



REPUBLIC OF KOREA: AUTHORITIES FAIL TO PROTECT HUMAN RIGHTS

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 28TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2017

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Republic of Korea (South Korea) in November 2017. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes recommendations to the government of the Republic of Korea to address the human rights challenges mentioned in this report.

Amnesty International is concerned about the governance of the National Human Rights Commission of Korea and the absence of a specialized body dealing with complaints against the police.

Amnesty International also raises concerns about restrictions on the rights to freedom of expression, association and freedom of peaceful assembly, and violations of the rights of conscientious objectors, LGBTI individuals, migrant workers, and asylum seekers.

FOLLOW UP TO THE PREVIOUS REVIEW

The Republic of Korea accepted 42 out of the 70 recommendations made by member states during its second UPR in 2012.¹ Amnesty International welcomes the government's efforts to incorporate accepted recommendations into its second National Action Plan on Human Rights, which was adopted in 2012.²

Amnesty International regrets, however, that despite the government's acceptance of recommendations to study the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, it has decided against ratification.³ The government did not accept the recommendation, nor did it proceed to ratify some of the fundamental conventions of the International Labour Organization, including ILO Convention No. 105 on Abolition of Forced Labour.⁴

¹ Addendum to the Report of the Working Group on the Universal Period Review, A/HRC/22/10/Add.1, 16 January 2013.

² Mid-term progress update by the Republic of Korea on the implementation of the recommendations made in the Second Universal Periodic Review, October 2012.

³ Report of the Working Group on the Universal Period Review, A/HRC/22/10, 16 January 2013, recommendations 124.1 (Argentina) and 124.5 (Cambodia, Philippines, Rwanda, Algeria, Morocco, Sudan, Chile and Indonesia). See also p.6 in the Addendum to that report.

⁴ A/HRC/22/10, recommendation 124.7 (Philippines and Uruguay).

It is also regrettable that the government did not accept the recommendation to adapt existing legislation to introduce a truly civilian alternative for conscientious objectors to military service.⁵ It also failed to accept recommendations to regularly review the regulations of the National Security Law to ensure it fully respects the right to freedom of expression.⁶

The government also rejected recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Despite efforts to consider such legislation in the National Assembly, the death penalty has yet to be abolished in law.⁷

THE NATIONAL HUMAN RIGHTS FRAMEWORK

THE NATIONAL HUMAN RIGHTS COMMISSION OF KOREA

National human rights institutions can play a key role in the protection and promotion of human rights. However, in order to be able to effectively address human rights violations and abuses and prompt appropriate remedies, these commissions must be independent, fully empowered, provided with adequate resources, and enjoy the trust and confidence of the public, including the local human rights community.

Amnesty International is concerned that the method of selecting and appointing the Chairperson of the National Human Rights Commission of Korea (NHRCK) in 2015 lacked transparency and appeared to be a decision made by the President of the Republic of Korea without consultation with civil society groups and other relevant stakeholders. This risks undermining the competence, impartiality and independence of the Commission, all of which are necessary if it is to effectively carry out its work.⁸

Procedures of selection, appointment, removal and terms of tenure of the Commission's members, including the chairperson, should be clearly specified and done through a transparent process in line with the Paris Principles.⁹

⁵ A/HRC/22/10, recommendation 124.53 (France, Germany, Poland, Slovakia, Spain, USA and Australia).

⁶ A/HRC/22/10, recommendation 124.56 (Australia and France) and 124.57 (Germany, Spain, Norway, USA and DPRK).

⁷ A/HRC/22/10, recommendations 124.1 (Argentina) and 124.35 (Rwanda, Switzerland, Slovenia, Uruguay, Chile, Germany, UK, Belgium, Honduras, Uzbekistan, Italy, Norway, Slovakia, Turkey, France, Spain, Australia).

⁸ Amnesty International, *South Korea: Secrecy of Chair appointment undermines independence of National Human Rights Commission of Korea*, (Index: ASA 25/2161/2015) Also Korea Herald, "Human rights watchdog candidate on hot seat," 11 August, 2015, <http://www.koreaherald.com/view.php?ud=20150811001031>.

⁹ The UN Principles relating to the Status of National Institutions (the "Paris Principles"), adopted by UN General Assembly Resolution 48/134, are the minimum standards that a national human rights institution must meet to be considered legitimate, and so as to afford the strongest possible guarantees of competence, impartiality and genuine independence.

The NHRCK also provides oversight of police policies and activities along with the Anti-Corruption and Civil Rights Commission, however, there is no specialized body dealing with complaints against the police. Current regulations also restrict the ability of the NHRCK to independently investigate incidents, including those involving the unlawful use of force by the police, in the case of any concurrent criminal investigations or internal investigations of the police.¹⁰

HUMAN RIGHTS SITUATION ON THE GROUND

FREEDOM OF PEACEFUL ASSEMBLY

A number of incidents involving reports of unnecessary or excessive use of force by the police have raised concerns over police accountability. Farmer-activist Baek Nam-gi was injured and later died when the police used water cannons during a large anti-government protest on 14 November 2015. This case illustrates not only a lack of accountability for the excessive use of force by law enforcement officials, but also inadequate implementation of current laws, guidelines and practice in this respect.

The Act of Performance of Duties by Police Officers provides that the use of lethal police equipment should be restricted to the necessary minimum. In addition, the Criminal Code and the Act on the Aggravated Punishment, Etc. of Specific Crimes also prescribe criminal sanctions for the arbitrary and otherwise unlawful use of force. Although these laws are in place, the investigation into Baek Nam-gi's case continues to be unduly delayed and more than one year after Baek Nam-gi's death, no one has been indicted or charged.

While the right to freedom of peaceful assembly is guaranteed in the Constitution of the Republic of Korea,¹¹ domestic legislation, including the Assembly and Demonstration Act (ADA) and other police practice guidelines governing assemblies, falls short of international human rights law and standards.¹² A cumbersome notification process, the absence of a legal provision allowing spontaneous and urgent assemblies, the wide range of options for authorities to ban assemblies or impose far reaching restrictions on them, are all elements in the ADA which place an undue burden on the organizers and restrict the right to peaceful assembly. Along with excessive use of force during assemblies and lack of accountability for law enforcement officials, these elements breach the international human rights obligations of the Republic of Korea.

¹⁰ Article 32(1)5 of the National Human Rights Commission Act (Act No. 14028, 3 February 2016, Partial Amendment), provides that the Commission shall reject a petition if “[...] the criminal investigation by an investigation agency or the procedures for remedies for infringement of rights under any other Act are in progress or terminated with respect to the fact causing the petition [...].”

¹¹ Article 21 of the Constitution of the Republic of Korea (1987).

¹² For example, Article 21 of the International Covenant on Civil and Political Rights (to which the Republic of Korea is a state party), and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

FREEDOM OF EXPRESSION AND ASSOCIATION

Detention and prosecution under the National Security Law (NSL) have been used persistently as a form of censorship to intimidate and imprison people exercising their rights to freedom of expression and association, including against individuals accused of publishing and distributing material deemed to “benefit” North Korea.¹³

Among the cases of alleged breaches of the NSL during the last few years are the criminal prosecution and imprisonment of lawmaker Lee Seok-ki and six other members of the Unified Progressive Party (UPP). In December 2014, the Constitutional Court ruled to dissolve the UPP on the basis that the party had violated the country’s “basic democratic order”.¹⁴ This is a particularly alarming development, as it is the first time since 1958 that a political party has been disbanded in the Republic of Korea.

Over the past two years, members of the now-defunct Korean Alliance for an Independent Reunification and Democracy (CAIRD) and Lee Jin-young, the owner of the online library “Labour Books”, have been arrested for alleged violations of the NSL. Yang Ko-eun, another CAIRD representative, was prohibited from travelling overseas in June 2016 to speak about the conditions of her arrested fellow members, and was herself arrested in September 2016. She remains in detention pending a hearing in the Supreme Court.

CONSCIENTIOUS OBJECTORS

In the Republic of Korea, the refusal of military service is illegal and carries a criminal penalty of up to three years’ imprisonment. As of February 2017, at least 400 conscientious objectors to military service remain in prison solely for exercising their right to freedom of thought, conscience, religion or belief; their imprisonment also constitutes a form of arbitrary detention under international law.¹⁵ The Republic of Korea is out of step with the growing number of countries that have legislated to provide a non-punitive national service of a genuine civilian character as an alternative to military service. A verdict is still pending from the Constitutional Court on the legality of conscientious objection in cases brought between 2012 and 2015.

Since the beginning of 2015, district courts have ruled in favour of 17 men refusing military duty and thrown out the charges against them. However, in at least two of the cases, appeals by the prosecution have overturned the acquittals.

Conscientious objectors in the Republic of Korea are sometimes punished twice as they may be denied employment due to their criminal record for refusing military service. This problem is compounded for young job-seekers by the current increasingly difficult economic climate. Many government-linked organizations will not employ conscientious objectors with a criminal record, and major private companies often require applicants to provide details of their military service during the recruitment process.

¹³ The UN Human Rights Committee also reminded the government in the concluding observations of its 2015 review that the International Covenant on Civil and Political Rights “does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create empathy for that entity.” See Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, 3 December 2015. See also Amnesty International, *Freedom of Peaceful Assembly in South Korea and International Human Rights Standards*, November 2016 (Index: ASA 25/5099/2016).

¹⁴ Constitutional Court of the Republic of Korea. *Dissolution of Unified Progressive Party Case*, 19 December 2014.

¹⁵ Working Group on Arbitrary Detention, Opinion No. 16/2008 (Turkey) of 9 May 2008; see also Human Rights Committee General Comment No. 35: Liberty and security of person, U.N. Doc. CCPR/C/GC/35, 16 December 2014, para 17.

RIGHTS OF LGBTI INDIVIDUALS

The government has failed to adequately respect and protect the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Civil society LGBTI groups continue to face discrimination, including at the hands of authorities. In February 2015, the Beyond the Rainbow Foundation was refused registration, and in May 2015, the Seoul Metropolitan Police refused to grant a permit to the Pride Parade. The ban was only overturned when the organizers filed a petition to the court.

On 8 October 2015, Cho Woo-suk, a board member of the public Korean Broadcasting System, called lesbian and gay individuals “dirty leftists” and incited discrimination against LGBTI persons during a panel discussion at the Korea Press Centre.¹⁶

There is no enforceable national anti-discrimination legislation that would extend human rights protection to LGBTI individuals. Moreover, Article 92 (6) of the Military Criminal Act continues to prohibit and punish consensual sexual activity between people of the same sex in the military. In a country where military service is compulsory for all men, gay men face considerable difficulties in fulfilling their military obligations free from violence, bullying or verbal abuse.

REFUGEES AND ASYLUM-SEEKERS

For several months in 2016, 28 men from Syria were detained at Incheon International Airport despite the government’s decision in 2014 to grant Syrian asylum-seekers humanitarian status to work and reside in the Republic of Korea until the war in their country is over. This raises concerns about the Republic of Korea’s compliance with its obligations under international law towards refugees and asylum-seekers, including to not subject them to arbitrary detention in inhumane conditions.¹⁷

The detention in 2016 of 13 North Korean restaurant workers who had been working in Ningbo, China, further calls into question the legality of the existing settlement support process for all North Koreans arriving in the Republic of Korea.¹⁸ The process involves a period of detention and investigation, which, to Amnesty International’s knowledge, can last anywhere from one to six months. During the subsequent 12-week period at the *Hanawon* education centre for social adaptation, the individuals are denied access to family and legal counsel of their choosing. They are also prohibited from otherwise communicating with the outside world during that period.¹⁹

¹⁶ Kyunghyang Shinmun, “KBS Board member says that group of homosexuals are dirty leftists”, 8 October 2015. In its 2015 review of South Korea, the UN Human Rights Committee also mentioned the continuing, widespread violence and hate speech against LGBTI individuals. Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, 3 December 2015.

¹⁷ Article 10, International Covenant on Civil and Political Rights. See also the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention.

¹⁸ The 13 individuals arrived in South Korea in April 2016, and were released in August the same year.

¹⁹ This is in contravention of, among others, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted in 1988, which states in Principle 15 that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”, U.N. Doc. A/RES/43/173, 9 December 1988. See also Principle 19, as well as Article 17(2)(d) of the Convention on the Protection of all Persons against Enforced Disappearance; Rules 43(3), 58, of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015); Human Rights Committee, General Comment No. 20 (Article 7), para. 11, U.N. Doc. HRI/GEN/1/Rev.1, 29 July 1994, at p. 30.

MIGRANT WORKERS

Amnesty International's research indicates that a significant number of migrant workers continue to be at risk of human rights abuses in the Republic of Korea. Many migrant workers, including those in the agricultural sector, are forced to work in conditions to which they did not agree under the threat of some form of punishment, including dismissal, non-renewal of their visa or threats of violence; they are effectively subjected to forced labour.²⁰

Significant numbers of migrant agricultural workers have been trafficked to the Republic of Korea for exploitation, including forced labour. While trafficking is a criminal offence in the country, the current definition of trafficking is not consistent with international law.²¹ They also suffer unreasonable limitations to their ability to change jobs, in turn a major cause of for exploitation by their employers.

At least half of all migrant workers interviewed by the National Human Rights Commission of Korea in 2013 did not receive the minimum wage, were forced to work beyond their contracted hours, and were subjected to verbal abuse.²²

THE DEATH PENALTY

Amnesty International welcomes the fact that no executions have been carried out in the Republic of Korea since 1997; however, death sentences continue to be imposed, and 61 people were on death row at the end of 2016. The growing international consensus against the death penalty was demonstrated again in 2016, when the plenary session of the UN General Assembly with an overwhelming majority adopted its sixth resolution calling for a moratorium on executions as a first step towards the full abolition of the death penalty. The resolution received support from 117 countries voting in favour, however, regrettably the Republic of Korea abstained in the vote.²³

In 2015, lawmaker Yu In-tae submitted the most recent bill to the National Assembly to abolish the death penalty. This is the seventh time that a bill to abolish the death penalty has been submitted. Although the bill received the support of 172 out of 298 lawmakers, it was stalled in the Legislative and Judiciary Committee of the National Assembly and was not approved.

²⁰ Amnesty International, *Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea*, October 2014 (Index: ASA 25/004/2014).

²¹ Article 3(a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children (Trafficking Protocol), which criminalizes not only the act of buying and selling, but also the recruitment and exploitation of the labour of migrant workers.

²² NHRCK, Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries, October 2013, pp111, 186-187, 190 and 201, http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf.

²³ Moratorium on the use of the death penalty, U.N. Doc. A/RES/71/187, 19 December 2016. Of the UN's 193 member states, 117 voted in favour of the resolution, 40 states voted against it and 31 abstained in the vote.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF THE REPUBLIC OF KOREA TO:

THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Ensure transparency in the method of selecting and appointing the Chairperson of the National Human Rights Commission of Korea, in consultation with civil society groups and other relevant stakeholders;
- Allow the National Human Rights Commission of Korea, or other external oversight bodies, to investigate incidents where death or serious injury result from the use of force by law enforcement officials regardless of any ongoing criminal investigation, including by amending relevant provisions in the National Human Rights Act.

FREEDOM OF PEACEFUL ASSEMBLY

- Ensure, as a matter of urgency, that law enforcement officials responsible for unnecessary or excessive use of force, including the use of the water cannon leading to Baek Nam-gi's death, as well as their superior officer(s), are brought to justice without delay;
- Initiate a review of current regulations regarding the use of water cannons during policing of demonstrations to ensure their conformity with international human rights standards;
- Guarantee the full enjoyment of the right to freedom of peaceful assembly, including a clear legal presumption in favour of holding assemblies;
- Ensure that the overall approach by the authorities to policing assemblies aims to facilitate peaceful assemblies, rather than ban them;
- Ensure that laws and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that all law enforcement officials are trained accordingly;
- Initiate a comprehensive review of the Assembly and Demonstration Act to bring it in line with the obligations of the Republic of Korea under international human rights law, and specify the role of government authorities as facilitators of the right to peaceful assembly.

FREEDOM OF EXPRESSION AND ASSOCIATION

- Abolish or fundamentally amend the National Security Law so that it conforms to international human rights law and standards and ensure it is not used arbitrarily or to harass and restrict the rights to freedom of expression, opinion and association;
- Immediately and unconditionally release all individuals unjustly charged and sentenced to prison terms solely for the legitimate exercise of their rights to freedom of expression and association.

ONSCIENTIOUS OBJECTORS

- Immediately and unconditionally release all individuals imprisoned solely for exercising their right to refuse to perform military service in the absence of a genuinely civilian alternative and refrain from imprisoning conscientious objectors in the future;

- Clear the criminal records and provide adequate compensation for conscientious objectors who have been imprisoned for refusing military service by reason of their conscientiously held beliefs;
- Bring national legislation into line with international human rights law and standards, ensuring that it provides for the recognition of conscientious objection and for individuals to register their objection;
- Ensure that, if conscientious objectors are not entirely exempted from military service, they have the option to perform an appropriate alternative non-punitive service of a genuinely civilian character, under civilian control and of a length comparable to that of military service.

RIGHTS OF LGBTI INDIVIDUALS

- Adopt a comprehensive Anti-Discrimination Act which guarantees the protection of their human rights to LGBTI persons;
- Repeal Article 92(6) of the Military Criminal Act, which prohibits and punishes consensual sexual activity between people of the same sex in the military;
- Protect all persons from hate speech and violence, regardless of ethnicity, gender, real or perceived sexual orientation or gender identities;

REFUGEES AND ASYLUM-SEEKERS

- Ensure that asylum-seekers are not arbitrarily detained and that detention is used only as a last resort in cases where their detention is necessary and proportionate to a legitimate purpose;
- Ensure the rights of all persons detained to access lawyers and medical care and to humane conditions of detention;
- Put in place policies and systems that ensure the effective protection of refugees and asylum-seekers and enable them to meet their basic needs in a manner consistent with human rights and human dignity;
- Initiate an overhaul of the resettlement support process for arrivals from North Korea, and ensure that such individuals are detained for the shortest possible period, and that their detention is in line with international law and standards, in particular by giving them prompt access to their family and friends, legal counsel and civil society organizations of their choice during the entire length of their detention and during interrogations.

MIGRANT WORKERS

- Allow greater flexibility in the time frame within which migrant workers have to secure new employment;
- Amend the current Employment Permit System Act to ensure that an application for a visa extension or a renewal is not restricted or refused on the basis that migrant workers have changed jobs;
- Repeal Article 63 of the Labour Standards Act and ensure that the rights it protects, in particular in respect to working hours, daily breaks and weekly paid rest days, are extended to all workers, including migrant workers, irrespective of the sector in which they work;
- Ratify and implement the four fundamental ILO Conventions: No. 29 on Forced or Compulsory Labour, No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on Right to Organise and Collective Bargaining, and No. 105 on Abolition of Forced Labour.

THE DEATH PENALTY

- Commute without delay all death sentences to terms of imprisonment and accelerate the procedures leading to the full abolition of the death penalty in law;
- Work towards ratification, without reservations, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²⁴

South Korea: 8-Point Human Rights Agenda for presidential candidates, March 2017 (Index: ASA 25/5785/2017)

Freedom of Peaceful Assembly in South Korea and International Human Rights Standards, November 2016 (Index: ASA 25/5099/2016)

Sentenced to Life: Conscientious objectors in South Korea, May 2015 (Index: ASA 25/1512.2015)

Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea, October 2014 (Index: ASA 25/004/2014)

²⁴ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/asia-and-the-pacific/south-korea/>

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TO ONE PERSON, IT
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