

# AMICUS BRIEF

CASE NO. 2007HUNKA12 AND  
OTHERS ON ARTICLE 15(8) OF  
THE ESTABLISHMENT OF  
HOMELAND RESERVE FORCE  
ACT AND CASE NO.  
2008HUNKA22 AND OTHERS  
ON ARTICLE 88(1)-1 OF THE  
MILITARY SERVICE ACT AT  
THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF KOREA

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## Case No. 2007HunKa12 and others on Article 15(8) of the Establishment of Homeland Reserve Force Act; Case No. 2008HunKa22 and others on Article 88(1)-1 of the Military Service Act

# INTRODUCTION

1. Amnesty International, 1 Easton Street, London WC1X 0DW, United Kingdom, is a company limited by guarantee. Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights. Amnesty International has a varied network of members and supporters around the world. At the latest count, there were more than 2.2 million members, supporters and subscribers in over 150 countries and territories in every region of the world. Amnesty International is a democratic, self-governing movement. Major policy decisions are taken by an International Council made up of representatives from all national sections.

2. Amnesty International has extensive experience in submitting amicus curiae briefs and other third-party submissions in international and national courts over the past two decades to assist them in resolving fundamental questions of international law. For example, the organization has intervened before the European Court of Human Rights in a number of cases, and the Inter-American Court of Human Rights. In addition, Amnesty International has made a number of submissions to national courts, including the United Kingdom House of Lords and the United States Supreme Court. Amnesty International submits that it is thus well placed to assist the Court with wider international law issues.

3. The present submission will not discuss the laws of South Korea *per se*, but Amnesty International is presenting it based on the well-established principle of the applicability in domestic law of the provisions of international treaties to which the Republic of Korea is a state party. This principle is provided in Article 6(1) of the Constitution of the Republic of South Korea, to wit:

Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.

This provision creates a presumption that relevant provisions of the Constitution of the Republic of Korea are to be interpreted in line with those of international treaties to which the Republic of Korea is a state party in general, and international human rights treaties in particular. This has indeed been the consistent practice of courts in the Republic of Korea generally, and the Constitutional Court in particular.

4. The present submission draws substantially on the interpretation by the UN Human Rights Committee, set up under the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Korea is a state party, and to a lesser extent by other international and regional bodies on the right to freedom of thought, conscience and religion in relation to conscientious objection to military service.

## **BACKGROUND TO THE HEARING IN THIS CASE**

5. The case in front of the Constitutional Court consolidates two cases, which in turn consolidate other cases.

### **Case No. 2007HunKa12 and others on Article 15(8) of the Establishment of Homeland Reserve Force Act**

(i) The Claimant of this case finished his active military service and was transferred to the reserve force. On 14 September 2006, he received notice of a reserved force drill from 25 to 27 September. The claimant was accused of not taking the drill without legitimate reasons.

(ii) The claimant was charged with breaching Article 15(8) of the Homeland Reserve Force Act and is being tried at Ulsan District Court. He claimed that he had become a believer of Jehovah's Witness, and did not take the drill because of his religious beliefs.

(iii) On 18 April 2007, the Ulsan District Court requested an Adjudication of Constitutionality of Article 15(8) of Establishment of Homeland Reserve Force Act from the Constitutional Court.

(iv) The claimant in case No. 2009HunBa103, who is prosecuted for refusing to take a reserve force drill on grounds of his conscience or religion, has also requested an Adjudication of the Constitutionality of Article 15(8) of Establishment of Homeland Reserve Force Act from the Constitutional Court, and his case has been consolidated with this one.

### **Case No. 2008HunKa22 and others on Article 88(1)-1 of the Military Service Act**

(i) The claimants in this case were accused of refusing to enlist after receiving enlistment notice. Chuncheon District Court, Young-wol District Court and other Courts sentenced the claimants to one and a half year's prison term each. Their appeals are now ongoing in the Chuncheon District Court.

(ii) The claimants in this case requested an Adjudication of the constitutionality of Statute from the Appeal Court (Chuncheon District Court) on the ground that Article 88(1)-1 of Military Service Act violates their right to freedom of conscience.

(iii) On 29 January 2002, the Chuncheon District Court accepted the petition and requested

the Adjudication of Constitutionality of Article 88(1)-1 of the Military Service Act from the Constitutional Court.

(iv) The claimants in the following cases are also prosecuted for violating the provision in question on the grounds of freedom of conscience and religion: 2008HunBa103, 2009HunBa3, 2009HunKa7, 2009HunKa24, 2010HunKa16 and 2010HunKa37. They too have requested Adjudication of Constitutionality of Article 88(1)-1 of the Military Service Act from the Constitutional Court, and their cases have been consolidated with this one.

6. The Constitutional Court has stated that it has scheduled this hearing on the following issues:

(1) Whether the provisions in question, which impose criminal punishment on those who refuse to take reserve force drill on grounds of conscience or religion, violate fundamental rights, including the right to freedom of conscience;

(2) Whether the provision which imposes criminal punishment on those who refuse to enlist in the Army violates fundamental rights, including the right to freedom of conscience;

(3) Whether or not introducing alternative service for those who refuse to undertake their military service duty on grounds of conscience or religion violates the fundamental right to freedom of conscience.

7. The case concerns a challenge to the laws governing compulsory military service, in particular two legal provisions:

(i) Article 15(8) of the Establishment of Homeland Reserve Force Act (Amended by Act No. 5704 on 29 January 1999), which provided, prior to its amendment by Act No. 9945 on 25 January 2010:

“A person who fails to receive the training under Article 6 (1) of this Act without any justifiable reason, who receives such training on behalf of any other person subject thereto, who resists or disobeys a justifiable order of the commander under paragraph (2) of the same Article, who fails to make any such report as prescribed in Article 10 of the Resident Registration Act so as to be unable to deliver a muster notice under Article 6-2 of this Act without any justifiable reason or has his resident registration erased under Article 8 or 17-2 of the Resident Registration Act by making any false report, or who fails to comply with any such order as prescribed in Article 8 (1) of this Act, shall be punished by imprisonment for not more than one year, by a fine not exceeding two million won, by detention, or by a non-penal fine.”

(ii) Article 88(1)-1 (Evasion of Enlistment) of the Military Service Act (as amended by Act No. 7272 on 31 December 2004), which provides as follows:

“(1) Persons who have received a notice of enlistment in the active service or a notice of call (including a notice of enlistment through recruitment) and fail to enlist in the army or to comply with the call, even after the expiration of the following report period from the date of enlistment or call without any justifiable reason, shall be punished by

imprisonment for not more than three years: Provided, that persons who have received a notice of check-up to provide the wartime labor call under Article 53(2), are absent from the check-up at the designated date and time without any justifiable reason, shall be punished by imprisonment for not more than six months, or by a fine not exceeding two million won, or with penal detention:

1. Three days in cases of enlistment in active service;"

## ISSUES ADDRESSED IN THIS SUBMISSION

8. This submission addresses the protection of conscientious objection to military service as derived from the right to freedom of thought, conscience and religion provided for in international human rights law and standards as well as in the Constitution of the Republic of Korea. It additionally addresses whether limitations on the manifestation of this right apply to conscientious objection to military service.

### OVERVIEW

9. The right to freedom of thought, conscience and religion comprises two elements: the right to hold convictions or beliefs, religious or otherwise, and the right to manifest one's convictions or beliefs in worship, teaching, practice and observance. The rights to freedom of conscience and freedom of religion are enshrined in Articles 19 and 20 of the Constitution of the Republic of Korea, respectively. Amnesty International submits, consistent with the jurisprudence of international human rights bodies and mechanisms, that conscientious objection to military service is a belief of sufficient seriousness and cogency to attract the protection of Article 18 of the ICCPR. Compulsion to engage in military service contrary to such a belief is in itself a violation of the individual's freedom of conscience. In addition, compulsory military service, without provision for those who are conscientious objectors because of their religious or other convictions or beliefs, amounts to an unjustified interference with the right to manifest a religion or belief. The Human Rights Committee has identified both elements in relation to conscientious objection to military service, stating that "the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."<sup>1</sup>

In its most recent Views on an individual petition, directly addressing the relevant laws of the Republic of Korea, the Committee found that the authors' "conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief" and 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>2</sup> Amnesty International submits that the fact that the Committee's Views focused on the Republic of Korea's relevant legislation rather than the authors' individual circumstances, and that the Committee in effect reiterated Views it had expressed on a very similar case,<sup>3</sup> clearly indicate that the Republic of Korea's failure to demonstrate the necessity for restrictions on Article 18



rights is attributable to its laws rather than to any particular circumstances of the specific cases.

10. Conscientious objection to military service has been recognised by the Human Rights Committee as deriving from the right to freedom of thought, conscience and religion under Article 18 of the ICCPR. Repeated resolutions of the former UN Commission on Human Rights have also recognised that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.<sup>4</sup> Special procedures mandated by the UN Human Rights Council have similarly addressed the question. The UN Special Rapporteur on freedom of religion or belief has made specific recommendations in regard to conscientious objection<sup>5</sup> and taken up individual cases.<sup>6</sup> In 2008 the UN Working Group on Arbitrary Detention ruled that imprisonment of conscientious objectors to military service was a form of arbitrary detention.<sup>7</sup> The right to conscientious objection is also explicitly recognised in the European Union (EU) Charter of Fundamental Rights and in the Ibero-American Convention on Young People's Rights.

### **CONSCIENTIOUS OBJECTION TO MILITARY SERVICE AND THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

11. The Republic of Korea is a state party to the International Covenant on Civil and Political Rights and its first Optional Protocol, and its Supreme Court and Constitutional Court have on several occasions referred to the State's obligations under this Covenant. It is, therefore, relevant to consider the interpretation of Article 18 of the ICCPR by the Human Rights Committee, the expert body which monitors States' implementation of their obligations under the ICCPR.

12. The 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, 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. It has affirmed this in one of its General Comments (interpreting the ICCPR provisions), in numerous Concluding Observations (in relation to states parties' reports under the ICCPR), and in 'Views' (decisions on individual petitions under the First Optional Protocol to the ICCPR).<sup>8</sup>

13. One issue which arose in early cases discussed by the Committee in relation to the protection of conscientious objection to military service under the ICCPR was the reference to it in Article 8(3) under the ICCPR's provision on forced labour. Initially, in 1987, the Human Rights Committee declared inadmissible its first case concerning a conscientious objector to military service,<sup>9</sup> referring to the wording in Article 8 § 3 c (ii) of the ICCPR. However, through the State reporting process, and the consideration of other individual cases relating to conscientious objection and alternative service (but not the central question of whether conscientious objection itself was protected under the ICCPR), the Committee's position evolved.

14. In 1993, the Committee adopted General Comment No. 22 on the right to freedom of thought, conscience and religion (Article 18, ICCPR).<sup>10</sup> In it the Committee noted that "a growing number of States have in their laws exempted from compulsory military service

citizens who genuinely hold religious or other beliefs that forbid the performance of military service".<sup>11</sup> The Committee added:

“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.”<sup>12</sup>

15. On the basis of General Comment No. 22, and using the procedure which it started in 1991 of unanimously adopting Concluding Observations when considering states parties’ reports on their implementation of the ICCPR,<sup>13</sup> the Committee has addressed the issue of conscientious objection on numerous occasions,<sup>14</sup> all but one explicitly or implicitly under Article 18.<sup>15</sup> The Concluding Observations have included specific recommendations to States to introduce legislation to provide for conscientious objection in States which fail to provide for recognition of such status, as well as to address discriminatory and unsatisfactory provisions where some recognition existed. For example, in the case of Chile: “The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment and recognizing that conscientious objection can occur at any time, even when a person’s military service has already begun.”<sup>16</sup>

16. In 1998, for instance, Armenia’s initial report was considered by the Human Rights Committee. The Committee regretted “the lack of legal provision for alternatives to military service in case of conscientious objection ... [and deplored] the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against family members.”<sup>17</sup>

17. It was not until 2004 that the Committee received an individual petition from conscientious objectors in a conscripting State that had no legislative provision for conscientious objection and who were, therefore, sentenced to prison for their religiously based objection. It was the Committee’s first opportunity to address the precise question of the protection of conscientious objection to military service under the ICCPR in an individual case. In that case, *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*,<sup>18</sup> the Committee reviewed its earlier case law and the relevance of the provision concerning forced labour (Article 8, ICCPR). It concluded that this article “neither recognizes nor excludes a right of conscientious objection” and that “the present claim is to be assessed solely in the light of Article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose”.<sup>19</sup> Concluding its Views on this case in November 2006, the Committee concluded that conscientious objection to military service is protected under Article 18, and, after considering the permissible limitations on the manifestation of religion or belief, it found a violation of Article 18 § 1 of the ICCPR.

#### Regional standards, interpretation and practice

18. In Europe, the protection of conscientious objection as derived from the right to freedom of thought, conscience and religion is explicitly recognised in the EU Charter of Fundamental Rights (2000), which in Article 10 provides:

- Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
- The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

In addition, The Committee of Ministers of the Council of Europe,<sup>20</sup> the Parliamentary Assembly of the Council of Europe (PACE),<sup>21</sup> and the European Parliament<sup>22</sup> have all recognised the right to conscientious objection to military service, and promulgation of legislation in accordance with international standards on conscientious objection to military service has been included in the accession criteria for new members of the Council of Europe where compulsory military service has applied.<sup>23</sup>

Most of the jurisprudence of the European Court of Human Rights predates the Human Rights Committee's Views in *Yoon and Choi v Republic of Korea*. A more recent case, *Bayatan v. Armenia*, which was decided by the Chamber in favour of the State, is now under consideration by the Grand Chamber.<sup>24</sup>

19. There are no judgments of other regional human rights courts about conscientious objection to military service and only one decision of the Inter-American Commission on Human Rights, in 2005.<sup>25</sup> That decision, too, preceded the Human Rights Committee's Views in *Yoon and Choi v Republic of Korea* and followed the earlier case law of the Committee in interpreting the equivalent provisions of the American Convention on Human Rights.<sup>26</sup> However, later in the same year, in approving a friendly settlement, the Inter-American Commission recognised the evolving nature of the right to conscientious objection and made an explicit reference to General Comment No. 22 of the Human Rights Committee.<sup>27</sup> In that case, the Bolivian State, represented by the Ministry of Defence, agreed, despite the absence of legislation to that effect, to provide a conscientious objector who had refused to perform military service with a document of completed military service without levying on him the military tax normally imposed on those declared exempt, and also to issue a Ministerial Resolution stipulating that in the event of an armed conflict he would not be called up. The State also undertook "in accordance with international human rights law, to include the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces", and "to encourage congressional approval of military legislation that would include the right to conscientious objection to military service". In approving the terms of the friendly settlement as being compatible with the American Convention, the Inter-American Commission reiterated that the purpose of the friendly settlement procedure was to reach a settlement on the basis of respect for the human rights recognised in the Convention, and that the State's acceptance of it was an expression of its good faith to comply with its obligations under the Convention.<sup>28</sup>

20. The Ibero-American Convention on Young People's Rights (2008), Article 12, provides:

"Young people have the right to form a conscientious objection against compulsory

military service.”

Bolivia, Costa Rica, the Dominican Republic, Ecuador, Honduras, Spain and Uruguay are states parties to this Convention.<sup>29</sup>

21. Of the 17 member states of the Council of Europe which still have conscription, Turkey is the only one which has no provision whatever for conscientious objection to military service; Azerbaijan has a Constitutional provision, but it has yet to be implemented in legislation. Armenia has had a provision since 2003. Conscription formerly applied in 23 additional Council of Europe member states; before conscription was abolished or suspended in those states, each of the 23 had provided for conscientious objection.

## LIMITATIONS TO THE FREEDOM TO MANIFEST ONE’S RELIGION OR BELIEF – VIEWS OF THE HUMAN RIGHTS COMMITTEE IN CASES CONCERNING THE REPUBLIC OF KOREA

22. In 2007 and 2010, the Human Rights Committee (‘the Committee’) published two Views on individual communications considered under Article 5 § 4 of the Optional Protocol to the ICCPR which addressed specifically the questions before the Court.<sup>30</sup> The two Views are appended to this submission, in Annex 2. Whilst both these Views have been alluded to in this submission within the general discussion, their direct relevance justifies further, separate discussion. This applies in particular to the issue of limitations on the freedom to manifest one’s religion or belief, which is at the heart of the case before the Constitutional Court. As noted above,<sup>31</sup> Amnesty International takes the position that the right to conscientious objection to military service is a component of the freedom to have or to adopt a religion or belief of one’s choice.

23. Under Article 18 § 3 of the ICCPR, “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” It is notable that, unlike the ICCPR provisions for freedom of expression, for the right of peaceful assembly and for the right to freedom of association,<sup>32</sup> “national security” is not included as one of the permissible grounds for possible limitations on the right to manifest one’s religion or beliefs under Article 18. The Human Rights Committee has reiterated this point in its General Comment No. 22, § 8.

24. The facts in the two cases were undisputed. The individuals in both cases had all refused to be drafted for military service on account of their religious belief and conscience, and subsequently were convicted and punished under Article 88(1)-1 of the Military Service Act. Both cases revolved around the individuals’ claim that their rights under article 18 of the ICCPR had been violated, due to the absence in the Republic of Korea of an alternative to compulsory military service, as a result of which their failure to perform military service resulted in their criminal prosecution and punishment.

25. It should be noted that in the process of reaching its conclusions on these cases, the Committee considered, in addition to its own jurisprudence, both relevant Supreme Court and Constitutional Court rulings and detailed submissions by the Government of the Republic of Korea. Government submissions in the latter case (*Jung and others*) included comments on

the Committee's view in the former one (*Yoon and Choi*).

26. Not least, the Committee carefully considered the Government's key argument, namely that:

in view of its specific circumstances, conscientious objection to military service needs to be restricted as it may incur harm to national security.<sup>33</sup>

This argument was reiterated and elaborated in great detail in the *Jung and others* case, emphasising the particular security situation faced by the Republic of Korea.<sup>34</sup>

Having considered this argument carefully, the Committee rejected it in very clear terms. In *Yoon and Choi*, the Committee stated:

while the right to manifest one's religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief [...] The Committee also notes, in relation to relevant State practice, that an increasing number of those States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service, and considers that the State party has failed to show what special disadvantage would be involved for it if the rights of the authors' under article 18 would be fully respected.<sup>35</sup>

The Committee concluded that "the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant."<sup>36</sup>

27. In a separate opinion, concurring with the Committee's conclusions but offering alternative reasoning, Committee member Mr. Hipólito Solari-Yrigoyen clarified that under Article 4 § 2 of the ICCPR, the right to freedom of thought, conscience and religion, from which the right to conscientious objection to military service derives, cannot be derogated from even in exceptional circumstances which threaten the life of the nation and justify the declaration of a public emergency.<sup>37</sup>

Of note is also Mr. Hipólito Solari-Yrigoyen's comment that:

"When a right to conscientious objection is recognized, a State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights."<sup>38</sup>

28. In *Jung and others*, the Committee considered the Government's arguments which, as noted, reiterated and expanded on the arguments it presented in *Yoon and Choi* and responded to the Committee's views in that case, and in particular emphasised the State's unique security situation. The Committee saw no reason to depart from its earlier conclusions.<sup>39</sup> In view of the similar facts of the case, including the conviction and punishment of the authors, which, the Committee found, constituted an "infringement of

their freedom of conscience and a restriction on their ability to manifest their religion or belief” and the failure of the State to demonstrate that such restriction was necessary under Article 18 § 3 of the ICCPR, the Committee concluded that the State had violated article 18 § 1 of the Covenant.<sup>40</sup>

29. It should be noted that the Committee's Views in these cases are consistent with its Concluding Observations, in particular on the issue of the inapplicability of “national security” as grounds for imposing restrictions on the right to conscientious objection as deriving from the right to freedom of religion or belief. Thus in the case of Finland, the Committee explicitly “regrets that the right to conscientious objection is acknowledged only in peacetime,” and recommended that “The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime”.<sup>41</sup> In the case of Israel, a country which has been in a constant state of emergency since its inception in 1948, and which has since then seen several armed conflicts and other violent incidents, the Committee, acknowledging that in that State, “certain exemptions from obligatory military service have been granted on the grounds of conscientious objection,” nevertheless expressed concerns over procedures for granting such exemptions, citing article 18,<sup>42</sup> and recommended that the State provide for more independent assessments of requests for exemptions.<sup>43</sup>

## CONCLUSION

30. It is Amnesty International's submission that compulsion to engage in military service contrary to one's conscience, religion, or belief is in itself a violation of the individual's freedom of conscience and belief, which are also enshrined in the Constitution of Republic of Korea. Further, making such service compulsory without provision for those who are conscientious objectors because of their religious or other convictions or beliefs amounts to an unjustified interference with the right to manifest a religion or belief. The weight of international standards and guidance from the jurisprudence of the Human Rights Committee, other UN human rights mechanisms and regional human rights mechanisms support the protection of conscientious objection to military service under the right to freedom of thought, conscience and religion, in particular as provided in Article 18 of the ICCPR. In so far as it is a manifestation of religion or belief, this Article, and Human Rights Committee jurisprudence, make clear that considerations of national security cannot provide permissible grounds for imposing limitations on this right in general and on the right to conscientious objection to military service in particular. Where military service is compulsory, States are required to make provisions for conscientious objectors in order to comply with Article 18. Any civilian alternatives to military service must be not be punitive and must be of purely civilian character and under civilian control and compatible with respect for human rights.

## SIGNATURES

Dated: 8 November 2010  
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# ENDNOTES

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<sup>1</sup> 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, § 11.

<sup>2</sup> Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v Republic of Korea (Communications Nos. 1593 to 1603/2007), Views adopted 23 March 2010, UN Doc. CCPR/C/98/D/1593-1603/2007, 30 April 2010, §7.4. This case and the Yoon and Choi case (infra n. 3) are discussed in greater detail in Section III.iii of this submission.

<sup>3</sup> See also Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea (Communications Nos. 1321/2004 and 1322/2004), Views adopted 3 November 2006, UN Doc. CCPR/C/88/D/1321-1322/2004, 23 January 2007.

<sup>4</sup> UN Commission on Human Rights Resolutions 1989/59, 1993/83, 1995/83, 1998/77, 2002/45, and 2004/35. The UN General Assembly abolished the Commission on 16 June 2006 (A/RES/60/251), replacing it with the Human Rights Council.

<sup>5</sup> For example, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to Turkmenistan, UN Doc. A/HRC/10/8/Add.4, 12 January 2009, 68; <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.

<sup>6</sup> For example, Summary of cases transmitted to Governments and replies received, UN Doc. E/CN.4/2006/5/Add.1, 27 March 2006, cases in Armenia at §§ 3-11; <http://www2.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm>.

<sup>7</sup> Opinion 8/2008 (Colombia) and Opinion 16/2008 (Turkey), in Opinions adopted by the Working Group on Arbitrary Detention, UN Doc. A/HRC/10/21/Add.1, 4 February 2009, pp. 110-114 and pp. 139-147, respectively; <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.

<sup>8</sup> The Human Rights Committee adopts its General Comments and Concluding Observations unanimously.

<sup>9</sup> L.T.K. v Finland (Communication No. 185/1984), Admissibility decision of 9 July 1985, UN Doc. CCPR/C/OP/2.

<sup>10</sup> 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, § 11, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.



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- 13 Originally the Committee members expressed individual comments on States' reports; it was only in 1991 that the Committee as a whole started adopting Concluding Observations which are agreed unanimously.
- 14 There are at least 45 references, some of which are cited below.
- 15 In some cases, the Committee has analysed Article 18 in conjunction with Article 26 (non-discrimination), and in one case, under Article 24 (rights of the child), addressing the possible conscription of persons under 18 years of age.
- 16 Concluding Observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/CHL/CO/5, 17 April 2007, § 13.
- 17 Concluding Observations of the Human Rights Committee: Armenia, UN Doc. CCPR/C.79/Add.100, 19 November 1998, § 18.
- 18 Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea (Communications Nos. 1321/2004 and 1322/2004), Views adopted 3 November 2006, UN Doc. CCPR/C/88/D/1321-1322/2004, 23 January 2007. See Annex 2 of this submission.
- 19 Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea, § 8.2.
- 20 Recommendations R(87)8 regarding conscientious objection to compulsory military service (9 April 1987) and CM/Rec (2010)4 on human rights of members of the armed forces (24 February 2010).
- 21 Resolution 337 (1967) and Recommendations 478 (1967), 816 (1977) and 1518 (2001).
- 22 Resolution of 7 February 1983 (Macciocchi resolution) on conscientious objection (OJ C 068, 14/03/1983 P. 0014); Resolution of 13 October 1989 (Schmidbauer resolution) on conscientious objection and alternative civilian service (OJ C 291, 20/11/1989 P. 0122); and Resolution of 19 January 1994 (Bandres, Molet and Bindi resolution) on conscientious objection in the member states of the Community (OJ C 044, 14/02/1994 P. 0103): see also European Bureau for Conscientious Objection, <http://www.ebco-beoc.eu/page/1uside/document/doc2eu.htm>.
- 23 PACE: Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe; Opinion No. 221 (2000), Armenia's application for membership of the Council of Europe; Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe, Opinion No. 234 (2002) Bosnia and Herzegovina's application for membership of the Council of Europe; Opinion No. 239 (2002), The Federal Republic of Yugoslavia's application for membership of the Council of Europe.
- 24 Case of Bayatyan v. Armenia (Application no. 23459/03), judgment of 27 October 2009, referred to the Grand Chamber on 10 May 2010.
- 25 Cristián Daniel Sahli Vera et al. v Chile, Case 12.219, Decision of 10 March 2005, Report No. 43/05.

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26 American Convention on Human Rights Articles 12 and 6 § 3 b are similar to Articles 18 and 8 §3 c (ii) of the ICCPR.

27 *Alfredo Diaz Bustos v Bolivia*, Report No. 97/05, 27 October 2005.

28 As provided under the American Convention on Human Rights, the main function of the Inter-American Commission on Human Rights is to promote respect for and defence of human rights (Article 41). Its powers include taking action on petitions and other communications submitted to it alleging violations of rights protected by the American Convention (Articles 41(f) and 44). In dealing with such petitions its procedures include placing itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognised in the Convention (Article 48.1 (f)).

29 Cuba, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal and Venezuela are signatories. It is also open to Andorra, Argentina, Brazil, Colombia, Chile and El Salvador.

30 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea* (Communications Nos. 1321/2004 and 1322/2004), Views adopted 3 November 2006, UN Doc. CCPR/C/88/D/1321-1322/2004; and *Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v Republic of Korea* (Communications Nos. 1593 to 1603/2007), Views adopted 23 March 2010, UN Doc. CCPR/C/98/D/1593-1603/2007, 30 April 2010, respectively.

In the interest of brevity we will henceforth, in this section, refer to the former case as considered by the Committee as *Yoon and Choi* and to the latter as *Jung and others*.

31 See para. 9.

32 See articles 19 § 3(b), 21 and 22 § 2, respectively.

33 *Yoon and Choi*, § 4.2. See further *ibid.*, §§ 4.3-4.6; 6.1, 6.3, 6.5.

34 See *Jung and others*, §§ 4.5-4.7.

35 *Yoon and Choi*, §§ 8.3- 8.4.

36 *Ibid.*, § 9.

37 *Ibid.*

38 *Ibid.*, § 8.3.

39 *Jung and others*, § 7.3.

40 *Ibid.*, § 7.4.

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41 Concluding Observations of the Human Rights Committee: Finland. Report of the Human Rights Committee, UN Doc. A/60/40, Vol. I (2004-5), § 81(14).

42 Concluding observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/ISR/CO/3, 29 July 2010, § 19.

43 Ibid. The Committee also expressed, under Article 14 of the ICCPR, concern over repeated imprisonment of conscientious objectors and called on the State to cease such imprisonment.

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