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Executive Summary

This submission was prepared in March 2013 on the basis of the latest information available at that date. It focusses on two issues with regard to military service in Mexico – the continued failure to make legislative provisions for conscientious objection to military service, and the classification of children attending military schools as members of the armed forces. Neither of these issues featured in the review of Mexico in the first round of the UPR, in May 2009, when attention was focussed on the other side of the coin, the use of the armed forces for law enforcement purposes, and the accountability of military personnel before civilian courts for any human rights abuses committed in this context.

CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

1. Obligatory military service was introduced in Mexico in 1942, during the Second World War. It has however subsequently “evolved significantly (...) from strictly military activities to primarily community service activities”.¹

2. As described by Guttman,² the current system is that young men must register at the age of 17, and their names go into a ballot, from which approximately a third of those eligible are drawn “although youths with greater financial resources and political connections often - and fairly easily - avoid military service”. Those who are selected are obliged to serve for one year, reporting for military training on Saturday mornings near where they reside; in fact, however, although they are uniformed and formally counted in the strength of the armed forces their military service “entails little military training per se” being mainly concerned with civil service duties such as health, construction of roads, and reforestation.

3. At no stage has Mexico made legislative provision for conscientious objection to military service.

4. This issue was first raised by the Human Rights Committee in 1999, when considering Mexico's Fourth Periodic Report under the International Covenant on Civil and Political Rights. In their concluding observations, “The Committee notes that the law does not recognize the status of conscientious objectors to military service. **The State party should ensure that persons required to perform military service can invoke conscientious objection as grounds for exemption.**”³

5. In 2005, Mexico was among the signatories of the Ibero-American Convention on Young People's Rights, Article 12 of which states (in the official English version): “Youth have the right to make conscientious objection towards compulsory military service. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service.” The Convention came into force with the fifth ratification on 1st March 2008. Mexico has to date still not proceeded to ratification.

6. In its Fifth Periodic Report under the ICCPR Mexico responded somewhat dismissively to the Human Rights Committee's previous Concluding Observations. “As regards the

¹ CCPR/C/SR.2688 (Tuesday 9th March 2010, pm), para 30.

² Guttman, M. C., “Military conscription, conscientious objection and democratic citizenship in the Americas” in Cinar, O.H. and Usterci, C. (Eds), Conscientious Objection: Resisting Militarized Society, Zed Books, London, 2009, pps 131 - 144, especially the section on “Conscription in Mexico”, pp. 139 - 141.

³ CCPR/C/79/Add.109, July 1999, Para 20.

recommendation of the Committee (...) to ensure that persons liable to military service can raise conscientious objector status, it should be noted that military service is a civic duty that is done by lottery and there is flexibility in performing it, especially for students. To date, there has not been a single case of conscientious objection.”⁴

7. The Human Rights Committee nevertheless returned to the question in its List of Issues on the report⁵ In its written replies⁶ Mexico gave an assurance that even in the absence of explicit legal recognition, it ought to be possible for a conscript to be permitted to perform a non military service in exercise of his freedom of conscience, should such a case occur.

8. In the dialogue with the State, a member of the Committee observed that “the Committee's jurisprudence was consistent in interpreting article 18 [of the ICCPR] to mean that the basic right of freedom of conscience should be extended to conscientious objection as grounds for exemption from military service. Therefore, the State party, which admitted that such grounds were not provided for under its law, was not in full compliance with its obligations under the Covenant. The fact that the Ministry of National Defence could, at its discretion, exempt some individuals from service for religious, moral or social reasons, was not sufficient; the right to conscientious objection must be specifically recognised in law. Noting that the current trend in the international community was to recognise the right to conscientious objection by offering alternatives to military service, he stressed that non-military community service must not be punitive, as that, too, would be contrary to the Covenant's aims and objectives.”⁷

9. The Mexican delegation continued however to argue that “to date there had not been a single case of conscientious objection” but that “while the right to conscientious objection was not recognised in Mexico (...) those individuals required to do service could always opt for strictly community service”.⁸ The “fusion of military and civilian authorities” implied by these “community service activities of the military” was seen as problematic by another member of the Committee, who questioned whether they were compatible with articles 2 (non-discrimination) and 14 (fair trial) of the Covenant.⁹ In response, the delegation further confused the issue, by seeking to distinguish “compulsory military service, in which community service was used to cultivate certain values in youth” from “voluntary or professional military service that prepared adults for war service.”¹⁰

10. It does indeed seem questionable whether what is called military service in Mexico should indeed be so described, which raises a different question of whether it is legitimate for a State to select young men by ballot to perform obligatory community service. However, it is not at all clear that in practice a conscientious objector could indeed freely opt out of the military training aspects of the service.

11. The Human Rights Committee was not convinced, and in its Concluding Observations on Mexico's Fifth Periodic Report notes that it “continues to be concerned that the State party does not have a law recognising the right of conscientious objection to military service and does not intend to adopt one,” and recommends “The State party should adopt legislation recognising

⁴ CCPR/C/MEX/5, 24th September 2008, para 715.

⁵ CCPR/C/MEX/Q5, 24th August 2009.

⁶ CCPR/C/MEX/Q.5/Add1, Para. 233

⁷ CCPR/C/SR.2688 (Tuesday 9th March 2010, pm), para 16

⁸ Ibid, para 30.

⁹ Ibid, para 38.

¹⁰ Ibid, para 42.

the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment.”¹¹

12. Mexico could deal with this either by completely removing all military aspects of the current obligatory service, and placing it under the supervision of a civilian ministry, or by recognising in law the right of conscientious objection to military service, or preferably by doing both, so that in the event that it was in the future considered necessary to reimpose military conscription, the rights of conscientious objectors would be upheld.

13. To date, there is no indication that Mexico has taken any action to implement the recommendations of the Human Rights Committee.

JUVENILE RECRUITMENT

14. Mexico is Party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

15. Nevertheless it is reported that “Children in Mexico may enrol in some military schools from the age of 15 and in others at 16 or 17. All military school students, regardless of their age, are considered to be members of the armed forces”.¹²

¹¹ CCPR/C/MEX/CO/5, 17th May 2010, para 19.

¹² 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, p55.