Submission to the 104th Session of the Human Rights Committee: March 2012
GUATEMALA
Conscientious objection to military service and related issues
Submission updated December 2011

Guatemalan legislation on “civic service” gives young people a free choice between civilian and military service. However information on how this system operates in practice would be very welcome.

Background

In 1996, the signing of the “Agreement on a Firm and Lasting Peace” sealed the negotiations bringing to an end a civil war which had lasted since the early 1960s. During that time, as the Guatemalan government itself subsequently acknowledged, “forcible military recruitment was common practice both for the national army and the guerrilla groups that made up the Unidad Revolucionaria Nacional Guatemalteca [...] some 45 per cent of the male population was recruited at some time by one or other of the parties to the conflict, and 20 per cent of those recruited were minors.”

Even those figures may be underestimates. It is reported that more than 3,000 former UNRG guerrillas subsequently participated in reconciliation programmes, of whom 214 were still minors. Between 1997 and 1998 army personnel was reduced from 46,900 to 31,423. However these figures are dwarfed by the PAC militias, “voluntary civil defence committees” which enjoyed formal Government support and had reached a strength of some 800,000 personnel when their disbandment was announced in 1996 – in that August alone 270,906 PAC members were demobilised. As this was nominally an all-volunteer force, there was not even a pretence that age limits were imposed, and, according to the case study for the “Machel Report” on the impact of armed conflict on children,

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1 CRC/C/OPAC/GTM/1, 17th July 2006, para 5.
2 Ibid, para 7.
3 Ibid, para 177
4 Ibid, para 173
recruits as young as 11 could be found in its ranks. At the time the adult male population of the country was not much above two-and-a-half million.

At the end of the war a strong reaction against the militarisation of Guatemalan society made itself heard. In 1993, a group called Jovenes Objectores de Conciencia unsuccessfully proposed to the congress a law which would provide for conscientious objection to military service; over the next three to four years some 350 young men publicly declared themselves to be conscientious objectors.

In 1996, the Congress voted down a proposal by CONAVIGUA (the National Coordinating Committee of Guatemalan Widows) based on the radical principle of voluntary military service and a free choice between military or civilian service. Meanwhile, however, in order to complement the demobilisation process, the government ceased to enforce conscription. In its concluding observations on Guatemala's initial report under the ICCPR, the Human Rights Committee welcomed “the suppression of the obligatory military service, which will aid in the demilitarization of the country.” A commission was set up to draft new legislation on national service; it brought representatives of civil society who had been working on conscientious objection issues together with others from the government and the armed forces.

The Law on National Civic Service, which was finally promulgated in 2003 embodied the principles which had been suggested by CONAVIGUA. As indicated in Guatemala's Third Periodic Report, although civic service is obligatory, citizens have a free choice of whether to perform this as civilian community service or as military service, thus military recruitment, governed by subordinate “Regulations on the performance of military civic service”, is effectively voluntary. According to the Government “This respects the principle of conscientious objection, enabling young people whose religious, moral or philosophical beliefs prevent them from taking up arms not to do so.” On the surface, it is even more radical. By requiring that one “opt-in” to military service, it means that not even a declaration of conscientious objection is needed in order to instead perform a civilian service – (although if the provision is to be in conformity with a strict interpretation of Article 8 of the ICCPR all those who choose the civilian option must be deemed conscientious objectors).

The Guatemalan scheme might be an interesting model to follow elsewhere, but many questions about the details of its operation remain unanswered.

Are both men and women obliged to perform either civilian community service or military service? If so, is the military as well as the civilian option available to women?

Is there any specific reference in the relevant legislation to the situation of conscientious objectors to military service? In the event of a national emergency is it

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5 See Brett, R. & McCallin, M., Children the invisible soldiers (Rädda Barnen, Stockholm) 1998 (2nd edition), p88, also Table 2, at p57 and footnotes p69.
8 Horeman & Stolwijk, op cit
9 Ley del Servicio Civico, (No. 20-2003)
10 CCPR/C/GTM/3, para 278.
11 Governmental Accord No. 731-2003
12 CRC/C/OPAC/GTM/1, para 60.
possible that persons would be called up to military service without being given the option of civilian service?

What has been done to make the provisions known to those affected? Precisely how and when is the option between civilian and military service made in an individual case? It has been reported that young persons opting for community service may undertake this at the age of sixteen, “for a period of up to 18 months or 728 hours”\(^\text{13}\), but it is not clear how this duration relates to that of the military option, or indeed of civilian service undertaken after the age of eighteen.

There are also some concerns about the extent to which in practice the new model has replaced the previous pattern of military recruitment. None of the existing obligatory military service legislation appears to have been repealed, although it has not been implemented for fifteen years. It appears that citizens remain under an obligation to register at the age of eighteen not only with the Citizens Register, from which the National Civil Service Council obtains its information, but also with the military authorities, and that the *libreta militar*, or military service record, is still a required document.\(^\text{14}\) In the past, as in other countries of the region, possession of this document was a pre-requisite for such purposes as obtaining an identity card or a passport, for university entrance, and in some cases for employment.\(^\text{15}\)

It is clear that the downsizing of the Guatemalan armed forces has continued. Over the last ten years the active strength of the armed forces has halved, to a little over 15,000.\(^\text{16}\) In its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Guatemala stated “The practice of voluntary enlistment in the military will be continued while the Government of Guatemala adopts the necessary administrative decisions, based on the Comprehensive Agreement on Human Rights, and Congress approves the new law on civic service, which includes military and community service. The Civic Service Act (Congressional Decree No. 20-2003) has now been promulgated.”\(^\text{17}\) Whether all recruitment was voluntary was however called into question by another paragraph of the same report, which stated “Currently, in accordance with the provisions of the Act establishing the Army (Decree No. 72-90) […], enlistment is either voluntary or by call-up, and anyone defying call-up is escorted to the military establishment.”\(^\text{18}\)

The statement that during the time covered by the Guatemala's Third Periodic Report under the ICCPR there had been no denunciations of forced recruitment\(^\text{19}\) is a significant one. Forced recruitment had continued to be widespread after formal conscription had been suspended; in the months of May and June 1995 alone the *Procuradoria de derechos humanos* received no fewer than 596 complaints from young men who claimed to have been conscripted by force, and obtained the release of 333 of


\(^{14}\) CRC/C/OPAC/GTM/1, paras 30, 31.

\(^{15}\) Horeman & Stolwijk, op. Cit.


\(^{17}\) CRC/C/OPAC/GTM/1, para 39

\(^{18}\) CRC/C/OPAC/GTM/1, para 55

\(^{19}\) CCPR/C/GTM/3, para 281
them, 148 of whom were minors. It was suggested that as a result of such challenges the armed forces changed their tactics, concentrating their forced recruitment in areas where they had not faced opposition, presumably the less developed rural areas.

Guatemala’s initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict described frankly how “At the time of the conflict, there were so-called “military commissions” in the country, groups of civilians backing up the army, particularly by making arrangements in the villages for military service. Unfortunately the methods these groups employed during the conflict constituted systematic compulsory and arbitrary recruitment. In 1995, the military commissions were abolished by Decree No. 79-95 in order to halt such human rights violations and, in particular, to comply with the commitments undertaken in the peace agreements. Some 24,000 people who had been acting as military commissioners were thus definitively withdrawn from that function.” War Resisters International were however informed in 1997 that “they still exert considerable influence in the villages, whose inhabitants are apt not to realise that they no longer have any legal authority.”

An alternative report to the Committee on the Rights of the Child indicated that in parts of the country there was still a tendency to deliver young men to the military authorities on reaching the age of sixteen “in the belief that military service was an essential part of their becoming men”, and that where birth registrations were rare, particularly in the east of the country, such under age recruits were being willingly accepted.

In its concluding observations, the Committee on the Rights of the Child noted that Guatemala did retain compulsory military service and expressed concern “that due to the number of children who lack birth registration, uncertainty about the age of young recruits may result in the recruitment of children under the age of 18.” The Committee recommended “that the State party ensure, in case of lack of a birth certificate, that the age of the recruit is determined by other reliable means, including medical examination. […] If in doubt the State party should consider recruits to be children and not accept them for military service. [It should] establish an inspection mechanism to ensure that all military recruits are over 18 years of age.”

In view of the various reports of how military recruitment is boosted by popular ignorance of the legal situation, it is worth enquiring what has been done to make the provisions of the Law on Civic Service known throughout the country. A specific concern is the position of indigenous peoples, who were heavily targeted by military recruitment at the time of the war; it is reported that there is no specific reference to them in the Law, leaving it unclear as to whether or not they are covered by it.

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20 Brett & McCallin, op cit., p.69.
21 Horeman & Stolwijk, op cit
22 CRC/C/OPAC/GTM/1, para 54
23 Horeman & Stolwijk, op cit
25 CCPR/C/OPAC/GTM/CO/1, 12th June 2007, para 14.
26 Ibid, para 15.