

Submission to UN OHCHR for Report on Conscientious Objection

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1. Recent Development regarding Conscientious Objection in South Korea

As of Jan. 2017, at least 408 persons are imprisoned for refusing to serve in the military on the grounds of their conscientiously held belief. While most of the imprisoned conscientious objectors are Jehovah's Witness believers, there are at least three objectors who refused to serve in the military on the grounds of their pacifist belief. The constitutional challenge on the Article 88 paragraph 1 subparagraph 1 of the Military Service Act, which prescribes punishment for draft evasion without providing exception for conscientious objectors, is pending at the Constitutional Court of South Korea. In 2011, when challenged on the same legal provision, the Court had previously held that the provision to be constitutional. However, even after the Court's decision, several district courts continued to request adjudication on constitutionality of the legal provision to the Constitutional Court, and the Court started considering this case. Due to the deliberation at the Constitutional Court, many of the trials of conscientious objectors were postponed pending the decision of the Court. Considering the fact that average of 600 refuse military service and are sent to prison per year, the number of conscientious objector prisoner will rise if the Court decides the provision is constitutional.

In the meantime, acquittal of indicted objectors significantly increased since 2015. Since 2015, total of 17 conscientious objectors were found not guilty in the courts. In Oct. 2016, the appellate division of the Gwangju District Court upheld not guilty ruling of a CO, and overturned guilty ruling of two COs for the first time. This trend demonstrates significant changes in the Judiciary. The courts had been sentencing exact 18 months of imprisonment for COs as a comprise as it is the minimum sentence that exempts COs from future call-ups. However, in recent years, many judges are taking more progressive stance with not guilty rulings. The current legal provision prescribes punishment for anyone who fails to enlist without justified reason, and these judges are ruling that in the absence of alternative service, refusal of military service on the grounds of conscientiously held belief constitute justified reason. Despite these ground-breaking decisions in the courts, the authorities' position on introduction of alternative service has not shifted.

2. Position of South Korean authorities on this issue

The authorities are refusing to introduce an alternative service system for COs on the grounds of security concerns related to military tension between North and South Korea, and lack of national consensus. In regards to the government's concern on security threats, the Committee has repeatedly pointed out that the State Party has failed to show what special disadvantage would be involved for it if it introduces an alternative service.¹ In addition, South Korea already has an alternative service system for social service personnel, conscripted fire-fighting personnel and so on. However, COs are not eligible for this service, as four weeks of military training is mandatory under this system. On the issue of national consensus, the authorities claim that as 53.8% of the population oppose to

¹ Human Rights Committee, Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea, Views adopted 3 November 2006 (Communications Nos. 1321/2004 and 1322/2004), UN Doc. CCPR/C/88/1321-1322/2004, para 8.4

introduction of alternative service, it is “hard to envisage introducing an alternative service”.² However, recent poll conducted by Gallup Korea on the request of Amnesty International Korea, 70% of the respondents are in favor of introduction of an alternative service.³

3. Key issues

Following the 2014 amendment to the Military Service Act, the Military Manpower Administration publicized names, ages and addresses of 237 “draft evaders” on Dec. 20th 2016. Among those 237 persons, at least 160 were known to be Jehovah’s Witness believers. This clearly demonstrates that this new scheme does not have an effect of preventing draft evasion, and it rather violates human rights of conscientious objectors. This runs counter to the recommendation of the Human Rights Committee in 2015.⁴

Repeated punishment of COs who are called up for reserve force duty is also a significant challenge in South Korea. As of Jan. 2017, roughly 80 COs, including 3 non-Jehovah’s Witness believers, were going through legal proceedings for their refusal to reserve force duty. Punishment of COs subjected to reserve force duty is somewhat more severe in the sense that they are punished repeatedly for the same act of refusal. For 8 years of reserve force duty, they face countless summons for questioning and trials, which result in fines and imprisonment.

² Replies of the Republic of Korea to the list of issues, UN. Doc. CCPR/C/KOR/Q/4/add.1, 31st July 2015, para 67.

³ Amnesty International Korea, *70% of the respondents are in favor of allowing alternative service to conscientious objectors* (in Korea), 10th May 2016, accessed via: <https://amnesty.or.kr/12873/> (accessed at 16th Feb. 2017)

⁴ Human Rights Committee, Concluding Observations on the fourth periodic report of the Republic of Korea. UN. Doc. CCPR/C/KOR/CO/4, paras 44,45.