



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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Executive summary:

Chile has not hitherto recognised the right of conscientious objection to military service. Draft legislation put before parliament in 2006 fell short of international standards; there is in any event no evidence of progress towards promulgating this legislation. Although priority is now given to those who “volunteer”, the military recruitment system is still based on obligatory service. Past conscientious objectors benefiting from an amnesty are in effect fined for their non-performance of military service.

Historical background

1. Military service in Chile is governed by the Law on Recruitment and Mobilization (*Ley de Reclutamiento y Movilización, Decreto Ley num. 2.306*) of 12 September 1978. As originally promulgated, this Law stipulated that eighteen-year-olds would be called up (subject to medical examination) between February and April each year; all those who would be liable having been obliged to register at a recruitment office by the 30th September of the previous year, ie. usually at the age of 17. Although the law applied in principle to both men and women, the registration requirement was obligatory for male citizens only; women might register voluntarily.

2. The Law on Recruitment and Mobilisation contains no provisions concerning conscientious objection. Those who refuse military service on the basis of conscientious objection are therefore liable to the general penalties set for *infractores* (those who failed to register) and *remisos* (those who once selected for military service failed to answer the call-up). These include a period of imprisonment of between 61 and 541 days and a doubling of the period of military service.¹ Moreover, those who do not fulfil the requirements of the Law are by definition unable to obtain a satisfactory “Certificate of Military Situation” (*Certificado de Situación Militar*), which under that law is required for admission to university or for employment in the public sector.²

3. In practice the peacetime needs of the Chilean armed forces are much smaller than the manpower available. Thus the number of *infractores* and *remisos* has been dwarfed by the number who registered but were fortunate enough not to be called up,

¹Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998.

²Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, p125

and the relevant penalties were rarely imposed. In 2003, the Government noted that “in the last 20 years, no youth has been detained for failure to complete his or her military service.”³

4. Proposals elaborated by the Ministry of Defence for “modernisation” of the military service obligation to a system officially described as “*Voluntaridad in principio; obligatoriedad en subsidio*” (roughly, “voluntary in the first instance, obligatory as back up”) were approved by Presidential Decree on 18th September 2000. Law No. 20.045, of 10th September 2005, amended Law 2.306 to incorporate these reforms.

Conscientious objection

5. Attempts to introduce legislation recognising the right of conscientious objection to military service date back to 1992. In August 1997, fourteen young men signed a formal declaration of conscientious objection to military service at a notary’s office, and applied, unsuccessfully, to the General Bureau of Mobilisation (*Dirección General de Movilización Nacional*) for recognition as conscientious objectors.⁴ Subsequent attempts by potential conscripts to register as conscientious objectors culminated in a concerted action by about 40 objectors who handed in declarations of conscientious objection at military recruitment offices in Santiago and two provincial cities on 27th September 2005.⁵

6. In its Fifth Periodic Report under the International Covenant on Civil and Political Rights, the Government revealed that “During the process of consideration of (Law No. 20.045), a parliamentary motion was tabled to include conscientious objection as one of the grounds for exemption from compulsory military service, but, while the initiative was supported by the Government, it was rejected by Congress.”⁶

7. On 20th June 2006, a further draft Bill “to establish conscientious objection to military service and create an alternative civilian service”⁷ was presented to Parliament; on 17th August the Defence Committee commenced consideration of the Bill.⁸ No further progress has been reported.

8. In its concluding observations on Chile’s Fifth Periodic Report under the ICCPR, the Human Rights Committee “notes the State party’s intention to adopt a law recognizing the right of conscientious objection to military service, but continues to be concerned that this right has still not been recognized (article 18 of the Covenant)”, and recommends “**The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment and**

³ Inter-American Commission on Human Rights, Report No 43/05, Case 12.219, *Vera et al v Chile* March 10, 2005; para. 26 reporting the brief from the responding State dated 16th April 2003.

⁴ Horeman, B. & Stolwijk, M., *Refusing to Bear Arms*, War Resisters International, London, 1998.

⁵ CO Update No. 14, War Resisters International, (www.wri-irg.org), Oct 2005

⁶ CCPR/C/CHL/5, para 249.

⁷ “*que establece una objeción de conciencia al servicio militar obligatorio y crea un servicio ciudadano alternativo*”.

⁸ <http://www.camara.cl/diario/noticia.asp?vid=21951>

recognizing that conscientious objection can occur at any time, even when a person's military service has already begun.”⁹

9. In fact, as reported on the Chamber of Deputies website¹⁰ the contents of the 2006 Draft Bill would not meet the conditions stipulated by the Human Rights Committee. It anticipated that the alternative service would be of two years, as opposed to the standard one year of obligatory military service. Such a discrepancy is discriminatory and apparently punitive. Moreover, another source reports that Article 4 of the Draft Bill states that applications to perform alternative service on the basis of conscientious objection must be made, accompanied with proofs, within the thirty days following the General Lottery for military service (see para 13, below).¹¹

10. In other respects the Draft Bill does not appear to meet the best standards established in Commission on Human Rights Resolution 1998/77. The requirement to provide proofs implies a refusal to “accept claims of conscientious objection as valid without inquiry”. And the requirement that alternative service is “compatible with the reasons for conscientious objection” and “of a non-combatant or civilian character” does not seem to be met by the stipulation that the alternative service should “contribute to the achievement of the objectives of a national defence”,¹² nor that Article 12 of the Draft Bill would place the administration of the alternative service system in the hands of the Ministry of Defence.¹³

The current situation

11. One crucial feature of the system instituted by Law No. 20.045 is that those liable for obligatory military service are no longer required to register at military recruitment offices. This conveniently precluded any subsequent repeats of the popular action of September 27th 2005 (para 3 above). Instead, in April each year a list (*Base de Conscripción*) is published on the basis of data from the Civil Registry showing, by place of residence, all males born eighteen years previously: thus the list published in 2008 showed those born in 1990.

12. Although no longer required to register at a recruitment office, all 17-year-old males are obliged under the Law on Recruitment and Mobilisation to check the details held by the civil registry and to notify any changes of address.¹⁴

13. Until 30th September, those whose names appear on the *Base de Conscripción* may present themselves at a local recruitment office to volunteer for military service. This possibility is also open to those aged between 20 and 24 who have not yet performed military service, and to those aged seventeen who wish to perform military service early. If this voluntary recruitment does not meet the target set by the armed forces a general lottery (*Sorteo General*) is held during the first week of October to select (commune by commune) a sufficient number of conscripts from those on the *Base de Conscripción* who have not volunteered. (A separate process is used to select

⁹ CCPR/C/CHL/CO/5, March 2007, para 13.

¹⁰ <http://www.camara.cl/diario/noticia.asp?vid=21951>, op. cit.

¹¹ Coscione, M., “Objeción de Conciencia y Servicio Ciudadano Alternativo: hacia dónde vamos en Chile?”, *Momento Cero*, 30th July 2006.

¹² “contribuyan al logro de los objetivos de la defensa nacional”

¹³ Coscione, *op cit*

¹⁴ <http://www.dgmn.cl/servicio/domicilio.php>

approximately 1,000 female recruits per annum from among those who have volunteered.)

14. The provision for advanced registration means that in some cases it is possible for a young man to embark before his eighteenth birthday as a “volunteer” on the military service which might in other circumstances be obligatory. The Committee on the Rights of the Child noted furthermore that in the declaration lodged when it ratified the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict “the minimum age for the voluntary recruitment of persons into its national armed forces is 17 or 18 years and that on an exceptional basis persons who have attained the age of 16 and meet certain criteria may participate in such programmes for shorter periods with the prior approval of the Director-General of the General Directorate for National Mobilization of the Ministry of National Defence and with the due consent of the parents or legal guardians.”¹⁵ Despite the assurances of the State Party that safeguards were in place to prevent the deployment in armed conflict of any person aged under 18, the Committee in its concluding observations **“encourages the State party to raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard.”**¹⁶

15. In April 2007, at the conclusion of the first cycle of the new system the President and Defence Minister announced at a ceremony in the Military Stadium that all places had been filled by volunteers. Official figures showed that 14,048 men and 1,030 women had been selected from some 40,000 volunteers who had presented themselves.¹⁷

16. A rather different picture emerges from the details of the 2009 recruitment cycle on the website of the *Dirección General de Movilización Nacional (DGMN)*.¹⁸ The general lottery was held on 6th October in order to select 70,461 men born in 1990 who would be called to military service in 2009, and the results were published on 9th October. Those selected, according to the website, have three options:
(i) to accept the result and participate in the selection process in December 2008, February and March 2009 (those currently enrolled in higher education or training may defer until immediately after the end of their studies, or choose one of two alternative “modalities” for fulfilling the military service requirement);
(ii) to present between 11th October and 13th November evidence of grounds for exemption (see following paragraph); or
(iii) before 28th February 2009 to inscribe at a recruitment office as a “volunteer”.

17. Grounds for exemption are:

- (i) “physical, dental, or psychological unsuitability”;
- (ii) being a chief wage earner whose family would in consequence suffer severe socio-economic damage, as attested by the social services;
- (iii) marriage or impending parenthood (before the date of the lottery);

¹⁵ CRC/C/OPAC/CHL/CO/1, January 2008, para 15..

¹⁶ *Ibid.*, para 16.

¹⁷ Riquelme, C. “Por primera vez en 107 años habrá sólo voluntarios realizando la milicia en las Fuerzas Armadas chilenas” *Terra Actualidad*, 3rd April 2007.

http://actualidad.terra.es/articulo/por_fuerzas_armadas_1496070.htm

¹⁸ http://www.dgmn.cl/dgmn/2008_07_reunion.php, consulted on 9th November 2008.

(iv) persons who have been convicted of serious offences (unless the DGMN decides they are “morally suitable”, or the conviction has been the subject of an amnesty);
(v) being a blood descendant of persons referred to in Article 18 of Law 19.123 as past victims of violations of human rights or political violence.

They do not of course include conscientious objection to military service.

18. Pending further progress towards legislation, conscientious objectors have no way of preventing their names from going into the *Base de Conscripción* and thus being entered into the General Lottery, and no opportunity to register their objection if selected. Conscientious objectors who do not report for military service if selected are treated as *remisos*; they become liable for a doubling of the length of that service,¹⁹ and until this is done are unable to obtain the *Certificado de Situación Militar*.

19. Moreover, Article 69 of the Law on Recruitment and Mobilisation stipulates that “in times of war, the President of the Republic can call upon all persons, regardless of sex or age limit, to be employed in the different services that the nation requires”. In clarifying this to the Committee on the Rights of the Child, Chile explained that “citizens aged over 18, whether or not they have completed their military service, pass into the military reserve”²⁰ Conscientious objectors, even if not selected for obligatory military service, are thus included on the military reserve list. In the event of a call up to military reserve service, the penalty for non-compliance stipulated in Articles 74 and 75 of the Law is up to five years’ imprisonment.

20. Following the institution of the new system, legislation was brought forward to pronounce an amnesty for all those who were in breach of the military recruitment regulations prior to the coming into force of the new arrangements in April 2006, and was passed by the Chamber of Deputies in January 2007. It was estimated that between 25,000 and 40,000 young men stood to benefit from this amnesty.²¹ In order to do so, a payment of 10,600 pesos is required; this compares with 1,100 pesos for the provision of the *Certificado de Situación Militar* in normal circumstances.²²

21. While welcoming the decriminalisation of those in this situation, Conscience and Peace Tax International has grave reservations about such arrangements. When applied to conscientious objectors this is tantamount to the imposition of a fine for the exercise of the right to freedom of thought, conscience and religion guaranteed in article 18 of the International Covenant for Civil and Political Rights; moreover the contribution to military expenditure may itself breach the freedom of conscience. In all cases, it institutionalises “the poverty draft”, by linking release from the military service obligation to the ability to pay.

¹⁹ Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008
<http://www.childsoldiersglobalreport.org/content/chile>

²⁰ CRC/C/OPAC/CHL/Q1/Add. , para 2

²¹ Meneses, A. , “Aprueban amnistía para infractores de normas de reclutamiento” La Nación, 16th January

2007(http://www.lanacion.cl/prontus_noticias/site/artic/20070116/pags/20070116172444.html).

²² http://www.dgmn.cl/servicio/tasas_derecho.php