

PRESS RELEASE

TO: Journalists of each News Media

DATE: 18 June 2021

TITLE: **Submission of Opinion Letter of the Civil Societies to the 'Military Sex Crime Eradication Task Force' of the Democratic Party**

[Press]

Civil Societies Submit Joint-Letter of Opinion to the Democratic Party's Military Sex Crime TF

- Regarding Introduction of Military Ombudsman and Amendments to the Military Court Act -

- Today, six civil society and human rights organizations (hereinafter, 'CSOs') have submitted a joint letter of opinion regarding the introduction of military ombudsman system and the reform of the military justice system to the 'Democratic Party's Military Sex Crime Eradication Task Force' (hereinafter, 'the TF').
- The six CSOs underscored that, during the discussion of the introduction of a military ombudsman system, the institution (namely, 'Military Human Rights Protector') should be guaranteed with the independent status and substantive mandates, such as the power of unnotified visitation and the power to obtain documents under criminal investigation. In addition, it noted that the proposed bill of amendments to the National Human Rights Commission of Korea Act, submitted by lawmaker Jo Seungrae, not only fails to include such status and mandates but also contains toxic clauses. It empowers the Minister of National Defense with the power of request for discontinuance of investigation, etc.; thus, it should be cautiously reviewed.
- Also, the CSOs emphasized that "Court-martials shall be abolished in the peacetime." The CSOs, moreover, expressed concerns about the legislation process of the military justice system reform since it lacks sufficient deliberation. Currently, it is known that the TF pushes ahead with the amendments of the Military Court Act, whose framework is to transfer the military's jurisdiction of sex crimes to the civilian courts only. This is somewhat distant from the people's expectation, which raises a fundamental question of the military justice system's meaning of existence. Therefore, it is high time to radically reform the military justice system not to repeat unfair deaths. In brief, the CSOs reminded that the deliberation stage that broadly gathers opinions of civil societies, academia, and other experts is undoubtedly necessary.
- The CSOs wish the direction of institutional reform of the TF to be effective so that it may prevent the recurrence of regrettable losses in the military.

[Attachment] Joint-Opinion Letter

**Center for Military Human Rights Korea, Healing Center for the Victims of Military 'Hamkke',
Lawyers for a Democratic Society, Catholic Human Rights Committee, People's Solidarity for
Participatory Democracy, Korea Sexual Violence Relief Center**

Joint Opinion Letter

1. Authors (in order of Korean alphabets)

- a) Center for Military Human Rights Korea;
- b) Healing Center for the Victims of Military ‘Hamkke’;
- c) Lawyers for a Democratic Society;
- d) Catholic Human Rights Committee;
- e) People’s Solidarity for Participatory Democracy;
- f) Korea Sexual Violence Relief Center

2. Opinions on the Enactment of the Military Human Rights Protector

- The Authors, herewith, present joint opinions concerning the introduction of military ombudsman system (namely, the Military Human Rights Protector, MHRP), being discussed by the “Democratic Party’s Innovative Task Force on Eradication of Military Sex Crimes and Protection of Victims” (hereinafter, “TF”) as follows:
- The MHRP’s establishment was propelled to implement a task, ‘introduction of military ombudsman system,’ included in the resolution calling for speedy implementation of the tasks for military human rights improvement and barrack life culture innovation’ adopted by the National Assembly on 24 July 2015.
- The follow-up bills, proposed during the 19th National Assembly by lawmaker Hwang Yeongchoel (Saenuri Party) and during the 20th by lawmaker Baik Hyaeryeon (Democratic Party), all assumed that the MHRP would be established under the National Human Rights Commission of Korea.
- However, after the first legislation attempt in 2015, its establishment has been delayed after five years due to disagreements among relevant officials on multiple issues.
- Judgments on the agenda and issues that must be taken into consideration during the process of enactment of the military ombudsman system should be made in line with the origin of the institution’s introduction.
- In 2014, the Ministry of National Defense and the military authorities did not know while late Private First Class Yoon was dying of beating and lynching for months. They had lost the people’s trust in the field of protection of soldiers’ human rights, for the military tried to mislead the public opinion by announcing that the cause of death is respiratory obstruction. Notably, the public was pervaded with a sentiment that protecting the human rights of service members with the closed internal system of the military organization appears to be impossible.
- In the meantime, the MHRP, a military ombudsman, came on the scene as a means to quickly relieve the damages from human rights violations with the third party’s point of view against the closed military by rooting out the possibility of concealment and thorough downscale investigation without exceptions.
- If so, the legislation and related issues should have been decided in accordance with the purpose of the introduction of the MHRP system. However, *the proposed bill of lawmaker Jo Seungrae on 8 December 2020 seems to be different from the aforementioned purpose.*

- Basically, it is necessary to secure a reasonable level of organization, personnel, and mandates for the MHRP to fulfill its role. That is why the bills in 2015 and 2017 added one more standing commissioner to the National Human Rights Commission of Korea as the MHRP, recommended by the National Assembly, established military human rights headquarters and supplement the officers, and clearly stated the power of unnoticed visitation and the request for documents related to cases under investigation.
- On the other hand, *the concerned bill states that one existing commissioner shall hold an additional position as the MHRP, does not mention staffing or expansion, de facto revokes the power of unnoticed visitation (it shall notify the Minister of National Defense when it has to make an unnoticed visit to a unit with unavoidable reasons), and does not include the power to request documents related to cases under investigation.*
- It is known that the Ministry of National Defense, in the first place, objected to the power of unnoticed visitation and investigation as well as the power to request documents related to cases under investigation. It is expected that the National Human Rights Commission of Korea surely knows why the Ministry of National Defense is against such mandates to be entrusted with the MHRP. Additionally, it is thought to be well acquainted with the pressure on victims during an investigation carried out after prior notice and the decline of credibility of relevant witnesses' testimonies. Also, it would recognize that cooperation from the military investigative authorities is rare since they use the fact, 'case under investigation,' as a shield against the request for documents.
- The MHRP is an institution that is introduced because the military is judged not to be wholly equipped with the self-auditing capacity to process cases of human rights violations. It is out of the question to relinquish necessary mandates by itself that the MHRP should have.
- Furthermore, *the bill empowers the Minister of National Defense with absurd authority to request discontinuance of investigation when it severely affects the national security, it hinders performance and operation of military missions, or it is the time of national emergency.* The Ministry of National Defense is the agency that the MHRP would investigate. In which country on this earth does an agency has the power to interrupt an ombudsman's investigation? It is hard to understand that the bill confers such a power to the Ministry of National Defense, which may discontinue an investigation practically anytime, whereas the MHRP is not empowered with the unnoticed visitation and investigation.
- The reason why the MHRP shall be established as a separate organization while the military is carrying out investigations and interrogations all by itself through inspection, military police officers, and military prosecutors is to ensure fairer and more effective protection of human rights. The MHRP to be launched after so many years of difficulties will face the criticism of uselessness if it fails to secure legal mandates to guarantee fair and effective investigation when the staffing and organization expansion is uncertain.
- The MHRP is a position made by lessons from numerous tragic deaths that happened in the military. The bills should be meticulously reviewed so that it may serve its role to the fullest possible. We should not let those sacrifices be in vain. *The power of unnoticed visitation and investigation and the power to request documents related to cases under investigation must be included, and the power to request discontinuance of investigation by the Minister of National Defense, stated in the bill of lawmaker Jo Seungrae must be excluded.* On the other hand, the bill of lawmaker Ahn Gyubaek contains the two former powers and does not prescribe the Minister's power to discontinue an investigation.

3. Opinions on the Amendments to the Military Court Act

- The Authors, herewith, presents joint opinions concerning the reformative legislation of the Military Court Act, being discussed by the “Democratic Party’s Innovative Task Force on Eradication of Military Sex Crimes and Protection of Victims” (hereinafter, “TF”) as follows:
- It has been a long time that we discussed reform of the military justice system every time when there was a case of human rights violations or sexual abuses in the military. The authors have underscored the abolition of peacetime court-martial in principle.
- Nevertheless, as it has been confirmed through media reports that the TF is currently discussing to transfer only the jurisdiction of sex crimes of the court-martial to the civilian, Authors cannot but express concerns.
- Once a judicial system changes, it would be hard to change it again in the short term. While regrettable deaths continue due to the problems of the military justice system, an opportunity to improve the institutions is, exceptionally, served before us. Obviously, it is time to find the appropriate direction of reformations so as to guarantee the human rights of service members and solve the revealed problems by widely gathering opinions and views of relevant organizations, academia, and other experts. The matter of military justice reform is not an issue to be hastily decided and implemented.
- Citizens became disenchanted by the military justice system beyond common sense. Citizens are fundamentally questioning the meaning of its existence. However, if the ruling party feels satisfied with the simple transference of sex crime jurisdiction from court-martial to civilian, it would be no different from confining the possibilities of reform.
- Meaningful changes can only be made with more heads put together. The authors suggest the TF take a step of deliberation in preparing a plan for the military justice reform.
- The Authors urge to positively consider the aforementioned opinions in order not to repeat unfair sacrifices anymore through radical reformation.