

Executive Summary

This submission was prepared in June 2013 on the basis of the latest information available at that date. It focusses on two issues with regard to military service in Chile – the continued failure to make legislative provisions for conscientious objection to military service, and residual arrangements permitting some juvenile recruitment; the possibility of opting to perform obligatory military service before the 18th birthday and the classification of children attending military schools as members of the armed forces.

CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

1. In the first cycle of the UPR, Chile was not asked about conscientious objection to military service. Nevertheless, during the Working Group on 8th May, 2009, the Chilean delegation added to comments about the review of military justice, the statement “The objection of conscience to military service is available to relatives of the victims of human rights violations of the past.”¹ While it is of course commendable that relatives of victims are exempted from the obligation to perform military service, this is an extension of the compassionate exemption extended by many States to the close relatives of those killed or disabled in the course of such service, and does not constitute recognition of conscientious objection to military service. Chile has yet to pass legislation which gives such recognition.

2. The first attempt to introduce conscientious objection provisions came in 2005, during the consideration of the Law on Modernisation of Obligatory Military Service². As noted in Chile's Fifth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR) “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.”³. The Government which took office in March 2006 indicated its intention of bringing in legislation which would recognise conscientious objection, and on 20th June 2006, a draft Bill “to establish conscientious objection to military service and create an alternative civilian service”⁴ was presented to Parliament. This Bill was still at the “first reading” stage when Chile's Report was examined by the Human Rights Committee in March 2007.⁵

3. In its Concluding Observations on Chile's Fifth Periodic Report 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 recognizing that conscientious objection can occur at any time, even when a person's military service has already begun.”⁶

4. No report of the further progress of the Bill has been traced, and no mention of it is made in Chile's Sixth Periodic Report under the ICCPR. In reply to the previous Concluding Observation Chile indicates that between 2007 and 2011 a total of 691 young men benefited from the exemption

¹ A/HRC/12/10, para 53.

² Law No. 20.045 of 10th September 2005

³ CCPR/C/CHL/5, 7th February 2006, para 249.

⁴ “*que establece una objeción de conciencia al servicio militar obligatorio y crea un servicio ciudadano alternativo*”.

⁵ CCPR/C/SR/2430 (Meeting of 15th March 2007, am) para 63.

⁶ CCPR/C/CHL/CO/5, March 2007, para 13.

from military service afforded under Law 20045/05 to certain clergymen, and that a further 1,132 were exempted as descendants of victims of past human rights abuses or political violence.⁷ Nevertheless, in contrast to its response during the UPR review, Chile admits that “Current legislation does not provide for exemption from military service – a constitutional duty for every Chilean who has reached 18 years of age – on the ground of conscientious objection as such.”⁸ The sixth periodic report is due to be examined by the Human Rights Committee in March 2014.

5. The relevant Article of the Chilean Constitution, No. 22, states “Chileans have the fundamental duty to honour their fatherland, defend its sovereignty and contribute to the preservation of national security [...]. Chileans able to bear arms must be inscribed in the Military Registers, unless they should be legally exempt from this requirement.”. Law 20045/05 reaffirms this principle, and as adopted contains no reference to conscientious objection. However it represented the institutionalisation of the principle of “*Voluntaridad in principio; obligatoridad en subsidio*” (roughly, “voluntary in the first instance, obligatory as back up”), which had been elaborated by the Ministry of Defence in the late 1990's and approved by Presidential Decree on 18th September 2000.

6. Under the Law, in April each year a list (*Base de Conscripción*) is published showing, by place of residence, all males born eighteen years previously: thus, for example, the list published in 2012 showed those born in 1994. Those whose names appear on the list 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. As a back-up a general lottery (*sorteo general*) is held during the first week of October to select (commune by commune) from those on the *Base de Conscripción* who have not volunteered, a pool of potential conscripts who are required to report to the recruitment authorities. (A completely separate process is used to select 1,000 female recruits per annum from among those who have volunteered.)

7. Conscripts selected in the annual lottery may as appropriate have the option of applying for one of the alternative modes of completing the military service obligation. Persons in higher education, or with certain professional qualifications, may postpone “ordinary” military service until after graduation, or may substitute *Prestación de Servicios*, under which the military requirement may be fulfilled in two periods of ninety days each, applying their professional expertise, or, on payment, a *Curso Especial de Instrucción Militar* - a 150-day military training course available to students in the final year of recognised higher education institutions. Or they may apply for exemption.

8. Exemptions are available to:

- those who produce a medical certificate attesting to a permanent physical or psychological incapacity.
- those who can produce evidence from the social service authorities that they are the chief source of income in their household, loss of which would have severe socio-economic consequences
- those who were married *before* the drawing of the lot, or who can provide proofs that they are actual or expectant fathers.

As noted above, exemptions have now also been extended to ministers of religion and to “persons closely related to those referred to in Article 18 of Law 19123 as past victims of violations of human rights or political violence.” Also excluded from military service are persons who have been convicted of serious offences, unless the General Bureau of Mobilisation (*DGMN - Dirección*

⁷ CCPR/C/CHL/6, 12th September 2012, paras 104, 105.

⁸ Ibid, para 106.

General de Movilización Nacional) decides they are “morally suitable”, or the conviction has been the subject of an amnesty.

9. Under the Law, all applications for exemptions or deferments carried a cost substantially higher than that otherwise charged for the “*Certificado de Situación Militar*” document, which under the military service law is required for admission to university or for employment in the public sector.⁹ and a further fee of a similar level was charged for the issue of a certificate of exemption. Many of these charges have now been abolished.

10. Conscientious objectors have no way of preventing their names from going into the *Base de Conscripción* and thus being entered into the lottery, and have no opportunity to register their objection if selected. Those who fail to register with the military authorities if required are classified as “*infractores*”; those who fail to report for military service as “*remisos*”. Both categories are liable to prison sentences of between 61 days and 541 days or to the imposition of a doubled length of military service, and are unable to obtain a *Certificado de Situación Militar*.

11. Moreover, Chile has informed the Committee on the Rights of the Child that “citizens aged over 18, whether or not they have completed their military service, pass into the military reserve”¹⁰ 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.

12. In what appeared to be a response to a growing number choosing to declare themselves publicly to the recruitment authorities as conscientious objectors,¹¹ the Law abolished the requirement that at the age of 17 young men should register with the local military recruitment office. The *Base de Conscripción* is now drawn up on the basis of information supplied by the civil registry (*Registro Civil e Identificación*) - a cosmetic change only, as the legal requirement on 17-year-olds has shifted to that of confirming their domicile with the nearest civil registry office.

13. 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.¹² In order to do so, a payment of 10,600 pesos was required; this compared with 1,100 pesos for the provision of the *Certificado de Situación Militar* in normal circumstances. The figures currently quoted on the website of the DGMN imply that application for an amnesty and obtaining the relevant certificate of classification to the reserve now costs in total 20,000 pesos, whereas the *Certificado de Situación Militar* itself is now provided free of charge.¹³ When applied to conscientious objectors this is tantamount to the imposition of a fine for the exercise of the right to freedom of conscience. Moreover it institutionalises “the poverty draft”, by linking release from the military service obligation to the ability to pay.

14. Over the years from 2007 to 2011 the number of volunteers was consistently around double

⁹ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004*, p125

¹⁰ CRC/C/OPAC/CHL/Q1/Add. 1, 5th December 2007, para 2.

¹¹ For instance, on 27th September 2005, in Santiago and two provincial cities about 40 conscientious objectors publicly handed in declarations at military recruitment offices. (CO Update No. 14, War Resisters International, (www.wri-irg.org), Oct 2005).

¹² 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).

¹³ <http://www.serviciomilitar.cl/tramites-smo/>

the number of recruits required, so that nobody chosen in the lottery was ultimately conscripted. However between 2008 and 2011 the proportion of a declining pool of young men choosing to volunteer for military service fell from just under 20% to just under 15%, and the proportion of the volunteers who were needed rose from approximately 45% to approximately 55%.¹⁴ The following year saw an acceleration of this trend. By October 2011 only 14,127 volunteers had come forward, for recruitment in 2012, a 30% drop from the year before. This low figure, which was blamed on the effect of the student protest movement, was so close to the target of 11,320 that there were fears that after unsuitable candidates had been weeded out it would at last be necessary to enlist some of those chosen by lot.¹⁵ Although it was not subsequently reported that this had in fact been necessary, there clearly can be no confidence that Chile will continue indefinitely to meet its recruitment requirements on a voluntary basis.

15. Suggested question: Chile maintains a system of obligatory military service in which however it gives priority to volunteers in meeting its annual recruitment target. In the latest year, how many young men were liable for conscription, how many volunteered, how many volunteers were accepted, and how many young men were selected by lot to perform military service? How many volunteers were applying to commence service before their eighteenth birthday? Were any of these accepted?

16. Suggested recommendation: That Chile legislate to permit exemption from military service for conscientious objectors and also introduce procedures whereby those who have developed conscientious objections after volunteering for military service may be exempted.

JUVENILE RECRUITMENT

17. When Chile ratified the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict on 31st July 2003, it lodged a declaration that “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.”¹⁶ Following criticism by the Committee on the Rights of the Child, this declaration was replaced on 13th November 2008 by the wording: “The Government of Chile declares that, in accordance with its internal legislation, the minimum age for voluntary recruitment into its national armed forces is 18 years. As an exception, persons who are 17 years of age may, at their request, advance by one year their ordinary conscription into military service, although they may not be mobilized before they have reached the age of 18.” It will be noted that in this case nothing is said to indicate that parental consent is required. In this it did not fully adhere to the recommendation in which the Committee on the Rights of the Child “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.”¹⁷

18. Chile is also one of the States in which students at military schools are classified as members of the armed forces, although admission to such schools is possible at the age of 17 on completion

¹⁴ Based on statistics provided in paragraph 106 of CCPR/C/CHL/6

¹⁵ War Resisters International, “Chile: Student movement blamed for fall in numbers of volunteers for the military”, CO Update No. 69, 3rd November 2011.

¹⁶ CRC/C/OPAC/CHL/CO/1, 13th February 2008, para 15..

¹⁷ *Ibid*, para 16.

of compulsory secondary education.¹⁸ As the Committee on the Rights of the Child has observed with reference to Azerbaijan¹⁹, this allows situations in which persons aged under 18 might be embroiled in armed conflict.

19. The Committee on the Rights of the Child also noted that 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,”²⁰ and suggested that Chile might “wish to consider expressly clarifying in the above-mentioned law that this provision only applies to persons over 18 years of age.”²¹

20. Suggested question: has Chile taken any action to implement the recommendation of the Committee on the Rights of the Child that it amend Article 69 of the Law on Recruitment and Mobilisation so that it cannot be read as applying to persons under 18 years of age.

21. Suggested recommendation: that Chile repeal the provision whereby persons may volunteer to embark upon their obligatory military service at the age of 17 and make such changes as are necessary in the status or practice of its military schools so that without exception no one may be considered a member of the armed forces before his or her eighteenth birthday.

¹⁸ Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers London, September 2012, p145.

¹⁹ CRC/C/OPAC/AZE/CO/1, 8th March 2012, para 13.

²⁰ CRC/C/OPAC/CHL/CO/1, 13th February, 2008, para 13

²¹ Ibid, para 14.