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| Center for Military Human Rights Korea |
| **LOIPR Suggestions on the Korean Military Human Rights Issues** |
| Submission to the UN Human Rights Committee’s 126th Session |

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# **Introduction of Stakeholder**

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 from and assisting victims, providing human rights education and develop human rights friendly national defense policies.
2. Major Activities

The Center, in essence, monitors various human rights violations and assists victims thereof. For instance, it revealed the fact of the death of late Private First Class Yoon Seungjoo (**Late PFC Yoon’s Death**) in 2014 that he died of physical, psychological and sexual tortures which lasted over a month, whereas the military authority was concealing.[[1]](#footnote-1) At then, with 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 law requires. In addition, it protects homosexual soldiers who are in the most vulnerable position in the military (**para. 6**).

On the other hand, it monitors abusing of military personnel for a partisan or political motivated purpose. In March 2018, it revealed, with documents, the coup d’état plan of the former Defense Security Command to secure the then-President Park by suppressing peaceful candle-light vigils forcibly (**para. 16**; **footnote 125, 128**). During assemblies in 2014 and 2017, it also carried campaigns monitoring and dissenting abuse of the conscripted police[[2]](#footnote-2) that deploying them in front and disrupting peaceful assemblies.[[3]](#footnote-3)

1. International Cooperation

The Center, furthermore, has built cooperative relationships with international societies. In 2008, it has 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 of the ROK, and participated with other civil societies in lobbying foreign embassies in the ROK; in 2015, it participated in a joint- Submission for the fourth Human Rights Committee(**HRCttee**)’s review on the ROK state report.[[4]](#footnote-4) The Center also raised military human rights issues at Yonsei University to the UN High Commissioner for Human Rights when he visited the ROK in 2015. It has been collaborating with the United States of America (**US**) Embassy in writing *US Human Rights Report* on the ROK annually.[[5]](#footnote-5)

# **Background Information**

1. Terminologies are defined as:
   1. **Soldier**: it means both **B.** & **C.** below with civilian workers in the military (**civilian workers**).
   2. **Conscript(s)**: it consists of adult 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 became 19 years old.
   3. **Executive(s)**: it is the rest of **A.** except **B**. It generally refers to commissioned and noncommissioned officers (**officers**; **noncoms**).
2. National Defense and Military Service System
   1. **Size of Armed Forces**: the ROK is one of the top military powers. 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 thousand of the Marine’s Corps), and 65 of the Air Force – in total about 590 thousand. It is to be reduced to 500 thousand by 2020.[[6]](#footnote-6)
   2. **Female Soldiers Size:** all the conscripts are males. Currently, about 7.4% of the officers are female; 5.9% of the total. It is to be increased by more than 8.8% by 2020.[[7]](#footnote-7)
   3. **Active-duty forces**: one serves military service in a military area. About 82.8% of the conscription examinees (300 thousand) were assigned active-duty.[[8]](#footnote-8) The length of service is scheduled to dwindle 18 months for the army, 20 for the navy and 22 for the air force as of June 2020 (those who serve as executives serve more than two years).
   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. After that, they are included in civil defense forces until 40 years old.
   5. **Supplementary Services**: those who are ranked fourth class in conscription examination and others with several grounds serve in different ways.[[9]](#footnote-9)
   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 (including the Maritime Police) and Conscripted Firefighters. The term of the former is that of the Army, and the latter is that of the Navy.
   7. **Alternative Service**: currently, the Government is preparing a bill to introduce alternative service of a 36-month-long in a nonmilitary area (**para. 10**).

# **Suggested LOIPRs regarding Implementation of the HRCttee’s Fourth Concluding Observations**

## **Discrimination against Sexual Minorities (**para. 15**)[[10]](#footnote-10) and Witch-hunts**

1. Legal Issues: the principle of clarity and violation of the right to equality

The current <Military Criminal Act (**MCA**)> article (**art**.) 92-6 [indecent act] criminally punishes same-sex relationship between homosexual soldiers without the involvement of force.[[11]](#footnote-11) The provision has been approved as constitutional by the Constitutional Court three times.[[12]](#footnote-12) However, it is basically considerably vague in terms of the sex of a subject, place and time of actus reus. It is critical that the phrase “any other indecent act” is opaque. Still, the Constitutional Court insists that the Supreme Court’s precedence[[13]](#footnote-13) clarifies its meaning.[[14]](#footnote-14)

Moreover, the Constitutional Court and the MND argues that the provision does not ‘discriminate homosexuals’.[[15]](#footnote-15) They interpret that it protects “the sound life of the common society of the military and military discipline” as its benefit and protection of the law (or legal interest). Nonetheless, as squarely denoted by the precedence, it is already discrimination in jurisprudence. Furthermore, it has not been, in practice, used to preserve the legal interest of the provision but utilized as a discriminative instrument.[[16]](#footnote-16)

Lastly, it is not a problem to apply other provisions of arts. 92 or in the Criminal Act and laws of sexual violence in order to protect such legal interest. Hence, the very reason for the existence of the provision, in fact, is a violation of art. 26 of the Covenant as it is manifestly discrimination against *homosexuality*.

1. Gay Witch-hunt[[17]](#footnote-17)

By maintaining the article, it provides a possibility of massive homosexual persecution. In fact, a nationwide probe to search out homosexual soldiers occurred in 2017. It started from one suspect under art. 92-6; about 50 soldiers were targeted for military police (**MP**) investigation through all sorts of extralegal and sexually harassing investigation techniques including outing threat.[[18]](#footnote-18) Those kinds of investigation are also violating art. 7 and 18 of the Covenant. Eventually, in total, more than 28 were investigated, probably, and 9 were indicted. There are 5 pending trials still, and other 4 were convicted by courts.[[19]](#footnote-19) Later at the end of the year 2018, 3 seamen in the navy are being investigated by MP, while 4 were targeted, which started from a seaman who had a consultation due to his sexual identity issue. That is a violation of art. 17, 19 and 26 of the Covenant recurred in the ROK navy.[[20]](#footnote-20)

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| **Another step**  Those 16 victims of the army’s quest for probing homosexuals who were not brought to trial are not entirely safe from damages in the aftermath. Those who are still serving the military as a profession among soldiers who were not indicted by the military prosecutor suffer from personnel and administrative disadvantages in a promotion or a selection process for long-term service[[21]](#footnote-21) because of art. 92-6 is regarded as a sex offense under the <MCA>. It is unfair to have disadvantages in personnel management and disciplinary actions like other sex offenders when there often is no victim of sodomy as the provision does not consider coercion (i.e. consent). In conclusion, they will be discharged ‘systematically’, so it is not much different from the time in 2007 when the MND reviewed forcing the discharge of homosexual soldiers.[[22]](#footnote-22)  In addition, the Military Manpower Administration still uses the term, “Sexual Identity Disorder and Sexual Preference Disorder”.[[23]](#footnote-23) This practice is indeed discrimination that classifies sexual minorities as mental disorder patients. |

The Government should:

* Provide overall statistics of sex crimes and punishment thereof happened in the military (including a number of reporting) with categorizations in victims and assaulters as well as their sexes along with the result of punishment and disciplinary action with applied legal provisions.
* Prove the necessity of using the criterion “Sexual Identity Disorder and Sexual Preference Disorder”.
* Describe situations of disadvantages in personnel management including disciplinary action that occurred due to noncoerced ‘indecent act’ based on the classification of art. 92-6 of the <MCA> as a sex offense like other sex crimes.

## **Suicide (**para. 25**)[[24]](#footnote-24) and maltreatment**

1. New Trend

Although the number of suicide cases is decreasing,[[25]](#footnote-25) the low-grade executives (including staff sergeant (**staff** **srgt**.), sergeant first class, second lieutenant (**lieut**.), lieut., captain (**cpt**.)).[[26]](#footnote-26) In 2014, according to *The Kyunghyang Daily*’s report, they accounted for two-thirds of the total suicide cases of the executives, and the suicide rate per 100 thousand capita was about double of the conscript’s. Nowadays, the executive’s suicide is becoming a new issue.[[27]](#footnote-27) The root cause of conscripts’ and low-grade executives’ suicide does not differ as they both are ‘rookies’ in the military society where closed culture and strict hierarchy of command and discipline are dominant with which they are not familiar.[[28]](#footnote-28) In short, the low-grades experience, like conscripts, various irrationalities; in addition, they are responsible for managing conscripted forces so that they may be held responsible when an accident occurs.[[29]](#footnote-29) These contexts aggravate stress (**para. 18**). In contrast, the generals cannot be asked for consequences of their commandership before a disciplinary committee.[[30]](#footnote-30)

1. Maltreatment and Negligence

The military authorities still cover suicide cases and attribute the cause of suicide to the deceased individuals. The preventive programmes overly concentrate on conscript’s suicide though they are not systematic. The army’s “Green Camp”, a conscript suicide prevention programme started in 2009, is a good example.[[31]](#footnote-31) Green Camp’s scheme, performance record, internal regulations or instructions are all unknown to the public. Still, as far as the Center figured out through counseling and media reports, it is run by military chaplains. The inmates are treated as ‘misfits’ and tagged along with a supervisor (another conscript), yet a proper mental therapy or an education for adjustment is not provided.[[32]](#footnote-32) In addition, mere misfits and mental patients are contained in the same facility. This classification of grouping both of them as simply ‘deviates’ is a violation of art. 9 of the Covenant.

As shown above, the military still understands suicide is caused by as personal traits or situational agonies. Nevertheless, if it were congenital, they should have been excluded at the examination stage, and if it were circumstantial, they should have been provided with rather comprehensive and systematic enough preventions considering that the soldiers live in a “common society of the military”. Especially, as the increment of noncoms is planned, comprehensive countermeasures must be prepared considering the current tendency of the suicide of executives.

The Government should please:

* Submit <Army Regulation-941> and regulations relevant to the Green Camp as well as provide operation plan or scheme and performance statistics including information of inmates, returners, discharged soldiers and the number of suicides after the Camp.[[33]](#footnote-33)
* Provide license and certificate information that is held by each expert or management officer of the currently-operating suicide prevention programmes.
* Explain the root cause of military suicides and the current situation by rank and troops.

## **Sexual, Verbal and Physical Violence in the Military (**para. 31**)[[34]](#footnote-34) and impunity of torturers**

1. Battery

The beating cases in the military continues even after late PFC Yoon’s Death in 2014 which provoked nationwide public resentment. It rather becomes sophisticated and subtle. While the frequency of severe beating, etc. has decreased, the misdeeds linger on with inertia wherever central attention is not given. For instance, in April 2019, a marine’s case was received by the Center that he was beaten and molested for a month almost every day.[[35]](#footnote-35) A similar incident happened in another Marine’s Corps’ unit.[[36]](#footnote-36) Such violence sometimes entails deaths (**footnote 25**). It is concerned that the occurrence of beating cases is rising (**footnote** **42**).

1. Tortures and Verbal Abuses

In addition, maltreatment is becoming more and more sophisticated and subtle. For example, in the early April 2019, approximately 900 army cadets (i.e. everyone except the first-years) were coaxed to run the track for an hour from 11 pm for a week, wearing combat gears.[[37]](#footnote-37) When this was reported, the Korea Military Academy argued that the cadets organized such “training” to reflect upon their colleague cadet’s *accident under influence*.[[38]](#footnote-38) However, this is clearly violating art. 13 of the ROK Constitution that prohibits implicative system and art. 7 of the Covenant as well as torture stipulated in art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**).[[39]](#footnote-39) Even if they actually voluntarily organized such event, it is the commander’s duty to ban it in respect to the protection of human rights. Additionally, diverse types of physical tortures were confirmed after a field visit by the Center in December 2018 to the Discipline Education Center[[40]](#footnote-40) operated by the National Police Agency (**NPA**), a civilian organ.[[41]](#footnote-41) Like these, infringements by executives and systematic beating and maltreatment are increasing lately while beating and torturing amidst of conscripts were frequent in the past.[[42]](#footnote-42)

Another issue is that the MND’s “2015 Barrack Language Culture Improvement Plan” has limitations as verbal use is a matter of daily life and that the plan roughly excludes the executives.[[43]](#footnote-43) Also, punishing verbal abuses is difficult and the reality is not reviewed properly. Meanwhile, insulting superior regardless of the superior’s direct listening is punished with a criminal offense.[[44]](#footnote-44)

1. Delayed Justice and Hidden Truth[[45]](#footnote-45)

This increment is due to the impunity of attackers and responsible figures of management level. Actually, not even a single person out of those who are responsible for the initial investigation and unit management in case of late PFC Yoon’s Death in 2014 was brought to trial.[[46]](#footnote-46) Thus, the family of the deceased submitted a complaint to the Presidential Truth-Finding Committee on Military Death Accidents in early 2019. In spite of these, the MND insists that punishment of assaults within the military is carried out strictly. However, there is a tendency to close a case by persuading victims to make a settlement or disposing of an attacker of disciplinary action (i.e. military guardhouse). It is because the commanders who are responsible are afraid of personnel disadvantages when a case becomes a criminal case. This is indeed negligence of obligation of art. 2 of the Covenant.

1. Digital Sexual Violence

Sex crimes in the military evolve parallel to those of civilian society, and especially illegal video-tapings with a candid camera are uncovered. Nonetheless, victims are exposed to secondary and tertiary damages as follow-up measures are inadequate. For example, in October 2018, it was reported that a cadet had been caught with illegal filming in a female cadet’s dormitory for a year in the Navy Academy. The offender even blackmailed the victims. However, the Navy just expelled the attacker on 21 September 2018. Remedial measures were shifted onto the NPA.[[47]](#footnote-47) What is worse is that there were no countermeasures to prevent recurrence while similar crimes occurred lately before that.[[48]](#footnote-48) On the other hand, some offenders sometimes suddenly join the military after committing a sex crime, but it is concerned that the poor quality of military investigation would make the case end in smoke.[[49]](#footnote-49)

1. Sex Crimes and Impunity

Such impunity works more strongly when it comes to sex crimes. For instance, in the navy, a female lesbian Lieut. (now a Capt.) was raped by a superior (a Major) in 2010. When she came to her superior, then a Lieut. colonel (now a Colonel), h raped her again. The victim confessed her abortion surgery and her sexual orientation, but the assaulter rather “corrective-raped” her, saying “I will teach you what man is.” The victim suffered from PTSD for years and finally recovered enough to report this to the MP in June 2017. After then, the victims were sentenced with 8 and 10 years of imprisonment with labor from a general military court (**MCt**); however, the High MCt acquitted both of them on 8 and 19 November 2018.[[50]](#footnote-50) This was after when the Supreme Court ruled that sentences of courts should take gender-sensitivity into account.[[51]](#footnote-51)

The worse problem is that such delay of justice is a common thing. According to late Member Roh’s release, from 2014 to the first half of 2017, the rate of imprisoning of offenders in case of sexual violence under the <MCA> was merely 5.6%. It is far below than that of the other sexual violence’s (23%).[[52]](#footnote-52) Also, while a number of case initiation of investigation grew during the same period, the rate of indictment fell from 60% to 53.2%.[[53]](#footnote-53) Disciplinary actions were inadequately taken.[[54]](#footnote-54) Consequently, sexual violence by generals and the field grade officers, and other high rankers persists. Late Cpt. Oh to the bitter end committed suicide after habitual sexual molestations by Major No in 2013.[[55]](#footnote-55) A suicide attempt of an 18-year-old female Staff Srgt. after numerous sexual harassments and molestations were reported in 2017 as well.[[56]](#footnote-56) Nonetheless, fortunately, the reporting seems to soar.[[57]](#footnote-57) However, victims suffer from secondary damages such as being called “gold-digger”, etc. as a separation of victims and assaulters is not guaranteed properly. Compensation for victims is not given, and even assaulters often return to the troop.

The situation is not so much different when victims are males. 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. Nevertheless, the 17th 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 troop blocked the Center from talking to the victim on the phone, asserting that the victim does not want help. As stated, the military is yet inclined to conceal incidents.

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| **Another step**  The additional problem is that most military investigators[[58]](#footnote-58) and frontline commanders[[59]](#footnote-59) do not possess a proper knowledge of investigation techniques and an attitude of human rights sensitivity and gender-sensitivity. Thus, many a measure was introduced, yet they failed. In other words, although military human rights training is provided as stated in the <Decree>,[[60]](#footnote-60) it is consequentially problematic that the effect is insufficient to entail improvement of human rights sensitivity and advocacy action for human rights.[[61]](#footnote-61) |

The Government should please:

* Submit statistics concerning occurrence of battery and maltreatment with the result of punishment of perpetrators and responsible figures in management line, including the relationship between victims and attackers and their ranks as well as the length of violence and its essence in brief.
* Provide statistics regarding results of occurrence of sex crimes and criminal punishment and disciplinary action thereof, including the relationship between victims and attackers and their ranks as well as the length of violence and its essence in brief.
* Elaborate educations provided for workers in the field of military investigation to enhance gender-sensitivity along with situations of general military human rights and provide operational state of sexual grievance counselors[[62]](#footnote-62) and statistics of sex crimes solved and discovered by the counselors.
* Explain any measures taken to ensure victims’ right to counteract to a sex crime, a batter or a maltreatment incident with any figure in a fiduciary relationship with him or her as far as the victim desires.

## **Confidentiality in Remedial Measures (**para. 31**)[[63]](#footnote-63)**

1. Poor Quality of Remedial Measures

The MND launched “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 solve 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.[[64]](#footnote-64) Also, some of the professional counselors for barrack life are composed of retired executives,[[65]](#footnote-65) and human rights experts are in short among counselors. They, as well, do not have the mandate to settle a problem. Furthermore, they are temporary workers whose position does not allow a conflict with the military authorities.[[66]](#footnote-66) Lastly, it is just too poorly managed in terms of selection and training during work for these counselors to respond to 590 million of large armed forces.[[67]](#footnote-67)

1. Inadequate Protection of Reporter and Search for Whistleblower

It is also a problem that the protection of reporters is not qualified. In fact, a seaman who visited a professional counselor for barrack life due to his sexual identity issue at the end of the year 2018 was investigated under the sodomy law as the counselor reported the client’s sexual intercourse to the commander with another soldier with same-sex which the client confessed during the consultation. Because of such practices, victims of military sexual violence are cornered too inferior situations. The trend amidst of victims distrusting internal grievance system is confirmed by the fact that the total number of calls received by the National Defense Help Call Center drops annually whereas those received by the Center jumps double annually.[[68]](#footnote-68)

Additionally, attempts to search for whistleblower continue.[[69]](#footnote-69) The latest case happened in the Korea Military Academy which is considered to nurture the best frontline officers when a media report revealed that torture-like disciplinary action was coaxed and disguised as “voluntary” decision of cadets (**para. 8. B**.). The Academy violated clauses in the law[[70]](#footnote-70) and the <FAMSS>[[71]](#footnote-71) that guarantees to ensure confidentiality. Besides, in 2014, the army filed a lawsuit against the Center not to use *Army Call* brand and threatened the soldiers that they may be punished if they use it.[[72]](#footnote-72)

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| **Another step**  Besides, the detainees in military guardhouses cannot send a letter to addresses of a political party or a civil society according to the <Decree>,[[73]](#footnote-73) which demonstrates an old habitual perception of the military viewing external intervention as an obstacle to military morale and discipline or something cumbersome. Moreover, it is a violation of art. 10 of the Covenant as well. |

The Government should please:

* Submit information about licenses and certificates possessed by the current professional counselor for barrack life 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.).
* Elaborate the recent survey result on soldier’s perception about the guarantee of confidentiality of informant and effectiveness of internal grievance systems, and measures taken accordingly to ensure and complement the confidentiality code.
* Submit statistics on those who attempted searching for informants and punished or disposed of administrative discipline, including the subject’s rank and title (position).

## **Conscientious Objection (**para. 44**)[[74]](#footnote-74) and continuous damages**

1. Unsolved Relief for Damages Made

On 28 June 2018, the Constitutional Court decided that <Military Service Act (**MSA**)> art.5 para.1 that lacks in alternative service for conscientious objectors is incompatible with the Constitution.[[75]](#footnote-75) However, this constitutional nonconformity decision does not constitute a reason for retrial unlike ‘unconstitutionality decision’, and neither can be retroactively applied to those who have already been imprisoned nor include half-way conscientious objectors, leaving numerous loopholes. It is because the decision favored <MSA> art. 88 para. 1 which punishes conscientious objectors.[[76]](#footnote-76) 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 Covenant’s concluding observations. Now the last chance for them to remedy their damages is the presidential amnesty.

1. Expected Infringements

Moreover, the currently discussed form of alternative service has a great possibility of human rights violation. Although the National Assembly (**Assembly**) has not yet produced a finalized draft bill, still some of the conservative party insist on the introduction of more than three-year-long mine removing job for an alternative. Meanwhile, the MND proposed 36-months-long cooking or administrative assistant job in correctional facilities.[[77]](#footnote-77) The excuse is that it was out of a consideration of ‘equity’ between them and the active-duty soldiers by balancing the condition in terms of the length of service term and the station life (i.e. isolation). However, this ‘equity’ consideration ultimately proves the alternative service proposed is punitive by nature. Also, the MND proclaimed to change the terminology “conscientious” to “based on religious belief, etc.” as the word incites repulsion from ordinary citizens.[[78]](#footnote-78) This implies that the MND still fails to discern objectors from evaders. All the more, this decision may be interpreted as favorable for a particular religion and may violate the constitutional separation of government and religion under art. 20 para. 2.

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| **Another step**  In addition, the Constitutional Court is still reviewing the clauses punishing conscientious reserved forces training objectors.[[79]](#footnote-79) In case of refusing reserved forces training (**RFT**) – 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 the disadvantage of fine becoming excessive. Meanwhile, the Supreme Court acquitted a conscientious objector, but excluded an RFT objector’s case from ruling; thus, pending.[[80]](#footnote-80)  Additionally, the current alternative services (service switch) deploy the labor forces of the youth to nonmilitary areas but pay remuneration almost next to nothing;[[81]](#footnote-81) this violates the ILO conventions and art. 8 of the Covenant that prohibits forced labor. |

The Government should please:

* Elaborate composition of the reviewing organ for conscientious objectors, the process of the review and how it will be operated along with countermeasures for the conscientious objectors to RFT.
* Explain the action plan on amnesty and reinstatement, compensation and indemnification for those who were imprisoned or is imprisoned.

# **Suggested LOIPRs on Implementation of Relevant Treaty Bodies’ Concluding Observations**

## **Establishment of Independent Ombudsperson** (CAT/C/KOR/3-5(2017)’s para. 36 (b): art. 2)[[82]](#footnote-82)

In 2014, late PFC Yoon was daily beaten with hand, foot, and combat boots, etc. and sexually tortured from March to till his death on 7 April. The authorities at first covered this death.[[83]](#footnote-83) Due to this, nationwide supports and attention towards military human rights were provoked and <FAMSS> passed the Assembly in 2016 in spite of interruption of the MND. The Act requires the establishment of ‘Military Human Rights Protector (dwindled mandate and role)’.[[84]](#footnote-84) However, only a ‘Military Human Rights Investigation Team’ under the NHRCK was made until today, passing three years of enactment. Now, as five years have passed since his death, the establishment of the mechanism is distant as the Government’s will is fading away.

The Government should please:

* Describe what efforts have been made to introduce the ombudsperson.
* Explain what institutional preparations have been taken to ensure mandates of the ombudsperson’s investigation and visit as well as to accept the mechanism’s recommendations.

## **Independence of Military Judicial Officers** (op. cit. para. 36 (d): art. 14)[[85]](#footnote-85)

The ROK Constitution art. 110 allows the establishment of MCt. There are one High MCt under the MND and 31 General MCts under each armed force.[[86]](#footnote-86) Yet, unlike other judges, military judges[[87]](#footnote-87) are appointed by each Chief of Staff or the Minister of National Defense (**MinND**). Though restricted largely, a nonjudicial lay officer still can be instated,[[88]](#footnote-88) and a commander may alter the final ruling of a court; a sentence can be tailored by an administrative officer.[[89]](#footnote-89)

As of 1 May, a bill to abolish the High MCt and reduce General MCts to five and open judge positions for civilians is proposed.[[90]](#footnote-90) Nonetheless, the opening of a position allows ‘revolving door’ for ex-military judicial officers. Hence, it is possible for the policy to reduce to a path for them to be rehired just like the professional counselors.[[91]](#footnote-91) Moreover, it seems hard to pass the Assembly as **para. 13**.

The Government should please:

* Elaborate the necessities for peacetime MCt with logical grounds.
* Explain efforts made to ensure the independence of military prosecutors as well as MCts.
* State ways to ensure fair and transparent procedures for military judge appointment.

## **Arbitrary Detention** (op. cit. para. 36 (e): art.9)[[92]](#footnote-92)

1. Military Guardhouse

Ever since 1896 according to art. 57 of the <Military Personnel Management Act (**MPMA**)>, a commander may detain a conscript up to 15 days per disposal without a warrant issued by a judge.[[93]](#footnote-93) Though it is decreasing,[[94]](#footnote-94) still, about 10 thousand are captured arbitrarily. Meanwhile, the MND plans to abolish this,[[95]](#footnote-95) and an amendment is pending before the Assembly[[96]](#footnote-96) although its passage seems difficult due to the opposition of a conservative opposition party.[[97]](#footnote-97) Additionally, three constitutional appeals show no progress.[[98]](#footnote-98) Besides, executives are not subject to this; it is another discrimination violating art. 16 and 26 of the Covenant.

|  |
| --- |
| **Another step**  The guardhouse is utilized as a facility to detain prisoners on trial, too, which violates art. 10 of the Covenant. Plus, if it is to be nullified, then there are not enough places to house them. |

1. Torture and Double Jeopardy

Furthermore, as the amendment brings ‘Military Discipline Training’ back as a replacement, it is worrisome to have pejoration of adding torture to arbitrary detention. It is highly likely to violate not only art. 9 but also 7 and 10. Of course, the vice-Minister explains that it will consist of ‘educational activities.[[99]](#footnote-99) However, in 2017, according to a field visit of the Center, the NPA’s Discipline Center (**footnote 40**) committed varying sorts of tortures. In brief, it is likely to deteriorate at any time as it is under arbitrary decision and instruction of a commander as ever. In fact, each force has regulations already, but violation cases have been discovered.[[100]](#footnote-100) Also, it does not include the term of education like the guardhouse, it is double jeopardy as it extends the service term.[[101]](#footnote-101) For these reasons, the NHRCK expressed concerns as well in 2018.[[102]](#footnote-102)

1. Assisting Impunity

Lastly, guardhouse detention is often taken advantage of as a charade of a penalty when it comes to cover an accident not to bring it to a criminal procedure but to close it within the troop. Though criminal cases will be known to the outside, the administrative disposals remain inside and regarded as rather lighter which would reduce disadvantages in personnel management for those in the chain of command. It is not only a violation of art. 2 of the Covenant but also art. 3 considering the female victims of sex crimes and art. 14 as there would be no trial at all. Besides, as attackers are arbitrarily detained, it violates art. 9.

The Government should please:

* See **para. 8**.
* Publicize all the relevant regulations and rules related to military discipline training including **footnote 100 (d)**.
* Elaborate the position on the proposed military discipline training pending before the Assembly and all the other options under review including the plan of operation
* Indicate alternative venues for prisoners on trial after the abolition of guardhouses.

## **Support and Protection of Victims** (op. cit. para. 36 (g): art.2)[[103]](#footnote-103)

1. Rejection of Governance

Although it became legal to report grievances to outside other than the military,[[104]](#footnote-104) civil societies’ efforts to help victims are attacked. Hence, some victims fear to report a case outside, and parents misunderstand that NGOs take advantage of victims to advertise their activities.

1. Threats to Human Rights Defenders

Recently, human rights defenders are targeted often. For instance, when the Center deplored the Commander of the 17th Army Division (**para. 8**), Korea Liberty Party Member Kim Doeup on 13 March 2019 reviled the Center, an NGO with “no authority”, for haphazardly entering military security zones.[[105]](#footnote-105) Member Baek Seungju also demanded the MND to award those who refused governance and punish who cooperated on 18 March.[[106]](#footnote-106) The conservative media *Chosun Ilbo* took dictation and even made an editorial letter[[107]](#footnote-107) 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 to a national inspection session last year.[[108]](#footnote-108) However, he had just disclosed coup d’état plan on 6 July 2018 and been personally attacked by Representative Kim Seongtae of the Party since 31 July based on his sexual identity.[[109]](#footnote-109) On 3 August, the Party had sued him along with Speaker of the Blue House and MinND, etc.[[110]](#footnote-110)

The Government should please:

* Explain if circumstances to accompany any person in a fiduciary relationship is available for victims during remedy for violation of rights.
* Release statistics on punishment upon hate speech and attacks towards human rights defenders.

# **More Military Human Rights Issues**

## **Right to Life (**art. 6**)**

1. Safety

There are big and small accidents happening in the military, but the state does not fulfill its responsibility. For instance, soldiers had to pay compensation by him/herself when they make a car accident with another soldier.[[111]](#footnote-111) Also, they tend to shift responsibility to low-rank officers. For example, there was a shooting accident due to a stray bullet in 2017; low-grade officers were indicated as responsible figures although it was rather due to the structure of shooting field and poor management as found by the Center after a field visit.[[112]](#footnote-112)

Besides, when one injures from malfunctioning during training, the burden on victims was tremendous. They were discharged, for they cannot serve anymore, and often had to pay for surgery and treatment in civilian hospitals even when military hospitals could not provide the operations. These have been improved partially.[[113]](#footnote-113)

1. Health

Besides, there are still some soldiers who could not exercise their right to health properly. Especially, those serving in front bases in the mountains have to spend a long time just to get to a hospital by car.[[114]](#footnote-114) Additionally, often nonqualified soldiers operated medical treatments (including prescription). This sort of illegal proxy medical action was not only done in small troops but in the Korean Armed Forces Capital Hospital (KAFCH) and the Armed Forces Medical Command admitted it.[[115]](#footnote-115)

Furthermore, even medics have far less experience than the outside, facilities and equipment are worn-out so that proper medical benefits are not ensured.[[116]](#footnote-116) In brief, Korean military hospitals cannot operate a bullet wound, soldiers have to go to District Emergency Centers or civilian hospitals.[[117]](#footnote-117) In addition to misdiagnosis, in case of conscripts, some die of delay of treatment because profession medics often regard they are faking it.[[118]](#footnote-118) It is no different in case of the KAFCH, known for the best military hospital.[[119]](#footnote-119)

1. Capital Punishment

Though the ROK has a death penalty,[[120]](#footnote-120) it does not execute. <MCA> also has it. It is executed only by a firing squad both in war and peacetime.[[121]](#footnote-121) 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 only with death.[[122]](#footnote-122) The Constitutional Court decided <MCA> art. 53 [Murder of Superior, etc] unconstitutional as it only punishes with death.[[123]](#footnote-123) Until recently, some soldiers were sometimes sentenced with capital punishments some of whom include those who committed a crime out of bullying. However, the focus is mainly placed on punishing the criminal, and checking background history is often miscarried.[[124]](#footnote-124) None is executed, too.

The Government should please:

* Explain measures taken to probe responsibility of safety accidents and statistics of recent safety accidents and preventive measures therefor.
* Describe measures taken to ensure soldiers’ right to health including specific improvements made for the right to access of the soldiers in remote bases.
* Disclose the date of misdiagnosis and medical accidents of the military hospitals as well as career and training experiences of medics and information of hospital facilities and equipment.
* Rationalize the necessities of provisions with the death penalty only under the <MCA>.

## **Rule of Law (**art. 4-5, 17-19, 21**) and coup and National Security Act (NSA)**

1. Former Defense Security Command (**DSC**)’s Coup and Infringements

The DSC, now Defense Security Support Command (**DSSC**), committed illegal political manipulation, spying on the bereaved of Sewol Ferry and planned coup d’état beyond its mandates as an information and investigation organ. They unlawfully perused personal information of military facility visitors, tapped telephones and social media. They even taped a phone between the then-late-President Roh and his MinND. Their tactic was to open an internal investigation case based on <NSA> and inspected procession participants.[[125]](#footnote-125) Critically, the DSC in May 2017 made a document, “Action Plan on Wartime Martial-law and Joint-investigation”, defining candle-light vigil participants demanding the impeachment of then-President Park as rioters[[126]](#footnote-126) to declare the <Garrison Decree> first,[[127]](#footnote-127) and then <Martial Law>[[128]](#footnote-128) to suppress civilians by armed forces with armored vehicles. It is a clear violation of the Covenant as a whole.

On the other hand, according to *JTBC* reports on 8 and 9 April 2019, they also spied on ordinary civilians massively right after Sewol Ferry’s submergence in 2014. Equipment for espionage prevention as utilized to listen to conversations in parks, amusement parks, churches and even inside of taxis. The Blue House complimented, saying “the best troop acting in strict order” after reporting of these activities.[[129]](#footnote-129) The DSC furthermore planned to use Central Radio Management Service under then-Ministry of Science and ICT to wiretap broadcast and communication devices generally.[[130]](#footnote-130) None has been properly punished.[[131]](#footnote-131)

1. Current DSSC

Nonetheless, the power of the DSC was passed down to the DSSC intact. For instance, <Decree on DSSC> Art. 4 [Mission] Para. 1 Subpara. 1 empowers it to mandate security tasks that the frontline units are already in charge of. They abused it to keep units under their surveillance. They even searched the personal belongings of soldiers without a warrant. Also, Subpara. 3 thereof uses a vague term, “military-related”; it was abused to spy on civilians. The DSC listed civilians on suspects of the <NSA> violators and probed, then terminated the case instead of making it official (**para. 16. A**.). Additionally, Item Ra’s “Trend Observation” was abused to probe the privacy of soldiers in the past indiscriminately. Likewise, Subpara. 4 gave power to the DSC to commit all misdeeds with investigation power while the professional investigation was done by the NPA or the National Intelligence Agency. Lastly, Subpara. 5’s “supportive work” has been indeed abused for them to influence politics in the past. In conclusion, the organ needs to be disbanded or its power is reduced.

In addition, the criteria for declaration of martial law should be specified.[[132]](#footnote-132)

1. Incitement of Violence

Some of the self-claiming conservative groups and their heads or figures are inciting civil war and spreading hate speech under the pretext of anti-government struggle. They instigate a civil war, saying “Declare martial law,” “Rise, Army,” “Shoot and kill candlelight citizens”, etc.[[133]](#footnote-133) The Center accused of some of them after reviewing the Supreme Court’s conviction on former Member Lee Seokgi of the United Progressive Party[[134]](#footnote-134) on 24 January 2017 to the prosecutors, but they were not indicted on 16 January 2019. Meanwhile, an improvised group of retired generals in early 2019 even claimed the current administration as “North Korea followers” and made propagated insurrection of the armed forces by saying “Refuse (them) risking your life.”[[135]](#footnote-135) These people denounce all measures taken for peace in the Korean peninsula under the current Government as benefitting the enemy. Even if their speech is not genuine, as it incites violence, it violates art. 20 of the Covenant.

The Government should please:

* Describe concrete plans for the DSSC to build a monitoring mechanism in alliance with civil societies to prevent the past malice and to protect citizens’ rights.
* Explain plans to punish the responsible and prevent a coup which the DSC planned as confirmed.
* Elaborate specific criteria for declaration of martial law.
* Provide statistics of occurrence of groups or persons inciting hate or violence via the press, social media, and assemblies, etc. and punishment of agitators.

## **Prohibition of Slavery (**art. 8**)**

1. Servitude

The outstanding ‘Gab(p)jil’[[136]](#footnote-136) incident happened in the military is definitely the case of General Park (the 2nd Army Operations Commander at the time of his misdeed). He enslaved his subordinates (valet-soldiers and aides-de-camp) from 2013 to 2017.[[137]](#footnote-137) The victims asked for help to 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.

1. Impunity of Modern Forms of Slavery

Absurdly, however, according to the investigation result of the prosecutor,[[138]](#footnote-138) it has been confirmed by multiple testimonies that he and Mrs. Jeon had committed crimes alleged by victims.[[139]](#footnote-139) Yet, the prosecutor simply viewed him not guilty because facts do not establish crimes of embezzlement, torture, bribery, etc. enough, the period of the statute limitations has passed, victims do not wish to penalize the offender, or the laws do not cover enough. In addition, it deemed that the crime of abuse of power 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.[[140]](#footnote-140)

The Government should please:

* Explain if there have been any measures taken to punish ‘Gab(p)jils’ in the military.
* Make reasoning why ‘Gab(p)jil’ which can even dictate tortures including private instructions does not constitute the crime of abuse of authority.[[141]](#footnote-141)

## **Invasion of Privacy (**art. 17**)**

1. The intrusion of Privacy of Low-grade Executives[[142]](#footnote-142)

The Center made a press release collecting all cases regarding human rights infringements and invasion of privacy of low-grade executives which soared from 2016[[143]](#footnote-143) on 5 June 2018.[[144]](#footnote-144) Accordingly, the MND issued an order on banning invasion of privacy to each level of troops. However, the NHRCK has already made recommendations on stopping internal inspection on bachelor’s quarters in barracks on 22 February 2017,[[145]](#footnote-145) and pointed out human rights violations regarding restrictions on purchase and driving of private vehicles in 2008.[[146]](#footnote-146) In 2013, it delivered recommendations upon an excessive survey of personal financial information (i.e. debts).[[147]](#footnote-147) In spite of all these, invasions had persisted until 2018.

Notwithstanding the recommendations, the reason of recurrence of such violations is because frontline commanders and managers abuse the extralegal practices so as to ‘prevent’ any outside affairs from happening by ‘control’ of the private life of low-grade executives in line with administrative opportunism. Though facility improvement has been made rather fast, unfortunately, awareness has not changed much, so their working and life conditions are not enhanced.

The Government should please:

* Elaborate measures taken to reinforce capacities of low-grade executives and to improve their working conditions and private life with statistics.
* Provide statistics on punishment including disciplinary actions imposed upon perpetrators of illegal acts including invasion of privacy of low-grade executives along with information about the relationship between victims and attackers, their ranks, and the gist of the violation.

**[Appendix] LOIPRs**

| Article | Suggestions |
| --- | --- |
| 2  (Remedy) | * Describe what efforts have been made to introduce the ombudsperson. * Explain what institutional preparations have been taken to ensure mandates of the ombudsperson’s investigation and visit as well as to accept the mechanism’s recommendations. |
| 2  (Protection) | * Explain if circumstances to accompany any person in a fiduciary relationship is available for victims during remedy for violation of rights. * Release statistics on punishment upon hate speech and attacks towards human rights defenders. |
| 4 & 5  (Restriction) | * Describe concrete plans for the DSSC to build a monitoring mechanism in alliance with civil societies to prevent the past malice and to protect citizens’ rights. * Explain plans to punish the responsible and prevent a coup which the DSC planned as confirmed. * Elaborate specific criteria for declaration of martial law. |
| 6  (Life) | * Submit <Army Regulation-941> and regulations relevant to the Green Camp as well as provide operation plan or scheme and performance statistics including information of inmates, returners, discharged soldiers and the number of suicides after the Camp.[[148]](#footnote-148) * Provide license and certificate information that is held by each expert or management officer of the currently-operating suicide prevention programmes. * Explain the root cause of military suicides and the current situation by rank and troops. |
| 6  (Safety, Health and Capital Punishment) | * Explain measures taken to probe responsibility of safety accidents and statistics of recent safety accidents and preventive measures therefor. * Describe measures taken to ensure soldiers’ right to health including specific improvements made for the right to access of the soldiers in remote bases. * Disclose the date of misdiagnosis and medical accidents of the military hospitals as well as career and training experiences of medics and information of hospital facilities and equipment. * Rationalize the necessities of provisions with the death penalty only under the <MCA>. |
| 7  (Torture, etc.) | * Submit statistics concerning occurrence of battery and maltreatment with the result of punishment of perpetrators and responsible figures in management line, including the relationship between victims and attackers and their ranks as well as the length of violence and its essence in brief. * Provide statistics regarding results of occurrence of sex crimes and criminal punishment and disciplinary action thereof, including the relationship between victims and attackers and their ranks as well as the length of violence and its essence in brief. * Elaborate educations provided for workers in the field of military investigation to enhance gender-sensitivity along with situations of general military human rights and provide operational state of sexual grievance counselors[[149]](#footnote-149) and statistics of sex crimes solved and discovered by the counselors. * Explain any measures taken to ensure victims’ right to counteract to a sex crime, a batter or a maltreatment incident with any figure in a fiduciary relationship with him or her as far as the victim desires. |
| 7 & 2 | * Submit information about licenses and certificates possessed by the current professional counselor for barrack life 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.). * Elaborate the recent survey result on soldier’s perception about the guarantee of confidentiality of informant and effectiveness of internal grievance systems, and measures taken accordingly to ensure and complement the confidentiality code. * Submit statistics on those who attempted searching for informants and punished or disposed of administrative discipline, including the subject’s rank and title (position). |
| 8  (Slavery) | * Explain if there have been any measures taken to punish ‘Gab(p)jils’ in the military. * Make reasoning why ‘Gab(p)jil’ which can even dictate tortures including private instructions does not constitute the crime of abuse of authority. |
| 9  (Personal Liberty) | * See **Suggestions for art. 7**. * Publicize all the relevant regulations and rules related to military discipline training including **footnote 100 (d)**. * Elaborate the position on the proposed military discipline training pending before the Assembly and all the other options under review including the plan of operation * Indicate alternative venues for prisoners on trial after the abolition of guardhouses. |
| 14  (Fair Trial) | * Elaborate the necessities for peacetime MCt with logical grounds. * Explain efforts made to ensure the independence of military prosecutors as well as MCts. * State ways to ensure fair and transparent procedures for military judge appointment. |
| 17  (Privacy) | * Elaborate measures taken to reinforce capacities of low-grade executives and to improve their working conditions and private life with statistics. * Provide statistics on punishment including disciplinary actions imposed upon perpetrators of illegal acts including invasion of privacy of low-grade executives along with information about the relationship between victims and attackers, their ranks, and the gist of the violation. |
| 18  (Conscience, etc.) | * Elaborate composition of the reviewing organ for conscientious objectors, the process of the review and how it will be operated along with countermeasures for the conscientious objectors to RFT. * Explain the action plan on amnesty and reinstatement, compensation and indemnification for those who were imprisoned or is imprisoned |
| 21  (rule of law and incitement of violence) | * Provide statistics of occurrence of groups or persons inciting hate or violence via the press, social media, and assemblies, etc. and punishment of agitators. |
| 26  (Equality, etc.) | * Provide overall statistics of sex crimes and punishment thereof happened in the military (including a number of reporting) with categorizations in victims and assaulters as well as their sexes along with the result of punishment and disciplinary action with applied legal provisions. * Prove the necessity of using the criterion “Sexual Identity Disorder and Sexual Preference Disorder”. * Describe situations of disadvantages in personnel management including disciplinary action that occurred due to noncoerced ‘indecent act’ based on the classification of art. 92-6 of the <MCA> as a sex offense like other sex crimes. |

Total 8,449 words, including cover page, except for footnotes.

1. *CNN*, 2014.09.04. [hoy.kr/EKlQY](https://hoy.kr/EKlQY); *BBC News*. 30 Oct. 2014. [goo.gl/DjLTFN](https://goo.gl/DjLTFN). [↑](#footnote-ref-1)
2. Those who serve the military service term as an assistant force for the police (**II. Background Information 5. F.**) [↑](#footnote-ref-2)
3. Please, refer to the UN Special Rapporteur’s country visit report: A/HRC/32/36/Add.2, para. 39 [↑](#footnote-ref-3)
4. A/HRC/WG.6/2/KOR/3 (2008); A/HRC/WG.6/14/KOR/3 (2012); INT/CCPR/CSS/KOR/21718 & 21790 (2015); INT/CAT/CSS/KOR/26966/E (2017). [↑](#footnote-ref-4)
5. *The Hankyoreh English*, 5 Aug. 2015, [bitly.kr/8G5J7](file:///C:\Users\animus\Desktop\bitly.kr\8G5J7); *The Hankyoreh*, 11 Feb. 2016, [bitly.kr/EA2Gp](http://bitly.kr/EA2Gp). [↑](#footnote-ref-5)
6. MND (2018). *Defense White Paper 2018*. p.87. [↑](#footnote-ref-6)
7. op. cit., p.175. [↑](#footnote-ref-7)
8. Member of the National Assembly (hereinafter ‘Member’) Kim Jongdae argues that about 9,000 conscripts are sent to “Green Camps” which is a programme to manage suicide-risk and early-dischargeable conscripts. Still, the authority plans to assign 91.4% of the examinees with active-duty (*The Jungang Daily*. 10 Oct. 2018. [bitly.kr/stdMh](http://bitly.kr/stdMh)). (**para. 8:** “Green Camp”). [↑](#footnote-ref-8)
9. Special Researcher, Industrial Worker, Public Service Worker, Public Health Doctor, Public Service Judge Advocates, etc. [↑](#footnote-ref-9)
10. “… repeal article 92-6 of the Military Criminal Act …”; CAT/C/KOR/CO/3-5’s para. 36’s clause (f) in 2017 and E/C.12/KOR/CO/4’s para. 25’s clause (a) in 2017 also pointed out the same problem and recommended improvement; the Government of the ROK has received the same recommendations in the second and the third cycle of the UPR (A/HRC/22/10, para.124.34; A/HRC/37/11, para.132.44-45, 58, 65-68) [↑](#footnote-ref-10)
11. <MCA> 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-11)
12. 2001HUNBA70 (2002); 2008HUNGA21 (2011); 2012HUNBA258 (2016) [↑](#footnote-ref-12)
13. Supreme Court 2008. 5. 29. Sentence 2008DO2222 Judgement: The Supreme Court defines ‘indecent act’ as “act of sexual satisfaction that excites a feeling of aversion and contradicts with the good sexual moral conception”. It deemed that the benefit and protection of the law of this provision is not an individual’s sexual freedom. This logic was upheld in 1973, too (Supreme Court 1973. 9. 25., Sentence, 73DO1915, Judgement). [↑](#footnote-ref-13)
14. **2012HUNBA258 says that the Supreme Court views ‘any other indecent act’ of** Article **92-5(former** Article **92-6) as “homosexual action that has not reached the degree of sodomy (chicken’s copulation)”.** [↑](#footnote-ref-14)
15. See **Footnote 10**. [↑](#footnote-ref-15)
16. For example, in 2010, a marine colonel habitually molested his driver (a conscript) more than three times in vehicles, yet the High Military Court dismissed the only witness who can support the victim’s testimony, then the Supreme Court acquitted the offender after five years from the beginning of lawsuit based on the minor alternations in the victim’s specific descriptions.

    It becomes clearer when two **Tables** below are taken into consideration that the MCA Article 92-6 is to discriminate homosexuals.

    |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- |
    | **Victims of Sexual Crimes in the Military** | **Civilian Female** | **Civilian Male** | **Male Soldier** | **Female Soldier** | **Sum** |
    | **2010** | 159 | 1 | 60 | 3 | 223 |
    | **2011** | 184 | 2 | 72 | 6 | 264 |

    <**Table 1**> Member Kim Gwangjin. *NEWSIS.* 4 Oct. 2012. [bit.ly/30bsVpb](https://bit.ly/30bsVpb).

    | **Year** | **Sum** | **No-indictment** | **Imprison-ment** | **Suspended Execution** | **Fine** | **Suspended Sentence** | **Acquittal** | **Transfer** | **Other\*** |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | **2014** | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
    | **2015** | 6 | 0 | 0 | 2 | 0 | 2 | 0 | 2 | 0 |
    | **2016** | 8 | 0 | 0 | 1 | 0 | 2 | 0 | 5 | 0 |
    | **2017** | 28 | 16 | 1 | 5 | 0 | 1 | 0 | 1 | 4 |
    | **~Jun. ‘18** | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |

    <**Table 2**> Source prepared by the MND for closed “Conference for Review of Implementation of the fourth Concluding Observations of the HRCttee(4th CCPR Conference)” with civil societies (hosted by the Ministry of Justice and the NHRCK on 8 April 2019). (\*: ‘Other’ is assumed to include ongoing investigations and trials.) [↑](#footnote-ref-16)
17. *CNN*. 13 Jun. 2017. [bit.ly/2VVj4Vd](https://bit.ly/2VVj4Vd)(actual interview with a victim starts from 30 seconds). [↑](#footnote-ref-17)
18. op. cit.; *Dotface*. 16 Apr. 2017. [bit.ly/30aoJGc](https://bit.ly/30aoJGc)(a video with the voice of the investigators like Warrant Officer Hong and his subjects questioned: preferable sexual posture, emotional satisfaction, etc. that are entirely not related to the investigation of Article 92-6 at all). More illegal factors found during the investigation is noted in [mhrk.org/news/?no=3257](http://mhrk.org/news/?no=3257). [↑](#footnote-ref-18)
19. See <**Table 2**> of **footnote 14**. Refer to UA KOR 2/2017 and the response letter (KGV/17/2018). [↑](#footnote-ref-19)
20. The gist of the incident is elaborated in [mhrk.org/news/?no=6086](http://mhrk.org/news/?no=6086). The Navy Headquarters publicly threatened ‘outing’ of the victims as a response to the Center’s press release and intervention. See [mhrk.org/news/?no=6094](http://mhrk.org/news/?no=6094). In addition, there was a seaman who was investigated in 2017 as well. [↑](#footnote-ref-20)
21. The Korean military operates a “mandatory retirement system by ranks” (<Military Personnel Management Act>’s Article 8); thus, one has to retire when he or she cannot be promoted further. Also, there is a “long-term service selection”. When one does not pass the selection process, one usually has to be discharged before having sergeant first class or captain. [↑](#footnote-ref-21)
22. The MND in 2006 accepted on 22 March 2006 recommendations from the NHRCK after an incident that required a homosexual conscript to prove his sexual orientation by submitting a photo of him having a sex with another man (*The Segye Daily.* 23 Mar. 2006.[bit.ly/2Vm4uBW](https://bit.ly/2Vm4uBW)); however, the MND reviewed a policy to kick out homosexual executives when noticed on 17 February 2007 (*The Yonhap News Agency*. 2007.02.17. [bit.ly/2YmJbly](https://bit.ly/2YmJbly)). [↑](#footnote-ref-22)
23. <Examination Criteria for Conscript Physical Examination, etc.>’s Appendix 3 [Criteria for Assessment and Degree of Diseases, and Physical and Mental Disorders]’s 102-3. [↑](#footnote-ref-23)
24. “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.”; ibid. para. 24 “… within the military …”; CAT/C/KOR/CO/3-5’s para. 36’s clause (a) in 2017 also recommended similarly. [↑](#footnote-ref-24)
25. According to the National Statistics Service ([bitly.kr/Pvq9](http://bitly.kr/Pvq9)), the suicide cases happened as follows. The rise in the early 2010s seems to have been influenced by the conflict between the Democratic People’s Republic of Korea under Lee Myungbak administration under which the Minister of National Defense Kim Kwanjin pushed a unilateral policy of ‘strong army’ and neglected human rights.

    |  |  |  |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | **Year** | **2010** | **2011** | **2012** | **2013** | **2014** | **2015** | **2016** | **2017** | **2018** |
    | **Suicide** | 82 | 97 | 72 | 79 | 67 | 57 | 54 | 51 | 56 |
    | **Beating** | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
    | **Death Toll** | 117 | 132 | 101 | 109 | 91 | 74 | 73 | 68 | 80 |

    [↑](#footnote-ref-25)
26. As the length of a srgt. first class (and a captain) is rather longer, only some of them are actually low-grade executives. However, most statistics do not distinguish the length of service term within a rank; thus, all of them are included. [↑](#footnote-ref-26)
27. The following table shows the suicide cases of executives as reported by the press. Some data from 2012 to 2014 were contradicting themselves, and the different figures are noted inside the parenthesis ( ) as it is less credible.

    | Year | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | Low-grade | 17 | 25 | 18 | - | - | - | - | - |
    | Executives | - | - | 34 | 34 | 21 (27) | 31 (35) | 29 | 31 |
    | Death Toll | 82 | 97 | 72 | 79 | 67 | 57 | 54 | 51 |

    (2010~2012: *The Kyunghang Daily.* 10 Sep. 2014. [bit.ly/2WE8crJ](https://bit.ly/2WE8crJ); 2012~2015: *KBS NEWS*. 24 Nov. 2016. [bit.ly/309o5IV](https://bit.ly/309o5IV)(after 29 seconds); 2014~2017: *Maeil Business Newspaper*. 10 Oct. 2018. [bit.ly/2VwiZrq](https://bit.ly/2VwiZrq)) [↑](#footnote-ref-27)
28. *The* *Korea Economic Daily*. 11 Oct. 2011. [bit.ly/30eSrtu](https://bit.ly/30eSrtu) [↑](#footnote-ref-28)
29. There is a tendency that commanding responsibility is usually rested upon low-grade executives, whereas the battalion commanders or high commanders do not be charged for their responsibility – a practice of ‘cutting tail’ is prevailing (see **para. 15-A.**). [↑](#footnote-ref-29)
30. <Military Personnel Management Act> Article 58-2 [Disciplinary Committee] Para. 2 stipulates that three executives are required to open a committee who are senior to the defendant subject to the committee’s review. As the seniors of a general retire with the issuance of appointment of generals, it is impossible to establish a disciplinary committee. Though this has been discussed publicly during the former General Park Chanju’s *Gapjil* incident, it has not been improved (*The Hankyoreh*. 4 Aug. 2017. [bit.ly/2E4CXPm](https://bit.ly/2E4CXPm)). [↑](#footnote-ref-30)
31. It is called “Vision Camp” when it is operated at a division-level troop. [↑](#footnote-ref-31)
32. According to the press report, inmates meets an external expert only once or twice and usually spends time watching TV or videos. Doors were locked from outside and an observer was tagged along the way to a toilet as well. What is worse is that even if they return to their own troops, they were already stigmatized as ‘dropouts’. From 2012 to 2013, a total of 83 conscripts committed suicide, and 33 of them (40%) were so-called “attention-needed soldiers”. The Green Camp is where those attention-needed soldiers were “sent”. (*The Hankyoreh*. 18 Aug. 2014. [bit.ly/2Q0l20W](https://bit.ly/2Q0l20W)). Moreover, due to poor programmes soldiers who were on a list for discharge after Green Camp course jumped from 19.4% (151) in 2013 to 44.9% (1,896) in 2017 (*Money Today*. 22 Aug. 2018. [bit.ly/2Hfv3Dz](https://bit.ly/2Hfv3Dz)). [↑](#footnote-ref-32)
33. For instance, a doctorate student’s request for a history of the Camp and scheme, etc. was partially rejected (in fact fully denied as the provided information was useless and vaguer than the press’ reports) based on the <Official Information Disclosure Act>: Article 9 Para. 1 Subpara. 2. and Subpara. 5. [↑](#footnote-ref-33)
34. “The State party should **conduct full and impartial investigations into all allegations of abuse** in the military and **ensure that perpetrators of human rights violations are tried and punished**. Merely **suspending** perpetrators of violent crimes from their duties or **dismissing them from the army is not an adequate** response”; CAT/C/KOR/CO/3-5’s para.36’s clause (c) also pointed out a similar problem. CEDAW/C/KOR/CO/8’s para.23’s clause (f) in 2018 also recommended the improvement of sexual violence situation. [↑](#footnote-ref-34)
35. Attackers were already under investigation by MP for similar actus reus, and they were transferred to the unit because of the very same criminal act. The perpetrators forced the victim to extinguish a cigarette butt by bare feet and beat the victim after lights turned off in the bed, hitting the victim’s belly, etc. almost every day and night. The victim had a healthy physique, he suffered from severe depression because of this. [↑](#footnote-ref-35)
36. *Kyungin Ilbo*. 8 May 2019. [bitly.kr/8kct7W](http://bitly.kr/8kct7W) [↑](#footnote-ref-36)
37. About 13kg. [↑](#footnote-ref-37)
38. In fact, so-called the “accident under influence” refers to a car accident from which a cadet was so severely injured by a taxi while he was crossing a road drunken around midnight during a period of an official business trip that he had to be transported via doctor-helicopter to an emergency medical center (*The Yonhap News Agency*. 2 Apr. 2019. [bit.ly/2YkDTXB](https://bit.ly/2YkDTXB)). [↑](#footnote-ref-38)
39. It is improbable that cadets decided something ‘by themselves’ without ‘reporting’ or ‘permission’ from the superiors. [↑](#footnote-ref-39)
40. It is the NPA version of the military guardhouse. The NPA decided not to confine conscripts in a guardhouse as it has unconstitutional factors but to send violators to discipline education centers to “educate”. It was first established in 1990 (*The* *Jungang Daily*. 5 Jun. 1990. [bit.ly/2JagzZ9](https://bit.ly/2JagzZ9)). [↑](#footnote-ref-40)
41. According to the Center’s visit, the Seoul Riot Police Education Center’s “Discipline Education” contained all kinds of physical drills, shouting at every footstep, sitting straight-up during work-hour and standing with wearing only underwear against a freezing winter wind, etc. They committed tortures under the pretense of “personality education”. This system was abolished in December 2018 (NPA (15 Jun. 2018.).“NPA Reformation Committee’s Official Disbandment, Closing a Year-long Activity”). [↑](#footnote-ref-41)
42. According to Member Kim Jungro of the Bareun-mirae Party based on MND’s report, military beating and maltreatment occurrence are as follows (*Health and Welfare Newspaper*. 18 Oct. 2018. [bit.ly/2LACCKz](https://bit.ly/2LACCKz)). By rank, in 2016, officers’ battery increased by 29, noncoms by 87, and the conscripted by 116 in case of battery across all ranks. Still, the officer’s rate of increment was 20%p higher than that of the conscript. Likewise, the maltreatment of conscripts decreased from 41 in 2016 to 24 in 2017, but the officers’ increased from 8 to 10 as well as noncoms’ from 16 to 17.

    |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- |
    | **Year** | **2014** | **2015** | **2016** | **2017** | **2018 first-half** |
    | **Battery** | 904 | 751 | 766 | 1,245 | 486 |
    | **Maltreatment** | 65 | 82 | 65 | 51 | 22 |

    [↑](#footnote-ref-42)
43. It mainly focuses on eradication of usage of slangs, loanwords and expletives and allowing violation of “honor form by pressing” (pressing the subject when the subject is lower than the hearer although higher than the speaker) as well as not coercing so-called “Da-or-Kka” endings in speaking inside a barracks (living dormitory) (formal/ written Korean predicates end in -da (statement) or -kka (question).) (*NEWS1*. 10 Mar. 2015. [bit.ly/1AdbbUC](https://bit.ly/1AdbbUC); *Sports Kyunghang*. 24 Feb. 2016. [bit.ly/2JeF1sf](https://bit.ly/2JeF1sf)). The military regulates speech acts by internal regulations that delineate so-called “military courtesy”. [↑](#footnote-ref-43)
44. The military prosecutor even accused a conscript of insult, etc. to superior using non-honorific case, yet the conscript was acquitted again in an appellate court (*KBS NEWS*. 20 Jan. 2019. [bit.ly/2VBz8MF](https://bit.ly/2VBz8MF)). [↑](#footnote-ref-44)
45. The followings are summaries of cases reported by the press.

    |  |
    | --- |
    | * On 19 July 2017 late Go PFC jumped from a roof of the Korean Armed Forces Capital Hospital when he visited there for a doctor’s appointment. He was affiliated to the 22nd Army Division. He was bullied, beaten, and verbally abused constantly from April. He was treating his front teeth which fall out during training. Senior conscripts made fun of it, saying “Wanna get another corn pulled off?” (“corn” is a tooth in slang). He was sexually abused during night watch – another conscript touched back of his neck and body. Though the victim reported this to the Deputy-Platoon Leader on 14 July, immediate separation of the victim and the assaulters was not conducted (*Sisa Journal*. 8 Aug. 2017. [bit.ly/2vYtqEZ](https://bit.ly/2vYtqEZ)). * *Mail Business Newspaper* on 25 Jul. 2017. ([bit.ly/2JzGRDm](https://bit.ly/2JzGRDm)): on 13 May 2016, PFC Park (22-year-old) of the Kimpo International Airport Police Unit committed suicide by hanging himself in a toilet after only two months from his deployment. While bruises from supposedly beating were found widely in his right calf and left thigh, the Commissioner of the Seoul Metropolitan Police Agency Kim Junghun announced that “nothing has been discovered in regard to beating or maltreatment” on 29 May. * *Mail Business Newspaper* on 16 Aug. 2018. ([bit.ly/2YiIauw](https://bit.ly/2YiIauw)): the Supreme Court confirmed two years of imprisonment with labor to Lieut. A (26-year-old) and Staff Srgt. (22-year-old) affiliated to a GOP in Gangwon-do. They were accused of torturing a dozen of subordinates from July 2016 to March 2017. Their crimes include: pushing a dozen of soldiers into a room, breaking their nails with industrial tools, and taping hands of soldiers to a pull-up bar. While the victims reported this to their Battalion Commander, nothing was done to stop it. * *Mail Business Newspaper* on 17 Nov. 2018. ([bit.ly/2HeM0PC](https://bit.ly/2HeM0PC)): from 2017 to 2018, a squad leader (conscript) forced a PFC to pour fabric deodorizers into his mouth saying that PFC’s mouth breath disgusts him. He also burnt PFC’s hair and forced PFC to dance and sing as an escort in a Noraebang (karaoke room), to eat three pills of diarrhea and insulted severely when one refuses to join an exercise after work with him. He also monitored internal grievance reporting system called “Letter of Heart” through his close colleagues or lower rankers. However, Cpt. A had no idea what was going on for months. In fact, Cpt. A in August 2017 laid physical drilling as a punishment to all of his crews just because some of them were watching TV in a barrack during the “Physical Training Time”. * *Seoul Newspaper* on 12 Feb. 2019. ([bit.ly/2HgvA9M](https://bit.ly/2HgvA9M)): a Cpt. in her twenties coerced a Warrant Officer of his 50s to dance during a workshop. She also verbally abused a Srgt. First Class of his 40s as well as kicked his shank with her boots on. Srgt. First Class were called upon to drink with her on weekends, too. He reported this to his commanders, but nothing was done. *Mail Business Newspaper* on 11 May 2019. ([bit.ly/2HfNnfS](https://bit.ly/2HfNnfS)): a male of his twenties was sentenced of a year and a half of imprisonment with labor from the Seoul Northern District Court after his service terminated. He was accused of beating a PFC with a bayonet and a short-wave radio’s antenna. He also suffocated the victim with covering his face with a sleeping bag, riding on his upper body. He was discharged while the military investigation was ongoing; thus, his case was transferred to a civilian court. |

    [↑](#footnote-ref-45)
46. Only the lead criminal of the late PFC Yoon’s Death was demanded by capital punishment by a military prosecutor, but he was sentenced to 35 years of imprisonment with labor from the High Military Court, and after the Supreme Court returned the case to the High Military Court, he was sentenced with 40 years of imprisonment with labor (*YTN.* 19 Feb. 2016. [bit.ly/2W4eOmw](https://bit.ly/2W4eOmw)). However, this punishment on criminals entailed evasion of punishment of the responsible figures in the management line. [↑](#footnote-ref-46)
47. In Korean society, it is available for high rankers as well as in the military may be excused to resign before punishment is finalized to preserve one’s reputation (i.e. pension). Thus, the HRCttee recommended: “Merely **suspending** perpetrators of violent crimes from their duties or **dismissing them from the army is not an adequate** response”, but it has not been upheld appropriately. [↑](#footnote-ref-47)
48. *The Jungang Daily*. 20 Sep. 2018. [bit.ly/2V9lX0c](file:///C:\Users\animus\Desktop\bit.ly\2V9lX0c); *The Hankook Ilbo*. 1 Oct. 2018. [bit.ly/2vQSlKW](https://bit.ly/2vQSlKW) [↑](#footnote-ref-48)
49. Some of the celebrities were blamed for such reason. (*Mail Business Newspaper*. 22 Nov. 2018. [bitly.kr/VURVKF](http://bitly.kr/VURVKF); *Sports Chosun*. 8 Mar. 2019. [bitly.kr/9dTPX1](http://bitly.kr/9dTPX1)). [↑](#footnote-ref-49)
50. *Sisa Journal*. 19 Nov. 2018. [bit.ly/2Yg4RzI](https://bit.ly/2Yg4RzI) [↑](#footnote-ref-50)
51. *The Yonhap News Agency.* 1 Nov. 2018.. [bit.ly/2HgmkkJ](https://bit.ly/2HgmkkJ) (The Supreme Court’s ruling was made in advance of the report) [↑](#footnote-ref-51)
52. The following table is made of data submitted by the MND by late Member Roh Hoechan (Cf. **Footnote 53**.).

    |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | | **Army** | **Navy** | **Air Force** | **Sum** | |
    | **Executive** | **Officers** | 55 | 16 | 8 | 162 (90%) | 79 |
    | **Noncoms** | 42 | 19 | 22 | 83 |
    | **Conscripts** | | 10 | 2 | 3 | 15 (8%) | |
    | **Civilian Workers** | | 1 | 1 | 2 | 4 (2%) | |
    | **Sum** | | 108 | 38 | 35 | 181 (100%) | |

    Also, the disposal of sex crimes against female soldiers seems depressing.

    |  |  |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | **Imprisonment** | **Suspended Execution** | **Fine** | **Suspended Sentence** | **Other** | **Acquittal** | **Ongoing** | **Sum** |
    | **Army** | 9 | 34 | 5 | 7 | 20 | 19 | 14 | 108 |
    | **Navy** | 0 | 9 | 1 | 1 | 10 | 4 | 4 | 38 |
    | **Air Force** | 2 | 10 | 4 | 4 | 7 | 0 | 8 | 35 |

    The military authority argues that the <MCA> more harshly deals with the sex crimes, but it seems that applies to only the case of “sodomy” (*LawFact.* 30 Oct. 2017. [bitly.kr/G21xCn](http://bitly.kr/G21xCn)). In addition, the rate of the suspended sentence is quite high. When a victim is a female soldier, the rate was 10.34% which was about ten times higher than that of the civilian court’s 1.86% (*theL*. 13 Jul. 2018. [bitly.kr/dI9mtX](http://bitly.kr/dI9mtX)). [↑](#footnote-ref-52)
53. The source is that of the **Footnote 52**.

    |  |  |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | **2014** | | **2015** | | **2016** | | **2017 first half** | |
    | Investigate | Indict(ratio) | Investigate | Indict | Investigate | Indict | Investigate | Indict |
    | **Sum** | 627 | 376(60%) | 647 | 403(62.3%) | 839 | 446 53.2%) | 426 | 115(36.4%) |
    | **MCA** | 253 | 165(65.2%) | 203 | 151(74.4%) | 292 | 200(68.5%) | 193 | 84(43.5%) |
    | **Criminal Act** | 172 | 87(50.6%) | 214 | 116(54.2%) | 230 | 114(49.6%) | 113 | 35(31%) |
    | **Sexual Violence Act** | 133 | 91(68.4%) | 164 | 104(63.4%) | 136 | 87(64%) | 63 | 27(42.9%) |
    | **Children & Juveniles Act** | 48 | 28(58.3%) | 41 | 26(63.4%) | 54 | 31(57.4%) | 18 | 6(33.3%) |
    | **Commercial Sex Acts Act** | 21 | 5(23.8%) | 25 | 6(24%) | 127 | 14(11%) | 39 | 3(7.7%) |

    [↑](#footnote-ref-53)
54. Although <Decree on the MND Disciplinary Action Process of Soldiers and Civilian Workers> Article 4-5 [Criteria for processing sexual violence, etc.] Para. 1 requires a disciplinary action independent from the criminal procedure, merely 20 cases received severe discipline action (expulsion & dismissal) was made among the total disciplinary actions of 273 cases between 2014 to 2016 (*theL*. 13 Jul. 2018. [bitly.kr/dI9mtX](http://bitly.kr/dI9mtX)). [↑](#footnote-ref-54)
55. *The Hankyoreh*. 18 Mar. 2014. [bit.ly/2Lz4zlW](https://bit.ly/2Lz4zlW). [↑](#footnote-ref-55)
56. The Staff Srgt. was harassed since 2012. In September 2013, she also had to endure a series of visual and verbal sexual harassment in a social media chatting room where the male colleagues share pornographic video clips titled as Kim Jungeun’s Missile, etc. Another male coworker even said that she appeared in his dream so “sexy”. In spite of these, the perpetrator was only sentenced to a year of imprisonment, and he appealed. Furthermore, the argument that the offender “did not know that she was a minor was accepted by a general MCt, and his allegations regarding <Act on the Protection of Children and Juveniles against Sexual Abuse> was acquitted. However, the victim asserts that it is impossible not to know her age as she showed her registration card every time when they had drinking parties after work, and did not drink alcohol (*Nocut News*. 1 Nov. 2017.. [bit.ly/2VX1OyQ](https://bit.ly/2VX1OyQ)). [↑](#footnote-ref-56)
57. It was reported that generals of the navy and the army each and field grade officers of the air force and the navy each were involved in sexual violence (*The Hankyoreh*. 13 Jul. 2018. [bit.ly/2WwwZ0Z](https://bit.ly/2WwwZ0Z)); according to Member Seo Younggyo, reported by *Sisa Journal*, the following table shows “Crimes against Female Soldiers and Civilian Workrs”. Sex crimes include rape, indecent act by force, illegal videotaping, etc. (*Sisa Journal.* 25 Oct. 2017. [bit.ly/2HbB858](https://bit.ly/2HbB858)) (Cf. **Footnote 52; 53)**

    |  |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- | --- |
    | **Category** | **Sum** | **2013** | **2014** | **2015** | **2016** | **2017 first half** |
    | **Sex Crime** | 229 | 32 | 50 | 51 | 73 | 23 |
    | **Battery** | 41 | 8 | 9 | 8 | 12 | 4 |
    | **Defamation/ Insult** | 20 | 6 | 17 | 37 | 30 | 11 |
    | **Others** | 101 | 1 | 4 | 4 | 7 | 4 |

    [↑](#footnote-ref-57)
58. Although the army might have more experience in the investigation as they are enormous in quantity, as shown in the 2017 gay witch-hunt, their investigation technique is lawless, and the navy and the air force frequently have little experience as there are not enough cases to investigate. [↑](#footnote-ref-58)
59. Though the battalion commanders and regimental commanders do take human rights educational courses, it confines to the abstract discussion and it only lasts for three days (National Defense University Job Training Center. “Education Schedule (Comprehensive)”. [bit.ly/2WDUW6q](https://bit.ly/2WDUW6q)). In addition, there are merely online courses consist of similar contents. This is not contextualized with their working environment, and it is only possible to teach ‘about the human rights’ as it stays at the theoretical level (Kim, G.S. (2018). “Situation and Task of Military Human Rights Education”. *Korea Human Rights & Law-related Education Association.* pp.47-76.). [↑](#footnote-ref-59)
60. <Decree on Military Human Rights Tasks> [↑](#footnote-ref-60)
61. Especially, while so-classified “military human rights-related task workers” are trained with supposedly context-specific programmes as requested by the <Decree>, the course is mostly limited to theoretical dimension and reduced to another “duty” [↑](#footnote-ref-61)
62. <FAMSS> Article 41 Para. 2: A counselor specialized in soldiers’ sexual distress shall be assigned to each military unit or agency of not less than the size prescribed by Presidential Decree in order to provide soldiers with exclusive counseling on sexual harassment, sexual violence, sexual discrimination and other sex-related distresses. [↑](#footnote-ref-62)
63. “**Complaints should be treated confidentially** and **victims and witnesses should be protected** against reprisals.” [↑](#footnote-ref-63)
64. <FAMSS> Article 41 Para. 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-64)
65. 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 (reserved forces) (*The* *Hankook Economic Daily*. 23 Dec. 2014. [bit.ly/2Htmx4f](https://bit.ly/2Htmx4f)). [↑](#footnote-ref-65)
66. *NEWS1*.26 Aug. 2014. [bit.ly/2PY0MNA](https://bit.ly/2PY0MNA) [↑](#footnote-ref-66)
67. According to a document provided by the MND in the “4th CCPR Conference” (8 Apr. 2019), the professional counselors increased from 383 to 660 as well as Help Call counselors from 17 to 21. What is concerning is that not only the number falls short but also their quality is not ensured properly. In fact, only 2% of the counselors hold A-level licenses or certificates, and 24% of them had the lowest level (E) or below (nonrated) (*OBS NEWS*. 31 Mar. 2015. [bit.ly/2HjuoRy](https://bit.ly/2HjuoRy)). That is to say, the authority had been increasing quantity of counselors for “show”. On the other hand, the <FAMSS> Article 41 Para.5 loosens certificate criteria, which allows “revolving door” for retired soldiers to be a counselor. The <Enforcement Decree of FAMSS> Article 32 recites seven national certificates and seven civilian certificates which the Minister of National Defense acknowledges as equivalent to the national certificates; a number of them are not so difficult to acquire. As of 30 Nov. 2017, announced by the Minister, there are eleven acknowledged certificates issued by the Korean Clinical Psychology Association, Korean Counseling Association, the Han Counseling Association, the Korean Family Culture Counseling Association, the Korean Satir Transformational Systemic Therapy Association, the Korean Association of Military Counseling. Especially the last organization issues three levels of a certificate, whereas others usually divide it into two, all of which are recognized as valid by the Minister. The Association’s first President was a former General, and the current third President is a professor of the Korea Military Academy as well as the second one (who is also a professor at Sangji University). The department where the second President belongs has another professor who is also a former instructor of the Navy University. On the other hand, most of the certificates do not require knowledge and attitude neither in professional counseling, barrack life nor martial laws. Additionally, Social Welfare Certificate was issued 7,311 (1st rate) and 74,177 (2nd rate) in 2018 solely (Ministry of Health and Welfare, & Korea Association of Social Workrs. (2018). *2018 Statistical Yearbook on Social Workers*). [↑](#footnote-ref-67)
68. The figures of the MND in the table below is from the data provided by Member Park Jumin.

    |  |  |  |  |  |
    | --- | --- | --- | --- | --- |
    | **Year** | **MND’s *National Defense Help Call*** | | **The Center’s *Army Call*** | |
    | **Total** | **Sex Crimes** | **Total** | **Sex Crimes** |
    | **2016** | 57,990 | 52 | 432 | 28 |
    | **2017** | 64,149 | 44 | 1,036 | 58 |
    | **2018** | 32,535 (~June) | 46 (~June) | 1,236 | 91 |

    [↑](#footnote-ref-68)
69. It was prohibited by the <Decree on Military Service> to bring a case to any external grievance facilities: Article 25 [grievance procedures] military personnel shall not request settlement of grievances to an external organ outside of the military related to his or her service through complaint or collective petition and any methods that are not prescribed in laws. Nonetheless, the provision was revised on 13 Jul. 2015 into “military personnel may request a settlement of grievances related to his or her service according to <NHRCK Act>, <Act on the Prevention of Corruption and Establishment and Management of the Anti-Corruption and Civil Rights Commission>, or any methods as regulated by the Minister of National Defense.” It changed from prohibition to limitation, yet now it does not exist under the <FAMSS>. [↑](#footnote-ref-69)
70. Protection of Public Interest Reporter [↑](#footnote-ref-70)
71. Article 45 [Protection of Informant] para2. 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-71)
72. *The Huffpost*. 11 Aug. 2014. [bit.ly/2vXTf8x](https://bit.ly/2vXTf8x) [↑](#footnote-ref-72)
73. <Decree on Military Guardhouse Execution and Treatment of Detainees> Article 16 [exchange of letter] Para.1 a detainee may exchange a letter with an external figure, …, yet the commander of a MP unit may limit dispatch of a letter under the following conditions: 1. When the address of the receiver is a political party, civil society, etc. if the content of a letter is assumed to have a concern on undermining the political neutrality of the military personnel; [↑](#footnote-ref-73)
74. “The State party should: (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 civilian nature.**” The ROK also has received similar and various relevant recommendations from the 2nd UPR (A/HRC/22/10, para.124.53) and the 3rd UPR cycle (A/HRC/37/11, para.132.94-106). [↑](#footnote-ref-74)
75. Unlike the immediate abolition by unconstitutionality decision, the law is in effect until 31 December 2019 due to unconformity decision. [↑](#footnote-ref-75)
76. Yet, in November 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-76)
77. *The Korea Herald*. 15 Nov. 2018. <http://www.koreaherald.com/view.php?ud=20181115000685> [↑](#footnote-ref-77)
78. *The Kyunghang Daily*. 4 Jan. 2019. <http://news.khan.co.kr/kh_news/khan_art_view.html?art_id=201901041436001> [↑](#footnote-ref-78)
79. 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-79)
80. *The Hankyoreh.* 20 Nov. 2018. <http://www.hani.co.kr/arti/society/society_general/870929.html> [↑](#footnote-ref-80)
81. 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-81)
82. “**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-82)
83. *The Yonhap News Agency*. 7 Aug. 2014..[bitly.kr/akQOoe](file:///C:\Users\animus\AppData\Roaming\Microsoft\Word\bitly.kr\akQOoe) [↑](#footnote-ref-83)
84. <FAMSS> Article 42 [Officer for Protection of Soldier’s Human Rights] Para. 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; Para. 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-84)
85. “**Ensure the independence of military judicial officers** engaged in the promotion and protection of human rights”; the UN Human Rights Council encouraged states parties “to integrate military courts or special tribunals for trying criminal offenders into the general judicial system, and to ensure that such courts apply internationally recognised fair trial standards”(A/HRC/RES/19/31). [↑](#footnote-ref-85)
86. After PFC Yoon’s Death in 2014, problems of the military judicial system were revealed, resulting in division-level general military courts and restricting adjudicator’s instatement as well as confirmation of judgements by convening authority. Also, the tenure of military judges was stipulated. [↑](#footnote-ref-86)
87. <MCt Act> Article 23 [Appointment and Attachment of Military Judges] Para. 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 Ministry of National Defense and integrated units under the direct command and operational control of the Ministry of National Defense shall be appointed by the Minister of National Defense from among the affiliated field-grade or higher ranking military judge advocates. [↑](#footnote-ref-87)
88. <MCt Act> Article 26 [Judges of General Military Courts] Para. 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-88)
89. <MCt Act> Article 379 [Confirmation of Judgments by Convening Authority] Para. 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 is too heavy in consideration of the matters in the subparagraphs of Article 51 of the Criminal Act exist.  [↑](#footnote-ref-89)
90. <Partial Revision to MCt Act>. 1 May 2019. Bill no. 20114. (prior announcement of legislation for consideration of the Assembly till 12 May 2019). [↑](#footnote-ref-90)
91. 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 a 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 nonjudicial officers participate in appointment of a judge. Also, they are all appointed/ commissioned by the MinND. The President of the Committee is selected among them by the MinND 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 MinND 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. Even if one accepts the need for MCt, it seems rather desirable at least appointment and reappointment of military judges rest under the Supreme Court. In addition, it is concerned that limiting the venue of an appellate court to Seoul High Court may restrict the rights to access to a trial of victims, etc. (Cf. A Brief of foreign MCts: [bitly.kr/WacWZ0](http://bitly.kr/WacWZ0)) [↑](#footnote-ref-91)
92. “**Put an end to the “guardhouse detention” of soldiers**, without a warrant and without judicial review” [↑](#footnote-ref-92)
93. Article 57 Para. 2 Disciplinary measures for enlisted personnel shall be classified into demotion, detention in a guardhouse, restriction on leave, and probation, and each kind of disciplinary actions shall be defined in detail as follows: … Subpara. 2. The term "detention in a guardhouse" means detention in a guardhouse in a military unit, a ship or other detention facilities for a period shall not exceed 15 days;

    <Act on the Establishment and Operation of Auxiliary Police Companies> and <Act on the Establishment of Obligatory Fire Fighter> Article 5 (1) also stipulates “detention in a guardhouse”. [↑](#footnote-ref-93)
94. According to Member Choi Jaeseong based on MND’s data, the conscripts sent to military guardhouse are as follows:

    |  |  |  |  |  |  |
    | --- | --- | --- | --- | --- | --- |
    | **Year** | **2014** | **2015** | **2016** | **2017** | **Jan. - Aug. 2018.** |
    | **Sum** | 14,151 | 12,492 | 10,778 | 9,246 | 5,261 |
    | **Air Force** | 259 | 358 | 368 | 478 | 339 |
    | **Navy** | 196 | 224 | 225 | 300 | 727\* |
    | **Army** | 13,696 | 11,910 | 10,185 | 8,468 | 4,195 |

    [↑](#footnote-ref-94)
95. “2019~2023 Comprehensive Plan for National Defense Human Rights Policies”. [bitly.kr/Fy0sm](http://bitly.kr/Fy0sm) [↑](#footnote-ref-95)
96. <Partial Revision to MPMA (Alternative)> 20 Sep. 2017. Proposed by the Speaker of the National Defense Committee. [↑](#footnote-ref-96)
97. Member Kim Doeup of Korea Liberty Party on 4 April 2019 during a plenary meeting of the Legislation and Judiciary Committee asked to the vice-Minister Seo Juseok of National Defense of why the amendment to MPMA is pending, then argued that it is because of moral hazard in military discipline such as several KATUS soldiers consumed LSD, brought cell phones and took pictures of their office in background, and some medics fabricated fingerprints with silicon and manipulated their attendance. He further made clear that there will be no discussion unless the Government brings a concrete replacement for military guardhouse (National Assembly Secretariat. “The 367th National Assembly (Special Meeting) Legislation and Judiciary Committee”, vol. 5. p.67) However, as the general election is scheduled in next April as well as revised supplementary budget in the second half of 2019, the bill may be discarded due to termination of the 20th Assembly. [↑](#footnote-ref-97)
98. 2018HUNGA10 [↑](#footnote-ref-98)
99. National Assembly Secretariat. Ibid. [↑](#footnote-ref-99)
100. (a) the army has operated deviated forms of discipline training even after 2014 when late PFC Yoon died of beating. It is reported that since 2012, a commander founded a “volunteer circle” which summons soldiers even on weekends and force severe physical drill: e.g. for only the first half of 2016, a total of 143 soldiers were convened on Saturday morning and participated in physical drilling. This is a plain violation of the existing regulation (please refer to clause (**d**) below) (NHRCK (2016). “16 Complaint 047070”); (b) the air force’s situation is no different which has quite specific regulations. A PFC killed himself after about twice of running with combat gears (about 11kg) on along with constant reprimands in 2014 at Seoul Airport (*The Jungang Daily.* 11 Nov. 2014. [news.joins.com/article/16387589](https://news.joins.com/article/16387589)); in 2015, trainees were imposed of seven different physical drillings for more than half an hour violating internal rules of the Air Force Military Training Center (NHRCK (2016) “15 Complaint 0707500”); (c) it is the same for those who serve as a Public Service Worker due to incompetent medical conditions for active-duty. According to Operation Report of the Manpower Administration in 2014 for the National Inspection (10 Oct. 2014), it has officialized a ‘mental training’ course run by Special Forces Command which is notorious for its arduous physical training; (d) <Spirit Fixing> (Army Regulation-120), <Military Discipline Training> (Navy Regulation-2-1-6), <Punishment of Love> (Air Force Regulation-2-24) and other internal rules of each training center. Yet nobody can actually observe those rules as they are too specific to be familiar with and follow. [↑](#footnote-ref-100)
101. Though it passed the concerning committee in September 2017, the consideration has not yet begun due to the opposition of the Korea Liberty Party in the Legislation and Judiciary Committee (*National Assembly News* *ON*. 1 Feb. 2019. [goo.gl/ySKacb](https://goo.gl/ySKacb)). [↑](#footnote-ref-101)
102. NHRCK (2018). “Opinion on the Amendment Bill Repealing the Military Guardhouse”. [↑](#footnote-ref-102)
103. *The Herald Economic Daily*. 13 Oct. 2017. [bit.ly/2Vh9sQb](https://bit.ly/2Vh9sQb) [↑](#footnote-ref-103)
104. Revision of the <Decree on Military Service> Article 25 and introduction of the <FAMSS> (**footnote 69**). [↑](#footnote-ref-104)
105. *Chosun Ilbo*. 15 Mar. 2019. [bit.ly/2YgORxb](https://bit.ly/2YgORxb) [↑](#footnote-ref-105)
106. *SBS NEWS*. 18 Mar. 2019. [bit.ly/2JnC7Ro](https://bit.ly/2JnC7Ro) [↑](#footnote-ref-106)
107. *Chosun Ilbo*. 16 Mar. 2019. [bit.ly/2Hf8ejk](https://bit.ly/2Hf8ejk) [↑](#footnote-ref-107)
108. *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-108)
109. *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 (he) showing on TV with wearing make-up and talking about the Defense Security Command and military reformation”. [↑](#footnote-ref-109)
110. *Oh My News*. 03 Aug. 2018. [bit.ly/2VTSbko](https://bit.ly/2VTSbko). [↑](#footnote-ref-110)
111. *NEWSIS*. 8 Nov. 2018. [bitly.kr/mu3IJE](http://bitly.kr/mu3IJE); In case of an accident with a civilian, private insurance coverage was applicable, yet recently the Government changed its policy to fulfill state responsibility. [↑](#footnote-ref-111)
112. *The Jungang Daily.* 27 Sep. 2017. <https://news.joins.com/article/21978176> [↑](#footnote-ref-112)
113. The problem of this sort of accident is that the root cause is often unidentifiable (See Marion Helicopter fall: *The* *Junang Daily*. 18 Jul. 2018. [bit.ly/2E1Gy0M](https://bit.ly/2E1Gy0M)); *Pressian.* 23 Sep. 2015. [bit.ly/2YsqTzr](https://bit.ly/2YsqTzr); however, after a mine explosion in the DMZ on 18 Jun. 2014, the military formed a task force as the public attention was gathered and decided to pay for the civilian hospital treatment fees too from September 2015. (*YTN*. 9 Nov. 2015. [bit.ly/2JfpAQz](https://bit.ly/2JfpAQz)). [↑](#footnote-ref-113)
114. NHRCK (2013). <Human Rights Situation Survey on Military Medical Management System> p. xvii; in some divisions’ cases, it even takes at least two hours via driving to be transported to the nearest synthesis hospital. [↑](#footnote-ref-114)
115. *SBS NEWS*. 2018.06.01. [bit.ly/2VwX0ka](https://bit.ly/2VwX0ka); the MND decided to replace unqualified agents with qualified ones. At first, the MND tried petty tricks of legalizing unqualified medical actions (*The Yonhap News Agency.* 7 Oct. 2016. [bitly.kr/fhqY0E](http://bitly.kr/fhqY0E)). [↑](#footnote-ref-115)
116. *Mail Business Newspaper*. 30 Jun. 2018. [bit.ly/2Vi00fl](https://bit.ly/2Vi00fl). [↑](#footnote-ref-116)
117. *KBS NEWS*. 14 Oct. 2013. <http://bitly.kr/nrFRmQ>; *Mail Business Newspaper*. 18 Sep. 2015. <http://bitly.kr/FGAx3E>; *SBS NEWS*. 19 Jul. 2018. <http://bitly.kr/E2I0C5>. [↑](#footnote-ref-117)
118. On 17 June 2013, late Corporal Shin Seongmin passed away due to complications of his brain tumors. He used to hit his head against metal locker agonizing for his pain in head and dizziness, but the medic gave him pain killers, telling him not to pretend (*SBS NEWS.* 6 Feb. 2013. [bit.ly/2Hestiq](https://bit.ly/2Hestiq)). [↑](#footnote-ref-118)
119. *NEWS A*. 12 Oct. 2018. [bit.ly/2JEnIk1](https://bit.ly/2JEnIk1) [↑](#footnote-ref-119)
120. <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-120)
121. <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-121)
122. 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-122)
123. 2006HUNGA13 [↑](#footnote-ref-123)
124. 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-124)
125. Based on the <Regulation on Security Tasks> Article 45’s delegation, the DSC and the National Intelligence Agency granted access to the network of the NPA. Especially, the DSC divided one IP into 30 and allowed any agents to access to it. Also, by abusing <Regulation> Article 33 Para. 3 Subpara. 6. to inspect citizens indiscriminately. The victims vary from judge and prosecutors-to-be and journalists who are irrelevant to the military as well as those who visited military hospitals and troops to see their friends or family members. The DSC made them suspects of the <NSA> violators and access to personal information, then closed the case instead of process it officially to conceal their misdeeds (*The Korea Times.* 13 May 2019. [goo.gl/LnA7sH](file:///C:\Users\animus\AppData\Roaming\Microsoft\Word\goo.gl\LnA7sH); *News1*. 30 Jul. 2018. [goo.gl/MvFkQo](file:///C:\Users\animus\AppData\Roaming\Microsoft\Word\goo.gl\MvFkQo); *The Yonhap News Agency*. 30 Jul. 2018. [goo.gl/jVMq8n](https://goo.gl/jVMq8n)).

     <Regulation on Security Tasks> Article 45 [Delegation of Authority] Para. 1 the Head of the National Intelligence Agency may delegate a part of authority regarding personal background investigation stated in Article 33 to the MinND and the Chief of the NPA. Notwithstanding the previous clause, the subject of delegated authority of the MinND is confined to the military personnel and civilian workers, workers and researchers of Defense Industries stated in <Defense Industry Act> or other facilities in the military security sector.

     Article 33 [Personal Background Investigation] Para. 3 A person who is subject to personal background investigation is as follows: … 6. A person regulated by other laws and regulations or recognized as necessary by a head of each class of agencies. [↑](#footnote-ref-125)
126. The maximum number of ralliers surpassed 200 million (*The* *Korea Herald*. 9 Dec. 2016. [bitly.kr/WL4sx](http://bitly.kr/WL4sx)); the Friedrich-Ebert-Stiftung awarded ‘FES Human Rights Prize’ to the candlelight vigil participants (Korean nationals) for their peaceful assemblies (website: [bitly.kr/0lNGJ](http://bitly.kr/0lNGJ)). [↑](#footnote-ref-126)
127. It has been repealed. [↑](#footnote-ref-127)
128. For reference, the DSC is not in charge of martial-law though it was the lead actor in the history of coup d’état through martial-law. The Security Command (former DSC) in 1979 led 12 December military coup, 17th May Emergency Martial-law, 1989 plan of massacring anti-government figures (*The Hankyoreh.* 7 Aug. 2018. [goo.gl/i7BDSr](https://goo.gl/i7BDSr)). The DSC even in the 21 century played important role in manipulation of public opinion under the Lee and Park administrations (*The Hankyoreh.* 12 Apr. 2018. [goo.gl/rAjfw2](file:///C:\Users\animus\AppData\Roaming\Microsoft\Word\goo.gl\rAjfw2)), spying on the family of the deceased of the Sewol Ferry (*The Korea Times.* 3 Jul. 2018. [goo.gl/grbNkY](file:///C:\Users\animus\AppData\Roaming\Microsoft\Word\goo.gl\grbNkY)), planning another military coup (*AP News*. 10 Jul. 2018. [goo.gl/NoeBjV](https://goo.gl/NoeBjV)). At then, the DSC schemed to declare a <Garrison Decree> first which is unfamiliar thus less repulsive, and drag the process of clearing the <Decree> in the Assembly with a help of the conservative ruling party and the veto of President up to two months at most. On the other hand, it also prepared to accuse major politicians and close the social media with the Korea Communications Commission as a preparation for dissenting demonstrations (Lim, T.H. (2018), “Reality of the Plan on Forceful Oppression on Candlelights and Tasks of the DSC Reformation”, *Urgent Panel Discussion on Candlelight Suppression by Force and the DSC’s Spying on Citizens.* Co-hosted by the Center for Military Human Rights Korea et al. 9 more organizations and Members of the Assembly.). [↑](#footnote-ref-128)
129. *JTBC NEWS*. 9 Apr. 2019. [bit.ly/2VL0Be3](https://bit.ly/2VL0Be3) [↑](#footnote-ref-129)
130. *JTBC NEWS*. 8 Apr. 2019. [bit.ly/2YiQOJt](https://bit.ly/2YiQOJt); the Service’s mission is to protect and manage the radio wave and frequencies. [↑](#footnote-ref-130)
131. Despite of the facts, Major General Soh and Brigadier General Kim who were charged for deploying 60 DSC agents to probe the bereaved of the Sewol Ferry deceased and manipulated the public opinion (US Department of State. (2019). “2018 Human Rights Report: Republic of Korea”) was bailed out by the MND General MCt for the benefit of their right to defense on 28 December 2018. [↑](#footnote-ref-131)
132. <Martial Law Act> Article 2 [Types, Declaration, etc. of Martial Law] Para. 2 Emergency martial law shall be declared by the President for the purpose of fulfilling military necessity or maintaining the public security and order when there are belligerency or serious disturbances of social order that considerably impede the performance of the administrative and judicial functions of the State in time of war, incident or other equivalent national emergency. Para. 3 Guarding martial law shall be declared by the President for the purpose of maintaining the public security and order when the social order is so disturbed that civil administrative authorities cannot preserve the public peace in time of war, incident or other equivalent national emergency. [↑](#footnote-ref-132)
133. *NEWS1*. 24 Jan. 2017. <http://bitly.kr/P0uds0>; *The Korea Economic Daily*. 25 Feb. 2019. <http://bitly.kr/Si1GHr> [↑](#footnote-ref-133)
134. 2014DO10978: the Full Bench ruled that the crime of agitation or propaganda of insurrection establishes when a person or a group of person *instigates* resolution and execution of those being instigated in the intent of insurrection, and neither their resolution of insurrection is required nor concrete plan of action and preparation needs to be accompanied with.  [↑](#footnote-ref-134)
135. *Monthly Chosun Newsroom*. 30 Jan. 2019. <bitly.kr/miApvy>; Video clip of the launching ceremony: [bitly.kr/hqGMHf](http://bitly.kr/hqGMHf). [↑](#footnote-ref-135)
136. “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-136)
137. *The Aju Business Daily.* 22 Sep. 2017. <http://www.ajudaily.com/view/20170922105940585>. [↑](#footnote-ref-137)
138. The prosecutors investigated a total of 15 soldiers: 11 conscripts, 2 valet-soldiers, 6 cooks and 1 driver (also conscripts) and 2 general’s aides-de-camp and 2 butlers of official residences (executives). The General and his wife forced the soldiers to: [↑](#footnote-ref-138)
139. * 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 to the next day’s dawn.
     * 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, the 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 (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-139)
140. 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 power. 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 a practically 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-140)
141. <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] Para. 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-141)
142. A research paper reported the same problems (Lee, J.Y. (2018). “A Study on the Reality of Low-ranking officer’s Human rights and the Remedies for Infringement”. *Korea Law Review, 90*. pp.385-420.). [↑](#footnote-ref-142)
143. Even before then, concerns were raised in respect to the invasion of privacy of low-grade executives. See *Annual Report 2011* and *2012* of the Center (Accessible at: [http://mhrk.org/areport/?no=12](http://www.mhrk.org/areport/?no=12); [http://mhrk.org/areport/?no=6](http://www.mhrk.org/areport/?no=6)) [↑](#footnote-ref-143)
144. *The Kyunghyang Daily.* 5 Jun. 2018. [bitly.kr/JsVVAM](http://bitly.kr/JsVVAM); types of the violation found in 2018 was: Identifying current location (via face-talk function); forceful accommodation of BOQs in barracks; curfews (e.g. after 22-23 o’clock); Unlawful BOQ inspection, etc. Firstly, the identification of the location was conducted under the name of “Thunder Communication” which has no legal grounds. Even if an emergency convention training was needed, it should be ordered by a general-level commander not frontline commanders according to the <FAMSS>. Secondly, inspection on BOQs is as recommended by the NHRCK a crime of housebreaking when it is done unwatched by room owners without a warrant. Quintessentially speaking, none of the executive-rankers are subject to barrack life instruction according to <Decree on Unit Manage>; thus, treating executives differently on the basis of their living venue is discrimination. [↑](#footnote-ref-144)
145. 16 Complaints 0666100∙0699200∙0705400∙0705600∙0705900∙070600 United (Yet, 16 Complaints 0699200∙0705400∙0705600∙0705900∙0706000 are dismissed because victims are not identified). [↑](#footnote-ref-145)
146. Decision 08 JININ0001451(Restriction on Driving) [↑](#footnote-ref-146)
147. 12 Complaint 0886400·12 Complaint 0890700(United) [↑](#footnote-ref-147)
148. For instance, a doctorate student’s request for a history of the Camp and scheme, etc. was partially rejected (in fact fully denied as the provided information was useless and vaguer than the press’ reports) based on the <Official Information Disclosure Act>: Article 9 Para. 1 Subpara. 2. and Subpara. 5. [↑](#footnote-ref-148)
149. <FAMSS> Article 41 Para. 2: A counselor specialized in soldiers’ sexual distress shall be assigned to each military unit or agency of not less than the size prescribed by Presidential Decree in order to provide soldiers with exclusive counseling on sexual harassment, sexual violence, sexual discrimination and other sex-related distresses. [↑](#footnote-ref-149)