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### **Joint UPR Submission: REPUBLIC OF KOREA Fourteenth Session: October 2012**

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## Executive Summary

**This submission deals with the situation in the Republic of Korea with regard to conscientious objection to military service and related issues. It was prepared in April 2012 on the basis of the latest information available at that time.**

**The concerns to which it draws attention are:**

- **non-recognition of the right of conscientious objection to military service**
- **routine imprisonment of very large numbers of conscientious objectors**
- **repeated punishment of those who on grounds of conscience refuse the call-up to reserve service**
- **continued civil disadvantages suffered by those who have not performed military service, compounded in the case of conscientious objectors who have been imprisoned by bearing a criminal record throughout life.**

## Background

1. Military service is obligatory for all male citizens of the Republic of Korea. In September 2007, the Ministry of Defence announced plans to gradually reduce the duration of service in the army from 24 months to 18 months. (Conscripts in other branches of the armed forces serve for two or three months longer.) However following an escalation of tensions in the region in November 2010, consideration was briefly given to reverting to 24 months, and it was decided to “freeze” the period of service at the current level of 21 months.<sup>1</sup>

2. There are no provisions regarding conscientious objection to military service; the only grounds specified in the Military Service Act on which a person may be excused obligatory military service are physical or mental disability.

3. Article 88.1 of the Military Service Act stipulates that “If a person who has received a draft notice for active duty or Notice of Summons (...), without justifiable cause, does not report for service within the period specified in the following clauses or refuses the summons, then he shall be sentenced to a prison term of three years or less...”. Until the year 2001, those charged under this article were tried in military courts and following imprisonment could face repeated call-up and conviction. This is no longer the case; trials now take place in civilian courts and the Enforcement Decree (Article 136.2) of the Military Service Act now stipulates that those who have served sentences of 18 months or more are released from the obligation to perform military service. All those who refuse military service on grounds of conscientious objection are prosecuted under this article; since 2001 most have been sentenced to exactly eighteen months' imprisonment.

## The First Cycle of the UPR

4. The Republic of Korea was examined in the Second Session of the UPR Working Group, in May 2008.

5. In the Working Group “Slovenia noted the recommendation by the Human Rights Committee that the Republic of Korea recognize the right of conscientious objectors to be exempted from military services. The Committee found a violation of article 18, paragraph 1, of ICCPR in two individual communications. Slovenia recommended that the Republic of Korea follow up on the Committee’s recommendation to provide the authors of these communications with an effective remedy. It also recommended recognizing 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 organizations.”<sup>2</sup> The United Kingdom recommended “that

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<sup>1</sup> The Cholsunilbo, English edition, (<http://english.chosun.com>) 22<sup>nd</sup> December 2010.

<sup>2</sup> A/HRC/8/40, para 19.

active steps be taken to introduce alternatives to military services for conscientious objectors.”<sup>3</sup>

6. The Republic of Korea did not explicitly accept these recommendations, but reported that it had “announced a new programme to give conscientious objectors the opportunity to participate in alternative in civilian service, in September 2007. For the implementation of the new system”, the statement continued, “the Government has to revise the Military Service Act, and considers submitting a revised Act to the National Assembly this year.” [ie 2008].<sup>4</sup> In its written responses at the time of adoption of the report, the Republic of Korea stated with regard to both recommendations only that “Alternative service programs for conscientious objectors are currently being studied.”<sup>5</sup>

7. The Republic of Korea has not submitted an implementation report.

## **Developments in the current review period**

### **A) Legislation**<sup>6</sup>

8. The announcement of 18<sup>th</sup> September 2007, referred to by the Republic of Korea in the UPR Working Group, had envisaged that alternative service for conscientious objectors would be available from January 2009.

9. On 16<sup>th</sup> June 2008, however, the Government revealed that this timetable would not be followed, stating that “the issue of conscientious objection to military service required further study and the forging of a broad national consensus”.

10. On 21<sup>st</sup> July, the National Human Rights Commission reiterated its recommendation of 26<sup>th</sup> December 2005 calling on the Government to institute a system for recognising conscientious objectors and providing alternative service.

11. On 22<sup>nd</sup> August, the Military Manpower Administration commissioned Professor Jin Seok-yong of Daejeon University to conduct a study of the feasibility of implementing a civilian alternative service system for conscientious objectors. The final report, incorporating the results of various consultation exercises, and recommending the adoption of such a scheme, was published on 19<sup>th</sup> December. The Ministry of Defence however seized upon the result of a simple opinion poll conducted as part of the study, in which 68.1% of respondents – a figure much higher than in any other recent survey on the issue - had indicated opposition to such a scheme. On that basis it announced on 24<sup>th</sup> December that it was therefore “still too early to allow alternative forms of military service for conscientious objectors.”<sup>7</sup> No more has subsequently been heard of any legislative moves.

### **B) Human Rights Committee**

12. Following the cases of *Yoon and Choi*<sup>8</sup> which were referred to by Slovenia in the UPR Working Group, the Human Rights Committee has ruled on two further sets of linked communications from conscientious objectors in the Republic of Korea who had been imprisoned for their refusal to perform military service, in both cases finding unanimously that there had been a

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<sup>3</sup> Ibid, para 37.

<sup>4</sup> Ibid, para 59.

<sup>5</sup> A/HRC/8/40/Add1, 25<sup>th</sup> August 2008, paras 17 and 24.

<sup>6</sup> The chronology reported here is largely based on MIMBYUN (Lawyers for a Democratic Society) and KSCO (Korea Solidarity for Conscientious Objection, Korean Government cancelled Alternative Civilian Service: Briefing paper on Conscientious Objection issues in the Republic of Korea, March 2009, pp 8 - 10 .

<sup>7</sup> Herskovitz, J. and Kim Junghzun, “South Korea rethinks alternative to conscription”, Euronews24, 24<sup>th</sup> December, 2008, reproduced at <http://wri-irg.org/node/6272>

<sup>8</sup> Human Rights Committee, Views adopted 3<sup>rd</sup> November 2006, Communications Nos. 1321/2004 and 1322/2004; *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea* (CCPR/C/88/D/1321-1322/2004, 23<sup>rd</sup> January 2007)

breach of Article 18 of the International Covenant on Civil and Political Rights (ICCPR), regarding freedom of thought, conscience, and religion.

13. The first group of new communications, *Eu min Jung et al v Republic of Korea*<sup>9</sup>, concerned eleven conscientious objectors. Whereas Yoon and Choi were both members of the Jehovah's Witnesses, the authors of the new communications were a Catholic, a Buddhist and nine who cited no denominational affiliation. The Committee noted that the State merely reiterated the arguments it had put forward in *Yoon & Choi* and therefore “found no reason to depart from its earlier position.”<sup>10</sup> It noted “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.”<sup>11</sup> and found “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.”<sup>12</sup>

14. The second group of communications, *Min-Kyu Yeong et al v Republic of Korea*<sup>13</sup>, concerned one hundred further conscientious objectors, all Jehovah's Witnesses, and was considered by the Committee one year later.

15. As with *Yoon & Choi*, the Committee had found with relation to *Jung et al* that “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.”<sup>14</sup> In *Yeong et al*, the finding was more specific: “the State party is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.”<sup>15</sup>

16. As has already been indicated, the Republic of Korea has in fact made no progress towards amending its legislation so as to avoid similar violations in future. It is not known whether it has complied with the requirements regarding the individual cases.

### C) Constitutional Court of the Republic of Korea

17. On 5<sup>th</sup> September 2008, the Appeal Court of Chungcheon District, Gaewong Province combined appeals by three Jehovah's Witnesses against their convictions for refusal of military service on grounds of conscience, and referred them to the the Constitutional Court for a ruling on the constitutionality of Article 88.1. To these were subsequently joined the case of a conscientious objector who had been acquitted at first instance but convicted on appeal.

18. The Constitutional Court ruled on these four cases on 30<sup>th</sup> August 2011. By a majority of 7 to 2, it reaffirmed its decision in a previous case on the issue, decided on 26<sup>th</sup> August 2004.<sup>16</sup> In doing so, the Court would have appeared not only to have overlooked intervening developments in jurisprudence elsewhere, including in the European Court of Human Rights<sup>17</sup> and the Constitutional

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<sup>9</sup> Human Rights Committee, Views adopted 23<sup>rd</sup> March 2010, Communications Nos. 1593 to 1603/2007 (CCPR/C/98/D/1593-1603/2007, 14<sup>th</sup> April 2010)

<sup>10</sup> Ibid, para 7.3.

<sup>11</sup> Ibid, para 7.4.

<sup>12</sup> Ibid.

<sup>13</sup> Human Rights Committee, Views adopted 24<sup>th</sup> March 2011, Communications Nos. 1642-1741/2007 (CCPR/C/101/D/1642-1741/2007, 5<sup>th</sup> April 2011)

<sup>14</sup> CCPR/C/98/D/1593-1603/2007, para 9.

<sup>15</sup> CCPR/C/101/D/1642-1741/2007, para 9.

<sup>16</sup> See War Resisters' International, “South Korea: Constitutional court again denies right to conscientious objection”, in CO Update No 68, September 2011.

<sup>17</sup> European Court of Human Rights, Grand Chamber. Case of Bayatyan v Armenia (Application no. 23459/03):

Court of Colombia<sup>18</sup>, but also to have failed to take account of the Republic of Korea's obligations under the ICCPR as spelled out by the Human Rights Committee.

D) Continuing convictions and imprisonment of conscientious objectors

19. In 2008, in anticipation of the early introduction of an alternative civilian service, there was a slackening off of the rate of prosecution of conscientious objectors. That year saw 377 convictions<sup>19</sup> which, although still representing a figure much greater than the total number of declared conscientious objectors imprisoned in the rest of the world, was the lowest in the Republic of Korea since the early 1990's. The numbers of imprisonments again rose rapidly from 2009 and by the end of 2010 over 900 Jehovah's Witnesses alone were serving prison sentences for their refusal, on grounds of conscience, to perform military service. As of February 2012, Jehovah's Witnesses gave current figure at 765, all serving sentences of 18 months. "Since 1950," the Jehovah's Witnesses report, "there have been 16,781 of Jehovah's Witnesses sentenced to a combined total of 31,927 years for refusing to perform military service."<sup>20</sup>

20. Although Jehovah's Witnesses are by far the most numerous, they are not the only conscientious objectors in the Republic of Korea. War Resisters International list five conscientious objectors who are not Jehovah's Witnesses, all of whom were as of April 2012 serving 18-month sentences under Article 88.1.<sup>21</sup> Three of the five had published declarations of their conscientious objection; one describes himself as a pacifist, one grounds his conscientious objection in anarchism, for the third it is linked to his gay sexual orientation. A further pacifist objector faced trial on similar charges in April 2012.<sup>22</sup> It is likely that there are further imprisoned conscientious objectors from a variety of religious backgrounds who are listed by neither source: for example in November 2011 the organisation World Without War published a statement from a Catholic objector, Hong Won-Seok, who was then facing trial.<sup>23</sup>

E) Repeated imprisonment of conscientious objectors

21. Although since 2001 first-time conscripts who have been convicted to sentences of 18 months or more have not been liable to repeated call-up, this is not the case with those who have developed conscientious objections only after having performed their initial period of military service, and have refused the call-up to reserve duty. The penalty for such refusal may be a short prison sentence, but it usually a fine. However it does not discharge the responsibility; conscientious objectors who are reservists may be subjected to repeated call-ups and repeated penalties over an eight-year period. It was estimated that in 2009, some 80 Jehovah's Witnesses, mainly men who had converted after their initial period of military service, were faced with this situation<sup>24</sup>, which, as the Human Rights Committee has observed, "may amount to punishment for the same crime if (the) subsequent refusal is based on the same constant resolve

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Judgment Strasbourg, 7<sup>th</sup> July 2011.

<sup>18</sup> Corte Constitucional de Colombia, Comunicado No.43 – Expediente D7685 Sentencia C-728/09, 14<sup>th</sup> October 2009.

<sup>19</sup> MIMBYUN and KSCO, op cit (footnote 6), p.6.

<sup>20</sup> Jehovah's Witnesses Official Media Web Site, "South Korea: Imprisonment of conscientious objectors to military service. Report: February 2012" <http://www.jw-media.org/kor/20120201rpt.htm>

<sup>21</sup> <http://wri-irg.org/programmes/pfp>, consulted 22<sup>nd</sup> April 2012. All five were convicted in 2011; four of the five will complete their sentences in 2012. .

<sup>22</sup> War Resisters International, "South Korea: Trial of conscientious objector Yoonjung Yoo / likely imprisonment" CO Alert 29<sup>th</sup> March 2012.

<sup>23</sup> [http://www.withoutwar.org/bbs/zboard.php?id=www\\_letter](http://www.withoutwar.org/bbs/zboard.php?id=www_letter)

<sup>24</sup> MIMBYUN and KSCO, op cit (footnote 6), p.10.

grounded in reasons of conscience,” thereby breaching the principle of *ne bis in idem*.<sup>25</sup>

F) Civil disadvantages suffered by conscientious objectors

22. Under Article 76 of the Military Service Law, those who have not satisfied the military service requirements are precluded from employment by government or public organisations. Moreover, as the Human Rights Committee recognised in its latest views (see para 15, above), conscientious objectors are not only penalised for the exercise of the freedom of thought, conscience and religion guaranteed under Article 18 of the ICCPR, but also have to carry through life the stigma of a criminal record, which may cause them to suffer discrimination in many fields of life.

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<sup>25</sup> Human Rights Committee, General Comment No. 32 (CCPR/C/GC/32, 23 August 2007), para 55.