



# 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

International non-profit organization (Belgium 15.075/96)

[www.cpti.ws](http://www.cpti.ws)

**Bruineveld 11 • B-3010 Leuven • Belgium • Ph.: +32.16.254011 • e-✉: [cpti@cpti.ws](mailto:cpti@cpti.ws)**

Belgian account: 000-1709814-92 • IBAN: BE12 0001 7098 1492 • BIC: BPOTBEB1

UPR SUBMISSION

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## Executive summary:

1. CPTI (Conscience and Peace Tax International) is concerned about a number of severe human rights violations associated with the military recruitment system in Colombia. In practice overlapping, these fall under six heads:

- i) Forced recruitment, by both the armed forces of the state and non-state actors
- ii) Non-recognition of the right of conscientious objection to military service
- iii) Links between the military recruitment and tax systems
- iv) Interference with the right of freedom to education
- v) Inadequate safeguards against the recruitment of children
- vi) Safety of human rights defenders

## Forced recruitment

### *Military Recruitment Legislation*

2. 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).

3. 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.

4. 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,. Those

who are not carrying appropriate documentation are required to present themselves at a specific place and time in order to “regularise” their military situation.

#### *Military Recruitment Practice*

5. 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 in 4 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.

6. *Batidas* frequently target public transport. In the large cities, they typically take place at the exit barriers from the rapid transit systems. Local sources inform CPTI that they are at least a weekly occurrence somewhere on the *transmilenio* network in Bogota, and especially common at the southern terminus, serving the poorest neighbourhoods and the encampments of displaced persons. In the countryside, buses are often stopped and their occupants checked.

7. Very similar methods of forced recruitment have been found by the Inter-American Commission on Human Rights<sup>1</sup> 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.

8. 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.

9. CPTI has details of a number of cases within the last year 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.

10. A particularly disturbing feature of reports by those affected is the frequency with which they refer to attempts to falsify the official written record, whether by forcing

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<sup>1</sup> Case 10,975 , Guatemala, 6<sup>th</sup> October 1993

“recruits” to sign statements (eg. that they were enlisting voluntarily, or confirming - incorrectly - that there were no grounds for exemption), forging their signatures on statements that they had refused to sign, or, in the case of a person required to report in order to “define his situation”, failing to record that he had duly done so.

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. A particular difficulty is faced by conscientious objectors (see below), whose objection is to participation in any armed or warlike activity, but whose 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”.

#### Non-recognition of the right of conscientious objection

##### *International standards*

12. It has been recognised that the right of conscientious objection to military service can be derived from the freedom of thought, conscience and religion established in Article 18 of the International Covenant on Civil and Political Rights. (General Comment No. 22 of the Human Rights Committee, paragraph 11).

13. The View of the Human Rights Committee on Communications 1321/2004 and 1322/2004<sup>2</sup> confirms that it is incumbent on States Parties to the Covenant, which include Colombia, to examine claims for conscientious objection to military service whether or not there is provision in national law.

##### *Domestic legislation*

14. 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 allow recognised conscientious objectors to be exempted or excused such service.

15. It has been argued, in a minority opinion in the Colombian constitutional court,<sup>3</sup> that the unconditional guarantee of freedom of conscience in the Colombian constitution had to be seen as prevailing over the 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.

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<sup>2</sup> CCPR/C/88/D/1321-1322/2004: Republic of Korea. 23/01/2007;

<sup>3</sup> 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.

### *Practice*

16. A number of young persons in Colombia have declared themselves to be conscientious objectors to all forms of military and armed activity. Such declarations have often been made on the occasion of enlistment, or attempted enlistment, but they are increasingly being registered publicly before any attempt at recruitment, by any party.

19. In principle, the military authorities have always refused to accept such declarations. No person has been excused military service, or directed to unarmed service (which most would not accept, although there is a general willingness to perform some sort of alternative civilian service following the model established in a large number of countries) on the grounds of conscientious objection.

20. CPTI knows of more than five cases over the last two years where conscientious objectors have been taken in *batidas*. Not all have resulted in definitive recruitment. Some have established their right to exemption on other grounds; in at least one case the process is ongoing. In no instance, however, has the conscientious objection to military service been recognised, thus in all cases the freedom of thought, conscience and religion has been violated.

### Links between the military recruitment and tax systems

21. 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.

### Interference with the right of freedom to education

22. Under Article 10 of Law 48/93 “All Colombian men are obliged to define their military situation from the date they achieve majority” (ie. their eighteenth birthday) “with the exception of students for the *bachillerato*” (the school leaving certificate) “who will define their military situation when they receive the *bachillerato* certificate.”

23. Article 13 of Law 418/1997 modified this provision. The full wording of this Article<sup>4</sup> is:

“Minors under 18 years of age shall not be called up for military service. Students in eleventh grade who are under age and are selected for military service under Act No. 48 of 1993 shall have their call-up postponed until they reach the age of majority, unless they voluntarily choose to fulfil their constitutional obligation immediately with the express written consent of their parents. In such cases, under-age recruits may not be assigned to areas where war operations are taking place or employed in armed conflict operations.

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<sup>4</sup> As translated in CRC/C/70/Add.5.

“If, on reaching the age of majority, a young person who has postponed his military service 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 military service enforceable. Any civil or military authority failing to apply this provision shall be charged with misconduct punishable by dismissal.”

24. CPTI heard reports in 2007 that University authorities, apparently fearful that the vaguely stated sanctions in the third paragraph of the above Article 13 might be imposed in a draconian fashion, were checking the military status of students on enrolment and that at least one student had been refused admission to his course. This would appear to be a violation of the freedom of education even more unequivocal than that implied by the provision of the Law.

#### Inadequate safeguards against the recruitment of children

25. Under Article 2 of Law 548/99, the possibility was repealed of “voluntary” enlistment on obligatory military service before the 18<sup>th</sup> birthday, and on 20<sup>th</sup> December 1999, in anticipation of this Law coming into force, publicity was given to the discharge of 648 persons aged under 18 from the Colombian Army and over 200 from the other branches of the armed forces. However, some doubt has subsequently been thrown by 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 (25<sup>th</sup> May 2005). In its preamble, the Declaration states: “The military forces of Colombia... do not recruit minors in age into their ranks unless they have the consent of their parents.”

27. Moreover, the practice of recruitment by means of *batidas* carries a particular risk of in practice 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.

#### Threats against human rights defenders

28. Finally, CPTI is disturbed that death threats were on 29<sup>th</sup> and 30<sup>th</sup> May 2008 sent in emails signed “Aguilas Negras” to a number of prominent members of Red Juvenil, an organisation which has been active in the support of conscientious objectors to military service and other young persons threatened by forcible recruitment by the Government or any armed non-state actor in Colombia. The Aguilas Negras are believed to be illegal “paramilitary” units which have regrouped following the recent demobilisation. While aware that this is but a local manifestation of a much wider problem, CPTI hopes that the Colombian Government will redouble its efforts to prevent victimisation of human rights defenders within the country.