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Submission to the 108th Session of the Human Rights Committee for the attention of the Country Report Task Force on CHILE

(Military service, conscientious objection and related issues)

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Basic Information

Population (November 2011, estimated¹) 17,067,000

Military service:
In law 12 months service (22 months in the navy or air force) is obligatory for male citizens, but volunteers are selected first and have in recent years been numerous enough to meet the requirements of the armed forces.

Conscientious objection:
No provision.

Minimum recruitment age²: 17 (see text).

Manpower reaching “militarily significant age” in 20103: 141,500

Armed forces active strength, November 20124 (of whom “conscripts”: 59050 (12250 – 20.7%) as a percentage of the number of men reaching “military age”: 41.7% (8.7%)

Military expenditure (US $ equivalent), 20125 $2,557m
Per capita $150

¹ Source: The Military Balance 2012 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.
² Source: 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.
³ Source: CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/index.html. The male population reaching “militarily significant age” - defined by the source as 16 - is more meaningful than total population in assessing the comparative impact of military recruitment in different countries.
⁴ As quoted by the International Institute of Strategic Studies (London) in The Military Balance 2013.
⁵ Stockholm International Peace Research Institute (SIPRI), April 2013.
At the time of its previous report under the International Covenant, Chile had just instituted a scheme whereby compulsory recruitment to military service would be resorted to only if not enough volunteers were forthcoming in any particular year. Nevertheless it was proposing to bring in legislation recognising the right of conscientious objection to military service. This legislation has not appeared, and although in recent years recruitment needs have been met on a voluntary basis it is by no means certain that this situation will continue. The potential situation of conscientious objectors therefore remains precarious.

This submission also raises concerns regarding some loopholes which can allow juvenile recruitment in Chile.

Non-recognition of conscientious objection to military service

In its concluding observations on Chile’s Fifth Periodic Report under the ICCPR, in March 2007, 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.”

In response, the Sixth Periodic Report simply refers back to Law No. 20.045, of 10th September 2005 on “Modernisation of Obligatory Military Service”. It indicates that between 2007 and 2011 a total of 691 young men benefited from the exemption from military service afforded under that Law to certain clergymen, and that a further 1,132 were exempted as descendants of victims of past human rights abuses or political violence. Nevertheless, in contrast to its response to the UPR review, Chile admits that it does not recognise conscientious objection “in the proper sense” as conferring exemption from military service. The previous State Report had indicated that “During the process of consideration of [Law No. 20.045], 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.”. 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” was presented to Parliament. 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” was presented to Parliament. The CPTI submission on Chile for the

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7 CCPR/C/CHL/6, 12th September 2012, paras 104, 105.
8 “The objection of conscience to military service is available to relatives of the victims of human rights violations of the past.” paragraph 53 of the Report of the Working Group
9 CCPR/C/CHL/6, para 106.
10 Ibid
11 CCPR/C/CHL/5, para 249.
12 “que establece una objeción de conciencia al servicio militar obligatorio y crea un servicio ciudadano alternativo”.
13 “que establece una objección de conciencia al servicio militar obligatorio y crea un servicio ciudadano alternativo”.
Committee’s 89th Session contained a critical analysis of the draft.

It is however clear that this bill failed to progress, and the latest report indicates something of a hardening of attitudes. It cites the duty to perform military service constitutionally laid on all male Chileans who reach the age of 18, as though this could “trump” the freedom of thought, conscience and religion.

Such reasoning had indeed been supported by the Inter-American Commission on Human Rights in a decision of March 2005 on the cases of three youths liable for military service, Cristian Daniel Sahli Vera, Claudio Salvador Fabrizzio Basso Miranda and Javier Andres Garate Neidhardt. It should however be noted that in coming to this the Commission had relied heavily on a review of the previous 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 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.”

The jurisprudence quoted preceded even the acknowledgement by the European Court of Human Rights, in Ulke v Turkey that “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.”

Of course subsequently both the Human Rights Committee, in Yoon & Choi v Republic of Korea, and the European Court of Human Rights in Bayatyan v Armenia have ruled that the references to conscientious objectors in the provisions of the relevant treaties dealing with forced labour are irrelevant to the interpretation of the freedom of conscience provisions. The Inter-American Commission has not yet had occasion to review its jurisprudence in this matter, but it must be expected that when it does it will follow the precedents set by the Human Rights Committee and the European Court of Human Rights.

The military recruitment system in practice

The exhaustive analysis of international jurisprudence in Vera et al v Chile could, even at that time, have been used to support a decision either way, and there is strong reason to suppose that

14 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.”

15 Ibid, Paras 96 and 97.

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

ultimately it was the fact that no material damage had been suffered by the complainants which tipped the balance.

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)  

Between the filing of the Vera case and the Inter-American Commission's decision the system of military service on the principle of “Voluntariedad in principio; obligatoriedad en subsidio” (roughly, “voluntary in the first instance, obligatory as back up”), had been institutionalised. Proposals elaborated by the Ministry of Defence had been approved by Presidential Decree on 18th September 2000, and were incorporated in the 2005 Law.

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 the list published in 2011 showed those born in 1993. 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.)

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. 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 or 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 are persons who have been convicted of serious offences, unless the General Bureau of Mobilisation (Dirección General de Movilización Nacional) decides they are “morally suitable”, or the conviction has been the subject of an amnesty. All applications for exemptions or deferments carry a cost substantially higher than that otherwise charged for the Certificado de Situación Militar, which under the military service law is required

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20 Inter-American Commission on Human Rights, Report No 43/05, Case 12,219, Vera et al v Chile March 10, 2005; para. 26 reporting the brief from the responding State dated 16th April 2003.
for admission to university or for employment in the public sector,\textsuperscript{21} and a further fee of a similar level is charged for the issue of a certificate of exemption.

No exemptions or alternatives for conscientious objectors are provided for. 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. Failure to register with the military authorities if required leads to classification as infractores; failure to report for military service in classification 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.

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”\textsuperscript{22} 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.

In what appeared to be a response to a growing number choosing to declare themselves publicly to the recruitment authorities as conscientious objectors,\textsuperscript{23} the requirement was abolished 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.\textsuperscript{24}

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.\textsuperscript{25} 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.\textsuperscript{26} 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.

In fact, as the table attached to paragraph 106 of the Sixth Periodic Report shows, over the years from 2007 to 2011 the number of volunteers was consistently around double 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%. 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.\textsuperscript{27} 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. The absence for appropriate arrangements in the obligatory

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\item[21] Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, p125
\item[22] CRC/C/OPAC/CHL/Q1/Add. , para 2
\item[26] http://www.dgmn.cl/servicio/tasas_derecho.php
\item[27] War Resisters International, “Chile: Student movement blamed for fall in numbers of volunteers for the military”, CO Update No. 69, 3rd November 2011.
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military service legislation for conscientious objectors is therefore not a pedantic drafting question but an issue which could well be tested in practice in the near future. Moreover, as the Human Rights Committee pointed out in the previous Concluding Observations conscientious objections can be developed by persons who have already embarked on military service; the fact of having initially volunteered does not preclude this possibility.

**Juvenile recruitment**

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.” 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.” (The provision concerned has already been described above.) 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.”

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

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,” 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.”

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29 Ibid, para 16.
31 CRC/C/OPAC/AZE/CO/1, 8th March 2012, para 13.
32 CRC/C/OPAC/CHL/CO/1, para 13
33 Ibid, para 14.
**Recommendations for the List of Issues**

The Committee regrets that, despite the information furnished when the last report was examined, and the recommendation in para 13 of the Concluding Observations, the State report indicates no further progress towards the recognition in law of the right of conscientious objection to military service, and invites the State party to explain the reasons for the lack of progress on this issue.

It has been reported that since 2011 the number of volunteers coming forward to perform “obligatory” military service has fallen dramatically. The State party is invited to provide updated statistics in this regard.

Has the State party yet introduced the amendment to the Law on Recruitment and Mobilisation to make it clear that even in a time of war or national emergency persons aged under 18 would not be subject to military mobilisation?