

Executive Summary

This document was prepared in March 2014 on the basis of the latest information known to the submitting organisations.

Principal concerns are:

- **lack of provision for conscientious objection to military service**
- **restrictions on the civil rights of those who have not completed military service, including conscientious objectors**
- **military service of persons aged less than 18 years**

Military service and conscientious objection

1 Bolivia maintains a system of obligatory military service. This was until recently regulated by the 1976 National Defence Service Act (*Ley Servicio Nacional Defensa*). In March 2008 the Chamber of Deputies approved a new draft Military Service Act (*Ley de Servicio Militar*) and it was passed to the Senate for approval. As of May 2011 it was still awaiting debate in the Senate. At the time of writing there has not been any indication of any further progress.

2 All male citizens become liable for obligatory military service of one year from the age of 19 (Article 22). Although the liability persists to the age of 45, military service in practice is usually performed by those aged 19 to 21. Women aged 19 to 35 with no children are, in time of war or national emergency, liable to service for up to two years in the Female Auxiliary Service, where they would carry out “production activities”.

3 Under the 1976 Law, postponement is possible for men who are studying or living abroad. Exemption may be granted to those who are physically disabled or mentally incapacitated, who are the only son of a widow or of parents aged over 70, who are themselves married or widowers and have children, whose fathers died in international armed conflict or during military service, to theology students, and to miners working underground. Although the law states that even those exempted must receive three month's military training, this is reportedly not enforced. There is no exemption from military service for conscientious objectors.

4 On completion of military service or other regularisation of their military situation, male Bolivians are issued with the “*libreta militar*”. This document is required in order to enter university or obtain a passport. Those who have been exempted from military service are (under Article 77 of the Military Service Act) obliged to pay a one-off “military tax” equivalent to between \$200 and \$400 in order to receive the *libreto militar*. Under Article 79, failure to do so incurs a fine and arrest.

5 The military service requirement and the “military tax” were in 2004 challenged in a petition brought before the Inter-American Commission on Human Rights (IACHR) on behalf of Alfredo Diaz Bustos. Bustos, a Jehovah's Witness, had explained that he was unable, on grounds of conscience, to perform military service. The military recruitment office were not prepared to exempt him on these grounds, but were able to find medical grounds, and demanded that he pay the military tax. He sought a re-classification of his exemption and also a recognition that “his beliefs which do not permit him to receive military instruction also forbade him to make financial payments to institutions of that nature”. He also alleged discrimination on the grounds that “Article

49(i) of the National Defense Service Act states that in peacetime, clergy, seminarians, religious, and novices are exempt from military service” but although dispensation was granted to Catholic theological students, it was not applied to his equivalent role as “a Ministerial Servant and as such (...) Assistant Principal of the Theocratic Ministry School that operates in La Paz Kingdom Hall of the Jehovah’s Witnesses”. This aspect of his petition was however not addressed in the eventual settlement.

6 In a Friendly Settlement before the IACHR in October 2005, the Bolivian State, represented by the Ministry of Defence, agreed:

- “a) to give Alfredo Díaz Bustos his document of completed military service within thirty working days after he submits all the required documentation to the Ministry of Defense;
- b) to present the service document free of charge, without requiring for its delivery payment of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not;
- c) at the time of presentation of the service record, to issue a Ministerial Resolution stipulating that in the event of an armed conflict Alfredo Díaz Bustos, as a conscientious objector, shall not be sent to the battlefield nor called as an aide
- d). Include, in accordance with international human rights law, the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces;
- e) Encourage, together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service;¹

7 As the IACHR noted in its Annual Report the following year, the first three items of this agreement, those which affected Bustos' individual situation, were honoured promptly, but no action had been taken on the two more general undertakings. Indeed, in direct contravention of item (d) of the Friendly Settlement Agreement, the draft Military Service Act passed by the Chamber of Deputies in March 2008 contained no provisions for conscientious objectors. As such it was criticised by Bolivia’s ombudsperson, Waldo Albarracín.²

8 The latest follow-up, in the IACHR's Annual Report for 2012, concludes that the Friendly Settlement Agreement has still been implemented in part only, and indicates that “the Commission will continue to monitor the pending items.”³ Bolivia had prided itself on its ratification of the Ibero-American Convention on Rights of Youth, Article 12 of which reads: “1. Youth have the right to make conscientious objection towards obligatory military service. 2. 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.”⁴ The petitioner however pointed out that far from doing anything to bring its national legislation into accordance with this provision, Bolivia had in fact entered a reservation to this article at the time of ratification.⁵

9 The petitioner had reported in 2011 that the Draft Law on Compulsory Military Service (No. 17/08 of January 16th 2008), which contained no provisions relating to conscientious objection is

1 Inter-American Commission on Human Rights: REPORT N° 97/05; PETITION 14/04; FRIENDLY SETTLEMENT; ALFREDO DÍAZ BUSTOS – BOLIVIA October 27, 2005, para 16, I, d and e

2 “Defensor objeta Ley de Servicio Militar”, *Los Tiempos* 28th March 2008

³ Annual Report of the Inter-American Commission on Human Rights, 2012; Chapter 3 (D), paragraph 281.

⁴ Ibid, para 272.

⁵ Ibid, para 275.

not moving through the legislative process and thus there is fear that it will be approved hastily without allowing any opportunity for observations from the Ombudsman's Office." Furthermore, "in 2009 the Ministry of Defense developed a series of preliminary drafts, including one referring to the Security and Integrated Defense of the Plurinational State, which omits conscientious objector status in Article 61 prescribing Compulsory Military Service."⁶ Asked for an update for the 2012 report, he maintained that no further progress had been made on these issues in the last twelve months.⁷ By contrast, the State had claimed "that in 2011 and 2012, the Plurinational Legislative Assembly had received the draft Law on Compulsory Military Service for police and military candidates and the draft Law on Compulsory Military Services, respectively, so that the conscientious objection continued to be the subject of much in-depth analysis. It pointed out that one proposal in the draft Law on Compulsory Military Service is to include alternative military service for conscientious objectors"⁸

10 The State conceded that no reference to a right of conscientious objection to military service was included in the new Constitution which took effect in 2007.⁹ It however pointed out that some forms of obligatory military service were unarmed. Thus "through Bolivia's Civil Aviation Law (Law 2902 of 2004) and Ministerial Resolution No. 1152 of August 25, 2000, provision is being made to award a military service certificate free of charge to young volunteers in the Bolivian Air Force's search and rescue squads who meet the requirements and perform that service once a week for two years. In short, [...] in practice there is an alternative to compulsory military service."¹⁰ In similar vein, it had argued the previous year that Ministerial Resolution No. 1062 of December 28, 2010, ordering that "the Reserve Officer Passbook be granted to personnel providing Outreach and Social Integration Service in the context of Paid Military Service" represented compliance with the Friendly Settlement Agreement, as it "gives young people the opportunity to serve their country according to their aptitudes and academic training and with respect for their professed beliefs".¹¹ It is however not clear that these options are freely available to all with a conscientious objection to bearing arms – on the contrary, there is an implication that the requirements for admission to the air search and rescue service are stricter than those for military service in general. In any case, particular unarmed postings within the overall context of military service are inadequate to meet the international standards regarding provision for conscientious objectors to military service.

11 When Bolivia's Third Periodic Report under the ICCPR was examined in October 2013, the Human Rights Committee had asked in the List of Issues **"Please provide information on the legal status of objection to military service. In particular, please provide information on the measures adopted to recognize in law and in practice conscientious objection to military service."**¹²

12 In its written replies¹³ Bolivia confirmed its continuing reservation to the relevant Article of the Convención Iberoamericana de Derechos de los Jóvenes. It quoted a Constitutional Court decision dating back to 2003, which indicated that the State was not obliged to make formal provision for conscientious objectors to military service, but that it was open to the individuals concerned to petition the armed forces authorities citing freedom of conscience. No mention was

⁶ Ibid, para 277.

⁷ Ibid, para 280, communication of 5th February 2013.

⁸ Ibid, para 279, communication of 31st December 2012.

⁹ Ibid, para 272.

¹⁰ Ibid, para 279.

¹¹ Ibid, para 276.

¹² CCPR/C/BOL/Q/3, 29th April 2013, para 20.

¹³ CCPR/C/BOL/Q3/Add.1, paras 226 to 228

made of the undertaking to bring in legislation which had been made in the Friendly Settlement of the *Bustos* case. (Of course the ability to petition the armed forces, who are not a disinterested and impartial tribunal, cannot be an adequate guarantee of the right of conscientious objection to military service.)

13 In its concluding observations¹⁴, the Committee expressed its concern that no alternative civilian service existed to enable conscientious objectors to exercise their rights in accordance with the Covenant, and it recommended that the State party promulgate legal provisions to recognise the right of conscientious objection to military service and to provide an alternative to military service which would be accessible to all conscientious objectors, and which in nature, cost and duration would be neither punitive nor discriminatory.

The *libreta Militar*: discrimination against those who do not perform military service

14 The general clauses of the Friendly Settlement in *Bustos* do not address the role of the *libreta militar*. However the ombudsman, in his comments on the 2008 draft law, criticised the interference with fundamental rights of the requirement to produce the *libreta militar* “in processing personal documents and to access work and education”.¹⁵ Among other things, it is a prerequisite for electoral registration.¹⁶ It may be noted that conscientious objectors and others who *refuse* to perform military service do not receive the *libreta militar* and are thus debarred from these rights. The fact that female citizens can access these rights although they are not eligible for the *libreta militar* shows that it is not administratively necessary.

15 Moreover it is discriminatory that those who are exempted from military service, for example for health or family responsibility reasons, should be required to pay a substantial tax to receive a document which is free to those who have performed military service, and that the imposition of this earmarked military tax on a conscientious objector can be, depending on the nature of the individual's objection, no less a violation of the freedom of thought, conscience and religion than the requirement to undertake military training and perform armed military service.

16 In these respects, Bolivia might be encouraged to follow the example of Ecuador, which had a similar system, but which reported to the Human Rights Committee in 2009 that the *libreta militar* was no longer required for civil purposes.¹⁷

Military service for persons aged less than 18 years

17 Voluntary “Pre-Military Service”, (*Servicio Premilitar*) was reintroduced by Supreme Decree 24527 of 17 March 1997. Initially for males living in cities and in the final year (*Cuarto Medio*) of secondary education, it was extended to both males and females. It involves “literacy and other training courses, and attending military instruction every Saturday and during holidays for 12 months (...). Since military service gave conscripts access to training and education they might not have elsewhere, voluntary pre-military service was an attractive option for some young people.”¹⁸ Those performing pre-military service (reportedly an annual 24,000 men and 2,000

¹⁴ CCPR/C/BOL/CO/3, 6th December 2013 (published only in Spanish) para 21.

¹⁵ See note 7.

¹⁶ Ministerio de Defensa del Estado Plurinacional de Bolivia, “Generalidades – Servicio Militar – 2012”, p18

¹⁷ CCPR/C/ECU/Q5/Add.1, 17th September 2009, page 51 (answer to Q.24).

¹⁸ Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London), p68.

women) are considered to be members of the armed forces.¹⁹

18 On its accession to the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict (OPCAC), on 22nd December 2004, Bolivia declared “that, under its legislation in force, the minimum age for compulsory military service in the armed forces is 18 years. As for pre-military service, it is a voluntary alternative available for young persons from the age of 17 years.”. Although not expressed as such, it appears that this represented a commitment to raise the minimum age limit; the pre-military service had previously been open to all 15 to 19 year olds with a basic minimum secondary education.

19 Bolivia has not yet reported under the OPCAC, and the only reference to military service in its Fourth Periodic Report under the Convention itself²⁰ is to repeat this declaration. Beyond encouraging Bolivia to submit its Initial Report under the Optional Protocol (which had been due in 2007)²¹ the Committee does not seem to have addressed the issue.

20 Proof of the performance of military service *or* voluntary pre-military service is reportedly a pre-requisite of obtaining a university degree or professional qualification, or, for any male aged between 17 and 55, of leaving the country.²² This, in conjunction with what is known about the *libreta militar* implies one of two things: either at a time before they have completed military service young males *including those aged 17* are subject to additional civic disadvantages if they have not performed this supposedly voluntary service, or the “voluntary pre-military service” itself in fact is sufficient for the issue of the *libreta militar*, in which case it is really an arrangement to permit the performance of obligatory military service before the age of 18.

21 The latter interpretation had been indicated at the time when the pre-military service was first introduced. That year, in its Second Periodic Report under the Convention on the Rights of the Child, Bolivia stated “Because of recurring complaints in recent years concerning cases of maltreatment, including the death of conscripts in barracks, this year pre-military service was reintroduced for male students in their final years. Under these provisions future graduates receive military training at weekends and during vacations, but economic discrimination still exists, since the students who opt for this type of service must pay for their own uniforms and food”.²³

22 Cadets who complete one or more years of study at the Navy Military School, are also deemed to have fulfilled their military obligations. Again, the age of admission is apparently now 17, in line with Bolivia's declaration on ratifying the OPCAC – it had previously been 16.

23 In the case both of “voluntary pre-military service” and cadetships at the Navy Military School, it is to say the least questionable whether the nature of the service ceases to be obligatory simply because there is a voluntary element in precisely how and when it is undertaken. The ombudsman, in his comments on the 2008 draft law,²⁴ criticised elements which would make “children of 16, 17 and 18 years old fight for the flag, in contravention of the UN Convention on the Rights of the Child”.

¹⁹ Ministerio de Defensa del Estado Plurinacional de Bolivia, op cit, p16.

²⁰ CRC/C/BOL/4, 25 March 2009

²¹ CRC/C/BOL/CO.4, 16th October 2009 para 90

²² Child Soldiers Global Report 2008, op cit, p67.

²³ CRC/C/65/Add.1, 1st December 1997, para 153.

²⁴ See note 7 above.

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