



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**  
Ninety-eighth session  
8 to 26 March 2010

**Views**

**Communications Nos. 1593 to 1603/2007**

<u>Submitted by:</u>	Messrs. Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh. (represented by counsel Jea-Chang Oh of Haemaru Law Offices)
<u>Alleged victims:</u>	The authors
<u>State party:</u>	The Republic of Korea
<u>Date of the communications:</u>	15 May 2007 (initial submissions)
<u>Documentation references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 October 2007 (not issued in document form)
<u>Date of adoption of Views:</u>	23 March 2010

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\* Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Conscientious objection.
<i>Procedural issues:</i>	None.
<i>Substantive issues:</i>	Right to freedom of thought, conscience and religion.
<i>Articles of the Covenant:</i>	18, paragraph 1.
<i>Articles of the Optional Protocol:</i>	None.

On 23 March 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communications Nos. 1593 to 1603/2007.

[ANNEX]

## ANNEX

**Views of the Human Rights Committee under article 5,  
paragraph 4, of the Optional Protocol to the International  
Covenant on Civil and Political rights (Ninety-eighth session)**

concerning

**Communications Nos. 1593 to 1603/2007\*\***

Submitted by: Messrs. Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh. (represented by counsel Jea-Chang Oh of Haemaru Law Offices)

Alleged victims: The authors

State party: The Republic of Korea

Date of the communications: 15 May 2007 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 March 2010,

Having concluded its consideration of communications Nos. 1593 to 1603/2007, submitted to the Human Rights Committee on behalf of Messrs. Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The authors of the communication are Messrs. Eu-min Jung (Communication no. 1593/2007), Tae-Yang Oh (Communication no. 1594/2007), Chang-Geun Yeom (Communication no. 1595/2007), Dong-hyuk Nah (Communication no. 1596/2007), Ho-Gun Yu (Communication no. 1597/2007), Chi-yun Lim (Communication no. 1598/2007), Choi Jin (Communication no. 1599/2007), Tae-hoon Lim (Communication no. 1600/2007),

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Salvioli, Mr. Krister Thelin and Mrs. Ruth Wedgwood.

Sung-hwan Lim (Communication no. 1601/2007) , Jae-sung Lim (Communication no. 1602/2007), and Dong-ju Goh (Communication no. 1603/2007), all nationals of the Republic of Korea. They claim to be victims of a violation by the Republic of Korea of article 18, paragraph 1, of the Covenant. The authors are represented by counsel, Mr. Jae-Chang Oh of Haemaru Law Offices.

1.2 On 23 March 2010, pursuant to Rule 94, paragraph 2, of the Committee's Rules of Procedure, the Committee decided to join the eleven communications for decision in view of their substantial factual and legal similarity.

### **The facts as presented by the authors**

#### *Mr. Eu-min Jung's case*

2.1 On an unspecified date, the State party's Military Power Administration sent Mr. Jung a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act<sup>1</sup>. On 1 September 2005, he was convicted as charged by the Seoul Northern District Court and sentenced to one and a half years of imprisonment. His appeal to the appellate court was subsequently rejected.

2.2 On 25 November 2005, the Supreme Court upheld Mr. Jung's conviction and sentence, reasoning *inter alia*, that,

“Article 39, paragraph 1 of the Constitution provides that, “All citizens shall have the duty of national defense under the conditions as prescribed by law”, charging the citizens who hold the sovereignty with the constitutional duty of national defense and military service, and it is justifiable in that they are necessary for the sake of the citizens of the state. [...] Also as article 18 of the International Covenant on Civil and Political Rights of which Korea is a State member appears to cover the same extent to which the protection of the fundamental rights under freedom of conscience in article 19 of the Constitution and under the freedom of religion in article 20 of the Constitution, it is concluded that the exceptional right of the defendant to be exempted from the application of article 88 paragraph 1 of Military Service Act is not derived from article 18 of the International Covenant on Civil and political Rights.”

#### *Mr. Oh's case*

2.3 Mr. Oh is a Buddhist. On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years

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<sup>1</sup> Article 88 of the Military Service Act provides as follows: "Evasion of Enlistment (1) Persons who have received a notice of enlistment or a notice of call (including a notice of enlistment through recruitment) in the active service, and who fails to enlist in the army or to comply with the call, even after the expiration of the following report period from the date of enlistment or call, without any justifiable reason, shall be punished by imprisonment for not more than three years: 1. Five days in cases of enlistment in active service [...]"

imprisonment. His appeal to the appellate court was rejected. On 15 July 2004, the Supreme Court upheld the conviction and sentence, on the basis that,

“freedom of conscience is merely a right to request the state to consider and protect the individual’s conscience, if it is possible, it cannot be the basis for refusing to carry out the duties under the law or request the provision of alternative ways to replace such duties.”

*Mr. Yeom*

2.4 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 15 April 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Dong-hyuk, Nah*

2.5 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 12 November 2004, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Ho-Gun, Yu*

2.6 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 24 June 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Chi-yun Lim*

2.7 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 13 January 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases. However, it also stated that “Although it is desirable to adopt a system of alternative service in place of military duty for those who firmly maintain and stick to their own religious or conscientious decision even facing the criminal penalty, rather than forcing them to serve in the army, this legislation is not a constitutional responsibility of the government and Military Service Act which provides only for the punishment does not provide such an exception is not an infringement of the Constitution”.

*Mr. Jin Choi*

2.8 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 15 September 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Tae-hoon Lim*

2.9 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 24 November 2004, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Sung-hwan, Lim*

2.10 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 13 January 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases. However, it also stated that "Under the current law system, it would be desirable to introduce an alternative service to replace the mandatory military service, rather than forcing those who, like the defendant, have a strong determination to maintain a religious or conscientious decision in spite of the prison sentences to perform the military service."

*Mr. Jae-sung, Lim*

2.11 On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 28 July 2005, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*Mr. Dong-ju Goh*

2.12 Mr. Dong-ju Goh is a pacifist, Roman Catholic. On an unspecified date, the State party's Military Power Administration sent him a notice of draft for military service. On account of his religious belief and conscience, he refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. He was convicted and sentenced by a District Court to one and a half years imprisonment. His appeal to the appellate court was rejected. On 7 December 2006, the Supreme Court upheld the conviction and sentence, on the basis of similar reasoning as in the abovementioned cases.

*The Constitutional Court decision*

2.13 On 26 August 2004, in a case unrelated to the current communications, the Constitutional Court rejected, by a majority, a constitutional challenge to article 88 of the Military Service Act on the grounds of incompatibility with the protection of freedom of conscience protected under the Korean Constitution. The Court reasoned, *inter alia*:

"the freedom of conscience as expressed in Article 19 of the Constitution does not grant an individual the right to refuse military service. Freedom of conscience is merely a right to make a request to the State to consider and protect, if possible, an individual's conscience, and therefore is not a right that allows for the refusal of one's military service duties for reasons of conscience nor does it allow one to demand an alternative service arrangement to replace the performance of a legal duty. Therefore the right to request alternative service arrangement cannot be deduced from the freedom of conscience. The Constitution makes no normative expression that grants freedom of expression a position of absolute superiority in relation to military service duty. Conscientious objection to the performance of military service can be recognised as a valid right if and only if the Constitution itself expressly provides for such a right".<sup>2</sup>

2.14 Following the decisions of the Supreme and Constitutional courts, the authors state that some 700 conscientious objectors are being sentenced and imprisoned annually for one and a half years. More than 99% of these conscientious objectors are Jehovah's witnesses.

**The complaint**

3.1 The authors complain that the absence in the State party of an alternative to compulsory military service, under pain of criminal prosecution and imprisonment, breaches their rights under article 18, paragraph 1, of the Covenant.

3.2 The authors refer to the Committee's Views in Communication nos. 1321/2004 and 1322/2004, Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea, Views adopted by the Committee on 3 November 2006, in which the Committee found a violation of article 18, paragraph 1 of the Covenant, by the State party, on the basis of similar facts as in the present communications and in which the State party was obliged to provide the authors with an effective remedy.

**State party's observations on admissibility and merits**

4.1 By submission of 14 November 2008, the State party responds on the merits of the communications, referring to the Committee's Views in Yeo-Bum Yoon and Myung-Jin Choi<sup>3</sup> and requesting the Committee to reconsider this decision taking into account the security environment in the State party.

4.2 The State party focuses on specific aspects of the Committee's earlier decision. As to the Committee's argument therein that, "an increasing number of States parties to the

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<sup>2</sup> While accordingly upholding the constitutionality of the contested provisions, the majority directed the legislature to study means by which the conflict between freedom of conscience and the public interest of national security could be eased. The dissent, basing itself on the Committee's General Comment No. 22, the absence of a reservation by the State party to article 18 of the Covenant, resolutions of the (then) UN Commission on Human Rights and State practice, would have found the relevant provisions of the Military Services Act unconstitutional, in the absence of legislative effort to properly accommodate conscientious objection.

<sup>3</sup> *Supra*.

Covenant, which have retained compulsory military service, have introduced alternatives to compulsory military service”, the State party points out that the legal systems of Germany and Taiwan, countries which have introduced alternatives, are quite different from those of the State party. The State party remains divided since the end of the Second World War, there was no war in Germany and reunification was achieved in 1990.

4.3 Taiwan never waged war against China following the establishment of the Taiwanese government in 1955. The Korean War was fought across the Korean peninsula and lasted for three years and a month from 25 June 1950 to July 1953, when a cease-fire agreement was finally signed. It left one million dead from the south and more than 10 million Koreans were separated from their families at the end of the war. The State party submits that its painful history of war constitutes one of the reasons why its government places such emphasis on national security as the most significant priority in its national policy agenda. From a legal perspective, the State party submits that a cease-fire agreement is still effective in the State party, which distinguishes it from other countries such as Taiwan. This agreement has not yet been superseded by a new legal framework such as a declaration ending the war or a peace agreement to ensure non-aggression and peace, despite the continued efforts to this end. In the State party’s view, the security environment is not comparable to that of either Germany or Taiwan, as it is bordered with the Democratic People’s Republic of Korea (DPRK) which spans 155 miles. There have been numerous clashes between North and South Korean vessels, which occurred on 15 June 1999 and 19 June 2002. Thus, this demonstrates that the outbreak of war remains a possibility even in the midst of a relatively reconciliatory environment between the two countries and reaffirms the State party’s need to build military means for the purposes of defense.

4.4 As to the Committee’s argument that the, “Republic of Korea has failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 were fully respected”, the State party submits that conscience objection or the introduction of an alternative service arrangement is closely linked to national security, which is the very prerequisite for national survival and the liberty of the people. It fears that alternative military service would jeopardize national security. It highlights that 70% of the Korean Peninsula is mountainous, making it all the more necessary to be equipped with enough ground forces to face guerrilla warfare. However, the number of soldiers in the State party remains at around 680,000, only 58% of that of the DPRK, which amounts to about 1,170,000 and between 2000 and 2005 there has been a significant decrease in the number of male soldiers between 15 and 25 years. This trend is expected to continue in the future and makes it even more difficult to accept cases of exception from conscription.

4.5 According to the State party, there have always been those who are intent on “evading” conscription due to the relatively challenging conditions often required in the military, or concern over the effect such an interruption will have on one’s academic or professional career. Thus, it is even more necessary to maintain its current system of a no-exception policy in mandatory military service to ensure sufficient ground forces. It submits that if it were to accept claims of exemption from military service, in the absence of a public consensus on the matter, it would be impeded from securing sufficient military manpower required for national security by weakening the public’s trust in the fairness of the system, leading the public to question its necessity and legitimacy. In addition, any exceptions based on religious belief would have to apply to people of all religious faiths and, given that persons of religious faith account for a significant part of the military forces, concerns about the proliferation of requests for exemptions are not groundless. The situation would be further aggravated if the State party were to accept exemptions based on personal conscience alone rather than on a religious basis. Thus, for the State party, the recognition of conscientious objection and the introduction of alternative service arrangements should be preceded by a series of measures: stable and sufficient provisions



of military manpower; equality between people of different religions as well as with those without; in-depth studies on clear and specific criteria for recognition of an exemption and consensus on the issue among the general public.

4.6 As to the Committee's argument that, "respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society", the State party is of the view that as a unique security environment prevails, fair and faithful implementation of mandatory military service is a determining factor to secure social cohesion. Respect for conscientious beliefs and its manifestations is not something that can be enforced through the implementation of a system alone. It is sustainable only if general agreement on this issue has been achieved among the members of society. A public opinion poll conducted in July 2005 and in September 2006 shows that 72.3% and 60.5% respectively expressed opposition to the recognition of alternative service arrangements for conscientious objectors. In the State party's view, the introduction of such an arrangement at a premature stage within a relatively short period of time, without public consensus, would intensify social tensions rather than contribute to social cohesion.

4.7 The State party submits that it is a very difficult task to set up an alternative service system in practice, guaranteeing equality and fairness between those who perform mandatory military service and those who perform alternative service. The majority of the soldiers of the State party perform their duties under difficult conditions and some are involved in life-threatening situations. They face the risk of jeopardizing their lives while performing their duty of defending the country. Indeed, six people died and nineteen were wounded in the recent clash between the South and the North naval vessels near Yeonpyeong-do in the Yellow Sea on 19 June 2002. Thus, it is almost impossible to ensure equality of burden with those fulfilling military service and those performing alternative service. Assuming that this disparity will continue to exist, it is imperative to gain the understanding and support of the general public before introducing an alternative service system.

4.8 The State party regrets that upon its accession to the Optional Protocol to the Covenant on 10 April 1990, the Committee had not provided a clear position on whether conscientious objection fell within the ambit of article 18. It was only on 30 July 1993, in its General Comment 22, that the Committee announced its position that failure to recognize conscientious objection constitutes a breach of this provision. It refers to the decisions of both its Supreme and Constitutional Courts to the effect that the failure to introduce a system at the present time cannot be interpreted as a breach of the Covenant, and that the requisite article of the Military Service Act punishing conscientious objectors is constitutional.

4.9 The State party informs the Committee that from April 2006 to April 2007, the Ministry of Defense set up a "Joint Committee between the public and private sectors to research the alternative service system". This Committee conducted research on the possibility of revising the Military Service Act and introducing an alternative service system including prospects for the future demand and supply of military personnel, the statements of those who refused military service, the opinions of experts in this field and relevant cases of foreign countries.<sup>4</sup> It is now conducting research with the aim of following the trend of public opinion from August to December 2008.

4.10 In addition, in September 2007, the State party announced its plan to introduce a system assigning social services to those who refuse conscription due to their religious

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<sup>4</sup> The State party has not provided any indication of the results of this research.

beliefs once there is a “public consensus” on this issue. The State party informs the Committee that once there is such consensus, “as a result of the research on public opinion and positions of the relevant Ministries and institutions, then it will consider introducing an alternative service system”. In conclusion, it requests the Committee to reconsider its previous view on this matter in light of the arguments presented herein.

#### **Authors' comments on the State party's observations**

5.1 By letter of 14 November 2008, the authors responded to the State party's submissions. On the States party's arguments on national security, the authors argue that security is an important issue for all countries irrespective of whether or not they are divided or there is a cease-fire in place. Germany has been providing alternative service since the 1960s, thus even before unification, and Taiwan has also done so despite its being dominated by China.

5.2 According to the authors, the official statistics demonstrate that while 340,000 men were enlisted in the military service in the State party, 8,000 were exempted, mostly due to physical disability. Among those enlisted, 270,000 soldiers serviced in military barracks, while another 70,000 served in “social alternative services”, such as public offices, police stations, fire stations, public health centres, prosecutors' offices, national defense-related factories and various laboratories. The criteria for dividing those enlisted were physical state or skill, and qualification and academic degrees, which can be utilized in an alternative to military service. The fact that such a high number do service in alternative services already, demonstrates that the State party is not short of soldiers to service in military barracks. In addition, it notes that according to a “Defense White Paper, issued by the Ministry of National Defense, on 4 November 2006, the State party has dispatched as many as 2,577 soldiers overseas even though it is not directly related to the national security of the State party.

5.3 According to the authors, the number of conscientious objectors is less than 700 annually, amounting to 0.26% and 1% of soldiers serving in and outside military barracks, respectively. Thus, the State party's argument that the adoption of alternative service would jeopardize national security is unreasonable and groundless. As to the arguments relating to security concerns with the DPRK, the authors argue that the State party's population is almost twice as large and its economy thirty times as large as that of the DPRK. Also, the DPRK has been under constant satellite surveillance. In addition, given that the defense budget of the State party was 15.7 billion dollars in 2006, whereas that of the DPRK was estimated at 2.94 billion dollars in the same year, as well as the fact that the State party has reduced the period of military service over the years, the State party's arguments in this regard are not credible.

5.4 As to the State party's argument that a no-exception policy in a mandatory system is essential in order to minimize evasion from conscription, the authors reiterate that 70,000 people have undertaken their military service outside military barracks, which is 100 times larger than that of conscientious objectors. Thus, the State party's concern about the inequalities of alternative military service for conscientious objectors would not arise. They also referred to an announcement by the Ministry of National Defense on 18 September 2007, that the State party would pursue a plan of permitting conscientious objectors special alternative service as part of “social alternative service”, on condition that: 1) service should be the toughest of “social alternative service”, such as, looking after Alzheimer patients or the highly disabled who need intensive care all the time; 2) those availing of this type of service should remain at the designated facility rather than commuting to their homes; and 3) the service should be twice as long as for those who serve in military barracks. According to the authors, given the more challenging and demanding nature of the conditions attached, it is likely that only genuine conscientious objectors would apply

for this service and it is not reasonable to suppose that the adoption of an alternative service for conscientious objectors would have an adverse effect on the military system or raise issues of inequality. This has not been the experience in either Germany or Taiwan.

5.5 As to the State party's argument that there is no "public consensus" on this issue, the authors argue that the State party has only referred to statistics from surveys carried out in 2005 and 2006 and did not mention those of 2007, which demonstrate a majority for such special alternative service (52%). This figure was quoted by the former government, and adopted by the progressive political party (the Open Democratic Party) as the reasoning behind its wish to incorporate special alternative service for conscience objectors as set out in para 4.10 above. The government had been inspired by the Committee's Views in *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea* to take such a step. However, the government subsequently changed its view and began quoting earlier surveys to support its new opinion. When the conservative party (the Grand National Party) took power in 2008, the Ministry of National Defense decided to postpone introduction of such an expanded special alternative system.

5.6 The authors submit that by introducing alternative service for conscientious objectors, the State party would be protecting minority rights and contributing to integration and pluralism in society. Due to the criminal records of conscientious objectors they suffer from social as well as economic disadvantages. For example, they are not eligible to be appointed as public officers or to join private companies.

5.7 The authors argue that the State party has an obligation under article 18 of the Covenant, as demonstrated in its Views in *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea* to grant alternative service to conscientious objectors. As various forms of such alternative service already exist, the State party could do so by simply removing the four-week training course concerning firearms. They also refer to the fact that article 18 is a non-derogable right even during times of emergency and hence the State party's arguments on national security are groundless.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 In the absence of objection by the State party to the admissibility to the communication, as well as any other reason whereby the Committee should declare the communication inadmissible in whole or in part, the Committee declares the claims under article 18 of the Covenant admissible.

### **Consideration of the merits**

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their rights under article 18 of the Covenant have been violated, due to the absence in the State party of an alternative to compulsory military service, as result of which their failure to perform military service resulted in their criminal prosecution and imprisonment. The Committee recalls its previous jurisprudence, in similar cases against the State party, that the authors' conviction and sentence amounted to a restriction on their ability to manifest their religion or belief and

that, in those cases, the State party had not demonstrated that the restriction in question was necessary, within the meaning of article 18, paragraph 3.<sup>5</sup>

7.3 The Committee notes that in the present cases the State party reiterates arguments advanced in response to the earlier communications<sup>6</sup> before the Committee, notably on the issues of national security, equality between military and alternative service, and lack of a national consensus on the matter. The Committee considers that it has already examined these arguments in its earlier Views<sup>7</sup> and thus finds no reason to depart from its earlier position.

7.4 The Committee notes that the authors' refusal to be drafted for compulsory military service was a direct expression of their religious beliefs which, it is uncontested, were genuinely held and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief. The Committee finds that as the State party has not demonstrated that in the present cases the restrictions in question were necessary, within the meaning of article 18, paragraph 3, it has violated article 18, paragraph 1, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts before the Committee reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>5</sup> *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, Communication no. 1321/2004 and 1322/2004, Views adopted by the Committee on 3 November 2006.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*