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# **BACKGROUND INFORMATION**

## **INTRODUCTION TO THE ORGANIZATION**

1. The Center for Military Human Rights Korea (**Center**) is a human rights organization specialized in the security sector, founded in Sep. 2009 in the Republic of Korea (**ROK**). It strives to protect and improve human rights in the military by receiving complaints about all sorts of discrimination and human rights infringements and assisting victims, providing human rights education, and developing human rights friendly national defense policies.
2. The Center monitors various human rights violations and provides assistance for victims thereof. For instance, it revealed the fact of the death of the late Private First Class Yoon Seungju in 2014 who died of physical, psychological, and sexual tortures, which lasted over a month, whereas the military authority was concealing it as suffocation.[[1]](#footnote-1) After that, with the help and support of the bereaved and citizens, it led to the passage of <Framework Act on Military Status and Service (**FAMSS**)> in 2016. Currently, it works on the introduction of ‘Military Human Rights Protector’ under the National Human Rights Commission of Korea (**NHRCK**), which the <FAMSS> requires as well as protection and promotion of the rights of sexual minorities in the military (**II. F.**).
3. On the other hand, it monitors the abuse of military personnel for personal/ selfish or politically motivated purposes. During candlelight assemblies in 2014 and 2017 demanding the recession of then-President Park, it had carried campaigns monitoring on abuse of the conscripted police.[[2]](#footnote-2) It has also advocated the voices of the suppressed in a general’s official residence who were de facto ‘enslaved’ (**IV. A.**) as well as helping those who were arbitrarily detained (**II. E.**).
4. The Center, furthermore, has built cooperative relationships with international societies. In 2008, it participated in the joint-NGO submission for the first cycle of the UPR of the ROK; in 2012, it also submitted an individual submission to the working group for the second UPR cycle; and in 2015, it participated in a joint- submission for the fourth Human Rights Committee (**HRCttee**)’s review on the ROK state report.[[3]](#footnote-3) The Center has participated in the process of the United Nations (**UN**) Committee against Torture (**Committee**)’s last consideration on the ROK, and submitted written information to the HRCttee for LoIPR in 2019.[[4]](#footnote-4)

## **INFORMATION REGARDING MILITARY ISSUES**

Terminologies:

* 1. **Military Personnel**: it includes **B.**, **C.**, and civilian workers in the military. A., H., and cadets are subject to the Military Criminal Act (**MCA**).
  2. **Soldier(s)**: it refers to **A**. except for civilian workers in the military.
  3. **Conscript(s)**: it consists of males over 20 years old with Korean nationality. When a Korean male reaches 18 years old, he is enrolled in the first conscript status; he receives a conscription examination after he becomes 19 years old.
  4. **Executive(s)**: it is roughly the rest of **A.** minus **B.**; It generally refers to commissioned and noncommissioned officers (**officers**; **noncoms**) only.
  5. **Convention** hereinafterrefers to the “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

National Defense and Military Service System:

* 1. **Size of the Armed Forces**: the Ministry of National Defense (**MND**)’s *Defense White Paper 2018* reads: there are 464 thousand of Army soldiers, 78 of the Navy (including 29 of the Marine Corps), and 65 of the Air Force – in total about 590 thousand. It is to be reduced to 500 thousand by 2020.[[5]](#footnote-5)
  2. **Female Soldiers Size:** currently, about 7.4% of the officers are female – 5.9% of the total. It is to be increased by more than 8.8% (of the officers) by 2020.[[6]](#footnote-6)
  3. **Active-duty forces**: one who serves military service in armed areas. About 84.3% of the conscription examinees (300 thousand) were assigned active-duty in 2018.[[7]](#footnote-7) The length of service is 18 months for the Army, 20 for the Navy, and 22 for the Air Force by June 2020 (executives are obliged to serve more).
  4. **Reserved forces**: it lasts 6 years after the termination of military service in case of the conscripted and 8 years in case of the executives. Female soldiers may choose whether to join or retire. After the period, they are included in ‘civil defense forces’ until 40 years old.
  5. **Supplementary Services**: those who are ranked 4th tier in conscription examination or those with special skills or commitment serve in different ways.[[8]](#footnote-8)
  6. **Switched Services**: it is a form of alternative services which receives 4 weeks of basic military training in the Army. Currently, it consists of Conscripted Police (Maritime Police) and Conscripted Firefighters. This service is to be closed by 2023.
  7. **Alternative Service**: the National Assembly has passed a bill to introduce non-militant alternative service for conscientious objectors on 30 Dec. 2019. They will serve in a correctional facility for 36 months. The Government has amnestied 1,879 conscientious objectors on 31 Dec. 2019 (**III. A.**).

# **INFORMATION REGARDING IMPLEMENTATION OF THE 3RD-4TH CONCLUDING OBSERVATIONS**

## **Military Violence and Impunity (para. 36 (a))[[9]](#footnote-9)**

Violations of articles 1 and 16 of the Convention have become rather “tactful,” thus, not improved. Military violence such as beating, bullying, or maltreatment often results in suicide.[[10]](#footnote-10) After the horrific incident in 2014, physical battery seems to be decreasing, but it is not because institutional reform has been successful but rather thanks to the educated minds of young soldiers who are sensitive to human rights.[[11]](#footnote-11) The superior’s ignorance is well depicted in this anecdote. In 2019, 900 cadets had to run in half-full gear at 11pm for a week based on the ‘involvement system.’ It was to make up for their classmate’s fault, that is ‘being hit by a taxi while drunken’ (See **II.** **E.**).[[12]](#footnote-12) In addition, verbal violence and indirect (nonphysical) bullying seems soaring up.[[13]](#footnote-13) It is also worrisome that the military is more often experiencing violence in a similar form to that of school violence (See **Furthermore** below).

Moreover, sexual abuses grow more worrisome despite the recent *#MeToo* movement.[[14]](#footnote-14) According to the Center, the number of reported cases has been increasing every year.[[15]](#footnote-15) Also, the female soldier’s awareness is rising; 54.1% of female soldiers said sexual violence is ‘severe.’[[16]](#footnote-16) On the other hand, digital sexual crimes increase in the case of the military as well, but the Government’s reaction appears to undermine the rights of victims, reconfirming concerns[[17]](#footnote-17) of the Human Rights Committee.[[18]](#footnote-18) For instance, in Nov. 2018, the High Military Court acquitted two sex offenders who “corrective”-raped and “consoling”-raped a naval female lesbian officer. They were initially sentenced to 8 and 10 years of imprisonment by the General Military Court.[[19]](#footnote-19) Besides, it is concerning that the total number of disciplinary actions placed on sexual misconduct is increasing every year.[[20]](#footnote-20)

The military is usually secret about such cases (mostly because commanders and responsible officers wish to preserve their post), and it often hinders the NGOs from helping or reaching out to victims. For instance, the Center received a complaint in early 2019 that a conscript suffered from sexual molestation. As the alleged perpetrator was identified, the Center requested the cooperation of the 17th Army Division to visit the unit and have face-to-face counseling to diagnose the situation. However, the 17th Army Division Commander not only refused such request but asked to *identify* the victim. Additionally, during the early stage of the Navy's probe on sexual minority from the end of the year 2018, when the Center tried to visit the troop with an attorney, the banned talking with the victim on phone, asserting that the victim does not want help. As stated above, the military is yet inclined to conceal any incidents and refuse cooperation with civil societies.

The reason why violations of the Convention continue is impunity prevailing within the military,[[21]](#footnote-21) fear of revenge after reporting, and distrust in the military judiciary system. This situation is inconsistent with article 12 Particularly, in the case of sex crimes, the scope and the degree of punishment are quite insufficient.[[22]](#footnote-22) First, disciplinary actions of exclusion (expulsion and dismissal) placed on sexual misconduct does not even account for 10%.[[23]](#footnote-23) Second, even if one is prosecuted, those who were sentenced to actual prison time were merely 5.6%, which falls far behind that of the civil court,[[24]](#footnote-24) and it is even decreasing.[[25]](#footnote-25)

**Furthermore**

The MND still upholds the concept of ‘Troublemaker’[[26]](#footnote-26) and uses the term in Article 229 of the Decree on Unit Management. The MND’s human rights textbook for military human rights instructors quoted it as well. It is greatly disappointing as they did not fully capsulate the essence of military violence, but they rather point the finger at the weak.

The fact that there is no clear way to hold perpetrators of indirect and subtler bullying accountable is quite worrisome. While the State party recently revised the <Labor Standards Act> to regulate ‘Workplace Harassment,’ government officers and the conscripts are not subject to that law, let alone the lack of penalty thereof. Also, the military and the public prosecutors have not charged the perpetrator of the enslavement of residential-conscripts and valet-officers[[27]](#footnote-27) for generals (See **IV. A.**).

**Suggested LoIPR**

* The State party should present the state of administration of justice in statistics in regard to the punishment of perpetrators and responsible managerial officers in the cases of suicide, beating, maltreatment, and sexual assault.
* The State party should demonstrate countermeasures taken against changing trends in suicide, battery, and sex crimes in the military along with state of human rights education, including statistics, curriculum structure and unit-level implementation, the satisfaction of students, etc.
* The State party should present a detailed road map to introduce a penalty for ‘torture or any other cruel treatment’ stipulated in the Convention into the domestic legal framework as well as plans to adopt the Optional Protocol to the Convention.

## **Military Ombudsman (para. 36 (b))[[28]](#footnote-28)**

From March to April 2014, the late Army Private First Class Yoon Seungju passed away after daily battery and torture. The authorities attempted to conceal the facts and misinformed the public,[[29]](#footnote-29) which was discovered by a civil society organization. This incident formed a social consensus on the establishment of an independent monitoring organ, and the president pledged to actualize the idea. The new bill, <FAMSS> Article 42, provides legal obligation and ground for establishment thereof despite intense dissent and interruption of the Ministry of National Defense, and the conservative opposition party thanks to relentless efforts of the bereaved and activists.[[30]](#footnote-30)

Nevertheless, even after the change of the administration, no following legislation has been taken. The Ministry of Economy and Finance and the Ministry of Public Administration and Security, in fact, opposed to new establishment although the Government was quite enthusiastic about increasing the number of public servants. Meanwhile, the National Human Rights Commission of Korea attempted to legislate it in 2017 once and again, along with the MND, in 2019. Nonetheless, as the next general election is scheduled in April 2020, it is likely to be extinguished. Moreover, the Government’s bill contains flaws that weakens the role and meaning of the office since it lacks in power to visit without notice. Again, the military is asserting ‘national security’ and ‘national secrets’ over human rights violations.

**Suggested LoIPR**

* The State party should elaborate operation, mandates, and legal status of the ‘Military Human Rights Protector’ along with the blueprint of its role and power in terms of contribution to good governance in the security sector based on engagement with civil societies.
* The State party should answer if the ‘Military Human Rights Protector’ may enjoy the fullest and whole mandates under articles 10, 11, 12 of the Convention.

## **Suicide (para. 36 (c))[[31]](#footnote-31)**

Particularly, about 50 soldiers still commit suicide yearly, half of whom are conscripts.[[32]](#footnote-32) On the other hand, the low-ranked officers whose age is not so different from that of the conscripted yet receive a tremendous amount of pressure as a “managing position” are neglected without having appropriate countermeasures against suicidal impulses, which is deeply disturbing. This new situation in the suicide trend is falling short of the recommendation of the HRCttee.[[33]](#footnote-33)

**Furthermore**

The managerial and investigative officers in the case of the late Private Yoon’s death, who are responsible for the negligence of duty and concealment of the truth, have not been punished in either administrative or criminal ways. Although the case brought a nationwide resentment which led the conservative administration run by the daughter of a military dictator to launch a Civil-Military-Government Joint-Task Force to deal with general policies of military service to end any more tragedies, those who committed crimes hid behind the main criminal who was sentenced to 35 years of imprisonment. The fact that the professional officers were not even asked to be held accountable leaves numerous small and big possibilities of recurrence.

**Suggested LoIPR**

* The State party should initiate comprehensive research on causes of suicide in the military regardless of the deceased’s rank, and build a good governance relationship with civil societies in order to have an objective and open-minded approach and solution.
* The State party should explain the result of penalization of the responsible officers of suicide or death cases in the military along with legal grounds for legitimatization of the result, supporting proportionality and necessity of such decision.

## **Independence of Military Judicial Officers (para. 36 (d))[[34]](#footnote-34)**

The Korean military judiciary system is not pursuant to article 4., para. 2 of the Convention. Even though article 110 of the Constitution allows the establishment of military tribunals, there is one High Military Court under the MND and 31 General Military Courts under divisions of each force.[[35]](#footnote-35) However, their composition and quality do not meet international standards. The military judges are appointed by either Chief of Staff or the Minister of National Defense, unlike other judges.[[36]](#footnote-36) Also, non-judicial officers, without any legal license, may preside over a trial.[[37]](#footnote-37) A commander of the unit where the court is established may and should confirm the final decision of military courts, resulting in the systematized intervention of the administrative branch to the judicial.[[38]](#footnote-38)

As of 1 May, the Government proposed a bill to close the High Military Court, reduce 31 General Military Courts to 5 and introduce civilian military-judges[[39]](#footnote-39) without any discussion with civil societies. However, the bill contains loopholes that may accompany with revolving door effect bring “retired or discharged” military judicial officers back to the field.[[40]](#footnote-40) Lastly, the bill still leaves ‘courts’ under the ‘administrative branch,’ which violates several reports submitted to the UN.[[41]](#footnote-41) The National Assembly Research Service on 17 Jan. 2020 submitted a report arguing disbandment or reduction of the military courts, implying that it might not be required even under the wartime, if well prepared.[[42]](#footnote-42)

This concern applies to the cases of military prosecutors, as stated by the National Assembly Research Service, as they are directly under the command of the non-judicial commander of each troop (usually under command of a general officer).[[43]](#footnote-43) That is why military prosecutors do not have a supervision authority over military police as they are all under the same authority.

**Furthermore**

The Military Court Act article 68-4 is interpreted as it allows a military court to trial civilians.[[44]](#footnote-44) For instance, Mr. Lim Taehoon, the Representative of the Center, and another civilian were each fined with about 1,000 USD, for he did not turn off his phone and argued with the court security agents on 26 Sep. 2014 by the Third Army Command General Military Court. Though they appealed, the High Military Court rejected the victim’s claims that civilians are not to be subject to the trial of a military court according to the Constitution.[[45]](#footnote-45) This does not only violate the Constitution of the ROK but other recommendations made by relevant UN mandates.[[46]](#footnote-46)

**Suggested LoIPR**

* The State party should provide a plan to abolish military courts for peace-time or detailed plans to operate them independently of the administrative executives.
* The State party should provide a plan to abolish the military prosecutors or plans to ensure the independence of the operation from front-line commanders.
* The State party should explain all cases where civilians were trialed before a military court including applied provisions, name of alleged crimes, and results, etc., and if they are in line with the Convention and other international human rights norms.

## **Arbitrary Detention (para. 36 (e))[[47]](#footnote-47)**

The ROK armed forces have been violating Articles 10 and 16 of the Convention. The military commander could confine a conscript without a warrant issued by a judge up to 15 days at a time in a military guardhouse.[[48]](#footnote-48) A total of 25,285 conscripts were arbitrarily confined from 2016 to the first half of 2018.[[49]](#footnote-49) Thanks to the continuous works of civil societies and recommendations from the international society, on 9 Jan. 2020, the National Assembly passed a bill to repeal “military guardhouse” detention,[[50]](#footnote-50) although it still violates the doctrine of double jeopardy since it excludes the period spent on ‘disciplinary training’ from the period of military service.[[51]](#footnote-51)

Nonetheless, another serious concern is casted; it is replaced by ‘disciplinary training’ which is based on a belief that one may be “rehabilitated” through the infliction of mental and/or physical pain (or discomfort in a milder point of view). Especially, the military has already ‘legalized’ so-called ‘military spirit drill,’ which is a kind of corporal punishment,[[52]](#footnote-52) which has been abused for a long time without legal basis. While the MND argues that the training will be educational by nature, the Center worries about two possible and worrisome scenarios, both of which falls under the definition of arbitrary detention.[[53]](#footnote-53)

First is regression or deviation of the initial intention. For instance, even the National Police Agency under a direct civilian control had been torturing conscripted police agents until Dec. 2018[[54]](#footnote-54) under the pretext of ‘education’. Hence, it is deeply concerning that this new replacement would result in another concentration camp (arbitrary detention) as well. Besides, neither executive officers[[55]](#footnote-55) nor public servants[[56]](#footnote-56) are disposed of ‘attitude/ mental training’ as a discipline, which makes it discriminative and shamanistic.

Second is the violation of human rights per se. The alternative disciplinary action lacks in suspension of execution during the interim appeal/ complaint procedure[[57]](#footnote-57) although it may confine an individual within a certain parameter and probably force one to endure certain allegedly educational courses. For instance, similar programme, so-called Green Camp (or Vision Camp, etc.), is being operated in the military to prevent suicide and rehabilitate ‘misfits’. It is mostly run by military chaplains (or any other religion)[[58]](#footnote-58) except for 6 hours (even 2 hours are allotted to test the pscyhometry) out of 5-day course and injects old and biased perspective such as Confucian values. When such rehabilitation is infringing human rights of soldiers to this degree, the Center cannot but worry what would happen during the so-called ‘military discipline training’. The Center insists that the new replacement is nothing more than another form of arbitrary detention disguised in education.

**Suggested LoIPR**

* The State party should explain plans to compensate or provide remedial measures for the victims of arbitrary detention, at least after the announcement of abolition of the ‘guardhouse’ in “2019~2023 National Defense Human Rights Policy Plan,”[[59]](#footnote-59) or those who were, still, detained even after the point of time when the bill was passed.
* The State party should present the up-to-date statistics of detainees in the military guardhouse from the passage of the amendment to the Military Personnel Act.
* The State party, in the case of ‘disciplinary training,’ should elaborate the grounds to exclude the training period from service period, and present detailed plans on the operation of such disciplinary action such as operation, curriculum, the composition of instructors, monitoring system, governance, etc.

## **Sexual Minorities in the Military (para. 36 (f))[[60]](#footnote-60)**

The Korean military punishes consensual same-sex relationships between soldiers up to 2 years of imprisonment under Article 92-6 of the MCA.[[61]](#footnote-61) That violates Articles 1 and 16 of the Convention. While the Constitutional Court of the ROK has approved of its constitutionality three times in the past,[[62]](#footnote-62) the provision itself contains critical errors. First, the law does not discern sexes of actors, in or outside of barracks, as well as during or after workhour. Also, the word, “any other indecent act”, literally sounds vague. All of which violates the principle of certainty and proportionality. Second, the law violates the right to privacy of soldiers. Third, it is unnecessary as the other articles of Article 92 may punish unsolicited sexual contacts as well as other relevant laws.

Such concerns have been realized in 2017 and 2018/19. First, in the Army in 2017, under the instruction of then-Army Chief of Staff, an investigative team of the military police cracked down on almost 50 soldiers, investigated and prosecuted about 23.[[63]](#footnote-63) Four convictions have been made, and there are five more awaiting the court’s decision. Although the main perpetrator confessed his team’s unlawful investigation, none of them have been punished, which violates Articles 4 (2) and 15 of the Convention. Naturally, second, the Navy attempted to crack down on ‘homosexual soldiers’ as well in late 2018 to early 2019. Nevertheless, the MND does not consider, not even a review, the abolition of Article 92-6 of the MCA, which received numerous concerned voices[[64]](#footnote-64) from the international society. The only bill to repeal this, proposed by Lawmaker Kim Jongdae, has not been reviewed by the committee.

**Furthermore**

The Military Manpower Administration still uses the terminology in the taxonomy of mental disorder, “Sexual Identity Disorder and Sexual Preference Disorder,” according to the MND’s Regulation.[[65]](#footnote-65) This practice is clearly discriminative and outdated since world health and medical societies have made clear that transgender or any other sexual orientation and identity is not a disorder.

The MND needs to provide a friendlier and open environment for transgender soldiers who wish to remain in the military as a profession in terms of living conditions and career paths. While there is a regulation that protects the rights of LGBTI soldiers in the military, often it is ignored or neglected.[[66]](#footnote-66) Also, it lacks support for Male-to-Female transgender soldiers to have medical surgery, if wanted, let alone transgender soldiers without transition surgery. In Jan 2020, the Army said, “need social consensus” for a transgender soldier who came out to continue military service.[[67]](#footnote-67) Because of the recent decision of the Army,[[68]](#footnote-68) they could be discharged based on a mere fact that they do not have one or both testicle(s).[[69]](#footnote-69) While the military itself acknowledged that no laws prohibit or allow service of transgender soldier, she was discharged for not being ‘man’ enough.

**Suggested LoIPR**

* + - The State party should provide information regarding the investigation, prosecution, and punishment of sexual minorities in the military and as well as cases of violation of the <Decree on Unit Management>’s Chapter 7 and the result of punishment thereof.
    - The State party should explain preventive actions taken and penalization made in order to stop the recurrence of the 2017 and 2018/19 crackdowns on gay soldiers.
    - The State party should explain detailed steps to remove biased, unscientific, and discriminative criteria from the <Regulation on Conscription Physical Examination>, especially regarding transgender people under a comprehensive scheme to protect and promote human rights of sexual minorities in the military.

## **Implementation of General Comment No. 3 of the Committee and Article 14 (para. 36 (g))[[70]](#footnote-70) of the Convention**

The ROK has legal problems in providing remedial measures. Although the abolition of ‘military guardhouse detention’ deserves commendation, one disturbing fact remains that the Constitutional Court has not made any decision on pending cases of arbitrary detention[[71]](#footnote-71) after its last decision in 2016.[[72]](#footnote-72) Just like the case of conscientious objectors, which eliminated chances for the past convicts to re-appeal and request compensation,[[73]](#footnote-73) the Constitutional Court is resorting to petty tricks by delaying its decision so that it would simply dismiss the cases siding with the Government to reduce the burden of reparation. Even though, the Government has not provided proper reparation to victims of human rights violations due to constitutional restriction,[[74]](#footnote-74) complex procedures, and misplacement of the burden of proof on victims.

Meanwhile, the whistleblowers are at risk instead of under protection as the military authorities tend to ‘search’ for the person who “ratted out” one’s organization and friends. Hence, it is hard to even imagine proper reparation. For instance, the Korea Military Academy, which is considered to nurture the best and only junior commissioned officers when a media report revealed that torture-level disciplinary action was coaxed and disguised as “voluntary” decision by cadets, attempted to find who told the story (See **II. A.**). The Academy even violated the positive law,[[75]](#footnote-75) but nobody took responsibility.

**Furthermore**

The confidentiality of reporting of human rights violations is often undermined. The MND launched the “National Defense Help Call Center,” incorporating numerous other reporting and counseling systems, after the late PFC Yoon’s Death in 2014. However, this system cannot ensure the anonymity of a reporter. In addition, if one wishes to resolve a problem, it has to be reported to a commander in charge, which results in disclosure of the identity of a reporter; thus, its role is confined to mere tête-à-tête distressing one’s agony.[[76]](#footnote-76) Only 31.3% of the soldiers have answered that they were content with the result of the MND’s Help Call Center’s service in 2017.[[77]](#footnote-77)

Another system, “professional (barrack life) counselor,” does not provide a better solution. For instance, a company leader outed a gay soldier to his family and let counseling note be leaked.[[78]](#footnote-78) A professional barrack life counselor disclosed a soldier’s sexual orientation and private life to his commander, leading him to be investigated and disposed of administrative discipline in Dec. 2018.[[79]](#footnote-79) Also, some of the professional counselors for barrack life are composed of retired executives,[[80]](#footnote-80) and human rights experts are sparse among counselors. They, as well, do not have the mandate to settle a problem. Lastly, as their legal status is insecure (they are principally all 2-year-contract workers), they tend to be passive and obedient to the military authorities. This situation is violating the recommendation of the HRCttee.[[81]](#footnote-81)

**Suggested LoIPR**

* + - Submit statistics on those who attempted searching for informants and punished or disposed of administrative discipline, including the subject’s rank and title (position).
    - Submit information about licenses and certificates possessed by the current professional counselor and other numerous counselors of grievance procedures along with the statistical statement of their operation.
    - Provide operational statistics of the National Defense Help Call Center and the principle of production of statistics of its operation (such as call counts, type of settlement and criteria of counseling process, etc.).

# **INFORMATION REGARDING IMPLEMENTATION OF OTHER TREATY BODIES’ CONCLUDING OBSERVATIONS**

## **Conscientious Objection to the Military Service**

## On 28 June 2018, the Constitutional Court decided that <Military Service Act (**MSA**)> Article 5, Para. 1, that lacks in alternative service for conscientious objectors, is incompatible with the Constitution.[[82]](#footnote-82) However, this constitutional nonconformity decision does not constitute a reason for retrial, unlike ‘decision of unconstitutionality,’ and neither can be retroactively applied to those who have already been imprisoned nor include those who claim conscientious objection during the service, leaving numerous loopholes. It is because the decision favored <MSA> Article 88, Para. 1, which was used to punish conscientious objectors.[[83]](#footnote-83)

## Indeed, this decision opened a path to an alternative service, yet immediate release, the expurgation of criminal record, etc. do not meet up to recommendations of the third UPR recommendations as well as the HRCttee’s concluding observations.[[84]](#footnote-84) Now the last chance for them to remedy their damages is via presidential amnesty, but the president only pardoned a handful of people who were convicted after the decision. Those who were convicted before are left out, which is ignoring views on numerous individual communications of the Human Rights Committee.[[85]](#footnote-85)

## **Furthermore**

## The National Assembly passed a bill to introduce alternative service, including conscientious objectors; however, the system rather focuses on punishing ‘fake’ conscientious objectors, as pointed out by the UN Special Rapporteurs.[[86]](#footnote-86) This is also not up to the international standards, i.e., self-reporting, as it requires ‘approval’ by a governmental body. Also, it is by nature punitive since the length of service is excessively longer than that of other services.

## In addition, the Constitutional Court is still reviewing the clauses punishing conscientious objectors to reserve forces training.[[87]](#footnote-87) In case of refusing reserved forces training – they made their mind up after termination of mandatory service – they are summoned throughout the year and repeatedly fined for refusals. As the fine accumulates, they are exposed to an excessively accumulated fine. Meanwhile, the Supreme Court acquitted a conscientious objector, but excluded a reserve forces training objector’s case from ruling.[[88]](#footnote-88)

## Lastly, the current other forms of alternative services (service switch) deploy the labor forces of the youth to nonmilitary areas but pay remuneration almost next to nothing;[[89]](#footnote-89) this violates the ILO conventions that prohibits forced labor along with other laws. If they are not in a good condition to serve the military physically or mentally, then they shall not be, logically and reasonably, deployed in administrative offices, public transportation stations, social welfare or caring houses, schools or kindergartens as well.

## **Suggested LoIPR**

* The State party should present explain the newly adopted alternative service and the new ways to protect and promote the rights of conscientious objectors.
* The State party should answer to the concerns raised by the relevant Special Rapporteurs of the UN,[[90]](#footnote-90) including the cases of conscientious objectors to the reserve forces training.
* The State party should explain the action plan on amnesty and reinstatement, compensation and indemnification for those who were imprisoned or are imprisoned regardless of statutory limitation.

## **Human Rights Education**

While it seems quite quintessential for the military to implement proper human rights education curricula in order to promote human rights in the military, not only are they reluctant to use the word “human rights”[[91]](#footnote-91) but also consider it as a way of accident prevention or a tool to enhance intangible military manpower. That is why most education is focused on the enlisted members not the responsible officers – to preserve or enhance the power of commandership. Though the battalion commanders and regimental commanders take human rights educational courses, it confines to the abstract discussion, and it only lasts for three days.[[92]](#footnote-92) Compared with that of the conscripts’ courses, they fall far behind while it is they who are in a great need of human rights education since they have never been educated of the concept in the primary and secondary schools. This violates the core idea of the second and the third phases of the World Programme for Human Rights Education.[[93]](#footnote-93)

In addition, when the Center asked to observe the actual scene of training those military human rights instructors in 2019, the MND was not only reluctant to cooperate but also did not open the course on the basis that it is not obligatory. The NHRCK was no different from the MND even though they should have been the initial monitoring organ and a collaborator under the <Decree on Military Human Rights Task>.[[94]](#footnote-94) Lastly, based on the analysis from the short and limited observations made by the Center in 2019, such curricula in the military do not cover the Committee on the Rights of Child’s recommendation.[[95]](#footnote-95)

## **Suggested LoIPR**

* The State party should submit a detailed action plan, carried out or to be carried out, to implement the relevant obligations on human rights education, especially involvement of the civil societies as declared in articles 7 and 8 of the United Nations Declaration on Human Rights Education and Training, including government and military training.[[96]](#footnote-96)
* The State party should explain the current situation of human rights education in the military in both quantitative and qualitative descriptions, and the State party should explain why the commander-level officers are given lesser opportunities with human rights education.

# **FURTHER MILITARY HUMAN RIGHTS ISSUES**

## **Contemporary Forms of Slavery**

## The outstanding ‘Gab(p)jil’[[97]](#footnote-97) incident that happened in the military is the case of General Park (the 2nd Army Operations Commander at the time of his misdeed). His actions were clear violations of Article 1 and 16, and the reaction of the Government was a violation of Article 14. He enslaved his subordinates (valet-soldiers and aides-de-camp) from 2013 to 2017.[[98]](#footnote-98) The victims asked for help from the Center, and it was made public in 2017; nationwide public indignation was provoked. The military prosecutor in 2018 viewed that his ‘private instructions’ do not constitute a crime, but the case was transferred later to the civilian prosecutor. However, the prosecutor found him not guilty but accused his wife, Mrs. Jeon, after finding partial guilt on 26 April 2019.

## Absurdly, however, according to the investigation result of the prosecutor,[[99]](#footnote-99) it has been confirmed by multiple testimonies that he and Mrs. Jeon had committed crimes alleged by victims.[[100]](#footnote-100) Nevertheless, the prosecutor viewed him not guilty because facts do not establish crimes of embezzlement, torture, bribery, etc. enough, the period of the statute limitations had passed, victims do not wish to penalize the offender, or the laws do not cover enough. In addition, it was deemed that the crime of abuse of power/authority is not established because his orders fall outside of his original mandates as a general. This legal argumentation is that of the suspects of the monopoly of judiciary and state administration.[[101]](#footnote-101)

**Suggested LoIPR**

* The State party should explain if there have been any measures taken to punish ‘Gab(p)jils’ in the military after the case of General Park in 2017 and changes in the military policies after the introduction of ‘Workplace Harassment’ in the <Labor Standards Act> in 2019.
* The State party should provide reasoning on why ‘Gab(p)jil’, which can even dictate tortures, including private instructions, does not constitute the crime of abuse of authority.[[102]](#footnote-102)

## **Capital Punishment**

Though the ROK has a death penalty,[[103]](#footnote-103) it does not execute. <MCA> also has it. It is executed only by a firing squad.[[104]](#footnote-104) There are about 18 clauses that have capital punishment, and crimes under chapter 38-41 of the Criminal Act may be included when aggravated. Moreover, there are 15 crimes that penalize a criminal only with death.[[105]](#footnote-105) The Constitutional Court decided <MCA> art. 53 [Murder of Superior, etc] unconstitutional as it only punishes with death.[[106]](#footnote-106) Until recently, some soldiers were sometimes sentenced with capital punishments, including those who committed a crime of mass murder out of revenge for bulling, etc. However, in such cases, the main focus of the Government and the media is mainly placed on punishing the criminal, so checking background history is often miscarried.[[107]](#footnote-107) Although the moratorium still stands, it seems necessary to point out that the military justice system is not an exception to the abolition of capital punishment.[[108]](#footnote-108)

**Suggested LoIPR**

* The State party should elaborate the efforts made in the past days to abolish all forms of capital punishment or to come to a national consensus on that matter.
* The State party should explain why some of crimes under the Military Criminal Act has one sort of punishment, that is death, and how it can be in line with the Convention and other international human rights norms.

## **Suppression of Human Rights Defenders**

Recently, human rights defenders are more often targeted directly. For instance, when the Center deplored the commander of the 17th Army Division, Korea Liberty Party Member Kim Doeup on 13 Mar. 2019 reviled the Center, an NGO with “no authority,” for haphazardly entering military security zones.[[109]](#footnote-109) Lawmaker Baek Seungju on 18 March, also demanded the MND to award those who refused governance and punish those who cooperated.[[110]](#footnote-110) The conservative media *The Chosun Ilbo* took dictation and even made an editorial letter[[111]](#footnote-111) defining the Center’s activities as threats to national security.

At last, the Korea Liberty Party Members charged Representative Lim of the Center on 28 March 2019 for not attending a national inspection session last year.[[112]](#footnote-112) However, he had just disclosed coup d’état plan in March 2018 and been personally attacked by Representative Kim Seongtae of the Party since 31 July based on his sexual identity.[[113]](#footnote-113) Besides, on 3 August, the Party had sued him along with the Speaker of the Blue House and Minister of National Defense, etc.[[114]](#footnote-114) Even the perpetrator of the Gapjil case in 2018, General Park, held a press conference for his announcement of running for office in this coming general election in 2019, said that Mr. Lim should be sent to ‘Samcheong Re-Education Camp.’[[115]](#footnote-115) The Camp, which, of course, no longer exists, is notorious for its past as it tortured hundreds of democratization movement activists, homeless, gangsters, and some vagrants.[[116]](#footnote-116)

**Suggested LoIPR**

* The State party should provide actions taken to ensure the rights and implement the obligations under the UN Declaration on the Human Rights Defender.
* The State party should present statistics of the number of human rights defenders prosecuted for defending the human rights of others and oneself along with the result of the trial.

# **APPENDIX. LoIPR**

| **Issues** | **Suggestions** |
| --- | --- |
| Military Violence and Impunity  (para. 36 (a)) | * The State party should present the state of administration of justice in statistics in regard to the punishment of perpetrators and responsible managerial officers in the cases of suicide, beating, maltreatment, and sexual assault. * The State party should demonstrate countermeasures taken against changing trends in suicide, battery, and sex crimes in the military along with state of human rights education, including statistics, curriculum structure and unit-level implementation, the satisfaction of students, etc. * The State party should present a detailed road map to introduce a penalty for ‘torture or any other cruel treatment’ stipulated in the Convention into the domestic legal framework as well as plans to adopt the Optional Protocol to the Convention. |
| Military Ombudsman  (para. 36 (b)) | * The State party should elaborate operation, mandates, and legal status of the ‘Military Human Rights Protector’ along with the blueprint of its role and power in terms of contribution to good governance in the security sector based on engagement with civil societies. * The State party should answer if the ‘Military Human Rights Protector’ may enjoy the mandate under Article 10, 11, 12 of the Convention. |
| Suicide  (para. 36 (c)) | * The State party should initiate comprehensive research on causes of suicide in the military regardless of the deceased’s rank, and build a good governance relationship with civil societies in order to have an objective and open-minded approach and solution. * The State party should explain the result of penalization of the responsible officers of suicide or death cases in the military along with legal grounds for legitimatization of the result, supporting proportionality and necessity of such decision. |
| Independent Military Judicial Officer  (para. 36 (d)) | * The State party should provide a plan to abolish military courts for peace-time or detailed plans to operate them independently of the administrative executives. * The State party should provide a plan to abolish the military prosecutors or plans to ensure the independence of the operation from front-line commanders. * The State party should explain if the ‘Military Human Rights Protector’ would have a supervision power to overview the military justice system as well as plans to build a good governance relationship with civil societies in order to check. |
| Arbitrary Detention  (para. 36 (e)) | * The State party should explain plans to compensate or provide remedial measures for the victims of arbitrary detention, at least after the announcement of abolition of the ‘guardhouse’ in “2019~2023 National Defense Human Rights Policy Plan,”[[117]](#footnote-117) or those who were, still, detained even after the point of time when the bill was passed. * The State party should present the up-to-date statistics of detainees in the military guardhouse from the passage of the amendment to the Military Personnel Act. * The State party, in the case of ‘disciplinary training,’ should elaborate the grounds to exclude the training period from service period, and present detailed plans on the operation of such disciplinary action such as operation, curriculum, the composition of instructors, monitoring system, governance, etc. |
| Sexual Minorities  (para. 36 (f)) | * The State party should provide information regarding the investigation, prosecution, and punishment of sexual minorities in the military and as well as cases of violation of the Decree on Unit Management Chapter 7 and the result of punishment thereof. * The State party should explain preventive actions taken and penalization made in order to stop the recurrence of 2017 and 2018/19 crackdown on gay soldiers. |
| Reparations  (para. 36 (g)) | * Submit statistics on those who attempted searching for informants and punished or disposed of administrative discipline, including the subject’s rank and title (position). * Submit information about licenses and certificates possessed by the current professional counselor and other numerous counselors of grievance procedures along with the statistical statement of their operation. * Provide operational statistics of the National Defense Help Call Center and the principle of production of statistics of its operation (such as call counts, type of settlement and criteria, etc.). |
| Conscientious Objection  (Art. 14) | * The State party should present explain the newly adopted alternative service and the new ways to protect and promote the rights of conscientious objectors. * The State party should answer to the concerns raised by the relevant Special Rapporteurs of the UN, including the cases of conscientious objectors to the reserve forces training. * The State party should explain the action plan on amnesty and reinstatement, compensation and indemnification for those who were imprisoned or is imprisoned regardless of statutory limitation. |
| Human Rights Education  (Art. 10) | * The State party should submit a detailed action plan to implement the relevant recommendations on human rights education in a harmonized way with civil societies, including international ones such as DCAF and local ones such as the Center. * The State party should explain the current situation of human rights education in the military in both quantitative and qualitative descriptions, and the State party should explain why the commander-level officers are given lesser opportunities with human rights education. |
| Contemporary Forms of Slavery  (Art. 1, 4, 12, 16) | * The State party should explain if there have been any measures taken to punish ‘Gab(p)jils’ in the military after the case of General Park in 2017 and changes in the military policies after the introduction of ‘Workplace Harassment’ in the <Labor Standards Act> in 2019. * The State party should provide reasoning on why ‘Gab(p)jil’, which can even dictate tortures, including private instructions, does not constitute the crime of abuse of authority. |
| Capital Punishment  (Art. 1, 2) | * The State party should elaborate the efforts made in the past days to abolish all forms of capital punishment or to come to a national consensus on that matter. * The State party should explain why some of crimes under the Military Criminal Act has one sort of punishment, that is death, and how it can be in line with the Convention and other international human rights norms. |
| Suppression of Human Rights Defenders  (Art. 1, 12, 16) | * The State party should provide actions taken to ensure the rights and implement the obligations under the UN Declaration on the Human Rights Defender. * The State party should present statistics of the number of human rights defenders prosecuted for defending the human rights of others and oneself along with the result of the trial. |

1. *CNN*, 4 Sep. 2014. [hoy.kr/EKlQY](https://hoy.kr/EKlQY); *BBC News*. 30 Oct. 2014. [goo.gl/DjLTFN](https://goo.gl/DjLTFN). [↑](#footnote-ref-1)
2. Please, refer to the UN Special Rapporteur’s country visit report: A/HRC/32/36/Add.2, para. 39 [↑](#footnote-ref-2)
3. A/HRC/WG.6/2/KOR/3(2008); A/HRC/WG.6/14/KOR/3(2012); INT/CCPR/CSS/KOR/21718 & 21790(2015). [↑](#footnote-ref-3)
4. INT/CAT/CSS/KOR/26966/E (2017); CCPR/C/KOR/QPR/5 (2019). [↑](#footnote-ref-4)
5. MND (2018). *Defense White Paper 2018*. p.87. [↑](#footnote-ref-5)
6. op. cit., p.175. [↑](#footnote-ref-6)
7. National Statistics Service (2019). <http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1718> [↑](#footnote-ref-7)
8. Special Researcher, Industrial Worker, Public Service Worker (Public Administration, ODA, Arts and Sports), Public Health Doctor (Public Practitioner, ODA, Conscription Doctor)/ Vet, Public Service Judge Advocate. [↑](#footnote-ref-8)
9. “Reinforce measures to prohibit and eliminate violence and abuse, including sexual, physical and verbal abuse, in the military and ensure the prompt, impartial and thorough investigation of all allegations of abuse and deaths in the military in order to demonstrate zero tolerance for ill-treatment and torture of military personnel.” [↑](#footnote-ref-9)
10. In Jul. 2017, a small wooden boat floated from the North to the ROK port unnoticed. Right after the case, a conscript committed suicide, and some accused the government that he died of grave pressure and stress from reprimand on his failure of reporting and coast guarding. However, according to the Center, the deceased was bullied, beaten and insulted by senior conscripts for five months. Even though he reported his case, the unit did not separate the attackers from the victim (*The* *Jungang Daily*, 20 Jul. 2017. <https://bit.ly/2twkYiE>). [↑](#footnote-ref-10)
11. Recently, the rate of reporting by victims seems to be increasing. However, still, authorities often fail to properly deal with human rights violations: blaming victims for causing trouble or incomplete separation of victims and attackers as well as coercion to settle with attackers. Meanwhile, a severe human rights violation like that of 2014 may recur anytime. According to the Center, an Army private first class had been beaten, tortured and bullied by three comrades, including two senior conscripts. The perpetrators rubbed human excrement on the victim’s face, forced him to lick it, and keep urine in his mouth. They followed the victim on furlough and molested him - kicked his crotch in a motel, too. The victim reported this to his company leader, but the main attacker freely went on furlough while he was sent to ‘Green Camp’ where so-called “misfits” are accommodated for “rehabilitation” (*The Yonhap News Agency*, 3 Jul. 2019. <https://bit.ly/35k1EC7>). This trend implies that human rights awareness among officers is quite inadequate contrary to the conscripts. In fact, First Lieutenant Choi and Staff Sergeant Kim were sentenced to jail, for they confined 10 platoon members, broke some of their nails with a tool and taped their hands to pull-up bar (2018Do7151). Also, one officer tortured a private first class for 6 months from March 2018, accusing the victim of being a clumsy worker – poking the private’s chest with a bayonet, covering the private’s head and suffocating him with sleeping bag (*Donga Daily*, 15 Sep. 2019. <https://bit.ly/39HJMV9>). [↑](#footnote-ref-11)
12. *The Yonhap News Agency*, 2 Oct. 2019., <https://bit.ly/2QOQ8tp> [↑](#footnote-ref-12)
13. According to the Ministry of Culture, Sports and Tourism (2017)’s report, “Survey on Language Use of the Armed Forces and Development of Educational Material,” 44.3% of the reserve forces who were discharged less than 2 years ago answered that they had faced ‘serious’ verbal abuse in the military. The content of verbal violence was mostly belittlement of the capability of an individual (53.22%). 39.3% responded that insults were often made coram populo. Insults were mostly ‘disparaging appellation,’ ‘calling one’s physical flaws (disability hatred),’ ‘slander about educational background or origin,’ and ‘insult to family or relatives.’ (<https://bit.ly/2Fpns4I>). [↑](#footnote-ref-13)
14. According to Lawmaker Kim Hakyong (2018), the sex crimes reported in the military were 649 in 2014, 668 in 2015, 871 in 2016 and 442 in the first half of 2017 (*theL*, 2018.07.13., <https://bit.ly/2MY4pCO>). [↑](#footnote-ref-14)
15. The number of cases reported to the Center due to sex crimes in the military or by military personnel

    |  |  |  |  |  |
    | --- | --- | --- | --- | --- |
    | **Year** | **2016** | **2017** | **2018** | **2019 (tentative)** |
    | **Sexual Violence** | 5 | 7 | 8 | 12 |
    | **Molestation** | 9 | 16 | 38 | 49 |
    | **Harassment** | 10 | 20 | 26 | 44 |
    | **Sum** | 24 | 43 | 72 | 105 |

    [↑](#footnote-ref-15)
16. NHRCK (2017) claims so in its survey in which 170 female soldiers participated in. In addition, it is reported that an Army division leader grabbed a female subordinate’s hand in a vehicle in July 2018. It was later found that there were two more victims. In the Navy, a Rear Admiral Lower Half summoned his female subordinate to an alcohol club and attempted to rape her. Similarly, in June, two Army field grade military prosecutor officers verbally abused subordinate female military prosecutors (*The Hankyoreh*, 9 Jull. 2018., [bit.ly/39GGaTF](https://bit.ly/39GGaTF)). [↑](#footnote-ref-16)
17. CCPR/C/KOR/CO/4, para. 31; See CEDAW/C/KOR/CO/8, para. 23 (f). [↑](#footnote-ref-17)
18. According to the Center, in Oct. 2018, a male naval cadet in the Naval Academy went in and out of the female dormitory for a year and installed a hidden camera in toilets, illegally filmed his comrades and even blackmailed some of the victims. However, the Academy closed the case by expelling the assaulter on 21 Sep. 2019 without establishing any preventive measures or punishment. Meanwhile, in the Armed Forces Nursing Academy, a handful of male cadets made a chatting room and verbally abused female instructors and comrades habitually. Still, most of the perpetrators were disposed of ‘probation,’ and the victims were asked to remain silent (*KBS*, 25 Nov. 2019, [bit.ly/2sFjmTE](https://bit.ly/2sFjmTE)). [↑](#footnote-ref-18)
19. *The Jungang Daily*, 20 Nov. 2018, [news.joins.com/article/23138785](https://news.joins.com/article/23138785) [↑](#footnote-ref-19)
20. The number of disciplinary cases under sexual misdemeanor (Lawmaker Choi Jaeseong (2018))

    |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | **Sum** | **2014** | **2015** | **2016** | **2017** | **2018** |
    | **Army** | 5,035 | 9,72 | 9,58 | 1,197 | 1,191 | 717 |
    | **Navy** | 198 | 32 | 33 | 41 | 49 | 43 |
    | **Air Force** | 303 | 39 | 54 | 103 | 72 | 35 |
    | **Marine Corps** | 238 | 34 | 32 | 43 | 64 | 65 |

    [↑](#footnote-ref-20)
21. The table below shows the number of cases investigated and prosecuted from 2017 to the first half of 2018 (The MND (8 Apr. 2019). “Closed Meeting for Assessment of Implementation of the Fourth Human Rights Committee Concluding Observations”.). *\*(M)CA: (Military) Criminal Act*

    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | **MCA** | **Sum** | **against Superior** | **Dis-obedience** | **Desertion** | | **Military Supplies** | | **Against Guard** | | **Rape/ Indecent Act** | | **Other** | |
    | **Investi-gated** | 1,274 | 238 | 10 | 157 | | 64 | | 165 | | 405 | | 235 | |
    | **Indicted(%)** | 31 | 27.31 | 50 | 38.22 | | 26.56 | | 33.33 | | 31.11 | | 28.51 | |
    | **Civil Codes** | **Sum** | **Criminal Act** | **Act on Violent Act** | **Sub-total** | **Sex Crimes**  **(CA)** | | **Violent Sex Crimes** | | **Juvenile Sex Protect** | | **Anti-Prosti-tution** | | **Sub-total** |
    | **``** | 2,975 | 1,895 | 281 | 2,176 | 362 | | 256 | | 78 | | 103 | | 799 |
    | **``** | 24.84 | 18.89 | 29.18 | 20.22 | 34.53 | | 47.66 | | 48.72 | | 13.59 | | 37.42 |

    [↑](#footnote-ref-21)
22. According to the Center, on 8 and 9 Nov. 2018, the High Military Court acquitted two officers accused of raping a subordinate female lesbian naval officer to “correct” her and “console” her. Each was sentenced to 10 and 8 years of imprisonment by a Naval General Military Court. The Court said that the assaulters and the victim were in a “loving relationship,” and that she did not resist hard enough. Such a decision overrules the Supreme Court’s view on 13 Apr. 2018 that required judges to employ “gender-sensitivity” when it comes to sex crimes. [↑](#footnote-ref-22)
23. According to the National Human Rights Commission of Korea, from 2014 to the first half of 2017, merely 20 were severely punished among 273 sexual violence cases against female soldiers (9 expulsions and 11 dismissals). Other heavy penalties were 11 demotions and 99 suspensions from work. The remaining 143 cases were mostly salary reduction (92) and some probation (30) (*The Sisa Journal*, 26 Mar. 2018., <https://bit.ly/2FxPP13>). [↑](#footnote-ref-23)
24. It is the outcome of cases from 2014 to the first half of 2017 (*theL*, 13 Jul. 2018., <https://bit.ly/2MY4pCO>). The military argues that they punish sex offenders severely, yet it seems to be true only in cases of ‘sodomy’. (*LawFact.* 30 Oct. 2017. [bitly.kr/G21xCn](http://bitly.kr/G21xCn)). Also, the share of suspension of sentence by military courts seems too high. In the case of trials whose victim is a female, 10.34% of offenders were suspended with sentence by General Military Courts, which is 10 times higher than that of civilian courts (1.86%) (*theL*. 13 Jul. 2018. [bitly.kr/dI9mtX](http://bitly.kr/dI9mtX)). [↑](#footnote-ref-24)
25. The result of sex offence trials is as follows (Lawmaker Choi Jaeseong, 2018):

    |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | **Total (Averg)** | **2014** | **2015** | **2016** | **2017** | **First Half ’18** |
    | **Imprisonment** | 126 | 49 | 35 | 22 | 20 | 0 |
    | **Rate** | 10.32% | 15.51% | 10.70% | 7.07% | 8.26% | 0% |
    | **Suspended Execution** | 597 | 157 | 149 | 166 | 118 | 7 |
    | **Fine** | 343 | 69 | 93 | 84 | 81 | 16 |
    | **Suspended Sentence** | 94 | 24 | 33 | 21 | 14 | 2 |
    | **Acquittal** | 61 | 17 | 17 | 18 | 9 | 0 |

    [↑](#footnote-ref-25)
26. One who deserves to be beaten or hit because he/ she caused such violence. [↑](#footnote-ref-26)
27. The soldiers who work in the official residence of a general to cook, iron, do laundry, mow and more house chores, etc. (to ensure alertness of a general in any circumstances). [↑](#footnote-ref-27)
28. “Establish the office of military ombudsman as an independent entity to monitor military units and conduct investigations into allegations of abuse and violence in the military.” [↑](#footnote-ref-28)
29. *The New York Times*. 6 Aug. 2014. <https://nyti.ms/35nmAbA> [↑](#footnote-ref-29)
30. **The Framework Act on Military Status and Service Article 42 (Officer for Protection of Soldier’s Human Rights)** (1)In order to guarantee soldiers’ fundamental rights and make relief against infringement of such rights, an officer for protection of soldier’s human rights shall be assigned;

    (2)The organization, duty and operation, etc. of the officer for protection of soldier’s human rights under paragraph (1) shall be separately provided for by a statute. [↑](#footnote-ref-30)
31. “Promptly investigate all cases of death in the military and establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed and make the results of such investigations public.” [↑](#footnote-ref-31)
32. According to Lawmaker Do Jonghwan (2019), the total number of suicide cases in the first half of 2019 was 31. The statistics of suicide cases in the military are as follows:

    |  |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- | --- |
    | **Year** | **Conscript** | **Staff Sgt** | **Noncom** | **Lieut.** | **Officers** | **Total** | **Death due to Battery** |
    | **2017** | 17 | 9 | 22 | 2 | 9 | 48 | 1 |
    | **2018** | 21 | 7 | 21 | 5 | 11 | 53 | - |
    | **1st 2019** | 19 | 4 | 9 | - | 3 | 31 | - |

    [↑](#footnote-ref-32)
33. The State party should increase its efforts to prevent suicides. In particular, it should study and address the root causes of suicide and improve its suicide prevention policies accordingly (CCPR/C/KOR/CO/4, para. 25; 31). [↑](#footnote-ref-33)
34. “Ensure the independence of military judicial officers engaged in the promotion and protection of human rights.” [↑](#footnote-ref-34)
35. After the death of late Private First Class Yoon in 2014, Division-level military courts were closed and non-judicial member’s participation has been restricted as well as limitation of mandates of commanders; the law has prescribed the office term of military judges. [↑](#footnote-ref-35)
36. **Military Court Act (MCtA) Article 23 (Appointment and Attachment of Military Judges)** (1) Military judges shall be appointed by the Chief of Staff of each military branch from among the field-grade or higher ranking military judge advocates under his/her control, provided that military judges at the MND and integrated units under the direct command and operational control of the MND shall be appointed by the Minister of National Defense from among the affiliated field-grade or higher ranking military judge advocates. [↑](#footnote-ref-36)
37. **MCtA Article 26 (Judges of General Military Courts)** (1) In a general military court, three military judges shall sit on the bench as judge, provided that two military judges and one adjudicator shall sit on the bench as judge in cases designated by the convening authority. [↑](#footnote-ref-37)
38. **MCtA Article 379 (Confirmation of Judgments by Convening Authority)** (1) The convening authority shall confirm judgments other than the following judgments: innocence; acquittal; dismissal of public prosecution; exemption from sentence; suspension of sentence; suspension of execution of sentence; capital punishment; imprisonment with labor for an indefinite term; and imprisonment without labor for an indefinite term, and may reduce punishment to the extent of 1/3 of the sentenced punishment only in case of a crime which occurred while the suspect faithfully and actively conducted his/her duties such as military operations, education and training if reasons to recognize that punishment are too heavy in consideration of the matters in the subparagraphs of Article 51 of the Criminal Act exist. [↑](#footnote-ref-38)
39. **Amendment Bill to the MCtA** (1 May 2019.) [Agenda No.: 20114]. [↑](#footnote-ref-39)
40. op. cit. **<Act>** **Article 22-2** regulates the Military Judge Personnel Committee which consists of 11 committee members: a military judge, a judge recommended by Chief Justice, a prosecutor by the Minister of Justice, an attorney by the Korean Bar Association, two law professors, three lay officers by each force’s Chief of Staff, two respectable figures with knowledge (at least one female) who do not have legal license. It seems inappropriate that non-judicial officers participate in the appointment of a judge. Also, they are all appointed/commissioned by the Minister of National Defense. The president of the Committee is selected among them by the Minister as well. All the more, the Committee’s recommended candidates will go through a review of ‘Military Court Steering Committee’ which consists of a judge designated by the Chief Justice, three military judges by the Minister and three military judicial officers by each Chief of Staff in line with Article 4-2, which restricts the decision making power more within the military authorities. In addition, it is concerning that limiting the venue of an appellate court to Seoul High Court may restrict the rights of access to a trial of victims, etc. [↑](#footnote-ref-40)
41. Mr. Stanislav Cherneko and Mr. William Treat, 1994 recited from E/CN.4./2006/58, para.14; Ms. Gabriela Knaul (2012) A/HRC/20/19, para.57; (2013). A/68/285, para.93-94. [↑](#footnote-ref-41)
42. *The Yonhap News Agency*, 26 Jan. 2020, [www.yna.co.kr/view/AKR20200123129800001?input=1195m](https://www.yna.co.kr/view/AKR20200123129800001?input=1195m) [↑](#footnote-ref-42)
43. **Military Court Act Article 39 (Direction and Supervision of Military Prosecution Duties by Chief of Staff of Each Military Branch)** The Chief of Staff of each military branch shall take overall charge of military prosecution duties under the jurisdiction of general prosecutors’ offices of subordinate units as the director and supervisor of military prosecution duties of each military branch, and direct and supervise military prosecutors posted thereat.

    **Article 40 (Direction and Supervision of Military Prosecution Duties by Heads of Units in which Military Prosecutors’ Office Is Established)** The head of a unit in which a prosecutors’ office is established shall take charge of military prosecution duties under command, and direct and supervise military prosecutors posted thereat.

    **Article 41 (Appointment of Military Prosecutors)** (1) Military prosecutors shall be appointed by the Chief of Staff of each military branch from among affiliated military judge advocates posted thereat, provided that military prosecutors of the MND and the integrated units under the direct command and operational control of the MND shall be appointed by the Minister of National Defense from among military judge advocates posted thereat.

    (2) Notwithstanding the main body of paragraph (1), the Minister of National Defense may appoint military prosecutors of the MND and each military branch from among military judge advocates posted at each military branch after hearing the opinions of the Chief of Staff of each military branch. [↑](#footnote-ref-43)
44. **Article 68-4 (Court-ordered Confinement, etc.)** (**1**) The military court may, ex officio, punish a person who violates prohibition or order prescribed in Article 68 (**2**) inside or outside of court, violates Article 68-2, or obstructs hearings in the court or markedly injured the prestige of trial by violent language, disturbance, etc. by court-ordered confinement for up to 20 days, or by an administrative fine up to one million won, or both.; (2) The military court may have military court personnel, courtroom soldiers or military policemen immediately arrest violators for court-ordered confinement prescribed in paragraph (1), and hold a court for the punishment of court-ordered confinement for up to 24 hours from arrest or order immediate release if the court proceedings for the punishment of confinement is not held.; (**3**) The court-ordered confinement shall be executed by detention in the military prison or military pre-trial confinement facility.; (**4**) The court-ordered confinement shall be executed prior to detention and sentence due to other cases of the confined person, and the detention and execution of sentence due to other cases of the confined person shall be suspended during the execution of court-ordered confinement and the proceedings of the original trial in which the confined person is the principal shall be suspended: Provided, That where considerable reasons exist, the military court may order the continuance of proceedings.; (**5**) A complaint or special complaint may be filed against the judgment prescribed in paragraph (1).; (**6**) The procedures for judgment prescribed in paragraph (1) and other necessary matters shall be prescribed by the Supreme Court Regulations. [↑](#footnote-ref-44)
45. **Article 27 (2)** Citizens who are not on active military service or employees of the military forces shall not be tried by a court martial within the territory of the Republic of Korea, except in case of crimes as prescribed by Act involving important classified military information, sentinels, sentry posts, the supply of harmful food and beverages, prisoners of war and military articles and facilities and in the case of the proclamation of extraordinary martial law. [↑](#footnote-ref-45)
46. E/CN.4/1999/63, Para. 80 by the Working Group on Arbitrary Detention; A/68/258, Section IV. D. by the Special Rapporteur on the independence of judges and lawyers. [↑](#footnote-ref-46)
47. “Put an end to the “guardhouse detention” of soldiers, without a warrant and without judicial review.” [↑](#footnote-ref-47)
48. **Military Personnel Act (MPA) Article 57 (Kinds of Disciplinary Actions)** (2)Disciplinary measures for enlisted personnel shall be classified into demotion, detention in a guardhouse, restriction on leave, and probation, … shall be defined in detail as follows: … 2. The term "detention in a guardhouse" means detention in a guardhouse in a military unit, a ship or other detention facility for a period not exceeding 15 days; [↑](#footnote-ref-48)
49. Lawmaker Choi Jaeseong (2018), National Inspection 2018; Also, according to the National Human Rights Commission of Korea (2019), a total of 1,577 conscripts were sent to ‘military guardhouse’ in 6 troops from 2018 to May 2019 (“Recommendation following up 2019 Military Guardhouse Visits,” p.3-4.). [↑](#footnote-ref-49)
50. *The Yonhap News Agency*, 4 Jan. 2020. <https://en.yna.co.kr/view/AEN20200103004700325> [↑](#footnote-ref-50)
51. **MPA Article 18 (Active Duty Service)** (3) Where an active-duty serviceman is sentenced to imprisonment with or without labor or misdemeanor imprisonment, or is confined to a military detention facility, or walks away from his post in the military, the number of days during which the sentence is executed or he is confined to a military detention facility, or he walks away from his post, shall not be included in his period of active duty service (Based on *The Hankyoreh*, (21 Nov. 2019., <http://bitly.kr/V3GiDG5Y>) and the amendment bill, it seems ‘military guardhouse’ is simply replaced by ‘disciplinary training’ en bloc. [↑](#footnote-ref-51)
52. Lawmaker Kim Byeonggi proposed <Amendment to the Framework Act on Military Status and Service>, which aimed to legalize ‘spirit drill’ since it has been abused and deviated by military units based on internal regulations without legal grounds. However, the term was changed to ‘Military Discipline Training’ [tentative translation], and **article 38-2** was added to become effective as of 27 May 2020. [↑](#footnote-ref-52)
53. § II. and III. of the Deliberation 04 of the Working Group on Arbitrary Detention (E/CN.4/1993/24, p.20). [↑](#footnote-ref-53)
54. According to the Center, the Seoul Riot Police Education Center had been committing all sorts of tortures under a disguise of ‘disciplinary education’ such as ‘shouting at every footstep’, ‘sitting straight-up during the work-hour’, ‘standing against a freezing winter wind wearing only underwear,’ etc. It was done under the pretense of ‘personality education’. This system was put to an end in Dec. 2018 (National Police Agency (15 Jun. 2018) “Police Reformation Committee’s Official Disbandment, Closing a Year-long Activity.”). [↑](#footnote-ref-54)
55. **MPA Article 57 (Kinds of Disciplinary Actions)** (1)Disciplinary actions against officers, warrant officers, and noncommissioned officers shall be classified into heavy disciplinary actions and minor disciplinary actions; heavy disciplinary actions shall be classified into expulsion, dismissal, demotion, and suspension from office and minor disciplinary actions into salary reduction, probation, and reprimand; and each kind of disciplinary measure shall be defined in detail as follows: … [↑](#footnote-ref-55)
56. **State Public Officials Act Article 79 (Categories of Disciplinary Action)** The disciplinary action shall be classified into removal, dismissal, demotion, suspension from office, reduction of salary and reprimand. [↑](#footnote-ref-56)
57. The original clause in **Article 60 of the MPA** “The execution of a detention in a guardhouse shall be suspended when a complaint against the detention in the guardhouse is filed pursuant to paragraph (1) or (4)” has been deleted. [↑](#footnote-ref-57)
58. NHRCK (2013). “Survey on Human Rights Situations and Control of Military Maladjustment”. p.40

    (Notice: unmarked sessions are led by a military chaplain)

    |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- |
    |  | 1st Day | 2nd Day | 3rd Day | 4th Day | 5th Day |
    | Morning | Medical Exam. (4 H)  By a medic | Self-introduction | Suicide prevention  (Overcoming depression) (1H) | Letting myself  (*details unknown*) | Mind control |
    | Afternoon | Counseling (2H)  By a counselor  Character Building (2H)  (about Fidelity & Courtesy)  By a vice-division commander/ a sergeant major | Psychological test  (a professional barrack life counselor may participate) | With Together  (*details unknown*) | In-depth counseling (4H)  By a professional barrack life counselor | Let’s Start Again  Life-respecting value Edu. (1H)  Completion Ceremony |
    | Evening | VTR (Life’s Dignity) | Self-story-telling | Movie Time/  Religious rite | Finding Dream | Return to Original Unit |

    [↑](#footnote-ref-58)
59. “2019~2023 National Defense Human Rights Policy Plan”. <http://bitly.kr/Fy0sm> [↑](#footnote-ref-59)
60. “Consider repealing article 92-6 of the MCA and take all measures necessary to punish violent actions against lesbian, gay, bisexual, transgender and intersex persons in the military.” [↑](#footnote-ref-60)
61. **Article 92-6** **(Indecent act)** A person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) or any other indecent act shall be punished by imprisonment with labor for not more than two years. [↑](#footnote-ref-61)
62. 2001HunBa70 (2002); 2008HunGa21 (2011); 2012HunBa258 (2016) – Currently there are four more cases raised by 13 current or former soldiers, pending before the Constitutional Court since 2017. [↑](#footnote-ref-62)
63. See UA KOR 2/2017. [↑](#footnote-ref-63)
64. CCPR/C/KOR/CO/4, para.15; E/C.12/KOR/CO/4, para.25 (a); A/HRC2210, para.124.34; A/HRC/37/11, para.132.44-45, 58, 65-68. [↑](#footnote-ref-64)
65. **Regulation on Criteria for Conscript Physical Examination, Etc.:** Appendix 3 [Criteria for Assessment and Degree of Diseases, and Physical and Mental Disorders] 102-3. Sexual Identity Disorder and Sexual Preference Disorder. [↑](#footnote-ref-65)
66. From late 2017 to mid-2019, a Captain said, “I dislike gays” “Why don’t you try (to like) girls?” “Are you feminine or masculine?” to a subordinate who came out to him for consultation. The Captain, a company leader, even outed his identity to his family against his will and leaked a company consultation note to other conscripts. All of such actions violate the Decree on Unit Management Chapter 7. But when the victim raised a complaint to the “Human Rights Protector” system in the military, a Military Judge Advocate Captain in his unit replied, “Why asking whom you’re seeing is a sexual harassment?” “The result of a disciplinary committee will not be affected even if it is sexual harassment” to the victim (*Donga Daily*, 1Aug. 2019. <https://bit.ly/36SydZG>). [↑](#footnote-ref-66)
67. *The Yonhap News Angency*, 16 Jan. 2020, <https://bit.ly/2Rmf6QZ> [↑](#footnote-ref-67)
68. BBC, 22 Jan, 2020, <https://www.bbc.com/news/world-asia-51204323> [↑](#footnote-ref-68)
69. **Regulation on Criteria for Conscript Physical Examination, Etc**.: Appendix 3 [Criteria for Assessment and Degree of Diseases, and Physical and Mental Disorders] 384. Testicular Atrophy or Deficit. [↑](#footnote-ref-69)
70. “Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with the Committee’s general comment No. 3 (2012) on the implementation of article 14.” [↑](#footnote-ref-70)
71. 2018HunGa10; 2017HunBa157. [↑](#footnote-ref-71)
72. 2013HunBa190 – In this case, 5 constitutional judges found ‘guardhouse detention’ unconstitutional but it falls short of quorum for decision of unconstitutionality. [↑](#footnote-ref-72)
73. As a result, the president granted amnesty only to those who were convicted after the Constitutional Court’s decision on constitutional nonconformity until the amendment of MSA in 30 Dec. 2019. [↑](#footnote-ref-73)
74. **Constitution** **Article 29** (2) In case a person on active military service or an employee of the military forces, a police officer or others as prescribed by Act sustains damages in connection with the performance of official duties such as combat action, drill and so forth, he/she shall not be entitled to a claim against the State or public organization on the grounds of unlawful acts committed by public officials in the course of official duties, but shall be entitled only to compensations as prescribed by Act. [↑](#footnote-ref-74)
75. **FAMSS** **Article 45 (Protection of Informant)** (2) The Minister of National Defense shall keep confidential all information on informants and notifications, etc. and ensure that no informant is subject to any disadvantageous action due to the informant’s notification, etc. [↑](#footnote-ref-75)
76. **FAMSS** **Article 41 (Professional Counselor)** (3) merely states that a professional counselor “may request the head of a military unit or agency to which he/she is assigned to take necessary measures.” It confines professional counselors’ activities by forcing them to work through commanders even in the non-military field where the military commanders are not specialized. [↑](#footnote-ref-76)
77. Korea Institute for Defense Analyses (KIDA). (2017) “2017 Military Human Rights Awareness Survey: Conscripted Soldiers”. p.206. [↑](#footnote-ref-77)
78. See **Footnote 66**. [↑](#footnote-ref-78)
79. See **II. F**. [↑](#footnote-ref-79)
80. It was first launched in 2005; the MND actually advertised this occupation as a job for not only active-duty soldiers but also for the retired soldiers (*The* *Hankook Economic Daily*. 23 Dec. 2014. [bit.ly/2Htmx4f](https://bit.ly/2Htmx4f)). [↑](#footnote-ref-80)
81. CCPR/C/KOR/CO/4, para.31. [↑](#footnote-ref-81)
82. Unlike the immediate abolition by unconstitutionality decision, the law is in effect until 31 December 2019 due to unconformity decision. [↑](#footnote-ref-82)
83. Yet, in Nov. 2018, the Supreme Court Full Bench acquitted a 34-year-old conscientious object, turning over 50-year precedence (*The Time*. 29 Jun. 2018. [bitly.kr/kctLKg](http://bitly.kr/kctLKg); *The Hankyoreh*. 28 Jun. 2018. [bitly.kr/nadAA5](http://bitly.kr/nadAA5); *Reuters*. 1 Nov. 2018. [c11.kr/709t](https://c11.kr/709t)). [↑](#footnote-ref-83)
84. (a) Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service; (b) Ensure that conscientious objectors’ criminal records are expunged, that they are provided with adequate compensation and that their personal information is not publicly disclosed; (c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility of performing an alternative service of a civilian nature (CCPR/C/KOR/CO/4, para.45). [↑](#footnote-ref-84)
85. See CCPR/C/88/D/1321-1322/2004; CCPR/C/98/D/1593-1603/2007; CCPR/C/101/3; CCPRC/C/101/D/1642-1741/2007; CCPR/C/110/D/1908/2009. [↑](#footnote-ref-85)
86. See JOL KOR 4/2019 [↑](#footnote-ref-86)
87. In 2004, the first acquittal of a conscientious objector to RFT. Since then, till 2019, so far 8 acquittals were made in the first trials (*Mail Business Newspaper.* 19 Feb. 2019. [bit.ly/2W4iGE4](https://bit.ly/2W4iGE4)). [↑](#footnote-ref-87)
88. There have been four cases pending before the Supreme Court’s full bench deliberation since last June 2019. The first case in history was in 2004. The Constitutional Court have upheld the constitutionality of punishment of conscientious reserve force objectors three times – the last one was in 2011 (*The Hankyoreh.* 20 Nov. 2018. <http://www.hani.co.kr/arti/society/society_general/870929.html>). [↑](#footnote-ref-88)
89. As of 2019, a corporal is paid with KRW 366,200 (about $309 as of 13 May 2019 KST) (National Statistics Service. “Conscript’s Remuneration Progress”. [bit.ly/30errdF](https://bit.ly/30errdF)). [↑](#footnote-ref-89)
90. JOL KOR 4/2019 [↑](#footnote-ref-90)
91. The MND prefers “fundamental rights” and discerns it from the “human rights” that the former is stipulated in the Constitution and may be limited by a statute. This is the main logic of the MND’s “National Armed Forces Human Rights Textbook for Military Human Rights Instructor” [↑](#footnote-ref-91)
92. National Defense University Job Training Center. “Education Schedule (Comprehensive)”. [bit.ly/2WDUW6q](https://bit.ly/2WDUW6q). [↑](#footnote-ref-92)
93. A/HRC/27/28, para. 11, para. 13; Please refer to Kim, G.S. (2018). “Situation and Task of Military Human Rights Education”. *Korea Human Rights & Law-related Education Association.* pp.47-76 for the clearer and more detailed description of the current military human rights education system. [↑](#footnote-ref-93)
94. **Article 10 (Operation of Armed Forces Human Rights Conference)** The Minister of the National Defense operates an Armed Forces Human Rights Education Conference jointly with Director of the MND Department of Human Rights and the main Section Leader in charge of education of the NHRCK, consisting of chiefs of relevant departments and sections as members. [↑](#footnote-ref-94)
95. Promote and raise awareness of the Optional Protocol and ensure that its provisions are included in the curricula of military schools (CRC/C/KOR/CO/5-6, para.49 (c)); [T]he State party, in the light of article 6, paragraph 2, [should] ensure that the principles and provisions of the Optional Protocol are included in the curricula of military schools and widely disseminated to the general public and State officials, as well as military and peace-keeping personnel, by appropriate means, including the media (CRC/C/OPAC/KOR/CO/1, para.8). [↑](#footnote-ref-95)
96. A/RES/66/137 [↑](#footnote-ref-96)
97. “Gabjil” (or [Gap-jil]) refers to a forceful action that treats a lower ranker or a subordinate who has less power like a slave or coerce irrational demands by using one’s status, title or authority (i.e. “to lay down the law to someone” or “to boss someone around”) (*Pub Chosun*. 17 Dec. 2014. [bit.ly/2LBSXPa](https://bit.ly/2LBSXPa)). [↑](#footnote-ref-97)
98. *The Aju Business Daily.* 22 Sep. 2017. <http://www.ajudaily.com/view/20170922105940585>. [↑](#footnote-ref-98)
99. The prosecutors investigated a total of 15 soldiers: 11 conscripts, 2 valet-soldiers, 6 cooks (also conscripts) and 1 driver, 2 general’s aides-de-camp and 2 butlers of official residences (executives). The General and his wife forced the soldiers to: [↑](#footnote-ref-99)
100. * Prepare for the General’s son and his friends’ BBQ party; Do the laundry of his son’s underwear and clothes
     * Drive the General’s private car to pick up or drop his son
     * Pick about 100 quince fruits from daybreak and wash them to make fruit marmalade; Make dried persimmons
     * Suffer from coercing church going on weekends
     * Prepare daybreak exercise of the General, meals and cleaning from 5 am until dawn the next day.
     * Wear an electronic bracelet (like Apple Watch) to summon at anytime and anywhere in the residence

     Due to such crimes, a conscript attempted to commit suicide.

     Next, General Park alone committed following misdeeds:

     * Beating two soldiers (the degree of battery is not specified in the prosecutor’s document)
     * Force soldiers to pick up golf balls during his practice
     * Declare, infuriated, “My wife is equivalent to a Brigadier General” and arbitrarily Dispatch the one who did not listen well to a general outpost in the front for a week.

     (The prosecutors themselves acknowledged that the General did not observe the laws and regulations and extralegally dispatched a soldier to another unit.)

     * Receive beef, boxes of fruits from soldiers or their families around holidays and birthday
     * Make a golf practice field in the official residence with the remaining grass from the troop’s golf field construction (having used conscripts’ labor)
     * Make jars of quince marmalade from the tree planted in the residence by using conscripts labor

     Especially in case of the marmalade, the prosecutor provided an argumentation that the tree belongs to the residence, thus it is the General’s private property. However, in case of the golf grass, the prosecutor contradicts oneself, saying that the residence is a public facility that is affiliated to the troop, thus embezzlement does not establish. [↑](#footnote-ref-100)
101. The Korean generals enjoy all sorts of privileges from propriety protocols and so on. They have MP, prosecutors, courts, and doctors under their commandership, and have no democratic checks, making them all mighty powers. When a former Justice who served as a Head of the Supreme Court Administration forced so-called “KKSS” which stands for, in Korean, “Do what is told to do” (probably, DWTD in English), it is practically a prosecutor’s official permission of massive human rights violations by those great powers in the military which is so much more closed and stricter in hierarchy than the courts to overlook his tortures, maltreatments and violent acts to that extent (*Donga Ilbo*. 29 Mar. 2019. [bit.ly/2Vr7Xnk](https://bit.ly/2Vr7Xnk)). [↑](#footnote-ref-101)
102. **Criminal Act Article 123** **(Abuse of Authority)** A public official who, by abusing his/her official authority, causes a person to perform the conduct which is not to be performed by the person, or obstructs the person from exercising a right which the person is entitled to exercise, shall be punished by imprisonment for not more than five years and suspension of qualifications for not more than ten years, or fine not exceeding ten million won.

     **FAMSS Article 26** **(Ban on Private Sanctions and Abuse of Authority)** In no event shall a soldier impose any private sanction, such as beating, verbal abuse, harsh treatment or bullying, or abuse his/her power.

     **MCA Article 62 (Cruel Act)** (1) A person who, by abusing his/her official authority, abuses or cruelly treats another person shall be punished by imprisonment with labor for not more than five years; Para. 2 A person who abuses or cruelly treats another person by force shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding seven million won. [↑](#footnote-ref-102)
103. **MCA** Article 5 (Insurrection) Subpara. 1\*., Subpara. 2.; among crimes of benefitting the enemy Article 11 (Furnishing of Military Bases and Installations)\*, Article 12 (Destruction of Military Installations, etc.)\*, Article 13 (Espionage) Para. 1\*, Article 14 (Benefitting the Enemy in General); Article 18 (Unlawful Initiation of Combat Engagement)\*, Article 19 (Unlawful Continuance of Combat)\*, Article 20 (Unlawful Advance or Retreat); Article 22 (Surrender)\*, Article 23 (Leading of Military Unit to Escape)\*, Article 24 (Dereliction of Duty) Subpara. 1\*, Article 27 (Commander’s Breakaway from Station of Defense) Subpara. 1\*, Subpara. 2, Article 28 (Sentry’s Breakaway from Station of Defense) Subpara. 1\*, Article 30 (Desertion from Military Service), Article 33 (Fleeing to Enemy’s Camp)\*; Article 37 (Danger Caused by Deceit to Navigation), Article 38 (False Order, Notification, and Report) Subpara. 1, Article 40 (Violation of Sentry Order) Subpara. 1, Article 41 (Cheating for Intentional Evasion of Service) Subpara. 1, Article 42 (Supply of Hazardous Foodstuff) Para. 2; Article 44 (Insubordination) Subpara. 1, Article 45 (Mass Insubordination) Subpara. 1; Article 50 (Aggravated Assault or Intimidation against Superior) Subpara. 1, Article 52 (Assault against Superior Causing Death or Injury) Subpara. 1, Subpara. 2, Article 52-4 (Infliction of Aggravated Bodily Injury on Superior) Subpara. 1, Article 52-5 (Infliction of Serious Bodily Injury on Superior) Subpara. 1, Subpara. 2, Article 52-6 (Infliction of Bodily Injury on Superior Causing Death) Subpara. 1, Subpara. 2, Article 53 (Murdering Superior and Preparation and Conspiracy therefor) Para. 1, Article 56 (Aggravated Assault or Intimidation against Sentry) Subpara. 1, Article 58 (Assault against Sentry Causing Death or Injury) Para. 1 Subpara. 1, Subpara. 2, Article 58-4 (Infliction of Aggravated Bodily Injury on Sentry) Subpara. 1, Article 58-6 (Infliction of Bodily Injury on Sentry Causing Death) Subpara. 1, Subpara. 2, Article 59 (Murdering Sentry and Preparation and Conspiracy therefor) Para. 1, Article 60 (Assault, Intimidation, etc. against Military Person, etc. on Duty) Para. 4 Subpara. 1, Subpara. 2, Article 60-5 (Infliction of Bodily Injury on Military Person, etc. on Duty Causing Death) Subpara. 1, Subpara. 2; Article 66 (Arson of Military Installations, etc.) Para. 1, Para. 2 Subpara. 1, Article 67 (Arson of Military Supplies Stored Outdoor) Subpara. 1, Article 71 (Capsizal or destruction of Ships and Aircraft) Para. 1, Para. 3, Article 75 (Aggravation of Penalty against Crimes Relating to Military Supplies, etc.) Para. 1; Article 83 (Plundering Resulting in Death or Injury), Article 84 (Rape in Combat Zone) Para. 1\*; Article 92-8 (Rape, etc. with Murder or Causing Death) (Asterisk mark refers to provisions stating ‘death penalty’ only). [↑](#footnote-ref-103)
104. <MCA> Article 3 [Execution of Death Penalty] A death penalty shall be executed by a firing squad at a place designated by the competent Chief of Staff or the competent officer of the military court [↑](#footnote-ref-104)
105. The Constitutional Court ruled in favor of the death penalty in 1996 and 2010. The National Assembly has proposed bills to repeal it: Member Yoo Jaegeon in 1999, Jeong Daecheol in 2001, Yoo Intae in 2004, Park Seonyeong in 2008, Kim Bugyeom in 2009, Yoo Intae in 2015 again and many others (*The* *Kyunghang Daily.* 10 Dec. 2014. [bit.ly/2WvLSRj](https://bit.ly/2WvLSRj)). There are about 57 condemned criminals; 4 of them are soldiers as of February 2018 (*The Yonhap News Agency*. 21 Feb. 2018.. [bit.ly/2DYr7q3](https://bit.ly/2DYr7q3)). [↑](#footnote-ref-105)
106. 2006HUNGA13 [↑](#footnote-ref-106)
107. On 19 February 2016 by the Supreme Court Full Bench decision, Srgt. Lim of the 22nd Army Division is convicted to the death penalty, for he shot fellow soldiers in June 2014 causing five losses (*The Yonhap News Agency.* 19 Feb. 2016. [bit.ly/2W4eOmw](https://bit.ly/2W4eOmw)). Corporal Kim of the 2nd Marine’s Corps was convicted in 2013, for he killed four comrades by firing in 2011 (*The Korea Economic Daily*. 13 Jan. 2012. [bit.ly/2vRq8DB](https://bit.ly/2vRq8DB)). PFC Kim of the 28th Army Division who fired 8 fellows in 2005 was convicted in 2008, for he did not appeal to the Supreme Court (*Sisa Journal*. 5 Oct. 2016. [bit.ly/2VZGVDg](https://bit.ly/2VZGVDg)). In addition, in the 28th Army Division, Private Lee killed 8 comrades by firing after a series of bullying from seniors and executed accordingly (*SBS NEWS.* 22 Jun. 2005. [bit.ly/2E3m9Zh](https://bit.ly/2E3m9Zh)). [↑](#footnote-ref-107)
108. E/CN.4/Sub.2/2002/4, Para. 38 [↑](#footnote-ref-108)
109. *The Chosun Ilbo*. 15 Mar. 2019. [bit.ly/2YgORxb](https://bit.ly/2YgORxb) [↑](#footnote-ref-109)
110. *SBS NEWS*. 18 Mar. 2019. [bit.ly/2JnC7Ro](https://bit.ly/2JnC7Ro) [↑](#footnote-ref-110)
111. *The* *Chosun Ilbo*. 16 Mar. 2019. [bit.ly/2Hf8ejk](https://bit.ly/2Hf8ejk) [↑](#footnote-ref-111)
112. *The Chosun Ilbo*. 28 Mar. 2019. [bit.ly/2Y9Uw8q](https://bit.ly/2Y9Uw8q); <Act on Testimony, Appraisal, etc. before the National Assembly>Article 12 (Offense of Non-Attendance, etc.) Para.1 Any witness who fails to attend, any witness who intentionally evades the service of a written request for attendance, any person who refuses a request for reporting or presentation of documents, or any witness or appraiser who refuses an oath, testimony or appraisal, without any justifiable ground, shall be punished by imprisonment with labor for not more than three years or by a fine of not less than thirty million won but not more than ten million won. [↑](#footnote-ref-112)
113. *The Kyunghyang Daily.* 31 Jul. 2018. [bit.ly/2Lt6hFj](https://bit.ly/2Lt6hFj); Representative Kim said, “That so-called Representative Lim Taehoon who suffers from sexual identity disorder leads military reformation is nonsense.”, “Many have inquired to the Korea Liberty Party whether it’s proper that showing (him) on TV with wearing make-up and talking about the Defense Security Command and military reformation”. [↑](#footnote-ref-113)
114. *Oh My News*. 03 Aug. 2018. [bit.ly/2VTSbko](https://bit.ly/2VTSbko). [↑](#footnote-ref-114)
115. Newsbeezer, 5 Nov. 2019. <https://bit.ly/3agRp5m> [↑](#footnote-ref-115)
116. The Korea Times, 2 Jul. 2013. <http://www.koreatimes.co.kr/www/news/nation/2013/08/113_138513.html> [↑](#footnote-ref-116)
117. “2019~2023 National Defense Human Rights Policy Plan”. <http://bitly.kr/Fy0sm> [↑](#footnote-ref-117)