

SUBMISSION

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REPUBLIC OF KOREA

Military service, conscientious objection and related issues

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INTRODUCTION

1. The Republic of Korea has a long record of serious violations of human rights of conscientious objectors, including but not limited to imprisonment and further discrimination.ⁱ The Human Rights Committee has found violations of the International Covenant on Civil and Political Rights in numerous occasions.ⁱⁱ The Republic of Korea has received numerous recommendations in the context of the Universal Periodic Review.

2. Despite significant progress in recent years, with the release of the majority of imprisoned conscientious objectors and the introduction of an alternative civilian service, the legislation and practice in the Republic of Korea continues to be in sheer contravention with international human rights law and standards, and conscientious objectors continue to face serious violations of their human rights, including imprisonment in certain cases.

3. Specifically, in June 2018 the Constitutional Court of the Republic of Korea ruled that the failure to offer alternative forms of civilian service to conscientious objectors is unconstitutional.ⁱⁱⁱ In November 2018, the Supreme Court of the Republic of Korea also rendered a decision that decriminalized conscientious objection, holding that moral and religious beliefs are valid reasons to object to military service.^{iv}

4. Following the decisions of the courts, the National Assembly passed the legislation on alternative service to mandatory military service for conscientious objectors in December 2019. Finally, the Act on the Transfer and Service of Alternative Services took effect on January 1, 2020.^v

However, the fact that the alternative civilian service is performed in prison facilities, and the punitive conditions of such service, render the new scheme rather a continuation of the previous practice of imprisonment. Furthermore, certain conscientious objectors are indeed officially imprisoned.

5. The Republic of Korea received numerous recommendations during the 3rd Cycle of the Universal Periodic Review^{vi}:

132.94 Decriminalize conscientious objectors, introduce a genuinely civilian alternative to military service and release those imprisoned for refusing to perform military service (Germany);

132.95 Recognize conscientious objection to military service, and allow conscientious objectors the option to perform an appropriate alternative service of a genuinely civilian character and of a length comparable to that of military service (Canada);

132.96 Introduce alternatives to military service to protect conscientious objectors (United States of America);

132.97 Introduce an alternative non-punitive service of genuine civilian character, under civilian control and of a length comparable to military service (Australia);

132.98 Provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature (Croatia);

132.99 Adopt legislation to ensure that alternative services offered to conscientious objectors are of a civilian nature, placed under civilian authorities' control, and devoid of any punitive dimension; examine the situation of individuals who are currently imprisoned for refusing to submit to compulsory military training, with a view to offering them an alternative civilian service (France);

132.100 Set up an alternative service for conscientious objectors to the compulsory military service in order to guarantee their right to freedom of expression (Mexico);

132.101 Establish an alternative service under civilian control for conscientious objectors, in conformity with the international human rights obligations of the Republic of Korea (Switzerland);

132.102 Make further progress in changing the regime which criminalizes the exercise of the right to

conscientious objection in relation to obligatory military service (Argentina);

132.103 Introduce alternatives to the military service for conscientious objectors, abolish prison sentences and release all persons who have been incarcerated for having refused the military service in the absence of a civilian alternative (Panama);

132.104 Ensure the legal recognition of conscientious objection to military service (Portugal);

132.105 Release individuals imprisoned or detained solely on the basis of their conscientious objection to military service and to consider expunging the corresponding charges from their criminal records (Croatia);

132.106 Consider releasing those people imprisoned or detained because of their conscientious objection to military service, and consider removing the corresponding charges from their criminal record (Costa Rica);

6. All but one of such recommendations (132.94 – 132.105) were not accepted but only noted. The only recommendation, which was accepted, was the recommendation 132.106.^{vii} However, not even this recommendation has been fully implemented, as the imprisonment of conscientious objectors in the Republic of Korea continues.

MAIN ISSUES OF CONCERN

a. Imprisonment of conscientious objectors

7. Despite the judgements of the Constitutional Court and the Supreme Court, the introduction of legislation for an alternative civilian service, and the release of the majority of conscientious objectors from prisons, the imprisonment of conscientious objectors continues in the Republic of Korea.

According to War Resisters' International, in December 2020 there were 5 conscientious objectors in prison.^{viii} In June 2021 there were 7 imprisoned conscientious objectors.^{ix} In November 2021, the number of imprisoned conscientious objectors was 5.^x In January 2021 there were 5 conscientious objectors in prison.^{xi}

8. Furthermore, according to the most recent report by the Jehovah's Witnesses, in July 2022 there is at least one Jehovah's Witness imprisoned for his conscientious objection to military service: 26-year-old Shim, H. S., sentenced to 18 months imprisonment, currently serving his sentence in the Cheonan Correctional Institution, with an expected release date for the 3rd of June 2023.^{xii} However, such report is not exhaustive because it does not include imprisoned conscientious objectors who are not Jehovah's Witnesses.

The imprisonment of conscientious objectors is a flagrant violation of the right to freedom of thought, conscience and religion and of the right to liberty.

b. Punitive alternative civilian service

Punitive duration

9. The duration of the alternative civilian service is 36 months compared to 18 months of military service. This means that the duration of alternative civilian service is double the one of military service, which contravenes *all* international human rights standards.

10. *International human rights standards about the duration of alternative civilian service*

- According to the **European Committee of Social Rights, of the Council of Europe**, the alternative service should not exceed in length 1.5 times [50% increase] the length of military service.^{xiii}
- According to the UN **Human Rights Committee**, an increase of the length of alternative service of 50%^{xiv} compared to that of military service “may be punitively long if not based on reasonable and objective grounds”.^{xv}
- According to the **OHCHR**, “Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria. Equalizing the duration of alternative service with military service should be considered a good practice.”^{xvi}
- The **European Parliament** has repeatedly stated that the length of alternative service should be the same and not last longer than the military service.^{xvii}

Other punitive conditions

11. The alternative civilian service is performed in prisons or other correctional facilities.

As it has been highlighted by the Jehovah’s Witnesses, this effectively means that the conscientious objectors performing the alternative civilian service, perform the same work as before, when they were convicted prisoners punished for their conscientious objection, and under very similar conditions, but now they are deprived of their liberty for 36 months.^{xviii}

12. According to Arnold Fang, Amnesty International’s East Asia Researcher: “South Korean conscientious objectors were promised a genuine alternative service. Instead they are confronted with little more than an alternative punishment. [...] Confining people to work in a prison – and for almost twice as long as the typical military service – does not respect their right to freedom of thought, conscience, religion or belief. [...] This tokenistic move does too little to eliminate the human rights violations conscientious objectors are suffering, and in effect continues to treat them as criminals.

13. [...] It will also not reduce the stigmatization they face in South Korea. Conscientious objectors will continue to be seen as having been sent to jail, and their ability to access employment afterwards will most likely still be compromised.”^{xix}

14. According to the Asia-Pacific Association of Jehovah’s Witnesses (APAJW):

- The alternative civilian service personnel are civilian workers, yet in [the Republic of] Korea they are treated as prisoners and soldiers. Their fundamental human rights are severely restricted.

- They live in barracks-style facilities on the prison grounds, similar to imprisoned criminals.

15. During their first month of service they cannot leave the facility at all. No exceptions are permitted.

- They are separated from their children, which severely limits their ability to provide financial or emotional support.

- A maximum of just 50% of alternative civilian service personnel are allowed to leave the facility, and this is possible only with the facility chief’s permission. When permitted to leave the prison, they must return by 9.30 p.m. unreasonably curtailing social, educational and religious activities.

- On weekdays, excluding holidays, personal communication devices can be used from 5.00 p.m. to 9.30 p.m. only. They cannot be used outside of these hours. Even in an emergency, there can be no direct contact with the conscientious objectors performing the alternative civilian service.

16. There is no objective justification for this restriction.

- Furthermore, because the alternative civilian service is restricted to prison work, only about 1,600 of the approximately 3,200 applicants can be accommodated by 2023. The delay for others seriously affects their family life and career development.^{xx}

17. IFOR would also like to highlight that an alternative civilian service performed in prisons and

correctional facilities might not be compatible with the reasons of conscience of certain conscientious objectors and currently certain conscientious objectors still face imprisonment in the country.

18. According to the OHCHR minimum standards, the “conditions for alternative service should be neither punitive nor have a deterrent effect” and “Alternative service, whether of a non-combatant or civilian character, should be compatible with the reasons for conscientious objection”.^{xxi}

c. Lack of independence and impartiality of the body examining applications for conscientious objector status

19. Applications for an alternative service plan are assessed by a committee under the Military Manpower Administration, which is part of the Ministry of National Defense.^{xxii}

This contravenes all international standards about the procedures and the body assessing applications for conscientious objector status.

20. *International human rights standards about the procedures and the body assessing applications for conscientious objector status.*

- The **Parliamentary Assembly of the Council of Europe**, has set specific basic principles as for the procedure: Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality; the decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body; it should be ensured that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered; applicants should be granted a hearing and should also be entitled to be represented and to call relevant witnesses.^{xxiii}
- The then **UN Special Rapporteur on religious intolerance**, since many years had set the relevant standards: “The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing and be entitled to legal representation and to call relevant witnesses.”^{xxiv} The same standards continue to be cited by the **UN Special Rapporteur on freedom of religion or belief** as named now^{xxv} and the **Office of the United Nations High Commissioner for Human Rights (OHCHR)**.^{xxvi}
- The **OHCHR** has determined that “Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities”.^{xxvii} The **OHCHR** has also cited acceptance of applications without inquiry as a best practice.^{xxviii}
- Already since 1998, the then **UN Commission on Human Rights** has welcomed the fact that some States accept claims of conscientious objection as valid without inquiry.^{xxix} The same has been repeated by its successor, the **UN Human Rights Council**.^{xxx}
- The **European Parliament** has repeatedly pointed out that “no court or commission can penetrate the conscience of an individual” and has favoured the position that a declaration setting out the grounds should suffice for somebody to be recognized as a conscientious objector.^{xxxi}

d. Lack of effective remedies to victims of violations

21. As pointed out by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief, “the Covenant [ICCPR] Article 2 (3) provides for the duty to provide effective remedies to victims of violations. The duty to provide effective remedies entails a duty to provide reparations to victims of human rights violations. Beyond compensation, this can entail “restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”, CCPR/C/21/Rev.1/Add. 13 para 16.”^{xxxii}

22. The two Special Rapporteurs have highlighted “the separate obligations of the State to provide effective remedies to victims of human rights violations in the form of reparations, for through restitution, compensation and just satisfaction by the State. The adoption of the draft law will not preclude the duty of the State to fulfil these separate obligations, and a failure to meet these separate obligations will constitute a separate violation of the Covenant. We reiterate the recommendations adopted by the Human Rights Committee, in its concluding observations on the Republic of Korea in 2015, in which it calls upon the State “Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service [and] Ensure that conscientious objectors’ criminal records are expunged, that they are provided with adequate compensation and that their personal information is not publicly disclosed”, see CCPR/C/KOR/CO/4 para. 45.”^{xxxiii}

SUGGESTED RECOMMENDATIONS

23. IFOR kindly invites the members States to address the following recommendations to the Republic of Korea:

- 1) Release all conscientious objectors from prison, cease the prosecution, imprisonment and criminalization of all conscientious objectors, and provide effective remedy, including adequate reparations, to all conscientious objectors who have suffered violations of human rights.
- 2) Bring the legislation and practice about conscientious objectors in line with international human rights law and standards, including by ensuring an alternative civilian service which is genuinely civilian, accessible to all conscientious objectors without discrimination, compatible with the reasons for conscientious objection, not punitive or discriminatory in terms of its nature and cost, and is of equal length to that of military service.
- 3) Place the assessment of applications for conscientious objector status under the full control of civilian authorities, and as a best practice accept claims of conscientious objection without inquiry.

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- ⁱ Amnesty International, “A life sentence from birth – story of a South Korean conscientious objector”, 13 May 2015. Available at: <https://www.amnesty.org/en/latest/campaigns/2015/05/a-life-sentence-from-birth-story-of-a-south-korean-conscientious-objector/>
- ⁱⁱ *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea* (CCPR/C/88/D/1321-1322/2004), Views adopted on 3 November 2006; *Eu-min Jung et al v. the Republic of Korea* (CCPR/C/98/D/1593-1603/2007), Views adopted by the Committee on 23 March 2010; *Min-kyu Jeong et al. v. the Republic of Korea* (CCPR/C/101/D/1642-1741/2007), Views adopted on 24 March 2011; *Jong-nam Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), Views adopted on 25 October 2012; and *Young-kwan Kim et al. v. the Republic of Korea* (CCPR/C/112/D/2179/2012), Views adopted on 15 October 2014; *Jong-bum Bae et al. v. the Republic of Korea* (CCPR/C/128/D/2846/2016), Views adopted on 13 March 2020.
- ⁱⁱⁱ Const. Ct., No. 2011 Hun-Ba 379 (28 June 2018).
- ^{iv} Sup. Ct., No. 2016 do 10912 (1 November 2018), <https://www.loc.gov/law/foreign-news/article/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/>
- ^v Submission of the Republic of Korea for the analytical report of the OHCHR on Conscientious objection to military service, 24 March 2022. Available at: <https://www.ohchr.org/sites/default/files/2022-05/ROK-HRC50.pdf>
- ^{vi} Human Rights Council, Report of the Working Group on the Universal Periodic Review – Republic of Korea, A/HRC/WG.6/28/L.8, 13 November 2017, recommendations 132.94-132.103 (Germany, Canada, United States of America, Australia, Croatia, France, Mexico, Switzerland, Argentina, Panama, Portugal, Croatia, Costa Rica). Accessible from <https://www.ohchr.org/en/hr-bodies/upr/kr-index>
- ^{vii} Report of the Working Group on the Universal Periodic Review, Republic of Korea, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, (A/HRC/37/11/Add.1), 28 February 2018, paras. 30-32. Accessible from <https://www.ohchr.org/en/hr-bodies/upr/kr-index>
- ^{viii} <https://wri-irg.org/en/story/2020/prisoners-peace-list-2020>
- ^{ix} <https://wri-irg.org/en/story/2021/conscientious-objectors-prison-june-2021>
- ^x <https://wri-irg.org/en/story/2021/prison-now-prisoners-peace-list-november-2021>
- ^{xi} <https://wri-irg.org/en/story/2022/prison-now-prisoners-peace-list-january-2022>
- ^{xii} <https://www.jw.org/download/?docid=1014752&output=html&fileformat=PDF&alllangs=0&track=1&langwritten=E&txtCMSLang=E&isBible=0> Accessed 13th of July 2022.
- ^{xiii} See for example Council of Europe, European Committee of Social Rights, *European Social Charter (Revised): Conclusions 2008 (vol. I)*, Estonia – Article I, p. 231.
- ^{xiv} As in the case of Austria: UN Human Rights Committee, List of issues in relation to the fifth periodic report of Austria, Addendum, Replies of Austria to the list of issues, (CCPR/C/AUT/Q/5/Add.1), 4 August 2015, para. 139. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FAUT%2FQ%2F5%2FAdd.1&Lang=en
- ^{xv} UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, (CCPR/C/AUT/CO/5), 3 December 2015, paras. 33-34. Available at <http://undocs.org/CCPR/C/AUT/CO/5>
- ^{xvi} OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, para. 60, (l). Available at: <http://undocs.org/A/HRC/41/23>
- ^{xvii} European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93), 11 March 1993, para. 51, as it has been published in the Official Journal of the European Communities C 115, 26 April 1993, [Minutes of the sitting of Thursday, 11 March 1993](#), page 183. Resolution on conscientious objection in the Member States of the Community, (A3-0411/93), 19 January 1994, para. 9, as it has been published in the Official Journal of the European Communities C 44, 14 February 1994, [Minutes of the sitting of Wednesday, 19 January 1994](#), page 105. See also in the case of Greece: Resolution on the situation concerning basic rights in the European Union (2001) (2001/2014(INI)), para 42, text adopted on 15 January 2003, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0012+0+DOC+XML+V0//EN>
- ^{xviii} Asia-Pacific Association of Jehovah’s Witnesses (APAJW), “Alternative Civilian Service in South Korea – July 2022”. Available at: <https://www.jw.org/download/?docid=1013172&output=html&fileformat=PDF&alllangs=0&track=1&langwritten=E&txtCMSLang=E&isBible=0>
- ^{xix} Amnesty International, “South Korea: Alternative to military service is new punishment for conscientious objectors”, 27 December 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors-2/>
- ^{xx} Asia-Pacific Association of Jehovah’s Witnesses (APAJW), “Alternative Civilian Service in South Korea – July 2022”. Available at: <https://www.jw.org/download/?docid=1013172&output=html&fileformat=PDF&alllangs=0&track=1&langwritten=E&txtCMSLang=E&isBible=0>
- ^{xxi} OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, para. 60, (k) and (l). Available at: <http://undocs.org/A/HRC/41/23>
- ^{xxii} Amnesty International, “South Korea: Alternative to military service is new punishment for conscientious objectors”, 27 December 2019.

Available at: <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors-2/>

^{xxiii} Council of Europe, Parliamentary Assembly, [Resolution 337 \(1967\)](#), Right of conscientious objection, paras. b2, b3, b4 and b5.

^{xxiv} Report submitted by Mr. Angelo Vidal d Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986 (E/CN.4/1992/52), 18 December 1991, para. 185. [Available through <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>].

^{xxv} A/HRC/6/5, para. 22, available at: <https://undocs.org/A/HRC/6/5>, A/HRC/19/60/Add.1, para. 56, available at: <https://undocs.org/A/HRC/19/60/Add.1>, A/HRC/22/51/Add.1, para. 69, available at: <https://undocs.org/A/HRC/22/51/Add.1>

^{xxvi} OHCHR, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 17. Available at: <http://undocs.org/A/HRC/35/4>

^{xxvii} OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, (A/HRC/41/23), 24 May 2019, para. 60 (g).

Available at: <https://undocs.org/A/HRC/41/23>

^{xxviii} OHCHR, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 34.

Available at: <http://undocs.org/A/HRC/35/4>

See also [A/HRC/23/22](#), para. 48 and [E/CN.4/2006/51](#), para. 36.

^{xxix} UN Commission on Human Rights, [Resolution 1998/77](#), Conscientious objection to military service, 22 April 1998, (E/CN.4/RES/1998/77), para. 2.

^{xxx} UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 7.

Available at <http://undocs.org/A/HRC/RES/24/17>

^{xxxi} European Parliament, Resolution on conscientious objection, (1-546/82), [known as Macciocchi Resolution], 7 February 1983, as published in the Official Journal of the European Communities [C 68](#), 14 March 1983, para. 3 (page 15). See also European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), [known as Schmidbauer Resolution], 13 October 1989, as published in the Official Journal of the European Communities [C291](#), 20 November 1989, para. A (page 123) and para. 4 (page 124).

^{xxxii} Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief, “Preliminary reactions to the Act on Transfer to and Performance of Alternative Military Service (the draft bill)”, 28 November 2019, (KOR 4/2019), p. 3.

Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24979>

^{xxxiii} *Ibid.*, p. 8.