

## Using UN Mechanisms to improve RoK Alternative Service

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Three separate kinds of UN mechanisms which can be used:

### 1. **Human Rights Treaty Bodies** (quasi-legal procedure)

Two main functions:<sup>1</sup>

Receive and consider reports every few years from States about their implementation of the Treaty

Receive and decide complaints from individuals about violations of their rights, any time

### 2. **Special Procedures of the UN Human Rights Council** (political in creation and reporting but depending on mandate-holder can be really independent and expert in practice)

Created and appointed by and reporting to the UN Human Rights Council

Individual experts or small group

Thematic on specific themes, covering all States – no need to be a party of a Treaty<sup>2</sup>

Can visit States, can take up individual cases, and issues within their mandate

### 3. **Universal Periodic Review (political)**

UN Human Rights Council process

Covers all States and all issues

State reports and considered every 4.5 years, produces report

Other States ask questions and make recommendations

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1 There are also some other procedures but not relevant for this purpose

2 There are also some country-specific Special Procedures but not relevant for this purpose

## 1. Treaty Bodies

RoK is a party to all the main UN human rights treaties and to the individual complaints procedures under the

- Covenant on Civil and Political Rights,
- Convention on the Elimination of Discrimination against Women,
- Committee against Torture, and
- Committee on the Rights of Persons with Disabilities.

Under each Treaty, the State has to **report periodically** and the Committee engages with the Government, asking questions and adopting Concluding Observations. In all cases, NGOs can provide information to the Committee and suggest questions.

In all **individual complaint** procedures, there has to be a specific individual (or more than one) who has been affected and who has exhausted all domestic remedies (or can show that there is no effective domestic remedy) before the case will be considered by the relevant Committee.

So far, Treaty Body engagement on conscientious objection in RoK has been with the Human Rights Committee – see Concluding Observations adopted November 2023 (below) – and the series of successful individual cases which helped to gain recognition of the right of conscientious objection. Start of next round for reporting will be in 2029.

Further individual cases could be brought relating to the length of alternative service compared with the military service, the decision-making body, lack of consideration/recognition of non-religious applicants and in relation to other issues, but would require using the domestic courts first.

**Other Treaty Bodies** operate in the same way as the Human Rights Committee with State reporting and individual complaints procedures. There is definitely scope for engaging with some of the other Treaty Bodies – both to supplement the work of the Human Rights Committee in relation to **timing**, and to **diversify the way in which issues are considered**.

**Committee on the Rights of the Child (CRC):**

**RoK due to report in December 2024, so scope for prompt action submitting information to CRC for reporting procedure.**

Possible issues to raise include:

What is the impact on the children of conscientious objectors/those doing alternative service both in their own right and in comparison with the children of conscripts? Article 2, CRC requires that there should be **no discrimination against children on the basis of their parent's status**

Article 9(3) **Right of child to maintain direct contact on a regular basis with parent from whom separated** – this could be raised in relation to the restrictions on visiting and communication by phone, etc while doing alternative service. Time is different for children – 3 years is a very long time for a small child. Again, if conscripts with children are treated differently this would be discrimination on the basis of the parent's status.

**Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)**

**RoK is due to be considered in May 2024 and the State has submitted its documents, so scope for prompt action by NGOs in submitting information for reporting process.**

Possible issues to raise could include:

What is the financial impact in relation to married Conscientious Objectors (COs) – do they get paid when doing alternative service? Do the wives of married COs have to work to compensate for loss of earnings? Can COs get married while doing alternative service? Is the situation the same for conscripts? If different, then discrimination, if the same then difference in length of time still means that the impact is different for COs, so discrimination. Can those doing alternative service marry?

**Committee on Economic, Social and Cultural Rights (CESCR)**

What impact does undertaking the alternative service have on the economic rights of COs? Is there any negative effect in law or practice for being a CO? Does the 3 year period of the alternative service affect their employment/professional status? Does the fact that only about half of recognised COs at present are able to undertake the alternative service because of the limit on the number of available places mean that some are waiting for 3 years before they can start their 3-year alternative service? What are the impacts of this on them, their work and other prospects?

**Committee on the Rights of Persons with Disabilities (CRPD)**

Does the experience of 3 years alternative service in detention/prison facilities have impacts on the CO – eg on physical or mental health? Are COs and conscripts with existing physical or mental health issues treated differently? Does the experience of the alternative service exacerbate existing health problems?

**2. UPR** – RoK was considered in 2023 so will not be considered again for several years, but worth bearing in mind for the future if the situation still needs action by then. Actions include submitting information in advance, and lobbying other governments to raise questions/make recommendations.

**3. Special Procedures:**

Can provide general information or submit specific cases.

Do not have to exhaust domestic remedies for individual cases.

Using Special Procedures does not preclude also using Treaty Bodies for individual cases or general issues during the reporting process.

Can submit information to more than one of the Special Procedures at the same time

**Special Rapporteur on Freedom of Religion and Belief:** considers anything to do with conscientious objection to military service, in particular covers discrimination in recognition between religious and non-religious objectors, or those from different religions.

**Working Group on Arbitrary Detention** will act immediately on any detention or imprisonment of a conscientious objector. Should immediately submit any cases to them as do not have to have exhausted domestic remedies, and can subsequently submit to Human Rights Committee too.

It might be worth considering whether the requirement to live in prison/detention centre for 3 years, with the limits on the possibility to leave the premises, and restrictions on contact with outside world amount to arbitrary detention?

**Special Rapporteur on Sexual Orientation and Gender Identity** – are there issues around sexual orientation and gender identity that could be raised?

**Special Rapporteur on Torture, Inhuman and Degrading Treatment and Punishment** – could the alternative service be considered as inhuman and degrading treatment?

**Special Rapporteur on Freedom of Expression** – are there issues about advocating for and providing information about the right to conscientious objection to military service?

**Special Rapporteur on the Right to Health** – what mental/physical health impacts does the 3 year alternative service have on the COs? The question of discrimination between those with health issues doing alternative service and those doing military service?

**Concluding Observations of Human Rights Committee on RoK, CCPR/C/KOR/CO/5 of 3/11/23**

**Conscientious objection**

51. The Committee welcomes the introduction of an alternative service system through the adoption of the Act on Assignment to and Performance of Alternative Service on 27 December 2019, which came into effect in January 2020. However, the Committee is concerned that the current alternative service system sets the service period at 36 months seems discriminatory and punitive compared to active-duty service (18-21 months) and that alternative service is limited to service in correctional facilities. The Committee takes note of persons who have refused alternative service, whose claims are now pending before the Constitutional Court, and that serving members of armed forces are not permitted to express objections of conscience. While welcoming that, further to the Constitutional Court's decision of 28 June 2018, conscientious objectors have been released from prison and had their criminal records expunged, the Committee is concerned at the reported lack of compensation provided to them, contrary to its previous recommendations and Views (arts. 17 and 18).

52. The State party should eliminate the discriminatory treatment of conscientious objectors compared to those enrolled in military service by reducing the excessively long duration of alternative service and expand alternative service to locations other than correctional facilities. It should also consider amending its legislation to recognize the right to conscientious objection of active members of the armed forces and, in line with the Committee's previous recommendations and Views, to provide compensation to conscientious objectors who, further to the Constitutional Court's decision of 28 June 2018, have been released from prison and had their criminal records expunged.

**UPR**

**Universal periodic review**

**Report of the Working Group on the Universal Periodic Review\***

**Republic of Korea (A/HRC/53/11) 23 March 2023**

139. The following recommendations will be examined by the Republic of Korea, which will provide responses in due time, but no later than the fifty-third session of the Human Rights Council:

139.34 Consider reviewing its legislation to address concerns on conscientious objection and alternative services and further bring it into full compliance with its human rights obligations (Timor-Leste)

139.48 Review legislation and practice to ensure alternative civilian service that is genuinely civilian, accessible to all conscientious objectors without discrimination, non-punitive and non-discriminatory in nature and cost and of a duration comparable to military service with any additional duration based on reasonable and objective criteria (Costa Rica)

139.68 Take steps on alternative service to ensure the observance of the rights to freedom of thought, belief, conscience and religion (Malawi)

139.76 Allow conscientious objectors to serve for a length comparable to that of military service and with a variety of options to serve, taking into account the range of talent and skills that conscientious objectors can contribute to the nation (Canada);

139.77 Ensure that no conscientious objector to military service is imprisoned or deprived of their liberty and that objectors are offered a genuinely civilian and non-punitive alternative in line with international law (Spain);

139.78 Take steps to implement alternative service for conscientious objectors to military service in line with international standards (Slovakia);

139.79 Adopt provisions for conscientious objectors to carry out an appropriate alternative and non-punitive service of a genuinely civilian character and of a comparable length to military service, with any additional extension based on reasonable and objective criteria (Panama);

139.81 Provide for the release of all imprisoned conscientious objectors, expunge the criminal records of conscientious objectors and provide them with adequate reparation (Argentina);

139.82 Allow conscientious objectors to carry out an appropriate alternative service of a genuinely civilian character (Cyprus);

139.83 Release all conscientious objectors in detention, expunge their criminal records and grant them appropriate reparation (Luxembourg);

139.84 End the detention of conscientious objectors to military service and ensure that civilian alternatives to military service are not punitive or discriminatory and remain under civilian control (Uruguay);

139.85 Improve civilian alternatives to the military service for conscientious objectors (Estonia);

139.86 Provide alternative service options for conscientious objectors by introducing an alternative non-punitive service of genuine civilian character, under civilian control and of a length comparable to military service and ensure that alternative service is offered without unreasonable delay (Australia);

139.87 Ensure that conscientious objectors to military service can carry out genuinely civilian and non-punitive alternative service without discrimination, by reducing the length of alternative service and expanding the places of possible service (Croatia);

139.88 Continue efforts towards making alternative service for conscientious objectors of a non-punitive and civilian character (Poland);

### **Responses to the UPR Recommendations from the Government of RoK**

A/HRC/53/11/Add.1 (13 June 2023) contained their responses to the Recommendations:

All the above were “noted”, except Nos. 81, 83 and the former part of 84 which they stated were “already implemented”. For the UPR “noted” means that they are not accepted.