INTERNATIONAL FELLOWSHIP OF RECONCILIATION

UPR SUBMISSION COLOMBIA 30th SESSION (May 2018)

Executive Summary

1. This submission highlights linked human rights concerns in Colombia, namely -
non-recognition of the right of conscientious objection to military service
irregular recruitment practices which amount to forced recruitment
threats against human rights defenders

2. The submission was prepared in September 2017 and incorporates the latest information available to IFOR at that time.

Conscientious objection to military service

3. Colombia retains a system of obligatory military service for male citizens, without any provisions allowing for conscientious objection to such service.

4. In October 2009, the Colombian constitutional court ruled that the absence of procedures whereby the right of conscientious objection to military service could be exercised was a serious omission, and called upon the Congress to bring in legislation to this end. 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.[1]

5. Despite extensive consultations no legislative proposals in this area have been placed before the National Assembly by the Government. A number of legislative initiatives have been made by individual members of the Assembly – including one in 2014 by a representative of the ruling party which covered both conscientious objection to military service and conscientious objection to being involved in the conduct of abortions. One or more may still be on the National Assembly's agenda, but there is no indication that any have progressed any farther.

6. In July 2010 Colombia's Sixth Periodic Report under the ICCPR was examined by the Human Rights Committee. In the list of issues,[2] the Committee had regretted Colombia's failure to respond to the recommendation in its previous concluding observations that "The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects."[3]

7. Colombias written replies summarised the decision of the Constitutional Court, referring particularly to the possibility of the right being enforced by a *tutella* action in an individual case, "demonstrating the exceptionally extreme circumstances which justify this".

8. The *Accion Collectiva de Objectores y Objectoras de Conciencia (ACOOC)* from Bogota argued

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1 *Comunicado No.43 – Expediente D7685 Sentencia C-728/09, 14th October 2009. http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM*

2 CCPR/C/COL/Q/6

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

strongly to the Committee that this response was inadequate. The Constitutional Court had seen tutella actions only as an interim means of protection, pending specific legislation, not as a solution. The idea that conscientious objection to military service can only be justified only in "exceptionally extreme" circumstances is contrary to international standards, and opens the dangerous possibility that tutella actions could result in the accumulation of case law which narrowly delimits the right. Moreover, *ACOOC* reported, the unprecedented delay in publishing the full judgement (*sentencia)* posed grave difficulties. Lower courts were not prepared to rely on a press release in interpreting Constitutional Court jurisprudence. (The *sentencia* finally appeared, after eleven months, in September 2010.)

9. In its Concluding Observations, the Human Rights Committee noted "with satisfaction [the] Constitutional Court ruling (...), 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..."**[4]

10..Since the Constitutional Court ruling, there have been successes in obtaining court orders to release conscientious objectors from the military, including by *ACOOC* in the case of José Luis Peña Rueda. Even so, two applications to lower courts to submit a tutella action in this case were turned down. Even in the most clear-cut case, that of Juan Diego Agudelo, whose status as a conscientious objector was recognised, following a tutella 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. Agudelo, after having declared his conscientious objection, was forcibly recruited and had to seek the assistance of the courts in securing his release.

11. Likewise, **Jhonatan David Vargas Becerra** was forcibly recruited in March 2013, despite his stated position that his religious beliefs prevented him from exercising violence or belonging to armed groups, and [that] he therefore refused to perform compulsory military service. Having been granted leave in June 2013, he did not return, instead launching a series of attempts to obtain his right of conscientious objection to military service through legal channels. On 4th September, 2014, at 8:30 pm, on leaving the Industrial University of Santander, Jhonatan was approached by police at a checkpoint where his identification documents were requested. These revealed an arrest warrant for "desertion". He was detained and the next day transferred to the Battalion Nueva Granada. On 16th September the Constitutional Court ruled that his fundamental rights to freedom of thought, conscience, and religion had been violated, and that he should be excused military service as a conscientious objector. Although this case was ultimately resolved through domestic mechanisms, no compensation was awarded for costs (monetary and psychological), nor for the two periods of arbitrary detention.

12. Irregular recruitment also features in the most recently reported case of the conscription of a conscientious objector, that of Diego Blanco . As a student currently enrolled at a University, Blanco was legally entitled to postpone military service. However when he followed the correct procedure and in December 2016 reported to his local recruitment office with proof of his studies he was nevertheless enlisted. He applied for release on the grounds both that he was unwilling to perform military service and that he should not have been enlisted in the first place. He was

[4] CCPR/C/COL/CO/&

examined by a military psychologist, who recommended against his release. On 20th March 2017 he formally declared himself a conscientious objector. Two days later, as a conscientious objector, he refused an order to take up arms. As a result he suffered a physical assault and threats of a Court Martial. This did not materialise, and in June he was released from military service. The official grounds have not been reported, but in this case it seems that this was a response to a global publicity and lobbying campaign rather than any judicial review either of the initial recruitment or of the asserted conscientious objection.

Irregular recruitment practices

13. The High Commissioner's report to the 19th Session of the 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."[5] 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."[6]

14. Given that military service in Colombia remains obligatory it is of course in order to monitor the fulfilment of individuals' military obligations. However, as the Working Group on Arbitrary Detention (WGAD) has pointed out, 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."[7]

15. In a decision of November 22nd 2011[8], the Colombian Constitutional Court effectively gave its own endorsment to the WGAD's interpretation of the legal situation. 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 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.

16. *Batidas* have become less ubiquitous since the decision of the Constitutional Court, but our local contacts report that a large proportion of military recruitment still takes this form.

17. In Para 35 of its Concluding Observations on Colombias Seventh Periodic Report under the ICCPR, the Human Rights Committee expressed concern about recent reports of such practices, including, the cases o and recommended "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

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5 A/HRC/16/22, 3rd February 2011,para 90.

6 A/HRC/19/21/Add 3, 31st January 2012, para 94.

7 Working Group on Arbitrary Detention, Opinion No. 8/2008, Paragraph 22 (A/HRC/10/21/Add. 3)

8 *Comunicado No.46 – Expediente D8488 Sentencia C-879/11, 22nd November 2011. http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM*

detention are investigated promptly, thoroughly and impartially; and that the perpetrators are prosecuted and punished."

18. By their nature, such methods of recruitment do not spare those who are not subject to military service, or who are entitled to exemption. The linkage made by the High Commissioner's Office of irregular recruitment methods and conscientious objection is particularly relevant; such procedures by definition do not allow space for the elaboration of a claim of conscientious objection. Thus, for example, on 10th June 2014, **Jefferson Shayanne Acosta Ortiz,** a declared conscientious objector, was forcibly recruited by Mechanized Cavalry Group No. 18 "General Gabriel Reveiz Pizarro" stationed in Saravena, Arauca department.

19. It should also be noted that this procedure carries a risk of unintentional juvenile recruitment. Once notorious for the conscription of persons under 18. On ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Columbia made a firm commitment to a minimum recruiting age of 18. However, a sudy 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, suspiciously no fewer than 321 were males aged 17.[9] - the majority otherwise were young children.

Human Rights Defenders

20. Our member organisation, the FOR Peace Presence sends disturbing reports that armed criminal gangs, former members of the AUC paramilitaries, are stepping in to the power vacuum left as the FARC guerrillas demobilise. On several recent occasions the weapon-free zone declared by the peace community of San Jose de Apartado has been violated.

Suggested recommendations

21. That Colombia without delay promulgate legislation enabling the exercise of the right to conscientious objection to military service.

22. That irregular recruitment practices are eliminated, and that those who have been responsible for such practices are ptrosecuted.

23. That Colombia takes strenuous action to ensure what the peace agreement calls a *paz duradura,* entailing a complete disarmament and demilitarisation of the country.

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[9] 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 by the *Coalicion contra la vinculacion de niñas, niños y jóvenes al conflicto armado en Colombia* (www.coalico.org) in Putchipu 17-18, (July-December 2007), pages 24 to 28, under the title "La presencia de niños en cuarteles según los datos del censo general 2005."