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## Conscience and Peace Tax International

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### **Joint UPR Submission: COLOMBIA Sixteenth Session: May / June 2013**

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## Executive summary

**This submission highlights five 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 inadequate protection of children against militarisation and involvement in armed conflict discrimination against those who do not hold the *libreta militar* threats against human rights defenders**

### Conscientious objection to military service

1. Colombia retains a system of obligatory military service for male citizens, without any provisions allowing for conscientious objection to such service. In the first cycle of the UPR, Slovenia recommended that Colombia should recognize the right of 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.”<sup>1</sup> Colombia rejected this recommendation, arguing 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. This obligation has been upheld on several occasions by the jurisprudence of the Constitutional Court.”<sup>2</sup>

2. The jurisprudence of the Colombian constitutional court in this matter has however now changed.<sup>3</sup> Asked to declare unconstitutional Article 27 of the the Military Recruitment Act, which gives total exemption from military service to indigenous and disabled persons, on the grounds that by not granting similar exemption to conscientious objectors it was in breach of Constitution Articles 13 (non-discrimination), 18 (freedom of conscience) and 19 (freedom of religion), the Court, while finding that it had no bearing on the enforceability of the specific Article in question, 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. In this respect the Court explicitly departed from its previous contradictory jurisprudence.

3. In July 2010 Colombia's Sixth Periodic Report under the ICCPR was examined by the Human Rights Committee. In the list of issues,<sup>4</sup> 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.”<sup>5</sup>

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<sup>1</sup> A/HRC/10/82, Paragraph 37(a) (recommendation by Slovenia)

<sup>2</sup> (A/HRC/10/82/Add.1, page 4 – reply to recommendation 37(a)).

<sup>3</sup> *Comunicado No.43 – Expediente D7685 Sentencia C-728/09, 14<sup>th</sup> October 2009.*  
<http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM>

<sup>4</sup> CCPR/C/COL/Q/6

<sup>5</sup> CCPR/CO/80/COL, 26<sup>th</sup> May 2004, para 17.

4. Colombia's written replies summarised the decision reached by the Constitutional Court, referring particularly to the possibility of the right being enforced by means of a tutella action in an individual case “demonstrating the exceptionally extreme circumstances which justify this”.<sup>6</sup>

5. The *Accion Colectiva de Objectores y Objectoras de Conciencia (ACOOC)* from Bogota argued 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.)

6. The 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...”**<sup>7</sup>

7. In mid-2010 the Ministry of Defence was consulting the OHCHR's office in Bogota and other authorities regarding the drafting of legislation to give effect to the Constitutional Court's decision. However, as noted in the report of the High Commissioner for Human Rights to the 19<sup>th</sup> Session of the Human Rights Council: “No significant progress has been made in drafting a bill to regulate the right to conscientious objection to military service; and debate on this topic has been stalled in Congress since July.”<sup>8</sup> Despite yet another individual initiative in the Senate<sup>9</sup> no further progress with a Government bill has been reported.

8. 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.

### Irregular recruitment practices

9. The High Commissioner's report to the 19<sup>th</sup> 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

<sup>6</sup> CCPR/C/COL/Q/6/Add.1, paras 110 – 112.

<sup>7</sup> CCPR/C/COL/CO/8

<sup>8</sup> A/HRC/19/21/Add 3, 31st January 2012, para 94.

<sup>9</sup> “Se podría acudir a objecion de conciencia para no prestar servicio militar” *EL Espectador*, 20<sup>th</sup> September 2012.

conscientious objection, with full respect for human rights, is urged.”<sup>10</sup> 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.”<sup>11</sup>

10. A large proportion of military recruitment still takes the form of *batidas*, where young men are systematically stopped in public places. 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.

11. 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.”<sup>12</sup>

12. In a decision of November 22<sup>nd</sup> 2011<sup>13</sup>, the Colombian Constitutional Court effectively gave its own endorsement 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.

13. *Batidas* have become less frequent since the decision of the Constitutional Court, but have not disappeared. The *Colectivo Quinto Mandamiento* reported forced recruitment in Barrancabermeja on 13<sup>th</sup> December, 2011, including of three persons who should have been exempt from military service; Adonis Andrés Amariz Pérez, a father of a family, José Eduardo Locumi, sole carer for an elderly relative, and Dagoberto Portillo Lopez, a declared conscientious objector.

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<sup>10</sup> A/HRC/16/22, 3<sup>rd</sup> February 2011, para 90.

<sup>11</sup> A/HRC/19/21/Add 3, 31<sup>st</sup> January 2012, para 94.

<sup>12</sup> Working Group on Arbitrary Detention, Opinion No. 8/2008, Paragraph 22 (A/HRC/10/21/Add. 3)

<sup>13</sup> *Comunicado No.46 – Expediente D8488 Sentencia C-879/11, 22<sup>nd</sup> November 2011.*

<http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM>

## Inadequate protection of children against militarisation and involvement in armed conflict

14. The practice of recruitment through *batidas* carries a particular risk of enlisting persons aged under 18, despite Colombia's declaration on ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict that this was the minimum recruitment age. A youth who may appear to the recruiter to look 18, but who is in fact younger, will not be able to show his *libreto militar* (military certificate) 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.<sup>14</sup> This is approximately twelve times the number which might be expected even were there an even age and gender distribution – in fact the majority otherwise were young children. It therefore has to be assumed that the vast majority of the 321 were in fact recruits, six years after the law had been changed to supposedly eliminate the possibility of any recruitment under the age of 18.<sup>15</sup>

15. The Committee on the Rights of the Child has welcomed “that recruitment of children below the age of 18 years is clearly criminalized in the Colombian Penal Code (Law No. 599 of 2000, article 162). The Committee also notes as positive that this provision is applicable to both illegal armed groups as well as the armed forces and that the definition of the crime includes both direct as well as indirect participation of children, including the use of children for intelligence purposes.”<sup>16</sup>

16. Although the Committee proceeded to deplore that to date over a thousand investigations of alleged juvenile recruitment and a similar number of confessions of child recruitment into “paramilitary groups”, had produced only two convictions,<sup>17</sup> by implication, all of these cases referred to concerned the recruitment of children into armed groups which were themselves illegal, not to the irregular recruitment or use of children by the armed forces of the state, even though this is also covered by Law 599/2000. Nevertheless the Committee also had occasion to state that it was “deeply concerned, that despite clear military instructions to the contrary (...), children continue to be used as informants for intelligence purposes, as recognized by the State party during the dialogue, exposing them to subsequent retaliations by illegal armed groups.”<sup>18</sup>

17. Attention might also be drawn to two ways mentioned by the Committee on the Rights of the Child in which children, even when not subject to recruitment, are exposed to militarism and military activities. One is “that considerable civic-military activities by the armed forces continue to take place inside schools as well as in the community and that children are invited to visit military installations and to wear military and police uniforms.”<sup>19</sup> It is encouraging that the Government apparently agreed that this was unacceptable; proof of action to terminate such activities would be more welcome. The other is the occupation use of schools in military activities

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<sup>14</sup> Gutiérrez Carvajo, C. La presencia de niños soldados en cuarteles de Colombia entre 1992 y 2005, una revisión a las sentencias de la Corte Constitucional y al Censo General. 2008 (unpublished ; A prior version was published by the *Coalición contra la vinculación de niñas, niños y jóvenes al conflicto armado en Colombia* ([www.coalico.org](http://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.”

<sup>15</sup> (Under Article 2 of Law 548/1999, the provision was repealed which had enabled “voluntary” enlistment on obligatory military service before the 18<sup>th</sup> birthday, and the Declaration lodged by Colombia on ratification of the Optional Protocol states categorically: “The military forces of Colombia... do not recruit minors in age into their ranks even if they have the consent of their parents.”)

<sup>16</sup> CRC/C/OPAC/COL/CO/1, 21<sup>st</sup> June, 2010, para 28.

<sup>17</sup> *Ibid*, paras 28, 29.

<sup>18</sup> *Ibid*, para 37.

<sup>19</sup> *Ibid*, para 41.

by both the armed forces and armed opposition groups. While encouraging Colombia “to take all preventive measures to stop illegal armed groups from recruiting children in schools”, the Committee is firm that this does not include the occupation of schools by the armed forces, pointing out that this “significantly increases the risk of exposing school children to hostilities”.<sup>20</sup>

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<sup>20</sup> Ibid, paras 39, 40.

## Discrimination against those who do not hold the *libreta militar*

18. Article 36 of Law 48/1993 (as amended by Decree 2150/1995), stipulates that all male Colombians must show that they have “resolved their military situation” before they may:

- a) enter into contracts with any public entity;
- b) enter into an administrative career;
- c) assume public office,
- d) obtain a professional degree from any school of higher education”

Article 37 adds: “No national or foreign company, official or private, established or hereafter established in Colombia, may have employment relations with adult persons who have not resolved their military situation.”

19. With the exception of members of indigenous communities and those with permanent physical disabilities, men who for whatever reason do not perform obligatory military service are required to pay a “compensation fee” set by the military authorities before they can receive the requisite proof – the *libreta militar*.

20. 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.

21. Males who for whatever reason have not performed military service and have not paid the “compensation quota” are effectively condemned to live permanently outside the formal economy, and are debarred from running for public office.

22. The effects are exemplified in the case of Bogota conscientious objector Julian Andrés Ovalle Fierro. Having successfully completed degree studies, he is debarred from receiving his certificate by the fact that as a conscientious objector he has refused to obtain a *libreta militar*, without either document, in his own words, “I could not obtain my professional title in psychology, and I could not have access to formal employment where I could put my acquired knowledge to the service of the community.”

23. An even more direct interference with the right to education was represented by a circular in which the National Recruitment Directorate required all centres of higher education to demand the presentation of the *libreta militar* on first registration, and from continuing students, and that men without a *libreta militar* sign a declaration undertaking to resolve their military situation in the course of the first semester.<sup>21</sup> This is directly contrary to article 111 of decree 2150/1995,<sup>22</sup> and was successfully challenged on those grounds in a *tutela* brought by conscientious objector Martin Rodriguez against the *Universidad Nacional* in Medellin.<sup>23</sup> Nevertheless, at the beginning of the following academic year, it was reported that the *Universidad Nacional* in Bogota was imposing the same requirement.

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<sup>21</sup> 006 DISCOR Z4 DIM 27 S1 155, 19<sup>th</sup> May 2006

<sup>22</sup> “En este decreto se prohíbe la exigencia de presentar la libreta militar para matricularse por primera vez a la universidad o para y sólo prescribe algunas situaciones de la vida civil en que será solicitada, entre las cuales no aparece matricularse en la universidad o firmar actas de compromiso para seguir estudiando en los centros de educación superior.”

<sup>23</sup> Tribunal superior Medellín, sala de decisión penal. Acción de tutela de segunda instancia -0683-2006 (013) 2007. Febrero 26 de 2007.

## Threats against human rights defenders

24. Several recommendations in the first cycle of the UPR referred to the situation of human rights defenders.

25. The latest report from the High Commissioner for Human Rights expresses continued concern about the “significant number” of attacks on, cases of harassment of, and threats against human rights defenders, particularly on the part of “illegal armed groups that emerged after the demobilization of paramilitary organizations”<sup>24</sup>

26. Organisations which oppose or seek to stand aside from the armed conflict are a particular target; the Human Rights Committee in 2010 was told of such threats against *Red Juvenil de Medellin*, which gives advice and legal support to conscientious objectors. On 26<sup>th</sup> November 2011 the youth organisation *Quinto Mandamiento* in Barrancabermeja was included in a mixed bag of ten human rights, workers', women's, and other social organisations warned in a leaflet that if they did not cease their public activities they would become “military targets” for *Los Rastrojos*, one of the illegal armed groups named in the High Commissioner's report.

27. “Peace Communities” which seek to maintain themselves as demilitarised and arms-free zones taking no part in Colombia's internal armed conflict are, ironically, at singular risk of such harassment. On 28<sup>th</sup> November 2011, IFOR's affiliate organisation FORUSA who run an “accompaniment” programme in the Peace Community of San José de Apartado (the site of a notorious massacre of unarmed villagers in 2005) reported that more than 50 heavily-armed men in camouflage uniform, who identified themselves as “paramilitaries”, entered La Esperanza, one of the Peace Community's eleven villages, called the villagers to a meeting and announced that they were putting a blockade of supplies of food to the village. Subsequently, on 4<sup>th</sup> February 2012, Jesus Emilio Tuberqueia, the legal representative of the community, suffered a violent attack in the centre of Apartado.<sup>25</sup>

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<sup>24</sup> A/HRC/19/21/Add 3, 31st January 2012, Section III A, particularly paras 14 – 16.

<sup>25</sup> See <http://forusa.org/blogs/for/peace-community-member-gunned-down/8658> (5<sup>th</sup> April 2011); <http://forusa.org/blogs/for/urgent-action-peace-community-threatened-paramilitary-presence/9980> (15<sup>th</sup> December 2011); <http://forusa.org/blogs/for-colombia/paramilitary-pressure-la-esperanza/9992> (20<sup>th</sup> December 2011); <http://forusa.org/blogs/for-colombia/colombia-take-action-protect-peace-community/10268> (22<sup>nd</sup> February 2012).