



# Conscience and Peace Tax International

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**Submission to the 89th Session of the Human Rights Committee: March 2007:**

## Conscientious Objection to Military Service

### CHILE

#### Summary

**Chile has not hitherto recognised the right of conscientious objection to military service. The Government has repeatedly referred to the low rate of enforcement of obligatory military service as though this rendered such recognition unnecessary. The administration which took office in 2006 has proposed bringing in legislation which will recognise the right of conscientious objection, but the provisions of any proposed legislation should be scrutinised carefully.**

Article 22 of the Chilean Constitution 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."<sup>1</sup>

The Law on Recruitment and Mobilization (*Ley de Reclutamiento y Movilización, Decreto Ley num. 2.306*) of 12 September 1978, stipulated that eighteen-year-olds would be called up (subject to medical examination) between February and April each year; all those who would be liable having been obliged to register by the 30<sup>th</sup> September of the previous year, ie. usually at the age of 17. Although the law formally applied to both men and women, the registration requirement was obligatory for male citizens only; apparently women might register voluntarily.<sup>2</sup>

<sup>1</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004*, p124

<sup>2</sup> Horeman, B. & Stolwijk, M., *Refusing to Bear Arms*, War Resisters International, London, 1998.

This Law contained no provisions concerning conscientious objection, an issue which came to the fore in August 1997, when fourteen young men signed a formal declaration of conscientious objection to military service at a notary's office, and applied, unsuccessfully, to the General Bureau of Mobilisation (*Dirección General de Movilización Nacional*) for recognition as conscientious objectors. In December of the following year, three youths liable for military service, Cristian Daniel Sahli Vera, Claudio Salvador Fabrizio Basso Miranda and Javier Andres Garate Neidhardt, made similar applications, to which no response was received, and they were called to report for military service on 18<sup>th</sup> and 19<sup>th</sup> March 1999. Subsequently, in a petition to the Inter-American Commission on Human Rights, they argued that *inter alia* their right of freedom of conscience under Article 12 of the American Convention on Human Rights had been violated by the obligation to perform military service.

In a decision delivered in March 2005<sup>3</sup>, the Commission found for the State, somewhat surprisingly in view of its earlier invitation to those member states which did not yet have legislative provision for conscientious objection “to review their legal regimes and make modifications consistent with the spirit of the international law of human rights”,<sup>4</sup> and in sharp contrast to the terms of a friendly settlement reached before the Commission on 27<sup>th</sup> October 2005 in the case brought against Bolivia (which had a very similar military system) on behalf of the conscientious objector Alfredo Díaz Bustos. In the friendly settlement, the Bolivian State, represented by the Ministry of Defence, agreed:

- “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;
- d) 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;
- e) 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”<sup>5</sup>

In the Chilean case, the Commission relied heavily on a review of the jurisprudence of the Human Rights Committee and of the European Court of Human Rights in cases featuring conscientious objection, from which it concluded: “In those countries that do not provide for conscientious objector status in their law, the international human rights bodies find that there has been no violation of the right to

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<sup>3</sup> Report No 43/05, Case 12.219, March 10, 2005

<sup>4</sup> Annual Report of the Inter-American Commission on Human Rights, 1997, pp. 1053-4.

<sup>5</sup> Report No 97/05, Case 12.475, October 27, 2005

freedom of thought, conscience or religion. The European system has refused to recognize a right to conscientious objector status within the larger context of the right to freedom of thought, conscience and religion (Article 9), due to the explicit reference to “conscientious objectors” in the article exempting military service or alternative service from the definition of forced or compulsory labor (Article 4(3) of the European Convention). Similarly, the United Nations Human Rights Committee has refused to recognize a right to conscientious objector status in those countries that do not recognize such status within the right to freedom of conscience (Article 18), due to the explicit reference to “conscientious objectors” in Article 8 that prohibits forced and compulsory labor in “countries where conscientious objectors are recognized”... The Commission sees no reason to diverge from this consistent and constant jurisprudence of the international human rights bodies.”<sup>6</sup>

In reaching this conclusion, the Commission appears to have overlooked that none of the previous jurisprudence had arisen from a case the facts of which were that a state had refused to give any consideration to an application for exemption from military service on the grounds of conscientious objection. Such cases have subsequently been brought to the European Court of Human Rights and to the Human Rights Committee itself; in both the jurisprudence has been developed in a manner which is not consistent with the Inter-American Commission’s interpretation.

In Ulke v Turkey, the European Court of Human Rights refrained from considering the complaint under Article 9 (freedom of thought, conscience and religion), as on the same facts it was able to find a violation of Article 3 of the ECHR (inhuman or degrading treatment or punishment). The Court repeated its statement from the case of Thlimmenos v Greece that “In particular, the Court does not have to address, in the present case, the question whether, notwithstanding the wording of Article 4 § 3(b), the imposition of such sanctions on conscientious objectors to compulsory military service may in itself infringe the right to freedom of thought, conscience and religion guaranteed by Article 9 § 1.”<sup>7</sup> The European Court thus raised the question that the wording of the forced labour provisions might not preclude a right of conscientious objection to military service even when this was not enshrined in national law.

In Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea, the Human Rights Committee directly addressed this question and expressly dismissed the relevance of the forced labour provisions: “The Committee notes the authors’ claim that article 18 of the Covenant guaranteeing the right to freedom of conscience and the right to manifest one’s religion or belief requires recognition of their religious belief, genuinely held, that submission to compulsory military service is morally and ethically impermissible for them as individuals. It also notes that article 8, paragraph 3, of the Covenant excludes from the scope of “forced or compulsory labour”, which is proscribed, “any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors”. It follows that the article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of

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<sup>6</sup> Ibid, Paras 96 and 97.

<sup>7</sup> European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24<sup>th</sup> January 2006, para. 53.

which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.”<sup>8</sup>

In its submission on the *Vera et al.* case, while implying that obligatory military service was essential to guarantee national security (para 23), and that the duty of all citizens to perform such service was essential for equality before the law (paras 22 and 24), the Chilean State had been at pains to play down the practical effects of this obligation in an individual case. It noted that in fact when the three men had failed to report for military service, no action had been taken to enforce the requirement, and no penalty had been imposed, adding that “in the last 20 years, no youth has been detained for failure to complete his or her military service.”(para 26). It argued also that the obligatory military service concerned was “no more than military preparation or training for a pre-determined period,” (para 25) “martial instruction, that does not require the use of arms against other human beings” (para 27). Moreover (para 22), mention was made of the ongoing reform of the military service system towards a reliance in the first instance on voluntary recruitment.<sup>9</sup>

In a similar vein, when asked about provisions for conscientious objection during the Human Rights Committee’s examination of Chile’s fourth report (March 1999), the State delegation had answered “that there was not yet a law allowing for conscientious objection, although, after pressure from youth groups, Parliament had considered the matter and the Ministry of Defence was now studying it. It should be noted in any case that only 30,000 of the 120,000 men over 18 had been drafted.”<sup>10</sup> This low rate of performance of obligatory military service is borne out by figures in the Military Balance 2005/2006<sup>11</sup>, showing an estimated 22,400 serving conscripts as of August 2004 while the annual number of men reaching the appropriate age remained over 120,000. In fact, less than a third of the armed forces active personnel at any one time in recent years have been conscripts.

Neither the low rate of call up, nor the failure to penalise those who evade military service, whether by omitting to register (a number estimated in 1998 as running at 10,000 per year<sup>12</sup>) or by simply not responding to the call-up, give appropriate protection to those with genuine conscientious objections. Those who fail to report for military service are criminalised and rendered liable to prison sentences of between 61 days and 541 days<sup>13</sup> or to the imposition of a doubled length of military service. The fact that the penalties may not be imposed in practice is no absolute assurance, and in any case genuine conscientious objectors are stigmatised by not being in any way distinguished from mere defaulters. As for the implication that military training can be in some way separated from the potential use of lethal force; this is neither internally consistent with the argument that obligatory military service must be maintained on grounds of national security, nor in any way compatible with the norm incorporated for instance in Commission on Human Rights Resolution 1998/77, that provisions for conscientious objectors must be “compatible with the reasons for conscientious objection, of a non-combatant or civilian

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<sup>8</sup> Human Rights Committee, Views: Communications Nos. 1321/2004 and 1322/2004 (UN Document Ref. CCPR/C/88/D/1321-1322/2004) 1<sup>st</sup> December 2006, para. 8.2.

<sup>9</sup> All paragraph references are to Inter-American Commission on Human Rights, Report No 43/05, Case 12.219, March 10, 2005

<sup>10</sup> CCPR/C/SR.1734.

<sup>11</sup> International Institute for Strategic Studies, The Military Balance 2005/6, Taylor & Francis, 2006.

<sup>12</sup> Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998.

<sup>13</sup> In the unusual event of a call-up for reserve duty a former conscript who failed to respond could face a prison sentence of up to five years, equivalent to that for desertion from active service.

character”<sup>14</sup>. Moreover those who do not fulfil the requirements of the *Ley de Reclutamiento y Movilización* are by definition unable to obtain a satisfactory *Certificado de Situación Militar*, which document is necessary for admission to university or for employment in the public sector.<sup>15</sup>

Proposals elaborated by the Ministry of Defence for “modernisation” of the military service obligation were approved by Presidential Decree on 18<sup>th</sup> September 2000. These involved a movement in four stages between 2001 and 2005 to a system officially described as “*Voluntaridad in principio; obligatoridad en subsidio*” (roughly, “voluntary in the first instance, obligatory as back up”). Law No. 20.045, of 10<sup>th</sup> September 2005 amended the existing Law 2.306 to incorporate these reforms, which took full effect in April 2006, ie. with respect to the 2007 round of recruitment.

From the details supplied with admirable clarity on the website of the *Dirección General de Movilización Nacional* ([www.dgmn.cl](http://www.dgmn.cl)), the new system may be described as follows:

In April each year a list (*Base de Conscripción*) is published showing, by place of residence, all males born eighteen years previously: the list published in 2006 showed those born in 1988. Until 30<sup>th</sup> September, 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. To the extent that this voluntary recruitment does not meet the target set by the armed forces - and it is clearly the hope of the framers of the legislation that it will - a general lottery will be held during the first week of October to select (commune by commune) from those on the *Base de Conscripción* who have not volunteered, a sufficient number of conscripts. (A completely separate process will be used to select 1,000 female recruits per annum from among those who have volunteered.)

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, or for an exemption. 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
- persons closely related to those referred to in Article 18 of Law 19123 as past victims of violations of human rights or political violence.

(The *Dirección General de Movilización Nacional* does not list the exemption for ministers of religion which is mentioned in the State Report<sup>16</sup>; it is to be presumed that they are excluded from the list of those eligible before the lottery takes place. It is correct that the State report clearly distinguishes such an exemption from a recognition of conscientious objection; even though it is believed to apply to all active Jehovah’s Witnesses, who might otherwise qualify as conscientious objectors. In this

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<sup>14</sup> Commission on Human Rights Resolution 1998/77, operative paragraph 4.

<sup>15</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004*, p125

<sup>16</sup> CCPR/C/CHL/5, para 249.

instance, they are treated as analagous to clergy of other denominations, and thus no issue arises of discrimination with regard to conscientious objectors of other beliefs.) 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 of 3110 pesos, a *Curso Especial de Instrucción Militar* - a 150-day military training course available to students in the final year of recognised higher education institutions. Applications for exemption or deferment of the requirement cost 5590 pesos to lodge; whereas the normal military certificate costs 500 pesos, certification that exemption has been granted costs 5880 pesos.

The State Report<sup>17</sup> indicates that a government-supported amendment to add conscientious objection to the grounds for exemption from military service in Law 20,045 was rejected by the Congress. However, in what appears to be a response to a growing number choosing to declare themselves publicly to the recruitment authorities as conscientious objectors<sup>18</sup> the new legislation does away with the requirement that at the age of 17 young men should report to the local military recruitment office to register. Instead, the *Base de Conscripción* is 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.

The logic of seeking those who will perform military service on a voluntary basis before calling on unwilling conscripts has to be applauded. In particular it recognises reality in a situation where evasion of military service was widespread and went unpunished. The new arrangements are however unlikely to do anything to counteract accusations that the system is discriminatory, bearing most heavily on youths of the middle and lower classes.<sup>19</sup> More importantly, the fact remains that the Chilean system of military recruitment remains based upon a principle of compulsion. The low likelihood of being called upon in practice to perform military service is no protection for a genuine conscientious objector.

The Government which took office in March 2006 reportedly indicated its intention of bringing in legislation which would recognise conscientious objection, but no details have of concrete proposals have been traced. Some of the discussion<sup>20</sup> implies that all who wished to register as conscientious objectors would be required to perform some form of obligatory civilian service. If true, this would be blatantly discriminatory in a situation where those who did not have a conscientious objection to performing military service might well nevertheless not be called upon to do so.

## **Recommendations**

**CPTI recommends that Chile be requested to provide details of the progress towards legislation implementing the right of conscientious objection to military service, and of the substance of any legislative proposals.**

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<sup>17</sup> Ibid

<sup>18</sup> For instance, on 27<sup>th</sup> 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](http://www.wri-irg.org)), Oct 2005).

<sup>19</sup> See eg. “*Adios al servicio militar*” Revista Qué Pasa, 20<sup>th</sup> April, 2000.

<sup>20</sup> See eg. Oscar Dávila León “*Objeción de conciencia, persistencia de la discriminación*” in [Granvalparaiso](#), 24<sup>th</sup> June, 2006.

**In evaluating any proposed legislation, CPTI recommends that attention be given to the following criteria:**

- **that it should recognise the right of conscientious objectors to declare themselves if they so wish before their names can be placed on a military service register, without prejudice to the opportunity to register a claim of conscientious objection at a later stage.**
- **that in line with the friendly settlement in the case of *Bustos v Bolivia* no charge should be made for the provision of the appropriate certificate of military status to conscientious objectors, and that this certificate should be recognised for all purposes as of equal status with that available to those who have completed military service.**
- **that no other discriminatory or punitive conditions should apply to the recognition of conscientious objector status.**
- **that, recognising that a conscientious objection can arise at any time, it should enable also the consideration of an application for release from any serving member of the armed forces who develops a conscientious objection.**

23<sup>rd</sup> January 2007