” set by the military authorities before they can receive the *libreta militar*. 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. In the case of conscientious objectors to military service the requirement to make a direct financial contribution to military expenditure is a separate violation of the freedom to manifest their religion or belief, and many are not prepared to do this.

Those males who do not hold a *libreta militar* suffer severe discrimination in many areas of life, notably education and employment. (The fact that females, who by definition never receive this document are not thereby disadvantaged shows that this effect is purely arbitrary.)

Article 13 of Law 418/1997 contains the provision:

“If, on reaching the age of majority, a young person (...) is enrolled in an undergraduate programme in a higher education institution, he shall have the option of serving immediately or of postponing his service until he has completed his studies.

Should he choose to serve immediately, the educational institution shall reserve his place for him under the same conditions; should he choose to postpone his service, his degree may be awarded only once he has completed his military service as the law requires. The interruption of higher studies shall make the obligation to perform

¹¹ Declaration lodged 25th May 2005, Preamble.

military service enforceable. Any civil or military authority failing to apply this provision shall be charged with misconduct punishable by dismissal.”¹²

The case of Martin Rodriquez, reported by WRI, indicates that some authorities, apparently fearful that the vaguely stated sanctions might be imposed in a draconian fashion, were checking the military status of students on enrolment. The case of Julian Andres Ovalle Fierro illustrates the difficulty in obtaining employment; indeed those who do not hold the *libreto militar* are seemingly condemned to live permanently outside the formal economy.

Threats against human rights defenders

Finally, CPTI is disturbed by the death threats which have been received by a number of members of organisations working to support conscientious objectors to military service and other young persons threatened by forcible recruitment by the Government or any armed non-state actor in Colombia.. Once again, full details are in the submission by War Resisters International and will not be repeated here. We are aware that these are but local manifestations of a much wider problem, and simply note that our partner organisations share the perilous conditions facing all human rights defenders in Colombia.

¹² As translated in CRC/C/70/Add.5.

Suggestions for the list of issues:

Further to the Committee's concluding observation no 17, regarding the fifth periodic report and to Opinion 8/2008 of the Working Group on Arbitrary Detention, is the State Party contemplating changes to the recruitment legislation to allow for the exemption from military service of conscientious objectors?

With reference to the comment on the practice of “*batidas*” in Opinion 8/2008 of the Working Group on Arbitrary Detention, and in the report of the Working Group's visit to Colombia in 2008, what steps is the state party taking to regularise recruitment methods?

So as to avoid discrimination against those who have not performed military service, does the State Party contemplate equalising the scale of charges for the *libreta militar*? Can the State Party justify the requirement to show a valid *libreta militar* for purposes unconnected with military service, eg for graduation from University?

APPENDIX

Children recorded in the 2005 census as resident in military barracks

Age	Females	Males	Total
>1	19	66	85
1	18	25	43
2	10	19	29
3	14	17	31
4	24	21	45
5	22	25	47
6	20	21	41
7	18	23	41
8	16	22	38
9	22	18	40
10	15	21	36
11	13	24	37
12	13	10	23
13	8	19	27
14	4	16	20
15	11	8	19
16	5	24	29
17	21	321	342
TOTAL	273	700	973

Source: Gutiérrez Carvajo, C. La presencia de niños soldados en cuarteles de Colombia entre 1992 y 2005, una revision a las sentencias de la Corte Constitucional y al Censo General. 2008 (unpublished ; A prior version was published in Putchipu 17-18, Coalicion contra la vinculacion de niñas, niños y jóvenes al conflicto armado en Colombia,. July-December 2007, pages 24 to 28. under the title "La presencia de niños en cuarteles según los datos del censo general 2005" (www.coalico.org)