

# **The Government of the Republic of Korea's Response to the Communication by the Special Rapporteur**

1. In response to the communication dated 28 November 2019 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief, the Government of the Republic of Korea submits its response as follows :

## **Background**

2. Prior to presenting the clarification with regard to the concerns expressed by the Special Procedures, the Government of the Republic of Korea would like to provide herewith an overview of the current status of the newly established Act on Transfer to and Performance of Alternative Military Service (hereinafter referred to as "the Alternative Service Act") and the revised Military Service Act.
  - It seems that the Special Rapporteurs made comments based on the initial draft bill pre-announced by the Ministry of National Defense of the Republic of Korea in 2018.
  - In accordance with the relevant laws, the 2018 draft bill pre-announced by the Ministry of National Defense obtained an official government bill status at the State Council Meeting, and the enactment of the Alternative Service Act and the revision of the Military Service Act were completed following a review by the National Assembly in late 2019.
  - During the National Assembly's consideration of the Act, in-depth evaluations and discussions, including a public hearing organized by the National Assembly took place regarding the proposed Alternative Service Act.
  - The Act was finally passed by the National Assembly at the Plenary Session on 27 December 2019, and the following clarifications as to the Special Rapporteur's concerns are elaborated upon this finalized Act.

## **Procedural Issues**

**Concern 1 :** Nowhere does the draft bill recognize a right to alternative service, but rather the draft bill only gives conscientious objectors a right to apply for alternative service. Thus, it can be implied that there could be circumstances where a conscientious objector is denied the right to perform alternative service.

3. In accordance with a ruling by the Constitutional Court in 2018, the Alternative Service Act was enacted to introduce the alternative service system for conscientious objectors-
- The Alternative Service Act ensures the conscientious objectors' right to freedom of conscience while enabling them to fulfill their military service.
  - However, considering the fact that the Republic of Korea has adopted the conscription system, a procedural step to judge whether the applicant is applying for alternative military service based on their true conscience and belief was included in the bill in order to prevent individuals from taking advantage of the system and using alternative military service as a tool to evade their military duty.

**Concern 2 :** The draft bill includes regulations which seem to allow the Alternative Service Committee to disregard the testimony provided by a conscientious objector. Therefore, giving the Alternative Service Committee a right to disregard the testimony by the individual concerned is likely to lead to results contrary to the Covenant.

4. The reason for the regulation to allow the Alternative Service Committee to disregard the testimony provided by a conscientious objector (Article 11(2)) is to protect the rights and interests of the applicant, as the person may have an inevitable or unavoidable reason for making a proper statement. Thus, such regulations in the bill will not lead to a result contrary to the Covenant, which the Special Rapporteurs are concerned about.

**Concern 3 :** If the domestic law doesn't have a legal distinction to exclude all individuals above the age of 30 from military service altogether, excluding individuals aged 30 years or more from applying for alternative service and applying an age requirement for qualifying for application are likely to be contrary to the Covenant.

5. Article 61 of the Military Service Act states that in the case of any person who has received or is to receive a written notice of draft physical examination, conscription, or call-up, but is unable to fulfill it on the date for fulfillment of the duty, the date may be postponed upon his request, but that this shall not pass the date he attains the age of 30.
- Under the Military Service Act, conscientious objectors shall fulfill their duty before the age of 30 like any other individuals subject to conscription.
  - The Government has also established an addendum to allow any conscientious objector past

the age of 30 before the enactment of the Alternative Service Act to make an application for transferring to alternative military service. Therefore, the Government ensures to provide no limitations to the transfer of conscientious objectors past the age of 30.

**Concern 4 :** There are concerns regarding the prohibition of reapplication of individuals who have previously withdrawn in Article 6(1). There might be many reasons for individuals to withdraw their application, one of which is the stigma regarding conscientious objection in the Republic of Korea.

6. The Article 6(1) of the draft bill prohibiting a reapplication by individuals was removed during the process of the National Assembly's review of the bill.

### **Real Service to the Community**

**Concern 1 :** Expressing concerns related to the exclusive emphasis on places of detention for alternative service. In particular, as many conscientious objectors might be transferred from a situation of incarceration to a situation where they perform service in prisons.

7. Conscientious objectors will initially be stationed in a correction facility with accommodation and other service facilities for the early implementation of alternative military service. The Government will continuously review the expansion of fields of alternative military service.

**Concern 2 :** Although Article 17(2) of the draft bill excludes activities which require the use of arms and weapons, activities which entail the use of forces against other individuals are not excluded.

8. Pursuant to Subparagraph 3 of Article 16(2) of the Alternative Service Act, individuals fulfilling alternative service shall be excluded from any activity which is similar to the use of arms or weapons. It means that activities which entail the use of force against other individuals are also excluded.

## Punitive Elements

**Concern 1 :** The draft bill proposes that the alternative service should be 36 months, which is longer than military service. However, there does not seem to be any objective justification for this distinction. The failure to provide such a justification is not only contrary to the Covenant, but also considered a punitive measure.

9. The Republic of Korea already implements various types of alternative service, including industrial technical personnel and public health doctor, and the majority of these forms of service have a 36-month mandatory service period.

**\* Duration of Other Forms of Alternative Service in the ROK**

Alternative Service	Duration	Alternative Service	Duration
Industrial Technical Personnel	34 months	Public Health Doctor	36 months
Expert Research Personnel	36 months	Draft Physical Examination Doctor	36 months
Onboard Ship Reserve	A total of five years with three years on board	Public-service Advocate	36 months
Professional in Arts and Sports	34 months	Public Quarantine Veterinarian	36 months

- As shown above, the duration of alternative service for conscientious objectors is also 36 months, which is equivalent to other forms of alternative service. Accordingly it cannot be regarded as a punitive measure

**Concern 2 :** Expressing concern to Article 25 of the draft bill, which provides for cancellation of transfer to alternative service. Out of the 7 circumstances which determine when a transfer shall be cancelled, only voluntary cancellation indicated in subparagraph 7 raises no concerns. The rest (sub-paragraphs 1-6) provide for cancellation of transfer where the individual has breached the rules of procedure, but where the individual might legitimately be a conscientious objector.

10. The article of the cancellation of transfer is equally applied to other forms of alternative military service such as professionals in arts and sports as well as industrial technical personnel, and the same regulations will be implemented to conscientious objectors in case of serious failure to comply with their duty of service. The Government will carefully prepare and plan procedures in

implementing the cancellation.

- In particular, pursuant to Subparagraph 1, a person's transfer shall not be cancelled simply due to their falsification but rather in case of an illegal citation from an individual who turns out to be a pseudo-conscientious objector during the process of evaluation by the Alternative Service Committee.

### **Reparations for past and current violations**

**Concern :** Equating time spent serving a criminal conviction with time remaining in alternative service further highlights the punitive nature of alternative service; therefore, there is a need to accentuate the difference between the two. The Government should take into account the time since charges were brought against the individuals and include into the time of alternative service completed.

11. Including the time period spent serving a criminal conviction in the alternative service period does not mean that the Government is equating the two periods. The period of alternative military service refers to time spent fulfilling one's military duty legally.
- The Government believes that it is appropriate to include only the detention period under and after the trial in the alternative military service period because it is inappropriate to consider a trial period as a part of time spent fulfilling one's military duty for those who was persecuted without detention.

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