

**Joint NGO Submission**  
**to the Committee against Torture**  
**for the List of Issues Prior to Reporting**

**Republic of Korea**  
**69th Session**

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South Korean Human Rights Organizations Network (76 NGOs)

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## **South Korean Human Rights Organizations Network (76 NGOs)**

South Korean NGOs Coalition for Law Enforcement Watch (Catholic Human Rights Committee, Dasan Human Rights Center, Democratic Legal Studies Association, Human Rights Movement Space 'Hwal', Korean Lawyers for Public Interest and Human Rights, Sarangbang Group for Human Rights; total 6 NGOs), Korea House for International Solidarity (KHIS), International Child Rights Center (InCRC), Center for Military Human Rights Korea (CMHRK), Korea Refugee Rights Network (Advocates for Public Interest Law, Lawyers for Public Interests Companion, The Jung Public Interest Incorporated Association, GongGam Human Rights Law Foundation, DREAM to do Justice, Gwangju Migrant Health Center, NANCEN Refugee Rights Center, Dongducheon Refugee Community, Duroo - Association for Public Interest Law, Suncheon Migrants Support Center, Friends of Asia, Migration To Asia Peace MAP, EcoFemme, Immigrants Advocacy Center Gamdong, Uijeongbu EXODUS, Migrants Center Friend, The Migrant Pastoral Commission of Jeju Diocese (NAOMI), Jeju Peace Human Rights Institute 'What', Paju EXODUS, Korea Migrant Human Rights Center, Human Asia; total 21 NGOs), MINBYUN - Lawyers for a Democratic Society, Rainbow Action Against Sexual-Minority Discrimination (GongGam Human Rights Law Foundation, Korean Lawyers for Public Interest and Human Rights (KLPH), Labor Party, Sexual Politics Committee, Minority Rights Committee of the Green Party, DAWOOM: Together4Change, Daegu Queer Culture Festival, Daejeon LGBTQ Human Rights Group Solongos, QUV; Solidarity of University and Youth Queer Societies in Korea, Jogye Order of Korean Buddhism The Social Affairs and Labor Relations Commission, the Korean lesbian community radio group, Lezpa, Rainbow Jesus, Rainbow Solidarity for LGBT Human Rights of Daegu, Human Rights Commission of The People's Party, Queer In Pusan, Busan Queer Festival, Gruteogi : 30+ Lesbian community group, Seoul Human Rights Film Festival, PFLAG Korea, Anglican Church Yongsan Sharing House (Human Rights Center for Social Minority), Yeohaengja: Gender non-conforming people's community, PFLAG Korea, Northwest: The support for LGBTQ's right to information, Collective for Sexual Minority Cultures PINKS, The Korean Society of Law and Policy on Sexual Orientation and Gender Identity (SOGILAW), Sinnaneuncenter: LGBT Culture, Arts & Human Rights Center, Unninetwork, Lesbian Human Rights Group 'Byunnal' of Ewha Womans University, Open Door: Jeollabuk-do LGBTQ Association, Sexual Minority Committee of the Justice Party, Network for Glocal Activism, LGBTQ Youth Crisis Support Center DDing Dong, Tulip Solidarity: Youth Transgender Human Rights Group, Korean Transgender Rights Organization JOGAKBO, Transgender Liberation Front, Chingusai – Korean Gay Men's Human Rights Group, Lesbian Counseling Center in South Korea, Korean Sexual-Minority Culture and Rights Center (KSCRC), Youth PLHIV Community of Korea 'R', Solidarity for LGBT Human Rights of Korea, Solidarity for HIV/AIDS Human Rights Nanuri+; total 40 NGOs), The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, The Research Institute of the Differently Abled Person's Right in Korea (RIDRIK), Truth Foundation, People's Solidarity for Participatory Democracy (PSPD), Korea Cyber Sexual Violence Response Center, Korea Women's Hotline, Korea Women's Associations United

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## **Preface**

The South Korean Human Rights Organizations Network composed of 76 human rights organizations in the Republic of Korea submits its report to the Committee against Torture ('the Committee') in advance of the preparation of the list of issues prior to reporting (LoIPR) for the review of the 6th periodic report of the Republic of Korea('ROK'), at its 69th session from 20 April to 15 May 2020.

In this report, we, the South Korean Human Rights Network, would like to propose and enumerate below particularly noteworthy points of inquiry to be put forth to the ROK government. We present first our assessment of the situation of human rights in South Korea and suggest a list of issues.

### **1. Definition of Torture and Revision of Criminal Law**

There has been no legislation or amendment of laws that include punishment provisions to the act of torture defined in Article 1 of the Convention against Torture ('the Convention'). In its Concluding Observations on the combined third to fifth periodic reports of the ROK, the Committee reiterated its concern regarding how the ROK's penal legislation has not yet incorporated the definition of torture that contains all the elements set out in Article 1 of the Convention.<sup>1</sup> Nonetheless of the Committee's series of recommendations, the government continues to state that Article 124 (illegal arrest and confinement) and Article 125 (violence and cruel acts) of the Criminal Act and other criminal legislations criminalize and punish all aspects of torture.<sup>2</sup>

This stance of the government is absolutely contrary to the recommendations of the Committee and the request from the Convention that the punishment provisions should be designed to fully reflect the grave nature of torture crime and the punishment should be

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<sup>1</sup> The Committee particularly expressed its concern in that torture is considered under different articles of Korean penal legislation, covering only the physical aspects of torture and only specific individuals in the investigation and trial processes. The Committee further stated that the penalties that can currently be applied are not commensurate with the gravity of the crime of torture. CAT/C/KOR/CO/3-5, para. 7.

<sup>2</sup> See CAT/C/32/Add.1 paras. 105-111; CAT/C/53/Add.2 paras. 28, 100-101, CAT/C/KOR/3-5, para. 3.

proportional to the level of the seriousness of the torture crime.<sup>3</sup> As stated in General Comment No. 2, para. 9, “serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity.”<sup>4</sup>

### **Suggested Questions**

- Provide information about the ROK government’s plans to legislate or amend the criminal laws to criminalize and punish any act of torture by appropriate penalties taking into account its grave nature as requested by Article 4.2 of the Convention.

## **2. Issues on Torture Cases**

### **A. Statute of Limitations in Civil Procedures**

Claims of state responsibility regarding past torture cases in civil procedures can only be raised after a considerable time has passed since the illegal action or illegal detention by a state took place, due to the nature of such cases. Since each claim of state responsibility cannot be claimed until a certain period of time is passed, it is rather difficult to claim the past torture case within the statute of limitations. In this context, the Supreme Court of Korea took a stance that the use of the statute of limitations as a defense by the state, an obligor, would constitute an abuse of rights, going against the principle of good faith. Meanwhile, the Court also ruled that the statute of limitations will run out when the victims of torture, the obligees, do not exercise their rights to claim for damages within a reasonable period of time.<sup>5</sup>

The Court’s conclusion above poses concerns with regard to 1) the State’s responsibility for the past torture cases, 2) the actual possibility of providing a remedy for the victims by the

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<sup>3</sup> Oh, Byoungdu. (2008). Implementation of the Convention Against Torture at the National Level and its Criminal-substantive Issues, *Democratic Jurisprudence* 37. pp. 185-190.

<sup>4</sup> For example, Articles 124 and 125 of the Criminal Act limit the subject of offences to "a person who performs or assists in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body." In this regard, the Act is only applicable to public officials with investigative authority or from judicial bodies who committed illegal arrests, detention, violence or other cruel acts. In particular, when public officials at correctional facilities commit a crime of torture which falls under the scope of the Convention, those officials cannot be charged with violating Article 125 of the Criminal Act due to the limitation of its application.

<sup>5</sup> Supreme Court of Korea, May 16, 2013, 2012Da202819 Judgment of en banc. Even though the considerable period is different according to the concrete issue, it shows the attitude of not recognizing more than 3 years being the short-term extinctive prescription of civil law. In addition, the starting point of reckoning is seen as the decision date of a truth ascertainment of the committee on the settlement of the Past affairs or the determination date of judgment of an acquittal of retrial.

State, and 3) the timing that victims become aware of the State's legal responsibility. In particular, the statute of limitations may expire before a victim knows when the decision to inquire by the Truth and Reconciliation Committee, the starting point of the computing period, was made.<sup>6</sup>

### **Suggested Questions**

- Provide current status of cases in which the State alleged the expiration of the statute of limitations in litigations on state responsibility regarding torture and illegal detention in the investigation process as well as the rulings on those cases.
- Provide detailed information on the government's plan to protect the rights of victims, including creating an exception to alleging the expiration of limitation periods in litigations regarding claims for state compensation for torture during the investigation process and admitting the debt once the state's responsibility is acknowledged.

### **B. Statute of Limitations in Criminal procedures**

There is no particular legislation envisaging exceptions on the grounds of the limitation periods where offenses are committed contrary to international law, such as torture and crimes against humanity. Consequently, the ROK has failed to properly investigate and punish the offenders of torture and crimes against humanity, and cases are closed due to the expiration of the limitation period. This amounts to the direct infringement of rights to redress.

### **Suggested Questions**

- Provide information on whether the government has investigated the offenses of torture and crimes against humanity and detailed information on punishment.

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<sup>6</sup> It seems that, due to such reasons, the Constitutional Court of Korea's recent decision stated that the subjective starting point and the short-term statute of limitations should be considered concretely with regard to the cases regarding mass killings of civilian groups, serious human rights violations and allegations of fabrications. Constitutional Court of Korea, August 30, 2018, 2014Hun-Ba148 · 162 · 219 · 223 · 290 · 466, 2015Hun-Ba50 · 440, 2016Hun-Ba419 (consolidated).

- Provide detailed information on the government's plan to guarantee the investigation and punishment of torture offenders by activities such as creating an exception to limitation periods

### **C. State Responsibility for Past Torture Cases, etc.**

Following the Supreme Court's judgment in September 2014, victims who suffered torture and illegal detention due to emergency decrees imposed by former President Park Chung Hee are eligible for compensation only when they can concretely prove that they have been tortured and/or forcibly detained.<sup>7</sup> It conflicts with the Court's previous judgments.<sup>8</sup>

Whereas the actual evidence of torture and illegal detention is monopolized by the State, the court requires the civilian victim to submit such evidence. Furthermore, the ROK, the defendant in a state compensation trial, refuses to admit its illegal acts in trials related to torture and illegal detention and denies responsibility for compensation. Victims of state violence have no choice but to request the State to investigate and disclose evidence related to their damage. However, the Truth and Reconciliation Commission, which conducts such a probe, has been unable to resume its activities since it ended its mandate on December 31, 2010, because the National Assembly continues to fail to pass a revised bill.

Meanwhile, during the 30th Cabinet meeting on July 10, 2018, the ROK government reviewed and adopted the "Cancellation of Inappropriate Decorations" policy to cancel decorations conferred to human rights criminals during the Chun Doo-hwan regime in the 1980s.<sup>9</sup> Nonetheless, the government decided to keep the real names of those involved confidential on the ground of the Official Information Disclosure Act, which states that "Information pertaining to the national security, national defense, unification, diplomatic relations, etc., which is deemed likely to seriously undermine national interests if it is disclosed" may not be disclosed.<sup>10</sup>

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<sup>7</sup> "Since emergency decrees were effective law at that time, the public officials' acts of duty that followed the laws do not directly correspond to the illegal acts," Supreme Court of Korea, September 27, 2014, 2013Da21762.

<sup>8</sup> "Emergency decrees are unconstitutional even when considered under the Yushin Constitution [which was in force when those emergency decrees were implemented]," Supreme Court of Korea, December 16, 2010, 2010Doh5986; Supreme Court of Korea April 18, 2013, 2011Choki689.

<sup>9</sup> <http://www.korea.kr/news/pressReleaseView.do?newsId=156280123>

<sup>10</sup> Article 9.2 of the Official Information Disclosure Act

## **Suggested Questions**

- Explain the ROK government's stance on re-operating the Truth and Reconciliation Committee by revising the Framework Act for Truth and Reconciliation to find the truth and bring justice for victims of past state violence.
- Provide concrete measures to find the truth regarding torture, illegal detention and those involved.
- Provide statistics on the number and types of cases in which victims of state violence claimed compensation for illegal acts such as torture and illegal detention in the course of their investigation and the outcomes of such claims.
- Provide the types of illegal acts by prosecutors and investigators who were recognized to have been involved in torture and illegal detention in the course of the investigation, and whether such prosecutors and investigators were criminally charged and their sentences.
- Disclose the types of decorations conferred to prosecutors and investigators who were recognized to have involved in torture and illegal detention for investigation, the status of such decoration's cancellation, and the subjects of such cancellation.

## **3. Fundamental Legal Safeguards**

### **A. The Suspect's Right to Counsel**

The current law stipulates that the defense counsel shall be allowed to participate in the interrogation of the suspect "unless there is a good cause"<sup>11</sup>, thus there is a room for the interrogative authorities to exercise discretion. Also, the Regulation on Duties of Special Judicial Police Officers provides examples of good causes for the interrogative authorities to intervene as "obstruction of interrogation" and "leakage of the secret of investigation". As such good causes may be determined by subjective judgments by the judicial police, the right to counsel of the suspect is likely to be limited.

At the "North Korean Defectors Protection Center" where the North Korean escapees who enter South Korea are investigated, North Korean escapees are cut off from the outside world,

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<sup>11</sup> Article 243-2 (Defense Counsel's Participation) of the Criminal Procedure Act: "Upon receiving an application from a criminal suspect, his/her defense counsel, legal representative, spouse, lineal relative, or sibling, a prosecutor or a senior judicial police officer shall allow the defense counsel to have an interview with the suspect or shall allow the defense counsel to participate in the interrogation of the suspect, unless there is good cause."

including requests from the counsels to deliver letters. The operation of CCTV at rooms designated for lawyer-client meetings at detention facilities <sup>12</sup>

### **Suggested Questions**

- Provide information about the right to counsel at the North Korean Defectors Protection Center, and its plan to guarantee such rights.
- Provide the statistics on the installation and operation of CCTV at detention centers, and its plan to guarantee the right to counsel of suspects.
- Provide its plans to amend the current legislation which allows the discretion of interrogative authorities to limit the right to counsel when the authorities believe there is a good cause.

### **B. Judicial Independence and Security of Tenure for Judges**

In 2013 and 2014, when interviewing candidates for career judges, officers from National Intelligence Service (NIS) were present to conduct ideological verification of candidates by asking the candidates about their views on the Sewol Ferry disaster as well as about their views on labor unions<sup>13</sup>. Moreover, as the investigation on the agitation of judicial system scandal progressed, it was revealed that National Court Administration, during the tenure of Chief Justice Yang Seung-Tae, carried out the illegal inspections on certain judges. It was also disclosed that the Blue House tried to ‘tame and cajole’ certain judicial officials during the Park Geun-Hye administration.

Despite such a large number of cases that have undermined the independence of judges, the reform of the judiciary is still far from being carried out, and legislative improvements through the National Assembly have not been made, either.

### **Suggested Questions**

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<sup>12</sup> The Constitutional Court of Korea held it constitutional to install CCTVs at rooms for lawyer-client meetings as the Court recognizes the suitability and the legitimacy in terms of prevention of accidents such as the reception of restricted items or possible violence, and the Court believes that limited record of footage would not infringe the secrecy. (2015Hunma243)

<sup>13</sup> Statement issued by Seoul Bar Association on 5. 27. 2015.

- Explain why NIS participated in the hiring interview for judges, and present details of data NIS has provided to the National Court Administration, along with verification on whether NIS is still involved in the process to appoint judges.
- Answer what plans the government is considering to improve the system and ensure the independence of judges, including reform measures against the National Court Administration, which has been the main culprit of the judicial agitation scandal.

### C. Warrantless Arrest (“Emergency Arrest”)

Despite the 2007 Criminal Procedure Act reform, the abuse of emergency arrest, or arrest without warrant, is very problematic as law enforcement officers are making emergency arrests on suspects with no probable causes. Arrest with a warrant is an investigative proceeding when the law enforcement agency has a probable cause to temporarily take freedom from a person prior to the detainment. The ROK Constitution declares as a basic principle that arrest should be made with a warrant.<sup>14</sup> On the contrary, an emergency arrest does not require a warrant.<sup>15</sup> However, statistics show that the number of emergency arrests largely outnumbered that of arrests with a warrant. It is highly problematic that such an exceptional procedure of arrest is widely abused.<sup>16</sup>

Furthermore, most suspects arrested without warrant tend to be released without charges. In particular, over the past decade, over 24% of emergency arrest suspects was released even without police request for an arrest warrant. Such phenomenon indicates that law enforcement agency tends to make emergency arrests for their own convenience, conduct search and seizure of a suspect without a search warrant if deemed necessary,<sup>17</sup> and then release the suspect if they were not able to further find causes to charge the suspect. In this regard, the investigative law enforcement agencies arbitrarily made emergency arrests. Systemic improvement is imperative as there exist no external factors that may intervene to

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<sup>14</sup> Article 12, Section 3 of the Constitution of the ROK

<sup>15</sup> Criminal Procedure Act, Article 200, Section 3

<sup>16</sup> According to lawmaker Keum, Tae-sup, from 2008 to 2017, 40.6% (45,577 people) of those arrested without warrant was released within 48 hours as the police either did not request for warrant or such request was rejected. Kyunghyang Shinmun, [2018 Inspection of State Affairs] Police releases 40% of suspects arrested without warrant... “need for abuse control,” [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?art\\_id=201810121001001](http://news.khan.co.kr/kh_news/khan_art_view.html?art_id=201810121001001) (last accessed on 3 February 2020).

<sup>17</sup> Article 217, paragraph 1 of the Criminal Procedure Act

control the arbitrary emergency arrest despite its high possibility of infringing fundamental rights.

### **Suggested Questions**

- With regard to operating the emergency arrest system, provide statistics on 1) the number of emergency arrest cases (including the number of people arrested), 2) the number of cases closed without requesting warrant, 3) the number of cases requested warrant, 4) the number of warrant granted, 5) the number of cases released (including release of suspects arrested without warrant due to the police not requesting warrant, rejection of warrant request by judge, and those released through review of legality of arrest).
- Provide specific plans to adopt policies or other measures to prevent the abuse of the emergency arrest system and protect the rights of suspects such as requiring law enforcement officials to obtain the mandatory post-arrest warrant, shortening the timeframe for requesting bench warrant, or any other specific plans to improve the system.
- Provide plans to amend laws to be more in line with the principle of no retrial detention such as raising the lower limit of the legal sentence of crimes subject to emergency arrest or limiting emergency arrest on suspects voluntarily appearing at the investigative agencies.

### **D. Security Surveillance System**

If you have been sentenced to more than three years' imprisonment for violating the National Security Law at least once, you can be either a 'subject of security surveillance' or 'people under security surveillance' for a lifetime unless the Minister of Justice decides to waive the security surveillance. They cannot escape criminal punishment unless they report extremely private details such as moving, traveling, and change in family relationships. As of August 2013, the number of people subject to security surveillance is 2,256, and the number of people under security surveillance is 43.

In response, the National Human Rights Commission of Korea recommended to abolish the system in its 'Recommendations for the 2012-2016 Framework for National Human Rights Policy' since the criteria for judging the risks of recidivism, which were defined as the

imposition requirements for security surveillance, lacked criteria. Also, there is a high risk of abuse since the decision is made entirely under the jurisdiction of the executive and without the Supreme Court's involvement. Furthermore, the possibility of infringement such as freedom of conscience and freedom of relocation due to misuse is very high. The government insists that the current system is strictly enforced to the minimum required by the Security Surveillance Committee. However, the renewal of the surveillance period is still practiced without substantial judgment on the risk of repeated offenses.

### **Suggested Questions**

- Provide statistical data on the number of security surveillance requests and deliberation results submitted to the Security Surveillance Committee over the past five years.
- Provide specific opinions on how the government can immediately abolish the security surveillance system or minimize the possibility of abuse by the administrator's arbitrary judgment.

## **4. National Security Act**

The Committee requested the repeal or amendment of Article 7 of the National Security Act in its Concluding Observations on the combined third to fifth periodic reports of the ROK (paras. 15-16.) The government evaluated the inter-Korean summit in 2018 and the third U.S.-North Korea summit in 2019 as a de facto declaration of an end of the war.<sup>18</sup> This means that the environment of national security has fundamentally been changed. There are no grounds for the existence of not only Article 7 of the National Security Act but also the Act itself. However, the government has not established any annual legislative plans to abrogate Article 7 of the Act. The government has not even proceeded to the hearing of opinion to abrogate the article. Instead, there have been cases where people have been prosecuted or confined for the violation of Article 7 of the Act until recently.

### **Suggested Questions**

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<sup>18</sup> AP, 'South Korea's Moon calls Trump-Kim summit end of hostility', July 2, 2019.  
<https://apnews.com/702b0e0154e844d49d205dda19eb1c4c>

- Provide specific plans to repeal or amend Article 7 of the National Security Act.
- Indicate the position of the State party about the amnesty and reinstatement of people who have been sentenced as guilty or are in the trial procedure for the violation of Article 7 of the Act.

## **5. Detention of North Korean Escapees**

In the event that North Korean escapees enter ROK, the Ministry of Unification determines the details of protection and support after the Intelligence Service (“NIS”) conducts an investigation and decides to provide protection and settlement support without disclosing the identity of a person concerned nor the facts and details concerning his or her entry into ROK. NIS has administrative control over the Centre., and North Korean escapees may be held for up to 6 months without any access to counsel, right to visitation for 'investigation'. The UN Human Rights Committee noted with concern; that North Korean escapees are detained upon their arrival and may be held for up to 6 months; that they do not have access to counsel; and that they may be deported without an independent review if it is determined that they are not qualified for protection. The Committee recommended the ROK government to ensure: that North Korean escapees are detained for the shortest possible period; that detainees are given access to counsel during the entire length of their detention; and that it adopts a review procedure that can result in a temporary suspension of execution before individuals are being deported.<sup>19</sup> However, these recommendations are still not implemented. North Korean escapees are still at risk of anti-constitutional and anti-human rights detention. The related law, the North Korean Refugees Protection and Settlement Support Act, has not been amended.

### **Suggested Questions**

- Please provide statistics by type of detention and deportation including the number of people from North Korea who were detained, the duration of their detention, the number of people deported, and reasons for their deportation.

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[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKOR%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKOR%2fCO%2f4&Lang=en)

- Please provide information on how the ROK government is ensuring the right to legal counsel of people from North Korea now as well as in the future.

## 6. Independent Complaints Mechanism

According to the data from the Supreme Public Prosecutor's Office, the number of human rights violation cases reported to the Human Rights Violation Reporting Center established at District Prosecutor's Offices nationwide for the purpose of receiving and taking appropriate measures dropped to 0 cases<sup>20</sup> in 2017 and the first half of 2018 from 20 to 30 cases annually when the centers were first established. Such extremely low performance shows that the center has become little more than a name. The Human Rights Violation Reporting Center of the Ministry of Justice is responsible for receiving, investigating and redressing human rights violations that occur in the course of the ministry's administrative work. There were 2,934 reported cases of human rights violations that occurred at investigation offices, correctional facilities, immigration and juvenile detention centers in 2018, but only 71 cases, or 2.4 percent of them, were accepted and redressed. Details of the reported cases show that human rights violations at investigative and correctional facilities are at a serious level. However, 1,666 cases, or 63.4 percent of the total 2,624 cases, were dismissed or rejected<sup>21</sup>. In the case of human rights violations by police reported to NHRC, 8,077 cases were received from January 2014 to August 2019, but only 669 cases out of 7,844 processed cases were accepted for relief<sup>22</sup>. Among them, only two cases were recommended for disciplinary action or mediation, while 343 cases were resolved during the investigation and 212 cases were closed after reaching an agreement. With only 8.3 percent of the total number of cases received for human rights violation being processed for redress, it raises questions as to whether NHRC functions as a channel that handles the human rights violation grievances by the public.

### Suggested Question

- Explain what measures are being implemented to allow Human Rights Violation Reporting Centers established at the Ministry of Justice, the Prosecutor's Office and

<sup>20</sup> "Human Rights Violation Center in Public Prosecutor's Office became 'Obsolete' with only 18 cases in 5 years", 2018. 10. 26 Yonhap News <https://www.yna.co.kr/view/AKR20181026098500004?input=1195m>

<sup>21</sup> [Press Release] Human Rights Violation Center of the Ministry of Justice\_Recurring Human Rights Violations with No Improvements\_by National Congressperson Song Ki-heon <https://peacesong1.blog.me/221680647237>

<sup>22</sup> "NHRC Recommended Disciplinary Actions in only 2 of 8077 Cases of Human Rights Violation" 2019. 10. 14 Munhwa News <http://www.munhwa.com/news/view.html?no=2019101401070921335001>

NHRC to play a substantial and effective role in preventing and redressing the human rights violation committed to the public.

## **7. Child Justice**

The Act on the Treatment of Protected Juveniles, etc. defines an 'order to be on good behavior (probation), in other words, solitary confinement, as a form of 'disciplinary action'.<sup>23</sup> When the disciplinary action is imposed, the children will be subject to 'restriction on watching TV for not more than 20 days', 'suspension of group athletic activities for not more than 20 days,' and 'suspension of participation in joint events for not more than 20 days', in principle. Outdoor exercise is prohibited based on the above provisions. The above Act only allows for visits by an attorney, assistant, and guardian. In practice, however, even visits by guardians are not permitted. Also, when the punishment is determined, in most cases attorneys and assistants are no longer involved, thus, in reality, there is no one who can visit the children. As a result, the children have nowhere to ask for protection in cases of inhumane treatment, such as beatings. Such disciplinary action is a violation of Article 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) in that the 'order to be on good behavior' is solitary confinement and prohibits children from contacting their families.

Meanwhile, the Enforcement Decree of the Protected Juveniles Act, etc. stipulates that a child with a risk of destroying the evidence may be separated during the investigation period. The problem is that such separation measures of solitary confinement may be carried out at the discretion of the juvenile director without a formal resolution by the Treatment Review Committee. As a result, some reformatories are taking separation measures for minor reasons such as simple dress-code violations or a bad attitude toward teachers.

Also, the Act specifies that the protective equipment, such as handcuffs and ropes may be used for cases where protected children are "escorted for investigation and examination by the court or the public prosecutors' office, transfer, or other reasons," even when there is no flight risk. Handcuffs are not taken off even in the process of transporting children for outside

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<sup>23</sup> The annual ratio of the children who were subject to disciplinary action per reformatory capacity increased by 10.6%p and separation measures increased by 16.3% between 2015 and 2017. As of 2017, 75.9% of detained population were subject to disciplinary actions and 130.7% were subject to separation measures. In particular, in 2017, 486 children, 94.5% of the 514 children were subject to solitary confinement in Seoul, Daegu and Chuncheon reformatory.

hospital treatment, and such excessive use of handcuffs and ropes in escorts seriously infringes on the personality and human rights of the child. Gas guns or electric shock machines are weapons that produce powerful shock and cause damage, yet they can be used without fulfillment of any additional requirements such as urgency or subsidiarity under the Act.

### **Suggested Questions**

- Provide the statistics on solitary confinement of the children and separation measures by the reformatories.
- Provide the legal ground for solitary confinement and separation measures, and plans by the government to abolish such practices.
- Provide relevant laws or guidelines regarding the use of protective equipment, such as handcuffs, ropes, gas guns, and electric shock machines. Also, provide the measures by the government to regulate and prevent the use of protective equipment that violates the human rights of children.

## **8. Human Rights for the Detained**

### **A. Solitary Confinement**

According to Articles 108 and 109(2) of the Administration and Treatment of Correctional Institution Inmates Act, inmates in correctional institutions may be subject to up to 30 days of solitary confinement, and when there are two or more grounds for disciplinary action, the disciplinary action may be increased by up to one-half of the original duration, which allows inmates to be isolated for a maximum of 45 days. This constitutes prolonged solitary confinement for a time period in excess of 15 consecutive days prohibited by Rules 43(1) and 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. According to a 2018 survey conducted in 10 correctional facilities by the NHRCK, between August 2017 and July 2018, the number of inmates who had been subject to solitary confinement exceeding 15 days accounted for about 41 to 60 percent of the total inmates who had been in solitary confinement, which shows that long-term solitary confinement is prevalent.<sup>24</sup>

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<sup>24</sup> NHRCK, "Recommendation for the promotion of inmates' human rights issued as a result of the 2018 survey in correctional facilities," 18Visit0001500, Jan.16, 2019.

### **Suggested Questions**

- Please provide statistics on the number of cases of solitary confinement by the duration of punishment.
- Provide information on the State party's plans to amend the Administration and Treatment of Correctional Institution Inmates Act to reduce the maximum length of solitary confinement to 15 consecutive days or less.

### **B. Voting Rights of the Convicted persons**

Article 18 (1) 2 of The Public Official Election Act has suspended the voting rights of a convicted person who is sentenced to imprisonment with or without prison labor for at least one year, but whose sentence execution has not been terminated or whose sentence execution has not been decided to be exempted. Therefore, the convicted people in correctional facilities who were sentenced to imprisonment for more than one year or parolees were deprived of voting rights. The convicted people submitted a petition to the Constitutional Court of Korea in July 2016 for constitutional review on Article 18 (1) 2 of the Act. The Court, however, held that the Article was constitutional because suspending the people's voting rights has the retributive function on the crimes. Because of the Act, the convicted people who were conscientious objectors or committed crimes by negligence were deprived of voting rights only for the reason that they were sentenced to imprisonment for more than one year without considering the specific context of their crimes.

### **Suggested Questions**

- Please provide information on the number of convicted people who were sentenced to imprisonment for more than a year, and the types of their crimes.
- Please also provide any specific measures taken to provide voting rights to the convicted people who were sentenced to imprisonment for more than a year, such as plans to revise the Public Official Election Act.

### **C. Voting Rights of the Person Subject to Medical Treatment and Custody**

Article 47(2) of the Act on Medical Treatment and Custody, etc. stipulates the voting rights of the person subject to medical treatment and custody be terminated until the termination or exemption from such treatment and custody. Under the above-mentioned laws, a person who

is in the medical treatment and detention facility is deprived of voting rights without exception.

### **Suggested Questions**

- Disclose the number of the person subject to medical treatment and custody who is deprived of voting rights along with the reason for the prescription of such medical treatment and custody. Also, provide any specific measures taken to guarantee voting rights to the person subject to medical treatment and custody.

### **D. Absence of the Standard for the Adequate Temperature in Correctional Facilities**

Recently, the extreme heatwave and tropical nights in the summer have continued and the strong cold waves in the winter have arisen. In August 2016, when the heatwave and tropical nights had continued, 2 inmates in the Pusan correctional facility, which offer only 1.74 square meters per one inmate, died at intervals of one day because of heat stroke in the investigative detention rooms.<sup>25</sup> Current laws related to the administration of correctional institutions do not stipulate the standard for adequate indoor-temperature of correctional facilities. The managers of correctional facilities arbitrarily decide air-conditioning and heating according to its internal regulations. Thus, the inmates' right to life is violated in the correctional facilities.

### **Suggested Questions**

- Provide information on the internal regulations relevant to air-conditioning and heating that each correctional facility has, on the sanctions when the facility violates the regulation, and on the precedents of sanctioned cases.
- Provide information on plans to revise the Act and the Decrees related to administration and treatment of correctional institutions to stipulate the standard for adequate and appropriate temperature in the correctional facilities.

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<sup>25</sup> National Human Rights Commission of Korea, "Ex Officio Investigation on the case of the death of the inmates in 00 correctional facility, including insufficient medical measures, etc." 16Jikgwon0001900, 16Jinjung065700(Merged), 23 December 2016.

### **E. The Prohibition of Mailing and Sending in Books to Inmates**

The Ministry of Justice has enforced the “Plan to Rationalize Mailing and Sending in Books to Inmates of Correctional Facilities” in November 2019. The Plan requires inmates to buy books at the bookstores selected by the facilities, using their own money kept in custody, to access books. As a result, the inmates’ access to books that are out of print, published by social organizations, or second-handed is, in principle, prohibited in correctional facilities. In other words, the inmates with no money kept in custody are banned from reading books they wish to as there is, in practice, no way to receive books as gifts from outside. In November 2019, a human rights activist tried to send in books including “Conscientious Objection: A practical comparison for movements,” written by War Resisters’ International, to an inmate *X* who has been detained in Gunsan Correctional Institution for conscientious objection. It was rejected by the facility. Similarly, Uijeongbu Correctional Institution rejected a request for sending in books to an inmate *Y* who has been detained for conscientious objection. *X* and *Y* have filed administrative appeals and complaints in December 2019.<sup>26</sup>

#### **Suggested Questions**

- Provide information on the statistics on the permit and disallowance of books before and after the enforcement of the ‘Plan to Rationalize Mailing and Sending in Books to Inmates of Correctional Facilities.’
- Provide information on the State party's plans to abrogate the ‘Plan to Rationalize Mailing and Sending in Books to Inmates of Correctional Facilities.’ which restricts the inmate's right to access books.

### **F. HIV-infected inmates**

There are several reported cases of violation and discrimination against HIV-infected inmates’ rights, including segregated confinement, disclosure of HIV status to others, compulsory testing without consent, and limitations on access to specific medical procedures.<sup>27</sup>

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<sup>26</sup> *X* and *Y* also submitted the constitutional complaint to the Constitutional Court. The Court, however, dismissed the case stating that the Plan can only restrict an inmate’s fundamental rights through an act of ‘deciding not to approve the exchange of goods,’ thereby the Plan cannot be a subject for constitutional challenge. Constitutional Court of Korea, 2019Hun-Ma1403, January 10, 2020.

<sup>27</sup> National Human Rights Commission of Korea, 11-Petition-0571300, “Isolation of HIV-infected prisoners in Correctional Facilities,” 10 October 2011; National Human Rights Commission of Korea, 12-Petition-0094800, “Isolation of HIV-infected prisoners in Correctional Facilities,” 15 February 2012. (in Korean).

According to the NHRCK's investigation, Daegu Correctional Institution has only allowed HIV-infected prisoners in the same room whenever a new HIV-infected inmate entered the facility and marked "special patients" in their living spaces. The cleaners were informed of the HIV status from previous cleaning helpers or officers. The officers disclosed the HIV status to others and allocated a different time slot from other inmates for the exercise time.<sup>28</sup>

### **Suggested Question**

- Submit the information on the guidelines and its implementations for HIV-infected inmates.

### **G. LGBTI inmates**

LGBT inmates are facing additional vulnerability and challenges during incarceration. A transwoman attempted suicide after being incarcerated in an all-male correctional facility in 2005.<sup>29</sup> Another transwoman inmate was punished with confinement in a solitary cell for refusing to have her long hair cut forcibly in 2014.<sup>30</sup> A transgender man was denied medical measures such as hormonal therapy when he was detained in the women's facility. The NHRCK recommended the detention director and the Minister of Justice to take measures to prevent a recurrence.<sup>31</sup> In 2019, Daegu Detention Center ordered a gay detainee A to solitary confinement and disclosed his sexual orientation.

### **Suggested Question**

- Submit the information on the relevant legislation, guidelines, and implementations for LGBT inmates.

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<sup>28</sup> National Human Rights Commission of Korea, 19-Petition-0116200, "Human Rights Violations against HIV-infected prisoners in Correctional Facilities," 17 July 2019. (in Korean).

<sup>29</sup> Newsis, "Prison not considerate of transgender inmate... state responsible for compensation," 4 January 2011 (in Korean). [http://www.newsis.com/view/?id=NISX20110104\\_0007074879](http://www.newsis.com/view/?id=NISX20110104_0007074879).

<sup>30</sup> Gwangju District Court 2014Guhap10493; Gwangju High Court 2014Nu6530 (in Korean).

<sup>31</sup> National Human Rights Commission of Korea, 17-Petition-0726700, 20 March 2019

## **9. Abolishment of Capital Punishment**

The ROK has not executed a death sentence for the past 22 years since December 1997, but the government has not made active efforts to abolish capital punishment either.<sup>32</sup> In September 2018, NHRCK recommended the accession to the ‘Second Optional Protocol to the ICCPR’<sup>33</sup> and in October of the same year, 32 members of the National Assembly initiated a resolution calling for its ratification. The government replied to NHRCK in February 2019 by saying that, while the capital punishment issue was being reviewed carefully in the light of the public sentiment, yet the government would not ratify the ‘Second Optional Protocol to the ICCPR’ at the moment.

### **Suggested Questions**

- Provide detailed information on the government's plans to officially declare the moratorium on the use of capital punishment as pledged when joining the European Convention on Mutual Assistance in Criminal Matters.
- Provide information on the specific government plans to abolish the death penalty.

## **10. Psychiatric Institution and Persons with Mental Disabilities**

### **A. Forced Hospitalization, Forced Treatment, Isolation, and Inhumane Treatment**

Despite the recommendation of the Committee(CAT/C/KOR/CO/3-5, para 32) as well as the ruling of the Constitutional Court of Korea (2016. 9. 29), the ROK government still maintains the system of forced hospitalization. The only notable revision<sup>34</sup> the government has made in the Act on the Improvement of Mental Health and Support for Welfare Services for the Mental Patients (Mental Health Act) is to allow forced hospitalization only in case of “the possibility of self-infliction ‘and’ the necessity of hospitalization” instead of “the possibility

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<sup>32</sup> According to the Ministry of Justice statistics, a total of 57 people were on death row as of 2018. Ministry of Justice Korea Correctional Service, Korea Correctional Service Statistics 2019, p. 65.  
[http://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/160&fn=temp\\_1567488834908100](http://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/160&fn=temp_1567488834908100) (last accessed: 4 February 2020).

<sup>33</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

<sup>34</sup> Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients, Article 43. 2.

of self-infliction ‘or’ the necessity of hospitalization.” However, the criteria are still unclear as there is a room for arbitrary interpretation<sup>35</sup> about the type of mental illness that requires inpatient treatment. Furthermore, there is no preemptive remedial procedure provided for persons with mental disabilities who are at risk of illegal and forced hospitalization and other related human rights violations. This is also against the decision of the Constitutional Court of Korea. Through the post remedial relief ‘Hospitalization Suitability Review Committee’, only 1.4% (115 cases) was able to get out of involuntary hospitalization<sup>36</sup>, making us doubt whether the committee is fulfilling its purpose, nor is there a guarantee on face-to-face investigation provided.

In addition, despite the recommendation of the Committee on the Rights of Persons with Disabilities (CRPD/C/KOR/CO/1, para. 30), Mental Health Act still allows psychiatric institutions to commit patients to unconsented isolation and/or physical restraint under the guise of medical treatment or patient protection,<sup>37</sup> while the guidelines of the Ministry of Health and Welfare allows for an even wider range of discretion in executing isolation and physical restraint.<sup>38</sup> Furthermore, special treatment options, such as electric shock therapy, insulin lethargy therapy, hypnosis under anesthesia therapy, psychiatric surgery, removal of certain body parts aimed at decreasing the probability of the symptoms of mental disabilities and aversive stimulation therapy, can be executed as long as such treatment decision is determined by a council organized by the corresponding mental healthcare institution.

### Suggested Questions

- Present the governmental effort<sup>39</sup> to prevent and eliminate the danger of inhumane and degrading practice of forced hospitalization and forced treatment.
- List specific steps and timeline the government will take to establish an independent monitoring mechanism<sup>40</sup> and independent complaints mechanism.<sup>41</sup>

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<sup>35</sup> Act on the Improvement of Mental Health and Support for Welfare Services for Mental Patients, Enforcement Regulation Article 34

<sup>36</sup>“Hospitalization Suitability Review Committee, A press release by the Ministry of Health and Welfare  
[http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR\\_MENU\\_ID=04&MENU\\_ID=0403&CONT\\_SEQ=345966&page=1](http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&CONT_SEQ=345966&page=1)

<sup>37</sup> Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients, Article 75.

<sup>38</sup> Guidelines of the Mental Health Service, the Ministry of Health and Welfare(2018)

<sup>39</sup> “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. ...” Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 16 Section 1.

## B. Medical Treatment and Custody

If a person who committed a crime has mental and/or physical disabilities, this can be a reason for the reduction or exemption of punishment,<sup>42</sup> but they can be sentenced to medical treatment and custody as well.<sup>43</sup> There is only one institute of forensic psychiatry under the Ministry of Justice in the country and NHRCK has been continuously issuing recommendations<sup>44</sup> for improvements due to chronic overcrowding,<sup>45</sup> a lack of medical staff, and inhumane treatment.

In the Institute of Forensic Psychiatry, many persons with intellectual disabilities and autistic persons who are not subject to medical treatment are accommodated without distinction from persons with disabilities who need treatment. As a result, they suffer from inhumane and forced treatment, isolation, and physical constraint. In 2018, the number of inpatients in the Institute of Forensic Psychiatry was 1,038, of which 84 are categorized as persons with intellectual disability, amounting to 9.1% of the total.

The medical treatment and custody can be extended to 15 years regardless of the actual sentence. The decision on whether or not to terminate the treatment and custody is made by the Treatment and Custody Review Committee within the Ministry of Justice, which does not have a proper mechanism to challenge the committee decision, nor does it guarantee procedural rights of inpatients with the disabilities.

### Suggested Questions

- List specific efforts the government is making to improve the inhumane treatment within the treatment centers.

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<sup>40</sup> CRPD/C/KOR/CO/1 para. 30

<sup>41</sup> “Establish an independent complaints mechanism and counsel in psychiatric institutions, effectively and impartially investigate all complaints of violations of the Convention, bring those responsible to justice and provide redress to victims.” CAT/C/KOR/CO/3-5 para. 32(e)

<sup>42</sup> Criminal law, Article 10. 1, 10. 2.

<sup>43</sup> Act on Medical Treatment and Custody, Article 2. 1. 1.

<sup>44</sup> The National Human Rights Commission of Korea, 18petition0190000, They recommended to the Director of the Medical Treatment and Custody to improve the custom of excessive use of physical force and restraint.

<sup>45</sup> The mental hospital has to have one doctor for every 60 inpatients, but the Forensic Psychiatric Institute has just one doctor for 156 inpatients. (Korea Joongang Daily, <https://news.joins.com/article/23448666> )

- Provide data for each type of disability as to what measures are being taken for inpatients with such disabilities.
- Explain what efforts are being made to ensure the procedural rights of inpatients in determining whether or not to terminate the case.

## 11. Rights of the Child

### A. Corporal Punishment\_

While the Committee on the Rights of the Child declared disciplinary acts within family and in schools as a form of violence, the ROK continues to justify corporal punishment as a necessary measure for educational purposes. The amended Child Welfare Act states that “No protectors<sup>46</sup> of children shall inflict physical pain or psychological pain, by, e.g., use of violent language, on the children”.<sup>47</sup> However, this is a declarative provision only, and the level of awareness regarding corporal punishment and abuse still remains low. According to recent research, the revision in law has led to little changes in the ratio of adolescents exposed to physical violence/punishment by their parents. The rate slightly increased to 26% in 2018, after the law revision, compared to 25.7% in 2014.<sup>48</sup> In May 2019, the Ministry of Health and Welfare made an announcement to review the revision of the Civil Act as a part of its Policies for Children towards Building an Inclusive Society. Article 915 of the Civil Act stipulates the right to “*Chinggye* (right to take disciplinary action)” of the person with parental authority, which is likely to be interpreted as parents have the right to punish their children, and used as a justification for corporal punishment. Meanwhile, the Enforcement Decree of the Elementary and Secondary Education Act limits punishment to “methods such as discipline and admonition which do not inflict physical pain on a student's body using punishment tools and body parts.”<sup>49</sup> However, this still allows for 'indirect corporal punishment' or other inhumane and humiliating forms of punishment that do not directly

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<sup>46</sup> The term "protector" means a person with parental authority, a guardian, a person who protects, rears and educates a child or who is liable to do so, or a person who actually protects and supervises a child due to the relations of business, employment, etc.; (subpara. 3, Art 3 of the Child Welfare Act)

<sup>47</sup> para. 2, Art. 5 of the Child Welfare Act

<sup>48</sup> Korea Youth Policy Institute (2018), A Study on the Actual Conditions of Human Rights in Korean Children and Youth, p.228-229

<sup>49</sup> para. 8, Art. 31 of the Enforcement Decree of the Elementary and Secondary Education Act

involve physical violence against students. In 2018, 23.2% of middle school students and 24.5% of high school students were found to have suffered from verbal violence.<sup>50</sup>

### **Suggested Questions**

- Provide information on measures to amend relevant legislation to expressly prohibit corporal punishment in the school and home and to implement educational measures promoting positive and non-violent forms of discipline.
- What specific efforts has the government made to amend the “Right to Take Disciplinary Action” of the Civil Act since its policy announcement in May 2019?

### **B. Children Deprived of Liberty in Institutions**

There is a lack of awareness regarding children without guardians or whose guardian is unsuitable for taking care of them, such as in cases of disability, abuse, or poverty. Consequently, this may lead to children being placed in residential and institutional facilities, which results in the deprivation of their liberty. Children placed in institutions live in communal living settings with highly restrictive regulations and are not permitted to freely leave and enter the premises. The Child Welfare Act stipulates that “when taking protective measures, the head of a local government should respect the opinion of the relevant child subject to protection”. However, there are no administrative procedures that monitor the application of this regulation and give consideration to the best interests of the child.<sup>51</sup> No legislative procedures are available for children to directly appeal and challenge their placement in such institutions. Meanwhile, when children living in the institutions run away from the place, the head of the institutions may notify the juvenile department of the Court. In such cases, children may be tried by the Juvenile Department. Moreover, the child can be detained in the Juvenile Classification Review Center or the juvenile reformatory.

### **Suggested Questions**

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<sup>50</sup> Korea Youth Policy Institute (2018), A Study on the Actual Conditions of Human Rights in Korean Children and Youth, p.211-213

<sup>51</sup> There is a lack of relevant officials in charge. As of April 2019, the number of children subject to protection is an average of 196 people, but the number of the officials in charge is an average of 1.2 people. (in association with pertinent government institutions (2019), Policies for Children toward Building an Inclusive Society)

- What procedures are available for children to appeal or challenge their placement in private or public residential and institutional facilities?
- Provide the last three years of statistical data (disaggregated by age, sex, and type of institutions) on the number of children who were tried as protection cases by the Juvenile Department of the Court due to a notification of the head of an institution.

### C. Protection System for Children Victims of Abuses

As of March 2019, there are 65 shelters for abused children nationwide, and each has the capacity to care for 7 children.<sup>52</sup> Those shelters lack appropriate recovery support systems, thus they have failed to adequately take into account ages and individual characters of children in care. Although the witness intermediary and court-appointed lawyer system for children who are victims of abuse including those of sexual abuse were introduced, not only are there human resource shortages but also there is no systematic child rights education programs to ensure professional expertise. While there had been nationwide “#School\_Metoo” movement since 2018, the government has not properly responded. In December 2018, the Ministry of Gender Equality and Family and the Korean National Police Agency made a joint-announcement to root out sexual harassment and violence in the educational sector, only 7 (out of 17 Offices in South Korea) Offices of Education have set up units dedicated to sexual harassment and violence.<sup>53</sup> Moreover, the government has not made concrete efforts in terms of providing support or facilitating recovery for student victims.

### Suggested Questions

- Provide the information on the efforts of the government to secure the experts in legal and administrative procedures to protect child victims, the current situation on its education and training program to enhance their child rights expertise, and assessment and evaluation system, if any.

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<sup>52</sup> Guidelines of the Ministry of Health and Welfare (2019), 2019 the public service related to the children Vol. 2, p.53

<sup>53</sup> December 29, 2019. Hankyung <The number of teachers who have committed harassment and violence within this year is 95 people, and the measures for the “#School\_Meetoo” remain highly questionable>  
<https://www.hankyung.com/society/article/201912298302Y>

- Provide the information on the follow-up to the “#School\_Meetoo” movement, including specific measures taken to provide remedies for student victims of sexual harassment and violence in schools.

#### **D. Extraterritorial Jurisdiction for Child Pornography Crimes**

In South Korea, child pornography is punished under the Act on the Protection of Children and Youth Against Sex Offenses. As the Act punishes offenders who produce and distribute child pornography, one tries to evade the law by taking advantage of using pornography sites with its servers located overseas.<sup>54</sup> According to 2019 statistics by Korea Cyber Sexual Violence Response Centre, amongst 186 cases of the criminal investigation against operators and users who were accused of distributing illegal and involuntary filming of sexually explicit nature of victims’ images, including child pornography, 85 cases (45.7%) were acquitted. Furthermore, among those who were indicted, 45.7% of cases were punished only with a fine.<sup>55</sup> In October 2019, world media paid strong attention to the “Welcome to Video” case, which is the most well-known site of child exploitation videos on the darknet that turned out to be run by a 23-year-old South Korean male. Shockingly, however, the defendant was sentenced to just a year and a half in prison, and the convict will be released in April this year.<sup>56</sup>

Child pornography and other sexually explicit and exploitative images can not only easily cross the border by using Internet technology but also can be reproduced at a rapid rate. Recently, the so-called “Telegram N chat room”<sup>57</sup> also shows the serious state of cyber sexual violence crime, including child pornography. However, it is very hard to investigate cyber sexual violence crime without exercising extraterritorial jurisdiction. Thus, proper measures to ensure the exercise of extraterritorial jurisdiction in such cases should be urgently prepared in order to provide damage relief for cyber sexual violence crime survivors.

<sup>54</sup> 「Pornography Site with ‘Overseas Server’ Scoff at Government Crackdown Efforts ... Site Manager in one’s 30s Arrested」, KBS, 2019. 3. 5. (<http://mn.kbs.co.kr/news/view.do?ncd=4150511>)

<sup>55</sup> 「“First-time offender” “Uploaded only 6 illegal pornography” ... Bizarre Reasons for Non-indictment Decisions by the Prosecutors’」, Women’s Daily, 2019. 9. 3. (<https://www.womennews.co.kr/news/articleView.html?idxno=192765>)

<sup>56</sup> “How Bitcoin transactions were used to track down the 23-year-old South Korean operating a global child exploitation site from his bedroom”, CNN, 20 OCT 2019. (<https://edition.cnn.com/2019/10/19/asia/south-korea-child-exploitation-international-police-intl-hnk/index.html>)

<sup>57</sup> 「Telegram N chat room erupted after the webhard and chat rooms crackdown」, The Hankyoreh, 2019. 11. 27. ([http://www.hani.co.kr/arti/society/society\\_general/918636.html](http://www.hani.co.kr/arti/society/society_general/918636.html))

### **Suggested Questions**

- Disclose what measures the government will take in order to exercise extraterritorial jurisdiction to properly investigate cyber sexual violence crimes, given the extreme ease of rapid and indiscriminate dissemination of the victims' images over the internet.

### **E. Immigration Detention of Children**

The current Immigration Act does not have any provisions about children and their best interests. While students attending primary and secondary education are to some extent deferred from deportation, children who are of preschool age, outside of school, or high school graduates are not protected from crackdown, detention, and deportation. Indeed, from 2015 to 2017, more than 200 children were detained for violation of the Immigration Act. Also, no regularization paths exist for undocumented migrant children, regardless of the duration of their stay in ROK, and the inevitable deportation of the long-term residing migrant children results in severe violation of their right to family life. The government has claimed that the Immigration Act provides for 'special permission of stay'; however, the permission has been given to only a handful of cases each year, and determination criteria are undisclosed and unclear.

### **Suggested Questions**

- Provide measures taken to prevent the immigration detention of children.
- Provide the statistics and reasons for children at the immigration detention centers.
- Disclose specific criteria, if exist, considered for the provision of 'special permission of stay' for undocumented migrant children.
- Provide measures regarding regularization paths for undocumented migrant children.

## 12. Abuses in the Military

### A. Arbitrary Detention<sup>58</sup>

The ROK armed forces have been violating Article 10 and 16 of the Convention. The military commander may confine an individual conscript without a warrant issued by a judge up to 15 days at a time in a military guardhouse.<sup>59</sup> A total of 25,285 conscripts were arbitrarily confined from 2016 to the first half of 2018.<sup>60</sup> On 9 Jan. 2020, the National Assembly passed a bill to repeal “military guardhouse” detention.<sup>61</sup> However, serious concern remains; it is replaced by ‘disciplinary training’ which believes that one may be “corrected” through the infliction of mental and/ or physical pains. Especially, the military has already legalized ‘spirit drill,’ a kind of corporal punishment,<sup>62</sup> which each training center and troops had abused for decades above the laws. Also, referring to the conscripted police case in Dec. 2018,<sup>63</sup> there is a grave concern that this new replacement would become another concentration camp. Besides, it violates the doctrine of double jeopardy as it excludes the period spent on ‘disciplinary training’ from the service period, resulting in the postponement of the discharge date.<sup>64</sup> Lastly, neither military officers<sup>65</sup> nor public servants<sup>66</sup> are disposed

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<sup>58</sup> in regard to CAT/C/KOR/CO/3-5, para.36, clause (e)

<sup>59</sup> **Article 57 (Kinds of Disciplinary Actions)** (2) Disciplinary measures for enlisted personnel shall be classified into demotion, detention in a guardhouse, restriction on leave, and probation, ... shall be defined in detail as follows: ... 2. The term "detention in a guardhouse" means detention in a guardhouse in a military unit, a ship or other detention facilities for a period shall not exceed 15 days.

<sup>60</sup> Lawmaker Choi Jaeseong (2018), National Inspection 2018; Also, according to the National Human Rights Commission of Korea (2019), a total of 1,577 conscripts were sent to ‘military guardhouse’ in 6 troops from 2018 to May 2019 (“Recommendation following up 2019 Military Guardhouse Visits,” p.3-4.).

<sup>61</sup> The Yonhap News Agency, 4 Jan. 2020. <https://en.yna.co.kr/view/AEN20200103004700325>

<sup>62</sup> Lawmaker Kim Byeonggi proposed <Amendment to the Framework Act on Military Status and Service>, which aimed to legalize ‘spirit drill’ since it has been abused and deviated by military units based on internal regulations without legal grounds. However, the term was changed to ‘Military Discipline Training’ [tentative translation], and article 38-2 was added to become effective as of 27 May 2020.

<sup>63</sup> According to the Center for Military Human Rights Korea, Seoul Riot Police Education Center had been committing all sorts of tortures under a disguise of ‘disciplinary education’ such as ‘shouting at every footstep’, ‘sitting straight-up during the work-hours’, ‘standing against a freezing winter wind wearing only underwear,’ etc. It was done under the pretense of ‘personality education’. This system was put to an end in Dec. 2018 (National Police Agency (15 Jun. 2018) “Police Reformation Committee’s Official Disbandment, Closing a Year’-long Activity.”).

<sup>64</sup> **Article 18 (Active Duty Service)** (3) Where an active-duty serviceman is sentenced to imprisonment with or without labor or misdemeanor imprisonment, or is confined to a military detention facility, or walks away from his post in the military, the number of days during which the sentence is executed or he is confined to a military detention facility, or he walks away from his post, shall not be included in his period of active duty service (Based on The Hankyoreh, (21 Nov. 2019., <http://bitly.kr/V3GiDG5Y>) and the amendment bill, it seems ‘military guardhouse’ is simply replaced by ‘disciplinary training’ en bloc.

<sup>65</sup> **Article 57 (Kinds of Disciplinary Actions)** (1) Disciplinary actions against officers, warrant officers, and noncommissioned officers shall be classified into heavy disciplinary actions and minor disciplinary actions; heavy disciplinary actions shall be classified into expulsion, dismissal, demotion, and suspension from office and minor disciplinary actions into salary reduction, probation, and reprimand; and each kind of disciplinary measure shall be defined in detail as follows: ...

to ‘attitude/ mental/ spirit training’ as a form of discipline.

### Suggested Questions

- The authorities should explain plans to compensate or provide remedial measures for the victims of arbitrary detention, at least after the announcement of the abolition of the ‘guardhouse’ in “2019~2023 National Defense Human Rights Policy Plan,”<sup>67</sup> or those who were still detained even after the bill was passed.
- The authorities, in the case of ‘disciplinary training,’ should elaborate the grounds to exclude the training period from service period, and present detailed plans on the operation of such disciplinary action in accordance with the international human rights norms such as curriculum, the composition of instructors, monitoring system, governance, etc.

### B. Eradication of Violence in the Military<sup>68</sup>

The South Korean military’s situations in violation of Article 1 and 16 of the Convention have become rather “tactful,” thus, not improved. Particularly, about 50 soldiers still commit suicide yearly, half of whom are conscripts.<sup>69</sup> On the other hand, the low-ranked officers whose age is not so different from the conscripted yet receive a tremendous amount of pressure as a “managing position” are neglected without having appropriate countermeasures against suicidal impulses, which is deeply disturbing. Suicides in the military often result from beating, bullying, or maltreatment.<sup>70</sup> After the horrific incident in 2014, the physical

<sup>66</sup> **Article 79 (Categories of Disciplinary Action)** The disciplinary action shall be classified into removal, dismissal, demotion, suspension from office, reduction of salary and reprimand.

<sup>67</sup> “2019~2023 National Defense Human Rights Policy Plan”. <http://bitly.kr/Fy0sm>

<sup>68</sup> CAT/C/KOR/CO/3-5, para.36, clause (a), (c), (g)

<sup>69</sup> According to Lawmaker Do Jonghwan (2019), the total number of suicide cases in the first half of 2019 was 31. The statistics of suicide cases in the military are as follows:

Year	Conscript	Staff Srgt	Noncom	Lieut.	Officers	Total	Battery Death
2017	17	9	22	2	9	48	1
2018	21	7	21	5	11	53	-
1 <sup>st</sup> Half 19	19	4	9	-	3	31	-

<sup>70</sup> In Jul. 2017, a small wooden boat floated from the North to the ROK port unnoticed. Right after the case, a conscript committed suicide, and some accused of the government that he died of grave pressure and stress from reprimand on the

battery seems to be decreasing, but it is not because institutional reform has been successful but rather thanks to the educated minds of young soldiers who are sensitive to human rights.<sup>71</sup> In addition, verbal violence and indirect (nonphysical) bullying remain the same.<sup>72</sup> In 2019, 900 cadets ran hours in half-full gear at night for a week under the implicative system even in the Army Academy where elite officers are brought up, which created quite a scandal.<sup>73</sup> In addition, sexual abuses grow more worrisome in spite of the recent #MeToo movement as the military was left behind.<sup>74</sup> In a survey, 54.1% of female soldiers said sexual violence is ‘severe.’<sup>75</sup> Also, digital sexual crimes increase in the case of the military as well, but the government’s reaction seems to be undermining the rights of victims, reconfirming concerns<sup>76</sup> of the Human Rights Committee.<sup>77</sup> Especially, the number of disciplinary actions placed on sexual misconduct is increasing every year, considering the low rate of reporting.<sup>78</sup>

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failure of reporting and coast guarding. However, according to the Center for Military Human Rights Korea, the deceased was bullied, beaten and insulted by senior conscripts for five months. Even though he reported his case, the unit did not separate the attackers from the victim (Jungang Daily, 20 Jul. 2017. <https://bit.ly/2twkYiE>).

<sup>71</sup> Recently, the rate of reporting by victims seems to be increasing. However, still, authorities often fail to properly deal with human rights violations: blaming victims for causing trouble or incomplete separation of victims and attackers as well as coercion to settle with attackers. Meanwhile, a severe human rights violation like that of 2014 may recur anytime. According to the Center for Military Human Rights Korea, an Army private first class had been beaten, tortured and bullied by three comrades, including two senior conscripts. The perpetrators rubbed human excrement on the victim’s face, forced him to lick it, and keep urine in his mouth. They followed the victim on furlough and molested him - kicked his crotch in a motel, too. The victim reported this to his company leader, but the main attacker freely went on furlough while he was sent to ‘Green Camp’ where so-called “misfits” are accommodated for “rehabilitation” (The Yonhap News Agency, 3 Jul. 2019. <https://bit.ly/35k1EC7>). This trend implies that human rights awareness among officers is quite inadequate contrary to the conscripts. In fact, First Lieutenant Choi and Staff Sergeant Kim were sentenced to jail, for they confined 10 platoon members, broke some of their nails with a tool and taped their hands to pull-up bar (2018Do7151). Also, one officer tortured a private first class for 6 months from March 2018, accusing the victim of a clumsy worker – poking the private’s chest with a bayonet, covering the private’s head and suffocating him with a sleeping bag (Donga Daily, 15 Sep. 2019. <https://bit.ly/39HJMV9>).

<sup>72</sup> According to the Ministry of Culture, Sports and Tourism (2017)’s report, “Survey on Language Use of the Armed Forces and Development of Educational Material,” 44.3% of the reserve forces who were discharged less than 2 years ago answered that the military is facing ‘serious’ verbal abuse. The content of verbal violence was mostly belittlement of the capability of an individual (53.22%). 39.3% responded that insults were often made coram populo. Insults were mostly ‘disparaging appellation,’ ‘calling one’s physical flaws (disability hatred),’ ‘slander about educational background or origin,’ and ‘insult to family or relatives.’ (<https://bit.ly/2Fpns4I>).

<sup>73</sup> The Yonhap News Agency, 2 Oct. 2019., <https://bit.ly/2QOQ8tp>

<sup>74</sup> According to Lawmaker Kim Hakyong (2018)’s National Inspection, the sex crimes in the military reported were 649 in 2014, 668 in 2015, 871 in 2016 and 442 in the first half of 2017; it is showing a growing trend (theL, 2018.07.13., <https://bit.ly/2MY4pCO>).

<sup>75</sup> The National Human Rights Commission of Korea (2017) claims so in its survey which 170 female soldiers participated in., In addition, it is reported that an Army division leader grabbed a female subordinate’s hand in a vehicle in July 2018. It was later found that there were two more victims. In the Navy, a Rear Admiral Lower Half summoned his female subordinate to an alcohol club and attempted to rape her. Similarly, in June, two Army field grade military prosecutor officers verbally abused subordinate female military prosecutors (The Hankyoreh, 9 July. 2018., <https://bit.ly/39GGaTF>).

<sup>76</sup> CCPR/C/KOR/CO/4, para. 31. “Merely suspending perpetrators of violent crimes from their duties or dismissing them from the army is not an adequate response” (See, CEDAW/C/KOR/CO/8, para. 23, clause (f))

<sup>77</sup> According to the Center for Military Human Rights Korea, in Oct. 2018, a male naval cadet in the Naval Academy went in and out of the female dormitory for a year and installed a hidden camera in toilets, illegally filmed his comrades and even blackmailed some of the victims. However, the Academy closed the case by expelling the assaulter on 21 Sep. 2019 without establishing any preventive measures or punishment. Meanwhile, in the Armed Forces Nursing Academy, a handful of male cadets made a chatting room and verbally abused female instructors and comrades habitually. Still, most of the perpetrators were disposed of ‘probation,’ and the victims were asked to remain silent (KBS, 25 Nov. 2019, <https://bit.ly/2sFjmTE>).

<sup>78</sup> According to Lawmaker Choi Jaeseong (2018)’s National Inspection, the number of disciplinary cases under sexual

Violations of the Convention persist because of prevailing impunity,<sup>79</sup> fear of revenge after reporting, and distrust in the military judiciary system. Particularly, in the case of sex crimes, the scope and the degree of punishment are quite insufficient.<sup>80</sup> First, disciplinary actions of exclusion (expulsion and dismissal) placed on sexual misconduct do not even account for 10%.<sup>81</sup> Second, even if one is prosecuted, those who were sentenced to actual prison time were merely 5.6%, which falls far behind that of the civil court,<sup>82</sup> and it is even decreasing.<sup>83</sup> Lastly, the government has not provided proper reparation to victims of human rights

misdemeanor is as follows:

Category	Sum	2014	2015	2016	2017	2018
Army	5,035	9,72	9,58	1,197	1,191	717
Navy	198	32	33	41	49	43
Air Force	303	39	54	103	72	35
Marine's Corps	238	34	32	43	64	65

<sup>79</sup> The table below shows the number of cases investigated and prosecuted from 2017 to the first half of 2018 (The Ministry of National Defense (8 Apr. 2019). "Closed Meeting for Assessment of Implementation of the Fourth Human Rights Committee Concluding Observations"). \*(M)CA: (Military) Criminal Act

MCA	Sum	against Superior	Dis-obedience	Desertion	Military Supplies	Against Guard	Rape/ Indecent Act	Others	
Investigated	1,274	238	10	157	64	165	405	235	
Indicted(%)	31	27.31	50	38.22	26.56	33.33	31.11	28.51	
Civil Codes	Sum	Criminal Act	Act on Violent Act	Sub-total	Sex Crimes under CA	Violent Sex Crimes	Juvenile Sex Protection	Anti-Prostitution	Sub-total
``	2,975	1,895	281	2,176	362	256	78	103	799
``	24.84	18.89	29.18	20.22	34.53	47.66	48.72	13.59	37.42

<sup>80</sup> According to the Center for Military Human Rights Korea, on 8 and 9 Nov. 2018, the High Military Court acquitted two officers accused of raping a subordinate female lesbian naval officer to "correct" her and "console" her. Each was sentenced to 10 and 8 years of imprisonment by a Naval General Military Court. The Court said that the assaulters and the victim were in a "loving relationship," and that she did not resist hard enough. Such a decision overrules the Supreme Court's view on 13 Apr. 2018 that required judges to employ "gender-sensitivity" when it comes to sex crimes.

<sup>81</sup> According to the National Human Rights Commission of Korea, from 2014 to the first half of 2017, merely 20 were severely punished among 273 sexual violence cases against female soldiers (9 expulsions and 11 dismissals). Other heavy penalties were 11 demotions, 99 suspensions from work. The remaining 143 cases were mostly salary reduction (92) and some probation (30) (The Sisa Journal, 26 Mar. 2018., <https://bit.ly/2FxPP13>).

<sup>82</sup> It is the outcome of cases from 2014 to the first half of 2017 (Late Lawmaker Roh Hoechan, 2017) (theL, 13 Jul. 2018., <https://bit.ly/2MY4pCO>). The military argues that they punish sex offenders severely, yet it seems to be true only in the case of 'sodomy'. (LawFact. 30 Oct. 2017. [bitly.kr/G21xCn](http://bitly.kr/G21xCn)). Also, the share of suspension of sentences by military courts seems too high. In the case of trials whose victim is female, 10.34% of offenders were suspended with sentence by General Military Courts, which is 10 times higher than that of civilian courts (1.86%) (theL, 13 Jul. 2018. [bitly.kr/dI9mtX](http://bitly.kr/dI9mtX)).

<sup>83</sup> The result of sex offence trials is as follows (Lawmaker Choi Jaeseong, 2018):

Category	Total (Averg)	2014	2015	2016	2017	First Half '18
Imprisonment	126	49	35	22	20	0
Rate	10.32%	15.51%	10.70%	7.07%	8.26%	0.00%
Suspended Execution	597	157	149	166	118	7
Fine	343	69	93	84	81	16
Suspended Sentence	94	24	33	21	14	2
Acquittal	61	17	17	18	9	0

violations due to Constitutional restriction,<sup>84</sup> complex procedures, and misplacement of the burden of proof on the victims.

### **Suggested Questions**

- The authorities should present the state of administration of justice with the statistics on the punishment of perpetrators and responsible managerial officers in the cases of suicide, beating, maltreatment and sexual assault along with the state of protective and remedial measures provided to the victims including separation, compensations, and reparation.
- The authorities should demonstrate countermeasures taken against changing the trends of suicide, battery, and sex crimes in the military along with state of human rights education, including statistics, curriculum structure and unit-level implementation, satisfaction, etc.

### **C. Independence of Military Judicial Officers<sup>85</sup>**

The South Korean military judiciary system is not pursuant to Article 4., Para. 2 of the Convention. Even though the Constitution Article 110 allows the establishment of military tribunals; there is one High Military Court under the Ministry of National Defense and 31 General Military Courts under divisions of each force.<sup>86</sup> However, their composition and quality do not meet international standards. The military judges are appointed by either Chief of Staff or the Minister of National Defense, unlike other judges.<sup>87</sup> Also, non-judicial officers,

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<sup>84</sup> **Constitution Article 29** (2) In case a person on active military service or an employee of the military forces, a police officer or others as prescribed by Act sustains damages in connection with the performance of official duties such as combat action, drill and so forth, he/she shall not be entitled to a claim against the State or public organization on the grounds of unlawful acts committed by public officials in the course of official duties, but shall be entitled only to compensation as prescribed by Act.

<sup>85</sup> CAT/C/KOR/CO/3-5, para.36, clause (d)

<sup>86</sup> After the death of late Private First Class Yoon in 2014, Division-level military courts were closed and nonjudicial member's participation has been restricted as well as limitation of mandates of commanders; the law has prescribed the office term of military judges.

<sup>87</sup> **Article 23 (Appointment and Attachment of Military Judges)** (1) Military judges shall be appointed by the Chief of Staff of each military branch from among the field-grade or higher ranking military judge advocates under his/her control: Provided, That military judges at the Ministry of National Defense and integrated units under the direct command and operational control of the Ministry of National Defense shall be appointed by the Minister of National Defense from among the affiliated field-grade or higher ranking military judge advocates.

without any legal license, may preside over a trial.<sup>88</sup> A commander of the unit where the court is established may confirm the final decision of military courts, resulting in the systematized intervention of the administrative branch to the judicial.<sup>89</sup> As of 1 May, the government proposed a bill to close the High Military Court, reduce 31 General Military Courts to 5 and introduce civilian military-judges<sup>90</sup> without any discussion with civil societies. However, the bill contains loopholes that may accompany the revolving door effect bringing “retired or discharged” military judicial officers back to the field.<sup>91</sup> Lastly, the bill still leaves ‘courts’ under the ‘administrative branch,’ which violates several reports submitted to the United Nations.<sup>92</sup> This concern applies to the cases of military prosecutors and police as they are directly under the command of the non-judicial commander of a unit.<sup>93</sup>

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<sup>88</sup> **Article 26 (Judges of General Military Courts)** (1) In a general military court, three military judges shall sit on the bench as judge: Provided, That two military judges and one adjudicator shall sit on the bench as judge in cases designated by the convening authority.

<sup>89</sup> **Article 379 (Confirmation of Judgments by Convening Authority)** (1) The convening authority shall confirm judgments other than the following judgments: innocence; acquittal; dismissal of public prosecution; exemption from sentence; suspension of sentence; suspension of execution of sentence; capital punishment; imprisonment with labor for an indefinite term; and imprisonment without labor for an indefinite term, and may reduce punishment to the extent of 1/3 of the sentenced punishment only in case of a crime which occurred while the suspect faithfully and actively conducted his/her duties such as military operations, education and training, if reasons to recognize that punishment is too heavy in consideration of the matters in the subparagraphs of Article 51 of the Criminal Act exist.

<sup>90</sup> **<Amendment Bill to the Military Court Act>** (1 May 2019.) [Agenda No.: 20114].

<sup>91</sup> *op. cit.* **<Act> Article 22-2** regulates the Military Judge Personnel Committee which consists of 11 committee members: a military judge, a judge recommended by Chief Justice, a prosecutor by a Minister of Justice, an attorney by the Korean Bar Association, two law professors, three lay officers by each force’s Chief of Staff, two respectable figures with knowledge (at least one female) who do not have legal license. It seems inappropriate that nonjudicial officers participate in the appointment of a judge. Also, they are all appointed/ commissioned by the Minister of National Defense. The President of the Committee is selected among them by the Minister of National Defense as well. All the more, the Committee’s recommended candidates will go through a review of ‘Military Court Steering Committee’ which consists of a judge designated by the Chief Justice, three military judges by the Minister of National Defense and three military judicial officers by each Chief of Staff in line with Article 4-2, which restricts the decision making power more within the military authorities. Even if one accepts the need for Military Court, it seems rather desirable at least appointment and reappointment of military judges rest under the Supreme Court. In addition, it is concerned that limiting the venue of an appellate court to Seoul High Court may restrict the rights to access to a trial of victims, etc. (Cf. A Brief of foreign Military Courts: bitly.kr/WacWZ0)

<sup>92</sup> Mr. Stanislav Cherno and Mr. William Treat, 1994 recited from **E/CN.4/2006/58**, para.14; Ms. Gabriela Knaul (2012) **A/HRC/20/19**, para.57; (2013). **A/68/285**, para.93-94.

<sup>93</sup> **Military Court Act Article 39 (Direction and Supervision of Military Prosecution Duties by Chief of Staff of Each Military Branch)** The Chief of Staff of each military branch shall take overall charge of military prosecution duties under the jurisdiction of general prosecutors’ offices of subordinate units as the director and supervisor of military prosecution duties of each military branch, and direct and supervise military prosecutors posted thereat.

**Article 40 (Direction and Supervision of Military Prosecution Duties by Heads of Units in which Military Prosecutors’ Office Is Established)** The head of a unit in which a prosecutors’ office is established shall take charge of military prosecution duties under command, and direct and supervise military prosecutors posted thereat.

**Article 41 (Appointment of Military Prosecutors)** (1) Military prosecutors shall be appointed by the Chief of Staff of each military branch from among affiliated military judge advocates posted thereat: Provided, That military prosecutors of the Ministry of National Defense and the integrated units under the direct command and operational control of the Ministry of National Defense shall be appointed by the Minister of National Defense from among military judge advocates posted thereat.

(2) Notwithstanding the main body of paragraph (1), the Minister of National Defense may appoint military prosecutors of the Ministry of National Defense and each military branch from among military judge advocates posted at each military branch after hearing the opinions of the Chief of Staff of each military branch.

## Suggested Questions

- The authorities should provide a plan to abolish military courts during peace-time or detailed plans to operate them independently of the administrative executives.
- The authorities should provide a plan to abolish the military prosecutors or plans to ensure the independence of the operation from front-line commanders.

## D. LGBTs in the Military<sup>94</sup>

South Korean soldiers may be penalized for ‘anal intercourse or any other indecent act’ with another soldier regardless of the will of individuals, time, or location.<sup>95</sup> That violates Article 1 and 16 of the Convention. The concerned provision does not stipulate sexes or distinguishes places (outside of barracks or inside) and time (during work hours or after). Also, the word “any other indecent act” is too vague. Hence, there was a massive crackdown in early 2017.<sup>96</sup> Now, there are a total of 3 constitutional appeals and 1 ruling on the constitutionality pending before the Constitutional Court, but no official progress has been made. Due to this incident and delay of justice, some of the gay soldiers who were tracked down had to be discharged dishonorably or suspended from his position over two years, receiving half of the salary, or missing opportunities for the promotion. Nevertheless, there was another crackdown in the Navy in early 2019. All the victims were humiliated by investigators (military police), but none of the responsible figures was punished. It violates Article 4, Para. 2 of the Convention.

<sup>94</sup> CAT/C/KOR/CO/3-5, para.36, clause (f)

<sup>95</sup> **Military Criminal Act Article 92-6 (Indecent Act)** A person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) or any other indecent act shall be punished by imprisonment with labor for not more than two years.

<sup>96</sup> About 20 military personnel were identified, investigated and some were brought to trial after about two months of illegal investigation in the Army; four victims are awaiting the Supreme Court’s decision (See **UA KOR 2/2017**). The table below shows the recent statistics of article 92-6 application (Ministry of National Defense (8 Apr. 2019). “Conference for Review of Implementation of the fourth Concluding Observations of the HRCtee” (\* Other: under investigation).

Year	Total	Non-indictment	Imprisonment	Suspended Execution	Fine	Suspended Sentence	Acquittal	Transfer	Other*
2014	2	2	0	0	0	0	0	0	0
2015	6	0	0	2	0	2	0	2	0
2016	8	0	0	1	0	2	0	5	0
2017	28	16	1	5	0	1	0	1	4
~2018.6.	3	0	0	0	0	0	0	0	3

The Ministry of National Defense does not consider, not even a review, the abolition of Article 92-6 of the Military Criminal Act, of which the international society voiced numerous concerns about.<sup>97</sup> The only bill to repeal this, proposed by Lawmaker Kim Jongdae, has not been reviewed by the committee.

### Suggested Questions

- The authorities should explain measures taken by the government to abolish or review the abolition of Article 92-6 of the Military Criminal Act.
- The authorities should present the results of punishment, including both criminal and administrative dispositions, given to the perpetrators of the illegal investigations against sexual minorities in the military in 2017 and 2018/19.

### E. Independent Military Ombudsman<sup>98</sup>

From March to April 2014, Late Army Private First Class Yoon Seungju passed away after constant battery and tortures. The authorities attempted to conceal the facts and misinformed the public,<sup>99</sup> which was discovered by a civil society organization. This incident led to a social consensus on the establishment of an independent and effective monitoring mechanism, and the President pledged to actualize the idea. The new bill <Framework Act on Military Status and Service> Article 42 provides legal obligation and ground for establishment thereof despite intense dissent and interruption of the Ministries (Finance and Administration) and the conservative opposition party thanks to relentless efforts of the bereaved and activists.<sup>100</sup> However, even after the change of administration, no follow-up legislative measures have been taken. NHRCK attempted to legislate it in 2017 once and again along with the Ministry of National Defense in 2019. As of June 2019, the government commenced drafting the bill. Nonetheless, as the next general election is scheduled in April 2020 and the Assembly is

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<sup>97</sup> CCPR/C/KOR/CO/4, para.15; E/C.12/KOR/CO/4, para.25, clause (a); A/HRC 2210, para.124.34; A/HRC/37/11, para.132.44-45, 58, 65-68.

<sup>98</sup> CAT/C/KOR/CO/3-5, para.36, clause (b)

<sup>99</sup> The New York Times. 6 Aug. 2014. <https://nyti.ms/35nmAbA>

<sup>100</sup> **The Framework Act on Military Status and Service Article 42 (Officer for Protection of Soldier's Human Rights)**

(1) In order to guarantee soldiers' fundamental rights and make relief against infringement of such rights, an officer for protection of soldier's human rights shall be assigned.

(2) The organization, duty and operation, etc. of the officer for protection of soldier's human rights under paragraph (1) shall be separately provided for by a statute.

under grave confrontation between both parties, it is unclear whether a bill may even be proposed before April.

### **Suggested Questions**

- The authorities should elaborate operation, mandates, and legal status of the ‘Military Human Rights Protector.’
- The authorities should present the blueprint of the ‘Military Human Rights Protector’ about its role and paths in terms of contribution to good governance in the security sector along with engagement with civil societies.

## **13. Violence against Women, including Intimate Partner Violence and Sexual Violence**

### **A. Criminal Justice System for Intimate Partner Violence including Spousal Rape**

According to the analysis of Korea Women’s Hot-Line on incidents reported in the media, at least 1,614 women were killed or threatened to be killed for 10 years (2009~2018) by their intimate male partners. ‘Femicide’ caused by constant and repetitive violence by intimate partners, including spouses, is highly prevalent. However, there is no government’s criminal statistics on crime occurrence and criminal processing of spousal abuse including spousal rape. The ROK government does not collect or classify cases in which the victim and the perpetrators are spouses, nor does it offer cross-analysis according to the gender of the victims and perpetrators. This reveals that the government does not take spousal abuse seriously as a criminal offense and gender-based violence against women. Also, there are cases in which criminalize marital rape, however, the Supreme Court is reluctant to criminalize spousal sexual violence by stressing that rape cases must be tried under the premise that “state intervention into a married couple’s sex life must be limited to a minimum in order to protect the family”, which shows that the judiciary is reluctant to criminalize spousal sexual violence. Article 297 of the Criminal Code adopts a narrow interpretation requiring a proof of “means of assault or intimidation” as a constitute of rape. In case of spousal rape, it is particularly difficult to be punished unless it accompanies assault or intimidation to the extent that resistance is incapable. In order to criminalize intimate partner sexual violence against women including marital rape, it is imperative to amend the Criminal

Code, which places “the lack of free consent of the victim” at the center of the definition of sexual crime and characterizes sexual violence as a crime against the right to personal security and physical, sexual and psychological integrity.

### **Suggested Questions**

- Provide comprehensive statistics on criminal cases and their judicial process where perpetrator and victim are married, including marital rape.
- Taking into consideration the Committee’s previous recommendations (CAT/C/KOR/CO/3-5, para. 38(a)), provide the legislative measures to define marital rape as nonconsensual sexual relations between spouses and to impose appropriate sanctions as a specific criminal offense.

### **B. Abolition of the Judicial Treatment for Domestic Violence focusing on Maintenance and Restoration of Family**

In South Korea, the legislation defining domestic violence as a crime and protecting the victims thereof was enacted in 1997, but most domestic violence crimes are not reported to the police. Even when they are reported, the perpetrators are not separated from the victims, prosecuted, or punished. In this situation, due to such flaws in the national criminal justice system, the perpetrators' acts of violence take the form of stalking, intimidation, rape, kidnapping, confinement, assault, arson, and murder, which threaten the lives and safety of victims/survivors and their family members.<sup>101</sup> Only 1.7% of spousal violence victims reported their cases to the police,<sup>102</sup> and the prosecution rate for domestic violence crime was 9.6% in 2017,<sup>103</sup> which is significantly lower than the violent crime prosecution rates of 25.8%

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<sup>101</sup> [Case] On October 22, 2018, a woman who had been subject to domestic violence for 25 years was stabbed multiple times and murdered by her ex-husband. During the marriage, the victim and her three children were subject to repeated violence, including assault, stalking, death threats, use of weapons, and attempted arson, and continued to receive death threats after divorce. Despite multiple reports filed by the victim, the police ignored the victim's request for help, leaving the scene after only listening to the perpetrator or saying, "Call us when it happens again." The perpetrator had been arrested on charges of bodily harm, but he was not detained and was released several hours after he was taken to the police station. In the absence of separation from the victim or punishment against the perpetrator, the victim changed her cell phone number ten times, moved six times, and even changed her name. However, the perpetrator found out the location of the victim's workplace, residence, and relatives' home, and often came to make death threats. Eventually, the victim was killed in the parking lot in front of her home.

<sup>102</sup> Ministry of Gender Equality and Family, ‘The Domestic Violence Survey in 2016’, 2016.

<sup>103</sup> Information submitted by the Ministry of Justice, 2019.07.

in 2017.<sup>104</sup> According to the law, a judicial police officer shall immediately go to the scene of domestic violence to separate the perpetrator from the victim after receiving a report. If the crime is likely to recur, the perpetrator may be isolated from the victim and a restraining order should be taken to the prosecutor ex officio by a judicial police officer or at the request of the victim or the victim's legal representative. However, the enforcement rate of these urgent ad hoc measures is only 3%,<sup>105</sup> and the measures are not effective in preventing crimes and protecting victims, as violations merely result in administrative fines. In addition, the scope of the restraining order does not reflect the wide range of everyday activities carried out by the victim and fails to address newly emerging methods of stalking, such as approaching through a third person.<sup>106</sup> The key factor why the punishment for domestic violence crimes and the security of victims has not been clearly established is that the 'Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence', focuses on 'family maintenance' through 'the correction of the perpetrators' conducts and restoration of relationships with perpetrators and treats domestic violence perpetrators differently from other criminal offenders as an exception to criminal punishment on the condition of counseling or training. The government has continuously implemented the conditional suspension of charges against perpetrators in exchange for education and counseling, and indiscriminately applied dispute resolution mechanisms such as reconciliation and mediation in judicial process of domestic violence, despite repetitive recommendations by UN, including Human Rights Committee(CCPR/C/KOR/CO/4, para. 18), Committee against Torture(CAT/C/KOR/CO/3-5, para. 37(c)), Committee on the Elimination of Discrimination against Women(CEDAW/C/KOR/CO/8, para. 23(b)).<sup>107</sup> Also, the government let the

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<sup>104</sup> Supreme Prosecutors' Office, 'Crime Statistics', 2018.

<sup>105</sup> Information submitted by National Police Agency, 2018.09.

<sup>106</sup> [Case] On November 2, 2016, a domestic violence perpetrator broke into a domestic violence shelter, which forced all the women victims/survivors and children to escape to another facility. The shelter staff called the police while they were standing face to face with the perpetrator, but the police officer who arrived at the scene did not separate the perpetrator from the shelter because the perpetrator did not engage in any 'harmful acts'. The police officers in the women and youth division who arrived an hour after the incident occurred accepted the demands of the perpetrator — who said, "I will not budge until I see my child" — and urged the staff to persuade the perpetrator. Moreover, the police officers blamed the victims and shelter staff for the exposure of the shelter's location, and said, "I (police officer) am also a father with children," and "He will go home once he sees his children." In the end, there were no measures to separate the perpetrator who broke into the domestic violence shelter from the victim, and three hours and thirty minutes after the incident, the staff distracted the perpetrator and helped the victims escape.

<sup>107</sup> A prosecutor may suspend the indictment of a domestic violence offender on condition of counseling(Article 9-2) or handle domestic violence crime as a home protection case in consideration of the personality and behaviors of the offender, etc.(Article 9) under the 'Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence'. The use of those procedures is being conducted by perfunctorily judging a victim's intention and situation to maintain the marital relationship' with perpetrators without the principles, procedures and expertise to ensure the safety and rights of victims. According to the information submitted by the Ministry of Justice(2019.07), 36.4% of domestic violence offenders were transferred to home protection. Although Injury/Assault crime occupied 80.3%(15,853 persons) of the home protection case in 2018, 39.2% of offenders did not receive any disposition. When they were disposed, prohibition of access to victims was

counseling centers for victims/survivors run correction and treatment programs for abusers. Moreover, the Family Court, in charge of home protection cases and divorce cases related to domestic violence, forces victims to meet the abusers by granting perpetrators a pre-disposition of visitation right or ordering couple counseling and parental education accompanying the perpetrator. This threatens the safety and life of domestic violence victims and their children. In addition, current laws and policies on domestic violence narrowly define the subjects focusing on marriage and kinship relations only. Most of the governmental support for domestic violence victims, including self-reliance policies, primarily targets the victims/survivors who have ever resided in a domestic violence shelter and do not reflect the various characteristics of the victim, including migration, disability, gender identity, and age. In the case of domestic violence victims' protection facilities, they are too small to guarantee individual privacy. There are only four mid- to long-term shelters in the country, where a greater emphasis is placed on vocational training and self-reliance for domestic violence victims, and group homes are in poor condition and the accessibility is low.

### **Suggested Questions**

- Provide the legislative measures to solve problems of not handling domestic violence as criminal cases without appropriate indictment and punishment, and leaving victims with dispute resolution mechanisms as ‘Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence’ which aims at maintaining and restoring the family.
- Provide the status of facilities for the protection, housing, and self-reliance of domestic violence victims/survivors (the number of shelters, area of independent space per person, the number of workers, etc.)

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disposed only 0,2%, while counseling, education, and social service occupy most of the disposal. (Source: Judiciary Yearbook of 2019, The National Court Administration)

## **14. Violence against Migrant Workers**

### **A. Migrant Workers in Agriculture and Fisheries Sectors**

The protection of human rights of migrant workers in agriculture and fisheries sectors has been recommended by the Special Rapporteur on Racism (A/HRC/29/46/Add.1, para. 70-71) and the CESCR (E/C.12/KOR/CO/4, para. 37). Yet the human rights violations against migrant workers in agriculture and fisheries sectors, such as forced labor, extensively long working hours with low wages, poor housing conditions, and abuses (verbal, physical and sexual abuses) are still ongoing in the ROK. Provisions on working hours, breaks, and days-off in the Labor Standards Act do not apply to workers in the agriculture and fisheries sector. Meanwhile, they are charged excessive fees for poor housing and meals provided by employers, and as a result, paid far less than legislative minimum wages that they are entitled to. Migrant fishermen working in vessels of 20 tons or more are recruited through the Foreign Seafarers System, and their minimum wages are set lower than those of South Korean fishermen. Employers in agriculture and fisheries sectors often confiscate passports and bankbooks of migrant employees in order to prevent them from deviating, and demand money or threaten to make them deported when the workers ask for the change of workplace. Some migrant fishermen are forced to rely on barges and uninhabited islands in the sea for their accommodations facing conditions tantamount to imprisonment isolated from any kind of social infrastructure.<sup>108</sup> Nevertheless, there is no monitoring system nor any measures provided by the government.

### **Suggested Questions**

- Provide specific measures taken by the government to protect the rights of migrant workers in agriculture and fisheries sectors, and to abolish discrimination in minimum wages against migrant fishermen under the Foreign Seafarers System.

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<sup>108</sup> “Migrant workers abroad S. Korean fishing boats regularly abused and exploited”, Hankyoreh, 8 January 2020. Retrieved at: [http://english.hani.co.kr/arti/english\\_edition/e\\_international/923664.html](http://english.hani.co.kr/arti/english_edition/e_international/923664.html)

## 15. Asylum-seekers and Migrants

### A. Immigration Detention and Violent Crackdown

While being detained, detainees are provided with a 6-square meter-room only and kept under strict discipline.<sup>109</sup> Nevertheless, the Ministry of Justice has repeatedly stated that there is no such thing as ‘arbitrary detention’ because the immigration detention is for people subject to deportation who may leave the ROK anyhow.<sup>110</sup> Since the Immigration Act lacks a provision regarding the detention of migrant children,<sup>111</sup> nor a time-limit provision in terms of the duration of detention, there have been cases of detention of children with parents who are subject to deportation.<sup>112</sup> During the designated period of intensive crackdown, immigration officers have entered buildings without any permission from the property owners and arrested undocumented migrants without any prior notice. The crackdown against undocumented migrants has been violent, resulting in severe injuries and deaths of migrants. The current Immigration Act requires prior approval from the Minister of Justice for detention exceeding 3 months, however indefinite immigration detention is possible, and reviews by independent authorities, such as judicial review procedure do not exist for immigration detention.

### Suggested Questions

- Provide the statistics on the detention of migrant children, including the statistics on current states and the duration of the detention. Also, provide measures to use detention as the last resort, and to consider the best interests of the child when it comes to the detention of children for unavoidable reasons.

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<sup>109</sup> The current Immigration Act defines ‘detention’ (in Korean, the word ‘protection’ is used to describe ‘detention’) as “immigration control official’s enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation at immigration detention room or immigration detention center”.

<sup>110</sup> There have been more and more cases of refugee applicants undergoing their refugee status determination procedure in detention centers. There was a refugee applicant who had been detained for 4 years and 8 months by 2018.

<sup>111</sup> The Immigration Amendment Bill on prohibition of detention of migrant children was introduced in 2017, however the Bill is still pending in the National Assembly.

<sup>112</sup> 67 children had been detained in Hwaseong Detention Center in the last 3 years. 70 children over 14 years old had been detained in 2016. From January 2015 to December 2017, 225 children were believed to be detained in immigration detention centers in the Republic of Korea. (Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015).

- Provide plans to improve the current immigration detention system, regarding the start, continuance, and the maximum length of detention to avoid arbitrary detention of migrants

## **B. Forceful Return and Deportation of Refugee Applicants**

The refugee status determination procedure in the ROK tends to be arbitrary, while the refugee recognition rate is extremely low. As a result, a majority of failed applicants are put at risk of deportation. There has been a huge increase in the number of refugee applicants, however the number of recognized refugees has not increased subsequently, which is an indication of the maximum number of refugee recognition.<sup>113</sup> Among 484 Yemeni asylum-seekers who arrived in Jeju Island in 2018, only two were recognized as refugees by the Ministry of Justice.<sup>114</sup> Despite the Committee's previous recommendation, Article 6 of the Refugee Act and Article 5 of the Enforcement Decree of the Refugee Act have not been amended so far which led to the incident where an asylum-seeking family with four children had been neglected at the transfer area of Incheon International Airport for 288 days.<sup>115</sup> The family was able to enter the territory of South Korea only after a prolonged judicial proceeding.

Since the arrival of Yemeni refugees in Jeju Island, there has been a prevalent anti-refugee sentiment in the ROK. The government has taken advantage of such sentiments to neglect asylum-seekers in need by granting humanitarian status to people from Syria and Yemen instead of recognizing them as refugees. Humanitarian status holders have fewer rights than recognized refugees. Under the Refugee Act, the government is to grant humanitarian status to those who are "likely to be infringed by torture, other inhumane treatment or punishment or other events even though they do not fall under" the definition of refugees under the Refugee Convention. In other words, humanitarian status holders have rights under the CAT in terms of its definition. The government has an obligation to provide appropriate protection

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<sup>113</sup> Refugee application, recognition Statistics for 3yrs after 5th review  
([https://www.index.go.kr/potal/stts/idxMain/selectPoSttsIdxMainPrint.do?idx\\_cd=2820&board\\_cd=INDX\\_001](https://www.index.go.kr/potal/stts/idxMain/selectPoSttsIdxMainPrint.do?idx_cd=2820&board_cd=INDX_001))

<sup>114</sup> <http://www.koreaherald.com/view.php?ud=20181214000213> [Newsmaker] Korea gives 2 Yemeni asylum seekers refugee status. At the 1st instance interview, 2 got refugee status, 412 got humanitarian status, 56 were simply rejected, 14 dismissed.

<sup>115</sup> <https://www.bbc.com/news/world-asia-49837865> Family from Angola in South Korea airport for nine months win court fight.

under the Convention, however, there have been several cases of attempts by the government to arbitrarily deport them by claiming that the humanitarian status is provided with discretion. Therefore, there is no merit for humanitarian status holders to appeal the decision of the government to cancel humanitarian status<sup>116</sup>. It amounts to the violation of Article 3(1) of CAT on which the principle of humanitarian status is based on.

During the refugee status determination procedure, the government has arbitrarily deprived applicants of their Visas and pressured them into voluntary repatriation. There has been an increasing number of cases where the government revoked the applicants' residence permit, then issued the deportation order or sent applicants to immigrant detention centers by giving exit orders. In these cases, applicants often rather opted for voluntary repatriation.<sup>117</sup>

When it comes to the detention of asylum-seekers, there is no time limit on immigration detention under the Immigration Act. Also, the decision to detain migrants and the decision to extend detention are not subject to judicial review, which leads to refugees being detained for a long period of time (up to four years). Recently, there was a death at the immigration detention center after the center failed to provide timely medical treatment due to poor conditions of the facilities. Despite these concerns, the government has claimed that its asylum procedure is overly generous and has led to an increase in applicants abusing the system, and has tried to amend the Refugee Act to introduce the expedited hearing process.<sup>118</sup>

### **Suggested Questions**

- Provide the statistics about the refugee recognition rates at 1) the Ministry of Justice level and 2) the Court.
- The government has claimed that the administrative decision of not granting humanitarian status by the Ministry of Justice is not subject to lawsuit while the government made it clear that Article 2(3) of the Refugee Act (humanitarian status

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<sup>116</sup> For the first time, the court ruling canceled the denial of humanitarian status (Seoul Administrative Court 2018Gudan15406), but the government consistently dismissed the norm of the Convention against Torture, claiming that the denial of status could not be argued at the court.

<sup>117</sup> Prior to 2016, as a rule, only re-applicants were deprived of their status of residence, but since then, they have issued an exit order if they have a student or work visa, or are unregistered for at least one day, or if they apply for refugee status under unlicensed employment.

<sup>118</sup> <https://en.yna.co.kr/view/AEN20180629004400315> Gov't to seek revision of Refugee Act to prevent abuse by fake asylum seekers

holders) is the implementation provision of non-refoulement obligation in Article 3 of the Convention. Provide reasons behind the above claim.

- Provide reasons why the government still has not amended Article 5 of the Enforcement Decree of the Refugee Act and why it has not made any efforts to prevent the deportation of asylum-seekers at the Port of Entry.
- The government amended the guideline in 2018 to prevent humanitarian status holders from naturalization. Provide reasons behind its decision to limit the right of humanitarian status holders to naturalize to whom the government owes obligations of non-refoulement under Article 3 of the Convention.
- Provide the statistics regarding detained refugee applications, including the grounds for and periods of detention.

## **16. National Human Rights Institution**

In September 2018, President Moon Jae-in nominated the 8th NHRCK Chairperson through a new independent selection committee. The civil society had high expectations for NHRCK under the new leadership, partly due to the frustration over the adoption of the third National Action Plan for the Promotion and Protection of Human Rights (NAP) in August 2018. The government's action plans failed to implement the majority of the recommendations made by UN treaty bodies and UPR. The civil society is concerned that the NHRCK is not fulfilling its role as the monitoring mechanism for the government's human rights policies.

The weakening of the NHRCK is a significant obstacle to the implementation of treaty body recommendations, including the CAT.

### **Suggested Question**

- Submit plans to strengthen the NHRCK and its role in implementing treaty body's recommendations, including the CAT.

## **17. Training for Public Officials**

According to the human rights education monitoring conducted by NHRCK on 65 civil servants education and training institutions for government officials and municipal

government civil servants, as well as on 17 municipal and provincial governments and 87 local autonomous bodies in 2017, the unsubmitted institutions accounted for more than half of the total surveyed institutions. Also, those who submitted the questionnaire answered that they failed to establish any human rights education in their organization. Such results strongly suggest the need for stronger efforts to provide human rights education at a national level.

It has been more than 10 years since the Committee recommended the strengthening of human rights education for civil servants in the ROK. Even though NHRCK also has continuously made recommendations on the enactment of human rights ordinances, less than 10 percent of the 169 institutions have in place human rights education programs that satisfy the requirements for the duration of education (more than eight hours) and the necessary human rights issues to cover (e.g., diversity).

### **Suggested Questions**

- Disclose measures the government is planning to implement for the expansion of human rights education for civil servants and for the establishment of a culture and system that respects human rights.

## **18. Redress for Victims of Torture and Ill-treatment**

### **A. Lack of Truth Investigation Agency**

South Korea's Truth and Reconciliation Commission was established after the enactment of the Framework Act on Clearing up Past Incidents for Truth and Reconciliation. However, the Commission took responsibilities of investigation for a short period of 4 years and 2 months, from 24 April 2006 to 30 June 2010. As a result, the victims and incidents of torture that occurred after the expiration of the term of the Commission have not been properly investigated. Those unreconciled victims have requested the amendment of the Framework Act that includes an extension of the term of the Commission. The National Assembly, however, has not amended the Framework Act.

### **Suggested Questions**

- Provide detailed information on the current status of unreconciled victims of torture inflicted by the State.
- Provide plans for the amendment of the Framework Act on Clearing up Past Incidents for Truth and Reconciliation and for the extension of the term of Truth and Reconciliation Commission.

## **B. State Compensation regarding the Victims' Mental Damages**

The Constitutional Court of Korea decided on August 30, 2018, that victims of past state violence, who received partial compensation under the Act on the Honor Restoration of and Compensation to Persons Related to Democratization Movement, may claim for mental damages to the State since deeming psychological harm suffered in relation to democratization movement not covered by the compensation and other allowances have been also settled through judicial compromise constitutes infringement of the right to claim compensation from the State and thus violates the Constitution.<sup>119</sup> Some courts, however, still deny the validity of the Constitutional Court's decision, taking the position that a state compensation claim for the victims' mental damages is not possible.<sup>120</sup> The Constitutional Court, meanwhile, ruled on July 25, 2019, that the courts' decisions on past state violence cases made before the Constitutional Court's 2018 decision cannot be revoked if such rulings stated that a state compensation claim cannot be made.<sup>121</sup> In other words, the Constitutional Court took the position that the effect of the 2018 decision does not fall short of the already finalized ruling before August 30, 2018. As a result, many victims of state violence are still unable to claim state compensation for their mental damages.

### **Suggested Questions**

- Provide detailed information on the status of the victims who failed to claim state compensation for their mental damage on the grounds that they received some compensation under the law on the pro-democracy movement

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<sup>119</sup> Constitutional Court of Korea, 2014Hun-Ba180 and 38 other cases (consolidated), August 30, 2018.

<sup>120</sup> Yonhap News, “‘Not eligible to claim state compensation if you have received compensation for democratic movement’... conflicting decision from the Constitutional Court”, October 11, 2019, <https://www.yna.co.kr/view/AKR20191011054900004>

<sup>121</sup> *See*, Constitutional Court of Korea, 2018Hun-Ma139, July 25, 2019

- Provide a detailed plan to guarantee the right to remedy victims who failed to claim state compensation for their mental damage on the grounds that they received some compensation under the law on the pro-democracy movement.

### **C. Criminal Retrial Procedure including Delay of Trials**

The Criminal Procedure Act of the ROK stipulates highly restrictive grounds for the reconsideration of the confirmed conviction. Many people who were falsely convicted by torture and inhumane treatment are unable to be relieved due to strict restrictions on initiating retrials. Meanwhile, the criminal retrial procedure is very slow, failing to rescue the victims in a timely manner. According to the 2018 findings of the National Human Rights Commission of Korea,<sup>122</sup> the longest period taken to make a decision to start a retrial was 7 years and 12 days.<sup>123</sup> Also, the Criminal Procedure Act allows prosecutors to delay the re-examination by broadly recognizing the right of prosecutors to disobey the decision to re-open the trial. There was also a case in which retrial started after three years and three months from the decision date to start retrial due to a prosecutor's abuse of authority for the disobedience. Such abuse of power by a prosecutor is particularly fatal toward those detained as the detention could be prolonged. Admittedly, the court may suspend the execution of the sentence after the decision to hold a retrial. However, since the Criminal Procedure Act stipulates that the suspension in the execution of the sentence is at the discretion of the court,<sup>124</sup> it cannot be considered<sup>125</sup> as an appropriate system to prevent unjust execution of the sentence, including a prolonged detention period.<sup>125</sup>

### **Suggested Questions**

- Provide plans to revise Article 420 of the Criminal Procedure Act to broaden grounds for criminal retrials.
- Provide specific information on the duration of the criminal retrial process

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<sup>122</sup> National Human Rights Commission of Korea, "Recommendation and Expression of Opinion for Improvement on Retrials of Criminal Cases," November 5, 2018.

<sup>123</sup> The structure of criminal retrial procedure of ROK is composed of two-tier: first, the court makes a 'decision to open retrial' after examining the legality of the case including the existence of reasons for retrial, and secondly, review the case.

<sup>124</sup> 'Criminal Procedure Act' Article 435 (2) When a ruling for commencing reopening of procedure has been rendered, the execution of the penalty shall be stayed by a ruling. <Amended by Act No. 5054, Dec. 29, 1995>.

<sup>125</sup> Before the amendment on December 29, 1995, the execution of sentence was necessarily suspended once the decision to open retrial was made.

- Provide specific plans to prevent delays in the criminal retrial process, such as the abolition of the prosecutor’s authority to disobey the decision to start retrial and the introduction of a system that makes suspension in the execution of sentencing mandatory when making a decision on retrial.

#### **D. Counseling and Psychotherapy for Victims of Illegal Exercise of State Power**

Counseling or psychotherapy for those who suffered from the illegal exercise of state power has been provided either as part of the victim support program run by non-profit and non-governmental organizations or by providing governmental support for psychotherapy to victims of certain state violence cases. There has never been a state-level survey on the demand for and provision of therapy support for victims of illegal exercise of state power, and the law for the establishment of the National Trauma Center to support such treatment has not been enacted<sup>126</sup>.

#### **Suggested Questions**

- Provide detailed information on the current status of victims of illegal exercise of state power, such as the number of victims and the current situation regarding the availability of support for psychotherapy and counseling.
- Present specific plans for supporting psychotherapy for victims of illegal exercise of state power, including the enactment of relevant laws.

#### **E. Japanese Military Sexual Slavery**

The Japanese military sexual slavery issue was raised in the international community including the United Nations after the first public testimony was made on August 14, 1991. Since then, victims have demanded the Japanese government to admit its war crime and take legal responsibility by making an official apology and reparation. However, the State party and the Japanese government announced that the issue of "comfort women" is resolved “finally and irreversibly” with the consolation money of 1 billion Yen on December 28, 2015, without victims’ participation and consent. After the announcement, various human rights

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<sup>126</sup> Public Administration and Security Committee of National Assembly, “Report on Legislation Plan on Establishment and Operation of the National Recovery Center for State Violence Trauma”, 2019. 11.

experts including the UN High Commissioner for Human Rights criticized<sup>127</sup> it and urged that both governments resolve the issue by taking a victim-centered approach. The Committee also made a recommendation to the State party to revise the 2015 agreement in order to ensure victims' rights to redress, truth, reparation, and assurance of non-repetition. Yet the State party hasn't taken any concrete measures to guarantee victims' rights that are recommended by the Committee.<sup>128</sup>

### **Suggested Questions**

- Recently, the Constitutional Court of Korea made a judgment on the 2015 agreement that the agreement is a non-binding agreement, and that yet the State party hasn't fulfilled any measures to ensure victims' rights. The State party also admitted problems of the agreement after running a task force team under the government and canceled the establishment of a foundation that was established as a result of the agreement in June 2019. That is, the State party is in the process of nullifying the agreement in practice through such measures. Along with such measures, the State party has made a public promise to resolve the issue based on international human rights principles in order to redress victims' human rights. However, the Japanese government is still forcing the victims to remain silent, claiming that it has fulfilled all responsibility for resolving the issue based on the agreement. Under these circumstances, what specific measures are the State party taking to urge the Japanese government to fulfill their responsibilities in order to ensure the right to remedy and restore the victims' human rights?

### **F. "Seongam Juvenile Reformatory" \_**

Seongam Juvenile Reformatory was a juvenile vagrant camp established in 1942 at Seongam island in Bucheon, Gyeonggi-do province during the Japanese colonization. After liberation, Gyeonggi-do province acquired the facility and operated until 1982. Seongam Juvenile

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<sup>127</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17209&LangID=E>

<sup>128</sup> CAT/C/KOR/CO/3-5, paras. 47 – 48

Reformatory indiscriminately kidnapped and detained children according to the government's "vagrant child policy." The children in the facility were beaten, threatened, imprisoned, forced to work, or even killed, went missing, wounded, or mentally disabled by such acts.<sup>129</sup> It is estimated that the total number of children detained in the Seongam Juvenile Reformatory is about 5,759 with related death cases of hundreds. Victims of the Seongam Juvenile Reformatory continue to claim for damages, but no proper action has been taken, such as the enactment of a law for redress.

### **Suggested Questions**

- Provide detailed information on the status of the victims of the Seongam Juvenile Reformatory incident.
- Provide specific plans to relieve the victims of Seongam Juvenile Reformatory incident such as legislating a law.

### **G. "Seosan Developing Group"**

There was a massive crackdown on prostitution, vagrants and homeless people in 1961 by the government in the name of the "brighter society". Then the government organized the Developing Group for land reclamation with the people who were forced to work. About 1,700 people were forced to join the Developing Group and were detained in Seosan, Chungcheongnam-do Province. The Group was violently treated and suffered from forced labor. Those who tried to escape from the detention were either shot or beaten to death. The government even forced people of the Group into marriage with others of the Group.<sup>130</sup> The aggrieved victims have requested redress, however, the government has failed to afford appropriate redress, such as the enactment of legislation.

### **Suggested Questions**

- Provide detailed information about the current status of victims of the "Seosan Developing Group" incident.
- Provide plans to redress victims, such as a plan to enact relevant law, etc.

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<sup>129</sup> See, National Human Rights Commission of Korea, et al., "Consultation on the Enactment of Special Act Concerning Seongam Juvenile Reformatory Incident and Preparation of Measures to Support the Victims," December 17, 2018.

<sup>130</sup> Truth and Reconciliation Committee, "Compiled Report 4", 2010. 12., pp.84; Korea Joongang Daily, "Horrendous Incident of "Seosan Developing Group", the mass wedding of 225 couples, forced labor." 5 March 2018.

## **H. “Brothers Home”**

The “Brother Home” is a case of assault, intimidation, confinement, forced labor, and abuse in isolation of homeless people with disabilities and orphans found in the street in the 1970s and 1980s, in the name of guiding the “delinquents” in Busan. Brotherhood Home was operated under national policies such as the 'Processing Guidelines on Reporting, Enforcement, Accommodation, and Protection of Homeless Persons, Returning Home and After Care.' It was a facility whose operation was directly managed by the government, such as outsourcing the accommodation of homeless people to Busan. There are about 18,521 victims, of whom 513 have died. Victims of the Brotherhood Home case continue to appeal for redress. However, no proper measures have been taken, such as the enactment of laws to redress them.

### **Suggested Questions**

- Provide specific information on the status of victims of Brotherhood Home.
- Provide specific plans, such as enacting legislation, to remedy and redress victims.

## **I. “Samcheong Re-education Camp”**

The government conducted the Samcheong re-education program on August 4, 1980, under Martial Law Decree 13. As a part of Samcheong program, citizens were arrested ignoring legal proceedings in the name of “protection from social evil.” Arrested citizens were detained in military units, subjected to severe physical training and forced labor. It is estimated that more than 60,000 citizens were arrested without warrants, and about 40,000 were assigned and detained in the Samcheong Camp within 25 military units. Samcheong Camp has resulted in multiple numbers of deaths, and the victims of detention are also suffering from serious trauma. The Law on the Honorary Recovery and Compensation of Samcheong Re-education Program Victims was enacted in 2004. The special legislation, however, limits the compensation to those who died or suffered from the Samcheong program, and the application for compensation was made available only by July 30, 2005. As a result, victims of the Samcheong program who failed to prove death or injury, or those who were detained but did not die or get injured, received no compensation or support for long-term detention and forced labor. Until recently, uncompensated victims have complained and

claimed for the damage, but no appropriate measures have been taken, such as amendments in the law to remedy them.

### **Suggested Questions**

- Provide specific information on the status of the uncompensated Samcheong victims.
- Provide a specific plan to redress the uncompensated Samcheong victims, including amendments to the Act on the Honorary Recovery and Compensation of Samcheong Education Victims.

### **J. Civilian Victims of Landmine**

The government has been providing compensation and medical assistance to persons affected by landmine accidents and their bereaved families, based on the “Special Act on Support to Landmine Victims” enacted in 2015. However, the law stipulates the compensation standard as the average monthly wage at the time of death, and the maximum allowable payment is 20 million won, which provides insufficient compensation for the victims and survivors in the past (especially in the 1970s). Victims and survivors filed complaints to the Constitutional Court in 2018, but the Court rejected the claim that paying only up to 20 million won does not violate the right to life.<sup>131</sup>

### **Suggested Questions**

- Provide specific information on the status of civilian landmine victims, such as the number of victims per year and the amount of compensation.
- Propose a plan to amend the Special Act on Support to Landmine Victims to raise the level of compensation for civilian landmine victims.

### **K. Counseling and Psychotherapy for the Bereaved Families of Sewol Ferry Victims<sup>132</sup>**

On April 16, 2014, 304 passengers, mostly students, were killed or gone missing when the Sewol ferry sank under the sea near Jodo-myeon in Jindo-gun, Jeollanam-do. The bereaved families of the victims of the Sewol ferry disaster have been demanding the government to

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<sup>131</sup> See, Constitutional Court Dec. 27, 2019 Decision 2018heonba236

<sup>132</sup> The Incheon Ilbo, “[6 Years after Sewol Ferry Disaster, the Tragedy Continues] No Progress on the Establishment of National Trauma Center for the Victims”, 2020. 1. 6.

investigate and reveal the facts of the disaster and to punish those responsible for the disaster. However, there has not been any clear identification of causes nor any proportionate punishments for those responsible. According to the results of a 2017 health survey, 84.8 percent of 239 bereaved families of the Sewol ferry disaster suffer from sleep disorders and headaches of unknown cause, while 66.7 percent of the 66 survivors also complain of physical abnormality. The known death toll alone in the wake of the Sewol ferry disaster, due to either suicide or deterioration of health, has reached 11. On Dec. 29, 2019, the bereaved father of one of the victims of the Sewol ferry disaster was found dead, taking his own life.<sup>133</sup>

### **Suggested Questions**

- Provide detailed information on the current status of victims of the Sewol ferry disaster, such as the number of victims and the current situation regarding the availability of support for psychotherapy and counseling.
- Present concrete plans to provide psychotherapy for the victims of the Sewol ferry disaster, including the establishment of a center for disaster victims.

## **19. Follow-up Procedures - National Action Plan**

The government announced the 3<sup>rd</sup> National Action Plan for the Promotion and Protection of Human Rights (NAP) in August 2018. However, civil society is taking a negative stance toward the process and the contents of the NAP as the Moon administration promised to fully respect human rights. In the process of setting up the NAP, the Ministry of Justice revealed its limitations. The majority of the ministries failed to show their understanding and will regarding the establishment and implementation of the NAP. Plans for human rights protection of LGBTI were still incomplete in the 3<sup>rd</sup> NAP. What was worse is that the 3<sup>rd</sup> NAP even retrogressed, eliminating LGBTI from the list of minorities<sup>134</sup> and no clear explanation of the reason for the omission was offered. Issues including the abolition of the death penalty and National Security Law, or Anti-Discrimination legislation were not even included in the 3<sup>rd</sup> NAP. It is regrettable that the government reserves its position on

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<sup>133</sup> No Cut News, “‘To His Son’s Side’... Another bereaved family member of the Sewol ferry disaster took his own life”, 2019. 12. 29

<sup>134</sup> [Joint Statement] “The CSO denounces the third NAP”, Aug. 14, 2019 available at [http://www.khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=523&ncount=499&s\\_text=&s\\_title=&pageno=2&basic\\_url=](http://www.khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=523&ncount=499&s_text=&s_title=&pageno=2&basic_url=) (in Korean)

numerous human rights issues on the grounds of ‘political sensitivity’ and decided to ‘research’ more about those issues.

### **Suggested Questions**

- Provide plans to implement the recommendations by the treaty bodies, including the CAT, through the NAP.
- Provide plans regarding human rights protection of minorities, including LGBTIs, refugees, immigrants, through the implementation of 3<sup>rd</sup> NAP and establishment of the 4<sup>th</sup> NAP.
- Provide plans to overcome the limitations of setting up the NAP, such as the Ministry of Justice playing the leading role. Also, provide institutional measures to strengthen the status of the NAP.

## **20. Other Issues**

### **A. Compensation by the police against participants of assembly and demonstration**

Previous governments of South Korea had abused a claim for compensation against participants of assembly/demonstration and strike. One of the typical examples is the 2009 strike by Ssangyong Motor workers. After the brutal crushing of the strike and occupation, 30 people including sacked workers and their family members have died prematurely during the last 10 years. And the workers have suffered from economic stress due to a lawsuit by the State seizing their possessions for damages. In 2009, police filed a suit against union members of the SsangYong Motors to demand compensation. In the second trial, the Court ordered the payment of 1.17 billion won (US\$1.01 million) in 2015. With delay charges factored in, the total amount of compensation was 2.5 billion won (US\$2.16 million). The case is currently pending in the Supreme Court. There is another lawsuit by SsangYong claiming damages for losses due to the union’s strike still in its second trial. In 2013, the court in the first trial ruled for the union to pay around 7.6 billion won (US\$6.57 million), including annual delay charges of 20%.

In 2018, a truth committee tasked with investigating alleged human rights violations involving police advised the police authority to drop its damage suits against workers of the SsangYong. The police released the seizure but have not withdrawn from the lawsuits.

Last December, NHRCK in their written opinion stated that “lawsuits for a huge amount of damages against SsangYong workers cannot be justified and rights to labor should not be countered with a lawsuit claiming for excessive damages.

### **Suggested Questions**

- Submit a plan to implement the recommendation by the committee to withdraw the lawsuit against the sacked workers of Ssangyong Motors.
- Submit a plan to ban a strategy of holding organizers responsible for the financial loss caused during assembly and demonstration through a damage lawsuit.

### **B. Human Trafficking of Migrant Women for Purposes of Sexual Exploitation**

Migrant women, victims of sex trafficking, who enter the ROK through various routes including E-6 (arts and entertainment) and C-3 (short-term visit) Visas are being exploited in sex industries. The standard for granting E-6 Visa is no longer limited to foreigner-exclusive entertainment establishments around the U.S. military bases and has expanded to adult entertainment establishments in small and medium-sized cities and in-port cities, etc. Recently, there has been an increase in the number of cases where women from visa-exempt countries, mainly Thailand and Russia, are exposed to the sex industries after being deceived by brokers with their passports confiscated to them. Nevertheless, many of those victims were identified as voluntary participants in sex-for-hire during police interrogation, thus immediately deported after the interrogation. The government has failed to conduct an appropriate investigation or punish the perpetrators, thus repeated cases of sex trafficking continue to emerge. Under the current Immigration Act, the Minister of Justice may grant an extension of stay for the victims of sexual crimes until an investigation by an investigative agency or procedure for remedying is completed, but immigration officers on site tend to consider the procedures for remedying only applies to legal procedures only. Therefore, the status of those who need to stay for physical or mental recoveries is not guaranteed. Also, the government has amended the Criminal Act to criminalize human trafficking to ratify the Palermo Protocol, however, the amended Criminal Act did not incorporate the comprehensive definition of sex trafficking as provided under the Palermo Protocol. The

amended Act also failed to include the essential point that the consent of the victim is irrelevant in criminalizing sex trafficking. As a result, it is literally impossible to punish various forms of sex trafficking under the amended Criminal Act, and laws for preventing sex trafficking and protecting victims thereof are non-existent.

### **Suggested Questions**

- Provide plans of the State Party to conduct a fact-finding investigation on sexually exploited migrant women who entered the country under the visa-exemption program.
- Provide legal instruments or guidelines regarding the right to stay in the ROK, if any, for victims of trafficking who have filed administrative and civil lawsuits, or are receiving medical treatment or psychological therapy in shelters as stipulated in the Act on the Prevention of Commercial Sex Acts and Protection, etc. of Victims.
- Provide the statistics on the application of the human trafficking provision under the amended Criminal Act.

### **C. Legal Recognition of Transgender Persons**

The UN Special Rapporteur on Torture had a discussion on demand of several countries that transgender persons undergo unwanted sterilization surgeries as a precondition for being guaranteed the right to be recognized legally in terms of their gender identity.<sup>135</sup> And the Committee noted that legal recognition of their gender is not dependent on whether or not [transgender persons] have undergone gender reassignment surgery in the Concluding Observations to Hong Kong, China.<sup>136</sup>

Since a 2006 Supreme Court decision,<sup>137</sup> matters to be investigated with regard to legal gender change have been presented according to the Supreme Court's established rules

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<sup>135</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, A/HRC/22/53. ("In many countries, transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.")

<sup>136</sup> UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, 3 February 2016, CAT/C/CHN-HKG/CO/5, at para 28. ("the Committee is concerned about reports that transgender persons are required to have completed sex-reassignment surgery, which includes the removal of reproductive organs, sterilisation and genital reconstruction, in order to obtain legal recognition of their gender identity.")

<sup>137</sup> Supreme Court of Korea, 2004Su42 Decision, 22 June 2006.

instead of laws of the ROK.<sup>138</sup> Despite the use of the expression “matters to be investigated,” which connotes discretion, courts have accepted this as a de facto precondition. According to these established rules, out of unmarried adults without legally minor children, only those who have been diagnosed with transsexualism, received psychiatric/hormone therapy, and undergone sterilization surgeries are eligible for legal gender change. The surgical requirement forces transgender persons to undergo indiscriminate and invasive surgeries for gender recognition and restricts reproductive rights as well.

### **Suggested Questions**

- Provide a plan to review the requirements and procedures for legal recognition of gender that guarantee transgender persons’ autonomy and physical integrity.
- Provide statistics on how many transgender persons have their legal gender changed.

### **D. Intersex Persons**

Children who are born with intersex variations are often subject to irreversible sex assignment, involuntary sterilization, or involuntary genital normalizing surgery, performed without their informed consent, or that of their parents.<sup>139</sup> In the ROK, intersex persons have been largely invisible. Statistically, newborns in the country amount to approximately 450,000 per year, out of whom 0.1%, or some 450, are presumed to have Klinefelter syndrome.<sup>140</sup> In addition, there are many other intersex variations, affecting estimates of up to 1.7% of the population. Consequently, the number of intersex newborns could be as many

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<sup>138</sup> Guidelines on the Clerical Processing of Cases of Transsexuals’ Application for Legal Sex Reassignment (revised on Jan. 8, 2015 [Established Rules on Family Relationship Registration No. 435; implemented on Feb. 1, 2015]; in Korean). English translation by Korean Society of Law and Policy on Sexual Orientation and Gender Identity is available at [http://annual.sogilaw.org/review/law\\_list\\_en](http://annual.sogilaw.org/review/law_list_en)

<sup>139</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57. At para. 50. “In many States, children born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization and genital normalizing surgery, which are performed without their informed consent or that of their parents, leaving them with permanent, irreversible infertility, causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants.”

<sup>140</sup> Asan Medical Center, An Encyclopedia of Diseases (in Korean). <http://www.amc.seoul.kr/asan/healthinfo/disease/diseaseDetail.do?contentId=32375>.

as 7,650 a year.<sup>141</sup> In 2014, the press reported an incident where a mother killed both her one-month-old infant born with Klinefelter syndrome and herself out of despair.<sup>142</sup>

In order for parents to register the birth of a child, they must select the legal gender of the child between male and female and record it in the reporting form according to the Resident Registration Act. To change this gender later, one must undergo legal gender change application procedures. In addition, it is common in the country for adults including parents and teachers to educate children based on gender binarism even during socialization and public education system. For these reasons, parents decide the legal gender of their children without the latter's consent and impose irreversible surgeries on the youngsters as well. In such cases, the physical sex of children is known to be "corrected" before 12 months for females and before school age for males, respectively.<sup>143</sup>

### **Suggested Questions**

- Provide statistics on intersex infants and children and the medical intervention imposed on them.
- Provide information on whether the parents of intersex infants can register their children's gender marker other than male or female.

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<sup>141</sup> The number of intersex persons who claimed medical expenses from the National Health Insurance Service in 2015 - Healthcare Bigdata [sic] Hub (operated by the Health Insurance Review and Assessment Service; in Korean). <http://opendata.hira.or.kr/op/olap3thDsInfo.do>.

<sup>142</sup> Kyunghyang Shinmun, "Incumbent female police officer found dead at home with month-old son", 23 December 2014. (in Korean). [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?code=940100&artid=201412230908381](http://news.khan.co.kr/kh_news/khan_art_view.html?code=940100&artid=201412230908381)

<sup>143</sup> Medical Today, "'Is it a boy or a girl?' What's the sex of [physically] ambiguous newborns?"; 28 June 2007. (in Korean). <http://bit.ly/2jsYKDg>.