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Imprisonment of JW conscientious objectors is arbitrary detention, according to the UN

Over 19,000 objectors sentenced to 36,300 years in prison in the last 60 years

By Willy Fautré, *Human Rights Without Frontiers**

HRWF (10.04.2017) - On 27 March 2017, attorney at law Chang Hwa Lee submitted individual complaints to the UN Working Group on Arbitrary Detention on behalf of 53 conscientious objectors to military service who are now serving an 18-month sentence.¹ The average age of the applicants is only 23, most of them living with their families at the time of their detention. Of the 53 applicants, 37 received only one oral hearing and their court proceedings were closed at the trial court, while seven were able to appeal to the appellate court and nine to the Supreme Court.

Furthermore, 23 of the applicants have had at least one family member imprisoned. For example, Mr. LEE, Gwan-yong has a father and two older brothers who have criminal records for their past conscientious objection to military service. Another example is the Jang brothers: Mr. JANG, Tae-yeong and Mr. TANG, Jae-yeong. They were detained in the same prison, Seoul Detention Center, on 27 June and 30 August 2016, respectively.

The same arbitrary and uniform sentences have been handed down for the past 60 years for conscientious objectors. **More than 19,000 have been imprisoned and the years of accumulated confinement amount to more than 36,300².**

The Working Group has repeatedly emphasized that the right to conscientious objection to military service is protected by the International Covenant on Civil and Political Rights

¹ Attorney at law Dujin Oh submitted individual complaints to the Working Group on Arbitrary Detention

on behalf of 600 conscientious objectors to military service on 8 July 2015

on behalf of 50 conscientious objectors to military service on 21 April 2016

on behalf of 71 conscientious objectors to military service on 22 July 2016.

² <https://www.jw.org/en/news/legal/by-region/south-korea/jehovahs-witnesses-in-prison/>

(ICCPR)³. The UN Human Rights Committee (CCPR) has delivered the same conclusion that the right to conscientious objection is protected by article 18, paragraph 1 of the ICCPR, and repeatedly directed the Republic of Korea to stop prosecuting conscientious objectors to military service⁴.

The CCPR further emphasized in the *Min-Kyu Jeong et al. v. The Republic of Korea* case⁵, stating that **the right to conscientious objection is an inherent right within the right to freedom of conscience in Article 18 on the ICCPR.**

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. (para.7.3.)

The CCPR also concluded in the *Kim, Young-kwan et al. v. The Republic of Korea* case⁶ that imprisoning conscientious objectors for refusing military service constitutes arbitrary detention under Article 9 of the ICCPR. Furthermore, the CCPR stated in its General Comment No 35 that imprisonment for the legitimate exercise of the rights as guaranteed by the ICCPR constitutes arbitrary detention⁷:

Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). (para. 17)

(*) The information contained in this article was provided by lawyers of Jehovah's Witnesses during a private meeting in Seoul on 27 March 2017

³ Working Group on Arbitrary Detention Opinion Nos 36/1999 (Turkey), 24/2003 (Israel) and 16/2008 (Turkey).

⁴ Communications Nos 1321/2004 and 1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi v. The Republic of Korea* (2006); Communication No 1642-1741/2007, *Min-Kyu Jeong et al. v. The Republic of Korea* (2011); Communication No 1786/2008, *Jong-nam Kim et al. v. The Republic of Korea* (2012); Communications Nos 1853/2008, 1854/2008, *Cenk Atasoy and Arda Sarkut v. Turkey* (2012); Communication No 2179/2012, *Kim, Young-kwan et al. v. The Republic of Korea* (2014); Communication No 2218/2012, *Zafar Abdullayev v. Turkmenistan* (2015).

⁵ Communication No 1642-1741/2007, *Min-Kyu Jeong et al. v. The Republic of Korea* (2011). Views adopted on 24 March 2011, para. 7.3.

⁶ Communication No 2179/2012, *Kim, Young-kwan et al. v. The Republic of Korea*. Views adopted on 15 October 2014, para. 7.5.

⁷ The Human Rights Committee, General Comment No 35, Article 9 (CCPR/C/CG/35), adopted on its 112th session (7-31 October 2014).

South Korea's unjust treatment of Dong-hyuk Shin

The government of South Korea imprisons hundreds of conscientious objectors to military service. It also subjects to punishing treatment the men who become conscientious objectors while enlisted in the reserve forces.

JW.ORG (07.03.2017) - <http://bit.ly/2nr7yPs> - As a young boy in South Korea, Dong-hyuk Shin knew that one day he would be called up to join the military. He reported for duty when he received his summons, and he completed his military service with an honorable discharge in 2005. He was then automatically enlisted in the reserve forces, subject to regular summonses for military training over the next eight years.

Soon after his discharge, Mr. Shin took up a study of the Bible. Its message of peace touched his conscience and moved him to object to military service. When summoned for reserve forces training in March 2006, he informed military officials that he could not accept the training because it violated his conscience.

No Freedom for the Exercise of Conscience

South Korea does not recognize the right to conscientious objection to military service. It currently issues summonses for reserve forces training to more than 40 of Jehovah's Witnesses who have declared themselves to be conscientious objectors.

The military ignored Mr. Shin's objection to reserve forces military training and issued to him a total of 30 summonses for the 2006 calendar year. Mr. Shin continued to receive summonses for the next seven years. In total, from March 2006 through December 2013, he was summoned 118 times for reservist training. * Because Mr. Shin respectfully declined to report each time, he was prosecuted and convicted 49 times, appeared in trial and appeal courts 69 times, and received a total of 35 court verdicts.

"No Other Option"

The courts did not doubt that Mr. Shin's adherence to his conscience was genuine. In a decision dated October 7, 2014, the Ulsan District Court stated: "It is understandable that [Dong-hyuk Shin], upon becoming one of Jehovah's Witnesses, had no other option but to commit the offense in the instant case, as he found it impossible to resolve the tension between the military duty and his inner conscience and religious conviction."

Although the district court showed insight into Mr. Shin's predicament, South Korea's courts are constrained by the requirements of the military service law. Mr. Shin has been fined by the courts more than 16 million won (\$13,322 U.S.) and six times sentenced to prison terms of at least six months, which were substituted with conditional sentences. In one case, a court ordered him to perform 200 hours of community service.

Mr. Shin said: "I was severely distressed and anxious. It seemed as if this test would never end. My frequent court appearances also caused distress to my family. I think my mother suffered as much as I did during those nine years, and the anxiety had a detrimental effect on her health. Knowing how distressed she was because of my situation, I felt heartbroken. And I also suffered economically. The cycle of call-ups and resulting prosecutions and convictions forced me to change my employment seven times because the obligation to attend court hearings multiplied my absences from work."

Violation of International Covenant Guarantees

Mr. Shin appealed all of his convictions to the courts in South Korea, but he found no relief—the Supreme Court rejected his appeals four times. Having no legal remedy within

South Korea, Mr. Shin filed a complaint with the UN Human Rights Committee (Committee) in June 2016. He claimed that by subjecting him to repeated call-ups, prosecutions, and convictions, South Korea violated its obligation to respect the International Covenant on Civil and Political Rights. The complaint focused on three issues:

- The situation in which conscientious objectors are repeatedly called up for military service and then punished again and again is explicitly recognized in international law as a violation of the right to fair trial.
- The many call-ups for military training and the subsequent criminal prosecutions confirm the obvious aim of State authorities to coerce military service. The hounding prosecutions dominated Mr. Shin's life, and the demeaning and criminalizing of his exercise of religious conscience was a degrading punishment.
- Because Mr. Shin's objections to military service are solidly based on his religious convictions, he complained that his right to freedom of conscience and religion was violated.

Hoped-For Relief

Mr. Shin is optimistic that his complaint will be favorably heard because the Committee has repeatedly ruled that South Korea should respect the right of conscientious objection to military service. ^{*} He looks forward to a decision that recognizes the special situation of military reservists. Mr. Shin reflected: "I do not regret standing up for religious principles and my conscience, but I do object to the way I have been treated. It is my hope that the government of South Korea will recognize a man's right to refuse national service that conflicts with his conscience." Jehovah's Witnesses in South Korea and worldwide share the same sentiments.

"Repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience."— Human Rights Committee, *Views, Zafar Abdullayev v. Turkmenistan*, Communication No. 2218/2012, U.N. Doc. CCPR/C/113/D/2218/2012 (March 25, 2015).

China expels 32 South Korea missionaries amid missile defense tension

Reuters (11.02.2017) - <http://reut.rs/2kQWkz6> - China has expelled 32 South Korean Christian missionaries, a Korean government official said on Saturday, amid diplomatic tension between the two countries over the planned deployment of a U.S. missile defense system in the South.

The 32 were based in China's northeastern Yanji region near the border with North Korea, many of whom had worked there more than a decade, South Korean media have reported.

South Korea's foreign ministry said on Friday it briefed Christian groups on the case of the missionaries, adding that they were expelled in January.

The ministry advised the groups on the importance of complying with the laws and customs of the areas where they work, it said.

On Saturday, a South Korean missionary in Seoul who insisted on anonymity told Reuters that four people, including a Korean missionary and a Korean-American pastor, were apprehended by Chinese police in a Yanji hotel on Feb. 9.

The South Korean official who talked about the 32 expulsions confirmed that one Korean man, whom he did not identify, had been arrested in China for possible immigration violations.

"We will provide consular services for him as needed," the official said, without giving details.

The official did not comment on whether three other people had been detained.

RETALIATION?

In South Korea, China is widely believed to be retaliating against Seoul's plan to host the Terminal High Altitude Area Defence (THAAD) system of the U.S. military, against the threat of the missile attack from North Korea.

But there was no indication of a direct link between the expulsions and tension over THAAD, said the official.

"There was no official explanation from China," he said. "There is no confirmation that it is related to THAAD."

China's Communist Party says it protects freedom of religion, but keeps a tight rein on religious activities and allows only officially recognized religious institutions.

The number of Korean missionaries working in China might top 1,000, South Korean media say. Most are in the northeast, and many help defectors flee North Korea and travel to third countries, including the South.

THAAD's radar is capable of penetrating Chinese territory. Beijing has objected to the planned deployment, saying it will destabilize the regional balance of security, threaten China's security and do nothing to ease tension on the Korean peninsula.

Many South Koreans believe Beijing is retaliating against THAAD, with measures against some companies and cancellations of performances by Korean artists.

On Wednesday, South Korea's Lotte Group said Chinese authorities had halted construction at a multi-billion dollar real estate project after a fire inspection.

(Reporting by Jack Kim and Ju-min Park; Editing by Richard Borsuk)

Five Chinese religious refugees denied political asylum and threatened with deportation back to China

Open letter to the South Korean authorities

HRWF (08.02.2017) - *Human Rights Without Frontiers* (Brussels) is asking the South Korean authorities to urgently grant political asylum to five Chinese citizens who have been persecuted because of their religious beliefs in China:

Cao Yi
Wang Jingjing

Wang Tingting
Xia Yaowen
Wang Dongqing

They have recently been ordered by the Seoul Southern Immigration Office to sign their Departure Order(출국명령서). Here is their story:

In July 2013, **Cao Yi (Spiritual name: Sister Ming Liang)** applied to the South Korean Immigration Office for refugee status, but the immigration office denied her request, and decided to not recognize her refugee status (난민불인정결정취소). Disagreeing with their refusal, she lodged an appeal to the South Korean Ministry of Justice, hoping to be granted a permit of stay for humanitarian reasons, a request which was also rejected. Soon afterwards, she appealed yet again to the court and for a third time, her request was turned down, which means that she could neither be granted refugee status nor remain in South Korea legally. As a result, she may be deported back to China. The Chinese police had planned to arrest her in July 2013 but did not manage to execute the arrest for she had fled to South Korea before the police arrived at her home.

Chinese police will surely arrest and persecute her if she is sent back to China. Her Alien Registration Card expires on 9 February 2017, in the mean time she planned to seek legal help and advice to avoid being deported. Unexpectedly, on 25 November 2016, the Seoul Southern Immigration Office withdrew her Alien Registration Card and urged her to sign the Departure Order, which forces her to leave South Korea within thirty days. When she applied to the South Korean Ministry of Justice for the second time, her case was heard and she was issued the Receipt of Refugee Status Application on 16 December 2016. However, the South Korean Immigration Office failed to grant her G-1 visa and failed to extend the normal permit of stay as according to the Refugee Act. A clerk wrote on her Departure Order with his handwritten signature reading "Pending Deportation (출국기한유예기간) 2017.3.23"

Her Departure Order expires on 23 March 2017. As claimed by the immigration office, she can still apply to the immigration office to extend her Departure Order on the afternoon of the 21st or 22nd March. If she is turned down, she will have to leave South Korea immediately, which divests her of her time and rights to seek legal remedy.

Wang Jingjing (Spiritual name: Sister Xi Yue) fled to South Korea and applied to the immigration office for her refugee status in August 2014. On 9 January 2015, she received the notice of non-recognition of refugee status from South Korean Immigration Office. She lodged an appeal to the Ministry of Justice and applied to the Commission on Legal Empowerment for an administrative trial. On 25 February 2016, she received a notice of rejection decision from the Ministry of Justice. On 10 May 2016, the Commission on Legal Empowerment refused her request for the administrative trial, stating in the notice that she can lodge an appeal to the court within 90 days from the date when she was notified. On 3 August 2016, she lodged an appeal to the court, requesting that the South Korean Immigration Office withdraws the decision of non-recognition of refugee status. On 25 August 2016, the court scheduled the hearing on her case. The court judged that her appeal had exceeded the given period of 90 days from the date of notification, and rejected her appeal according to "the applicant can lodge an appeal to the court within 90 days from the date when she was notified of being rejected". The

court failed to proceed her case as a real-entity one but regardless went through the procedure of the hearing outwardly. Xi Yue clarified that she had effectively lodged an appeal before 7 August 2016, according to the notification of the decision of administrative trial, and that therefore it did not exceed the required submission period. The judge then replied that, according to the South Korean law, the applicant could make a choice between lodging a disagreement and applying for an administrative trial after receiving the notification of a decision of non-recognition of refugee status. This was the first time Xi Yue heard that these two options were mutually exclusive options. Being a foreigner, she does not speak Korean. She had no knowledge of any Korean laws, and could not conduct conversations with Korean people, making it impossible to seek legal help during this time. The Immigration Office, the Ministry of Justice, and the court all failed to perform their obligation to inform the refugee status applicants of the proper procedures.

After facing such difficulties, 24-year-old Xi Yue feels sad and helpless. Her Alien Registration Card was due to expire on 28 February 2017, but the South Korean Immigration Office withdrew the card on 25 November 2016, forcing her to sign the Departure Order, ordering her to leave South Korea within thirty days. On 13 December 2016, she applied for refugee status for a second time with the South Korean Ministry of Justice. Like Ming Liang's experience, the immigration office failed to issue Xi Yue's Alien Registration Card and to extend her regular permit of stay. They signed "Pending Deportation 2017.3.23" on her Departure Order in handwriting. Xi Yue has one final chance to apply for an extension on her Departure Order from the immigration office, which must be done on the afternoon of 21 or 22 March. If her application is denied, she will have to leave South Korea immediately.

In August 2014, **Wang Tingting** and **Xia Yaowen (Spiritual names: Chun Zhen and Gao Ge)** fled to South Korea to seek asylum. They were followed by **Wang Dongqing (Spiritual name: Jiao Tuo)** in November 2014. After their applications for refugee status were overruled, they lodged disagreements against the rejection decision to the Ministry of Justice, and applied to the Commission on Legal Empowerment for the administrative trial. These appeal applications were once again overruled and the Commission on Legal Empowerment refused their requests for an administrative trial. Like Xi Yue's experience, when the three siblings lodged appeals to the court, they did not know that their appeals were not within the required period of 90 days against the rejection decision. They thought it was effective as long as they lodged their appeals for the administrative trial within required 90 days.

Human Rights Without Frontiers asks the South Korean authorities to grant these individuals political asylum if they have not committed criminal activities and to examine the cases of other Chinese citizens who are in the same situation in South Korea.

Best regards,

Human Rights Without Frontiers

“Best Court Decision of the Year”

JW.org (25.01.2017) - <http://bit.ly/2kQFk0H> - The three young men, Hye-min Kim, Lak-hoon Cho, and Hyeong-geun Kim, walked free from the appeal court, grateful that they had not been sentenced to a prison term. It was a surprising result because their cases concerned conscientious objection to military service, a stand that brings imprisonment to hundreds of men in South Korea each year. Since this long-unresolved issue had also put their fathers and over 19,000 others in prison before them, the three men had expected the same punishment. The historic “not guilty” decision of the Gwangju Appellate Court has laid the groundwork for a positive shift in perspective on this issue.

Appellate Court Renders “Best Court Decision of the Year”

At least 200 news outlets reported on the case, emphasizing not only the consequence of this first not-guilty decision by an appellate court but also the growing interest in the issue generally. One newspaper labeled it the “best court decision of the year” and another identified it in the top five court decisions of 2016 in South Korea.

The appellate court’s decision reflects the changing perspective of legal experts and judges on this issue. In a number of recent cases, the judges saw that the men are motivated by genuine and deeply-held moral convictions and that ruling either to compel them to serve in the military or to punish them for not doing so would violate their freedom of conscience. These judges concluded that the men had a “justifiable ground” for their refusing military service. Rather than consider the men as military evaders, judges rendered 16 not-guilty decisions in the last 20 months.

“The trend is significant,” says lawyer Du-jin Oh, who has represented many conscientious objectors. He stated: “I am pleased to see the increasing number of not-guilty decisions at trial and recently from a high court. In each case, the prosecutor is expected to appeal these decisions, but the apparent shift in thinking of South Korea’s judiciary brings increased attention to the Constitutional Court’s pending judgment on the right to express one’s conscience.”

“Many countries have implemented alternative service for conscientious objectors in order to bring into harmony two colliding interests—freedom of conscience and the balance of imposing military duty. ... Germany, Denmark, France, Austria, Italy, Spain, Finland, Hungary, Norway, Sweden, Brazil, Taiwan, etc. have implemented alternative service into their conscription system. This has proved to be effective in resolving the issue of the balance in imposing military duty.”

—Judge Hyung-geol Lee of the Cheongju District Court, in the not-guilty judgment of Jae-gwang Jang, August 9, 2016.

Seeking a Solution

The nation is waiting on South Korea’s Constitutional Court to render its decision. That highest court is weighing the constitution’s guarantee of freedom of conscience against the Military Service Act’s punishment of those who exercise that freedom because their deeply-held religious or other beliefs cause them to refuse military service.

Dae-il Hong, a national spokesman for Jehovah’s Witnesses, stated: “Thousands of families in South Korea welcome a solution that respects the religious scruples of young men who cannot be coerced to act against their conscience. We look forward to a decision from the Constitutional Court that dignifies these young men.”
