SENTENCED TO LIFE

CONSCIENTIOUS OBJECTORS IN SOUTH KOREA

AMNESTY INTERNATIONAL

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Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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1. EXECUTIVE SUMMARY

"I am willing to provide my service to the country. I would like others to understand that the reason I refuse taking up arms is genuine and not out of negligence."

Lee Cherin (Age 24)[1]

Every year South Koreans are sent to prison for exercising their freedom of thought, conscience or religion or belief. Over 613 conscientious objectors to military service – that is, men who have refused conscription for reasons of conscience – are currently in prison in the Republic of Korea (South Korea).[2] There are also over 80 conscientious objectors currently subjected to reserve force duty - those who have refused to serve in the reserve forces after completing the mandatory military service.[3]

South Koreans are required to perform military service, in accordance with the Military Service Act (MSA).Terms of active duty service range from 21 to 24 months. All those who have completed the initial military service are required in the following eight years to perform up to 160 hours of reserve forces duty.

Refusing to perform military service for reasons of conscience or profound personal conviction, without suffering any legal or other penalty is part of the right to freedom of thought, conscience and religion, found in Article 18 of the International

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[1] Amnesty International interview with Lee Cherin in Seoul on 28 October 2014 and follow up email exchanges in April 2015.

[2] There are no available statistics about the total number of conscientious objectors imprisoned or facing prosecution in South Korea. The great majority appear to be members of Jehovah's Witness, a Christian group, although there are also documented cases of individuals non-affiliated with this group who elected to become conscientious objectors and are unwilling to bear arms for pacifist or religious motives. According to a report by Jehovah's Witness, 613 of its members were imprisoned in South Korea for conscientious objection as of April 2015. See Jehovah's Witness, *Imprisoned for Their Faith—South Korea*, available at: http://www.jw.org/en/news/legal/by-region/south-korea/jehovahs-witnesses-in-prison/ (accessed 9 April 2015). There is no provision in South Korean law for conscientious objectors to military service to do a genuine alternative civilian service. Refer to Chapter 3.1.

[3] The European Association of Jehovah's Christian Witnesses, Submission to the *UN Human Rights Committee Prior to the Adoption of the List of Issues* (113th Session – 16 March – 2 April 2015) Fourth periodic report pursuant to article 40 of the Covenant Republic of Korea (115th Session of the Human Rights Committee, 19 October – 6 November 2015), para.13.

Covenant on Civil and Political Rights (ICCPR), to which South Korea is a state party.

The United Nations' Human Rights Committee has expressed concern about the penalty provided in Korean law of up to three years' imprisonment for refusal of military service, that those who have not satisfied military service requirements are excluded from employment in government or public organizations, and that convicted conscientious objectors bear the stigma of a criminal record.[4] The Committee has called on the authorities to recognize the right of conscientious objectors to be exempted from military service.[5] The South Korean government argues that introducing an alternative service for conscientious objectors would jeopardize national security and undermine social equality and cohesion.

The South Korean authorities have failed to comply with Article 18 of the ICCPR by not introducing an adequate legal framework or structure for the implementation of a genuinely civilian alternative to compulsory military service and by imprisoning those who, for conscientious reasons, refuse to do military service.

Amnesty International urges the South Korean authorities to comply with obligations under international law to respect, protect and fulfil the right to freedom of thought, conscience and religion or belief, including by immediately and unconditionally releasing all individuals imprisoned solely for exercising their right to refuse to perform military service, clear the criminal records and provide adequate compensation for conscientious objectors who have been imprisoned; and bring national legislation into line with international standards by amending it to ensure that it provides for the recognition of conscientious objection and that, if conscientious objectors are not entirely exempted from military service, they have the option to perform an appropriate alternative non-punitive service of a genuinely civilian character which is under civilian control and of a length comparable to that of military service.

This briefing paper on conscientious objectors in South Korea includes information gathered in South Korea in October 2014 and January 2015 when Amnesty International interviewed ten conscientious objectors, their families, lawyers, scholar, religious organizations and civil society organizations working with conscientious objectors. It also draws on other relevant sources, including reports by UN bodies and the South Korean government, documents issued by religious organizations and civil society organizations, and academic literature.

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[4] The United Nations' Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

[5] UN Human Rights Committee, *Concluding Observations on Republic of Korea*, UN Doc. CCPR/C/KOR/CO/3, 28 November 2006, para 17, (HRC, Concluding Observations on the Republic of Korea).

2. INTERNATIONAL LAW AND STANDARDS

2.1. THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION OR BELIEF

The right to freedom of thought, conscience and religion is enshrined in Article 18 of the Universal Declaration of Human Rights and set out in Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR), which states that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." While Article 18(3) permits certain limitations on the manifestation of one's religion or belief (but not on the holding of that belief itself), these limitations may be "only such … as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others". The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with their obligations under that treaty, has stressed that this provision must be strictly interpreted, and in particular that "restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security".[6]

While the ICCPR does not expressly refer to a right to conscientious objection, the UN Human Rights Committee has explicitly stated that conscientious objection to military service is protected as part of the right to freedom of thought, conscience and religion under Article 18 of the ICCPR: "The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief".[7]

As a state party to the ICCPR, South Korea has a binding obligation to ensure that right for everyone within its jurisdiction. Based on this, the UN Human Rights Committee made a recommendation to the South Korean authorities in 2006 that South Korea should take all necessary measures to recognize the right of

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[6] UN Human Rights Committee, General Comment No. 22: *The right to freedom of thought, conscience and religion* (Art. 18), UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 8, (HRC, General Comment No. 22).

[7] HRC, General Comment No. 22, para. 11.

conscientious objectors to be exempted from military service, and encouraged South Korea to bring legislation into line with article 18 of the Covenant.[8]

The UN Human Rights Committee has also adopted Views (that is, issued opinions) on four petitions submitted to it by over 500 conscientious objectors from Korea who have been sentenced to prison terms for their religiously or conscientiously based objection to military service: Yeo-Bum Yoon and Myung-Jin Choi (Views adopted 2006, two persons),. Eu-min Jung et al. (2010, 11 persons), Min-Kyu Jeong et al. (2011, 100 persons), and Jong-nam Kim et al. (2012, 388 persons).[9] In all these cases the Committee has found that the punishment of conscientious objectors for refusing to carry out military service, where the authorities do not provide them with the option to undertake an appropriate alternative form of service, was a violation of Article 18(1) of the ICCPR.

Since 1989 the UN Commission on Human Rights, and most recently its successor body the UN Human Rights Council in resolution 24/17 of September 2013, have adopted several resolutions calling on states not to imprison conscientious objectors, to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection, and to make provisions for conscientious objectors to carry out alternative service compatible with their reasons for conscientious objection.[10] All these resolutions were adopted without a vote – that is, they were adopted without objection from any of the members of those bodies. South Korea was a member of the UN Human Rights Council in 2013 when resolution 24/17 was adopted, and was a member of the Commission on Human Rights since 1993, after which most of the Commission's resolutions on this issue were adopted.

The right to freedom of conscience and religion is also set out in the Constitution of South Korea, Article 19 of which specifies that "all citizens shall enjoy freedom of conscience" and further stipulates in article 20 that (1) all citizens shall enjoy freedom of religion, (2) no state religion shall be recognized, and religion and state shall be separated.

2.2. ALTERNATIVE SERVICE

A system of compulsory military service without special accommodation for those who are conscientious objectors because of their religious or other convictions or

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[8] HRC, Concluding Observations on Republic of Korea, para 17.

[9] *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; *Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chiyun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v. Republic of Korea*, Views adopted 23 March 2010 (Communications Nos. 1593–1603/2007), UN Doc. CCPR/C/98/D/1593-1603/2007; *Min-Kyu Jeong et al. v. Republic of Korea*, Views adopted 24 March 2011 (Communications Nos. 1642–1741/2007), UN Doc. CCPR/C/101/D/1642-1741/2007; *Jong-nam Kim et al. v. Republic of Korea*, Views adopted 25 October 2012 (Communication No. 1786/2008), UN Doc. CCPR/C/106/D/1786/2008.

[10] UN Commission on Human Rights Resolutions 1989/59, 1993/84, 1995/83, 1998/77, 2002/45, and 2004/35; UN Human Rights Council Resolution 24/17, UN Doc. A/HRC/24/17, 2013.

beliefs amounts to an unjustified interference with the right to freedom of thought, conscience, and religion or belief and is not compatible with international human rights law.

The Human Rights Committee has noted that a growing number of states have legislated to provide exemption from compulsory military service for conscientious objectors, replacing it with alternative national service.[11] With specific reference to conscientious objectors in South Korea, the Committee has stated that "a State may, if it wishes, compel [a conscientious objector] to undertake a civilian alternative to military service, outside the military sphere and not under military command. [It] must not be of a punitive nature [and] must be a real service to the community and compatible with human rights".[12] The UN Commission on Human Rights and the Human Rights Council have, in a series of resolutions on conscientious objection, recommended that states introduce forms of alternative service for conscientious objectors, which are of a non-combatant or civilian character and not of a punitive nature, and compatible with the reasons for conscientious objection.[13]

However, while, the UN Human Rights Committee, as noted above, has emphasized that national security is not one of the grounds listed in Article 18(3) of the ICCPR on which certain limitations may be imposed, the government of South Korea continues to emphasize the military tension with North Korea and the needs of national security as the primary reason for not introducing an alternative service system.[14]

In September 2007, the Ministry of Defense in South Korea had announced plans to introduce alternative service for conscientious objectors by 2009. However, after President Lee Myung-bak came into power in February 2008, the South Korean government announced on 24 December 2008 that such plans had been put on hold indefinitely, citing lack of public support.

2.3. PUNISHMENT OF CONSCIENTIOUS OBJECTORS VIOLATES HUMAN RIGHTS

In all the cases where it has issued opinions on petitions received from conscientious

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[11] HRC, General Comment No. 22, para. 11.

[12] *Min-Kyu Jeong et al*. v. Republic of Korea (2011), para. 7.3.

[13] See UN Commission on Human Rights Resolutions 1989/59, 1993/84, 1995/83, 1998/77, 2002/45, and 2004/35; UN Human Rights Council Resolution 24/17, UN Doc. A/HRC/24/17, 2013.

[14] The government of South Korea explains the difficulties of introducing an alternative as follows. "To recognize alternative service in the Republic of Korea, the following is taken into consideration: practical problems with the recognition of objectors based on their conscience or religious faith or the introduction of an alternative service system under the current mandatory military service system, securing social integration and stable pluralism, and difficulties with providing alternative service commensurate with compulsory military service, among other issues." Republic of Korea, *Fourth Periodic Report to the Human Rights Committee* under Article 40 of the ICCPR, UN Doc. CCPR/C/KOR/4, 4 November 2013, paras.266 and 267, referring to *Third Periodic Report*, UN Doc. CCPR/C/KOR/2005/3, 21 February 2005, paras 271-2. See also *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea* (2006), paras 6.1-6.4; *Eu-min Jung et al. v. Republic of Korea* (2010), paras 4.1-4.7; *Min-Kyu Jeong et al. v. Republic of Korea* (2011), paras 4.1-4.7; *Jong-nam Kim et al. v. Republic of Korea* (2012), paras 4.1-4.5.

objectors in South Korea the UN Human Rights Committee has concluded that the prosecution, conviction and sentencing of conscientious objectors as a result of a system of compulsory military service which contains no provision for them to carry out appropriate alternative service violates Article 18 of the ICCPR.[15]

The UN Working Group on Arbitrary Detention, a Special Procedure of five independent experts appointed by the UN Human Rights Council, has ruled that imprisonment of conscientious objectors to military service is, in addition, a form of arbitrary detention, resulting from the exercise of rights and freedoms guaranteed by Article 18 of the Universal Declaration of Human Rights and the ICCPR.[16]

The punishment of conscientious objectors addressed also in repeated resolutions of the UN Commission on Human Rights and most recently, in September 2013, resolution 24/17 of the UN Human Rights Council which emphasized that "States should take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service."[17]

Amnesty International considers that individuals such as conscientious objectors who are detained solely for exercising their right to freedom of thought, conscience or religion or belief, and who have not used violence or advocated violence or hatred are "prisoners of conscience" who should be immediately and unconditionally released.

2.4. REPEATED PUNISHMENT

Conscientious objectors who refuse duties in reserve forces after completing a mandatory military service, can be charged with same breach every year until their reserve duty obligation expires.[18]

The UN Human Rights Committee, in its General Comment 32 on Article 14 of the Covenant on right to fair trial, and citing also relevant opinions by the UN Working Group on Arbitrary Detention, specifically addresses the repeated punishment of conscientious objectors, stating:

> "Article 14, paragraph 7 of the Covenant, providing that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country, embodies the principle of ne bis in idem.... Repeated punishment of conscientious objectors for not having obeyed a renewed order

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[15] Kuk Cho "Conscientious Objection to Military Service in Korea: The Rocky Path from Being an Unpatriotic Crime to a Human Right" Oregon Review of International Law (Vol.9, 2007), p. 197.

[16] This position is in line with the Working Group's generally-applicable position that detention can be arbitrary when deprivation of liberty results from exercising a right or freedom protected by the Covenant.

[17] UN Human Rights Council Resolution 24/17, UN Doc. A/HRC/24/17, 2013, para. 10.

[18] See section 3.2 below for more details about this practice in South Korea.

to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience."[19]

2.5. PRINCIPLE OF NON-DISCRIMINATION

There must be no discrimination against conscientious objectors because they have failed to perform military service.[20] The principle of non-discrimination in the enjoyment of rights is enshrined in Article 2(1) and 2(2) of the ICCPR and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2(1) of the ICCPR obliges South Korea to "ensure to all individuals within its territory and subject to its jurisdiction enjoy the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social organs, property, birth or other status."

[19] UN Human Rights Committee, General Comment No. 32, Article 14: The right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, paras 54–5 (footnote omitted), http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/C/GC/32, (HRC, General Comment No. 32).

[20] HRC, General Comment 22, para. 11.

3. CONSCIENTIOUS OBJECTORS IN SOUTH KOREA

"I was born as a criminal. All my life, I felt like I was imprisoned because I knew I would go to jail."

Song In-ho (Age 25)[21]

3.1. COMPULSORY MILITARY SERVICE IN SOUTH KOREA

South Korean men are required to perform military service, in accordance with the Military Service Act (MSA). All men are called up for medical examination at the age of 18, and then the conscripts are placed in categories of military suitability. Despite various types of service outlined in MSA, none of them meet the definition of a genuine alternative service in line with the international standards.

Terms of active duty service range from 21 to 24 months. All those who have completed the initial military service are required in each of the following eight years to perform duties in the reserve forces for up to 160 hours.

Currently in South Korea, there are two types of conscientious objectors. One is individuals who refuse to serve at the initial call to serve, and the other is individuals who decide not to serve in the reserve forces after completing the initial military service. There are some differences in consequences they suffer though both attempt to exercise the same rights.

Those who refuse initial active military service could be, on conviction, subject to imprisonment for a maximum of three years though in practice, the sentences imposed are usually 18 months.[22] For those who refuse reserve forces duty, there

[21] Amnesty International interview with Song In-ho in Seoul on 28 October 2014. Song knew at an early age that he would be sent to prison because the right to conscientious objection is not recognized in South Korea. Refer to Chapter 4, Case A for his full story.

[22] Official figures of the total number of conscientious objectors are not available, yet all 613 conscientious objectors detained as of April 2015 were sentenced for 18 months. Jehovah's Witness, Imprisoned for Their Faith—South Korea, available at: http://www.jw.org/en/news/legal/by-region/south-

are no legislative limits on the number of times a conscientious objector may be recalled and subjected to new penalties under the Establishment of Homeland Reserve Forces Act and they can also be imprisoned.

Individuals who refuse to take part in reserve forces can be fined and the fines vary depending on jurisdiction, but typically average 200,000 KRW (approximately 200 USD) for the first conviction. Fines usually increase by 100,000-300,000 won (approximately 100-300 USD) for each subsequent conviction. However, in at least one case the fine accumulated to 40,000,000 KRW (approximately 40,000 USD).[23] Courts have the option, in lieu of levying fines, to sentence individuals deemed to be habitual offenders to prison terms or suspended prison terms.[24]

According to a Jehovah's Witness's submission to UN Human Rights Committee, some conscientious objectors are incapable of paying their fines, which may amount to thousands of dollars each year, which causes them to be sentenced to labour in a "work-house" (a facility inside a prison) instead of paying the fine. The length of such labour arrangements vary from one day to three years, depending on the amount of the unpaid fine.[25]

In 2005, the National Human Rights Commission made a recommendation to establish an alternative service system and to recognize conscientious objection as an exercise of the freedom of conscience.

On 11 November 2010 the Constitutional Court held a hearing as part of a case which was considering the constitutionality of Article 15(8) of the Establishment of the Homeland Reserve Force Act and Article 88(1)-1 of the Military Services Act (MSA) and whether these articles violate fundamental rights, including the right to conscientious objection. In its ruling in August 2011, the Constitutional Court stated that the refusal to undertake military service is not covered by "right to freedom of conscience" protected in the Constitution.[26]

To date, Korean authorities have failed to comply with international standards and introduce an adequate legal framework or structure for a genuine alternative to

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korea/jehovahs-witnesses-in-prison/ (accessed 9 April 2015)

[23] Refer to Chapter 4, Case D for details.

[24] The European Association of Jehovah's Christian Witnesses, *Submission to the UN Human Rights Committee Prior to the Adoption of the List of Issues* (113th Session – 16 March – 2 April 2015) Fourth periodic report pursuant to article 40 of the Covenant Republic of Korea (115th Session of the Human Rights Committee, 19 October – 6 November 2015), para.13.

[25] The European Association of Jehovah's Christian Witnesses, Submission to the *UN Human Rights Committee Prior to the Adoption of the List of Issues* (113th Session – 16 March – 2 April 2015) Fourth periodic report pursuant to article 40 of the Covenant Republic of Korea (115th Session of the Human Rights Committee, 19 October – 6 November 2015), para. 12 to 14.

[26] See Amnesty International, South Korea: Constitutional court ruling runs counter to South Korea's obligations under international human rights law, 2 September 2011, ASA 25/010/2011, https://www.amnesty.org/en/documents/asa25/010/2011/en/ (accessed 17 April 2015)

compulsory military service.

3.2. VIOLATIONS, ABUSES AND OTHER PROBLEMS FACED BY CONSCIENTIOUS OBJECTORS

Beyond the question of imprisonment, heavy fines, and a criminal record simply for the exercise of their right to freedom of thought, conscience or religion or belief, conscientious objectors may face additional, broader implications when they refuse military service, such as discrimination in employment and social stigma.

DISCRIMINATION AND OTHER EMPLOYMENT-RELATED PROBLEMS

Difficulty obtaining a job is one of the most serious consequences of imprisonment of conscientious objectors. Conscientious objectors with criminal records are particularly disadvantaged in terms of employment opportunities, in both public and private sectors. For instance, those who have not satisfied military service requirements face discrimination in access to employment in public bodies, because they lose their eligibility for a period of time for work in these institutions.[27]

Son Incheol a 29 year old conscientious objector reflected on his dream:

> *"I dreamt of becoming a pilot. However, I realized that it was not an option I could choose because I realized that I would have a criminal record in the future which would prevent me from flying."* [28]

Discrimination in terms of employment may also happen informally. During the recruitment process, some large companies request applicants to provide information about their military service experience.[29] Some conscientious objectors informed Amnesty International that it is almost "impossible" to get a job in a these companies for this reason.[30] For example in the case of Son Incheol, since being released from prison in July 2014, he has been looking for a job as an interpreter and translator in private and public companies to date, however, he has encountered the following obstacles:

> *"There were many good job openings at public companies, but I had to give up because of a law that disqualifies those with a criminal record from entering public firms. Many private companies also screen prospective*

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[27] Article 33 of the State Public Officials Act which lists types of individuals who are disqualified from becoming public officials for a period of time. English translation is available on the website of the Korea Legislation Research Institute, http://elaw.klri.re.kr/eng_service/lawView.do?hseq=28949&lang=ENG (accessed 29 April 2015)

[28] Amnesty International interview with Son Incheol in Seoul on 28 October 2014.

[29] The job application form of a South Korean mainstream construction company has a section on military service and there are questions such as "Did you serve the military?", "If you have been exempted from the military service, why would that be?", "Where did you serve? Army, air force or navy?" "What was your status in the service when completed?"

[30] Amnesty International interview with Song In-ho in Seoul on 28 October 2014 and follow up interview on 1 April 2015. Similar remarks were made by others.

employees for criminal records, so my job prospects haven't been bright so far." [31]

Choi Jung-won, a conscientious objector subjected to reserve forces duty, who faced multiple court appearances for his continued refusal to carry out these duties, told Amnesty International that he had to change jobs five times in order to get time off work to appear in court every year during his reserve forces obligation which made it difficult to maintain stable work and income.[32]

SOCIAL STIGMA

Given the security tension on the Korean peninsula, national defence had been a priority for South Korea, and the duty of military service is strongly emphasized as a "holy" duty of the people.[33] Thus, conscientious objectors are criticized as being "unpatriotic deviants" who ignore the serious security situation. A conscientious objector expressed the hardship he faced for being seen as a "traitor" or as a person with mental or physical disability when he is just exercising his basic rights.[34] A lawyer defending conscientious objectors explained that serving in the military is regarded as an absolute duty for Korean men, and that the government fears recognizing conscientious objectors would lead to a plausible excuse for many others to evade the mandatory military service.[35]

Lee Yeda, a 24 year old conscientious objector, expressed that becoming a conscientious objector in South Korea means a "social death" as he felt that conscientious objectors will be stigmatized by Korean society for not fulfilling the "holy" duty and the criminal record would result in destroying their future prospects because of the obstacles to obtaining jobs.[36]

Another conscientious objector, Kim Jung-sik, aged 38, explains that he had been seen as an individual "avoiding" the military which is regarded as unacceptable by mainstream Koreans.[37] He used to work in the education sector, and told Amnesty International that he hesitated to share the fact that he is a conscientious objector.

"I hesitate to disclose that I am a conscientious objector when I consider the possible effects on my students and their parents. I was worried that

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[31] Amnesty International interview with Son Incheol in Seoul on 28 October 2014 and follow up through emails during 1-10 April 2015.

[32] Choi Jung-won was on the seventh year of reserve forces duty, and has one more year until the obligation is complete. Amnesty International interview with Choi Jung-won in Seoul on 28 October 2014.

[33] Kuk Cho "Conscientious Objection to Military Service in Korea: The Rocky Path for Being an Unpatriotic Crime to a Human Right" Oregon Review of International Law (Vol.9, 2007), p. 194.

[34] Amnesty International interview with Lee Cherin in Seoul on 28 October 2014.

[35] Amnesty International interview with Oh Jae-Chang in Seoul on 30 January 2015.

[36] Amnesty International interview with Lee Ye-da by Skype on 29 October 2014.

[37] Amnesty International interview with Kim Jung-sik in Seoul on 29 January 2015.

> *students who looked up to me may be influenced by my decision to become a conscientious objector. They might choose to become conscientious objectors themselves without understanding the implications and then undergo the same hardship I had. The long court procedure and instability was painful. I could not foresee my future, and I was anxious every time I appeared at court for seven years. I felt particularly sorry for my parents for making them worry about me."* [38]

A number of conscientious objectors stated their concern about marriage prospects.[39] They expressed that the parents of daughters would hesitate to have their daughter marry a man with a criminal record.

Some conscientious objectors had encountered family opposition about their decision to become a conscientious objector.

A conscientious objector, Lee Yeda, encountered strong reaction from his mother when he told her his decision to become a conscientious objector.

> *"When I told this decision to my mother, she said 'why are you not going to the military like everyone else? Why do you want to be a victim?'"* [40]

A staff member of a peace organization, World Without War, said "Along with the suffering of conscientious objectors themselves, parents of conscientious objectors go through a difficult time. Parents suffer the pain of sending sons to prisons, yet they feel that it is not easy to share those experiences with others."[41]

A mother of a conscientious objector became depressed after having sons imprisoned, and became unable to visit her sons in prison. Her spouse expressed that they had tried hard not to show their suffering to their sons which made it even more difficult for them to cope with the situation.[42] Access to jobs can be affected not just for conscientious objectors themselves, but also for their families. Yang Ji Woon, a renowned voice-over actor and a father of three conscious objectors became out spoken when his first son was imprisoned. He reflects that even given his rich career, he had difficulties obtaining jobs, particularly commercial advertisement jobs, after publicly speaking out about being the father of a conscientious objector.[43]

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[38] Amnesty International interview with Kim Jung-sik in Seoul on 29 January 2015.

[39] Amnesty International interview with Lee Cherin and Son Incheol in Seoul on 28 October 2014. Similar remarks were made by other conscientious objectors during the course of the interviews.

[40] Amnesty International interview with Lee Yeda by Skype on 29 October 2014.

[41] Amnesty International interview with World Without War in Seoul on 29 October 2014.

[42] Amnesty International interview in Seoul with Yang Ji Woon in Seoul on 29 October 2014 and a follow up on 2 April 2015.

[43] Amnesty International interview in Seoul with Yang Ji Woon in Seoul on 29 October 2014 and a follow up on 2 April 2015.

MULTIPLE PUNISHMENTS FOR CONSCIENTIOUS OBJECTORS SUBJECTED TO RESERVE FORCES DUTY

In South Korea, there are currently over 80 conscientious objectors subjected to reserve forces duty - those who have refused to serve in the reserve forces after completing the mandatory military service.[44] They are charged with same breach every year until the reserve forces duty obligation is complete.

In the case of Kim Jung-sik, a conscientious objector subjected to reserve forces duty, the court charged him with fines every year he refused to serve in the reserve forces. In the fifth year of refusal, he was charged an accumulated fine of 40,000,000 KRW (approximately 40,000 USD). In the end this was changed to a 12,000,000 KRW fine, 240 hours of volunteer social work and a four months prison sentence, suspended for a period of one year.[45]

[44] The European Association of Jehovah's Christian Witnesses *Submission to the UN Human Rights Committee Prior to the Adoption of the List of Issues* (113th Session – 16 March – 2 April 2015) Fourth periodic report pursuant to article 40 of the Covenant Republic of Korea (115th Session of the Human Rights Committee, 19 October – 6 November 2015), para.13.

[45] Amnesty International interview with Kim Jung-sik in Seoul on 29 January, 2015. Refer to Chapter 4, Case D for his full story.

4. CONSCIENTIOUS OBJECTORS CASES

CASE A: SONG IN-HO (AGE 25) – CONSCIENTIOUS OBJECTOR

Song In-ho ©Amnesty International

Song In-ho is a 25 year-old and recent college graduate.[46] He works for a cleaning company which his parents own and is currently waiting for the court ruling on his decision not to perform the military service. He will be sent to jail once his claim is rejected. He has been a Jehovah's Witness since childhood, and says he made the decision to become a conscientious objector because of "his Bible trained conscience". He knew at an early age that he would be sent to prison if he continued to stay faithful to his belief in the Bible. He describes his life in the following terms:

> *"I was born as a criminal. All my life I felt like I was imprisoned because I knew that I would be sent to jail. I was a future criminal."*

Song reflects on his childhood as follows:

"When I was a primary school student, I was asked during class to write my future dream but I left it blank as I knew that it was not achievable. Yet, I could not tell that to my mother because she would be heartbroken. Some classmates approached

[46] Amnesty International interview with Song In-ho in Seoul on 28 October 2014 and follow up interview on 1 April 2015.

me and asked "Are you a Jehovah's Witness? My mother said that you would be sent to jail."

Song notes that he was giving up his hopes for the future. He also had to face classmates and friends throughout primary school to college, who saw him differently.

> *"Intimate friends started to behave differently once I revealed my religion. The moment of revealing, atmosphere around me get frozen. People smile at me but they whisper about me behind my back."*

Song hoped to get a job after graduation, but he found it difficult and he explains:

> *"I could not find employment. This is because of objecting to military service. Getting a job in a reputable company is nearly impossible because the discrimination and prejudice are so strong."*

His father was resistant to his decision to become a conscientious objector at first, but he later came to support the decision of his son. Song reflects:

> *"A beloved son was going to jail, and no father wants that to happen to his son. However, because of my faith, I had always tried my hardest to be a diligent son. From childhood, I always tried to be the best son."*

CASE B: KIM SUNG-MIN (AGE 28) - CONSCIENTIOUS OBJECTOR

Kim Sung-min holding a sign saying "Imagine peacefully" ©World Without War

Kim Sung-min is currently serving an 18-month sentence in Seoul detention centre for refusing to undertake compulsory military service.[47] He was inspired when he first met with a conscientious objector at an event hosted by Amnesty International Korea, and he further developed his opinions against militarism. He got involved in the non-violence movement after that. Kim reflects on his decision of becoming a conscientious objector:

> *"For me, conscientious objection is not only about refusing to be a militant, but also fighting against the military sprit that is deeply ingrained in everyday life. Reflecting the history, the majority of people who pointed the guns in the name of religion and nation were just ordinary people performing a command."*

He also believes that refusing military service is in accordance with his religious beliefs as a Christian, however, his family did not share the same perception.

> *"My father opposed the basis on the Bible when I first told him about conscientious objection. My heart was broken, but I felt that my father's thoughts are typical among Koreans. I spent a lot of time with my family in order to understand each other. As I look back, it was a part of the process to become a conscientious objector."*

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[47] Quotes in this section are from a letter of Kim Sung-min dated 18 November 2013. On the day of the deadline for him to enlist, Kim Sung-min notified the Military Manpower Administration that he was conscientiously objecting to undertake military service. He was sentenced to 18 months imprisonment on 28 May 2014 and was taken into custody.

He elaborates on the diverse and complex feeling towards the military among Koreans drawing on his family members as examples.

> *"My grandfather has an emotional wound from the army. My mother was disappointed by the fact that she could not join the military like men. We all ponder deeply. Discussing and sharing trouble with the family and friends around me was a process to build my current thought and belief. Conscientious objection is not only my personal decision of conscience, but also a product of a relationship. Though the warrant was directed to me, I rejected on behalf of others who share the same views."*

CASE C: LEE YEDA (AGE 24) – FIRST SOUTH KOREAN CONSCIENTIOUS OBJECTOR GRANTED REFUGEE STATUS IN FRANCE

Lee Yeda © Amnesty International

Lee Yeda is living in France and currently looking for a job.[48] He is the first South Korean national to be recognized as a refugee in France for not being able to exercise the right to conscientious objection.

Lee was inspired by the comic book "Buddha" written by Osamu Tezuka, a renowned Japanese comic artist, and started to think about the meaning of peace. He wondered why he had to serve in the military, and had debated this with his family and friends. He reflects on his decision.

> *"I wanted to know about the military service as it is an obligation. I gathered testimonies and collected the history of the military and realized the existing human rights abuses in the military. I felt something is wrong."*

After deciding not to serve, he had discussions with his family. As the right to conscientious objection is not recognized in the country, rejection of military service meant he would be imprisoned.

> *"I was thinking about the meaning of happiness. As I believe happiness means*

[48] Amnesty International interview with Lee Yeda on 29 October 2014.

to live in a world which people respect one another and share each other's values. If the consequence of being a conscientious objector is to be imprisoned, I could not see my bright future."

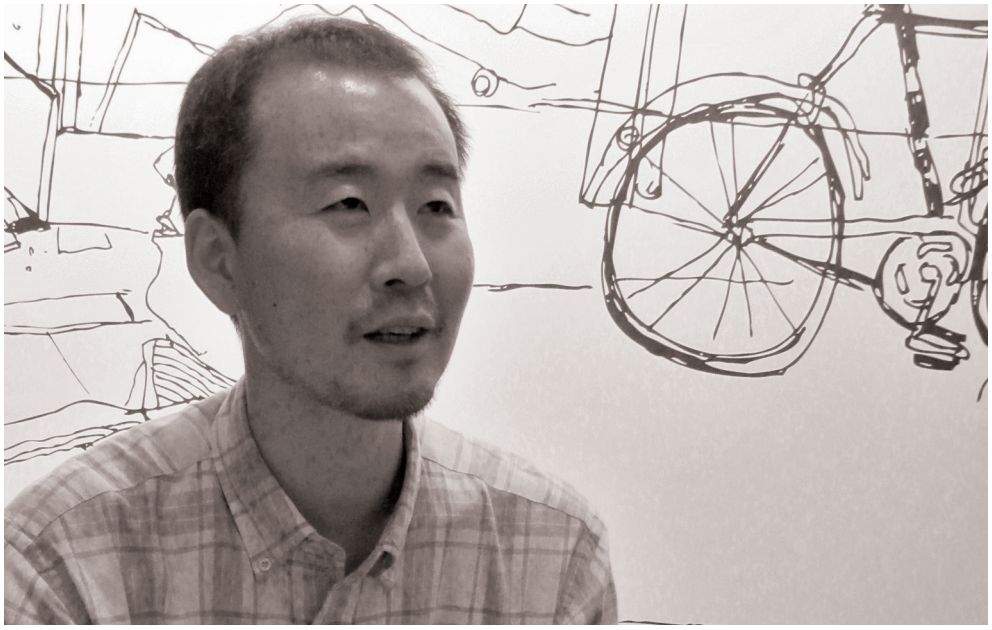
When he first told them his decision to become a conscientious objector, his family's reaction varied.

"My father and younger sister were not in favour of the idea but they left the choice up to me and refused to interfere. It was my mother who had a strong reaction. She questioned me 'why are you not going to the military like everyone else? Why do you want to be a victim?' She was even more shocked when I told my decision to apply for refugee status and told me to go to prison instead."

Now that he is living in France, though his right is recognized, the most challenging thing is not being able to see his family and friends.

"After coming to France, I was able to do what I want to do and there's support for that. I gained my self-esteem. I have nothing to lose, but the fact that I am not able to see my loved ones."

CASE D: KIM JUNG-SIK (AGE 38) – CONSCIENTIOUS OBJECTOR SUBJECTED TO RESERVE FORCES DUTY



Kim Jung-sik ©Amnesty International

Kim Jung-sik had some doubts about serving in the military, however, like many other South Korean men he thought it was better to just go and serve.[49] A week after beginning his service in 2002, he realized that it was different from what he had imagined. He reflects:

> *"We were asked to hold the gun and shoot the manikin wearing a North Korean military uniform. A pain struck my soul. I felt that I could not do this anymore. I went to meet my supervisor and told him that I could not hold the gun thinking I might be taken to the jail in the military."*

After this experience, Kim approached his supervisor saying that he was unable to continue the military service. The supervisor told Kim Jung-sik that the whole unit would be in trouble if he resigned and allowed him to transfer to a unit for administrative work instead.[50]

In 2005, Kim was called in for reserve forces duty for the first time. An hour after the start of the training, he realized he could not endure it if he was forced to hold a

[49] Amnesty International interview with Kim Jung-sik in Seoul on 29 January, 2015.

[50] Kim Jung-sik was imprisoned while he was involved in the students' movement during university. Thus, he says that his supervisor was keeping a close eye on his situation during initial training. Kim reflected that the decision to transfer him was quite exceptional treatment given the fact that he was previously imprisoned. He also told Amnesty International that after his transfer, he was supervised 24/7 until he completed his service.

gun. After expressing his will to the senior military superior, he was later called to a police station, and then the case was referred to the prosecutor.

> *"Every time I went to court, I informed my family that I may not return as I might be sent to jail immediately after that. I was filled with anxiety and was torn every time I appeared to court."*

The period for reserve forces duty continued for eight years. During this period, up to 160 hours of mandatory training are required each year. The first year of refusing to serve, Kim was only asked to pay a fine between 500,000 to 1,000,000 KRW, yet the amount accumulated every year. In the fifth year of refusal, his fine amounted to 40,000,000 KRW (approximately 40,000 USD). In the end this was changed to 12,000,000 KRW fine (approximately 12,000 USD), 240 hours of volunteer social work and a four months prison sentence, suspended for a period of one year.

Though judges who sentenced him were quite young and had been sympathetic to his situation and mentioned that his treatment was a "repeated punishment"[51], yet under the current law they had no choice but to sentence him.

> *"I felt sorry for my family. Because I would make them worry even more, if I was sent to prison. I am also worried that how I would affect my students when making their own life decisions."*

After paying his fines and completing all the processes that were required as a consequence of becoming a conscientious objector to reserve forces duty in 2012, Kim became more outspoken about his situation. "I want to share my experience with those who are suffering as conscientious objectors to reserve forces duty, those not knowing what will happen in the future."

[51] The repeated punishment of conscientious objectors to military service is specifically addressed in the UN Human Rights Committee's General Comment No. 32 on Article 14 of the ICCPR.

5. CONCLUSION AND RECOMMENDATIONS

Conscientious objectors continue to confront serious violations of their human rights as a result of their beliefs. The South Korean authorities have failed to comply with Article 18 of the International Covenant on Civil and Political Rights (ICCPR) by not introducing an adequate legal framework or structure for the implementation of a genuinely civilian alternative to compulsory military service and by imprisoning those who, for conscientious reasons, refuse to do military service.

Conscientious objectors in South Korea continue to face serious repercussions for their refusal to perform military service by being imprisoned and also facing life-long repercussions.

The right to refuse to perform military service for reasons of conscience or profound personal conviction, without suffering any legal or other penalty is inherent in the human rights to freedom of thought, conscience and religion or belief.

Amnesty International urges the South Korean authorities to comply with obligations under international law to respect, protect and fulfil the right to freedom of thought, conscience and religion or belief, including specifically conscientious objection to military service, and to this end offers the recommendations laid out below.

RECOMMENDATIONS

The Government of South Korea should:

- Immediately and unconditionally release all individuals imprisoned solely for exercising their right to refuse to perform military service in absence of a genuinely civilian alternative and refrain from imprisoning conscientious objectors in the future;

- Clear the criminal records and provide adequate compensation for conscientious objectors who have been imprisoned for refusing military service by reason of their conscientiously held beliefs;

- Bring national legislation into line with international standards by amending it to ensure that it provides for the recognition of conscientious objection and for a

person to register his or her objection, and to ensure that, if conscientious objectors are not entirely exempted from military service, they have the option to perform an appropriate alternative non-punitive service of a genuinely civilian character which is under civilian control and of a length comparable to that of military service;

- Ensure that conscientious objectors who perform alternative service are treated equally with persons performing military service as far as any financial or other benefits are concerned, and that legislative provisions or regulations which take into account military service for employment or pension purposes apply also to alternative service;

- Ensure that no discrimination is permitted against conscientious objectors because they have failed to perform military service;

- Ensure that the human rights education and training of relevant public officials, including judges, lawyers, public prosecutors, and law enforcement officials, includes an understanding of the right to conscientious objection to military service as an element of the right to freedom of thought, conscience and religion or belief.

APPENDIX: STATE PRACTICE ON CONSCIENTIOUS OBJECTION

Although exemptions to military service in States which imposed conscription had, at various times in previous centuries, been granted to specific religious groups on the basis of their pacifist belief, legal provisions explicitly exempting individuals from military service on the basis of their conscientious objection where in fact first implemented during the First World War when States with a long tradition of purely voluntary military service felt obliged to introduce conscription. Subsequently a number of States applied the principle to obligatory military service in peacetime, making an alternative civilian service available.[52]

Within the last 50 years, the number of States where conscientious objection to military service has been acknowledged in law has increased to such a point that the number of States recognizing conscientious objection greatly exceeds those which continue to impose obligatory military service with no allowance for conscientious objectors.

Apart from South Korea,[53] only Chile[54] and Turkey[55] continue to insist that no right to conscientious objection to military service can be claimed within their highest domestic courts. While Israel has no constitutional or legislative provisions recognizing conscientious objection to military service, the Minister of Defence

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[52] The material in this appendix is drawn from Amnesty International, Friends World Committee for Consultation (Quakers), the International Commission of Jurists, the International Fellowship of Reconciliation, and War Resisters' International, *"The right to conscientious objection to military service: Amicus Curiae Opinion Submitted to the Constitutional Court of Korea"*, 1 September 2014, (AI Index: POL 31/001/2014), paras 28-50.

[53] In South Korea, 28 cases indicated below are pending with Constitutional Court of Korea on issue of conscientious objection to military service as of March 2015. In 26 August 2004, the Constitutional Court of Korea upheld the constitutionality of the law that punishes conscientious objectors reviewing the request by Judge Park Si-Hwan in 2002.

Cases Nos: 2013HunGa5, submitted to the Constitutional Court by Seoul Northern District Court; 2014HunGa8, submitted to the Constitutional Court by Seoul Eastern District Court; 2012HunGa17, submitted to the Constitutional Court by Masan Branch of Changwon District Court; 2013HunGa23, submitted to the Constitutional Court by Seoul Southern District Court; 2013HunGa27, submitted to the Constitutional Court by Ulsan District Court; 2013HunGa13, submitted to the Constitutional Court by Suwon District Court.

[54] In Chile, recruitment to military service has in practice been voluntary since 2005. See Inter-American Commission on Human Rights, Cristián Daniel Sahli Vera et al. v. Chile, Case 12.219, Decision of 10 March 2005, Report No. 43/05.

[55] See UN Human Rights Committee, *Cenk Atasoy and Arda Sarkut v. Turkey*, Views adopted 29 March 2012 (Communications Nos. 1853/2008 and 1854/2008), UN Doc. CCPR/C/104/D/1853- 1854/2008

has in the past exempted a small minority of conscientious objectors from military service on the advice of an internal committee of the Israeli Defence Force.

Among the 193 UN Member States, 57 have made legislative or constitutional provision for conscientious objection to military service.[56] Twelve States have either confirmed the right judicially, or ratified an international instrument which expressly includes it, have promoted the right at the international level, or the concept has been acknowledged in practice.[57] Among the remaining 124 States, 21 States have no armed forces,[58] and in 67 all military service is presently voluntary,[59] so that the question of conscientious objection to obligatory military service does not arise in practice in 88 States.

Of the remaining 36 UN Member States that still formally impose obligatory military service and do not in any way acknowledge conscientious objection to military service, the majority do not in practice face claims of conscientious objection.[60] Of the 36, only Eritrea, South Korea, Singapore, Turkey and Turkmenistan were believed in 2013 to have held conscientious objectors in prison for their refusal of military service.

Provisions allowing the exemption of conscientious objectors from military service were first implemented in the context of wartime conscription, however, most States which currently apply conscientious objection provisions are not engaged in an armed conflict. Two States where political tensions with a neighbour are

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[56] Albania, Angola, Australia, Austria, Argentina, Armenia, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Croatia, Cyprus, Czech Republic, Slovakia, Ecuador, Estonia, Slovenia, Denmark, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Italy, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Marshall Islands, Moldova, Montenegro, Mongolia, Mozambique, Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, Romania, Russian Federation, Serbia, Spain, Sweden, Switzerland, The FYR of Macedonia, Ukraine, United Kingdom, United States of America, Uruguay, Uzbekistan.

[57] Bolivia, Colombia, Costa Rica, the Dominican Republic, Honduras, Ireland, Israel, Malta, Mexico, Nicaragua, Panama, and San Marino.

58 Andorra, Dominica, Grenada, Haiti, Iceland, Kiribati, Liechtenstein, Maldives, Mauritius, Micronesia, Monaco, Nauru, Palau, Samoa, Solomon Islands, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Tonga, Tuvalu, and Vanuatu

[59] Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brunei, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Democratic Republic of Congo, Djibouti, El Salvador, Ethiopia, Fiji, Gabon, Gambia, Ghana, Guyana, India, Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Mali, Myanmar, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Papua New Guinea, Philippines, Qatar, Rwanda, Saudi Arabia, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Swaziland, Timor Leste, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, Zambia, and Zimbabwe

[60] For instance, the requirement to perform military service may not be in fact imposed systematically, or universally. In Peru, as in Chile, the conscription provisions are now simply held in reserve against the possibility that in a particular year fewer volunteers come forward to perform military service than are required by the armed forces. Elsewhere, those who might be conscientious objectors may not be motivated to declare themselves as such, where no provisions exist, and instead seeking simply to avoid or evade military service.

perceived as constituting a major security threat have nevertheless made provision for conscientious objection to military service, despite the fact that the adversary in question has no such provision: Taiwan implemented an Alternative Service Law on 15 January 2000, and on 8 June 2013 Armenia introduced legal amendments which finally established a truly civilian alternative service independent of the control of the military.

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