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**Annual report of the United Nations High Commissioner
for Human Rights and Reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by the International Fellowship of Reconciliation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 March 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Comments on the report of the High Commissioner on the situation of human rights in Colombia: Human rights issues connected with military service

Introduction

The High Commissioner's 2010 report stated that her office in Colombia had “observed irregular, and in some cases clearly illegal, practices in the military recruitment process” and recommended: “these practices should be discontinued as soon as possible. Rapid development of mechanisms to regulate military service, including conscientious objection, with full respect for human rights, is urged.”¹

This year she reports: “No significant progress has been made in drafting a bill to regulate the right to conscientious objection to military service; and debate on this topic has been stalled in Congress since July. Illegal practices in military recruitment procedures continued without effective control in several cities, such as Bogotá, Bucaramanga, Cali and Medellín.”² She also expresses concern about the harassment of human rights defenders.³

Conscientious objection to military service

Colombia retains obligatory military service, without any provisions for conscientious objection. The Constitutional Court has now ruled that this right is guaranteed by Colombia's Constitution as well as its international treaty commitments.⁴ The Court called upon Congress to bring in legislation creating procedures whereby the right might be exercised. Meanwhile, given the fundamental nature of the right of conscientious objection to military service, it could be enforced in an individual case of imminent conscription by means of a “tutella” action.

When presenting its report to the Human Rights Committee, Colombia referred to the possibility of the right being enforced by means of a tutela action in an individual case “demonstrating the exceptionally extreme circumstances which justify this”.⁵ Representatives of the Accion Colectiva de Objectores y Objectoras de Conciencia (ACOOO) argued that tutela actions were only an interim means of protection, pending specific legislation. The idea that conscientious objection to military service could only be justified in “exceptionally extreme” circumstances opened the dangerous possibility of an accumulation of case law which might place illegitimate limitations on the right. Meanwhile, grave difficulties were presented by the unprecedented delay in publishing the formal judgement (sentencia). Lower courts could not interpret the jurisprudence of the Constitutional Court on the basis of a press release.

The Human Rights Committee's concluding observations noted “with satisfaction” the Constitutional Court ruling, which represented “progress in the implementation of the Committee’s earlier recommendation”⁶, but it was “still concerned by the lack of progress on the introduction of the necessary legislative amendments for recognizing conscientious objection...” and recommended that “The State party should, without delay, adopt

¹ A/HRC/16/22, 3rd February 2011, para 90.

² A/HRC/19/21/Add 3, 31st January 2012, para 94.

³ Ibid, paras 14-16.

⁴ Comunicado No.43 – Expediente D7685 Sentencia C-728/09, 14th October 2009.
<http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM>

⁵ CCPR/C/COL/Q/6/Add.1, 3rd May, 2010, paras 110-112.

⁶ CCPR/CO/80/COL, 26th May 2004, para 17. y

legislation recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects...”⁷

Sadly, as the High Commissioner's report indicates, the Government has yet to put draft legislation before the National Assembly.

Since the release of the sentencia in September 2010 (eleven months after the judgement), ACOOC has succeeded in obtaining a court order for the release from the military of conscientious objector José Luis Peña Rueda, but only after two applications to lodge tutela actions were turned down while he languished in military detention. Even in the most clear-cut case, Juan Diego Agudelo, whose release from the armed forces as a conscientious objector was ordered by a court in Antioquia on 30th November 2010, a tutela could not prevent recruitment, but simply reversed it after two months.

Irregular recruitment

In theory, male Colombians register with the military authorities at 18 years old, are subsequently summoned for medical examination and if fit receive call-up instructions. In practice, most recruitment is effected by “batidas” where troops systematically stop young men in public places, and demand documentation of their “military status”. Those who cannot supply this are loaded on to trucks and taken to barracks for immediate incorporation in the armed forces. By their nature, such methods of recruitment do not spare those who are not subject to military service, or who are entitled to exemption.

The Working Group on Arbitrary Detention has observed that there is no legal basis for this practice. The statutory penalties for non-compliance with the recruitment requirements “are exclusively of a pecuniary nature (...) In no case are arrest, detainment and enrolment in the army against one's expressly declared will authorized.”⁸ The Human Rights Committee likewise expressed its concern about “the use of 'round-ups' as a means of checking who has carried out military service” and recommended that Colombia should review this practice.⁹

In a decision of November 22nd 2011¹⁰ referenced in a footnote to the High Commissioner's report, the Colombian Constitutional Court echoed the Working Group's interpretation.

The Court ruled that only those who are listed as “remisos”, having failed to report for duty when personally called up in accordance with Article 20 of the Military Recruitment Act, may be apprehended in order to perform their military service. Otherwise, the power to “compel” compliance referred to in Article 14 of the Act is constitutional only “if it is understood in the sense that someone who has not complied with the obligation to register to define his military situation can be held momentarily while this situation is verified and he registers, a process which does not require any formalities.” The Court further elaborates that this may not extend to transporting the person to barracks or a military district headquarters, to holding him for a health examination, nor to his recruitment.

Batidas have continued despite the decision of the Constitutional Court. For instance the Colectivo Quinto Mandamiento reported on a forced recruitment which took place on 13th December, 2011, including of three persons entitled to exemption from military service;

⁷ CCPR/C/COL/CO/6, 4th August 2010, para 22.

⁸ Working Group on Arbitrary Detention, Opinion No. 8/2008, Paragraph 22 (A/HRC/10/21/Add. 3)

⁹ CCPR/C/COL/CO/6, 4th August 2010, para 22.

¹⁰ Comunicado No.46 – Expediente D8488 Sentencia C-879/11, 22nd November 2011.
<http://www.corteconstitucional.gov.co/relatoria/2009/C-728-09.HTM>

Adonis Andrés Amariz Pérez, father of a family, José Eduardo Locumi, sole carer for an elderly relative, and Dagoberto Portillo Lopez, a declared conscientious objector.¹¹

We welcome the active interest shown in the above issues by the OHCHR offices in both Bogota and Medellin and encourage them to continue closely monitoring military recruitment patterns and giving the Government every assistance and encouragement towards the early introduction of legislative provisions on conscientious objection.

Threats against human rights defenders

The High Commissioner's report also draws attention to attacks on and threats against "human rights defenders, community, social, Afro-Colombian and indigenous leaders, trade union members and journalists,"¹² particularly on the part of "illegal armed groups that emerged after the demobilization of paramilitary organizations".¹³

The International Fellowship of Reconciliation (IFOR) draws attention to the fact that groups which oppose, or seek to stand aside from, armed hostilities are a particular target. The Human Rights Committee in 2010 was told of such threats, by the "Aguilas Negras", against Red Juvenil de Medellin, and the Colectivo Quinto Mandamiento, both of which give advice and legal support to conscientious objectors,. On 26th November 2011 Quinto Mandamiento was among ten organisations in Barrancabermeja warned in a leaflet that if they did not immediately cease their public activities they would become "military targets" for "Los Rastrojos", an illegal armed group named in the High Commissioner's report.

Pressure has also been stepped up against the Peace Community of San José de Apartado, which seeks to maintain itself as a demilitarised and arms-free zone taking no part in the ongoing armed conflict. The site of a notorious massacre in 2005, it has suffered numerous other assassinations, most recently that of Bernardo Rios on 22nd March 2011. The accompaniment programme run there by IFOR's affiliate organisation FORUSA has just marked its tenth anniversary.

On 28th November 2011, over 50 heavily-armed men in camouflage uniform, who identified themselves as "paramilitaries", entered La Esperanza, one of the Community's eleven villages, summoned a public meeting and announced that they would blockade of supplies of food to the village, alleging, despite the Community's known neutrality, that the villagers were victimising the FARC guerrillas with whom they had recently clashed. Such reprisals would be criminal in any circumstances. Subsequently, on 4th February 2012, Jesus Emilio Tuberqueia, the Community's legal representative, suffered a violent attack in the centre of Apartado.¹⁴

We urge the OHCHR in Colombia to continue pressure on the authorities, "to take effective steps to guarantee the security of human rights defenders, trade unionists and journalists" as recommended by the Human Rights Committee¹⁵, and to reinforce their efforts to protect peaceful civilian communities from targeting by parties to internal armed conflicts.

¹¹ COMUNICADO, JORNADA DE INCORPORACION EN EL DISTRITO N° 34 DE LA CIUDAD DE BARRANCABERMEJA, COLECTIVO QUINTO MANDAMIENTO, issued 13th December 2011

¹² A/HRC/19/21/Add 3, 31st January 2012, para 14.

¹³ Ibid, para 16.

¹⁴ See <http://forusa.org/blogs/for-peace-community-member-gunned-down/8658> (5th April 2011); /urgent-action-peace-community-threatened-paramilitary-presence/9980 (15th December 2011); -colombia/paramilitary-pressure-la-esperanza/9992 (20th December 2011);-colombia/colombia-take-action-protect-peace-community/10268 (22nd February 2012).

¹⁵ CCPR/C/COL/CO/6, 4th August 2010, para 22.