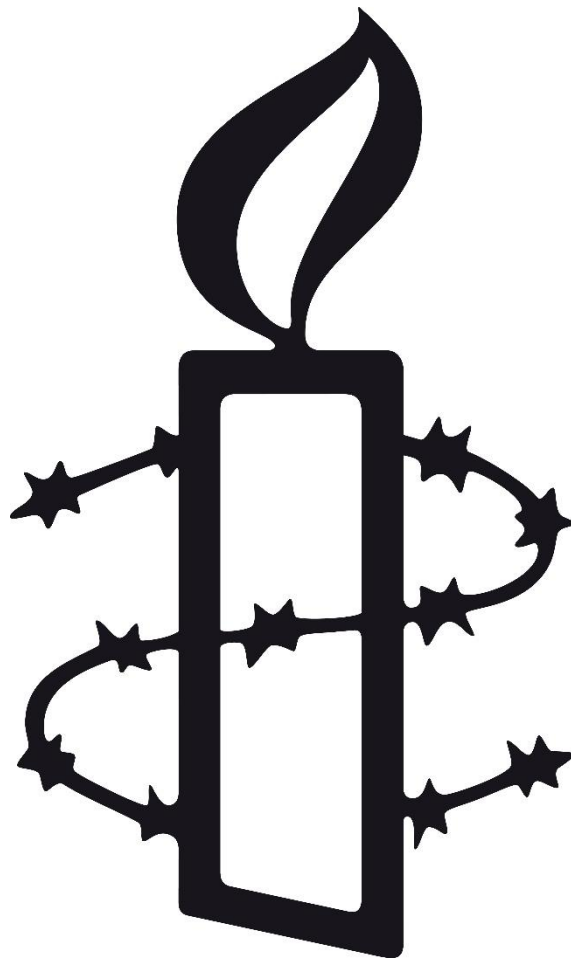


SOUTH KOREA

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE
139TH SESSION, 9 OCTOBER 2023 – 3 NOVEMBER 2023



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INTERNATIONAL



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In this submission to the UN Human Rights Committee, Amnesty International sets out its concerns and recommendations regarding the implementation of the International Covenant on Civil and Political Rights by the government of South Korea. It highlights concerns with regard to violations committed in the context of discrimination, sexual orientation and gender identity, gender equality, violence against women, right to life, persons deprived of their liberty and conditions of detention, conscientious objection, freedom of expression and peaceful assembly.

1. INTRODUCTION

Amnesty International submits the following information to the UN Human Rights Committee (the Committee) ahead of the review of the fifth periodic report of the Republic of Korea (South Korea) at its 139th session in October 2023.

In this submission Amnesty International sets out its concerns and recommendations regarding the implementation of the International Covenant on Civil and Political Rights (the Covenant) by the government of South Korea. It highlights concerns with regard to violations committed in the context of discrimination, sexual orientation and gender identity, gender equality, violence against women, right to life, persons deprived of their liberty and conditions of detention, conscientious objection, freedom of expression and peaceful assembly.

This submission is not an exhaustive list of concerns but draws on Amnesty International's ongoing research and advocacy related to South Korea's implementation of the Covenant.

2. DISCRIMINATION AGAINST LGBTI PERSONS AND WOMEN (ARTICLES 2, 7, 17 AND 26)

Despite a concerted effort by civil society and repeated calls from the international community during the reporting period, South Korea has failed to adopt and enforce meaningful and comprehensive anti-discrimination legislation to protect cis-, LGBTI and transgender women. Discrimination against LGBTI people in South Korea continues to persist in various forms, some of which are institutionalized. For example, same-sex relationships are not legally recognized and consensual same-sex activity between men continues to be criminalized in the military, even though it is not outlawed for the general public.

During his election campaign in early 2021, President Yoon Suk-yeol made several anti-feminist remarks; blamed the country's low birthrate on feminism; and claimed that systemic gender discrimination does not exist in South Korea, despite statistical evidence suggesting that the country has a long way to go to achieve gender equality.¹

Women continue to face multiple legal, social and economic barriers and discrimination across all spheres.² For example, women continue to face a pronounced gender wage gap, earning an average of 31.5% less than men.³ Women also remain highly underrepresented in the country's leadership positions, making up 19% of parliamentarians and less than 5% of executives in the 100 companies with the highest sales figures in the country.⁴

South Korea has repeatedly voted in favour of UN Human Rights Council resolutions calling for an end to discrimination and other expressions of support for such international statements of intent. However, the National Assembly has failed to enact numerous comprehensive anti-discrimination laws that have been proposed over the last 15 years. Four proposed anti-discrimination bills were added to

¹ Amnesty International, 'Yoon Suk-yeol needs to change the way South Korea treats women', 11 May 2021, <https://www.amnesty.org/en/latest/news/2022/05/yon-suk-yeol-needs-to-change-the-way-south-korea-treats-women/>

² Amnesty International, 'South Korea: Lawmakers must seize chance to pass landmark anti-discrimination act', 9 August 2021, <https://www.amnesty.org/en/latest/news/2021/08/south-korea-lawmakers-must-pass-landmark-anti-discrimination-act/>

³ Korea Herald, 'Korean women still earn 38% less than men', 7 March 2022, <https://www.koreaherald.com/view.php?ud=20220307000655>

⁴ NPR, 'South Korea has the world's lowest fertility rate, a struggle with lessons for us all', 19 March 2023, <https://www.npr.org/2023/03/19/1163341684/south-korea-fertility-rate>

the agenda at a Legislation and Judiciary Committee meeting in May 2022, yet none of these have been passed.

Under Article 92-6 of the country's Military Criminal Act, same-sex sexual activity is an offence punishable by up to two years in prison.⁵ In April 2022, for the first time, the Supreme Court reversed lower court convictions of two soldiers under Article 92-6, reversing partially its own precedent which confirmed convictions of consensual sexual acts between men without examining whether the acts took place on or off duty and whether the acts were mutually consented. The Court reasoned that if same-sex sexual acts took place off base, while the soldiers were off duty and by mutual consent, the Act does not apply.⁶ However, the Act still criminalizes same-sex sexual acts on duty at the base and therefore its constitutionality is being challenged at the Constitutional Court.

2.1 RIGHTS OF TRANSGENDER PEOPLE

Transgender people also suffer from discrimination. In February 2021, a survey commissioned by the National Human Rights Commission of Korea (NHRCK) revealed that transgender people are “exposed to hatred and discrimination in all places”. The report criticized the lack of laws, institutions and policies guaranteeing the rights of transgender individuals and called on the government to enact a comprehensive law banning discrimination against them.⁷

Furthermore, there is no law governing legal gender recognition in South Korea, which means that applicants must apply for legal gender recognition through the courts in accordance with the “Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People” adopted by the Supreme Court in 2006. These guidelines include abusive or discriminatory requirements, such as not having children under 19 and being at least 19 years old themselves, as well as being unmarried, diagnosed with “transsexualism”, having undergone hormone therapy and have been sterilized.

In November 2022, the Supreme Court held that transgender people cannot be denied the right to have their legal gender marker changed solely on the grounds that they have children who are under 19. The ruling was in response to a case of a transgender woman who had originally had her application for legal recognition of gender rejected because she had underage children.⁸

However, transgender individuals seeking legal gender recognition through the courts are still required to meet excessive and disproportionate conditions such as undergoing sterilization. Without legal gender recognition, transgender individuals cannot change their gender marker to match their gender identity on their national identification cards, which is required to obtain official documents and access essential services. These official documents are also necessary to obtain employment and to purchase property. Further, the authorities continue to pathologize gender dysphoria as a mental disorder.

Authorities continued to prevent transgender individuals from serving in the military. For example, former staff sergeant Byun Hui-su, a transgender woman, was reportedly discharged from the military

⁵ Military Criminal Act, Article 92-6 Indecent Act, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=62072&lang=ENG

⁶ Amnesty International, ‘South Korea: Landmark judgement on same-sex sexual acts in military a huge victory for LGBTI rights’, 21 April 2022, https://www.amnesty.org/en/latest/news/2022/04/south-korea-landmark-judgement-on-same-sex-sexual-acts-in-military-a-huge-victory-for-lgbti-rights/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2021

⁷ National Human Rights Commission of Korea, 9 February 2021, <https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7606311&menuid=001004002001>; Yonhap News Agency, ‘Discrimination, hatred against trans people ‘serious’ in S. Korea: watchdog’, 10 February 2021, <https://en.yna.co.kr/view/AEN20210210005000315>

⁸ Amnesty International, ‘South Korea: Supreme Court ruling on legal gender recognition an important step forward for transgender rights’, 24 November 2022, <https://www.amnesty.org/en/latest/news/2022/11/south-korea-supreme-court-ruling-on-legal-gender-recognition-an-important-step-forward-for-transgender-rights/>; Amnesty International, South Korea: Amicus curiae brief in the Supreme Court of Korea on legal gender recognition, ASA 25/6246/2022, <https://www.amnesty.org/en/documents/asa25/6246/2022/en/>

after requesting a transfer to the female corps.⁹ Byun Hui-su's gender affirmation surgery was classified by the military as a "disability".¹⁰ Following the discharge, she was found dead in March 2021 in Cheongju, North Chungcheong province.¹¹ Her death was treated as a suicide. After her death, a district court ruled in October of 2021 that there were "no mental or physical disability grounds for dismissal" and ordered her discharge to be posthumously cancelled.¹²

2.2 SEXUAL ORIENTATION AND GENDER IDENTITY RELATED CONTENT BEING REMOVED FROM TEXTBOOKS

The Ministry of Education announced its decision to remove the term 'sexual minority' from the revised new national school curriculum. It also stated that public consensus was needed to include 'controversial terms in the curriculum'. The revised curriculum, which replaces "sexual minorities" with "people who suffer discrimination due to sex, age, race, nationality, disability, etc.", was announced in 2022.¹³ The ministry explained at the time: "As adolescence is a period of establishing gender identity, it was decided to explain the term indirectly to avoid confusion that young students may face when confronted with specific examples of sexual minorities." Amnesty International is concerned that the government's plan is a demonstration of a broader opposition to the full realization of the human rights of specific groups, in particular LGBTI persons. Non-inclusive education is among the factors that prevent LGBTI students from achieving social mobility and increase their vulnerability to violence.¹⁴

2.3 SAME-SEX COUPLE'S NATIONAL HEALTH INSURANCE CASE

Lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination can result in same-sex partners being treated unfairly by private actors, including health-care providers and insurance companies. On 7 January 2022, the Seoul Administrative Court dismissed a lawsuit filed by So Seong-wook and his partner Kim Yong-min against the National Health Insurance Service (NHIS) for denying insurance coverage by not recognizing partners within a same-sex relationship as dependents. The NHIS first recognized Kim Yong-min as So Seong-wook's dependent in 2021 but cancelled this status eight months later.¹⁵ So appealed to the appellate court which ordered the NHIS to resume coverage for the petitioner's partner stating that the spousal coverage system under the state health insurance scheme was not just for families as defined by law and not granting the rights to people in same-sex relationships was discrimination.¹⁶

The NHIS has appealed the appellate court and the case is now before the Supreme Court.

2.4 RECOMMENDATIONS

- Promptly enact comprehensive, meaningful and enforceable anti-discrimination legislation that prohibits discrimination based on, among others, sex, gender, sexual orientation, gender

⁹ The Guardian, 'South Korea's first transgender soldier found dead', 4 March 2021, <https://www.theguardian.com/world/2021/mar/04/south-koreas-first-transgender-soldier-found-dead>

¹⁰ The Guardian, 'South Korea's first transgender soldier found dead', 4 March 2021, <https://www.theguardian.com/world/2021/mar/04/south-koreas-first-transgender-soldier-found-dead>

¹¹ The Guardian, 'South Korea's first transgender soldier found dead', 4 March 2021, <https://www.theguardian.com/world/2021/mar/04/south-koreas-first-transgender-soldier-found-dead>

¹² NPR, 'Landmark ruling finds South Korea military illegally discharged a transgender soldier', 9 October 2021, <https://www.npr.org/2021/10/09/1044742514/south-korea-trans-soldier-discharged-court-ruling>

¹³ Hankyoreh, 'Korean teachers worry new policies will undo inclusive education on sex, gender', 29 December 2022, https://english.hani.co.kr/arti/english_edition/e_national/1073604.html

¹⁴ CEDAW, General comment No. 36, para. 45

¹⁵ Amnesty International, 'South Korea: High Court health insurance ruling offers hope for marriage equality', 21 February 2023, <https://www.amnesty.org/en/latest/news/2023/02/south-korea-health-insurance-same-sex-marriage/>

¹⁶ Reuters, 'South Korean court grants legal status for same-sex couple in landmark ruling', 21 February 2023, <https://www.reuters.com/world/asia-pacific/south-korean-court-recognises-spousal-coverage-state-insurance-same-sex-couple-2023-02-21/>

identity, gender expression and sex characteristics, gender expression and sex characteristics.

- Repeal Article 92-6 of the Military Criminal Act, which prohibits and punishes consensual same-sex sexual conduct between men in the military.
- Stop basing legal gender recognition for transgender individuals upon unreasonable and discriminatory requirements such as undertaking psychiatric diagnosis, seeking medical treatment (including forced sterilization or genital reconstruction), or the prohibition of marrying or having children. Gender recognition should be made available through swift, accessible and transparent administrative procedures based on individual self-declaration.
- Stop treating gender dysphoria as a mental health disorder by implementing without delay the WHO ICD-11, which no longer classifies gender dysphoria as a mental disorder.
- Ensure that all gender-affirming treatments are included in the national health insurance system.
- Adopt comprehensive and SOGI-inclusive sexuality education to reduce physical and psychological health risks for LGBTI and gender-diverse youth.
- End discrimination against, and criminalization of, the LGBTI community and introduce legislative measures to ensure marriage equality for same-sex couples.

3. GENDER EQUALITY AND VIOLENCE AGAINST WOMEN (ARTICLES 2, 3, 17, 25 AND 26)

3.1 ATTEMPT TO ABOLISH MINISTRY OF GENDER EQUALITY AND FAMILY

In October 2022, the government announced plans to abolish the Ministry of Gender Equality and Family (MOGEF) as part of a reorganization effort.¹⁷ The ministry had served as an overarching body for setting and monitoring gender equality policies for all other ministries. With the dissolution of the MOGEF, the government appears to no longer have a coordinating mechanism to advise on the impact of all government policies on women's rights; monitor the situation of women comprehensively and help formulate new policies; and effectively carry out strategies and measures to eliminate discrimination against women.¹⁸ Furthermore, Amnesty International is deeply concerned that replacing 'gender equality' with 'population, family affairs and welfare' may directly or indirectly reinforce discriminatory and long-standing stereotypes about the roles and responsibilities of women and men in the family and in society.

3.2 ONLINE GENDER-BASED VIOLENCE AND BIG TECH'S INADEQUATE REPORTING SYSTEM

There has been a noticeable increase in digital sex crimes as digital technology rapidly develops.¹⁹ In cases documented by Amnesty International, the perpetrators of such crime use cloud links and cryptocurrencies on closed overseas platforms such as Telegram to distribute and purchase illegally filmed content and sexually exploitative material.

On 23 April 2020, South Korea announced measures to address digital sex crimes in response to one such case on Telegram, the so-called "Nth Room" incident, which included a number of legal

¹⁷ BBC, 'As South Korea abolishes its gender ministry, women fight back', 14 December 2022, <https://www.bbc.com/news/world-asia-63905490>

¹⁸ CEDAW, General comment No. 6: Effective National Machinery and Publicity

¹⁹ UN Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, UN Doc. A/HRC/38/47, p. 13, para. 57, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/184/58/PDF/G1818458.pdf?OpenElement>

revisions under what was termed the Nth Room Prevention Act.²⁰ These included a commitment to establish a government-led victim support centre to ensure continued support system for survivors. A Digital Sex Crimes Task Force Team's Expert Committee was also established under the Ministry of Justice.²¹ The Committee was established in August 2021 with the mandate of preparing policies to respond to digital sex crimes. However, the government did not put in place a sustainable emergency response system for digital sexual violence.²² As a result, survivors continue to be exposed to prolonged physical and mental harm including the constant fear that the content may be distributed again.

The Digital Sex Crimes Task Force Team's Expert Committee was officially disbanded on 15 June 2022, with two months remaining in its mandate. The disbandment came after 17 members of the task force resigned under pressure from the newly inaugurated administration of President Yoon Suk-yeol, which stated that the task force had already fulfilled its intended purpose.²³

3.3 NO COMPREHENSIVE LEGISLATION AFTER DECRIMINALIZING ABORTION; ABORTION PILLS PROHIBITED

Following the Constitutional Court's decision in 2019 to declare the abortion ban unconstitutional, in January 2021, the government decriminalized abortions. Despite these determinations, parliament did not take action to revise the law as ordered by the Constitutional Court in 2019.²⁴ Several bills remain pending in the National Assembly, including those prescribing specific time limits for abortion access as well as some calling for full decriminalization. This prolonged legislative vacuum has caused confusion among medical providers, creating legal uncertainty and negatively impacting access to safe abortions.

The NHIS has provided coverage for abortion related consultations and education since August 2021, but no oral medication abortion pills have yet been approved by the Ministry of Food and Drug Safety. The Korea Communication Standards Commission issued a ruling in 2019 blocking domestic access to the website of Canadian nonprofit organization Women on Web, which provides access to information about reproductive health and access to abortion medication, following a request by Korea's Food and Drug Agency.²⁵ Amnesty International is concerned that despite the decriminalization of abortion, access to safe abortions continues to be limited by a number of unnecessary legal and administrative hurdles and restrictions on access to information and services relating to abortions.

3.4 RAPE LAW STILL NOT CONSENT-BASED

Amnesty International is concerned that the current definition of rape in article 297 of the Criminal Code requires proof of "means of violence or intimidation" and that the Committee's previous recommendations to specifically criminalize marital rape in legislation, rather than only in case law, have not been implemented. MOGEF initially announced a plan to revise the components of the offences of rape and indecent assault under the Criminal Code in the "Third Basic Plan for Gender

²⁰ Amnesty International, 'South Korea: Online sexual abuse content proliferates as survivors blame Google failings', 8 December 2022, <https://www.amnesty.org/en/latest/news/2022/12/south-korea-online-sexual-abuse-content-proliferates-as-survivors-blame-google-failings/>

²¹ Ministry of Justice, Digital Sex Crimes Task Force Team, <https://www.moj.go.kr/bbs/moj/161/442228/download.do>

²² Nikkei Asia, South Korea's 'nth rooms' are toxic mixture of tech, sex and crime, 10 April 2020, <https://asia.nikkei.com/Opinion/South-Korea-s-nth-rooms-are-toxic-mixture-of-tech-sex-and-crime>

²³ Korea Times, 'Civilian members of digital sex crime task force resign as #MeToo prosecutor calls it quits', 20 May 2022, https://www.koreatimes.co.kr/www/nation/2023/08/113_329461.html

²⁴ Time, 'South Korea's Top Court Orders Government to End 66-Year-Old Abortion Ban', 11 April 2019, <https://time.com/5568461/south-korea-abortion-ban-overturn/>

²⁵ Korea Herald, 'Abortion pill in review for over a year', 10 October 2022, <https://www.koreaherald.com/view.php?ud=20221010000100>

Equality”, but later withdrew the plan, stating the amendment required “social consensus”.²⁶ Similarly, ten bills to amend the Criminal Code were proposed during the 20th National Assembly session, but none of them were discussed during the session and were subsequently discarded. Three new bills have been proposed to revise the legal definition of rape to include nonconsensual sex and are currently pending at the National Assembly.

3.5 RECOMMENDATIONS

- Halt plans to abolish the (MOGEF) and take concrete measures to strengthen the national machinery for the advancement of women and ensure that it is equipped with the necessary human, financial and technical resources.
- Ensure that online platforms within its jurisdiction, and encourage those outside, take all appropriate measures to prevent and end online discrimination and violence they are facilitating, causing or are contributing to.
- Establish measures to address online gender-based violence, such as a comprehensive inter-agency mechanism which includes appropriate allocation of resources to create an enabling environment for women to access justice; report crimes and actively participate in criminal justice processes; and take measures to prevent retaliation against or the revictimization of women seeking recourse in the justice system.
- Swiftly reform the Criminal Act to decriminalize abortion in line with the Constitutional Court order of 2019.
- Ensure universal access to quality and affordable sexual and reproductive health information, services and goods, including abortion, through concrete legislative, policy and administrative measures.
- Ensure that abortion and all sexual and reproductive health services and goods are affordable, subsidized by public health insurance schemes, or provided free of charge to those who otherwise cannot afford them.
- Take concrete steps to amend Article 297 of the Criminal Act to define rape on the basis of consent.

4. RIGHT TO LIFE (ARTICLES 2 AND 6)

4.1 DEATH PENALTY

Death sentences continue to be imposed in South Korea, although no executions have been carried out since 1997. In October 2021, Member of the National Assembly Lee Sang-min submitted a bill to abolish the death penalty with 30 co-sponsors.²⁷ There have been nine such proposals tabled to date since 1999, but all previous bills have expired after being stalled at the National Assembly Legislative Committee. A complaint filed in 2019 on the constitutionality of statutes allowing for the death penalty remains pending at the Constitutional Court.²⁸

²⁶ Korea Times, ‘Is non-consensual sex not rape?’, 1 February 2022, https://www.koreatimes.co.kr/www/nation/2023/08/113_344628.html#:~:text=Korea's%20Criminal%20Law%20defines%20the,threatened%20violence%20against%20the%20victim.

²⁷ Amnesty International, Death Sentences and Executions 2021, 24 May 2022, <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

²⁸ Amnesty International Korea, Amicus Curiae Brief of Amnesty International in the Constitutional Court of the Republic of Korea, December 2019 (2019HunBa59), https://amnesty.or.kr/wp-content/uploads/bcp-attach/Amnesty-International_-Amicus_death-penalty_20191203_ENG.pdf

Official figures provided to Amnesty International indicate that 60 men, including two Chinese nationals, were handed death sentences in South Korea at the end of 2022.²⁹ All were convicted of murder, including four under military law.³⁰

4.2 RECOMMENDATIONS

- Commute all death sentences without delay to terms of imprisonment and introduce and adopt legislative measures to fully abolish the death penalty which would lead to the full abolition of the death penalty in law.
- Ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

5. PROHIBITION OF TORTURE, OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 7)

5.1 VIOLATION OF THE PRINCIPLE OF NON-REFOULEMENT

On 7 November 2019, the South Korean government forcibly repatriated two North Korean fishermen to North Korea claiming they had committed serious non-political crimes, including killing 16 fellow sailors on a fishing boat before encountering South Korean naval forces.³¹ Then Unification Minister Kim Yeon-cheol first mentioned the alleged crimes of the two sailors at the National Assembly, defining the two as “criminals.”³² As criticism poured in as a response to this remark, Minister Kim Yeon-cheol changed his words, saying, “[t]hey wanted to return to North Korea.”³³ According to media reports, they clearly expressed their desire to remain in Korea in writing.³⁴

Amnesty International is concerned that the decision was made without due process and that the two men are at risk of serious human rights violations upon return, including enforced disappearance, arbitrary execution, torture and ill-treatment and trials that do not conform to international fair trial standards.

5.2 RECOMMENDATIONS

- Take specific measures to prevent recurrence of forceful repatriation by guaranteeing prompt investigation and international human rights conventions. In addition, amend and supplement relevant laws and regulations so that refugees, including North Koreans, will not be forcibly repatriated to places where there is fear of persecution, even if they are suspected of being criminal suspects.

²⁹ Newsis, 법무부 "사형수 1명 병으로 사망... 현재 복역자 60명", 23 July 2019, https://mobile.newsis.com/view.html?ar_id=NISX20190723_0000719015

³⁰ Amnesty International, Death Sentences and Executions 2022, <https://www.amnesty.org/en/documents/act50/6548/2023/en/>

³¹ New York Times, ‘2 North Koreans Tried to Defect. Did Seoul Send Them to Their Deaths?’, 18 December 2019, <https://www.nytimes.com/2019/12/18/world/asia/north-korea-fishermen-defectors.html>

³² Reuters, ‘South Korea expels two North Koreans suspected of killing 16 fishermen’, 7 November 2019, <https://www.reuters.com/article/us-northkorea-southkorea-fishermen-idCAKBN1XHOSJ>

³³ Yonhap News Agency, ‘Unification ministry says no doubt that 2 deported N. Koreans killed other crew members’, 15 November 2019, <https://en.yna.co.kr/view/AEN20191115008651325>

³⁴ Korea Times, ‘Ex-unification minister questioned in probe into 2019 repatriation of 2 N. Korean fishermen’, 20 September 2022, https://www.koreatimes.co.kr/www/nation/2023/08/113_336407.html

6. PERSONS DEPRIVED OF THEIR LIBERTY, AND CONDITIONS OF DETENTION (ARTICLES 7, 9, AND 24)

6.1 INHUMANE TREATMENT OF FOREIGN NATIONALS INCLUDING ASYLUM SEEKERS IN IMMIGRATION DETENTION³⁵

Violations of the rights of foreign nationals including asylum seekers continued at immigration detention centres.³⁶ For example, officials at the Hwaseong immigration detention centre allegedly tied Moroccan detainee inmate A's arms and legs behind his back in the so-called "hog-tying position".³⁷ In February, the Ministry of Justice issued a temporary release from detention for inmate A, an undocumented migrant, following acknowledgement by the Ministry of Justice and the National Human Rights Commission of Korea that human rights violations had occurred when he suffered torture and other ill-treatment at a detention centre in June 2021.³⁸ In May, however, the Ministry of Justice announced a revision to the Immigration Control Act to introduce equipment and chairs that can bind upper and lower body limbs simultaneously.³⁹ This amendment would interfere with individuals' rights and result in harmful effect as the protective equipment could potentially injure ankles and facial skin, which could constitute ill-treatment and/or torture by officers.

According to media reports, a 3-year-old Mongolian child was detained for 19 days in an immigration detention centre in Suwon before being deported in April 2023.⁴⁰ The child was detained with his 22-year-old father, who was in Korea without a valid visa. As reported, the child suffered from stomach pains and visited a pediatrician two times during his detention, but the family's request for temporary release on bail was not granted.

6.2 RECOMMENDATIONS

- Immediately cease any practices against people detained in immigration facilities that could result in inflicting severe pain or suffering, including psychological suffering and undertake prompt, thorough, impartial, independent, transparent and effective investigations into cases of alleged torture and/or ill-treatment in detention facilities.
- Ensure migrant children are kept with their parent or primary caregiver, unless it is determined to be in the child's best interests not to do so; and if that is the case, to ensure the child is kept outside of detention. Unaccompanied migrant children should be appointed an independent and competent legal guardian to protect their rights.

³⁵ VOA, 'South Korean Activists Urge Better Treatment of Asylum Seekers', 2 January 2022, <https://www.voanews.com/a/south-korean-activists-urge-better-treatment-of-asylum-seekers/6378557.html>

³⁶ Korean Bar Association and United Nations High Commissioner for Refugees's joint investigation revealed that these facilities do not guarantee the basic rights of those detained, banning minimal visits outside or mobile phone use. Korea Herald, 'Human rights still violated at foreign detention centers: Korean lawyers', 31 January 2023, <https://www.koreaherald.com/view.php?ud=20230131000754>

³⁷ Korea Times, 'Moroccan asylum seeker's outcry for humane treatment of detainees', 20 June 2022, https://www.koreatimes.co.kr/www/nation/2023/09/113_331340.html

³⁸ Korea Times, 'Justice ministry to dispatch human rights commissioner to immigration detention centers', 25 May 2022, https://www.koreatimes.co.kr/www/nation/2023/08/113_329840.html

³⁹ Hankyoreh, 'Months after outcry over "torture devices," Justice Ministry proposes more restraints for immigration detention centers', 7 October 2022, https://english.hani.co.kr/arti/english_edition/e_national/1061838.html

⁴⁰ Korea Herald, 'Minor party slams ministry for detaining Mongolian 3-year-old', 14 June 2023, <https://www.koreaherald.com/view.php?ud=20230614000691>

7. CONSCIENTIOUS OBJECTORS (ARTICLES 17 AND 18)

7.1 ALTERNATIVE TO MILITARY SERVICE STILL PUNITIVE IN NATURE

In 2018, the Constitutional Court issued a ruling requiring the government to introduce a civilian alternative to military service by the end of 2019. As a result, on 27 December 2019, the legislature enacted amendments to the Military Service Act. The new law allows conscientious objectors to fulfil the mandatory military service by performing 36 months of alternative service in correctional facilities.⁴¹ However, the legislation still violates the right to freedom of thought, conscience and religion or belief because it imposes unreasonable and excessive burdens on conscientious objectors. For example, it provides a disproportionate length of alternative service – 36 months, compared to 21 or 18 months for military service. Applications for an alternative service plan is also assessed by a committee under the Military Manpower Administration, which is part of the Ministry of National Defense.⁴²

Since 30 June 2020, people objecting to compulsory military service have been able to apply for alternative service. The newly created Commission for Examination of Alternative Service operating under the purview of the Ministry of National Defense reviewed only those applications made on religious grounds and accepted 2,896 cases out of 3,047 applications as of May 2023.⁴³ In October 2020, the first batch of alternative service personnel started their 36-month duty, which has been limited to working in prisons or other correctional facilities.⁴⁴

7.2 FIRST CONSCIENTIOUS OBJECTOR TO REFUSE ALTERNATIVE SERVICE

Hye-min Kim, whose religious beliefs precluded him from doing military service, was the first person known to have refused the “alternative service” since it was introduced in 2020.⁴⁵ His application for alternative service was approved but he refused to serve because of the punitive nature of the new system. Kim was charged in August 2022 under Article 88 of the Military Service Act, which can lead to imprisonment for up to three years for those who fail to enlist without justifiable grounds.⁴⁶

7.3 RECOMMENDATIONS

- Make 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 length based on reasonable and objective criteria.
- Ensure that the recognition of conscientious objectors and the administration of alternative service itself is undertaken by a civilian authority entirely separate from the military authorities and its composition guarantees maximum independence and impartiality.
- Immediately and unconditionally release all individuals imprisoned solely for peacefully exercising their right to freedom of thought, conscience and religion or belief including by refusing military service on grounds of conscience.

⁴¹ Amnesty International, ‘South Korea: South Korea marks International Conscientious Objection Day with alternative service plan that falls short’, 15 May 2019, <https://www.amnesty.org/en/documents/asa25/0352/2019/en/>

⁴² Amnesty International, ‘South Korea: Alternative to military service is new punishment for conscientious objectors’, 27 December 2019, <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors-2/>

⁴³ Kyunghang Shinmun, “양심의 자유 침해, ‘괴롭힘의 장’이 됐다”, 2 July 2023, <https://m.khan.co.kr/national/national-general/article/202307020830011#c2b>

⁴⁴ Act on the Assignment and Performance of the Alternative Service, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=53137&lang=ENG

⁴⁵ New York Times, ‘In South Korea, Draft Resisters Still Go to Prison. But Now It’s a Job’, 24 October 2020, <https://www.nytimes.com/2020/10/24/world/asia/south-korea-draft-conscientious-objectors.html>

⁴⁶ Amnesty International, ‘South Korea: Drop charges against first conscientious objector to refuse alternative service’, 22 August 2022, <https://www.amnesty.org/en/latest/news/2022/08/south-korea-conscientious-objector-military-service-hye-min-kim/>; Article 88 of the Military Service Act, Evasion, etc. of Enlistment, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=56344&lang=ENG

- Clear the criminal records of all convicted conscientious objectors and provide them with access to justice and effective remedies including adequate compensation.

8. FREEDOM OF EXPRESSION (ARTICLES 9 AND 19)

8.1 NATIONAL SECURITY ACT

The National Security Act (NSA), which has been continuously used as a means to censor and cast a chilling effect on and imprison those who exercise their right to freedom of expression, remains in effect.³⁰ The NSA has been used against human rights defenders who have expressed criticism of government policies and who have been labelled as “anti-government organizations”, a concept which is broad and vaguely defined in the Act, and have therefore been considered “a threat to social order and the state.”⁴⁷

8.2 THE PARTIAL AMENDMENT TO THE DEVELOPMENT OF INTER-KOREAN RELATIONS ACT

The Partial Amendment to the Development of Inter-Korean Relations Act, which took effect in March 2021, prohibits the distribution of leaflets and goods in the border area between South Korea and North Korea. Amnesty International has expressed concern that the law could unduly limit freedom of expression, pointing to the ambiguity of language on what prohibited acts consist of and the possibility of severe punishment.⁴⁸

Park Sang-hak, a North Korean escapee who has been launching balloons filled with propaganda leaflets into North Korea became the first person to be charged under the Act in January 2022.⁴⁹

8.3 RECOMMENDATIONS

- Repeal, review or amend the National Security Act, in particular its article 7, so that it complies with international human rights law. This law should not be used to harass, intimidate, arrest, or prosecute those who are peacefully exercising their right to freedom of opinion and expression.
- Review the Partial Amendment to the Development of Inter-Korean Relations Act, so that it complies with the ICCPR and does not violate the principle of proportionality in punishment.

⁴⁷ Reuters, ‘South Korea debates scrapping Cold War-era ban on North’s propaganda’, 22 November 2022, <https://www.reuters.com/world/asia-pacific/south-korea-debates-scrapping-cold-war-era-ban-norths-propaganda-2022-11-22/>

⁴⁸ Amnesty International Korea, ‘대북전단금지법을 둘러싼 논란 – 국제엠네스티의 접근법’, 17 May 2021, <https://amnesty.or.kr/41338/>

⁴⁹ New York Times, ‘Fiery North Korean Defector Charged Under New Propaganda Law’, 28 January 2022, <https://www.nytimes.com/2022/01/28/world/asia/korea-border-leaflets-speech-law.html>

9. PEACEFUL ASSEMBLY (ARTICLES 7, 9 AND 21)

9.1 RESTRICTING CIVIC SPACE OF LGBTI PERSONS

In June 2023, hundreds of Daegu city officials and protesters backed by their conservative mayor disrupted the Daegu Queer Festival, resulting in a physical clash with the police.⁵⁰ Mayor Hong Joon-Pyo led a group of city workers to block the route, arguing that the event consisting of approximately 1,500-participants was inconvenient for traffic.⁵¹

In July 2023, the Seoul Metropolitan Government denied the organizer of the Seoul Queer Cultural Festival permission to use the central plaza where the celebration is usually held, citing a scheduling clash.⁵² Instead, the permit was given to a Christian youth concert. The festival is significant for the LGBTI community as it is the largest parade that takes place in the country since 2015 (which the exception of two years during Covid-19).

9.2 INTIMIDATION AND HARASSMENT OF DISABILITY RIGHTS PROTESTERS BY SECURITY FORCES AND PUBLIC OFFICIALS

A group of human rights defenders, who are mostly persons with disabilities, faced verbal intimidation and harassment by security forces and public officials during their “Ride the Subway with People with Disabilities” demonstration, which took place in January 2023.⁵³ Around 250 disability and human rights defenders attempted to ride the subway in Seoul, demanding increased budget allocation to address disability rights. Approximately 600 police officers were deployed to prevent the protesters from boarding the subway and reportedly isolated them for more than 10 hours at the station.⁵⁴

The Seoul Metropolitan Government also obstructed the protest by having subway trains pass through the station without stopping and sending out citywide text messages blaming the protest for not allowing trains to stop in various stations.⁵⁵ The Seoul Namdaemun Police Station launched an investigation into the disability rights groups for obstruction of traffic and disturbance of subway operations by Seoul Metro.⁵⁶ In March 2023, the police arrested one of the disability rights defenders, Park Kyeong-Seok, a 63-year-old man who uses a wheelchair, for illegally occupying roads and obstructing subway services while staging a series of protest rallies at major subway stations in Seoul.⁵⁷ Park had been summoned for questioning 18 times, but refused to show up before the police, prompting the police to seek a warrant to arrest him. Police arrested Park in front of the Seoul

⁵⁰ BBC, ‘South Korea: Police clash with officials over Daegu LGBT event’, 27 June 2023, <https://www.bbc.com/news/world-asia-65939702>

⁵¹ Korea Herald, ‘Daegu mayor blasts police chief over Pride parade’, 18 June 2023, <https://www.koreaherald.com/view.php?ud=20230618000117>

⁵² CNN, ‘South Korea’s LGBTQ festival bumped from venue in favor of Christian youth concert’, 5 May 2023, <https://edition.cnn.com/2023/05/05/asia/seoul-lgbt-festival-christian-concert-intl-hnk/index.html>

⁵³ Communication from the UN Special Rapporteur on the rights of freedom of peaceful assembly and of association; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on the enjoyment of all human rights by older persons, 26 April 2023, https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28003&fbclid=IwAR2xIn5lvTEy-F-4bTfea-iZcY4V9_2DWJlQ70COq1sVL_KP7hPA4d7ceqU

⁵⁴ Yonhap News Agency, ‘Seoul Metro files damages suit against disability rights group over subway protests’, 10 January 2023, <https://en.yna.co.kr/view/AEN20230110003100315>

⁵⁵ Korea Times, ‘Seoul Metro orders train to bypass national disability solidarity protest’, 14 December 2022, https://www.koreatimes.co.kr/www/nation/2023/08/113_341744.html

⁵⁶ Yonhap News Agency, ‘Police refer 24 disability rights activists to prosecution over subway protests’, 2 January 2023, <https://en.yna.co.kr/view/AEN20230102005551315>

⁵⁷ Yonhap News Agency, ‘Leader of disability rights protests referred to prosecution on illegal demonstration charges’, 10 July 2023, <https://en.yna.co.kr/view/AEN20230710007600315>

Metropolitan Police Agency headquarters where he was holding a press conference.⁵⁸ Park was released the day after but remains under police surveillance.⁵⁹

9.3 RECOMMENDATIONS

- Guarantee and ensure the rights of everyone to freedom of expression, association and peaceful assembly to everyone, regardless of sex, sexual orientation or gender identity.
- Ensure that no human rights defenders, including older persons and persons with disabilities are criminalized for peacefully exercising his/her rights to freedom of expression, peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals.

⁵⁸ Korea Herald, 'Police apprehend subway protest leader', 17 March 2023, <https://news.koreaherald.com/view.php?ud=20230317000600>

⁵⁹ Communication from the UN Special Rapporteur on the rights of freedom of peaceful assembly and of association; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Independent Expert on the enjoyment of all human rights by older persons, 26 April 2023, https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28003&fbclid=IwAR2xIn5lvTEy-F-4bTfea-iZcY4V9_2DWJlQ7OC0q1sVL_KP7hPA4d7ceqU

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