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Mr. Moon Jae-in
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Your Excellency:

OPEN LETTER: ALTERNATIVES TO MILITARY SERVICE FOR CONSCIENTIOUS OBJECTORS

On behalf of Amnesty International, I welcome the recent decisions by the Constitutional Court and Supreme Court of the Republic of Korea (South Korea), confirming the right to conscientious objection. I would like to acknowledge this important milestone, and the tireless efforts by activists and conscientious objectors who paved the way for this change.

As your Government prepares to introduce an alternative to compulsory military service for conscientious objectors, I would like to take this opportunity to urge you to ensure that the system for such service is in line with South Korea's international human rights obligations and with recommendations made by the UN Human Rights Committee and others.

As confirmed by the highest courts of South Korea in effect, the right to refuse the performance of military service for reasons of conscience or profound personal conviction, without suffering any legal or other penalty, is derived from the right to freedom of thought, conscience and religion or belief provided for in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), as well as South Korea's Constitution.

As a State Party to the ICCPR, South Korea is obliged to provide a genuinely civilian alternative to compulsory military service for conscientious objectors that is non-discriminatory and non-punitive. Though we look forward to your Government taking measures to end the practice of jailing young men simply due to their beliefs, we would also like to direct your attention to three key issues to ensure that the new legislation is compliant with human rights.

1. Length of service

The length of alternative service should be comparable to that of military service itself. If the Government takes the position that it needs to be longer – for example, to balance heavier working hours in the military such as weekends and any requirements for subsequent reserve duty or other reasonable and objective criteria – it is important that any additional length of alternative service be justified clearly on those grounds. Duration of alternative service should not be made longer to test whether an individual's conscience or other personal conviction is genuine, nor amount to a penalty for exercising the right to freedom of conscience.

2. Form of service

Instead of only prescribing one specific type of service, different forms of alternative service, compatible with individuals' reasons for conscientious objection, should be made available for conscientious objectors. These should be services of a civilian character, in the public interest and not, due to its nature or conditions, of a punitive or discriminatory character. The Human Rights Committee has provided examples of conditions for alternative service that are "punitive in nature",

including the requirement to perform such services outside places of permanent residence, provision of salaries below the subsistence level for those who are assigned to work in social organizations and restrictions of freedom of movement for the persons concerned.

3. Civilian control

The alternative service must not be under military control. It must be wholly civilian in substance, both in terms of the nature of the work and under civilian administration. Moreover, responsibility for evaluating claims to be recognized as a conscientious objector should be given to a civilian authority entirely separate from the military and conducted in a way that guarantees maximum independence and impartiality. To place the evaluation body under the Ministry of National Defense would, as is currently under consideration, not be appropriate for this reason.

Finally, I wish to emphasize that any system for conscientious objectors to apply for and carry out alternative service must ensure that there is no differential treatment of conscientious objectors based on where and when their conscience or profound personal conviction arose. Their objection arising from religious, ethical, moral, humanitarian or other conscientious motives may develop at any stage of the military service. The possibility to apply for alternative service should therefore be accessible at any stage. Furthermore, no one who performs alternative service should face discrimination in the future as a result of having done so. This means that access to and equal treatment under the social insurance system or education or employment opportunities, for example, must not depend on whether one has performed military service or performed alternative service.

Amnesty International therefore encourages you to commit to the following steps:

- Make provision for conscientious objectors to carry out an appropriate alternative and non-punitive service of a genuinely civilian character and of a length comparable to that of military service itself;
- Ensure that the recognition of conscientious objectors and the administration of alternative service itself is undertaken by a civilian authority entirely separate from the military authorities and its compositions guarantees maximum independence and impartiality;
- Immediately and unconditionally release all individuals imprisoned solely for refusing military service on grounds of conscience;
- Clear the criminal records of all convicted conscientious objectors and provide them with effective reparation, including adequate compensation.

The South Korean people have won struggles against violations of human rights in all walks of life, from obtaining rights of workers, to speaking freely about the political system they desire. We look forward to the moment when the practice of sending young men to jail for simply exercising their right to freedom of thought, conscience and religion or belief is finally consigned to history.

Yours sincerely,

Kumi Naidoo
Secretary General

CC: Jeong Kyeongdoo, Minister of National Defense, Ministry of National Defense
Park Sang-ki, Minister of Justice, Ministry of Justice
Choi Young-ae, Chairperson, National Human Rights Commission of Korea