



Permanent Mission of the Republic of Korea
Geneva

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KGV/35/2019

Reference: WGAD/2018/KOR/OPN

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights), and has the honor to refer to the Communication from the Working Group on Arbitrary Detention (WGAD/2018/KOR/OPN) dated 22 Aug 2018.

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva has further the honor to submit, as attached, the Information on the measures taken by the Government of the Republic of Korea.

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

Encl.: as stated

Geneva, 22 February 2019

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



OHCHR REGISTRY

25 FEB 2019

Recipients:WGAD.....
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**Information on the measures taken by the Government of the Republic of Korea
in follow up to the Opinion No.40/2018 by the Working Group on Arbitrary Detention**

1. On 22 August 2018, the Working Group on Arbitrary Detention (hereinafter referred to as “the Working Group”) transmitted Opinion No. 40/2018, which it adopted concerning Jeong-in, Shin and Seung-hyeon, Baek to the government of the Republic of Korea, and requested that the government provide information on its follow up measures within six months of the date of the transmission. In this respect, the ROK Government submits information requested by the Working Group pursuant to the Working Group's methods of work (A/HRC/26/8) as follows.

2. On the subject of the request to bring the domestic laws into conformity with the recommendations made in the Working Group's Opinion and with the commitments made by the Republic of Korea under international human rights laws, the Government is currently undertaking measures to introduce alternative service with the aim of enacting or amending relevant laws by 2019 and enforcing them by 2020. In August 2018, the Government organized an advisory group on the introduction of alternative service comprised of civilian experts, representatives of civil society and personnel from relevant ministries, and held two public hearings: one in October and one in December, 2018. A public opinion poll on the subject was also conducted. As a result of such efforts, in December 2018, a pre-announcement of legislation was released on the enactment of a new legislation named "Act on Assignment and Performance of Alternative Service" and on the amendments to Military Service Act, altogether aimed at introducing an alternative service system for conscientious objectors. Meanwhile, nine proposals on the amendment of Military Service Act for the adoption of an alternative service which were submitted by the members of National Assembly are currently being reviewed by the relevant Standing Committee of the National Assembly.

- Meanwhile, the Constitutional Court of the Republic of Korea, in a move away from its previous positions, rendered a decision on 28 June 2018 ruling that Article 5 of the Military Service Act was unconstitutable because of its omission of the possibility of alternative service for conscientious objectors. Pursuant to this decision, the National Assembly is required to amend the law for the adoption of alternative service no later than 31 December 2019.
- On 1 November 2018, the Supreme Court of the Republic of Korea ruled that the conscientious objection to military service constitutes “justifiable ground” for evasion of enlistment in Article 88 (1) of the Military Service Act, altering the precedent verdict which considered the punishment of the conscientious objectors as necessary for the sake of public safety. The Supreme Court then reversed and remanded the lower courts' decision which found conscientious objectors guilty.

3. On the subject of the Working Group's opinion that Mr. Shin and Mr. Baek shall be released, Mr. Shin was released on 14 August 2018 on parole. While Mr. Baek is not subjected to release on parole as his appeal is currently pending before the appellate court, he was released on 30 May 2018 on bail. The Ministry of Justice, following up on the findings of the Constitutional Court and the verdict delivered by the Supreme Court, has pursued granting of parole to conscientious objectors as detailed below;

Conscientious Objectors Released on Parole (as of February 2019)

The date of parole	August 2018	September 2018	October 2018	November 2018	December 2018	January 2019
The No. of individuals paroled	9	16	33	57	10	2

4. On the subject of the request by the Working Group to accord the two concerned individuals an enforceable right to compensation and other reparations in accordance with international law, the Government notes that defendants in cases finalized by a verdict of 'not guilty' may claim compensation for their detention or the serving of sentence pursuant to the domestic legislations on the criminal compensation and restoration. Nonetheless, as cases of Mr. Shin and Mr. Baek do not meet the aforementioned conditions as of present, an immediate compensation is difficult to be made. The Government also notes that pursuant to State Compensation Act, a victim may file a claim for state compensation under circumstances where public official(s) have inflicted damage in violation of the statutes intentionally or as a result of negligence in performing their official duties, and the state shall make compensation when the victim receives a final ruling in his/her favor. If Mr. Shin or Mr. Baek files a claim for damages to the ROK Court, the Government will consider taking appropriate actions in reference to the court proceedings.

5. On the subject of the request by the Working Group to disseminate the present opinion as widely as possible, the Government is currently undertaking the process of supervising the translation of the presented Opinion along with the Working Group's Opinion No. 69/2018, which addresses a similar case with regard to conscientious objection. Upon completion of such process, the Government will publish the opinions to the public without delay in its Official Gazette, as well as on the official website of the Ministry of Justice.