



# International Covenant on Civil and Political Rights

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**Human Rights Committee**  
One hundredth and first session  
14 March - 1 April 2011

## Views

### Communications No. 1642-1741/2007

|                                   |  |
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| <u>Submitted by:</u>              | Min-Kyu Jeong et al (represented by counsel,<br>André Carbonneau)  |
| <u>Alleged victims:</u>           | The authors  |
| <u>State party:</u>               | The Republic of Korea  |
| <u>Date of communication:</u>     | 21 September and 6 November 2007 (initial<br>submissions)  |
| <u>Document references:</u>       | Special Rapporteur's rule 97 decision,<br>transmitted to the State party on 7 December<br>2007 (not issued in document form) |
| <u>Date of adoption of Views:</u> | 24 March 2011  |

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\* Made public by decision of the Human Rights Committee.

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| <i>Subject matter:</i>                    | Conscientious objection                               |
| <i>Substantive issues:</i>                | Right to freedom of thought, conscience and religion. |
| <i>Procedural issues:</i>                 | Exhaustion of domestic remedies                       |
| <i>Articles of the Covenant:</i>          | Article 18 (1)  |
| <i>Articles of the Optional Protocol:</i> | Article 5, paragraph 2 (b)                            |

On 24 March 2011, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communications No. 1642-1741/2007.

[Annex]

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (one hundredth and first session)**

Concerning

#### **Communications No. 1642-1741/2007\*\***

Submitted by: Min-Kyu Jeong et al (represented by counsel, André Carbonneau)

Alleged victim: The authors

State party: The Republic of Korea

Date of communication: 21 September and 6 November 2007 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 March 2011,

Having concluded its consideration of communications No. 1642-1741/2007, submitted to the Human Rights Committee on behalf of Messrs. Min-Kyu Jeong et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The authors of the communications are 100 persons<sup>1</sup>, all nationals of the Republic of Korea. They claim to be victims of a violation by the Republic of Korea of their rights under article 18, paragraph 1 of the International Covenant on Civil and Political Rights<sup>2</sup>. The authors are represented by counsel, Mr. André Carbonnier.

\*\* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Iulia Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli, Mr. Krister Thelin and Ms. Margo Waterval.

An individual opinion signed by Committee members Mr. Yuji Iwasawa, Mr. Gerald L. Neuman and Mr. Michael O'Flaherty is appended to the text of the present Views.

<sup>1</sup> The list of the authors and their respective communication number is annexed at the end of the Views.

<sup>2</sup> The Optional Protocol entered into force for the Republic of Korea on 10 April 1990.

1.2 On 24 March 2011, pursuant to Rule 94, paragraph 2, of the Committee's Rules of Procedure, the Committee decided to join the 100 communications for decision in view of their substantial factual and legal similarity.

**The facts as presented by the authors**

2.1 All 100 authors are Jehovah's Witnesses, who have been sentenced to one and a half years of imprisonment for refusing to be drafted for military service, based on their religious belief. None of the authors appealed their cases to higher courts as the Supreme Court of Korea, on 15 July 2004, and the Constitutional Court of Korea on 26 August 2004, decided that conscientious objectors must serve in the army or face prison terms. Since the highest courts of Korea made a final decision on this issue, any further appeal would be totally ineffective.

2.2 In its ruling, the Constitutional Court rejected a constitutional challenge to article 88 of the Military Service Act on the grounds of incompatibility with the protection of freedom of conscience protected under the Korean Constitution. The Court reasoned, *inter alia*:

"the freedom of conscience as expressed in Article 19 of the Constitution does not grant an individual the right to refuse military service. Freedom of conscience is merely a right to make a request to the State to consider and protect, if possible, an individual's conscience, and therefore is not a right that allows for the refusal of one's military service duties for reasons of conscience nor does it allow one to demand an alternative service arrangement to replace the performance of a legal duty. Therefore the right to request alternative service arrangement cannot be deduced from the freedom of conscience. The Constitution makes no normative expression that grants freedom of expression a position of absolute superiority in relation to military service duty. Conscientious objection to the performance of military service can be recognized as a valid right if and only if the Constitution itself expressly provides for such a right".

2.3 Following the decisions of the Supreme and Constitutional courts, more than 700 conscientious objectors have been sentenced and imprisoned for one and a half years for refusing to bear arms. An additional 50 to 70 persons are convicted and imprisoned each month.

*Mr. Min-Kyu Jeong's case*

2.4 On 12 December 2006, Mr. Jeong received an enlistment notice from the State party's Military Manpower Administration. He refused to perform military duty on account of his personal religious convictions. He agreed to perform alternative service. On 25 April 2007, the Gunsan Branch of Jeonju District Court rejected his claim and sentenced him to one and a half years of imprisonment in violation of the Military Service Law. During police and prosecutor's investigation, he explained his religious belief and the fact that he did not want to evade national duty. He pointed out that the Constitution protected freedom of religion. During the hearing, he requested the Court to postpone the judgement until the Government of the State party adopt an alternative service system. His claim was rejected. He served his time in prison and describes the two years of both investigation and prison time as stressful and emotional.

*Mr. Hui-Sung Gu's case*

2.5 On 12 December 2005, Mr. Gu received a draft notice of the Military Manpower Administration ordering him to be drafted into military service at the Choonchun military

camp. Mr. Gu refused to be drafted within the 3-day-prescribed period of time because of his religious beliefs. On 11 May 2006, the Incheon District Court sentenced him to one and a half years imprisonment.

*Mr. Jin-Mo Yeon's case*

2.6 On an unspecified date, Mr. Yeon called the Military Manpower Administration to explain his standing as conscientious objector. He submitted all the documents requested, including a document proving that he was a Jehovah's Witness and a written statement explaining his religious beliefs. At the Court hearing, he informed the judge of his readiness to perform alternative service as long as he would be exempt from the compulsory two-week military training session. His claim was rejected. On 26 May 2006, the Court (unspecified name) sentenced him to one and a half years imprisonment.

*Mr. Il-Joo Lee's case*

2.7 On 31 October 2005, Mr. Lee received a notice of draft for military service. He replied that he would not perform military service because of his religious beliefs. He was interrogated by the police and prosecutor and taken into custody from 16 May 2006. The Western Section of the Seoul District Court rejected his claim on the basis that due reason exempting from military service could only include compelling reasons such as health related. To Mr. Lee's argument that the Military Service Law violated freedom of conscience, which is protected by the Korean Constitution, the judge replied that such freedom is protected as long as it remains private and personal but not when it enters in conflict with other protected rights and obligations. The Court concluded that freedom of conscience was not an absolute right and could therefore be restricted. The Court added that the absence of any alternative to active military service was a measure which could not be considered disproportionate. On 26 April 2006, Mr. Lee was sentenced to one and a half years imprisonment.

*Mr. In-Hwan Jo's case*

2.8 Mr. Jo received a draft notice for military service on 22 September 2006. He wrote a statement to the Military Manpower Administration explaining his religious convictions. He was interrogated by the police and detained for 37 days. On 10 January 2007, the Jeonju District Court sentenced him to one and a half years imprisonment.

*Mr. Jung-Rak Kim's case*

2.9 Mr. Kim received a draft notice for military service in February 2006. He notified his decision to be a conscientious objector to the Military Manpower Administration and submitted the requested documents. He attended the Changwon District Court hearing as a free man but was eventually sentenced to one and a half years imprisonment.

*Mr. Jong-Wook Kim's case*

2.10 Mr. Kim received a notice of enlistment for military service in October 2006. Although he had declared himself a conscientious objector, the Court reproached him for not having given justifiable reasons for not reporting to military duty within 3 days upon receipt of the draft notice. On 17 January 2007, he was sentenced by the Suwon District Court to one and a half years imprisonment.

*Mr. Dong-Hun Shin's case*

2.11 Mr. Shin received a notice of enlistment for military service on 18 September 2006 ordering him to enter the military camp of Yonghyun-Dong within 3 days. He objected to

military service to the Military Manpower Administration, which rejected his claim. He was arrested and detained from 16 November 2006. On 28 December 2006, he was sentenced to one and a half years of imprisonment by the Incheon District Court.

*Mr. Ju-Gwan You's case*

2.12 Mr. You received a draft notice for military service on 18 October 2006 but did not enter the military training camp within the prescribed period of time because of his religious beliefs. He was sentenced to one and a half years of imprisonment by the Jeonju District Court on 10 April 2007.

*Mr. Jae-Hyung Jung's case*

2.13 On 29 August 2006, Mr. Jung received a draft notice of enlistment for military service. On 11 October 2006, he informed the Suwon Military Manpower Administration of his refusal to enlist for military service due to his religious beliefs. He provided all the documents to justify his position. He was arrested and detained from 13 November 2006. On 21 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Uok Heo's case*

2.14 Mr. Heo received his enlistment notice on 6 April 2006. He notified his objection to military service. The police investigation started on 9 June 2006 and the prosecutor's investigation on 30 August 2006. He was not detained prior to being sentenced. On 10 November 2006, the Incheon District Court sentenced him to one and a half years imprisonment.

*Mr. Jong-Keun Park's case*

2.15 On 1 October 2006, Mr. Park received an enlistment notice for military service. He went to the Military Manpower Administration office to submit his statement of conscientious objector. He was summoned and investigated in April 2007. On 30 May 2007, the Incheon District Court sentenced him to one and a half years imprisonment.

*Mr. Un-Hyun Baek's case*

2.16 Mr. Baek objected to military service enrolment for religious reasons after he received his draft notice on 12 September 2006. He was detained from 25 October 2006 while being investigated. The Chungju District Court sentenced him to one and a half years imprisonment on 30 November 2006.

*Mr. Jung-Rok Lim's case*

2.17 Mr. Lim received a draft notice of active military service on 8 August 2006 but he refused to enrol in the army because of his religious beliefs. During the trial, the prosecution demanded 3 years imprisonment. On 1 February 2007, the Daegu District Court sentenced him to one and a half years in prison.

*Mr. Myung-Ki Shin's case*

2.18 Mr. Shin was called-up for military service on 27 January 2006, which he refused because of his religious beliefs. He later went to the Military Manpower Administration to provide a written statement on his religious convictions. After a police investigation in March and the prosecutors' investigation in May 2006, he was heard by the Court. On 22 June 2006, the Uijeongbu District Court sentenced him to one and a half years imprisonment.

*Mr. Jae-Ha Cha's case*

2.19 On 2 October 2006, Mr. Cha received his enlistment notice. He filed a letter of conscientious objection along with a letter confirming his status in his Congregation and a Registration Certificate of the Congregation. He was investigated upon but the judge did not request him to be detained before the trial. During the Court hearing, the prosecutor requested 2 years of imprisonment for failing to perform military service. On 28 March 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Ju-Hyun Park's case*

2.20 Mr. Park received a draft notice of enlistment on 3 July 2006. He provided his written statement of conscientious objection and was investigated in September 2006. During the trial he mentioned his readiness to perform alternative service. His claim was rejected. On 20 October 2006, the Uijeongbu District Court sentenced him to one and a half years imprisonment.

*Mr. Tae-Eung Kim's case*

2.21 Mr. Kim received his enlistment notice on 26 December 2006. In Court he expressed his readiness to perform alternative service. On 22 June 2007, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. San Seo's case*

2.22 On 22 September 2006, Mr. Seo was notified of his enlistment into military service. He refused on the basis of his religious beliefs. He provided the necessary documents to the Military Manpower Administration. On 11 January 2007, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Ho Cho's case*

2.23 Mr. Cho received his draft notice of enlistment on 2 August 2006. He objected to it because of his religious beliefs. On 23 November 2006, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jung-Hoon Kim's case*

2.24 On 8 June 2006, Mr. Kim received his draft enlistment notice. He provided the necessary documents to the Military Manpower Administration and fully cooperated with the police and prosecutors. In Court, he expressed his readiness to perform voluntary alternative service. His claim was rejected. On 25 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jae-Hun Lee's case*

2.25 Mr. Lee was called-up for military service on 18 March 2007. He objected to it as a Jehovah's Witness. On 27 June 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hangle Yoon's case*

2.26 On 25 August 2006, Mr. Yoon received a draft notice of enlistment. He went to the Military Manpower Administration and informed them of his conscientious objection. He was interrogated by the police and then detained at the Suwon Detention Centre, while waiting for his trial. On 15 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hwan-Ho Jung's case*

2.27 On 31 July 2006, Mr. Jung received a draft notice of enlistment. He was questioned and detained pending his trial. On 22 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Do-Hyun Kim's case*

2.28 On 20 June 2006, Mr. Kim was called-up for military service. He refused and notified his position on 18 August 2006. In Court, he expressed his readiness to perform alternative service. His request was rejected. On 10 November 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Gang-Wook Kim's case*

2.29 Mr. Kim received his draft notice of enlistment on 11 May 2006. He refused as a conscientious objector. On 8 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hun Kim's case*

2.30 Mr. Kim received his draft notice from the Military Manpower Administration on 14 December 2006. As he did not report to service within the prescribed period of time he was summoned by the police and investigated. He submitted a written statement on his religious beliefs. He was detained pending trial. At trial, he expressed his readiness to perform alternative service. His request was rejected. On 20 March 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Young-Won Lee's case*

2.31 Mr. Lee received a draft notice of enlistment on 4 April 2006. He was detained before and during the trial. On 31 August 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Tae-Soo Moon's case*

2.32 Mr. Moon received a draft notice of enlistment on 10 May 2006. He refused to be drafted and explained his position to the Military Manpower Administration on 30 June 2006. He was arrested and detained pending trial. On 20 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Ji-Hyun Jung's case*

2.33 Mr. Jung received a draft notice of enlistment on 24 October 2006. He refused to be drafted and explained his position to the Military Manpower Administration. He was detained pending trial. In Court, he expressed his readiness to perform alternative service. His request was rejected. On 30 January 2007, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Doo-On Kang's case*

2.34 Mr. Kang was called-up for military service on 3 October 2006. He refused to bear arms and was therefore sentenced by the Ansan Branch of the Suwon District Court on 17 April 2007 to one and a half years imprisonment.



*Mr. Sung-Ryul Kang's case*

2.35 Mr. Kang received his notice for enrolment on 28 August 2006. He refused to do the army because of his religious beliefs. On 23 January 2007, the Busan District Court sentenced him to one and a half years imprisonment.

*Mr. Yong-Dae Kim's case*

2.36 Mr. Kim was called-up for military service on 14 March 2006. He contacted the Military Manpower Administration to inform them of his position as a conscience objector. On 8 August 2006, the Daejeon District Court sentenced him to one and a half years imprisonment.

*Mr. Seung-Yob Lee's case*

2.37 Mr. Lee received his notice of enlistment on 12 July 2006. He went to the Military Manpower Administration to express his religious convictions. He was interrogated twice and imprisoned at the Suwon detention centre. On 1 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jae-Won Seo's case*

2.38 Mr. Seo received his notice of enlistment on 4 May 2006. Because of his convictions, he refused to bear arms. The prosecutor demanded two years of imprisonment. On 30 August 2006, the Guchang Branch of the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Woo-Jin Choi's case*

2.39 Mr. Choi received his notice of enlistment on 28 July 2006. He filed a letter of conscientious objection. On 7 December 2006, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Sung-Jin Hwang's case*

2.40 Mr. Hwang received a draft notice for military service on 21 April 2006. He refused to abide by the notice. He was arrested and detained. On 25 September 2006, the Busan District Court sentenced him to one and a half years imprisonment.

*Mr. Sung-Joong Jeon's case*

2.41 Mr. Jeon received a draft notice for military service on 16 October 2006. He refused to be enrolled and was therefore arrested and detained from 4 December 2006, pending trial. On 7 February 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Dae-Jin Kim's case*

2.42 Mr. Kim received his draft notice of enlistment on 6 July 2006. He notified the Military Manpower Administration of his decision to be a conscientious objector. He was arrested and detained pending trial. On 3 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Eun-Woo Kim's case*

2.43 Mr. Kim received his enrolment notice on 16 June 2006. He refused as a conscientious objector. At trial he expressed his readiness to perform alternative service.

His request was rejected. On 4 May 2007, the Southern Section of the Seoul District Court sentenced him to one and a half years imprisonment.

*Mr. Ji-Hoon Lim's case*

2.44 Mr. Lim received a draft notice for military service on 11 July 2006. He refused as conscientious objector. On 3 November 2006, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. Sung-Ho Lee's case*

2.45 Mr. Lee was called-up for military service on 21 September 2006. Three days before the enlistment day, he called the Military Manpower Administration to inform them that he was a conscientious objector. On 12 January 2007, in ten minutes, the hearing took place and the Changwon District Court sentenced Mr. Lee to one and a half years imprisonment.

*Mr. Dae-Jun Shin's case*

2.46 Mr. Shin was called to perform military service on 23 September 2005. He explained his refusal to bear arms as a conscientious objector during the police and prosecutor's investigation. On 18 May 2006, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. She-Woong Park's case*

2.47 Mr. Park received his draft notice of enrolment into the army on 16 May 2006. He objected for religious reasons. As an authorized herb doctor, he was exempted from active military service duty and able to perform alternative service (working in a public health centre) as long as he accepted to go for a four-week basic military training session. Because of his religious beliefs he had to refuse. On 27 September 2006, the Gunsan Branch of the Jeonju District Court sentenced him to one and a half years imprisonment.

*Mr. Jin-Moo Kwan's case*

2.48 Mr. Kwan was called-up for military service on 8 May 2006. He filed his letter regarding conscientious objection. Despite explaining at large his religious convictions, the Busan District Court sentenced him to one and a half years imprisonment on 26 October 2006.

*Mr. Ki-Joon Kim's case*

2.49 Mr. Kim was called-up for military service on 26 May 2006. He refused for religious reasons. On 1 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Young-Ki Lee's case*

2.50 Mr. Lee received a draft notice of enlistment for military service on 4 September 2006. He refused as conscientious objector. On 23 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Kang-Hyeok-Kang Seo's case*

2.51 Mr. Seo received his writ for active military service on 12 October 2006. He called the Military Manpower Administration, explaining his refusal to enrol for religious reasons. He was arrested, investigated and detained pending trial. At trial, he expressed his readiness

to perform alternative service. His request was rejected. On 18 January 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Chong-Bin Wee's case*

2.52 Mr. Wee received a draft notice of enrolment into the army on 10 April 2007. He notified the Military Manpower Administration of his status as a conscientious objector. He was arrested, interrogated and detained at the Suwon detention centre, pending trial. On 4 June 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Sang-Yong Oh's case*

2.53 Mr. Oh received a draft notice for active military service on 10 May 2006. He refused for religious reasons. On 27 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hyun Young's case*

2.54 Mr. Young was called-up for military service on 31 August 2006. He called the conscription office to inform them of his status as a conscientious objector. He was investigated and detained until he went to court. On 16 March 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jae-Sung Lee's case*

2.55 Mr. Lee received a draft notice for enrolment into the army on 21 August 2006. He refused for religious reasons. On 5 January 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Bum-Hyuk Huh's case*

2.56 Mr. Huh received a draft notice for active military service on 21 September 2006. He revealed his position to the Military Manpower Administration. He was investigated, arrested and detained until he went to trial. He expressed his readiness to perform alternative service. His request was rejected. On 19 January 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Gang-Il Kim's case*

2.57 Mr. Kim received a draft notice for military service on 13 June 2006. He refused to be enrolled for religious reasons. He was investigated upon, arrested and detained until he faced trial. He expressed his readiness to perform alternative service. His request was rejected. On 20 October 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years of imprisonment.

*Mr. Jong-Hoon Kim's case*

2.58 Mr. Kim received a draft notice for military service on 5 July 2006. He informed the conscription office about his status as conscientious objector. He was investigated, arrested and detained until he went to trial. He expressed his readiness to perform alternative service. His request was rejected. On 28 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hyun-Woo Jung's case*

2.59 Mr. Jung was called to perform military service on 22 March 2006. He refused for religious reasons. He was investigated, arrested and detained until he went to trial. He

expressed his readiness to perform alternative service. His request was rejected. On 11 July 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jun-Hee Ha's case*

2.60 Mr. Ha was called-up for military service on 2 August 2006. He objected to it for religious reasons. He was investigated, arrested and detained until he went to trial. He expressed his readiness to perform alternative service. His request was rejected. On 1 December 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Min-Gu Kang's case*

2.61 Mr. Kang received a draft notice of enlistment on 27 July 2006. He objected to it for religious reasons and informed about his religious convictions to the Military Manpower Administration. He was investigated, arrested and detained until he went to trial. He expressed his readiness to perform alternative service. His request was rejected. On 15 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Il-Gu Kang's case*

2.62 Mr. Kang received a draft notice of enlistment in the beginning of November 2006. He objected to it for religious reasons to the Gyeonggi Military Manpower Administration. At trial, he expressed his readiness to perform alternative service. His request was rejected. On 3 April 2007, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Sang-Hyun Gwak's case*

2.63 Mr. Gwak was called up to perform military service on 30 April 2006. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. His request was rejected. On 27 October 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Sun-Hong Choi's case*

2.64 Mr. Choi was called-up for military service on 31 March 2006. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. His request was rejected. On 19 July 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Chang-Hyo Lee's case*

2.65 Mr. Lee received a writ for active military service on 10 October 2006. He objected to it for religious reasons and called the Military Manpower Administration to inform them about his position. On 17 April 2007, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. Chan-Hee Kim's case*

2.66 Mr. Kim received a writ for active military service on 4 February 2006. He objected to it for religious reasons. He was investigated, arrested and detained until he went to trial. He expressed his readiness to perform alternative service. His request was rejected. On 20 July 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Joon-Suk Kang's case*

2.67 Mr. Kang received his enlistment notice on 23 August 2006. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. His request was rejected. On 22 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Sung-Hee Lee's case*

2.68 Mr. Lee received his notice for enlistment on 13 March 2006. He objected to it for religious reasons. On 13 July 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Gang-Min Lee's case*

2.69 Mr. Lee received his enrolment writ on 27 July 2006. He objected to it for religious reasons. On 23 November 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Seul-Yong Park's case*

2.70 Mr. Park received his writ for military service on 14 March 2006. He expressed his conscientious objection to the Military Manpower Administration. He said he would be ready to perform alternative service. On 10 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Du-Hyun Jeon's case*

2.71 Mr. Jeon was called-up for military service on 27 July 2006. He objected to it for religious reasons. On 8 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Chan-Wook Park's case*

2.72 Mr. Park received his writ to perform military service on 14 April 2004. As he refused to enrol for religious reasons, the Suwon District Court sentenced him on 30 August 2006 to one and a half years imprisonment.

*Mr. Seung-Ho Suk's case*

2.73 Mr. Suk received his writ for military service on 26 June 2006. He expressed his conscientious objection to the Military Manpower Administration. He was arrested and detained until he was tried. On 31 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hyun-Il Nam's case*

2.74 Mr. Nam received his draft notice for military service on 28 July 2006. He refused for religious reasons. On 17 November 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hyun-Soo Hong's case*

2.75 Mr. Hong received his writ for military service on 27 April 2006. He expressed his position as conscientious objector. He was arrested and detained until the trial started. On 18 October 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Woong-Hee Lee's case*

2.76 Mr. Lee received his writ for military service on 6 November 2006. He refused for religious reasons. On 25 April 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Nam-Hee Lee*

2.77 Mr. Lee received his writ for military service on 12 July 2006. He refused for religious reasons. On 18 January 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Young-Guk Ju's case*

2.78 Mr. Ju received his writ for military service on 22 July 2006. He refused for religious reasons. He was arrested and remained in detention until the trial. On 13 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jin-Young Kim's case*

2.79 Mr. Kim received his writ for military service on 25 May 2006. He refused for religious reasons. On 29 September 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hyuk Park's case*

2.80 Mr. Park received his writ for military service on 22 March 2006. He refused for religious reasons. He was arrested and detained pending the trial. He said he would be ready to perform alternative service. His request was rejected. On 29 August 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Myung-Jae Kim's case*

2.81 Mr. Kim received his writ for military service on 22 July 2006. He invoked his status as a conscientious objector. On 9 July 2007, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Yoon-Soo Kim's case*

2.82 Mr. Kim received his writ for military service on 5 April 2007. He refused for religious reasons. He was detained pending trial. He said he would be ready to perform alternative service. On 25 July 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Ji-Ho Yoon's case*

2.83 Mr. Yoon received his writ of enlistment for military service on 16 February 2007. He refused for religious reasons. He said he would be ready to perform alternative service. On 22 June 2007, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Jin-Hyung Park's case*

2.84 Mr. Park received his writ of enlistment for military service on 25 October 2006. He objected to it for religious reasons. On 13 April 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Hee-Hwan Park's case*

2.85 Mr. Park received his writ of enlistment for military service on 22 September 2006. He refused for religious reasons. He was detained pending trial. On 7 February 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Gi-Uk Lee's case*

2.86 Mr. Lee received his writ of enlistment for military service on 15 September 2006. He objected to it for religious reasons. On 15 February 2007, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Ki-Up Kim's case*

2.87 Mr. Kim received his writ of enlistment for military service on 23 August 2006. He objected to it for religious reasons. He provided all the necessary documents. He was arrested and detained pending trial. In Court, he expressed his readiness to perform alternative service. His request was rejected. On 21 February 2007, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Seng-Jae Ro's case*

2.88 Mr. Ro received his writ of enlistment for military service on 5 July 2006. He objected to it for religious reasons. He was interrogated and later released. On 10 November 2006, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. Bo-Hyun Kim's case*

2.89 Mr. Kim received his writ of enlistment for military service on 17 October 2006. He objected to it for religious reasons. He was detained pending trial. On 6 February 2007, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Seung-Jin Lee's case*

2.90 Mr. Lee received his writ of enlistment for military service on 14 December 2005. He objected to it for religious reasons. At trial he expressed his readiness to perform alternative service. On 10 August 2006, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. Hoe-Min Kim's case*

2.91 Mr. Kim received his writ of enlistment for military service on 23 December 2006. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. On 23 March 2007, the Changwon District Court sentenced him to one and a half years imprisonment.

*Mr. Suk-Jin Kwon's case*

2.92 Mr. Kwon received his writ of enlistment for military service on 12 May 2006. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. On 15 September 2006, the Daegu District Court sentenced him to one and a half years imprisonment.

*Mr. Do-Hee Han's case*

2.93 Mr. Han received his writ of enlistment for military service on 4 July 2006. He objected to it for religious reasons. He was arrested and detained pending trial. On 18

January 2007, the Daejeon District Court sentenced him to one and a half years imprisonment.

*Mr. Dae-Hee Bae's case*

2.94 Mr. Bae received his writ of enlistment for military service on 28 July 2006. He objected to it for religious reasons. He was detained pending trial. He expressed his readiness to perform alternative service. On 15 December 2006, the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Mu-Myoung Kang's case*

2.95 Mr. Kang received his writ of enlistment for military service on 10 May 2006. He objected to it for religious reasons and submitted all relevant documents to the Military Manpower Administration. He was detained pending trial. In Court, he expressed his readiness to perform alternative service. On 8 September 2006, the Incheon Bucheon District Court sentenced him to one and a half years imprisonment.

*Mr. Eun-Geol Cho's case*

2.96 Mr. Cho received his writ of enlistment for military service on 10 May 2006. He objected to it for religious reasons and submitted all relevant documents to the Military Manpower Administration. He was detained pending trial. On 5 September 2006, the Ansan Branch of the Suwon District Court sentenced him to one and a half years imprisonment.

*Mr. Woo-Young Park's case*

2.97 Mr. Park received his writ of enlistment for military service on 28 March 2006. He objected to it for religious reasons. He was detained pending trial. In Court, he expressed his readiness to perform alternative service. On 18 July 2006, the Busan District Court sentenced him to one and a half years imprisonment.

*Mr. Jong-Woo Jeong's case*

2.98 Mr. Jeong received his writ of enlistment for military service on 19 May 2006. He objected to it for religious reasons and submitted all relevant documents to the Military Manpower Administration. He was detained pending trial. On 25 August 2006, the Busan District Court sentenced him to one and a half years imprisonment.

*Mr. Chang-Win Park's case*

2.99 Mr. Park received his writ of enlistment for military service on 4 August 2006. He objected to it for religious reasons. On 22 January 2007, the Busan District Court sentenced him to one and a half years imprisonment.

*Mr. Myung-Woong Park's case*

2.100 Mr. Park received his writ of enlistment for military service on an unspecified date. He objected to it for religious reasons. At trial, he expressed his readiness to perform alternative service. On 31 October 2006, the Sooncheon Branch of the Gwangju District Court sentenced him to one and a half years imprisonment.

*Mr. Su-Heon Choi's case*

2.101 Mr. Choi received his writ of enlistment for military service in February 2007. He objected to it for religious reasons and submitted all relevant documents to the Military



Manpower Administration. On 11 July 2007, the Incheon District Court sentenced him to one and a half years imprisonment.

*Mr. Won-Kyung Lee's case*

2.102 Mr. Lee received his writ of enlistment for military service on an unspecified date. He objected to it for religious reasons. He submitted a written statement justifying his position. On 8 March 2007, the Daejeon District Court sentenced him to one and a half years imprisonment.

*Mr. Kwang-Yoo Kim's case*

2.103 Mr. Kim received his writ of enlistment for military service in the summer of 2006. He objected to it for religious reasons and submitted all relevant documents to the Military Manpower Administration. He was detained pending trial. In Court, he expressed his readiness to perform alternative service. On 20 December 2006, the Goyang Branch of Uijeongbu District Court sentenced him to one and a half years imprisonment.

### **The complaint**

3.1 The authors complain that the absence in the State party of an alternative to compulsory military service, under pain of criminal prosecution and imprisonment, breaches their rights under article 18, paragraph 1, of the Covenant.

3.2 The authors refer to the Committee's Views in Communication nos. 1321/2004 and 1322/2004, Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea, Views adopted by the Committee on 3 November 2006, in which the Committee found a violation of article 18, paragraph 1 of the Covenant, by the State party, on the basis of similar facts as those in the present communications and in which the State party was obliged to provide the authors with an effective remedy.

### **State party's observations on admissibility and merits**

4.1 By submission of 14 November 2008, the State party responds on the merits of the communications, referring to the Committee's Views in Yeo-Bum Yoon and Myung-Jin Choi<sup>3</sup> and requesting the Committee to reconsider this decision taking into account the security environment in the State party.

4.2 The State party focuses on certain aspects of the Committee's earlier decision. As to the Committee's argument therein that, "an increasing number of States parties to the Covenant, which have retained compulsory military service, have introduced alternatives to compulsory military service", the State party points out that the legal systems of Germany and Taiwan, countries which have introduced alternatives, are quite different from those of the State party. The State party remains divided since the end of the Second World War, whereas there has been no war in Germany since 1945 and reunification was achieved in 1990.

4.3 Taiwan never waged war against China following the establishment of the Taiwanese government in 1955. The Korean War was fought across the Korean peninsula and lasted for three years and one month from 25 June 1950 to July 1953, when a cease-fire agreement was finally signed. It left one million dead from the south and more than 10 million Koreans were separated from their families at the end of the war. The State party submits that its painful history of war constitutes one of the reasons why its government

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<sup>3</sup> Supra.

places such emphasis on national security as the most significant priority in its national policy agenda. From a legal perspective, the State party submits that a cease-fire agreement is still effective in the State party, which distinguishes it from other countries such as Taiwan. This agreement has not yet been superseded by a new legal framework such as a declaration ending the war or a peace agreement to ensure non-aggression and peace, despite the continued efforts to this end. In the State party's view, the security environment is not comparable to that of either Germany or Taiwan, as it is bordered with the Democratic People's Republic of Korea (DPRK) which spans 155 miles. There have been numerous clashes between North and South Korean vessels, which occurred on 15 June 1999 and 19 June 2002. Thus, this demonstrates that the outbreak of war remains a possibility even in the midst of a relatively reconciliatory environment between the two countries and reaffirms the State party's need to build military means for the reasons of defense.

4.4 As to the Committee's argument that the, "Republic of Korea has failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 were fully respected", the State party submits that conscientious objection or the introduction of an alternative service arrangement is closely linked to national security, which is the very prerequisite for national survival and the liberty of the people. It fears that alternative military service would jeopardize national security. It highlights that 70% of the Korean Peninsula is mountainous, making it all the more necessary to be equipped with enough ground forces to face guerrilla warfare. However, the number of soldiers in the State party remains at around 680,000, only 58% of that of the DPRK, which amounts to about 1,170,000, and between 2000 and 2005 there has been a significant decrease in the number of male soldiers between 15 and 25 years. This trend is expected to continue in the future and makes it even more difficult to accept cases of exception from conscription.

4.5 According to the State party, there have always been those who are intent on "evading" conscription due to the relatively challenging conditions often required in the military, or concern over the effect such an interruption will have on one's academic or professional career. Thus, it is even more necessary to maintain its current system of a no-exception policy in mandatory military service to ensure sufficient ground forces. It submits that if it were to accept claims of exemption from military service, in the absence of public consensus on the matter, it would be impeded from securing sufficient military manpower required for national security by weakening the public's trust in the fairness of the system, leading the public to question its necessity and legitimacy. In addition, any exceptions based on religious belief would have to apply to people of all religious faiths and, given that persons of religious faith account for a significant part of the military forces, concerns about the proliferation of requests for exemptions are not groundless. The situation would be further aggravated if the State party were to accept exemptions based on personal conscience alone rather than on a religious basis. Thus, for the State party, the recognition of conscientious objection and the introduction of alternative service arrangements should be preceded by a series of measures: stable and sufficient provisions of military manpower; equality between people of different religions as well as with those without; in-depth studies on clear and specific criteria for recognition of an exemption and consensus on the issue among the general public.

4.6 As to the Committee's argument that, "respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society", the State party is of the view that as a unique security environment prevails, fair and faithful implementation of mandatory military service is a determining factor to secure social cohesion. Respect for conscientious beliefs and its manifestations is not something that can be enforced through the implementation of a system alone. It is sustainable only if general agreement on this issue has been achieved among society. Public opinion polls conducted in July 2005 and in September 2006 show

that 72.3% and 60.5% respectively expressed opposition to the recognition of alternative service arrangements for conscientious objectors. In the State party's view, the introduction of such an arrangement at a premature stage within a relatively short period of time, without public consensus, would intensify social tensions rather than contribute to social cohesion.

4.7 The State party submits that it is a very difficult task to set up an alternative service system in practice, guaranteeing equality and fairness between those who perform mandatory military service and those who perform alternative service. The majority of the soldiers of the State party perform their duties under difficult conditions and some are involved in life-threatening situations. They face the risk of jeopardizing their lives while performing their duty of defending the country. Indeed, six people died and nineteen were wounded in the clash between the South and the North naval vessels near Yeonpyeong-do in the Yellow Sea on 19 June 2002. Thus, it is almost impossible to ensure equality of burden with those fulfilling military service and those performing alternative service. Assuming that this disparity will continue to exist, it is imperative to gain the understanding and support of the general public before introducing an alternative service system.

4.8 The State party regrets that upon its accession to the Optional Protocol to the Covenant on 10 April 1990, the Committee had not provided a clear position on whether conscientious objection fell within the ambit of article 18. It was only on 30 July 1993, in its General Comment 22, that the Committee announced its position that failure to recognize conscientious objection constituted a breach of this provision. It refers to the decisions of both its Supreme and Constitutional Courts to the effect that the failure to introduce a system at the present time cannot be interpreted as a breach of the Covenant, and that the requisite article of the Military Service Act punishing conscientious objectors is constitutional.

4.9 The State party informs the Committee of that fact that from April 2006 to April 2007, the Ministry of Defense set up a "Joint Committee between the public and private sectors to research the alternative service system". This Committee conducted research on the possibility of revising the Military Service Act and introducing an alternative service system including prospects for the future demand and supply of military personnel, the statements of those who refused military service, the opinions of experts in this field and relevant cases of foreign countries.<sup>4</sup> It is now conducting research with the aim of following the trend of public opinion from August to December 2008.

4.10 In addition, in September 2007, the State party announced its plan to introduce a system assigning social services to those who refuse conscription due to their religious beliefs once there is a "public consensus" on this issue. The State party informs the Committee that once there is such consensus, "as a result of the research on public opinion and positions of the relevant Ministries and institutions, then it will consider introducing an alternative service system". In conclusion, it requests the Committee to reconsider its previous view on this matter in light of the arguments presented herein.

#### **Authors' comments**

5.1 In their comments dated 23 February 2009, the authors challenge the State party's submission. They point out the identical nature of their claims to those of the authors in communications 1321-1322/2004, submitted by Mr. Yoon Yeo-bum and Mr. Choi Myung-jin<sup>5</sup>, in which the Committee expressed its view that the State party had violated article 18,

<sup>4</sup> The State party has not provided any indication of the results of this research.

<sup>5</sup> *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, communication no. 1321/2004 and 1322/2004, Views adopted by the Committee on 3 November 2006.

paragraph 1, of the Optional Protocol. The authors consider therefore that in the present case, their rights under article 18 have also been violated. The authors deplore the State party's failure to implement the national action plan for conscientious objection devised by the National Human Rights Commission, referred to in State party's submissions to both present communications as well as in previous ones<sup>6</sup>.

5.2 With respect to the State party's alleged necessity to preserve national security, which would be hampered by the recognition of the right of conscientious objection, the authors reply that States such as the United Kingdom, the Netherlands, Norway, Denmark and Russia adopted laws recognizing the rights of conscientious objectors during war time. There is no evidence that these laws weakened these States' national security. Another example is the State of Israel, which since 1948, has been involved in military confrontations that have resulted in a much higher number of casualties than those the Republic of Korea has experienced over the last fifty years. The State of Israel nevertheless exempts conscientious objectors from military service. The authors conclude that recognition of conscientious objection does not compromise a country's national security.

5.3 The authors further contend that the current number of conscientious objectors in the territory of the State party amounts to two percent of those enlisted for military service each year. The authors do not consider this number high enough to have any type of influence on the ability for the State party to defend itself. They further note that these conscientious objectors are not serving the army but serving time in prison, thus suggesting that the State party's refusal to recognize conscientious objectors and to allow alternative service has not contributed to improve or maintain its national security. As for the State party's fear that the recognition of the right to conscientious objection would lead to an increase of requests from Buddhists, Catholics, and others from the Christian faith, the authors reply that there is no record in any country which has implemented alternative civilian service for conscientious objectors, of a substantial increase coming from the ranks of Buddhists, Catholics and others from the Christian faith.

5.4 With regard to State party's argument of the alleged necessity to preserve social cohesion, the authors reply by quoting a United States Supreme Court ruling in 1943 where it has considered that fundamental freedoms do not depend on the outcome of elections<sup>7</sup>. The authors argue that public opinion cannot excuse a breach of the Covenant or of its own Constitution. In the present case, the State party opted to include in its Constitution the protection of fundamental rights including the right to freedom of conscience and freedom of religion. Thus, domestic law, which includes the Covenant, protects such rights. This law of the land therefore protects the authors' right to conscientious objection. These rights may not be subject to popular vote. The authors further contend that reliance on public polls can be misleading. The State party refers to two polls dated 2005 and 2006 where 73.3% and 60.5% respectively expressed opposition to the recognition of alternative service arrangements for conscientious objectors. Yet, on 18 September 2007, when the Ministry of Defence announced that it had decided to introduce alternative civilian service for conscientious objectors, it made reference to another poll which showed that 50.2% of the population consented to introducing an alternative form of national service. The authors quote two other polls showing the same tendency.

5.5 The authors conclude that such contradictions show that fundamental rights cannot be subject to election reasons and that the State party has chosen to protect these freedoms in its Constitution and the Covenant. As for the State party's argument that when it acceded

<sup>6</sup> Ibid, paragraph 6.5.

<sup>7</sup> US Supreme Court, *West Virginia State Board of Education et al. v. Barnette et al.*, 319 U.S. 624, 639 (1943).

to the Covenant, the Committee had not yet issued its General Comment No 22 broadening the scope of article 18 to the right to conscientious objection, the authors reply that subsequent to the State party's accession to the Covenant, it became a member of the then UN Human Rights Commission, which adopted resolutions on the rights of conscientious objectors in 1993, 1995, 1998, 2000, 2002 and 2004. The State party did not object to any of them. The authors therefore request the Committee to consider that article 18, paragraph 1 has been violated in their case.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes that the authors have not appealed against the judgement of the respective District Courts on the basis that any appeal would have been totally ineffective. The authors contend that the Supreme Court of Korea, on 15 July 2004, and the Constitutional Court of Korea on 26 August 2004, decided that conscientious objectors must serve in the army or face prison terms; and since the highest courts of Korea made a final decision on this issue, any further appeal would be totally ineffective. Taking into account the authors' arguments and in the absence of any objection by the State party, the Committee considers that the authors have exhausted domestic remedies, in accordance with article 5, paragraph 2 (b) of the Optional Protocol.

6.4 The Committee further considers that the authors have sufficiently substantiated their allegations and therefore declares the claims under article 18, paragraph 1, of the Covenant admissible and proceeds to their consideration on the merits.

#### *Consideration of the merits*

7.1 The Human Rights Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their rights under article 18, paragraph 1 of the Covenant have been violated, due to the absence in the State party of an alternative to compulsory military service, as a result of which their failure to perform military service led them to criminal prosecution and imprisonment. The Committee notes that in the present cases the State party reiterates arguments advanced in response to the earlier communications<sup>8</sup> before the Committee, notably on the issues of national security, equality between military and alternative service, and lack of a national consensus on the matter. The Committee considers that it has already examined these arguments in its earlier Views<sup>9</sup> and thus finds no reason to depart from its earlier position.

<sup>8</sup> *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, communication No. 1321/2004 and 1322/2004, Views adopted by the Committee on 3 November 2006; *Eu-min-Jung et al v. the Republic of Korea*, communications No. 1593-1603/2007, Views adopted by the Committee on 30 April 2010.

<sup>9</sup> *Ibid.*

7.3 The Committee recalls its General Comment No 22 where it has considered that the fundamental character of the freedoms enshrined in article 18, paragraph 1 is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4, paragraph 2 of the Covenant. Although the Covenant does not explicitly refer to a right of conscientious objection, the Committee believes that such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience. The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. 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.

7.4 In the present cases, the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs which, it is uncontested, were genuinely held and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1 of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts before the Committee reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Annex 1

| Case No.      | Complainant      | Case No.      | Complainant      |
|---------------|------------------|---------------|------------------|
| 1. 1642/2007  | JEONG, Min-Kyu   | 31. 1672/2007 | KANG, Doo-on     |
| 2. 1643/2007  | GU, Hui-sung     | 32. 1673/2007 | KANG, Sung-ryul  |
| 3. 1644/2007  | YEON, Jin-mo     | 33. 1674/2007 | KIM, Yong-dae    |
| 4. 1645/2007  | LEE, Il-joo      | 34. 1675/2007 | LEE, Seung-yob   |
| 5. 1646/2007  | JO, In-hwan      | 35. 1676/2007 | SEO, Jae-won     |
| 6. 1647/2007  | KIM, Jung-rak    | 36. 1677/2007 | CHOI, Woo-jin    |
| 7. 1648/2007  | KIM, Jong-wook   | 37. 1678/2007 | HWANG, Sung-jin  |
| 8. 1649/2007  | SHIN, Dong-hun   | 38. 1679/2007 | JEON, Sung-joong |
| 9. 1650/2007  | YOU, Ju-gwan     | 39. 1680/2007 | KIM, Dae-jin     |
| 10. 1651/2007 | JUNG, Jae-hyung  | 40. 1681/2007 | KIM, Eun-woo     |
| 11. 1652/2007 | HEO, Uok         | 41. 1682/2007 | LIM, Ji-hoon     |
| 12. 1653/2007 | PARK, Jong-kpeun | 42. 1683/2007 | LEE, Sung-ho     |
| 13. 1654/2007 | BAEK, Un-hyun    | 43. 1684/2007 | SHIN, Dae-jun    |
| 14. 1655/2007 | LIM, Jung-rok    | 44. 1685/2007 | PARK, She-woong  |
| 15. 1656/2007 | SHIN, Myung-ki   | 45. 1686/2007 | KWAN, Jin-moo    |
| 16. 1657/2007 | CHA, Jae-ha      | 46. 1687/2007 | KIM, Ki-joon     |
| 17. 1658/2007 | PARK, Ju-hyun    | 47. 1688/2007 | LEE, Young-ki    |
| 18. 1659/2007 | KIM, Tae-eung    | 48. 1689/2007 | SEO, Kang-hyeok  |
| 19. 1660/2007 | SEO, San         | 49. 1690/2007 | WEE, Chong-bin   |
| 20. 1661/2007 | CHO, Ho          | 50. 1691/2007 | Oh, Sang-yong    |
| 21. 1662/2007 | KIM, Jung-hoon   | 51. 1692/2007 | YOUNG, Jo-hyun   |
| 22. 1663/2007 | LEE, Jae-hun     | 52. 1693/2007 | LEE, Jae-sung    |
| 23. 1664/2007 | YOON, Hangle     | 53. 1694/2007 | HUH, Bum-hyuk    |
| 24. 1665/2007 | JUNG, Hwan-ho    | 54. 1695/2007 | KIM, Gang-II     |
| 25. 1666/2007 | KIM, Do-hyun     | 55. 1696/2007 | KIM, Jong-Hoon   |
| 26. 1667/2007 | KIM, Gang-wook   | 56. 1697/2007 | JUNG, Hyun-woo   |
| 27. 1668/2007 | KIM, Hun         | 57. 1698/2007 | HA, Jun-hee      |
| 28. 1669/2007 | LEE, Young-won   | 58. 1699/2007 | KANG, Min-gu     |
| 29. 1670/2007 | MOON, Tae-soo    | 59. 1700/2007 | KANG, Il-gu      |
| 30. 1671/2007 | JUNG, Ji-hyun    | 60. 1701/2007 | GWAK, Sang-hyun  |

|     | Case No.  | Complainant     |
|-----|-----------|-----------------|
| 61. | 1702/2007 | CHOI, Sun-hong  |
| 62. | 1703/2007 | LEE, Chang-hyo  |
| 63. | 1704/2007 | KIM, Chan-hee   |
| 64. | 1705/2007 | KANG, Joon-suk  |
| 65. | 1706/2007 | LEE, Sung-hee   |
| 66. | 1707/2007 | LEE, Gang-min   |
| 67. | 1708/2007 | PARK, Seul-yong |
| 68. | 1709/2007 | JEON, Du-hyun   |
| 69. | 1710/2007 | PARK, Chan-wook |
| 70. | 1711/2007 | SUK, Seung-ho   |
| 71. | 1712/2007 | NAM, Hyun-II    |
| 72. | 1713/2007 | HONG, Hyun-soo  |
| 73. | 1714/2007 | LEE, Woong-hee  |
| 74. | 1715/2007 | LEE, Nam-hee    |
| 75. | 1716/2007 | JU, Young-guk   |
| 76. | 1717/2007 | KIM, Jin-young  |
| 77. | 1718/2007 | PARK, Hyuk      |
| 78. | 1719/2007 | KIM, Myung-jae  |
| 79. | 1720/2007 | KIM, Yoon-soo   |
| 80. | 1721/2007 | YOON, Ji-ho     |

|      | Case No.  | Complainant       |
|------|-----------|-------------------|
| 81.  | 1722/2007 | PARK, Jin-hyung   |
| 82.  | 1723/2007 | PARK, Hee-hwan    |
| 83.  | 1724/2007 | LEE, Gi-uk        |
| 84.  | 1725/2007 | KIM, Ki-up        |
| 85.  | 1726/2007 | RO, Seng-jae      |
| 86.  | 1727/2007 | KIM, Bo-hyun      |
| 87.  | 1728/2007 | LEE, Seung-jin    |
| 88.  | 1729/2007 | KIM, Hoe-min      |
| 89.  | 1730/2007 | KWON, Suk-jin     |
| 90.  | 1731/2007 | HAN, Do-hee       |
| 91.  | 1732/2007 | BAE, Dae-hee      |
| 92.  | 1733/2007 | KANG, Mu-myung    |
| 93.  | 1734/2007 | CHO, Eun-geol     |
| 94.  | 1735/2007 | PARK, Woo-young   |
| 95.  | 1736/2007 | JEONG, Jong-woo   |
| 96.  | 1737/2007 | PARK, Chang-win   |
| 97.  | 1738/2007 | PARK, Myung-woong |
| 98.  | 1739/2007 | CHOI, Su-heon     |
| 99.  | 1740/2007 | LEE, Won-kyung    |
| 100. | 1741/2007 | KIM, Kwang-yoo    |



## Appendix

### **Individual opinion by Committee members Mr. Yuji Iwasawa, Mr. Gerald L. Neuman, and Mr. Michael O'Flaherty (concurring)**

We concur with the majority of the Committee in finding that the facts before the Committee reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1 of the Covenant, in line with its previous jurisprudence in similar cases against the State party. In this case, however, the majority of the Committee adopted reasoning different from the one it used in its previous jurisprudence. We believe that the Committee should use the same reasoning it used before. Accordingly, paragraphs 7.2 to 7.4 of the Views of the Committee should be replaced by the following paragraphs:

7.2 The Committee notes the authors' claim that their rights under article 18, paragraph 1 of the Covenant have been violated, due to the absence in the State party of an alternative to compulsory military service, as result of which their failure to perform military service resulted in their criminal prosecution and imprisonment. The Committee recalls its previous jurisprudence, in similar cases against the State party, that the authors' conviction and sentence amounted to a restriction on their ability to manifest their religion or belief and that, in those cases, the State party had not demonstrated that the restriction in question was necessary, within the meaning of article 18, paragraph 3.<sup>1</sup>

7.3 The Committee notes that in the present cases the State party reiterates arguments advanced in response to the earlier communications<sup>2</sup> before the Committee, notably on the issues of national security, equality between military and alternative service, and lack of a national consensus on the matter. The Committee considers that it has already examined these arguments in its earlier Views<sup>3</sup> and thus finds no reason to depart from its earlier position.

7.4 The Committee notes that the authors' refusal to be drafted for compulsory military service was a direct expression of their religious beliefs which, it is uncontested, were genuinely held and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief. The Committee finds 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.

[Signed]: Yuji Iwasawa

[Signed]: Gerald L. Neuman

[Signed]: Michael O'Flaherty

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

<sup>1</sup> *Yeo-Bun Yoon and Myung-Jin Choi v. The Republic of Korea*, communication No. 1321/2004 and 1322/2004, Views adopted by the Committee on 3 November 2006; *Eu-Min Jung et al. v. The Republic of Korea*, communication No. 1593-1603/2010, Views adopted by the Committee on 23 March 2010.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*