



Permanent Mission of the Republic of Korea
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OHCHR REGISTRY

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Recipients : **SIB**.....
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The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights), and has the honor to refer to the Communication from Special Procedures(AL KOR 2/2017) dated 28 May 2018.

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva has further the honor to submit, as attached, the Republic of Korea's response to the Communication above.

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurance of its highest consideration.

Encl.: as stated

Geneva, 10 September 2018

Special Procedures Branch
Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva 10



Response of the Government of the Republic of Korea on the Communication from Special Procedures

1. In regards to the communication dated 28 May 2018 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to privacy and the Special Rapporteur on freedom of religion or belief, the Government of the Republic of Korea submits its response as follows.

2. The Special Procedures asked for observations of the Government of the Republic of Korea on the conscientious objection to military service issue. While the Special Procedures welcomed the judicial developments that de-criminalize conscientious objectors, illustrated by increasing number of lower courts which ruled in favour of conscientious objectors, they still remained concerned that conscientious objection continues to be criminalized and the personal information of conscientious objectors are published.

3. The Special Procedures particularly asked the Republic of Korea to provide additional information and/or comments on the conscientious objection to military service issue to indicate how the criminalization and imprisonment of young Korean men for conscientious objection is consistent with the Republic of Korea's international human rights obligations, including under ICCPR, to indicate the current status of the legislative proposals regarding the introduction of an alternative to military service, and to provide information about the legal basis for publishing the personal information of conscientious objectors to a public registry.

Additional Information and/or Comments on the Conscientious Objection to Military Service Issue

3. On June 28, 2018, the Constitutional Court changed its previous stance¹ and ruled that Article 5 (Categories of Military Service) of the Military Service Act, which does not stipulate alternative services as a kind of military service for conscientious objectors, does not conform to the Constitution. The Constitutional Court demanded that the Government

¹ In 2004 and 2011, the Constitutional Court ruled that the Clause 1, Article 88 of the Military Service Act which punishes conscientious objectors to military service is in accord with the Constitution.

introduce an alternative service system for conscientious objectors by December 31, 2019.

4. Following the decision of the Constitutional Court, the Government plans to prepare measures for an alternative service system and the amendment proposal of the Military Service Act promptly and submit it to the National Assembly. Currently, the Government is considering concrete implementation measures, focusing on maintaining equity with conscript soldiers and preventing the abuse of the alternative service system for draft-dodging.

Obligation of the Republic of Korea to the International Human Rights Standards and Its Criminal Punishment of Conscientious Objectors

6. Apart from the recent decision of the Constitutional Court and the Government's endeavors to develop a reasonable alternative service system for conscientious objectors, the Government of the Republic of Korea observes that the imposition or enforcement of sentences for conscientious objectors has been a necessary and justifiable restriction on "freedom to manifest one's religion or beliefs," under the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant").

7. The conscientious objection to military service constitutes an act of manifesting one's religion or beliefs. Therefore, the exercise of the right must be subjected to limitations necessary in certain cases prescribed in Article 18 Paragraph 3 of the Covenant.

- Article 18 of the Covenant distinguishes "freedom to have or to adopt a religion or belief of his choice" from "freedom to manifest his religion or belief in worship, observance, practice and teaching". Paragraph 3 of the same Article states that "freedom to manifest one's religion or beliefs" may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The Committee also acknowledged in its General Comment 22 that "Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief" and, on the "freedom to have or adopt a religion or belief of one's choice", any limitations whatsoever are not permitted, whereas on the "freedom to manifest religion or belief", restrictions are permitted if they fulfill the requirements prescribed in Article 18 Paragraph 3.
- While the Committee has neither provided the definition of conscience nor clarified

what falls under the legitimate limitations of the freedom to manifest one's conscience under Article 18 Paragraph 3 of the Covenant, given that the dictionary definition of the term 'manifest' is 'to show something clearly, through signs or actions,' refusing enlistment explicitly demonstrates that one's determination to object to military service and falls under the 'manifestation' of one's conscience.

8. Punishment of conscientious objectors based on the Constitution of the Republic of Korea and the Military Service Act fulfills the conditions of justifiable restrictions "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" as defined in Article 18 Paragraph 3 of the Covenant.

- Conscientious objectors are sentenced to imprisonment based on Article 39 of the Constitution defining that all citizens shall have the duty of national defense alongside Article 88 of the *Military Service Act*, which stipulates that any person who fails to enlist in the military or to comply with the call even after three days from the date of enlistment or call without justifiable grounds shall be punished. The Supreme Court of the Republic of Korea has repeatedly maintained that conscience or religious beliefs would not meet the justifiable grounds for refusing to be enlisted set out in Article 88 of the *Military Service Act*, following which the courts have sentenced conscientious objectors to 18 months in prison.
- Since 2004, however, an increasing number of lower courts have handed down decisions recognizing conscience or religious beliefs as justifiable grounds for objection to military enlistments, thus concluding conscientious objectors not guilty. The Supreme Court has recently referred a case involving conscientious objectors to its *en banc* session and held a public hearing to determine whether the conscience or religious beliefs fall under justifiable grounds for refusing military service.
- Notwithstanding, the criminal sanctions against conscientious objectors up to now have to be deemed necessary to protect public safety in light of the unique security situation of the Republic of Korea as a divided nation. While active duty soldiers serve around 21-23 months, conscientious objectors are generally sentenced to 18 months imprisonment and there is the possibility of parole if certain conditions are met. Given the fact, a prison term of 18 months for conscientious objectors cannot be considered an extraordinarily punitive punishment that goes against the principle of proportionality.

Current State of Legislative Proposals for the Introduction of the Alternative Service System for Conscientious Objectors

9. Three legislative proposals for the introduction of the alternative service system for conscientious objectors have been submitted by the members of the National Assembly and they are currently pending in the Bill Examination Subcommittee of National Defense Committee of the National Assembly.

Legal Basis for Publicly Revealing the Personal Information of Conscientious Objectors

10. Until recently, the personal information of conscientious objectors has been publicly revealed pursuant to Article 81-2 which regulates the disclosure of personal information of the person who evades military service.

11. However, on July 13, 2018, the Government removed the personal information of conscientious objectors (22 persons), judging that it is not appropriate to reveal personal information of conscientious objectors in accordance with the decision of the Constitutional Court.
