

JEHOVAH'S WITNESSES COUNTRY REPORT—THE REPUBLIC OF KOREA
(SOUTH KOREA)

January 2008 to December 2008

Restrictions on Religious Freedom

Conscientious Objection to Military Service

South Korea has compulsory military service but does not have a legislative provision for alternative civilian service. There is no exemption from military service for ministers of religion or for conscientious objectors. Every year, 400 to 700 draft-age men who are Jehovah's Witnesses are convicted and imprisoned because they refuse to perform military service. Conscientious objectors to military service are tried in civilian courts and are usually sentenced to 18 months in prison. Conscientious objectors who are called up as reservists must face multiple prosecutions and repeated punishments over an eight-year period.

Since the 1950's, more than 13,000 of Jehovah's Witnesses have been imprisoned in South Korea for refusing to perform military service.

As of September 30, 2008, there were 408 Jehovah's Witnesses in prison in South Korea because of their conscientious objection to military service. Additionally, over 80 Witnesses are subjected to repeated fines totaling hundreds of thousands of dollars because of conscientious objection to military reserve duty.

Decision of the United Nations Human Rights Committee (UNHRC)

On October 18, 2004, two conscientious objectors, Mr. Myung-Jin Choi and Mr. Yeo-Bum Yoon, individually filed a complaint with the UNHRC. Before these complaints were filed, both the Supreme Court of Korea and the Constitutional Court had decided to refuse to uphold the right to conscientious objection even though in 1990 Korea had adopted the *International Covenant on Civil and Political Rights* (ICCPR) as well as the First Optional Protocol. On November 3, 2006, the UNHRC rendered a decision that the Korean government had violated Article 18, paragraph 1, of the Covenant (section 10) and stated: "[T]he 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."

- In a separate document dated October 31, 2006, the 88th session of the UNHRC adopted the following Concluding Observations to the report submitted by the South Korean government:

17. The Committee is concerned that: (a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are precluded from employment by government or public organizations and that (c) convicted conscientious objectors bear the stigma of a criminal record (article 18).

The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with Article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to its General Comment 22, paragraph 11 on the right to freedom of thought, conscience, and religion.

Since the November 3, 2006, decision rendered by the UNHRC, the Supreme Court of Korea has heard at least 120 appeals from conscientious objectors. In all these cases, it has consistently refused to apply the UNHRC decision.

Further Appeals to the UN Human Rights Committee (UNHRC)

From September 21, 2007, until November 6, 2007, 100 new complaints were filed with the UNHRC by imprisoned conscientious objectors who are Jehovah's Witnesses. On December 7, 2007, these complaints were communicated to the government of Korea. The government was given a delay of six months to respond to these complaints. An additional 388 new complaints were filed by April 25, 2008. On April 29, 2008, the UNHRC combined all 488 complaints into one case identified as communication No. 1786/2008 in behalf of Mr. Jong-nam Kim et al. and communicated these to the government of Korea. Again the government was given six months, that is until October 30, to respond. However, there has been no response from the government yet.

Recommendations of the United Nations Human Rights Council

On May 29, 2008, the *United Nations Human Rights Council* recommended to the Republic of Korea as it is noted in the draft report of the working group on the universal periodic review:

17. 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 organizations, in line with the recommendation by the Human Rights Committee. (Slovenia)

24. ... [T]hat active steps be taken to introduce alternatives to military service for conscientious objectors. (United Kingdom)

Forced Dismissal

The records of conscientious objectors to military service are kept by a Korean investigative body as criminal files for five years. As a consequence, conscientious objectors are not allowed to enter a government office and apply for any type of national certification exam, nor will they be employed by any company that inquires about criminal records.

Case of Kim, Hong-ju

He was imprisoned for being a conscientious objector and was released in June 2003. Later, on May 25, 2005, he started to work as a supplementary worker in a state-run hospital located in Seoul. Recently, the hospital accepted him as a regular worker. But when a check was made on the private background information of the workers recently converted to regular employees, or members, the hospital found his criminal record as a conscientious objector, and on April 14, 2008, he was dismissed. This is inappropriate because he had already disclosed his position and his prison record as a conscientious objector when he first contacted the hospital. He was even denied unemployment compensation, which is usually granted to workers who have been dismissed.

Conscientious Objection to Reserve Forces Training

South Korea has a reserve forces system, in which those who complete regular military service are summoned for approximately 200 hours of military training over an eight-year period after discharge. This system is a problem for all whose beliefs have changed after they performed their regular military service and who are later assigned to perform reserve forces service. When called up for reserve forces training, these conscientious objectors are subject to multiple prosecutions and repeated fines or imprisonment. They are not exempt from military training, even after they have been convicted, paid fines, or served a prison term. As a result, these conscientious objectors may be charged and prosecuted as often as 10 times a year for not responding to the call-up for reserve forces training.

Currently, over 80 Jehovah's Witnesses are caught in the cycle of being accused and sentenced to repeated fines and/or prison terms because of their conscientious objection to reserve forces service. Many of them are not capable of paying the fines, which may amount to thousands of dollars each year. Some have been registered as "wanted" like criminals because of their inability to pay the fines. Others have chosen to undertake labor in a "work-house" (lock-up facilities inside a prison) instead of paying the fines. The length of this labor arrangement can vary from one day to three years, in proportion to the unpaid fine (usually calculated at 50,000 won [approx. US\$50] in fines equal to one day's labor).

Case of Yoon, Jang-woon

Yoon, Jang-woon (32 years old) was indicted eight times from 2002 to 2004 and was sentenced to pay a total of 4.5 million won in fines (approx. US\$4,500). He was indicted seven times from 2005 to 2007 and was given a ten-month suspended prison term, fined three million won (approx. US\$3,000), and sentenced to 120 hours of community service. His appeal is currently pending before the Supreme Court. In a separate case regarding reserve service, he was sentenced to a four-month prison term on March 14, 2007. He was detained for three months until he was released on bail after appealing his case. In the other case, he was given a six-month suspended prison term and was sentenced to 80 hours of community service. His appeal is currently pending before the Supreme Court.

Case of An, Young-woong

An, Young-woong (29 years old) was discharged in 2004. He rejected army reserve training and was fined a total of five million won (approx. US\$5,000). In 2006, he had to pay six million won in fines (approx. US\$6,000). In 2007, he paid another seven million won in fines (approx. US\$7,000). Another case regarding his refusal to submit to military reserve training is pending in court. This abnormally harsh punishment and the constant pressure of having to appear before the police and the prosecutor's office caused severe hardship for him at his workplace. Until now he has been sentenced to fines totaling more than 19 million won (approx. US\$19,000).

Appeals to the Constitutional Court

On April 18, 2007, Judge Song, Seung-yong of the Ulsan District Court suspended the trial of Shin Dong-hyuk, over which he was presiding, and filed a request with the Constitutional Court asking for a determination of constitutionality of sections of the Homeland Army Reserve Act. The judge has requested that the Constitutional Court review Articles 6(1) and 15(8) of the Homeland Army Reserve Act, which forms the basis for the indictment against Shin Dong-hyuk, in light of Article 19 of the Constitution, which guarantees the right to freedom of conscience.

The outcome of this case is important to more than 80 other Witnesses who have been indicted and accused under this law as conscientious objectors to military reserve training.

On January 7, 2008, the director of the National Human Rights Committee submitted an opinion to the Constitutional Court, urging the Korean government not to penalize conscientious objectors to reserve military service and implement alternative service along with recognition of the right to conscientiously object to military service.

On September 5, 2008, a three-judge panel of an appellate division of the Choonchun District Court decided to combine four separate appeal cases of young conscientious objectors who are Jehovah's Witnesses and to refer these cases to the Constitutional Court. The Constitutional Court was asked to review the constitutionality of Article 88, Section 1, of the Military Service Act. The following day, a conscientious objector who had been declared innocent at trial, but who was convicted on appeal, submitted his case directly to the Constitutional Court. The Constitutional Court will now have the occasion to revisit its 2004 decision in which it had refused to declare Article 88, Section 1, of the Military Service Act unconstitutional.

Alternative Civilian Service

The 17th National Assembly submitted a bill of alternative service, but the bill was repealed as the National Assembly completed its office. Lawmakers of the 18th National Assembly have not yet submitted a bill about alternative service.

On September 18, 2007, the Ministry of National Defense (MND) announced plans to conduct public surveys to allow conscientious objectors to perform alternate civilian service. According to one spokesman of the MND, the MND would submit such a bill during 2008 in order to have it enacted in 2009.

On May 7, 2008, Lee, Sung-ju, Chief of the Human Rights Division of MND, confirmed the position of Korea at the Universal Periodic Review held in Geneva, when he stated: "The Republic of Korea announced a new programme to give conscientious objectors the opportunity to participate in alternative civilian service, in September 2007. For the implementation of the new system, the government has to revise the Military Service Act, and a revised version of it will be submitted to the National Assembly this year."

However, on June 16, 2008, the Korean government altered its position by stating, in the report containing Views and State's Response to the UPR Recommendations, that "the issue of conscientious objection to military service required further study and the forging of a broad national consensus."

On July 21, 2008, the National Human Rights Commission once again adopted a resolution urging the government of Korea to implement alternative civilian service.

In October, the National Assembly conducted an inspection on the administration of government offices. At this, Kim, Jang-su, former Minister of National Defense, who is now an assemblyman, strongly urged the Korean government to keep the promise to implement alternative civilian service. Another assemblyman of an opposing political party also inquired of the director of the Military Manpower Administration what had been done about alternative civilian service. The director avoided any direct comment on this by saying that he was not in charge of the implementation and that a study was being conducted.

Investigation of Five Cases of Death After Objection to Military Service

On November 6, 2007, the *Presidential Commission on Suspicious Deaths in the Military* (CSD) decided to examine the death of five conscientious objectors who had refused to serve in the army during the 1970's and 1980's. The cases to be examined include the death of Jeong, Sang-bok, who died right after refusing military training in 1976, and the death of Kim, Sun-tae, whose dead body was found near the training camp in 1981. Before making its decision, the CSD reviewed relevant documents and interviewed the families of the deceased. In its press release, the CSD stated that a thorough investigation would be made to determine the reasons why these conscientious objectors had been subjected to harsh treatment. This is the first official governmental task undertaken by the CSD.