

**Mandate of the Special Rapporteur on freedom of religion or belief**

REFERENCE: AL  
KOR 4/2015:

11 December 2015

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolution 22/20.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **imprisonment of over 600 conscientious objectors for failing to complete the military service.**

According to the information I received:

Since 1950, more than 18,000 men have been sentenced to prison in the Republic of Korea for refusing to do the mandatory military service. Of those, more than 600 are currently serving their sentences in prison.

The Military Service Act (MSA) establishes a compulsory military service for all males aged between 18 and 35, which lasts between 21 and 24 months. The refusal to undertake the service is punished with up to three years' imprisonment, and the lifetime exclusion from public employment.

Conscientious objectors who refuse to do the military service also bear the consequences of having a criminal record, which hinders their capacity to find employment in the private sector. Their stigmatization as holders of a criminal record and "traitors" also has other consequences in the social sphere, such as difficulties for marriage and ostracization from their families.

In 2005, the National Human Rights Commission recommended the Government to create a civil service system as an alternative to the mandatory military service for conscientious objectors. In 2007, the Government announced the creation of an alternative service for conscientious objectors. However, in 2008 the Government announced that such a service would not be established due to lack of public support.

In 2010, the Constitutional Court held that conscientious objectors do not have the right to reject completing the military service despite “right to freedom of conscience” being recognized by article 19 of the Constitution of the Republic of Korea.

While I do not wish to prejudge the accuracy of information made available to me, the above allegations appear to be in contravention with international law, in particular the right of every individual to freedom of religion or belief, as set out in article 18 and 19 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Korea is a State Party.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken to ensure that the military service in the Republic of Korea is compatible with the right to freedom of thought, conscience, belief and religion, and to implement the recommendations in this regard made to the Government by the Human Rights Committee and the Korean National Human Rights Commission.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Heiner Bielefeldt  
Special Rapporteur on freedom of religion or belief

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the right to freedom of religion or belief, enshrined in article 18, of the International Covenant on Civil and Political rights, acceded to by the Republic of Korea on 10 April 1990.

In addition, we draw the attention of Your Excellency's Government to General Comment No. 22 issued by the Human Rights Committee (CCPR/C/21/Rev.1/Add.4): "Many individuals have claimed the right to refuse to perform military service on the basis that such right derives from their freedoms under article 18. In response to such claims, 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 and replaced it with alternative national service. 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. (...) The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service."

Furthermore, the Human Rights Committee stated in 2011, in the case *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), that the failure of the Republic of Korea to offer "an alternative to compulsory military service" violated article 18 of the ICCPR, because it "entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs".

In October 2015, the Human Rights Committee expressed its concern for the lack of implementation by the Republic of Korea of its recommendations concerning conscientious objectors to military service and called the Republic of Korea to "[i]mmediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service; [...] Ensure that the criminal records of conscientious objectors are expunged, that they are provided with adequate compensation and that their information is not publicly disclosed; and [...] Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility to perform an alternative service of civilian nature."