



THE EUROPEAN ASSOCIATION OF
JEHOVAH'S CHRISTIAN WITNESSES

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From The European Association
of Jehovah's Christian Witnesses

Contribution to the Report of the U.N. High Commissioner for Human Rights
on the implementation of the new review mechanism of the Human Rights Council,
established by GA Resolution 60/251 and by the Human Rights Council in
Resolution

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KOREA

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WRITTEN SUBMISSION OF RELEVANT STAKEHOLDER TOWARDS THE UPR PROCESS

SUMMARY OF THE SUBMISSION

Conscientious objectors to military service in Korea are criminally prosecuted and imprisoned: Since 1950, 16,655 Jehovah's Witnesses in South Korea have been sentenced to a combined total of 31,739 years for refusing to perform military service. Despite repeated recommendations issued from international and domestic human rights bodies, Korea has not introduced a single provision for conscientious objectors. We respectfully request the Republic of Korea to recognize the right to conscientious objection to military service in harmony with its commitment to the norms of international society and to implement alternative service in line with international standards.

I. PREPARATION FOR UNIVERSIAL PERIODIC REVIEW

1 This submission is based on the documents prepared for and received from the UN Human Rights bodies, decisions of the UN Human Rights Committee, official records of court proceedings of conscientious objectors to military service, the official briefings and notices of the Korea government, news articles, and statistics for imprisoned conscientious objectors posted on the official media website of Jehovah's Witnesses. We also referred to the religious freedom reports released annually by the U.S. Department of State.

II. INTRODUCTION

2 The European Association of Jehovah's Christian Witnesses is a Charity registered in the UK and the Association is assisting the adherents of the faith of Jehovah's Witnesses in various areas of the world.

3 Today, there are over 99,000 Jehovah's Witnesses in South Korea worshipping in over 1,400 congregations. They generally enjoy freedom of worship but continue to face the unresolved issue of conscientious objection to military service. Since young men of the Jehovah's Witnesses faith have no option to forego military training or to choose alternative civilian service, they suffer imprisonment rather than violate their Bible-trained consciences and personally held convictions. They continue to suffer after their release due to the criminalization of their conscientious position.

III. LEGAL FRAMEWORK FOR CONSCIENTIOUS OBJECTION

4 Conscientious objectors to military service in Korea are criminally prosecuted, convicted, and generally sentenced to 18 months of imprisonment for violation of the Military Service Act Article 88 Paragraph 1. Each year, some 500 to 900 young men continue to be added to the list of conscientious objectors criminalized in Korea. Between 1950 and December 2011, a total 16,655 men have been sentenced to 31,739 years of imprisonment for conscientious objection to military service. As of December 2011, 761 Jehovah's Witnesses were imprisoned for conscientious objection to military service. Since 2008, more than 2,496 conscientious objectors have been tried and convicted by the courts, and sentenced to total 3,726 years of imprisonment.

5 Conscientious objectors who are called up as reservists face multiple prosecutions and repeated punishments over an eight-year period for violation of Homeland Reserve Forces Act Article 15 Paragraph 9. A reservist is not exempt from being repeatedly called up for the very training that he failed to perform even after paying fines or serving a prison term. Currently, over 80 of Jehovah's Witnesses are caught in the cycle of being accused and sentenced to repeated fines and

possible prison terms because of the religious beliefs they have come to accept after serving their basic terms in the military. A reserve forces training call up is issued over and over again, two or three times a year, even after one is penalized for the conscientious objection to it. For example, Mr. Shin, whose case was rejected by last year's constitutional court decision, has been prosecuted 37 times as of December 31, 2011, and is expected to face call ups and trials for two more years.

IV. DOMESTIC IMPLEMENTATION OF CONSCIENTIOUS OBJECTION

1. Recommendations made during the 8th Session of UPR in 2008

6 During the 8th Session of the Universal Periodic Review in 2008, the recommendations were made to the Republic of Korea to “to recognize the right of conscientious objection by law, to decriminalize refusal of active military service and to remove any current prohibition from employment in Government or public organization.” At this, the Republic of Korea responded that the alternative service programs for conscientious objectors were being studied.

7 Since then, however, the Korea government has not provided any legal remedy for conscientious objectors nor did it propose any revision of the military service act. In fact, a few days after the 8th Session of UPR, on July 4, 2008, it was reported by a news media that the Ministry of Defense would discontinue its consideration of introducing alternative service for conscientious objectors. (*Donga Daily*, July 5, 2008, “Reconsider alternative service for conscientious objectors”) On December 24, 2008, the Korea government officially announced that it would not introduce alternative service.

8 The Korea government's decision not to adopt alternative service is based on a study conducted by a professor named Jin, Seok-yong (Daejeon University, Political Science and Mass Communication) who comprehensively examined the possibility of alternative service. Although the study was positive in suggesting various ways of operating alternative service, the government highlighted the negative result of a public poll included in the study, which indicated the 68.1% of Koreans were against the plan. In interviews with several media sources, the professor who conducted the study explained that the government and the Ministry of Defense distorted his study result (*Hankook Daily*, January 7, 2009, “Government distorted the study on alternative service”; *News & Joy*, February 15, 2009, “I feel deceived by the Ministry of Defense.”)

9 No bill for alternative service or revision of the military service act was ever submitted to the National Assembly by the government. Recommendations made in the 8th Session of the UPR regarding conscientious objection have not been implemented.

2. UN Commission on Human Rights Resolutions

10 Since the 1980's, it has been the constant position of the UN Committee on Human Rights that the right of a conscientious objector to refuse military service was protected by Article 18 of the ICCPR. It has consistently repeated this position in a series of resolutions over the years. Korea was a member of that Commission when resolutions 1993/84; 1995/83; 1998/77; 2000/34; 2002/45; 2004/35 were adopted. Since these were all unanimous resolutions adopted without a vote, the Korean government took the official international position that Article 18 ICCPR protected the rights of conscientious objectors. There is no record of any objection raised by the Korean government to any of these resolutions, which means that the Korean government has not been a persistent objector.

11 In addition, the Working Group on Arbitrary Detention under the UN Human Rights Council categorized the deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by ICCPR as a form of arbitrary detention.

12 However, the Korean government has shown no regard for the resolutions and opinions adopted so far.

3. View of the UN Human Rights Committee

13 The Republic of Korea adopted on March 16, 1990, with the consent of the National Assembly, Article 18 of the International Covenant on Civil and Political Rights (hereafter *ICCPR*) without reservations, and joined the first Optional Protocol of *ICCPR* on the right of an individual to file a complaint.

14 The Human Rights Committee, by its repeated views on the individual communications filed by imprisoned conscientious objectors, clearly indicated Korea’s violation of the *ICCPR*. In its views issued as a third time on March 24, 2011, (nos. **1642-1741/2007**, *Min-Kyu Jeong et al.*) after examining 100 complaints filed by imprisoned conscientious objectors, the Human Rights Committee stated (at § 9, regarding Korea) that “the State party is under an obligation to provide the authors with (I) an effective remedy, including (a) expunging their criminal records and providing them with (b) adequate compensation. The State party is under an obligation to (II) avoid similar violations of the Covenant in the future, which includes the (III) adoption of legislative measures guaranteeing the right to conscientious objection.”

15 As regards (I.a), although the authors of 100 communications officially asked President Lee, Myung-bak to expunge their criminal record, the Office of Secretary to the President rejected their request with a remark on June 20, 2011: “Expunging criminal records and granting amnesty are matters of public consensus.” Since then, conscientious objectors have never been subjects of amnesty or pardon. Therefore, on February 28, 2012, the 100 authors once again filed a petition with the Minister of Justice for amnesty requesting clearance of criminal records and rehabilitation of the civil rights on the basis of article 26 of the Constitution and the Petition Act.

16 As regards (I.b), the response of the Korean government in its submission to the Human Rights Committee on March 23, 2010, stated that there is no legal ground for providing the convicted conscientious objectors with compensations or reparations. The Korean government has not introduced any law prescribing compensation for imprisoned conscientious objectors.

17 As regards (II), the Korean government continues on a daily basis to violate Article 18 paragraph 1 of the Covenant by imprisoning conscientious objectors. There are presently more than 700 young Jehovah’s Witness men who are serving prison sentences as conscientious objectors in Korea. This is by far the largest number of conscientious objectors serving prison terms of any country in the world. This is a most dismal picture for a country that claims to be making efforts to “protect and promote the right to freedom of thought, conscience, and religion.”

	2011											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Imprisoned	845	834	819	844	805	751	734	741	775	802	802	761
Imprisoned this month	34	69	40	68	40	23	35	33	66	96	85	53
Sentenced prisoners	842	828	813	836	803	750	734	741	774	798	796	755
Sentenced this month	39	66	40	66	46	24	36	33	65	93	83	53
Trial with detention	3	6	6	8	2	1	0	0	1	5	6	6
Trial Court	1	3	3	5	1	0	0	0	0	0	0	0
Appeallate Court	1	2	2	2	0	0	0	0	1	3	4	2
Supreme Court	1	1	1	1	1	1	0	0	0	2	2	4
Trial without detention	110	93	102	90	84	77	88	113	110	85	75	76
Trial Court	84	66	76	64	58	52	63	88	81	58	54	52
Appeallate Court	18	19	18	18	17	16	16	16	19	21	20	19
Supreme Court	8	8	8	8	9	9	9	9	10	6	1	5
Investigated	66	57	45	30	25	37	45	44	36	27	34	28
Appeal to Supreme Court	2	0	0	0	2	0	0	0	1	0	3	6
accumulative total	143	143	143	143	145	145	145	146	146	149	149	155

18 As regards (III), the Korea government insistently claims that a national consensus is a prerequisite for adoption of alternative service. Therefore, it unduly shifts the obligation of government to implement international standards onto Korean citizens who are negative to introducing alternative service. It continues to claim that in harmony with the Committee's views, the government with the National Human Rights Policy Council reviews the possibility of establishing alternative service for conscientious objectors. However, although the National Human Rights Policy Council established the National Action Plan in 2008 regarding conscientious objection, national consensus was still a precondition for actual implementation. Legislation and administration regarding conscientious objectors has been made dependent on public opinion.

19 Since 2008, no bill for alternative service or revision of military service act has ever been submitted to the National Assembly by the government. The repeatedly issued views of the UN Human Rights Committee regarding conscientious objection have not been implemented. Meanwhile, the Human Rights Committee is examining another 388 communications filed by imprisoned conscientious objectors in Korea, with others waiting to file complaints with the Committee as soon as they complete court proceedings.

4. The Constitutional Court and the Supreme Court reject the rights of Conscientious Objectors

20 Since 2008, more than 120 appeals have been filed to the Supreme Court by those whose appeals were rejected by the Court of Appeals. The Supreme Court, however, has rejected their appeals and repeatedly reaffirmed that the right to conscientious objection cannot derive from CCPR and that the recommendations made by UN chartered or treaty bodies do not have any legally binding effect.

21 The Constitutional Court refused to recognize the right to conscientious objection by its decision rendered on August 30, 2011. Six different Korean courts challenged that these laws violated the human dignity of conscientious objectors or their freedom of conscience. The laws were also challenged by four of Jehovah's Witnesses who conscientiously refused to take up arms. On November 11, 2010, the Court heard oral arguments on the cases and considered the constitutionality of laws. In its final decision, the Court stated that the recommendations made by UN Human Rights Committee and UN Human Rights Council (UN Commission on Human Rights) are not legally binding and do not guarantee the right to conscientious objection. This ruling by Korea's highest court permits the continued imprisonment of Korean citizens exercising their internationally-recognized right as conscientious objectors to military service. As regards the conscientious objectors to reserve forces trainings, the Court ruled that the repeated issuance and prosecution is not in conflict with their freedom of conscience.

V. POSITIVE DEVELOPMENTS

1. Remaining Constitutional Appeals in the Constitutional Court

22 Although the Constitutional Court rejected the requests of the local courts to review the constitutionality of the laws that penalize conscientious objectors, there are four remaining constitutional complaints to be examined by the Court; one filed by an attorney who was prosecuted for conscientious objection, two others filed by conscientious objectors whose request to refer their cases to the Constitutional Court was rejected by local courts, and the other filed by 100 conscientious objectors for whom the UN Human Rights Committee had confirmed Korea's violation of the ICCPR by its view. (Communications No. 1642-1741/2007)

2. Supreme Court recommends that alternative service be introduced

23 The Supreme Court consistently rejects the appeals of the conscientious objectors to military service. In 2007 and 2008, the Court, however, quoting the Constitutional Court's recommendation for the legislature to introduce alternative service, has concluded on several occasions that its decision to pronounce them guilty "should not be interpreted to deny the need to provide legislative solution or the urgency of discussion on this issue". (Supreme Court, case 2007Do7941, Case 2007Do10771, 2008Do555 , etc.)

3. Revision bills of the Military Service Act and the Homeland Reserve Forces Act

24 On July 1, 2011, Assemblyman Kim, Bu-kyum submitted a revision bill of the Military Service Act to allow alternative service for conscientious objectors. Also, on September 14, 2011, Assemblywoman Lee, Jeong-hee submitted revision bills of the Military Service Act and the Homeland Reserve Forces Act to accommodate conscientious objectors. However, the bills will be automatically abolished if they are not passed before the National Assembly session concludes on May 29, 2012. The bills are under the examination of the relevant Committees but no progress has been reported.

4. Torture-related deaths of conscientious objectors in the military acknowledged

25 On January 15, 2009, the Korean Presidential Commission on Suspicious Deaths in the Military released its decision acknowledging that the Korean government was responsible for the deaths of five young Jehovah's Witnesses who were forcibly conscripted into the army. It was only because of conscientious objection to military service that these young men were subjected to degrading acts of brutality and violence at the hands of military personnel. Based on this decision, n December 9, 2010, the Supreme Court of Korea recognized the government's responsibility to compensate for the death of one victim.

5. Korean citizens are getting tolerant to conscientious objection

26 A recent survey on whether to adopt alternative civilian service conducted by the Military Manpower Administration Office reveals that 43.5 percent of them agreed, and only 54.1% percent now object to alternative service. This reveals progress in societal attitudes since the December 2008 survey, in which 28.9 percent of those who were surveyed supported the adoption of alternative civilian service while 68.1 percent expressed objection. (*Yonhap News*, January 1, 2012, Negative response declined from 68.1% in 2008 to 54.1% in 2011)

VI. CONCLUSION

27 Jehovah's Witnesses in South Korea and as a worldwide organization respectfully request the Republic of Korea to:

1. Recognize the right to conscientious objection to military service.
2. Implement alternative service for conscientious objectors in line with international standards and obligatory on Korea subsequent to their acceptance of the ICCPR.
3. Grant amnesty for conscientious objectors who file a petition for clearance of criminal records and rehabilitation of civil rights.