

# 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)

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**UPR SUBMISSION**

**BOLIVIA**

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## **Executive summary:**

**This submission focusses on the situation regarding military service and conscientious objection to military service in Bolivia. Among the human rights concerns it identifies are:**

**Bolivia's failure to introduce legal provision exempting conscientious objectors from military service and the dedicated “military tax” required of those who have not performed such service**

**Discrimination against male citizens who for any reason have not performed military service**

**Recruitment of persons aged under 18 into various forms of military service**

**Discrimination in recruitment practices and abuses within military service**

1. This submission was prepared in September 2009 on the basis of the latest information available to CPTI:.

## **Military Service in Bolivia: failure to recognise the right of conscientious objection**

2. 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, but the further progress of this draft is not known.

3. 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”.

4. 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 not enforced.

**5. There is under the 1976 Law no exemption from military service for conscientious objectors, nor was any proposed in the draft law approved in 2008.**

This is despite the undertaking made by the Bolivian State, represented by the Ministry of Defence, in a “friendly settlement” before the Inter-American Commission on Human Rights, “in accordance with international human rights law, to include 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;” and “together with the Deputy Ministry of Justice, to encourage congressional approval of military legislation that would include the right to conscientious objection to military service.” (REPORT N° 97/05; PETITION 14/04; FRIENDLY SETTLEMENT; ALFREDO DÍAZ BUSTOS – BOLIVIA October 27, 2005, para 16, I, d and e.). As such it was criticised by Bolivia’s ombudsperson, Waldo Albarracín (“[Defensor objeta Ley de Servicio Militar](#)”, Los Tiempos 28<sup>th</sup> March 2008)

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

6. 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.

7. 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” in order to receive the *libreto militar*. Under Article 79, failure to do so incurs a fine and arrest. The level of the tax was reported in 1998 as being between \$200 and \$400 (US).

8. This requirement was challenged in the above-mentioned Bustos case before the Inter-American Commission on Human Rights. 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” and that only religious denomination distinguished his 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” from such Catholic theological students. This aspect of his petition was however not addressed in the Friendly Settlement.

9. In Bustos' individual case, the Bolivian state agreed in the Friendly Settlement

- a) to give Alfredo Díaz Bustos his document of completed military service within thirty (30) 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”

10. **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”. 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.**

11. **To this, Conscience and Peace Tax International would add that 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 belief than the requirement to undertake military training and perform armed military service.**

Military service for persons aged less than 18 years

12. 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. According to the Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London), it involved “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.”

13. On its accession to the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict, on 22<sup>nd</sup> 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.”. Bolivia has not yet reported under the Optional Protocol, and the only reference to military service in its Fourth

Periodic Report under the Convention itself (CRC/C/BOL/4, 25 March 2009) is to repeat this declaration.

14. In contradiction to the Government's declaration, the Child Soldiers Global Report 2008 alleges that voluntary pre-military service is in fact open to all 15 to 19 year olds with a basic minimum secondary education.

15. Moreover, the same source claims that proof of the performance of military service *or* voluntary pre-military service was a pre-requisite of obtaining a university degree or professional qualification, or, for any male aged between 17 and 55, of leaving the country. 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.

16. The latter interpretation is implicitly supported by Bolivia's 1997 Report under the Convention on the Rights of the Child, which 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” (para 153).

17. The ability to discharge the military service obligation before the age of 18 is unambiguously available to cadets at the Navy Military School. Again, according to the Child Soldiers Global Report 2008 “Secondary school graduates could apply to become cadets at the Navy Military School from age 16. From the second semester onwards, cadets participated in joint training exercises with the Argentine and Peruvian navies. Cadets completing one or more years of study were deemed to have fulfilled their military obligations.”

**18. 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 *when* it is undertaken.**

19. The ombudsman, in his comments on the 2008 draft law, 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” [in the case of 16 and 17 years old].

20. Spot checks may still be made during call-up periods, with those unable to produce the *libreta militar* being taken to barracks in order to regularise their military situation. It is however believed that the level of forced recruitment, and with it the irregular, rather than systematic, recruitment of minors has declined significantly in the last two decades.

21. In its Second Periodic Report (1997) to the Committee on the Rights of the Child, Bolivia admitted that “although the minimum age for performing military service is 18, when the annual intake into the armed forces cannot be made up on a voluntary basis, compulsory recruitment is indiscriminate, an occasion for forcibly recruiting poor adolescents, including some as young as 14, by means of organized sweeps.” and also “There have been reports in the Chapare region of minors being conscripted illegally into the fight against drug trafficking.”(para 154) . By the time of the Third Periodic Report (2004), Bolivia stated merely, “Some youths under 19 (between 14 and 17) have been spotted doing military service: the National Ombudsman has set in train an official investigation into living conditions in army barracks.” (CRC/C/125/Add.2, page 60), and abuses under military service are not mentioned at all in the Fourth Periodic Report.

#### Discrimination in the recruitment processes

22. Two call-ups occur annually; one in January and one in June or July. “There is much radio and television propaganda and posters in the colour of the national flag are displayed depicting tanks and youths "happily" performing military service (...) Following every call-up the barracks are opened up for 15 to 20 days to receive the new recruits. As a rule they are, immediately on arrival, given a hair cut, supplied with a uniform and then despatched to various parts of the country.” (Horeman & Stolwijk, Refusing to Bear Arms, War Resisters International, 1998)

23. Again, the most authoritative source alleging discrimination in this process is the commendably frank report Bolivia made under the Convention on the Rights of the Child in 1997, which states “military service has been turned into a way of institutionalizing discrimination based on economic situation and social class, since the children of city families with means can illegally acquire a certificate of military service and escape the obligation, while for urban young men without means and, in general, for those in rural areas a year in barracks is unavoidable.” (para 152) The War Resisters International 1998 report notes “Evidently there is a black market in military booklets: there have been cases of individuals having booklets bearing identical numbers and codes.”

24. The latter source also notes that the discrimination also operates on an ethnic basis, pointing out that the “conscripts in the advertisements are mestizos. No white young people are ever shown”. Other sources report that the indigenous community are disproportionately represented, finding military service a route to social acceptance and economic betterment.

25. “Living conditions for conscripts were poor and resources meagre” (Child Soldiers Global Report, 1998). “Moreover, it has also been found that conscript labour is often exploited for private gain and that conscripts are subjected to abuse that may inflict irreparable damage.”(Report under Convention on the Rights of the Child, 1997). It is believed that the present government is taking action to address these problems.