

# SOUTH KOREA

South Korea is a presidential representative democratic republic with separation between the legislative, executive, and judiciary powers. According to the last census from July 2015, the South Korean population is estimated at 49,115,196 people.

In regards to religions, South Korea is a country composed of a variety of beliefs. The major denominations are Christianity 31.6% (Protestant 24.0%, Catholic 7.6%), Buddhism 24.2%, other or unknown 0.9%, and a large part, 43.3%, of the population considers itself without any religious affiliation, according to the last estimate from 2010. The remaining 0.9% of the population can be included in other religious groups including Won Buddhism, Confucianism, Jeongsando, Cheondogyo, Daejonggyo, Jehovah's Witnesses, the Church of Jesus Christ of Latter-Day Saints (Mormons), Seventh-Day Adventist Church, Daesun Jinrihoe, the Unification Church, and Islam. There is also a small Jewish population consisting almost entirely of expatriates.<sup>1</sup>

South Korea's current territorial aspect is a division resulting from World War Two. Until its defeat, Japan had ruled the Korean peninsula since its annexation in 1910. Following the war, the United States and the Soviet Union divided the territory in two parts; a solution not intended to last. However, the Cold War created a schism between the two superpowers, and two opposing governments were established. It is very often said that the Korean Peninsula represents the Cold War ideological difference. From this moment, the peninsula was divided between North and South Korea.<sup>2</sup>

War broke out once again in 1950 when the North invaded the South. A lengthy ceasefire was only established in 1953 with an armistice creating the Korean Demilitarized Zone. Since then, tensions between the two countries have remained stable but tenuous, with some rising tensions from time to time.<sup>3</sup>

Jehovah's Witnesses are the main victims of this situation. From the Korean War period to the present, South Korea has relentlessly prosecuted young Witness men who refuse military service, and the government has not provided any alternative to resolve the issue. The result? South Korea has sentenced over 18,700 Witnesses to a combined total of more than 35,800 years in prison for refusing to perform military service in the last sixty years.

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<sup>1</sup> Central Intelligence Agency. 'World Factbook: South Korea'.

<sup>2</sup> Bureau of East Asian and Pacific Affairs. 'U.S. Relations With South Korea'. *U.S. Department of State*.

<sup>3</sup> Ibid.

## **Improved Prison Conditions**

In the past, imprisoned Witnesses endured harsh conditions and long prison sentences, but more recently conditions have improved and sentences have been reduced. Prison authorities allow most Witnesses to hold religious meetings in prison. Additionally, more than seventy percent of Witness inmates are separated from the general prison population and placed in cells with fellow Witnesses.

## **The International View of the Right to Conscientious Objection**

The UN Human Rights Committee (CCPR), which reviews the implementation of the International Covenant on Civil and Political Rights (ICCPR), has consistently ruled that South Korea is violating the rights of conscientious objectors by convicting and imprisoning them. Most recently, on 14<sup>th</sup> January 2015, the CCPR released its fifth decision against South Korea on this issue. The decision, involving fifty Witnesses who had been imprisoned, repeated its earlier rulings that South Korea violated their right to ‘freedom of thought, conscience and religion.’ It also concluded that the government was guilty of ‘arbitrary detention’ by punishing the men with imprisonment for exercising a right guaranteed by the ICCPR.

After reviewing South Korea’s human rights record, the CCPR released concluding observations on 3<sup>rd</sup> November 2015. The CCPR urged the government to release all conscientious objectors, expunge their criminal record and provide adequate compensation, and adopt legislation providing for alternative civilian service. It stated that the government ‘should also fully implement the Views the [CCPR] has issued so far.’

## **South Korea’s Constitutional Court Again Considers the Issue**

There is increasing domestic pressure on the government to adopt legislation providing for an acceptable alternative service program for conscientious objectors. Some district courts have referred cases to the Constitutional Court, and on 9<sup>th</sup> July 2015, that Court held a hearing to examine whether the government’s refusal to recognize the right of conscientious objection is constitutional. The Court has twice ruled, in 2004 and 2011, that the Military Service Act’s lack of recognition of the right to conscientious objection does not violate the constitution. The decision is pending.

## **Jehovah's Witnesses in Prison**

Technically, South Korea is still at war with the North, despite the sixty-three-year-long ceasefire.<sup>4</sup> As such they maintain a system of mandatory military service for the sake of national defense and maintenance of the demilitarised zone along the northern border. Conscientious objection to military service is punishable by a prison term. There is no alternative civilian service.

As of April 2016, 537 young Jehovah's Witnesses<sup>5</sup> were serving eighteen-month prison terms for conscientious objection to military service, and as of 31<sup>st</sup> December 2016, there were 395 of them. A number of them were released at the end of their term while others were called up and refused to carry out their military service.<sup>6</sup>

The full list of documented cases of FoRB prisoners for each denomination is available on the USB key attached to this report and on our website: <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/>

## **Laws Used to Criminalize Religious Activities**

### **Constitution of the Republic of Korea, 1948 (amended 1987):<sup>7</sup>**

(Article 39)

- (1) All citizens shall have the duty of national defense under the conditions as prescribed by statute.

### **Military Service Act, 1993:<sup>8</sup>**

(Article 88)

- (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.

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<sup>4</sup> BBC. 'The Korean War armistice'.

<sup>5</sup> See full list of prisoners here <http://www.jw.org/en/news/legal/by-region/south-korea/jehovahs-witnesses-in-prison/>

<sup>6</sup> JW.org. 'South Korea: Imprisoned for Their Faith'.

<sup>7</sup> Government of the Republic of Korea. 'Constitution of the Republic of Korea: July 12, 1948 (as Amended to October 29, 1987)'.

<sup>8</sup> Government of the Republic of Korea. 'Military Service Act, (Act No. 4685 of 1993)'.

Article 20 of the Constitution of the Republic of Korea and other laws and policies generally protect religious freedom in the country.<sup>9</sup> Nevertheless, the only restriction to freedom of religion is the obligation to perform military service. According to Article 39 of the South Korean constitution, military service or national service is mandatory for all male citizens. The refusal to take part in military service has for result a prison sentence, as stipulated under Article 88 of the Military Service Act.

The Korean government does not consider religious considerations to be sufficient justification for derogation from this obligation, because its position is that, due to the war with the North, the argument of religious freedom in this case is not sufficient to override national security concerns.

### **National Standards for Detention Conditions**

#### **Constitution of the Republic of Korea, 1948 (amended 1987):<sup>10</sup>**

(Article 12)

(2) No citizens shall be tortured or be compelled to testify against himself in criminal cases.

(7) In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession.

In addition to these constitutional prohibitions on torture or ill-treatment, the Republic of Korea gave its accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995.<sup>11</sup>

### **International Reports on Prison Conditions in South Korea**

#### **UN Periodic Reports Summary on UNCAT Issues (advance unedited version), 2016:<sup>12</sup>**

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<sup>9</sup> Government of the Republic of Korea. 'Constitution of the Republic of Korea: July 12, 1948 (as Amended to October 29, 1987)'.

<sup>10</sup> Ibid.

<sup>11</sup> United Nations Treaty Collection. 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.

<sup>12</sup> UN Committee against Torture. 'Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure; Combined third to fifth periodic reports of States parties due in 2012: Korea'.

(Paragraph 122)

The Human Rights Bureau of the MOJ inspects detention or protective facilities including substitute cells every year (once every three years for each facility) in order to check their conformity with domestic laws and subordinate statutes as well as international minimum standards in terms of their facilities and operation. Investigation teams visit the facilities, conduct first-hand checkups, and survey and interview inmates, after which the Bureau makes recommendations to improve human rights conditions. The Bureau made a total of 372 inspections between June 2006 and December 2015 (see table 22).

(Paragraph 136)

The five police officers of Yang-cheon police station, who were accused of torture, etc., by the NHRCK to the prosecutors' office, were prosecuted on 9 July 2010. Four were prosecuted under Article 4-2 of the *Act on the Aggravated Punishment, etc. of Specific Crimes* and Article 125 of the *Criminal Act*, and one was prosecuted under Article 125 of the *Criminal Act*. The court convicted the five police officers on 18 June 2011: one was sentenced to imprisonment for three years, three were sentenced to imprisonment for one year each, and one was sentenced to imprisonment for eight months with suspension of execution for two years taking into account the level of involvement and gravity of violence. All were dismissed from public office.

As can be seen, Korea has had cases of torture and ill-treatment of prisoners; however mechanisms to enforce against such cases are working. The same report mentions mechanisms against specific problematic kinds of detention (Paragraph 112), punishments for cases of rape or other forms of sexual violence in prison (Paragraph 115-116), and the handling of cases of torture and ill-treatment (Paragraph 123).<sup>13</sup> These mechanisms have succeeded in improving prison conditions. Prisoners of conscience, despite the religious motivation for their sentences, are allowed to hold religious services and practice freely within the prisons.

## Conclusions

Since the 1953 armistice that created a demilitarized zone at the 38th parallel, South Korea has been extremely vigilant regarding its national security. Mandatory military service is part of that regime of national vigilance. At the same time, in the absence of an option for alternative

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<sup>13</sup> Ibid.

unarmed service, hundreds of Jehovah's Witnesses serve prison terms every year and have a criminal record.

The South Korean government would do well to abide by the decisions of the UN Human Rights Committee and fulfill the recommendations of the last session of the Universal Periodic Review: the introduction of a civilian service.