CONSCIENTIOUS OBJECTION OF JEHOVAH'S WITNESSES AND A CASE STUDY IN RECTIFYING HUMAN RIGHTS VIOLATIONS IN SOUTH KOREA

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ABSTRACT

The Republic of Korea has a long history with a tumultuous period of struggles between the Joseon Dynasty and Japanese Imperial colonization to the subsequent Civil War. Throughout this period the religious movement of Jehovah's Witnesses consistently suffered from a range of human rights abuses due to their refusal to bear arms. This paper will consider the historical context and consistency of Jehovah's Witness' non-violent theology across several countries both during and after the World War II period which has extended through various regimes. It will further discuss the unique perspective in relation to the 70 years of legal and physical persecution perpetrated by several regimes as well as the social stigmas and economic hardships faced by conscientious objectors. It will discuss the development recognition of the need for alternative service on constitutional grounds and the benefit to society as a whole for the adoption of such a program along with criteria that would ensure a fair national system of alternative service for those who qualify. Legal developments in the recognition of the responsibilities of the Republic of Korea as a member state of the United Nations and need for compliance with "freedom of conscience" and "freedom of religion" in accord with the Universal Declaration of Human rights will also be examined.

Keywords: Conscientious objection, Jehovah's Witnesses, Human Rights, Refusal to Bear Arms, Pacifism, Korea, Japan.

INTRODUCTION

THE deep seated conviction that Jehovah's Witnesses have in relation to refusing military service can be better understood by understanding Christianity's long history and the religious motivation for doing so. The scriptural basis of their reasoning is often quoted as being Isaiah 2:4 which states that worshippers of God would no longer learn (or practice) war, Mark 12:31 which states that one should love one's fellow man as oneself and Exodus 20: 13 which plainly says "You must not murder". The theological argument of the sanctity of blood and thereby the sanctity of life can be considered one of the central tenets of their faith and thereby inseparable from the individual. This is in actual fact, in line with the historically held views of the early Church as practiced by Christians in the 1st to 3rd Centuries.

"Lactantius refers to the Christians as "those who are ignorant of wars, who preserve concord with all, who are friends even to their enemies, who love all men as brothers, who know how to curb anger and soften with quiet moderation every madness of the mind.3... This we believe to be to our advantage, that we should love you and confer all things upon you who hate (us)." 4 Since the just man, he says, "inflicts injury on none, nor desires the property of others, nor defends his own if it is violently carried off, since he knows also (how) to bear with moderation an injury inflicted on him, because he is endowed with virtue, it is

necessary that the just man should be subject to the unjust, and the wise man treated with insults by the fool," (Cadoux).

Following this pattern, the history of the conscientious objection of Jehovah's Witnesses starts early in the 19th and 20th Centuries and finds its most notable cases at the onset of the Second World War. Globally the religious movement of Jehovah's Witnesses has been the single largest unified religious group in the issue of conscientious objection with the highest rates of incarceration or detention of any group (Moskos & Chambers p.11).

The 1946 report by the Bureau of Prisons in the United States of America stated that between 1941 to 1946 a total of 4050 Jehovah's Witnesses were conscientiously objecting the war with an additional 1,205 non-Jehovah's Witnesses conscientiously objecting (Tietz). In Nazi Germany the situation was stark, as Jehovah's Witnesses refused to compromise their position on military service leading to severe persecution by the Nazis (Lawson). Although the Jehovah's Witnesses were one of the lesser known groups to be sent to the death camps they consisted one of numerically larger populations in the death camps (Bergman). Interestingly Jehovah's Witnesses were the first religious group to be banned by the Third Reich having viewed their refusal to bear arms with special ire, Nazi records displaying that hundreds of Witnesses were tried on the grounds of conscientious objection (Garbe p.19). They were referred to as "voluntary prisoners" and could be released at any time if they decided to renounce their faith and in the case of men, join the army. So strong was the conviction of the Witnesses that they were used as barbers for their captors, holding razors to their throats in order to shave, because their oppressors knew they would not harm even their enemies (Reynaud & Graffard). During the Nazi era, 13,400 Jehovah's Witnesses are known to have been imprisoned and at least 270 were executed with 250 being publicly beheaded or shot (Chryssides p. Iviii).

In Armenia the Witnesses had been imprisoned for refusing military service, however, due to pressure from the United Nations Human Rights Commission, Armenia redrafted laws to allow for alternative civilian service and released all Jehovah's Witnesses on November 12th, 2013 with a follow up report by the UN showing that as August of 2014, a total of 128 Witnesses were performing alternative labour service (IRFR 2014).

South Africa also had a legislation geared toward conscription with governmental policies during the Namibian and Angolan conflicts leading to strict enforcement. Again, the majority of conscientious objectors were Jehovah's Witnesses. Jehovah's Witnesses drew attention for their refusal to accept Apartheid ideology and the added refusal to accept conscription was viewed as treasonous. The Witnesses were imprisoned in Detention Barracks and beaten when they refused to partake in military drills, they were provided with regulation military uniforms which they refused to wear and some were dehumanised by being left to spend winter months in only their underwear. Many Witnesses were repeatedly placed in solitary confinement and given reduced rations (CIIR).

From 1954 to 1977 approximately 1000 Jehovah's Witnesses were sentenced for numerous crimes such as insubordination or sedition (this sentencing was due to a lack of clear legislation as to how conscientious objectors should be sentenced, hence judges were free to lay whichever charge they felt necessary) due to refusing military service in Spain. Of those sentenced, about 300 were detained in the Castle of Santa Catalina de Cádiz, a military prison which included a sizable population of the military's most violent criminals. A survivor of the abuse in Santa Catalina de Cádiz, Fernando Marín related how Witness prisoners could not

consume the food provided, all of it contained blood sausage (Jehovah's Witnesses adhere to the Biblical injunction to abstain from blood) and hence had to find or create jobs within the prison so as to earn enough to buy edible foodstuffs.

Jesús Martín Noales was imprisoned for 22 years and subject to beatings, torture, physical and verbal abuse as well as being whipped and had his head trodden on by guards.

The Singaporean government enacted a ban of Jehovah's Witnesses in 1972 declaring that this was as a result of their refusal of military service, refusal to salute the flag and refusal to swear the oath of allegiance (IRFR, 2004). As of 2018, a total of 8 Jehovah's Witnesses are incarcerated for conscientious objection (JW).

In Turkmenistan a total of 3 Jehovah's Witnesses are imprisoned, Bahram Hemdemov for simply practicing his religion, Arslan Begenjov and Kerven Kakabayev specifically for their conscientious objection. All three are being held in Seydi prison (LBK-12) and are known to be subject to beatings and other inhumane treatment. (JW)

Eritrea is currently detaining 53 Jehovah's Witnesses, many of these conscientious objectors, in the squalid Mai Serwa Prison, denied basic human rights, tortured and kept in metal shipping containers that exceed 50 Celsius during the day. It is reported that four have died in prison and an additional three have died shortly after release due to deprivation and abuse in the prison. Some have been given indefinite sentences and have been in detention since 1994 (Hendricks). Furthermore, they have no legal protection as they have been effectively made stateless by Presidential decree.

"On October 25, 1994, President Afwerki issued a decree revoking their citizenship for their refusal to take part in the referendum on independence or to participate in national service." (USCIRF)

These examples of cases involving Jehovah's Witnesses and their stance on conscientious objection is far from exhaustive and is merely designed to illustrate the point of the unified ideology and theology that adherents practice globally. The unique Korean perspective will further illustrate how dictatorships and regimes in Korea have refused to comply with basic international human rights laws.

An Overview of the Korean Context Taishō period (大正時代) & Shōwa period (昭和時代)

The last century is Korea has been characterised by bloody wars over territory and political ideals. The conscientious objection of Jehovah's Witnesses finds its beginnings during such a time, the Japanese Occupation of Korea. During this time conscription and emperor worship were strictly enforced on the population in a program of cultural assimilation starting in the Taishō period. The aims of assimilation focused on the cultural similarities between Korea and Japan and the policy of assimilation was twisted toward a supposed reunification of two related races (Caprio p.17).

The Shōwa period became an era of special hardships for the Witnesses due to their refusal to recognise Hirohito (裕仁- 124th Emperor of Japan) as a living god along with their apathy toward state propaganda. In reality, the spark of persecution that would become a full inferno, started in Japan. Three of Jehovah's Witnesses in Japan, Masato Akashi, Kazuo Muramoto and Chuji Miura were arrested for "refusing to bear arms" as well as

"disrespecting the Emperor" (due to refusal to worship the Emperor's image) these unheard of actions would swivel and focus the attention of the throne and the entire country on this group. (Wah,2002)

The Witnesses and several other groups deemed "pseudo religions" by the state, faced the full brunt of the newly created "Peace Preservation Law" (Garon).





Image I: (Left) Kim Bok Ryeong (Right)
Ok Rye Jun

During the occupation it was not only men that were subject to being arrested for failure to comply with conscription laws, women were also arrested, some elderly and infirm. In 1939, a total of 38 Jehovah's Witnesses were arrested and widely reported in newspapers as the Deung-dae-sa Incident (등대사/燈臺社) with 5 being killed in prison (조경건). Among those arrested were Kim Bok Ryeong along with her husband both of whom tortured in Seodaemun Prison and along with the remaining Witnesses imprisoned until the

Liberation (MBC).



Image II: Newspaper clipping from 1938 reporting the Deungdaesa Incident and showing images of arrest.

Syngman Rhee and Korean War Period (李承晚時代)

The period following the Japanese occupation was tumultuous yet allowed for a short period of respite as the new government was in the process of taking control over civil matters. The inauguration of Syngman Rhee as president however (term in office 1948-1960) guaranteed a steady supply of trials for Jehovah's Witnesses by means his totalitarian regime. The dictatorship was characterised by extreme violence, such as the indiscriminate massacre of entire villages (including women and children) by Korean police on Jeju Island (Merrill).



Image III: Three of Jehovah's Witnesses in 1948

The respite ended with the outbreak of the Korean War and young Jehovah's Witnesses were forced into to hiding to avoid being captured by either Communist authorities from the North or the Syngman Rhee government, both hungry for new recruits to fuel their respective war efforts.

A Jehovah's Witness survivor of the war, Chong-Il Park relates his experience during this time.

After hiding himself and his friends they were discovered by Communist Special Police from the North, explaining clearly that Jehovah's Witnesses refuse to become involved in wars he was then ordered by the officer not to move from the area. Two days later the officer returned, bringing a fellow officer along with him, Chong-II Park then started preaching to the pair who thanked him and left. Different officers visited from time to time but did not report them to the Communist authorities who would likely have executed them. Chong-II relates "During three months they were staying in Seoul, and in fact they protected us" (Park). Later, he was taken by the South Korean army who ordered him to carry ammunition to the front lines which he refused stating the same reasons he had to the communists, as a result he was badly beaten. Later, when the company he was with moved out they left him behind and he was free. Several months after this event he applied for a passport but was arrested and sentenced to two years in prison. (Park)



Image IV: Chong-Il Park in prison camp and after release.

While persecution of Jehovah's Witnesses continued during this period darker clouds were on the horizon.

Park Chung Hee Period - Korean Ultra Militarism

Park Chung Hee (朴正熙/ 박정희) was born during the Imperial Colonial period and was highly influenced by Bushido philosophy as well as the Meiji Restoration (Hwang p.229). After receiving recommendations from the Japanese Colonel Arikawa he adopted the Japanese name Takagi Masao/高木正雄 (趙 甲済) and joined the extension of the Japanese

Imperial Army known as the Manchukuo Imperial Army. After returning to Korea he joined the Korean Military Academy and later the American forces but was arrested by the government and sentenced to death for leading a communist cell however he was pardoned by the President Syngman Rhee. He spent several years working up through the ranks and became a major general in 1958 (Encyclopedia of the Cold War). On the 16th of May, 1961 he came to power through a notorious coup d'état (군사정변/五一六軍事政變).

Park's rule was marked by his hyper-militaristic style of governance in which all aspects of life were militarized (Hwang), a concept which followed the Bushido philosophy and which likely sparked his disdain for Jehovah's Witnesses.

In 1972, the constitution was changed to the "Yushin Constitution" and Park started to allude to himself with references as the "imperial president" (Kim et al p.27).

During his dictatorship, Jehovah's Witnesses were targeted with special ferocity and subject to various types of torture while awaiting military trials. Many were beaten to death for refusing to bear arms and a special form of sleep deprivation torture was designed to attempt to break their resolve. A small cell the size of a closet was created in which Jehovah's Witness prisoners has no choice but to stand. To prevent them from sleeping from exhaustion, a guard was posted in front of the cells and when the guard pressed a button a light would brighten the cell, the prisoner was then required to press another button in response. If the prisoner had fallen asleep they would be beaten. This cell was created so that a caustic substance would slowly drip from the ceiling and burn into the scalp and flesh of the prisoners within (MBC).

The Park regime sought to extend prison sentences and would routinely release prisoners after a three-year sentence had been completed, only to arrest them again as they walked out of the prison gate, imposing another three year sentence.

Park would go further to give secret orders to the soldiers and prison guards telling them that they should not hold back and that they would not be held accountable for any Jehovah's Witnesses deaths that occurred during under their custody or even as a result of torture. (MBC) Effectively, they became licensed not only to use extreme force against non-violent civilians but also to kill.

Despite this persecution and to the frustration of the regime the Witnesses not only refused to change their biblical stance but the total number of Witnesses continued to increase.

Post-Park Chung Hee to Park Geun Hye

Under consecutive presidencies there was a slight decrease in persecution however depending on the particular policies or stance of the respective ruling presidents, human rights abuses continued due to the Military Conscription Laws which remained in place from the Park Chung Hee administration. This conscription law violated the constitution which guaranteed freedom of belief and expression to Korean citizens and yet, even after various rulings by the United Nations Commission on Human Rights, the numerous presidential administrations were unwilling to change their stance on the conscription laws in place. The CCPR decided in favour of Jehovah's Witnesses in various appeals against the conscription policies and lack of alternative service for citizens who could not take up arms for reasons of conscience, stating that freedom of conscience and religious belief is a basic human right. The following cases resulted in victories that were ignored by the then ruling presidential administrations.

- Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, Communications nos. 1321/2004 and 1322/2004, UN Doc. CCPR/C/88/D/1321-1322/2004
- Min-Kyu Jeong et al. v. Republic of Korea, Communications nos. 1642-1741/2007, UN Doc. CCPR/C/101/D/1642-1741/2007Jong-nam Kim et al. v. Republic of Korea, Communication no. 1786/2008, and UN Doc. CCPR/C/106/D/1786/2008
- Young-kwan Kim et al. v. Republic of Korea, Communication no. 2179/2012, UN Doc. CCPR/C/112/D/2179/2012

Throughout this period, young Jehovah's Witness men had to bear the strong social stigma of being not only viewed as traitors to the country and subject to assault and abuse but also bear the psychological weight of knowing they would face hardships in terms of education and employment. After being imprisoned, young Jehovah's Witness men would have a criminal record that would bar them from all avenues of public employment such as the teaching profession, law and medicine.

Song In Ho relates his experience growing up "In South Korea, those who conscientiously object to military service are stigmatized, almost as if we are branded at birth. It is like people know that a child is predestined to be in jail, so they decide to treat them like criminals-to-be". (Amnesty)



This constant mental strain led many young male Jehovah's Witnesses to feel trapped by an inevitable and unavoidable future which destined them to automatic incarceration.

"When I was a primary school student, I was asked during class to write about my future aspirations, but I left it blank as I knew it was not achievable. Since I was destined to go to jail anyway, what use is a dream? Yet I could not tell that to my mother because she would be heartbroken.

This dehumanizing treatment extended from the views of parents to influence their children who also pasted these negative views about Jehovah's Witnesses on to their peers at school. "I remember a traumatic experience when some classmates

approached me and asked: "Are you a Jehovah's Witness? My mother said that you would be sent to jail." It was many years later that I realized this experience was merely the prologue to what was to unfold in my life." (Amnesty)

Song In Ho suffered the same humiliation and abuse as other young Jehovah's Witness men by having his human rights violated through wrongful imprisonment alongside violent criminals.

"To prepare for my trial, I went to court on the same day each week and I saw petty thieves, burglars, crooks, and rapists – criminals of all variet(ies), all appealing that their sentences were unreasonable. I felt that if anyone should make an appeal, it ought to be me." (Amnesty)

While violations of human rights were an issue within the bounds of confinement, further violations of civilian privacy placed conscientious objectors, their families and other innocent bystanders in physical danger.

The Military Manpower Administration Office (MMAO) posted the personal information of conscientious objectors on its official website including names, ages, addresses, and information pertaining to their "evasion of service" (20th December, 2016) (OHCHR). This led to targeted harassment of the individuals with the information being removed after

appeals.

Recent Developments and Rectifications of Laws in Compliance with Human Rights Legislation

Several scholars note that Jehovah's Witnesses' constant appeals have brought attention to human rights issues in Korea with statements such as "Their incessant combats for the freedom of conscience have contributed to the diffusion of discourses on religious freedom and pacifism." (이진구)

It should be noted that appeals by Jehovah's Witnesses have not asked to be excused from all national service but rather for alternative service (non-military service). Despite a severe lack of nursing staff and high burn out rates for nurses due to a lack of support staff (전경자, &

변성원) as well as an ever aging Korean population as well as a great need for community service and welfare work in other areas, no provisions were made and no compromise was found to enable Jehovah's Witnesses to serve the community via non-violent means under previous administrations. On this subject, the afore mentioned Song In Ho stated "I am willing and ready to dedicate myself to any form of alternative service for my country, no matter how difficult. My conscientious objection to military service is nothing to do with avoiding service. I am a grateful citizen, and it is my wish that I would be allowed to contribute to the nation in some way other than military service."(Amnesty)

This alternative service was not forthcoming and he was sentenced to 18 months for refusing to bear arms due to his Christian conscience. Essential however, like other Jehovah's Witness men, he had been given an inescapable life sentence of abuse, harassment and the violation of his human rights for simply practicing his faith.

After the impeachment of Park Geun Hye for corruption and inauguration of the now incumbent President Moon Jae In, the governmental administration sought to bring legislation in line with international law and the agreements made by the Republic of Korea with the United Nations.

"On August 11, 2017, a delegation representing 904 conscientious objectors submitted a petition to the new president, asking that the government recognize the right to conscientious objection by releasing those imprisoned and implementing an alternative civilian service program." (JW NEWS)



Image V: Lawyer submits Conscientious Objection Appeal (Source Credit: www.jw.org)

The Constitutional Court ruling of June 28, 2018 ordered lawmakers to provide alternative service to genuine conscientious objectors which was free from military connection or oversight.

Following several appeals the Constitutional Court agreed to review the Military Service Act and whether it violated the National Constitution. On Thursday, June 28, 2018, the Constitutional Court comprising of nine judges and headed by Chief Justice Lee Jin Sung, declared that Article 5, paragraph 1, of the Military

Service Act was unconstitutional due to the lack of any governmental provision for alternative service.

On November 1st of 2018, the Supreme Court of Korea convened to resolve numerous issues with two being of prime concern. Firstly, "Whether the so-called conscientious objection to military service constitutes "justifiable cause" as defined by Article 88(1) of the Military Service Act (affirmative with restriction)" (SCLK)

This then raised the second question of "Whether the matter of acknowledging conscientious objection as justifiable grounds under the foregoing Article is in a logically consequential relationship with the existence or absence of alternative military service for conscientious objectors (negative)" (SCLK)

Not including Dissenting Opinion by Justice Kim So-young, Justice Jo Hee-de, Justice Park Sang-ok, and Justice Lee Ki-taik, the Majority decision brought current legal understanding closer to the Universal Declaration of Human Rights as well as upholding the duties of T=the Republic of Korea as a member state of the United Nations by declaring "Sanctions, such as criminal punishment, should not be imposed on a person who does not perform the duty of military service involving participation in military training or bearing arms on the ground of one's inner-formed conscience. Uniformly forcing the performance of military service against conscientious objectors and imposing criminal punishment for nonperformance are not only unreasonable in light of the constitutional system that guarantees fundamental rights, such as the freedom of conscience, and the overall legal order, but also contravene the spirit of free democracy pertaining to the embracement and tolerance of the minority. Accordingly, should the performance of military service were to have been refused due to a genuine conscience, then such refusal ought to constitute "justifiable cause" as prescribed by Article 88(1) of the Military Service Act." (SCLK)

Image VI: A Jehovah's Witness mother embraces her released son.

Following this decision, on November 30, 2018, a total 57 of Jehovah's Witnesses were freed from prison and reunited with their families.

December 14, 2018 set a legal precedent when not-guilty verdicts were passed on five of Jehovah's Witnesses by Jeonju District Court which effectively erased and reversed decisions by the lower courts to pass punitive sentences.

To date, Jehovah's Witnesses have served a cumulative sentence of 36,700 years. As yet, no specific legislation as to alternative service has been drafted or released by the government and therefore the proper formulation of protocols for alternative service are imperative and should be carried out without delay.

CONCLUSION AND RECOMMENDATIONS



After seventy years of stagnant law and 36,700 years of erroneous convictions, steps are finally being taken to correct the grievous human rights violations of torture, murder and wrongful imprisonment as well as to guarantee peaceful citizens in Korea, the rights promised by the Constitution of Korea.

These well documented human rights violations have harmed not only the victims and their families but also the entirety of the Korean society due to withholding of capable individuals from fields of social services that are in dire need of support staff.

The following recommendations can be made to remedy the vacuum created by the absence of able-bodied members of society from both the social and economic spheres.

Firstly it is noteworthy to consider the Taiwanese model by identify the fields of non-military

public services that have the greatest deficits in human resources. Fields such as Fire and Rescue Services, Medical Assistant staff, aged care facility helpers as well as public facility maintenance workers.

Secondly, it is recommended to create an alternative service system that is by its formation, nonpunitive and hence, can be seen positively by conscientious objectors and society alike, which will further eradicate the longstanding stigma and social backlash associated with conscientious objection.

It can be estimated that a significant number of those who partake in such social work will, after having gained substantial experience during the compulsory period, continue to work at a professional capacity in these fields. This in turn, will then work to offset the deficiency of manpower in these specific fields.

Finally, it is necessary to grant pardons to all those whom have been affected by wrongful imprisonment by removing the criminal records that have inhibited conscientious objectors from finding appropriate employment. The greatest continuous economic hurdle for conscientious objectors has been the baring of qualified individuals from respective workforces further damaging the economic stability. Pluralism enables a variety of democratic structures including a democratic economy to function efficiently. Sanctioning individuals for non-violent views cannot be considered religious pluralism and therefore is counterproductive to a civil society. (Yoo, 2018)

By ensuring that a proper alternative service program is implemented, the Korean Government will alight their current legislation with that agreed upon by the United Nations member states through the Universal Declaration of Human Rights, thereby assisting in correcting the historic human rights abuses perpetuated by various regimes.

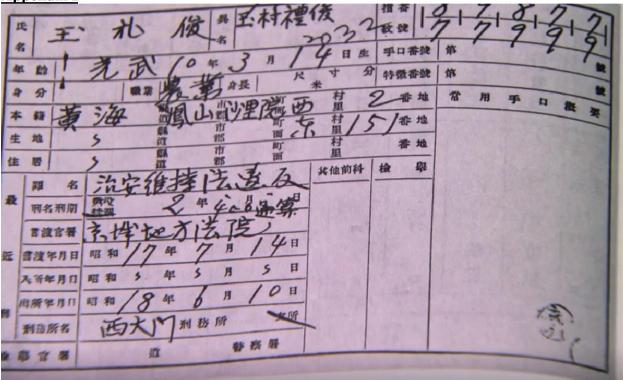
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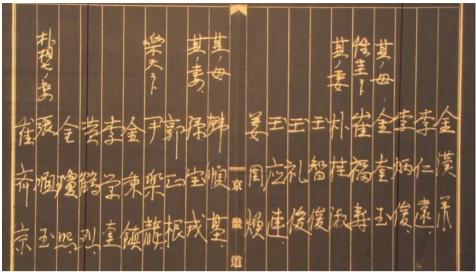
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Appendix I

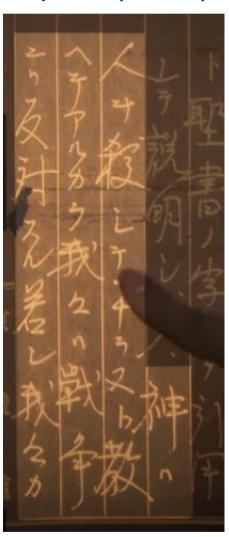


Primary Source:

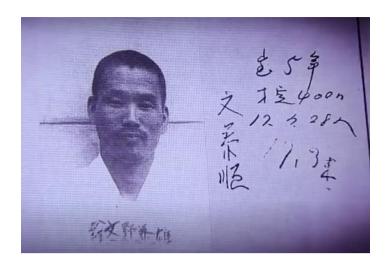
Imperial Japanese document identifying the Jehovah's Witness prisoner Ok Rye Jun (玉^옥礼^尚俊^준), from the Yellow Sea area, to be imprisoned in Seodaemun (西大門)Prison. Dated: 10^{th} of July, 1918. Charged with "Violating public order" and "a lese majesty"



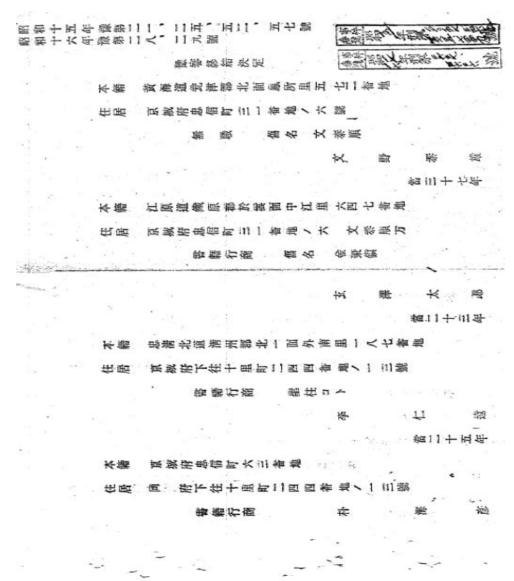
Primary Source: Japanese Occupation Era, Jehovah's Witness prisoner name list.



Primary Source: Japanese Occupation Era, Jehovah's Witness prisoner statement: "Due to the Bible teaching, 'thou shalt not kill' we are opposed to involvement in this war".



Primary Source: Jehovah's Witness prisoner Moon Tae Sun (文^显泰^태順^全) prisoner identification card. Charged with "Violating public order" and "a lese majesty"



 $\underline{\text{http://theme.archives.go.kr/viewer/common/archWebViewer.do?archiveEventId=003497014}\underline{5}$