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SUBMISSION TO THE  
UNITED NATIONS HUMAN  
RIGHTS COMMITTEE

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# EXECUTIVE SUMMARY

Amnesty International is submitting this briefing in advance of the United Nations (UN) Human Rights Committee's (the Committee) examination in October 2015 of the Republic of Korea's (South Korea's) fourth periodic report (CCPR/C/KOR/4) on the measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant).

This submission provides an overview of the organization's main concerns about the South Korean government's compliance with its obligations under the Covenant. It highlights concerns with respect to a number of issues:

- Independence of the national human rights institution (article 2), in particular the lack of transparency in the method of selection and appointment of the next Chairperson of the National Human Rights Commission of Korea.
- The death penalty (article 6), including the bill submitted by lawmaker Yu In-tae to abolish the death penalty.
- Trafficking, forced labour, poor working conditions and discrimination against migrant workers (article 2, 8 & 26), the lack of prosecution of employers who trafficked migrant workers for labour exploitation, and the Employment Permit System (EPS), which makes it extremely difficult for migrant workers to seek and secure alternative employment if they are subject to exploitation or abuse by their employer.
- The right to conscientious objection to military service (article 18), including the lack of effective steps to recognize the right to conscientious objectors to be exempted from military service, the large number of conscientious objectors in prison, and economic and social disadvantages which last far beyond their jail term.
- The right to freedom of expression, association and peaceful assembly (articles 19, 20 and 22) including through:
  - The National Security Law including the increasing use of detentions and prosecutions under the law as a form of censorship to intimidate and imprison people exercising their rights to freedom of expression.
  - The unnecessary use of force by the police against peaceful protesters during the anniversary of the Sewol Ferry Accident in April 2015.
  - The arrest of union leaders for exercising their rights, and government attempts to delay registering the Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU), and to deregister the Korean Teachers and Education Workers Union (KTU).

The document is based on Amnesty International's research over the past five years.

# INDEPENDENCE OF THE NATIONAL HUMAN RIGHTS INSTITUTION (ARTICLE 2)

National human rights institutions play a key role in the protection and promotion of human rights. To be able to act as an effective remedy towards human rights violations, it is vital that they are independent, fully empowered and enjoy the trust and confidence of civil society, particularly the local human rights community. It is crucial that the public perceives the Commission's members as being free from bias, and from expectations of further career advancement.

Amnesty International is concerned that the method of selection and appointment of the next Chairperson of the National Human Rights Commission of Korea (NHRCK) lacked transparency and appears to be a decision made solely by the President of South Korea without the broader consultation with civil society groups and other relevant stakeholders. This could undermine the competence, impartiality and independence of the Commission, all necessary attributes if it is to effectively carry out its work.<sup>1</sup>

According to South Korea's reply to the List of Issues, a new internal regulation has been in place since 2014 which would require the NHRCK to publicize vacancies of the members three months prior to the event, receive recommendations on candidates from the general public, and deliver them to the appointing authorities. It would be helpful if the South Korean government could confirm that such procedures have been followed when deciding on the candidate for the next Chairperson of the NHRCK. If the post of Chairperson is an exception to this rule, the South Korean government should provide a valid reason for such exception and explain the selection process that was used.

The independent procedures of selection, appointment, removal and terms of tenure of the NHRCK members should be clearly specified and done through a transparent process in line with the "United Nations Principles relating to the Status of National Institutions" (adopted by the UN Commission on Human Rights in 1992, and later the UN General Assembly Resolution 48/134, known as "the Paris Principles"), which are the minimum standards that a national human rights institution must meet if it is to be considered legitimate, so as to afford the strongest possible guarantees of competence, impartiality and genuine independence.

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<sup>1</sup> Amnesty International, "South Korea: Secrecy of Chair appointment undermines independence of National Human Rights Commission of Korea," 2015.  
<https://www.amnesty.org/en/documents/asa25/2161/2015/en/>. Also Korea Herald, "Human rights

# THE DEATH PENALTY (ARTICLE 6)

Amnesty International welcomed the suspension of executions in South Korea, now in its 17th year. As of December 2014, however, at least 61 people were still sentenced to death. One new death sentence was imposed in 2014.

In 2015, lawmaker Yu In-tae of the New Politics Alliance for Democracy (NPAD) submitted a bill to the National Assembly that would abolish the death penalty. Formerly a prisoner on the death row, Yu had previously submitted the bill to the 17th National Assembly. This is the seventh time that a bill to abolish the death penalty has been submitted. Each of the previous six times - beginning with the 15th Assembly - the bill has not made it to a vote before the full assembly.<sup>2</sup>

The Committee has since consistently called on states parties to abolish the death penalty and accede to the Second Optional Protocol to the ICCPR.<sup>3</sup> The growing international consensus against the death penalty was further demonstrated in 2014, when the plenary session of the United Nations General Assembly (UNGA) adopted the fifth resolution calling for the establishment of a moratorium on executions as a first step towards full abolition of the death penalty, so as to meet the requirements of Article 6 of the ICCPR.<sup>4</sup> The government of South Korea should follow this trend and take concrete steps to abolish the death penalty.

# MIGRANT WORKERS AND TRAFFICKING FOR FORCED LABOUR (ARTICLE 2, 8 & 26)

Amnesty International's research and other sources indicate that significant numbers of migrant agricultural workers are compelled to work in conditions to which they did not agree

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<sup>2</sup> Hankyoreh "Bill before parliament to abolish the death penalty." 15 July, 2015, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/699206.html](http://english.hani.co.kr/arti/english_edition/e_national/699206.html), accessed 18 August, 2015

<sup>3</sup> See for example concluding observations on Jamaica (UN Doc. CCPR/C/JAM/CO/3, 17 November 2011) para 10, Guatemala (UN Doc. CCPR/C/GTM/CO/3, 19 April 2012) para 13, Malawi (UN Doc. CCPR/C/MWI/CO/1, 18 June 2012) para 10, Ethiopia (UN Doc. CCPR/C/ETH/CO/1, 19 August 2011) para 19, Mongolia (UN Doc. CCPR/C/MNG/CO/5, 2 May 2011) para 6 and Kazakhstan (UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011) para 12.

<sup>4</sup> Amnesty International, "UN vote boosts support for a global moratorium on the death penalty," 2014, <http://www.amnesty.org/en/news/un-vote-boosts-support-global-moratorium-death-penalty-2014-11-21>.

under the threat of some form of punishment (e.g. dismissal, non-renewal of their visa and threats of violence) and consequently are subjected to forced labour.<sup>5</sup> Data from the NHRCK's survey of 161 migrant workers provides indicators that forced labour is a widespread problem, with more than half of the respondents being forced to work beyond contract hours or on rest days.<sup>6</sup>

Significant numbers of migrant agricultural workers are considered to have been trafficked for exploitation, including forced labour. Amnesty International recorded incidents of contractual deception for all 28 migrant workers who were interviewed in 2013, particularly in relation to work hours, breaks, rest days and salary.

Despite this, in 2013 the South Korean government provided data that only 11 convictions were obtained for labour trafficking offences nationally, covering all employment sectors and both South Korean and foreign nationals.<sup>7</sup> The Government was unable to provide statistics on the number of Korean or foreign victims of labour trafficking who were assisted by the authorities, but a Ministry of Employment and Labour (MOEL) survey of foreign workers on issues related to labour trafficking (carried out in September 2013) found that over 5% of respondents reported passport confiscation, threats or physical assault.

In September 2014, the Ministry of Justice told Amnesty International that the South Korean government charged just two cases of trafficking (under article 289 of the Criminal Act – see below) in 2013 and two more cases in 2014. It did not provide further details on the nationality of the trafficked victims, sanctions given, or whether the cases were for trafficking related to labour or sexual exploitation. Amnesty International is not aware of any employer being charged or prosecuted for trafficking migrant workers for labour exploitation, including forced labour.

In 2000, South Korea signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), but has yet to ratify it.<sup>8</sup> While trafficking is a criminal offence in South Korea, the current definition is not consistent with international law, including article 3(a) of the Trafficking Protocol. Under article 289(1-3) of South Korea's Criminal Act, trafficking in persons is defined as:

*“(1) A person who buys or sells another shall be punished by imprisonment for not more than seven years.*

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<sup>5</sup> Amnesty International, *Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea*, October 2014 (ASA 25/004/2014), <https://www.amnesty.org/en/documents/ASA25/004/2014/en/>

<sup>6</sup> See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp111, 186-187, 190 and 201, available at: [http://www.humanrights.go.kr/common/board/fildn\\_new.jsp?fn=in\\_BB2013103111262611332591.pdf](http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf), accessed 3 June 2014 (in Korean).

<sup>7</sup> US State Department, “Korea, Republic of”, *Trafficking in Persons Report 2014*, pp233-234, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>, accessed 22 September 2014.

<sup>8</sup> In July 2014, the South Korean government submitted the Trafficking Protocol Ratification Bill to the National Assembly. As of September 2015, the Protocol was still not ratified. See: [http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill\\_id=PRC\\_N104JOM7T100Q1X6U0Q0L4E118F8S6](http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_N104JOM7T100Q1X6U0Q0L4E118F8S6), accessed 19 September 2014 (in Korean).

*(2) A person who buys or sells another for the purpose of engaging in an indecent act, sexual intercourse, marriage, or for gain, shall be punished by imprisonment for at least one year up to ten years.*

*(3) A person who buys or sells another for the purpose of labour exploitation, sex trafficking, sexual exploitation, or the acquisition of organs shall be punished by imprisonment for at least two years up to fifteen years.”<sup>9</sup>*

This definition criminalizes only the act of buying and selling, which makes it difficult to prosecute individuals who have recruited and exploited the labour of migrant agricultural workers through contractual deception.

As a signatory to the Trafficking Protocol, South Korea is obligated not to undertake measures that defeat the object and purpose of the Protocol.<sup>10</sup> The Government of South Korea urgently needs to amend its domestic legislation on trafficking so that it is fully consistent with the Trafficking Protocol.

As of 2014, approximately 250,000 migrant workers were employed in the Republic of Korea (South Korea) under the Employment Permit System (EPS). Although the EPS Act states that migrant workers should enjoy the same labour rights as South Korean workers, in practice migrants are likely to suffer worse terms and conditions of work than their South Korean counterparts, primarily because of the restrictions that the EPS places on the job mobility of migrant workers.

Under the EPS, it is extremely difficult for migrant workers to seek and secure alternative employment if they are subject to exploitation or abuse of their employer. Although the South Korean government stated in its reply to the List of Issues that workplace change is allowed without the consent of the employers if the violation of contractual terms or unfair treatment by the employers occurs since July 2012, there is no indication in Amnesty International’s research that workers who suffered from such treatment were able to benefit from the application of such provisions. In order to be able to leave their job and seek new employment, migrants must obtain a signed release form from their current employer (article 25(1) of the EPS Act). Amnesty International’s research revealed that employers are extremely reluctant to sign release forms. On some occasions, they will only do so in exchange for a bribe, which is usually the equivalent of between US\$1,000-2,000. If migrant workers leave without the signed release form, their employer is likely to report them to the immigration authorities as “runaways”, putting them at risk of arrest and deportation. Where migrants do obtain a release form, they must then secure a new job in the same

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<sup>9</sup> Criminal Act (1953, last amended 14 May 2014, Act No. 12575), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=153923&efYd=20140514#0000>, accessed 23 September 2014 (in Korean).

<sup>10</sup> “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.” Article 18 of the Vienna Convention on the Law of Treaties, which South Korea ratified in 1977.

employment sector within three months (article 25(3) of the EPS Act) or face deportation.

In contrast, under the EPS employers can usually terminate or refuse to renew a migrant worker's contract without having to justify their decision. In this way, the EPS regulations require migrant workers to maintain a good relationship with their employer in order to be able to continue working in South Korea. This makes it very difficult for them to challenge exploitative or discriminatory conditions of work and to change jobs.

The dependency of EPS migrant workers on the goodwill of their employers and the dangers inherent in trying to assert their rights are illustrated by Amnesty International's research, which found 15 out of 28 migrant agricultural workers interviewed to have experienced some form of threat to terminate their contract if they did not do what was demanded of them by their employer or if they complained about their terms and conditions of employment.

In addition to the policies outlined above, there is also a lack of effective redress mechanisms available to protect migrant workers and deal with any discriminatory or abusive treatment that takes place. Amnesty International's research strongly indicates that migrant workers cannot rely on support from the South Korean authorities to resolve issues at work. While 23 out of 28 migrant interviewees sought assistance from the government-run job centres and labour offices in a variety of locations (including Iksan, Mokpo, Damyang, Pyeongtaek, and Seosan), none received adequate assistance from the officials in these offices when seeking to remedy a work-related problem. In the majority of cases, the migrants were even actively discouraged from taking the issue forward. This shows that the existing redress mechanisms are not functioning effectively, with some officials failing to support EPS workers who are seeking to resolve problems and others actively discouraging them from making complaints.

## CONSCIENTIOUS OBJECTORS (ARTICLE 18)

The government of South Korea has not taken any effective steps to recognize the right to conscientious objectors to be exempted from military service or to bring legislation into line with Article 18 of the Covenant as recommended by the Committee in 2006. At least 653 conscientious objectors were in prison for refusing to perform military service for reasons of conscience or profound personal conviction as of July 2015.<sup>11</sup> There are also over 80 conscientious objectors who have refused to serve in the reserve forces after completing the

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<sup>11</sup> There are no available statistics about the total number of conscientious objectors imprisoned or facing prosecution in South Korea. The great majority appear to be members of Jehovah's Witness, a Christian group, although there are also documented cases of individuals non-affiliated with this group who elected to become conscientious objectors and are unwilling to bear arms for pacifist or religious motives. According to a report by Jehovah's Witness, 653 of its members were imprisoned in South Korea for conscientious objection as of July 2015. See Jehovah's Witness, *Imprisoned for Their Faith—South Korea*, available at: <http://www.jw.org/en/news/legal/by-region/south-korea/jehovahs-witnesses-in-prison/> (accessed 17 July 2015).

mandatory military service.<sup>12</sup>

Amnesty International's research and other sources indicate that many conscientious objectors face economic and social disadvantages which last far beyond their jail term.<sup>13</sup> In an increasingly difficult economic climate for young job-seekers, conscientious objectors are punished twice as they are often denied employment due to their criminal record. Many government-linked organizations will not employ conscientious objectors because of they have a criminal record, and major private companies generally require applicants to provide details of their military service during the recruitment process.

A conscience objector told Amnesty International that he felt as if he was in prison his entire life and was unable to live with hope since he knew that his dreams would be destroyed because he knew he would go to prison under the current law.<sup>14</sup>

The Ministry of National Defense informed Amnesty International in response to an inquiry that introducing alternative non-punitive civilian service for conscientious objectors was not a feasible option given the special security concerns of the divided country and the lack of "national consensus".<sup>15</sup>

However, the HRC has explicitly stated that conscientious objections to military service is protected as part of the right to freedom of thought, conscience and religion under Article 18 and that limitations must be strictly interpreted, and in particular that "restrictions are not allowed on grounds not specific there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security".<sup>16</sup>

Contrary to the government's position, a number of decisions recognizing conscientious objection have been made by the judiciary. While the Constitutional Court is again examining the legality of conscientious objection,<sup>17</sup> on 12 May 2015, the Gwangju District Court

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<sup>12</sup> The European Association of Jehovah's Christian Witnesses, *Submission to the UN Human Rights Committee Prior to the Adoption of the List of Issues* (113<sup>th</sup> Session – 16 March – 2 April 2015) Fourth periodic report pursuant to article 40 of the Covenant Republic of Korea (115<sup>th</sup> Session of the Human Rights Committee, 19 October – 6 November 2015), para.13.

<sup>13</sup> Amnesty International, *Sentenced to Life: Conscientious objectors in South Korea*, May 2015 (ASA 25/1512/2015), <https://www.amnesty.org/en/documents/asa25/1512/2015/en/>.

<sup>14</sup> Amnesty International, *Sentenced to Life: Conscientious objectors in South Korea*.

<sup>15</sup> Letter from the Ministry of National Defence to Amnesty International Korea, 8 May 2015.

<sup>16</sup> Human Rights Committee, General Comment No. 22: *The right to freedom of thought, conscience and religion* (Art. 18), UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, para.8.

<sup>17</sup> Cases Nos: 2013HunGa5, submitted to the Constitutional Court by Seoul Northern District Court; 2014HunGa8, submitted to the Constitutional Court by Seoul Eastern District Court; 2012HunGa17, submitted to the Constitutional Court by Masan Branch of Changwon District Court; 2013HunGa23, submitted to the Constitutional Court by Seoul Southern District Court; 2013HunGa27, submitted to the Constitutional Court by Ulsan District Court; 2013HunGa13, submitted to the Constitutional Court by Suwon District Court. See also, Amicus Curiae opinion by Amnesty International, Friends World Committee for Consultation (Quakers), the International Commission of Jurists, the International Fellowship of Reconciliation, and War Resisters' International, *"The right to conscientious objection to military service: Amicus Curiae Opinion Submitted to the Constitutional Court of Korea"*, 1 September

acquitted three conscientious objectors accused of breaking the law by refusing military duty.<sup>18</sup> District courts in Suwon and Gwangju further acquitted three other conscientious objectors in August 2015. The judge stated in the decision in May that the men were not unwilling to serve, but were refusing to bear arms on grounds of their constitutionally protected right to freedom of conscience. The latest ruling in August is the fifth in South Korea in favour of the right to conscientious objection.

The revision of the Military Service Act and the Enforcement Decree of the Military Service Act came into force on 1 July 2015.<sup>19</sup> Based on this revision, information on individuals refusing military service without “justifiable” reasons can be made public on the internet. Committees set up at respective District Military Manpower Administrations will hold an open review to decide whether to make the personal information public. The information to be provided could include name, age, address, reason for avoiding military service and the law under which the individual was charged. This law could further disadvantage conscientious objectors by having their identity revealed for simply exercising their right to freedom of thought, conscience and religion as enshrined in the Covenant. In addition, it violates the right to privacy and the right to be free from discrimination, as decisions to publicize this information online is punitive measure against an individual who is only exercising his right to conscientious objection to military service.

## NATIONAL SECURITY LAW (ARTICLE 19)

In its reply to the List of Issues (paragraph 73), the South Korea government claimed that the National Security Law (NSL) is applied only where there are clear threats to national security and existence or danger to the democratic fundamental order. Amnesty International has documented, however, that detentions and prosecutions under the NSL are being increasingly used as a form of censorship to intimidate and imprison people exercising their rights to freedom of expression, and against individuals accused of publishing and distributing material deemed to “benefit” the Democratic People’s Republic of Korea (DPRK). Investigations over alleged violations of the NSL have dropped to 57 in 2014 from the highest of 129 cases in 2013, according to official sources. However, the number of cases in 2013 was the highest record in a decade, and had almost tripled since 2008.

Amnesty International is concerned about charges under Article 7 of the NSL for praising or propagating DPRK ideology that have been brought against members of the Unified

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2014, (AI Index: POL 31/001/2014).

<sup>18</sup> The Supreme Court upheld the lower court decision and sentenced one of the acquitted individuals to one year and six months in prison on 27 August 2015. See Hankyoreh, “Supreme Court sticks to its position on imprisoning conscientious objectors”, 28 August 2015, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/706440.html](http://english.hani.co.kr/arti/english_edition/e_national/706440.html), Accessed: 9 September 2015.

<sup>19</sup> Article 81-2 of the Military Service Act was newly added in December 30, 2014 and the article 160 and 161 of Enforcement Decree of the Military Service Act were added in June 30, 2015.

Progressive Party and the ruling of the Constitutional Court which led to disbandment of the party. Among the cases of alleged NSL violations in 2013 were criminal prosecutions of lawmaker Lee Seok-ki and six other members of the Unified Progressive Party (UPP). In February 2014, this group was found guilty of violating the NSL and other charges. On appeal, the Seoul High Court reduced Lee's sentence to nine years for NSL violations and "inciting an insurrection." This was a reduction from the initial sentence of twelve years, with Lee being acquitted of the charge of "insurrection conspiracy". The verdict of the High Court was upheld in a Supreme Court decision in January 2015.

In parallel judicial proceedings, the Constitutional Court in December 2014 ruled to dissolve the UPP because the party had violated the country's "basic democratic order." This is a particularly alarming sign, as it is the first time a political party in South Korea was disbanded since 1958. The Venice Commission states, "The prohibition or dissolution of political parties as a particularly far-reaching measure should be used with utmost restraint." The South Korea government has not provided information that purports to show any clear link between the UPP and attempts to overthrow the state or that shows the UPP to be a danger to the democratic order in South Korea or to the rights of individuals.

In recent years, South Korea broadened the application of the NSL to new categories and additional groups of individuals, such as politicians, serving parliamentarians, and foreign nationals. In January 2015, US national Shin Eun-mi was deported for allegedly speaking positively about the DPRK. Her speech was in conjunction with promotion of her book, which was previously selected as an excellent book by the South Korean Ministry of Culture, Sport and Tourism. She was also interviewed in a documentary of the South Korean Ministry of Unification in September 2014. Hwang Seon, a national of the South Korea was also arrested on 14 January 2015 and has been charged under the NSL for causing social confusion through a speaking tour allegedly praising the DPRK regime. The tour took place in November 2014.<sup>20</sup>

The restrictions placed on the freedom of expression in the NSL do not meet the requirements of Article 19, Paragraph 3 of the ICCPR.<sup>21</sup> Despite the inquiry in the List of Issues on steps taken to amend the NSL, in particular the lack of clear definition of concepts contained within Article 7, the reply from the South Korean government failed to address this question on any progress made in changing the law or its application.

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<sup>20</sup> Amnesty International, "South Korea: National Security Law continues to restrict freedom of expression", 2015, <https://www.amnesty.org/en/documents/asa25/001/2015/en/>

<sup>21</sup> Amnesty International "The National Security Law: Curtailing freedom of expression and association in the name of security in the Republic of Korea," 2012, <http://www.amnesty.org/en/library/info/ASA25/006/2012/en>

# FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 9 & 21)

The Sewol ferry accident in April 2014, in which 304 people (mostly children) died, has generated a continuing series of peaceful demonstrations expressing discontent about the government's response to the accident. Police blockades of street rallies marking the one year anniversary of the accident occurred in 2015. During the evening of 16 April 2015, police used unnecessary force against participants of a vigil walk in memory of the victims near Gwanghwamun in central Seoul. In addition to using pepper spray, a police officer used his shield to push into the crowds, causing a woman (the mother of a child who died in the ferry accident) to suffer from fractured ribs. Ten people were arrested in clashes with police during the walk that same evening. Amnesty International also saw police officers on site with no visible identification numbers, making it possible for them to evade accountability. Police also prevented other family members from joining the protest and attempted to block people from providing food to the protesters.<sup>22</sup>

Seven human rights defenders had been detained as of 15 July 2015 for either organizing or participating in the protests related to the Sewol ferry accident. On July 14, Park Rae-goon and Kim Hye-jin were detained by police for organizing demonstrations to seek additional action from the government in response to the accident in April and May this year. Park and Kim are both prominent human rights defenders and members of the standing committee for the group "April 16 Alliance" that is calling for an investigation into the accident. They had been under investigation for three months on charges which include violation of the "Assembly and Demonstration Act", and obstructing police in relation to the rallies. The police claim that some of these protests were illegal, even though the protesters were exercising their rights to freedom of expression and peaceful assembly.

# TRADE UNIONS AND FREEDOM OF ASSOCIATION (ARTICLE 22)

Amnesty International has previously noted that the South Korean authorities use vaguely worded clauses such as Article 314 of the Criminal Act (interference with business) and other laws – such as the Law on Assembly and Demonstration – to arrest trade union leaders exercising their rights. Several trade union leaders, including Kim Jung-woo, former leader of the Ssangyong Motor branch of the Korean Metal Workers' Union, were charged or

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<sup>22</sup> Amnesty International, "South Korea: Clampdown against Sewol ferry anniversary protest an insult to the victims", 2015, <https://www.amnesty.org/en/latest/news/2015/04/south-korea-clampdown-against-sewol-ferry-anniversary-protest-an-insult-to-the-victims/>

imprisoned for engaging in collective action and other legitimate union activities.<sup>23</sup>

Although the South Korean government finally granted legal status to the Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU) on 20 August, 2015, its earlier crackdown on the leadership of the MTU was a cause of particular concern. The MTU was formed in April 2005 for all migrant workers regardless of their immigration status. In June 2005, the Ministry of Labour (now the MOEL) rejected the MTU's notification of union establishment on the basis that irregular migrant workers do not have the same legally protected rights, including the right to freedom of association, guaranteed to other workers under South Korean law. The Supreme Court of Korea ruled on 25 June 2015 that irregular migrant workers have the same rights to form and join a union as other Korean workers, but the government continued to delay registering the MTU. The Seoul Regional Labour Office, demanded the MTU change its rules and regulations before granting registration in August. The restrictions on migrant workers, and particularly those with irregular status, to form and join trade unions, and access the independent advice and support they need to challenge discriminatory and exploitative working conditions remains a concern.

In addition, the MOEL also sought to deregister the Korean Teachers and Education Workers Union (KTU) in 2013 using Article 2 of the Teachers' Union Act, which prevents dismissed teachers from joining labour unions. Although the union was once restored its legal status on appeal, the decision on 28 May 2015 from the Constitutional Court upheld the constitutionality of Article 2 of the Teachers' Union Act, which provided the legal basis for stripping the KTU of its official status.<sup>24</sup>

## RECOMMENDATIONS

Amnesty International calls on the South Korea authorities:

*On the independence of the National Human Rights Institution:*

- To confirm if such procedures as publicizing vacancies of the members three months prior to the event, receiving recommendations on candidates from the general public, and delivering them to the appointing authorities were followed when deciding on the NHRCK Chairperson candidate; or to provide a valid reason for such exception and explain the selection process that was used if the post of Chairperson is an exception to this rule;
- To clearly specify the procedures of selection, appointment, removal and terms of tenure of the NHRCK members, and to perform these procedures independently, transparently, and in line with the "United Nations Principles relating to the Status of National Institutions" (adopted by the UN Commission on Human Rights in 1992, and later the UN General Assembly, known as "the Paris Principles");

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<sup>23</sup> Amnesty International, "South Korea: Demand release of trade union leader: Kim Jungwoo," 2014, <http://www.amnesty.org/en/library/info/ASA25/002/2014/en>

<sup>24</sup> Hankoryeh, "Court decision on teachers' union erodes the value of the Constitution," 29 May, 2015, [http://english.hani.co.kr/arti/english\\_edition/e\\_editorial/693439.html](http://english.hani.co.kr/arti/english_edition/e_editorial/693439.html)

*On the Death Penalty:*

- To commute all death sentences to terms of imprisonment, and to ratify the *Second Optional Protocol to the International Covenant on Civil and Political Rights* and eventually abolish the death penalty;

*On the freedom from trafficking, forced labour and discrimination of Migrant Workers:*

- To permit all EPS workers to change jobs without having to obtain a release form from their employer;
- To repeal article 63 of the Labour Standards Act and ensure that the rights which the Act protects, in particular in respect to work hours, daily breaks and weekly paid rest days, are extended to all workers, including migrant workers, irrespective of the sector they work in;
- To amend the current legislation to ensure that an application for a visa extension or a renewal is not restricted or refused on the basis that migrant workers have changed jobs,
- To allow greater flexibility in the time frame within which migrant workers have to secure new employment, for example, by extending the time limit to a year;
- To allow migrant agricultural workers to work in other sectors during the off season to ensure that the rights of migrant workers under the EPS and Labour Standards Acts are properly enforced, including through regular workplace inspections and the publication of annual reports recording the full details of the visits (e.g. the number and type of violations identified, the action taken to remedy the situation, the sanctions applied to employers who are in breach of their obligations, etc.);
- To ratify and fully implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, incorporate its provisions into domestic law and implement it in policy and practice;
- To ratify and implement the four fundamental ILO Conventions, which South Korea has yet to ratify: No. 29 on Forced or Compulsory Labour, No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on Right to Organise and Collective Bargaining, and No. 105 on Abolition of Forced Labour;

*On the right to freedom of conscientious objection to military service:*

- To immediately and unconditionally release all individuals imprisoned solely for exercising their right to refuse to perform military service in absence of a genuinely civilian alternative and refrain from imprisoning conscientious objectors in the future;
- To clear the criminal records and provide adequate compensation for conscientious objectors who have been imprisoned for refusing military service by reason of their conscientiously held beliefs;
- To bring national legislation into line with international standards by amending it to ensure that it provides for the recognition of conscientious objection and for a person to register his or her objection, and to ensure that, if conscientious objectors are not entirely exempted from military service, they have the option to perform an appropriate alternative non-punitive service of a genuinely civilian character which is under civilian

control and of a length comparable to that of military service;

- To ensure that conscientious objectors who perform alternative service are not discriminated against as far as any financial or other benefits are concerned, and that legislative provisions or regulations which take into account military service for employment or pension purposes apply also to alternative service;

*The rights to freedom of expression, assembly and association*

- To repeal or amend the NSL so that it conforms to international human rights law and standards and ensure it is not used arbitrarily or to harass and restrict the rights to freedom of expression, opinion and association;
- To thoroughly review current policing practices, including the training and deployment of all police officials, in particular the riot police, in crowd control and the regulations on the use of force by the police to ensure their compliance with South Korea's obligations under the Covenant, as well with the *UN Code of Conduct for Law Enforcement Officials*; the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; and other applicable international standards;
- To ensure that clear guidance and strict training is given to police officials on the appropriate use of police and security equipment and weaponry in accordance with international human rights law and standards;
- To immediately release human rights defenders who have been detained solely for peacefully exercising their right to freedom of expression and assembly, and to enable them to carry out their peaceful human rights activities without fear of arbitrary detention, harassment and intimidation in line with the UN Declaration on Human Rights Defenders and international human rights law and standards;
- To recognize the right of trade unionists and workers to organize and take part in legitimate and non-violent strike action without harassment or arrest, in accordance with their rights under international human rights law and labour standards; and
- To take steps to ensure that trade unionists are able to exercise their rights to freedom of association, in accordance with international labour standards and withdraw reservations to Article 22 of the ICCPR.



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