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South Korea must immediately release all conscientious objectors and introduce alternatives to military service

Over 850 conscientious objectors -- men who have refused conscription for reasons of conscience -- are currently in prison in South Korea serving sentences for that refusal. On the occasion of International Conscientious Objection Day, Amnesty International calls on the South Korean government to take urgent steps to remedy this shameful situation. The large majority of conscientious objectors in South Korea are Jehovah's Witnesses. The remainder conscientiously object because of other religious beliefs or have moral, ethical, humanitarian or similar reasons for refusing to carry out military service. There is no provision in South Korean law for conscientious objectors to military service to do an alternative civilian form of service.

Amnesty International believes that every person has the right to refuse to perform military service for reasons of conscience or profound personal conviction, without suffering any legal or other penalty, and that this right is inherent in the human right to freedom of thought, conscience and religion. This right is provided, among other things, in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee general comment 22 has stated that while "the Covenant does not explicitly refer to a right to conscientious objection, ... 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."

In March this year, after considering the cases of 100 South Korean conscientious objectors who had brought their cases to the UN Human Rights Committee, the Committee found that the South Korean government had violated Article 18 of the ICCPR by imprisoning individuals who refused on conscientious grounds to undertake military service. The Committee further stated that the South Korean government has an obligation to provide an effective remedy for violation of the rights of conscientious objectors, including compensation, and to avoid similar violations in the future.

According to the Committee, making provision for conscientious objectors need not erode the principle of universal conscription, which the South Korean government has stated it regards as important for social cohesion and equality. The Committee has noted that it is possible in principle, and common in practice, to establish alternative forms of civilian service for conscientious objectors. That is, service which renders equivalent social good and makes equivalent demands on the individual, eliminating unfair disparities between those engaged in compulsory military service and those in alternative service.

Amnesty International calls on the South Korean government to promptly address the concerns raised by the Human Rights Committee by ensuring an effective remedy for conscientious objectors whose rights to freedom of thought, conscience and religion have

been violated, and to take steps to ensure that such violations do not occur in the future. In particular to:

- Grant an immediate amnesty to all conscientious objectors currently in prison in South Korea and release them immediately and unconditionally;
- Clear the criminal records and provide adequate compensation for conscientious objectors in South Korea who have been imprisoned for refusing military service by reason of their conscientiously held beliefs;
- Bring national legislation into line with international standards by introducing provisions for conscientious objection to military service, including ensuring that alternative service is of a genuinely civilian character, non-punitive and under civilian control and of a length comparable to that of military service;
- Ensure that conscientious objectors who perform alternative service are treated equally with persons performing military service as far as any financial or other benefits are concerned, and that legislative provisions or regulations which take into account military service for employment, career or pension purposes apply also to alternative service.

Background

The rights to freedom of conscience and freedom of religion are enshrined in Articles 19 and 20 of the Constitution of South Korea. On 11 November 2010 the Constitutional Court held a hearing as part of a case which is considering the constitutionality of Article 15(8) of the Establishment of the Homeland Reserve Force Act and Article 88(1)-1 of the Military Services Act (MSA) and whether these articles violate fundamental rights, including the right to conscientious objection.

In September 2007, the Ministry of Defence in South Korea had announced plans to introduce alternative service for conscientious objectors by 2009. On 24 December 2008, the South Korean government announced that such plans had been put on hold indefinitely citing lack of public support.

In South Korea, men who refuse to undergo compulsory military service are tried in civil courts for violation of the MSA. Under the MSA typically all males ages 18-35 must serve an average of 24 months active military service followed by subsequent duties in the Reserved Forces for the following eight years. Most conscientious objectors in South Korea currently serve a minimum of 18 months in prison. They leave prison with a criminal record and are consequently discriminated against when seeking employment.

Repeated resolutions of the former UN Commission on Human Rights over the years recognized 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. In 2006, the UN Human Rights Committee called on the South Korean government to take all necessary measures to recognize the right of conscientious objectors to be exempted from military service, and urged them to bring legislation into line with Article 18 of the ICCPR.

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