



國家人權委員會
NATIONAL HUMAN RIGHTS
COMMISSION, TAIWAN

National Human Rights Commission Opinion on the Ministry of National Defense's Draft Amendments to "Physique Classification Standards of Military Service" Concerning Intersex and Transgender Persons

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I. Introduction

On December 11, 2025, the Ministry of National Defense announced draft amendments to the *Physique Classification Standards of Military Service* (hereinafter referred to as “the Draft Amendments”). The key revisions include subdividing the Substitute Service category into Grade A and Grade B classifications. Of the 193 items in the Physique Classification Standards Table, the Draft Amendments substantially revise 180 items, encompassing classifications related to Standing Service, Substitute Service, and Exempted from Military Service. According to the explanatory notes accompanying the Draft Amendments and related media reports, the immediate impetus for these revisions is to address recent cases involving domestic

entertainers evading military service. Given that Taiwan's military exemption rate has reached approximately 16% in recent years—significantly higher than the roughly 5% rates observed in Singapore and South Korea—and in light of advances in medical technology that enable effective treatment or control of certain conditions, amendments to the existing physical classification standards are being pursued.

Among the proposed revisions to the Physique Classification Standards Table, Items 109 and 189 would reclassify intersex persons and transgender women who have obtained psychiatric certification from the “Exempted from Military Service” category to the “Substitute Service” category. Based on past conscription examinations, intersex persons exempted from military service accounted for only 0.0005%, with transgender persons accounting for 0.045%. Nevertheless, the Draft Amendments propose to include these groups in Substitute Service while overlooking the long-standing disadvantaged circumstances faced by these communities. In particular, the Draft Amendments fail to take into account the current lack of gender-inclusive safeguards within the Substitute Service system and do not propose any corresponding supporting mechanisms. As a result, the proposed revisions risk exacerbating human rights concerns related to personal safety, health, and privacy for intersex persons and transgender women; it can hardly be regarded as an appropriate or effective response to the issue of elevated exemption rates.

Pursuant to Article 2, Paragraph 5 of its *Organic Act*, the National Human Rights Commission (NHRC) hereby sets forth its opinions and recommendations on the Draft Amendments, based on international human rights standards, including the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

II. Absence of Gender-Inclusive Mechanisms in the Existing Substitute Service System

The practical operation of the current Substitute Service system continues to follow militarized management and masculine culture. Since the *Act of Military Service System* presumes that all Substitute Service members are cisgender men, gender-inclusive measures are originally insufficient.

The operational framework of the current Substitute Service system continues to be characterized by militarized administration and a hyper-masculine culture. As the *Act of Military Service System* operates under the presumption that participants are exclusively cisgender males, the provision of gender-inclusive infrastructure and policies is fundamentally inadequate.

1. Conscription Physical Examination and Physique Classification Stage

Human dignity and privacy are fundamental human rights protected by international human rights covenants (see UDHR Articles 1 and 12; ICCPR Article 17). According to the relevant interpretations by the UN Human Rights Committee and other treaty bodies, the right to privacy encompasses at least five dimensions: (A) physical and mental integrity, (B) decisional autonomy, (C) personal identity, (D) informational privacy, and (E) bodily and spatial privacy.

Based on public data from the Department of Conscription Administration (Ministry of the Interior) and local governments, physical examinations for physique classification are conducted by 43 designated hospitals and 7 re-examination hospitals. These facilities are appointed by the Ministry of the Interior in consultation with the Ministry of Health and Welfare and are commissioned by local governments. Currently, only certain local governments—such as Taipei City, New Taipei City, and Kaohsiung City—are known to have implemented gender-inclusive examination measures. Such measures include: assigning senior nursing staff for full-process accompaniment, providing independent and private changing spaces, scheduling dedicated time slots to avoid peak crowds, and providing gender-inclusive restrooms (for safe use and urine sample collection).

However, these gender-inclusive measures have not been implemented by all local governments or designated hospitals, nor do all civil service, military, and medical personnel possess gender-sensitive attitudes. Consequently, many intersex and transgender individuals are compelled to seek cross-jurisdictional examinations or undergo the process in environments lacking privacy protection and inclusivity. From the use of binary gendered titles and mandatory undressing to restroom accessibility and medical consultations, these individuals endure intrusive scrutiny and unwelcoming treatment arising from current procedural flows and spatial arrangements.

2. Active Service Period

(1) Regulations on Dress and Appearance

Multiple domestic judicial rulings involving disputes over gender marker changes have seen the courts not only reaffirm privacy as a fundamental human right protected by the Constitution but also recognize gender identity and gender self-determination as core elements of human dignity and the right to personality. Both are deemed to fall within the scope of protection under Article 22 of the Constitution (see Taipei High Administrative Court Judgment No. 275 (2020) and Kaohsiung High Administrative Court Judgment No. 155 (2024), among others).

However, the Ministry of the Interior's current "Regulations on Dress and Appearance Inspections for Substitute Service Members" stipulate

that members must maintain short hair, with regular and ad hoc inspections conducted to determine rewards or penalties. Such rigid regulations are detrimental to the gender identity and expression of transgender women, severely infringing upon their human dignity and privacy rights.

(2) Basic Training and Assignment Units

Beyond human dignity and privacy, physical and mental health—as well as personal safety—are fundamental human rights that States are committed to protecting. These rights are interrelated, interdependent, and indivisible (see UDHR Articles 3 and 25; ICCPR Article 9 and General Comment No. 35; ICESCR Article 12 and General Comment No. 14). Current regulations require Substitute Service members to undergo basic training at Chengkungling, jointly administered by the Ministry of the Interior and the Ministry of National Defense. This centralized training adopts a military-style management model, which includes: collective, undressed physical examinations and uniform-changing procedures upon arrival; restroom and bathing facilities designed under the presumption of cisgender male users; and dormitory spaces consisting of open-bay barracks with centralized housing, which lack essential privacy and safety protections. Neither the physical infrastructure nor the personnel staffing and training provide necessary supporting measures for intersex individuals or transgender women in service.

If these individuals are assigned, upon completion of training, to police or fire departments where the environments remain similar to military structures, the aforementioned risks to mental and physical health, as well as the threat of gender-based violence, will persist. If training and operational units lack an understanding of transgender-specific medical needs or access to relevant healthcare resources, individuals undergoing hormone replacement therapy (HRT) may be forced to interrupt their treatment. Such interruptions—often caused by administrative barriers in obtaining medical leave or the inaccessibility of medical care—severely compromise their right to health.

III. Human Rights Risks of Incorporating Intersex and Transgender Persons in Substitute Service Under the Draft Amendments

The Draft Amendments directly impact the physique classification of certain intersex persons and transgender women, primarily through revisions to Item 109 and Item 189:

- Item 109 - "Abnormalities of External Genitalia"

Refers to "persons possessing both male and female external genital characteristics" and "persons with sex chromosome abnormalities." Previously classified as exempted from military

service, these cases are now proposed for reclassification to Substitute Service Category Grade B.

- Item 189 - "Psychosexual Abnormalities"

Refers to "persons with a confirmed diagnosis of psychosexual abnormalities" and "persons who have undergone sex reassignment surgery," both previously exempted from military service. The current proposal seeks to revise the terminology to "Specific Psychosexual Conditions," encompassing "persons with a confirmed diagnosis of specific psychosexual conditions" and "persons who have completed gender marker change registration." Under the proposal, the former would be reclassified to Substitute Service Category Grade A, while the latter would remain Exempted from Military Service.

Regarding "persons with a confirmed diagnosis of specific psychosexual conditions":

- (1) The diagnosis must be made by a psychiatrist.
- (2) A psychological assessment and examination report must be completed.
- (3) "Specific psychosexual conditions" include gender dysphoria, paraphilic disorders, and other sexual dysfunctions. If the diagnosis was made less than one year prior, a one-year "undetermined status" period is granted.

As previously mentioned, the current Substitute Service system lacks essential gender-inclusive measures. In the absence of structural reforms and meaningful consultation with intersex and transgender communities as key stakeholders, the precipitous conscription of these groups threatens to expose them to exacerbated systemic discrimination and human rights violations. Furthermore, such measures are unlikely to effectively address the underlying issue of elevated exemption rates.

1. Exacerbated Risks of Discrimination, Violence, and Other Human Rights Violations

If intersex persons and transgender women are incorporated into Substitute Service, uncertainty regarding the handling of their physical examination and physique classification records—compounded by the absence of strict confidentiality protocols—poses a significant risk. The transmission of such sensitive data between training and operational units may lead to unauthorized disclosure of their private information, thereby exacerbating health risks and threats to personal safety during their service.

As previously detailed, the practical operation of the current Substitute Service system—including dress and appearance regulations, basic training, and assignment to operational units—fails to account for the disadvantaged position of intersex and transgender individuals. If these groups are conscripted in the future, they will be forced into

prolonged collective living with men. Within a military-style environment dominated by hyper-masculine culture, they will face immense psychological and physical strain, alongside heightened threats of gender-based violence. Such conditions constitute a direct violation of their rights to privacy, health, and personal safety. This is likely to lead to increased discrimination and litigation, which existing grievance and legal remedy mechanisms may be ill-equipped to address them.

2. Failure to Comply with the Principles of Legal Clarity and Proportionality

(1) Principle of Legal Clarity

According to international human rights covenants, the Constitution, and successive Constitutional Court interpretations, administrative regulations must comply with the principle of legal reservation to ensure human rights and the rule of law. While the legislature may authorize administrative agencies to establish specific regulations, the regulatory density must be calibrated according to the subject, content, and legal interests involved, as well as the severity of the restrictions (see ICCPR Articles 4 and 9; Constitution Article 23; and Judicial Yuan Interpretation No. 443). Article 5 of the *Administrative Procedure Act* clearly stipulates that "the substance of administrative acts must be clear and definite," while Article 7 mandates the proportionality principle for administrative acts. Although Article 33 of the *Act of*

Military Service System clearly provides that “the standards of categories (for Substitute Service) will be determined jointly by the Ministry of National Defense and the Ministry of Interior,” the Draft Amendments—which introduce Grade A and Grade B classifications for Substitute Service—fail to articulate the criteria for such distinctions or the underlying reasoning. Furthermore, the amendments do not clarify the differences in training, service content, or the subsequent legal effects between these two grades. Regarding amendments to Items 109 and 189, the reclassification of intersex persons and transgender women from "Exempted from Military Service" to "Substitute Service Grades B and A" respectively lacks a clear legal justification for this alteration of rights and obligations. This lack of transparency renders it impossible for the public to foresee the legal consequences of classification, thereby violating the principle of legal clarity.

(2) Principle of Proportionality

The Ministry of National Defense 's announcement of amendments to Physique Classification Standards of Military Service aims to address the current high rate of military service exemptions. However, according to reports, the top 5 reasons for exemption from military service in recent years are: body weight, foot deformities, arrhythmia, below-average intelligence, and psychoneurosis. Body weight alone has consistently accounted for approximately 30% of exemptions for over a decade, with the remaining reasons alternating in order. In 2025,

among more than 120 cases of military service evasion investigated by the Department of Conscription Administration, 92 individuals were suspected of 'falsely claiming hypertension' and were subsequently referred to local prosecutors' offices. This figure excludes the cases from three separate waves of investigation by the New Taipei District Prosecutors Office. Notably, none of these cases involved the 'fraudulent claim' of gender dysphoria. Additionally, based on the Control Yuan's investigation report on intersex rights, only 8 individuals were identified with "external genital abnormalities" (Item 109) between 2007 and 2016, a mere 0.0005% of conscripts. Similarly, a research report commissioned by the Executive Yuan, titled *'Institutionalization and Legislative Recommendations for Gender Marker Change Requirements,'* indicates that between 2002 and 2020, only 1,433 conscripts were identified with "inconsistent gender identity" (corresponding to Item 189, "Psychosexual Abnormalities"). This figure represents a mere 0.045% of the 3,165,972 conscription-age men during the same period, according to official statistics from the Ministry of the Interior. If the objective is to reduce exemption rates, targeting a population that represents only 0.0005% (intersex) and 0.045% (transgender) is grossly disproportionate. Conscripting these groups while ignoring the systemic lack of gender-inclusive protections in physical examinations, training, and assignments serves only to exacerbate risks to human dignity, personality rights, and personal safety. Consequently, the proposed means fail the tests of

appropriateness, necessity, and proportionality *stricto sensu* (balance of interests).

IV. Conclusions and Recommendations

Given that the Draft Amendments to the Physique Classification Standards significantly impact the fundamental human rights of intersex persons and transgender women, the Commission—having reviewed the proposed revisions against the UDHR, the ICCPR, the ICESCR, and other international human rights standards—hereby issues the following conclusions and recommendations pursuant to its statutory authority:

1. Recommendation to suspend the incorporation of intersex and transgender persons into Substitute Service and to conduct a rigorous re-evaluation of human rights and gender impacts

(1) In response to escalating international security threats, the policy of the Ministry of National Defense and the Ministry of the Interior to comprehensively restructure standing soldier and Substitute Service personnel reflects legitimate national policy objectives. However, since intersex and transgender persons are by no means the primary cause of elevated exemption rates, and considering that the competent authorities have yet to

address the lack of gender-inclusive measures or propose and implement safeguards to prevent or mitigate risks of human rights violations, the precipitous reclassification of these groups would instead subject them to more severe discrimination. Therefore, we recommend that the Ministry of National Defense and the Ministry of the Interior suspend the proposed amendments concerning these groups.

- (2) The decision-making process for the Draft Amendments lacked participation and deliberation from the affected communities, nor did it include a Human Rights Impact Assessment (HRIA) or a Gender Impact Assessment (GIA). Consequently, the announcement of the Draft Amendments has sparked significant public concern and anxiety. We recommend that the Ministry of National Defense and the Ministry of the Interior re-examine the appropriateness of conscripting these groups into Substitute Service. The authorities should actively invite affected individuals and relevant human rights organizations to participate in deliberations and ensure that comprehensive Human Rights and Gender Impact Assessments are conducted prior to any legislative changes.

2. Recommend that the government improve and establish gender-inclusive military systems and environments

- (1) The current military service system is predicated on the assumption that all conscripts and service members are cisgender men. Personnel across the conscription, military, and medical sectors often lack sufficient understanding of and respect for intersex and transgender communities, leading to persistent reports of discrimination, harassment, and bullying. The military system and its physical environment remain dominated by a hyper-masculine culture; facilities such as restrooms and dormitories, as well as personnel training and assignment protocols, fail to account for the specific challenges faced by transgender and intersex individuals with female gender identities.

- (2) We recommend that the competent authorities research and analyze the obstacles encountered by these groups within the current conscription examination procedures. The authorities should convene key stakeholders, local governments, and designated medical institutions to exchange practical experiences, seek appropriate solutions, and develop gender-inclusive conscription examination guidelines.

(3) We recommend that the competent authorities strengthen gender equality and human rights awareness among conscription, military, and medical personnel. All appropriate measures should be taken to improve and establish gender-inclusive military systems and environments. The goal is to ensure that all individuals—irrespective of sex, sexual orientation, gender identity, or gender expression, and regardless of whether they are serving through compulsory service or voluntary enlistment—receive the understanding and respect to which they are entitled, and are safeguarded from all forms of discrimination, harassment, bullying, and violence.