

[Joint NGO Submission]

**The Fifth Periodic Report on
the International Covenant on
Civil and Political Rights**

Republic of Korea

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South Korean Human Rights Organizations Network (119 NGOs)

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Minority Committee of the Justice Party, Sinnaneun Center Inc.: LGBTQ+ Art & Culture, Social and Labor Committee of Jogye Order of Korean Buddhism, Solidarity for HIV/AIDS Human Rights: Nanuri+, Solidarity for LGBT Human Rights of Korea, The Shop North West: Supporting the rights to know for LGBT, The Transgender Liberation Front, Tulip Solidarity for Transgender Youth Human Rights, Unninetwork, Yongsan Nanum House - Anglican Church of Korea, Youth PLHIV Community of Korea R), Research Institute of the Differently Abled Person's Right in Korea (RIDRIK), SARANGBANG Group For Human Rights, Solidarity Against Disability Discrimination, Solidarity of Mobility Right for Disabled, South Korean Coalition for Anti-discrimination Legislation, 『South Korean Human Rights Network in Response to the COVID-19』 (Activists group for Human Rights 'BARAM', Center for Health and Social Change, Dasan Human Right Center, Dongcheon Foundation, GongGam Human Rights Law Foundation, Gwang-Ju Human Rights Center 'Hwal JJak', HIV/AIDS Human Rights Activists Network Korea, Human Rights Movement Space 'Hwal', Human Rights Foundation SARAM, Korean Gay Men's Human Rights Group 'Chingusai', Korean Lawyers for Public Interest and Human Rights(KLPH), Korean People's Solidarity against Poverty, Korean Progressive Network 'Jinbonet', MINBYUN - Lawyers for a Democratic Society, People's Coalition for Media Reform(Media Reform), People's Health Institute, PINKS: Solidarity for Sexually Minor Culture & Human Rights, Protesting against Poverty & Discrimination Solidarity for Human Right, SARANGBANG Group For Human Rights, Seoul Human Rights Film Festival, Solidarity Against Disability Discrimination, Solidarity for LGBT Human Rights of Korea, Solidarity for Peace & Human Rights, Women with Disabilities Empathy), 『South Korean NGO TF to Monitor Government HR Policy』 (Korean House for International Solidarity, Dasan Human Rights Center, PINKS: Solidarity for Sexually Minor Culture & Human Rights, Activists group for Human Rights 'BARAM', Catholic Human Rights Committee, Korean Lawyers for Public Interest and Human Rights(KLPH), MINBYUN – Lawyers for a Democratic Society Minorities' Rights Committee), 『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(KLPH), SARANGBANG Group For Human Rights), Stand Up Against Sex-Trafficking of Minors, 『Truth and Justice Network of South Korean NGOs』 (Jeju Dark Tours, Korean Council for Democratic Martyr, MINBYUN-Lawyers for a Democratic Society Committee on Transitional Justice and Reparation, The April 9 Unification & Peace Foundation, The Center for Historical Truth and Justice, The Committee for the Truth Finding of the Brothers Home Incident, The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, The Truth Foundation), United Nations Human Rights Policy (KOCUN), Universal Birth Registration Network, World without War

Introduction

Driven by our unwavering commitment to upholding the principles of the International Covenant on Civil and Political Rights (ICCPR), we, a coalition of 119 Non-Governmental Organizations (NGOs) from the Republic of Korea, present this report to the esteemed Human Rights Committee. This report is submitted as part of the periodic review of the ROK's compliance with the Covenant, marking the country's fifth review.

The Covenant represents a global commitment to safeguarding and advancing the fundamental civil and political rights of all individuals, regardless of their nationality, race, gender, disability, sexual orientation, gender identity or social status. As a party to this critical international treaty, the ROK has an obligation to uphold these rights and report on its progress and challenges in doing so.

Specifically, during the fourth review, the Committee requested the ROK to provide information on the implementation of three specific recommendations within one year of the adoption of the concluding observations. These recommendations include Conscientious Objection, Discrimination on the Grounds of Sexual Orientation and Gender Identity, and Peaceful Assembly. The ICCPR Centre provided the ROK with an average rating of 2.6 out of 5 based on ratings of C, E, and C for each recommendation, which falls below the average standard.

Now, the ROK stands at a critical juncture, particularly concerning the state of civil and political rights. Our report for the fifth review contains crucial information regarding violations of the rights enshrined in the Covenant.

First, despite repeated commendations, critical recommendations such as the abolition of the death penalty, enactment of comprehensive anti-discrimination laws, and the decriminalization of defamation, remain unimplemented.

Second, with the advent of the new Yoon administration, concerns are growing regarding the deterioration of freedom of assembly and association, media freedom, and the active campaign against and blame placed on Civil Society and labor unions. All of these issues contribute to the shrinking and oppression of civil society.

Third, our report highlights significant challenges related to discrimination and inequality, particularly affecting women, the LGBTI community, people with disabilities, and immigrants. These issues demand urgent attention and concerted efforts for positive change.

Lastly, we have also covered and updated some issues not present on the list of issues, such as the Itaewon tragedy and the climate crisis.

Through this report, our aim is to illuminate the areas where the State report failed to provide accurate information on upholding civil and political rights in the ROK. We respectfully urge the Committee to carefully consider our concerns.

LOIPR 01

National Action Plan for the Promotion and Protection of Human Rights (“NAP”) [State Party Report 1]

The State Party has failed to implement the recommendations of the Human Rights Committee (“the Committee”) and the National Human Rights Commission of Korea (“NHRCK”), as well as the views of the civil society, in the development of the Third NAP (2018-2022). Despite 18 sectoral consultations, there is no mention of LGBT rights, undocumented migrants are referred to as “illegal aliens,” and there is no mention of freedom of association for public employees and the unemployed. Furthermore, public consultation on the Fourth NAP (2023-2028), which should have been established in 2022, has not even begun as of August 2023. The lack of a NAP for over a year reflects not only the current administration’s lack of awareness about the NAP, but also the absence of legislation regarding the NAP. In December 2021, the government proposed the Framework Act on Human Rights Policy, which would provide the legal basis for the establishment and implementation of the NAP, but it has not been properly debated in the National Assembly and is highly unlikely to be passed before the end of the 21st National Assembly's term in May 2024.

- Ensure civil society participation in the process of developing the Fourth NAP, and establish and implement the Fourth NAP in accordance with international human rights standards.
- Enact the National Human Rights Policy Framework Act, a law on the establishment and implementation of the NAP.

Measures to implement the Committee’s Views under the Optional Protocols [State Party Report 5-6]

The State Party has not only failed to establish procedures to implement the Committee's Views¹ under the Optional Protocol to the Covenant, but has actively opposed their implementation. When the victim filed a claim for state compensation in relation to the Committee's Views No. 2273/2013 of 12 July 2018 due to the government's inaction, the government argued in court that the Committee's recommendations were not legally binding and that its actions were justified, and the Supreme Court of Korea ruled in favor of the government on 1 June 2023.² The victim did not receive any remedy.

- Establish mechanisms and appropriate procedures to give full effect to and implement the Committee's Views under the Optional Protocol, in order to provide effective remedies in all cases of violation of the Covenant.
- Provide appropriate remedies to all victims to date, in line with the Committee’s Views.

¹ CCPR/C/123/D/2273/2013.

² Supreme Court Decision 2023Da204262, decided 1 June 2023.

LOIPR 02

Domestic application of international human rights instruments [State Party Report 16]

According to Article 6 of the Constitution, international human rights treaties ratified by the Republic of Korea (“ROK”) have the same effect as domestic laws. However, courts have rarely applied the provisions of international human rights treaties, and in the few cases where they have, only mentioned them in passing.³ In the Supreme Court's decision on conscientious objection to military service, the Covenant and the Committee's general comments were not mentioned in the majority opinion, but only in a separate concurring opinion of individual justices.⁴ The Daegu High Court's 2018 decision on religious freedom only made a passing reference to the Covenant in addition to Constitutional provisions.⁵ The issues addressed in the State Party's follow-up report, to which the Committee assessed the State Party's measures as either contrary to the Concluding Observations (E), irrelevant or not implemented (C),⁶ have not improved, but rather deteriorated. In late 2021, the government proposed the Framework Act on Human Rights Policy to reform the mechanism for the establishment of a national human rights policy, strengthen the human rights protection functions of local governments, implement the recommendations of international human rights bodies, and promote the corporate responsibility to respect human rights.⁷ However, no effort has been made to pass the bill since the change of government after the 2022 presidential election.

- Publish an official trial manual on international human rights law for legal practitioners including judges; list international human rights treaties and general comments in the legal database; and establish a program for the systematic and in-depth training of legal practitioners on international human rights law, to ensure that the provisions of international human rights substantively apply in judicial proceedings.
- Accelerate the enactment of the Framework Act on Human Rights Policy to establish a basic legal and institutional framework for the promotion and protection of human rights, including by providing a legal basis for the development of a national human rights policy and ensuring the implementation of the recommendations of international human rights bodies.

³ Judicial Policy Research Institute, “Applying International Human Rights Treaties by Korean Courts: Normative Status and Interpretive Challenges,” 2020.

⁴ Supreme Court Decision 2016Do10912, decided 1 November 2018.

⁵ Daegu High Court Decision 2018Nu3005, decided 21 September 2018.

⁶ Human Rights Committee, Discontinuance of the follow-up procedure/request for additional information (letter dated 8 November 2018).

⁷ Ministry of Justice press release, “The Cabinet meeting passed The Framework Bill on Human Rights Policy to establish an international human rights policy promotion system,” 28 December 2021 .

Occupational health and safety for migrant workers [State Party Report 9-13]

The State Party claims it provides safety education and check the implementation of safety measures, but the number of industrial accidents and deaths among migrant workers has not decreased. According to the 2022 edition of the Employment and Labor White Paper published by the Ministry of Employment and Labor, the average number of migrant workers killed in industrial accidents in the last five years (2017-2021) was 123.8 per year. This is more than twice the rate for Korean nationals.⁸

- Take comprehensive measures to prevent migrant worker accidents in workplaces, strengthen safety inspections of workplaces employing migrant workers, and provide support measures such as safety devices and safety facilities.
- Require all workplaces employing migrant workers to join the Industrial Accident Compensation Insurance.

Migrant workers' human rights / Employment Permit System [State Party Report 14-15]

Many migrant workers who entered the ROK under the Employment Permit System suffered from de facto forced labor in appalling working and living conditions, due to the extremely difficulty in changing workplaces without the employer's consent.⁹ However, on 5 July 2023, the government's Foreign Workforce Policy Committee announced that, in addition to the existing restrictions on changing workplaces, migrant workers newly entering ROK from September 2023 will be restricted to changing workplaces only within certain regions.¹⁰ This violates the right to freedom of choice of workplace, freedom of residence and movement. In addition, in the freezing winter of 2020, a Cambodian worker died in a greenhouse provided under the Employment Permit System¹¹ but "temporary buildings" such as greenhouses and cargo containers continue to be offered as accommodation to migrant workers.

- Repeal the restriction of workplace changes to certain regions and ensure migrant workers' freedom to change workplaces, in compliance with the ILO Forced Labour Convention.
- Ban the use of temporary buildings such as greenhouses, cargo containers, and prefabricated panels for accommodation of migrant workers and improve accommodation standards.

⁸ Ministry of Employment and Labor, *Employment and Labor White Paper*. https://www.moel.go.kr/info/publicdata/majorpublish/majorPublishView.do?bbs_seq=20220601277.

⁹ In 2018, the UN Committee on the Elimination of Racial Discrimination recommended that "the Employment Permit System and other legislation applicable to migrant workers be amended to: a) facilitate family reunification; **b) remove restrictions that prevent them from changing their workplaces** ; c) extend the maximum period of stay; and d) allow them to obtain other types of visas". CERD/C/KOR/CO/17-19, para. 10.

¹⁰ Hankyoreh, "Government restricts 'regional movement' of migrant workers, to take effect from September", 5 July 2023. <https://n.news.naver.com/article/028/0002646848?sid=102>.

¹¹ GLOBE, "Death in Greenhouse," 15 October 2021, <https://southeastasiaglobe.com/death-in-a-greenhouse/>.

- Increase significantly labor inspections of workplaces employing migrant workers and impose penalties for employers who violate the working and living standards.

LOIPR 03

Measures to ensure the independence of the National Human Rights Commission of Korea [State Party Report 19]

Regarding the selection of members of the National Human Rights Commission of Korea, a single independent selection committee recommended by GANHRI-SCA to the NHRCK in October 2021¹² has still not been formed. The President forms a candidate selection committee, but the National Assembly and the Supreme Court do not form it or provide compositional information. Therefore, the current laws of the NHRCK do not guarantee the formation of the NHRCK with various backgrounds in accordance with the Paris Principles. As a result, concerns in Asian civil society have recently been publicly announced about a standing commissioner who undermines the independence of the NHRCK.¹³ The 2021 recommendation by the GANHRI-SCA recommends the State Party to ensure the financial autonomy of the NHRCK. Also, related laws have not been passed.

- Pass legislation to set up a single candidate selection committee, as recommended by GANHRI.
- Pass legislation to guarantee the financial autonomy of the NHRCK, as recommended by GANHRI.

LOIPR 04

Remedies for corporate human rights abuses [State Party Report 20-26]

The State Party has failed to establish an effective system to realize the corporate responsibility to respect human rights. The Guidelines on Business and Human Rights published by the Ministry of Justice in 2021¹⁴ are non-binding. There has been no policy or legislative proposal related to human rights and environmental due diligence. The government has failed to ensure that victims of human rights abuses by South Korean companies have access to effective remedies. The Korean National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises does not include labor unions and civil society members in its composition and rarely communicates with them, despite the recommendations of the 2021 Peer Review

¹² GANHRI-SCA REPORT, Oct. 2021, pp. 11-12, https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf.

¹³ [Open Letter] The anti-human rights behaviour of Lee Choong-sang, a Standing Commissioner of the National Human Rights Commission of Korea, 3 July 2023, <https://forum-asia.org/?p=38388&nhri=1>.

¹⁴ Ministry of Justice, Guidelines on Business and Human Rights, December 2022, https://viewer.moj.go.kr/skin/doc.html?rs=/result/bbs/51&fn=temp_1672625107878100.

report¹⁵ that recommended key stakeholders such as civil society members and labor unions be structurally represented or have regular and meaningful direct communication channels. Such structural flaws have led to a string of business-friendly decisions. The labor management grievance settlement units within each Korean embassy exist for Korean employers and failed to provide remedy for victims. Grievance procedures within public institutions, introduced by their human rights-based management policy, only provide perfunctory rather than effective remedy for victims.

- Enact a human rights and environmental due diligence law to ensure that businesses fulfill their responsibility to respect human rights and that victims of corporate human rights abuses have access to effective remedies across borders and regardless of where they are situated in the supply chain.

LOIPR 05

Comprehensive Anti-Discrimination Legislation [State Party Report 34]

The adoption of a comprehensive anti-discrimination legislation has been recommended not only by the Committee in 2015, but also by all other relevant treaty bodies including CESCR,¹⁶ CEDAW,¹⁷ CERD,¹⁸ and CRC.¹⁹ During the State Party's Fourth Cycle of the Universal Periodic Review (UPR) in 2023, 17 states recommended the adoption of a comprehensive anti-discrimination legislation. However, to these recommendations from the UPR, the State Party replied that it "faces difficulties in taking immediate actions in a short period of time."²⁰ While the State Party replied that it will "deliberate ways to effectively amend the current legal framework" in response to the relevant section of the List of Issues Prior to Reporting ("LOIPR"),²¹ it has failed to make any actual effort to do so, such as by conducting research or campaigns.

- Enact a comprehensive anti-discrimination legislation that explicitly addresses all spheres of life, defines and prohibits discrimination on any ground, including race, sexual orientation and gender identity, imposes sanctions for direct and indirect discrimination committed by both public and private entities, and provides effective remedies.
- Review the four bills for comprehensive anti-discrimination legislation currently introduced in the National Assembly.

¹⁵ OECD (2021), OECD Guidelines for Multinational Enterprises National Contact Point Peer Reviews: Korea, <https://mneguidelines.oecd.org/ncppeerreviews.htm>

¹⁶ E/C.12/KOR/CO/4, para. 23.

¹⁷ CEDAW/C/KOR/CO/8, para. 13.

¹⁸ CERD/C/KOR/CO/17-19, para. 5.

¹⁹ CRC/C/KOR/CO/5-6, para. 17.

²⁰ A/HRC/53/11/Add.1, para. 8(a).

²¹ CCPR/C/KOR/5, para. 34.

Discrimination against North Korean defectors [State Party Report 29-30]

According to a survey conducted by the Korea Hana Foundation²² in 2021, the “defectors” from the Democratic People’s Republic of Korea (“North Korean defectors”) face difficulties such as differences in speech patterns, lifestyles, and tax burdens, and experience discrimination or alienation due to negative perceptions of North Korean defectors. In addition, 13.3% of North Korean defectors experienced suicidal impulse due to economic and other difficulties, which was 2.5 times higher than the general population's 5.2%.²³ The arbitrary detention and interrogation of all North Korean defectors²⁴ at the “Freedom Nuri Center”²⁵ and the constant surveillance of all North Korean defectors by the police through the “personal protection officer system”²⁶ contribute to the social stigma and the internalization of discriminatory attitudes.

- Abolish the Freedom Nuri Center, where all North Korean defectors are subjected to prolonged detention and coercive interrogation upon arrival, and abolish the police personal protection officer system, which has been used to monitor North Korean defectors for decades.
- Integrate the social assistance for North Korean defectors into the current general social security system and implement protection measures to prevent discrimination against North Korean defectors.

LOIPR 06

Discrimination and violence against LGBTI persons [State Party Report 38-46]

Discrimination in the law and policy based on sexual orientation and gender identity has not been addressed since the last review. Article 92-6 of the Military Penal Code criminalizes same-sex sexual contact in the armed forces.²⁷ While the Supreme Court acquitted two soldiers who engaged in sexual contact outside the

²² A non-classified public institution under the Ministry of Unification established by the North Korean Defectors Protection and Settlement Support Act, also known as the North Korean Refugees Foundation.

²³ Korea Hana Foundation, “2021 Social Integration Survey of North Korean Refugees in South Korea,” 2022.

²⁴ Offices of the Policy Committee Chair of the Democratic Party, the People Power Party and the Justice Party & Korean Bar Association, “Symposium on the problems and ways of improvement of administrative detention from human rights’ perspective,” 29 November 2016.

²⁵ Also known as the Protection Center for North Korean Defectors, formerly the Government Joint Investigation Center.

²⁶ Korean National Police Agency, “Seminar on improving the person protection system for North Korean defectors for human rights-friendly protection of North Korean defectors,” 12 June 2019.

²⁷ Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labor for not more than two years.

barracks in April 2022,²⁸ Article 92-6 still criminalizes same-sex sexual contact, and the military still disciplines consensual sex between people of the same sex.²⁹ Therefore the provision itself should be repealed.

The Supreme Court's guidelines for legal recognition for transgender people are intrusive, requiring them to be sterile, have undergone external genitalia surgery, not be married, and not have minor children.³⁰

In the ROK, same-sex couples are not guaranteed any rights under the law. In 2021, a same-sex couple filed a lawsuit to recognize their status as dependents under the National Health Insurance Act³¹ and the case is pending before the Supreme Court as the National Health Insurance Service appealed.

- Repeal Article 92-6 of the Military Penal Code, which criminalizes same-sex sexual contact.
- Improve the legal system to ensure that same-sex couples are not subject to economic and social discrimination, including by amending the Civil Code.
- Abolish invasive requirements for gender reassignment for transgender people, including the removal of reproductive capacity, surgical procedures, and the absence of minor children.
- Develop public campaigns and training for public officials to promote sensitivity and respect for diversity in sexual orientation and gender identity.

LOIPR 07

Gender discrimination in the workplace [State Party Report 47-48]

Although the gender wage gap is a structural problem, the State Party has abdicated its responsibility by insisting that there is no structural gender inequality. Most of the labor policies promoted by the government are business-friendly but anti-gender equality. The government has announced these policies without careful consideration or social consultation, confronting the labor groups and workers. Some of the controversial policies include the sectoral differentiation of the minimum wage, the extension of working hours of up to 69 hours, and the introduction of migrant domestic workers paid below the minimum wage. These policies are expected to exacerbate the already problematic gender wage gap by increasing women's unpaid work, especially in the low-wage sector dependent on the minimum wage. Korean women perform 215 minutes of unpaid care work per day, compared to men's daily unpaid work of 49 minutes³². The minimum wage is announced to increase by 2.5% in 2024, which is the second lowest increase. All these policies will pose

²⁸ The Guardian, "South Korea's highest court overturns military convictions of two gay soldiers," 22 April 2022 <https://www.theguardian.com/world/2022/apr/22/south-koreas-highest-court-overturns-military-convictions-of-two-gay-soldiers>.

²⁹ Appendix 1, Table 3 of the Military Disciplinary Regulations stipulates 'misconduct' as a separate disciplinary ground and stipulates disciplinary modalities such as 'sexual harassment.'

³⁰ Guidelines on the Clerical Processing of Cases of Transsexuals' Application for Legal Sex Reassignment (revised on 2 Feb.2020 [Established Rules on Family Relationship Registration No. 550; implemented on 16 Mar, 2022]; in Korean).

³¹ Yonhap News, "Same sex couple loses suit against state health insurer over spousal coverage", 7 January 2022 <https://en.yna.co.kr/view/AEN20220107006200315>.

³² OECD, "Employment: Time spent in paid and unpaid work by sex," <https://stats.oecd.org/index.aspx?queryid=54757> .

serious threats to low-wage women workers who disproportionately bear the responsibility of unpaid care work.

- Provide policy measures to eliminate structural gender discrimination in the workplace including the gender wage gap and gender discrimination in hiring.

Women's representation in public and private sectors [State Party Report 49-51]

National machinery for gender equality

The Ministry of Gender Equality and Family (MOGEF), created in 2001, has existed as a ministry for about 20 years, but operates with an extremely inadequate budget (0.24% of the annual national budget, 2023)³³ and human resources (279 officials, 2022).³⁴ President Yoon promised to abolish the MOGEF during his presidential campaign, claiming that there is no systemic gender discrimination in Korea and therefore no longer a need for the MOGEF. On October 7, 2022, a government organization reform bill, including the abolition of the MOGEF and the establishment of the Office of Population, Family and Gender Equality, under the Ministry of Health and Welfare (MOHW), was proposed with the support of all ruling party lawmakers.³⁵ The government continues to claim that abolition of the MOGEF will not lead to a weakening of the existing policies of the MOGEF.³⁶ However, if the MOGEF is abolished, the coordination and integration mechanism for gender equality policies among ministries and local authorities will shrink or even disappear completely; The mandates given to the head of the ministry, including the mandates to 1) deliberate and decide on important policies as a member of the State Council and 2) propose bills and issue ordinances on matters under its jurisdiction, will be lost; The Gender Equality and Family Committee, a standing committee of the National Assembly, will also be abolished; and the legal and policy framework for women's rights will become fragmented and lose priority, leading to a deterioration in the human rights of women and vulnerable groups.³⁷

- Withdraw the plan to abolish the MOGEF immediately and establish the Office of Population, Family and Gender Equality under the MOHW, and provide concrete plans to strengthen the MOGEF to

³³ Ministry of Economy and Finance, Budget status per ministry (2023), <https://www.data.go.kr/data/15095848/fileData.do>.

³⁴ Ministry of Government Legislation, organizational structure of the MOGEF, <https://www.law.go.kr/lsBylInfoPLinkR.do?lsiSeq=245943&lsNm=%EC%97%AC%EC%84%B1%EA%B0%80%EC%A1%B1%EB%B6%80+%EC%A7%81%EC%A0%9C&bylNo=0001&bylBrNo=00&bylCls=BE&bylEfYd=20221213&bylEfYdYn=Y>.

³⁵ The bill was passed in February 2023, and the provision to abolish the MOGEF was removed in the final negotiations. As of August 2023, the MOGEF still exists, but the original bill to abolish the MOGEF has not been completely repealed and is still pending in the NA.

³⁶ Response of the Government of the Republic of Korea to the Joint Communication from Special Procedures, 21 July 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37621>

³⁷ The Kyunghyang Shinmun, "The MOGEF again pushes for the "deletion of the term 'women'" by removing the word "women" from the name of a policy it has been promoting for 10 years"(in Korean), 20 July 2023, <https://www.khan.co.kr/national/national-general/article/202307201011001>.

enable it to effectively carry out its mandate to address structural gender discrimination and promote gender equality.

Women's representation in the public sector

Under the Second 5-year Plan to Improve Women's Representation in the Public Sector (2018-2022), the government has been monitoring its implementation progress every year. As of 2022, the proportion of women at the senior managerial levels in the central administrative bodies is still 11.2% and those at Level 4 or above is 26.4%; women senior managers at Level 5 or above in local governments is 27.4%; women executives in public institutions is 23.6%; women senior managers in local public enterprises is 12.9%; women professors in national universities is 20.2%; women senior military officers is 9%; and women senior police officers is 5.7%³⁸. These figures show that most of the goals of the Plan have not been achieved or the goals themselves have been set very low. The proportion of seats held by women in the National Assembly is 57 out of 300 (19%), which ranks 34th out of 38 OECD countries and is far below the world average of 25.6% (as of 2021).

- Implement mandatory gender-balanced recruitment in all decision-making positions in all public sectors, and revise the Public Official Election Act, the Political Parties Act, etc., to ensure that each party's candidates in general and local elections do not exceed 60% of one gender.

LOIPR 08

Access to safe abortion after the Constitutional Court's ruling [State Party Report 81-82]

Following the Constitutional Court's April 2019 ruling that the law criminalizing abortion was unconstitutional, the government should have moved forward with a legal and policy framework that guaranteed, rather than controlled, the reproductive rights of women seeking to safe abortion. However, the bills proposed by the Ministry of Justice and the Ministry of Health and Welfare included provisions on gestational limits and permissible grounds, and additional requirements for abortion, which still aimed to control and restrict women's rights, and were therefore strongly opposed by the women's groups, CSOs³⁹ and the NHRCK⁴⁰. In the absence of a policy to fully guarantee the rights of women seeking abortion in 2023, women's health and reproductive rights continue to be violated due to extremely limited health insurance coverage for abortion and

³⁸ Mun Mi-kyung et.al. (2023), "The implementation status of the Plan to Improve Women's Representation in the Public Sector (2018-2022) and setting future goals," Korean Women's Development Institute.

³⁹ Today Shinmun, "Ministry of Justice proposed 'Abortion Law Amendment'...Women's groups oppose the plan to retain punitive provisions"(in Korean), 27 October 2020, <https://www.ntoday.co.kr/news/articleView.html?idxno=7508>.

⁴⁰ Lawtimes, "Maintaining a law criminalizing abortion is a human rights violation...NHRCK recommends reconsideration of Criminal Act amendment bills"(in Korean), 31 December 2020, <https://www.lawtimes.co.kr/news/166954>.

a delay in the approval of an abortion pill that has already been approved as a safe medicine by the WHO⁴¹. There is an urgent need to establish legal and policy frameworks to ensure universal access to reproductive rights throughout the cycle of contraception, pregnancy, termination of a pregnancy, childbirth, and child-rearing.

- Provide information for lack of practical policies to guarantee access to abortion as a fundamental right of women, although abortion has been decriminalized.
- Provide concrete plans to establish legal and policy frameworks to guarantee reproductive rights throughout the cycle of contraception, pregnancy, termination of a pregnancy, childbirth, and child-rearing.

Gender-based Violence [State Party Report 55-75]

Due to the low⁴² level of trust in law enforcement, reporting rates of violence against women, including domestic violence, are overwhelmingly low. Even when reported, perpetrators are not adequately punished. Specifically, the indictment rate for domestic violence is 10.1%,⁴³ which indicates domestic violence is virtually unpunished.⁴⁴ This is because the purpose of the Act on Special Cases Concerning The Punishment

⁴¹ SBS News, "Still outside the law...seeking abortion pills like drugs" (in Korean), 12 April 2023, https://news.sbs.co.kr/news/endPage.do?news_id=N1007151822

⁴² Only 0.8% of domestic violence victims (Ministry of Gender Equality and Family, 2022 Survey on Domestic Violence, 2023), and 2.6% of sexual violence victims (Ministry of Gender Equality and Family, 2022 Survey on Sexual Violence, 2022) report to the police, respectively.

⁴³ <Status of handling domestic violence cases>, Office of Rep. Chun-sook Jeong, 2021 data of the National Police Agency and the Ministry of Justice, September 2021

Year	Number of Complaints (person)	Total Domestic Violence Cases Referred to Prosecution (person)	Outcome (person)									
			Total	Prosecutions				No-Charges	Deferred Prosecutions		Family Protection Accidents	Etc
				Sub-total	Arrested	Without Detention	Summary Indictment		Suspension of Prosecution on condition of counseling	Etc		
2018	249,450	39,183	39,188	4,168	294	1,256	2,618	18,962	220	2,632	14,253	1,805
2019	240,594	53,364	53,238	4,993	389	1,451	3,153	25,441	34	3,764	19,818	2,986
2020	221,824	49,755	49,286	4,998	270	1,448	3,280	23,966	14	3,814	17,311	3,011

⁴⁴ 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., for protective orders (Article 9). According to the 2021 Domestic Violence Judicial Action Report by the National Police Agency, among the 53,985 domestic violence offenders, 46% (24,867) were transferred as home protection cases. According to the 2022 Judicial Statistics by the Supreme Court, 19,321 persons were handled as home protection cases in 2021, among which 44.5% (8,603 persons) did not receive

of Crimes of Domestic Violence focuses on ‘family maintenance.’⁴⁵ Also, only 4.8% of stalking cases transferred to the prosecution have led to arrests since the Act on Punishment of Crime of Stalking was enforced in 2021.⁴⁶

The international community including the Committee⁴⁷ has recommended the State Party should define⁴⁸ all forms of rape in terms of absence of consent rather than violence or intimidation.⁴⁹ However, the government has opposed the amendment of legislation⁵⁰. According to the analysis conducted by the Korean Association of Sexual Violence Relief Centers, 71.4% (2019) and 62.5% (2022) of rape counseling cases were not involved in direct violence or intimidation. Though, the government sticks to definition of rape accompanied with violence or intimidation. The current education programs to prevent violence against women and to promote

any disposition. Even though they were disposed of, most were “Diagnosis of and counseling” (24.8%, 4,803 persons) or “Order for community service or a lecture” (11.4%, 2,208 persons). On the contrary, only 0.1% (33 persons) were ordered “Restrictions on a domestic violence offender’s access to the victims or family members.” “Restrictions on a domestic violence offender’s exercise of parental authority over the victims” and “Entrustment to protective facilities for custody established under the control of or determined by the Minister of Justice” were never ordered.

- 2021 Reported Home Protection Cases by Charge (Source: 2022 White Paper on Crime, Institute of Justice, 2023)
 - Injury/Assault 74.8%(17,456 persons), Intimidation 12.1%(2,827 persons), Property Damage 11.4%(2,652 persons), Others 1.7%(384 persons), Abandonment/Abuse/Child Abuse 0.0%(6 persons)
- Dispositions results of Home Protection Cases in 2021 (Source: 2022 White Paper on Crime, Institute of Justice, 2023)
 - Protective orders 54.3% (10,438 persons), Non-disposition 44.5% (8,603 persons), Others 1.2% (235 persons)
 - Among Protective orders, 1-ho (Restrictions on a domestic violence offender's access to the victims or family members) 0.2%(31 persons), 2-ho (Restrictions on a domestic violence offender's access to the victims or family members through telecommunications) 0.0% (2 persons), 3-ho (Restrictions on a domestic violence offender's exercise of parental authority over the victims) 0.0% (0 person), 4-ho (Order for community service or a lecture) 11.4% (2,208 persons) , 5-ho (Probation under the Act on Probation) 7.0% (1,357 persons), 6-ho (Entrustment to protective facilities for custody established under the control of or determined by the Minister of Justice) 0% (0 person), 7-ho (Entrustment of the treatment of offenders to medical institutions) 0.6% (116 persons), 8-ho (Entrustment of the counseling for offenders to counseling centers) 44.5%(8,603 persons)

⁴⁵ Act On Special Cases Concerning The Punishment Of Crimes Of Domestic Violence. Article 1 (Purpose): The purpose of this Act is to help restore the peace and stability of a family destroyed by criminal domestic violence, maintain a healthy family environment and protect the human rights of victims and their family members, by providing for special provisions on procedures for the punishment of criminal domestic violence and by issuing protective orders to change an environment for the persons who have committed criminal domestic violence and to correct their personality and behaviors.

⁴⁶ According to the Status of cases received and handled regarding the Act On Punishment of Crime of Stalking submitted by the Ministry of Justice (2022) to Kwon In Suk, Member of the National Assembly, only 4.8% resulted in the imprisonment among the 3,182 stalking cases transferred to the prosecution from October 2021 when the Act On Punishment Of Crime Of Stalking was enforced, to June 2022.

⁴⁷ United Nations Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, para. 19.

⁴⁸ Article 297 (Rape): A person who, by means of violence or intimidation, has sexual intercourse with another shall be punished by imprisonment with labor for a limited term of at least three years.

⁴⁹ “Ensure that sexual assault, including rape, is characterized as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.”, Committee on the Elimination of Discrimination against Women, General recommendation No.35, para. 29(e), 2017; “Amend article 297 of the Criminal Code so as to place the lack of free consent of the victim at the centre of the definition and specifically criminalize marital rape”, Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of the Republic of Korea para. 23(a).

⁵⁰ In January 2023, the Ministry of Gender Equality and Family considered expanding the definition of rape to include non-consensual sex as part of the government’s third framework on gender equality policies, but withdrew the idea 9 hours after its announcement due to the objection of the Ministry of Justice. As a result, expanding the definition of rape to include non-consensual sex was withdrawn from the Yoon Administration’s gender equality agenda. Hankyoreh, “Classifying non-consensual sex as a rape was withdrawn from Yoon administration policy objectives in the end,” 24 July 2023, <https://www.hani.co.kr/arti/society/women/1101508.html>; The Korea Times, “Is non-consensual sex not rape?,” 1 February 2023, https://www.koreatimes.co.kr/www/nation/2023/07/113_344628.html.

awareness have been incomprehensive⁵¹, therefore ineffective. Governmental support including legal⁵² and medical aids, housing and monetary grants for self-reliance⁵³ that are only available in domestic violence victims shelters⁵⁴, has been insufficient for victims of violence against women. Despite this situation, the government attempted to abolish the Ministry of Gender Equality and Family⁵⁵ and removed the word "women" from the various mid- and long-term government plans and statistics⁵⁶ instead of strengthening policies and initiatives to eliminate and prevent violence against women from a gender equality perspective.

- Amend the purpose of the Act on Special Cases Concerning The Punishment of Crimes of Domestic Violence to ‘ensure the safety and human rights of victims’ instead of ‘maintain and protect the family.’
- Amend Article 297 of the Criminal Act from ‘violence or intimidation’ to ‘absence of consent’ as a constitutional requirement for the crime of rape.

⁵¹ In 2020, the Ministry of Gender Equality and Family made it mandatory for high-ranking officials to attend violence prevention education programs, with the stated aims of strengthening the response against sexual violence/harassment in the public sector. On October 5th 2022, the Ministry of Gender Equality and Family announced that the rate of participation in these education programs among public institutions consistently increased, reaching 99.8%. However, according to relevant data, 58.6% completed the education program through individual online lectures, and 11.8% through watching videos (Ministry of Gender Equality and Family Status Report on Sexual Harassment Prevention Education, Korean Statistical Information Service). Violence against women results from deep-rooted sexism, and it does not make sense to prevent it only through 4 hours of one-way education programs. The government’s attitude in announcing this as a success is also very problematic.

⁵² Free legal aid for sexual violence victims is very insufficient. According to the <2023 Women and Children Rights Project Guidelines>, the cost of legal aid per person is limited to 5 million won. The case on the merits is limited to 1.5 million won, while other collateral application cases such as adjudication and complaints are limited to 400 thousand won. Although victims are burdened by heavy legal fees due to the perpetrator’s counter-accusation, overlapping damage, and strict standards of constituting sexual violence, it is difficult for support institutions to link lawyers to the victim, as legal aid support is insufficient.

⁵³ As of 2022, the self-reliance support budget for domestic violence victims who leave protective facilities was merely 1.41 billion won (Ministry of Gender Equality and Family, 2023 Plan of Operation for the Gender Equality Fund, 2022). When we assume that we provide 5 million won per person (Ministry of Gender Equality and Family, 2022 Women and Children Rights Project Guidelines, 2022) at a total 65 shelters nationwide (Ministry of Gender Equality and Family, Operation Report of Domestic Violence Support Facilities in the First Half of 2022, 2022), the budget can only support 4 victims per shelter. Considering that an average 23.8 people entered a shelter in 2021 (Ministry of Gender Equality and Family, Operation Report of Domestic Violence Support Facilities in the First Half of 2022, 2022), the self-reliance support budget is extremely insufficient. Meanwhile, those who leave the shelter for sexual violence victims can be provided 5 million won of self-reliance support, within two months before and after they leave. However, the conditions are very strict; only those who enter the shelter as a minor under the age of 19, stay more than a year and then leave the shelter as an adult can receive the support (Ministry of Gender Equality and Family, 2022 Women and Children Rights Project Guidelines, 2022).

⁵⁴ It is estimated that only a minimal portion of domestic violence victims enter protective facilities (shelters). In 2020, there were 221,824 domestic violence reports and 230,578 domestic violence counseling cases, but only 1,702 people entered the shelters. In addition, the number of people in the shelters is rapidly decreasing; 3,415 in 2016, 2,704 in 2018, and 1,702 in 2020 (Ministry of Gender Equality and Family, Operation Report of Domestic Violence Support Facilities in the First Half of 2022, 2022). For domestic violence victims who do not enter the shelters, it is difficult to access most of the self-reliance support programs.

⁵⁵ President Yoon Suk Yeol has pledged to abolish the Ministry of Gender Equality and Family since his presidential campaign. In October 2022, the Yoon administration announced the plan to abolish the Ministry, and instead establish the “Office for Population, Family and Gender Equality” under the Ministry of Health and Welfare. Due to strong resistance from citizens, this plan was blocked at the National Assembly. However, many are concerned that the agenda of abolishing the Ministry of Gender Equality and Family might be tried again as a political tool under the Yoon administration. Women News, [1 year of Yoon Administration, Where is Gender Equality] “Abolish the Ministry of Gender Equality and Family? Now we must seek another way,” 11 May 2023, <http://www.womennews.co.kr/news/articleView.html?idxno=235682>; Korea JoongAng Daily, “Yoon gov’t will scrap Gender Ministry,” 6 October 2022, <https://koreajoongangdaily.joins.com/2022/10/06/national/socialAffairs/korea-genderministry-ministry-of-gender-equality-and-family/20221006182655993.html>.

⁵⁶ Hankyoreh, “Ministry of Public Administration and Security seeks to remove gender equality indexes during municipality evaluation,” 24 July 2023, https://www.hani.co.kr/arti/area/area_general/1101548.html; Kyunghyang Shinmun, “The Ministry of Gender Equality and Family again tries to ‘erase women’: removed the word ‘women’ in a 10-year-old policy,” 20 July 2023, <https://www.khan.co.kr/national/national-general/article/202307201011001>.

- Strengthen policies to eliminate and prevent violence against women and establish an independent implementation system based on a gender equality perspective.
- Secure national general budget for the elimination and prevention of violence against women and increase legal and medical aids, grants, and housing supports for victims.

LOIPR 09

Act on Counter-Terrorism for the Protection of Citizens and Public Security [State Party Report 83-86]

The State Party has stated that it has clearly defined concepts related to terrorism, that information can only be collected under strict procedures under other laws, and that there are sufficient safeguards to protect human rights. However, concepts such as 'terrorist suspect,' 'counter-terrorism activities' and 'counter-terrorism investigation' are vague and their meaning can be indefinitely expanded by the intelligence services.⁵⁷ In addition, other laws recognize exceptions to counter-terrorism activities, allowing for warrantless collection of personal information,⁵⁸ and the Director of the National Intelligence Service is granted unchecked authority to conduct counterterrorism investigations and surveillance.⁵⁹ The Counter-Terrorism Human Rights Protection Officer is not an independent and effective safeguard for the protection of human rights, as there is only one officer.⁶⁰

- Repeal the Counter-Terrorism Act, which gives the National Intelligence Service excessive powers, including broad warrantless intelligence collection.
- Establish procedures for independent oversight of counterterrorism activities and safeguards to protect human rights.

LOIPR 10

Abolition of the Death Penalty [State Party Report 87]

Since the last execution on 30 December 1997, more than 25 years have passed without any executions. The State Party has officially confirmed its stance against carrying out executions by voting in favor of the "death penalty moratorium" resolution adopted by the United Nations General Assembly's three committees in 2020

⁵⁷ Article 2 3., 6., 8. of Act On Counter-terrorism For The Protection Of Citizens And Public Security, available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=57493&lang=ENG.

⁵⁸ Article 7 (1) of Protection Of Communications Secrets Act, available at: https://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=59856.

⁵⁹ Article 9 (3) and 9 (4) of Act On Counter-terrorism For The Protection Of Citizens And Public Security, available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=57493&lang=ENG.

⁶⁰ Article 7 (1) of Act On Counter-terrorism For The Protection Of Citizens And Public Security, available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=57493&lang=ENG.

and 2022⁶¹. However, in a public hearing held in July 2022 at the Constitutional Court, which is reviewing the unconstitutionality of the death penalty, the State Party said it has no intention of abolishing the death penalty, claiming that "the existence of the death penalty is not the criterion for determining a human rights state."⁶² While prosecutors continue to seek the death penalty, there have been no confirmed death penalty cases at the Supreme Court from 2017 to August 2023. As of August 2022, there were a total of 59 death row inmates, with 55 housed in the Justice Department correctional facility and 4 in the military correctional facility.

- Declare a moratorium on executions officially and commute the sentences of all death row inmates to life imprisonment.
- Enact the Special Act on the Abolition of the Death Penalty to achieve the complete abolition of the death penalty, and promptly ratify the Second Optional Protocol to the Covenant.

LOIPR 11

Suicide [State Party Report 88-90]

While the State Party's suicide prevention master plan mentions tailored counseling for groups at high risk of suicide,⁶³ there is no measure to address the social root causes, including excessive stress in education and work, poverty among the elderly, and discrimination and hate speech experienced by certain groups, such as LGBT people, as recommended in the 2017 Concluding Observations of the CESCR⁶⁴. While the State Party has announced plans to improve suicide prevention, the number of suicides in the country has increased to 26 per 100,000 in 2018, far from reaching the target of 17 per 100,000 in 2022.⁶⁵ Despite the ongoing severity of suicide, only 0.01% of the national budget is allocated to suicide prevention.⁶⁶ Suicide prevention is not only a matter of central government policy, but also a matter of local community action,⁶⁷ but the State Party has centralized and controlled suicide prevention and has done very little to support local governments.⁶⁸

⁶¹ Hankyoreh, "The government votes in favor of 'death penalty moratorium' at UN General Assembly, second time after the last government."

⁶² The Korean Legal News, "'Respect for the right to human life' vs 'inevitable for the public good' a public hearing of the death penalty."

⁶³ Fifth National Suicide Prevention Basic Plan(2023-2027), April 2023, pp. 29-34.

⁶⁴ E/C.12/KOR/CO/4, paras. 55-56.

⁶⁵ According to the National Suicide Prevention Basic Plan (kfsp.or.kr) released by the Korea Foundation for Suicide Prevention, the country is not achieving any of its planned suicide prevention goals. In 2018, the target for 2022 was 17 per 100,000 people, but the current rate is 26 suicides per 100,000 people in 2021.

⁶⁶ South Korea's suicide rate has long ranked first among OECD countries, but only 0.01% of the budget is spent on prevention | JoongAng Ilbo (joongang.co.kr) Most suicide prevention centers have a total budget of less than 200 million won with only four staff members. The budget for suicide prevention is 36.8 billion won, or 0.0007%, of the total budget for 2021, and all the plans in the report are difficult to implement or are only implemented formally.

⁶⁷ WHO, Preventing suicide: A global imperative, 2014.

⁶⁸ National Assembly Future Institute, "National Future Strategy Insight No. 22, High Suicide Rate: What's the Problem, What's Not?," pp. 51-52. The Welfare Ministry has only expanded its organization and budget at the higher levels of the central government, such as the Suicide Prevention Policy Division, Presidential Committee of National Cohesion and the Korea Foundation for Suicide Prevention.

Currently, the information on suicide provided by the central government is insufficient for local communities to carry out suicide prevention projects in accordance with local realities.⁶⁹

- Implement measures to address the social root causes of suicide, including oppressive educational and working environments, poverty, hatred and discrimination.
- Increase suicide prevention budgets and devolve necessary information and authority and allocate appropriate budget to local governments.
- Actively publish statistics on suicide and immediately communicate trends to support suicide prevention efforts.
- Actively implement effective suicide prevention policies.

The infringement of the right to life and the right to effective remedy in relation to the 29 October Itaewon Disaster

On 29 October 2022, a crowd crush occurred to the people who visited Itaewon during Halloween festivities, resulting in 159 people killed⁷⁰ and hundreds injured.⁷¹ Even though a large crowd was clearly expected, the government failed to take preventive measures and failed to respond to several reports from people at the scene who sensed danger. After the disaster occurred, the government conducted only perfunctory investigations of low-level officials and refused to explore the responsibility of superior officials. The government failed to conduct comprehensive investigations on fact-finding and accountability, as demanded by the victims and bereaved families. To date, the government has refused to address questions raised by the victims and their families or to take measures for adequate reparation and memorialization. Measures, including an independent fact-finding investigation into the circumstances that led to the violations of the right to life and holding accountable those found responsible,⁷² must be taken to provide effective remedy to victims.

- Take all necessary measures to provide adequate reparation and memorialization for victims and bereaved families, and establish comprehensive plans to determine the truth, hold accountable those responsible, and guarantee non-recurrence.
- Enact the Special Act on the October 29 Disaster promptly, and support the fact-finding investigation by establishing an independent investigative body according to the Act.

⁶⁹ Research on how to establish suicide prevention statistics (2018), Professor Myung Ki, Preventive Medicine Department, Medical College, University of Korea. Flexer Server (opm.go.kr).

⁷⁰ Including the death by suicide of one injured victim 45 days after the disaster.

⁷¹ Including one injured person who is still in coma since the disaster.

⁷² CCPR/C/GC/36, paras. 27-28.

LOIPR 12

Punishment on torture and ill-treatment [State Party Report 92-93]

Despite the government's explanation that torture and ill-treatment are punishable under the provisions of the Criminal Act and the Act on the Aggravated Punishment, etc. of Specific Crimes, these laws do not cover torture or cruel, inhuman or degrading treatment or punishment under the Covenant, and the scope of punishment is limited to certain law enforcement officials.⁷³

- Criminalize torture and cruel, inhuman or degrading treatment or punishment under the Covenant and take the necessary legislative measures to implement it.

Limits on use of all-night interrogations [State Party Report 94]

Through the Regulations on the Mutual Cooperation of Prosecutors and Judicial Police Officers and the General Standards of Investigation, the National Police Agency and the Public Prosecutor's Office prohibit investigations between 9 p.m. and 6 a.m. in principle. However, a wide range of exceptions are provided for, including the inspection of documents that are part of the investigation and the determination of whether to apply for detention, as well as cases in which the nature of the case makes late-night investigations unavoidable, resulting in de facto all-night interrogations.⁷⁴

⁷³ Article 124 of Criminal Act(Unlawful Arrest and Unlawful Confinement) (1) If a person who performs or assists in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body, arrests or imprisons another by abusing his or her official authority, he or she shall be punished by imprisonment with labor for not more than seven years and suspension of qualifications for not more than ten years;

Article 125 of Criminal Act (Violence and Cruel Act) A person who, in performing or assisting in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body, commits an act of violence or cruelty against a criminal suspect or against another person while performing his or her duties, shall be punished by imprisonment with labor for not more than five years and suspension of qualifications for not more than ten years.

Article 4-2 of Act On The Aggravated Punishment Of Specific Crimes (Aggravated Punishment of Arrest and Confinement) (1) Any person who commits a crime provided for in Article 124 or 125 of the Criminal Act, resulting in the injury of any person, shall be punished by imprisonment with labor for a limited term of not less than a year. (2) Any person who commits a crime provided for in Article 124 or 125 of the Criminal Act, resulting in the death of any person, shall be punished by imprisonment with labor for an indefinite term or by imprisonment with labor for not less than three years.

⁷⁴ Regulations on the Mutual Cooperation of Prosecutors and Judicial Police Officers and the General Standards of Investigation, Article 21 (Limits on Late-night Investigations)

① A prosecutor or judicial police officer shall not conduct an investigation (hereinafter referred to as a "late-night investigation") of a suspect or person involved in a case between 9:00 p.m. and 6:00 a.m., regardless of the name of the investigation, interrogation, or interview. However, the procedure for inspecting an investigation report that has already been prepared may be carried out before midnight.

② Notwithstanding paragraph 1, a late-night investigation may be conducted in any of the following cases. In this case, the reason for the late-night investigation must be clearly stated in the report.

1. It is necessary to determine whether to seek or apply for an arrest warrant within 48 hours of arresting the suspect
2. The statute of limitations is about to expire
3. When the suspect or a person related to the case requests a late-night investigation for specific reasons such as departure from the country, hospitalization, remote residence, or professional reasons that make it difficult for the person to appear again (except when the defense counsel expresses the person's intention not to agree to the late-night investigation), and it is recognized that there are substantial reasons for the request

- Take the legislative and administrative steps necessary to prohibit all-night interrogations only with the free and informed consent of all parties.

Remedies provided for victims of the crime of torture including rehabilitation and compensation [State Party Report 95-98]

Reparations for victims of torture and ill-treatment are limited to those cases prescribed in special laws or who have been acquitted on retrial.⁷⁵ Statutes of limitations and the burden of litigation costs limit victims' rights to state compensation,⁷⁶ and many acts of torture and ill-treatment are not recognized as crimes or investigated. Support under the Crime Victim Protection Act mentioned in the State report is only available to the direct victims of criminal acts and their immediate family members and siblings,⁷⁷ leaving victims of torture and ill-treatment that are not criminalized due to the legislative void and the statutes of limitations, and victims who are not immediate family members or siblings, without assistance. In addition, the Crime Victim Protection Act applies only to nationals and exceptionally applies to non-nationals only if there is a mutual guarantee, placing the burden of proof of reciprocal guarantee on the non-national victim, effectively leaving most non-nationals without assistance. The enactment of a law on the prevention of torture and assistance to victims has been excluded from the state agenda and is not currently being pursued at the government level.⁷⁸ The mandate of the National Center for Violence and Trauma, which is currently under construction, is limited by a 35% budget cut this year,⁷⁹ poor accessibility, and the exclusion of pre-1945 torture victims.⁸⁰

- Take the necessary legislative and administrative measures to ensure that reparations are made to all victims of torture and ill-treatment, including the enactment of a law on the prevention of torture and assistance to victims.
- Expand the scope of assistance under the Crime Victim Protection Act to be in line with international standards.
- Ensure that no statute of limitations applies to the exercise of the rights of victims of torture and ill-treatment.

4. In other cases prescribed by the Minister of Justice, the Chief of the National Police Agency, or the Commissioner General of the Korea Coast Guard, such as when it is deemed unavoidable to conduct a late-night investigation considering the nature of the case, etc., and the permission of the human rights protection officer designated by the prosecutor or the head of the judicial police officer's organization is obtained.

⁷⁵ Article 2 of Act on Criminal Compensation and Restoration of Impaired Reputation.

⁷⁶ MBC News, "'Forced Mobilization' Japanese Company Damages Lawsuit; Court Dismisses Survivor's Claim as 'Past the Statute of Limitations,'" MBC News, 14 February 2023, https://imnews.imbc.com/news/2023/society/article/6455202_36126.html.

⁷⁷ Article 3 (1) of the Crime Victim Protection Act.

⁷⁸ Presidential Office of the Republic of Korea, 120 State Agenda, https://www.president.go.kr/affairs/gov_project.

⁷⁹ KBC News, "Will the first National Center for Violence and Trauma become a half-functioning center?," 24 August 2023, <http://www.ikbc.co.kr/article/view/kbc202308240069/>

⁸⁰ A/HRC/54/24/Add.1, para. 144.

- Take the necessary legislative and administrative measures to ensure that all victims of torture and ill-treatment are eligible for and can easily access the healing services of the National Center for Violence and Trauma.

Independent mechanism to investigate allegations of torture and ill-treatment [State Party Report. 99-102]

The Human Rights Violation Reporting Center of the Human Rights Bureau of the Ministry of Justice and the Inspection Organization of the Prosecutor General's Office that were mentioned in the State Party report are not independent mechanisms for investigating allegations of torture and ill-treatment because they are part of the Ministry of Justice and investigative agencies, and their work is not aimed at investigating truth and accountability from the perspective of victims. The National Human Rights Commission of Korea, also mentioned in the State Party report, is an independent investigative body for human rights in general, not specifically on torture and ill-treatment. Although the NHRCK plays a role in investigating torture and ill-treatment, such as visiting correctional facilities, it is limited in that it does not have sufficient financial, material, and human resources, and some facilities including unauthorized institutions, are excluded from the scope of its investigations.⁸¹ In addition, the NHRCK does not have the authority to investigate all cases of torture and ill-treatment, as it only investigates cases that happened within less than one year,⁸² and only investigates human rights violations committed by public authorities.⁸³ It also does not investigate cases of torture and ill-treatment that have passed the statute of limitations.

- Ratify the Optional Protocol to the Convention against Torture and take legislative and administrative measures to establish a national preventive mechanism.
- Take the necessary legislative and administrative measures to ensure the investigation of all allegations of torture and ill-treatment by an independent body, including torture and ill-treatment that occurred many years ago and torture and ill-treatment caused by private entities.
- Take the necessary legislative and administrative measures to ensure that torture and ill-treatment are not subject to statutes of limitations

⁸¹ Article 2.2. of **National Human Rights Commission Of Korea Act** defines “confinement or caring facility” as “(a) Prison, juvenile prison, detention center and its branch, protective custody office, medical treatment and custody facility, juvenile reformatory, and Juvenile Classification and Examination Center, (b) Detention cell and facility where a judicial police officer investigates, detains, and accommodates persons in order to perform his/her duties; Military correctional institution (including its branch office and detention facility for detainees pending trial); Foreigner detention center; Facility for caring for many persons (referring to a facility for protecting and accommodating many persons, which is prescribed by Presidential Decree)”and facilities that stipulates in the Presidential Decree are approved protection facilities.

⁸² Article 32 (1) 4. of National Human Rights Commission Of Korea Act.

⁸³ Article 30 (1) 1. of National Human Rights Commission Of Korea Act.

LOIPR 13

Violence in the military [State Party Report 44-46, 110]

Annually about 50,000 cases of grievance are dealt with inside the military. However, most of them are closed by simply transferring perpetrator/victim(s), disciplinary action without criminal punishment, informal apology, or often the complainants are appeased or pressured to drop the case.⁸⁴ The law only protects informants, not victims.⁸⁵ Victims of sexual violence are in danger of counter-accusation or even disciplinary action,⁸⁶ and the rate of actual punishment is low even if one reports sexual violence.⁸⁷ As of July 2022, military sexual crimes are investigated by civilian police and tried before a civilian court, but crimes of secondary victimization remain under military jurisdiction. Though the Officer for Protection of Soldier's Human Rights was established in July 2022, it lacks personnel and authority.⁸⁸ The State Party argues that the Unit Management Decree prohibits LGBT discrimination, but it is not fully observed. Still, human rights education is insufficient,⁸⁹ and there is no LGBT service policy. Gay service women are at severe risk, too.⁹⁰ Meanwhile, a transgender army sergeant passed away, who was forcefully discharged for she underwent sex-reassignment surgery in February 2021; however, the Army still refused to acknowledge her death as in the

⁸⁴ In August 2022, an army corporal bullied a private in a Guard Out-Post. The platoon leader covered up the perpetrator and verbally abused the victim, who had to be hospitalized in November. www.khan.co.kr/national/national-general/article/202304271328001#c2b. In 2020, four senior marine soldiers tortured a junior marine for six months, including peeing on the victim's body. The victim could report the case only after three perpetrators were discharged. www.yonhapnewstv.co.kr/news/MYH20200901023500641?srt=l&d=Y.

⁸⁵ <Framework Act on Military Status and Service> Article 44 (Protection of Informant's Identity) No person who is aware of another person who has filed a report or petition, etc. (hereinafter referred to as "notification, etc.") under Article 43 (hereinafter referred to as "informant") shall inform, disclose or report the informant's personal information or any facts implying the informant's identity to any third person: Provided, That this shall not apply when the informant consents thereto.

Article 45 (Protection of Informant) (1) No person shall give any job-related disadvantage, such as disciplinary measure, or discriminative treatment in working conditions (hereinafter referred to as "disadvantageous action") to any informant by reason of the informant's notification, etc.

⁸⁶ A female non-com in the 15th Fighter Wing in the summer of 2022 was forced to enter another victim's quarters under the coercion of a sexual offender, a warrant officer, but the Air Force Prosecutor's Office decided to suspend the indictment of the servicewoman under the crime of trespassing in March 2023. The victim submitted a constitutional complaint in June 2023. en.yna.co.kr/view/AEN20220802006500315.

⁸⁷ As of 2022, a total of 123 sexual crimes were indicted, but 65% of them were sentenced to suspension of execution, and only 13% were sentenced to actual imprisonment. koreapro.org/2023/04/how-hierarchy-and-toxic-masculinity-fuel-sexual-abuse-in-south-koreas-military/.

⁸⁸ According to the press release by the National Human Rights Commission of Korea, where the Office is established, the total rate of processing cases increased by 74.2%. However, most of those decisions were 'non-acceptance' (i.e., dismissal). From July 2021 to June 2022, 47 out of 489 cases were accepted, recording 10% of acceptance rate, but it turns out only 69 out of 852 cases were accepted from July 2022 to June 2023, recording 8% of acceptance rate.

⁸⁹ The standard textbook for military human rights education published in 2016 by the Ministry of National Defense simply stated that "sexual relationships between same-sexes shall be punished" without any explanation. The updated textbook in 2023 merely recited the Decree's clauses.

⁹⁰ In 2010, a female naval lieutenant was repeatedly 'corrective-raped' by her superior A who became aware of her sexual orientation. A captain of her ship, whom she reported the case, again 'corrective-raped' her. In 2018, the High Military Court acquitted the defendants. Though the Supreme Court found the captain guilty of rape, etc., it acquitted A, for there is lack of trust of the victim's testimony and use of violence in the rape, which was overlooking the victim's sexual orientation. english.hani.co.kr/arti/english_edition/e_national/1037221.html.

line of duty.⁹¹ Although crimes of violence inside barracks became indictable without complaint,⁹² there are legal loopholes, and military violence cases are dealt with lightly.⁹³ Military's human rights training is mainly done in collective lectures, and military commanders often give lessons instead of human rights experts; hence, systemic improvement is urgently required. The military human rights instructors are concurrent offices, thus lacking expertise.⁹⁴ Despite the mandatory gender sensitivity training, there has been sexual violence in the military.

- Disaggregate, professionalize, and mandate human rights and gender awareness training in the military and recognize the death of the transgender army sergeant as in the line of duty, and adopt an LGBT-inclusive policy for soldiers to serve openly.
- Stabilize the status of barracks life counselors and prevent military commanders's intervention from investigations by military police and trials by military courts.
- Increase the number of military human rights investigators and strengthen their powers.

LOIPR 14

Human Trafficking [State Party Report 111-126]

The Act on Human Trafficking and Protection of Victims ("the Act") was amended in 2022 and enforced in 2023. However, the Act has led to confusion due to its vague definition of human trafficking, stating that it applies to "crimes of human trafficking, etc.," and its lack of a punishment clause. Consequently, no crime of human trafficking has been investigated or punished.⁹⁵ The Act's definition of human trafficking, as well as that of the Criminal Act, still do not align with international law, leaving many forms and victims of human trafficking unaddressed. As such, there have been no reported cases where the government identified victims

⁹¹ See AL KOR 4/2020. In April 2022, the Presidential Commission on Death in the Military recommended the Army to acknowledge her death as in line of duty, but the Army rejected in December. In February 2023, the National Human Rights Commission of Korea recommended again to the Minister of National Defense.

⁹² For two months from April 2019, an army soldier was bullied outside of the barracks while he went out with his senior soldiers. www.seoul.co.kr/news/newsView.php?id=20190703500052&wlog_tag3=naver.

⁹³ According to a lawmaker, So Byeongchoel, there were 4,275 cases of beating and maltreatment reported in the military from 2016 to June 2020. 28.9% of the battery cases were not indicted, and only 0.09% were sentenced to actual imprisonment. On the other hand, the reported cases were 3,643, which is about 600 cases lower, from 2011 to June 2015, and the rate of actual imprisonment was 1.4%. www.news1.kr/articles/?4096416. In the meantime, according to the National Assembly Research Service's "Current State and Reform Tasks of the Military Human Rights Mechanisms" in 2021 pointed out that the textbook contains expressions such as 'there is a causer of violent actions' and 'physical exercise will prevent sex crimes.'

⁹⁴ The World Programme for Human Rights Education (2010-2014) stated "the military should not translate into just one-off training courses for selected officials but should encourage the establishment of a sound national training structure, involving both the sector in question and those sectors of society ... a fully integrated human rights centre in ... military training colleges;"(A/HRC/15/28, para. 43 (d) (i), (iii)).

⁹⁵ The Special Rapporteur on trafficking in persons, especially women and children, and the Special Rapporteur on contemporary slavery, including its causes and consequences, have sent a joint letter on the problem of the definition clause, the lack of a provision clause, and the limits of victim protection. However, the critiques of the Special Rapporteurs have not been reflected in the legislation of the Act. OL KOR 2/2021, 15 March 2021, https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/JointOpenLetter_OL_KOR_15.03.21.pdf.

of human trafficking through inspections, or punished perpetrators under the Criminal Act. In addition, as the current law does not provide for a system for supporting victims, leaving them without appropriate identification or necessary assistance and support. A measure to address male victims of human trafficking for labor exploitation is particularly non-existent.

In addition to the Employment Permit System, the government is actively implementing policies to hire migrant workers in industries such as fisheries, agriculture, and ship-building, where labor conditions are often poor. However, these migrant workers are exposed to labor exploitation and forced labor due to widespread practices by local governments and private broker agencies. Such practices include confiscating identification documents to “prevent escapes”, and imposing high costs for sending and receiving fees.

- Amend the definition of human trafficking under the Criminal Act to align with the definition under the Palermo Protocol, and establish a punishment clause under the Act on Human Trafficking and Protection of Victims to punish perpetrators of human trafficking with no impunity.
- Create an identification index capable of encompassing diverse categories of human trafficking victims, such as victims with disabilities and victims of labor exploitation, and establish a comprehensive system for victim protection.
- Ensure that public agencies, as opposed to private organizations, are responsible for the immigration process of migrant workers, and strengthen punishment and penalties against employers who confiscate passports and identification documents.

LOIPR 15

Procedures for involuntary psychiatric hospitalization [State Report 123-126]

The State Party has amended the Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients, but the procedures for psychiatric detention still do not respect the will and interests of the person being hospitalized. The system of involuntary hospitalization,⁹⁶ in which a person is detained by the decision of a guardian or the government, still exists under the Act. The newly established Admission Suitability Review Board does not guarantee a face-to-face review which provides the person an opportunity to be heard and is based on a very short document review, resulting in a discharge rate of merely 1.5%.

The government’s statistics show a decrease in the rate of involuntary hospitalization and an increase in the rate of voluntary hospitalization. However, the rate of voluntary hospitalization includes ‘Hospitalization with

⁹⁶ Under 『Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients』, ‘Hospitalization by Guardians (Article 43)’, ‘Hospitalization by Governors (Article 44)’ are classified as involuntary hospitalization system.

Consent,⁹⁷ which requires consent of guardians when the person wants to be discharged from the hospital. In other words, ‘Hospitalization with Consent’ is actually an involuntary procedure, but the government’s statistics classify it as voluntary hospitalization. So it cannot be said that the actual rate of involuntary hospitalization has decreased.

- Abolish ‘Hospitalization by Guardians’ and ‘Hospitalization with Consent’, which allow for involuntary hospitalization procedures towards people with psychosocial disabilities against their will.
- Consolidate involuntary hospitalization system into ‘Hospitalization by Governors’ to minimize coercive measures and ensure the government accounts for whole involuntary hospitalization.

LOIPR 16

Correctional Facilities [State Party Report 127-133]

In 2020, the ratio of actual occupancy to capacity in correctional facilities reached 112.1% (with a maximum of 130.5%). Nevertheless, the current law does not set a minimum guaranteed living area per inmate, so the problem of overcrowding is not fundamentally addressed.⁹⁸ The number of days of punitive solitary confinement is also not improving. The current law provides for a maximum of "45 days" of solitary confinement as a punishment, but according to an investigation by the National Human Rights Commission, a person had been ordered to up to 95 days in solitary confinement for consecutive punishments.⁹⁹ In the case of protective equipment, the law does not specify the hours of use, leaving the use of protective equipment to the discretion of prison officials. In July 2023, the NHRCK recommended that the Minister of Justice minimize

⁹⁷ ‘Hospitalization with Consent (Article 42, Act same as above)’ is a newly established type of hospitalization when the 『Mental Health Act』 was amended to 『Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients』. The intention of new establishment of the article was to expand voluntary hospitalization by establishing ‘Hospitalization with Consent’ that is an intermediate step between voluntary hospitalization and involuntary hospitalization in response to the reality of the Republic of Korea’s very high involuntary hospitalization rate at that time. As a result, under the current law, ‘Voluntary Hospitalization’ and ‘Hospitalization with Consent’ are classified as voluntary hospitalization system, while ‘Hospitalization by Guardians’ and ‘Hospitalization by Governors’ are classified as involuntary hospitalization system. However, ‘Hospitalization with Consent’ has been often abused, resulting frequent cases of violation of liberty rights. Through the National Human Rights Commission (2021), it was confirmed that there were cases where mental health institutions submitted applications for Hospitalization with Consent that were not ultimately signed by the person concerned; cases where mental health institutions failed to perform their duties such as informing the person’s rights and confirming their will; and cases where the person applied for Voluntary Hospitalization, but the institution improperly processed it as Hospitalization by Consent. the National Human Rights Commission (2021), Opinions about 『Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients』 Article 42 Hospitalization with Consent System.

⁹⁸ In a May 2022 recommendation, the NHRCK urged the Minister of Justice to immediately resolve overcrowding in correctional facilities. NHRCK resolution 21JinJung0027900, 15 April 2022.

⁹⁹ National Human Rights Commission of Korea, The Public Announcement of Opinion on Fifth periodic report submitted by the Republic of Korea under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, 6 July 2020, <https://www.humanrights.go.kr/site/inc/file/fileDownload?fileid=14732&filename=f3ae08fa8340cbb776f039617f20b79.pdf>

the use of protective equipment on prisoners with mental disabilities, citing cases of excessive use of protective equipment against prisoners with mental disabilities.¹⁰⁰

- Establish in law a living area per detainee that is consistent with international human rights standards and provide adequate reparations to victims of overcrowding.
- Establish in law a maximum duration of no more than 15 days and take necessary legislative and administrative measures to prevent the abuse of protective equipment.

LOIPR 17

Right to legal counsel [State Party Report 134-137]

The State Party states that the right to counsel is guaranteed in any type of criminal investigations, but it cannot be said that the right is actually fulfilled. For example, the defense attorney's participation rate in interrogation of a suspect was only 0.9% from 2017 to 2019.¹⁰¹ In particular, even if a suspect is arrested, they can receive assistance from a court-appointed defense attorney only when a warrant of detention is requested or when they request the competent court to review the legality of the arrest or detention. On the other hand, the Criminal Procedure Act allows extensive discretion to investigative agencies, so that they can arbitrarily exclude the participation of defense attorneys.¹⁰² In addition, the regulations of the Supreme Prosecutors' Office restrict the assistance of defense attorneys by requiring them to obtain approval from the prosecutor if they want to state their opinions.¹⁰³ Due to the limited system of court-appointed defense attorneys,¹⁰⁴ vulnerable groups are not able to receive assistance from defense attorneys from the beginning of the investigation.

- Revise the Criminal Procedure Act and related regulations so that the participation of defense attorneys is not excluded at the discretion of the investigative agencies and can state their opinions as much as possible in the investigation procedures.
- Take necessary legislative and administrative measures to provide assistance of defense attorneys to every person, especially vulnerable groups from the beginning of the investigation.

Due process rights of North Korean defectors [State Party Report 138-142]

¹⁰⁰ National Human Rights Commission of Korea, "The Minister of Justice should provide adequate protection measures when disciplining inmates with mental illness" (in Korean), 12 July 2023.

¹⁰¹ <https://www.etoday.co.kr/news/view/1993658>

¹⁰² Article 243-2 (1) of Criminal Procedure Act.

¹⁰³ Article 7, 8 of Operating Guidelines on Participation of Defense Attorney in Interrogation and Investigation.

¹⁰⁴ Article 33 of Criminal Procedure Act.

The Concluding Observations of the Committee in 2015 and the Concluding Observations of the Committee Against Torture in 2017 recommended improvements¹⁰⁵ to the Freedom Nuri Center.¹⁰⁶ In 2018 and 2019, amendments to the Act on Protection and Resettlement Support for North Korean Defectors and implementing regulations to the same Act reduced the upper limit on the duration of investigations to three months, but there is no limit on the duration of decisions on protection, which still allows for indefinite detention.¹⁰⁷ The National Intelligence Service (NIS) still makes all decisions on investigations and detention,¹⁰⁸ and the right to counsel is not guaranteed. The current practice of not strictly distinguishing between the authorities and procedures of protection determination investigations and criminal investigations allows for human rights violations and abuses amounting to torture and ill-treatment, with an approach that treats all North Korean defectors as potential spies without any legal basis. In a detention center run by the NIS, it is unrealistic to expect a single NIS-appointed part-time human rights officer to identify and prevent human rights violations in the facility.¹⁰⁹

- Ensure that North Korean defectors detained at the Freedom Nuri Center have access to counsel and that laws and institutions are in place to ensure that the right to appeal a decision on deportation or rejection of protection is effectively enforced.
- Implement the full transfer of the NIS' powers on national security-related criminal investigation to the police as scheduled to ensure the complete exclusion of the NIS from protection decision investigations and criminal investigations of North Korean defectors, and revise relevant legislation to ensure that North Korean defectors are afforded due process during their resettlement in the State party.

¹⁰⁵ The committees recommended the State party should ensure: 1) the shortest possible period of detention; 2) access to legal counsel during the entire detention period, including during interrogation; and 3) differentiation between investigation processes to decide on protection and settlement for North Korean defectors and the criminal investigation processes for violations of the National Security Act.

¹⁰⁶ Also known as the Protection Center for North Korean Defectors, formerly the Government Joint Investigation Center.

¹⁰⁷ Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act Article 12-3 (Period of Examination and Provisional Protective Measures) The period of examination and provisional protective measures under Article 7 (3) of the Act shall not exceed 90 days from the date when the relevant applicant for protection enters into the Republic of Korea (referring to the date of applying for protection, if such applicant applies for protection after the date of his or her entry into the Republic of Korea): Provided, That in extenuating circumstances, such as the increase in the number of the residents escaping from North Korea who enter into the Republic of Korea, such period may be extended within the extent of 30 days only once, after deliberation by the Council.

Article 15 (Determination on Protection) (2) Where the Director of the National Intelligence Service intends to decide on whether to provide protection under the proviso of Article 8 (1) of the Act, he or she shall determine eligibility for protection within 30 days from the date he or she completes examination and provisional protective measures under Article 7 (3) of the Act: Provided, That this shall not apply in extenuating circumstances.

¹⁰⁸ As of 1 January 2024, the NIS' powers on national security-related criminal investigation will be transferred to the National Office of Investigation of the police. After that the NIS will have no authority to investigate or make decisions concerning North Korean defectors detained in the Freedom Nuri Center.

¹⁰⁹ Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act Article 12-5 (Human Rights Protection Officer)

(1) One human right protection officer shall be assigned to the provisional protection facility to reinforce the protection of human rights of an applicant for protection.

(2) The human right protection officer under paragraph (1) (hereinafter referred to as "human right protection officer") shall be commissioned by the Director of the National Intelligence Service (5) Except as provided in paragraphs (1) through (4), matters necessary for operating human rights protection officer shall be determined by the Director of the National Intelligence Service.

LOIPR 18

Immigration detention [State Party Report 143-148]

In 2021, following the revelation through CCTV footage of torturous actions, including the use of unnecessarily tight restraints, also known as “Hog-tying” against a detainee at Hwaseong Immigration Detention Center,¹¹⁰ the State Party admitted the incidents of human rights violations and announced its plan to enhance due process.¹¹¹ However, since then, it has failed to present a comprehensive solution. Rather, the State Party endeavours to introduce protective devices that legalize torture.¹¹²

The current Immigration Act does not have any provisions that prohibit the detention of children, which leads to situations where even infants can be detained alongside their parents when their parents are subject to deportation orders. While the State Party states its plan to amend the Immigration Act to prohibit the detention of criminal minors (those under 14), the detention of children above the age of 14 persists. Also, the current law lacks an upper limit on the duration of detention, nor regular examination procedures conducted by independent entities such as the judiciary, which led to the Constitutional Court decision in March 2023 declaring the immigration detention system of the ROK to be unconstitutional. The Ministry of Justice, however, has yet to address any potential legislative improvements, and continues to detain migrant children.¹¹³ During the intensive and violent crackdown on undocumented migrants, multiple incidents involve forceful entries into buildings and the apprehension, there have been tragic incidents of injuries or fatalities of undocumented migrants.¹¹⁴

The State Party claims that individuals remaining at the airport after non-referral¹¹⁵ of refugee status application should not be considered detained as they can leave the country voluntarily.¹¹⁶ Their right to liberty is significantly damaged as they are unable to enter the ROK even during the process of overturning the non-

¹¹⁰ The Observers, “Surveillance footage reveals shocking treatment of migrant in South Korean detention,” 6 October 2021, <https://observers.france24.com/en/asia-pacific/20211006-moroccan-migrant-detained-south-korea>.

¹¹¹ Yonhap News, “Justice Ministry acknowledges rights violation at detention center for illegal immigrants,” 1 November 2021, <https://en.yna.co.kr/view/AEN20211101007700315>.

¹¹² Hankyoreh, “Civic groups condemn immigration detention center protective gear as “torture devices,” 22 June 2022, https://english.hani.co.kr/arti/english_edition/e_national/1048108.html.

¹¹³ The Korea Herald, “Minor Party slams ministry for detaining Mongolian 3-year-old,” 14 June 2023, <https://www.koreaherald.com/view.php?ud=20230614000691>.

¹¹⁴ Hankyoreh, “For Korea’s Justice Ministry, no place is sacred from immigration raids,” 5 May 2023, https://english.hani.co.kr/arti/english_edition/e_national/1090678.html.

¹¹⁵ An individual who applied for refugee status at the port of entry must go through the pre-screening assessment. The assessment will determine whether or not the application should be referred to the refugee status determination procedure.

¹¹⁶ According to the Korea Refugee Rights Network, more than 75% of asylum-seekers who received a non-referral decision and appealed that decision won their cases in court. Additionally, the family mentioned in the State Party Report stayed at the airport for more than 287 days after receiving a non-referral decision, entered the ROK after they appealed the decision and were eventually recognized as refugees.

referral decision. They are forced to reside in the departure waiting room or transfer gates, receiving only two meals a day at the airport.¹¹⁷

- Amend the Immigration Act as soon as possible to set an upper limit on the duration of immigration detention, prohibit immigration detention of children, and guarantee regular examination procedure by independent entities, such as the judiciary.
- End the excessive use of ‘non-referral’ decisions at ports of entry which contradict international standards and national laws, and if those who are not referred file lawsuits against the non-referral decision, ensure that they receive the same treatment as refugee applicants.

LOIPR 19

Judicial abuse of power case [State Party Report 152-159]

Five years have passed since it was revealed that judges from the Office of Court Administration used trials as a means of bargaining with the Presidential Office, the National Assembly, and the government. It was also revealed that they inspected individual judges and intervened in the trial of private cases, violating the constitutional value of judicial independence. The judicial manipulation case violates the independence of judges guaranteed by international human rights law and the Constitution of the ROK, as well as the right of those involved to be tried by an independent and impartial judiciary.¹¹⁸ Nevertheless, the criminal trials involving the implicated judges have primarily culminated in acquittals, with only minimal disciplinary measures taken against certain judges. The National Assembly took action by passing a resolution to impeach former judge Lim Seong-geun for the first time in the ROK’s constitutional history, but the Constitutional Court dismissed the case, citing the expiration of his term. The core causes of the judicial manipulation lie in the bureaucratic judicial administration structure, which heavily concentrates the power of judicial administration in the Chief Justice of the Supreme Court, bureaucratizes judges around the Office of Court Administration, and reinforces hierarchy through the personnel structure. To prevent the recurrence of judicial manipulation, institutional reforms are imperative to reduce bureaucracy within the judiciary. While the Supreme Court launched the Judicial Administration Advisory Council in September 2019, it is only an advisory body ill-suited to achieve the goal of decentralizing and monitoring the Chief Justice’s power.

¹¹⁷ The Korea Herald, “Hidden lives of terminal dwellers in South Korea”, 15 May 2023., <https://www.koreaherald.com/view.php?ud=20230515000710>.

¹¹⁸ On 7 June 2018, People’s Solidarity for Participatory Democracy (PSPD) and MINBYUN-Lawyers for a Democratic Society submitted a letter of allegation to the Special Rapporteur on the independence of judges and lawyers about judicial corruption allegations of the Republic of Korea. In response, on 15 November 2018, the Special Rapporteur sent a letter to the Republic of Korea calling for attention to and response to the judicial corruption. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24183>.

- Amend the Court Organization Act to abolish the Office of Court Administration and establish a consensus body, the Judicial Administration Commission, to decentralize the power of judicial administration from the Chief Justice.

LOIPR 20

Surveillance and interception of private communication [State Party Report 166-168]

Despite the recommendations of the Committee in 2015, the opinions of the UN Special Rapporteur on the Right to Freedom of Opinion and Expression in 2017,¹¹⁹ and the UN Special Rapporteur on the Right to Privacy in 2021,¹²⁰ more than five million subscriber's information, which includes national identification numbers that can be linked to a large number of personal data, are still provided per year to intelligence and investigative agencies on request, without court warrant, on the sole basis of investigative need.¹²¹ In 2018, the Protection of Communications Secrets Act was partially amended following the Constitutional Court's decision on the unconstitutionality of interception using Deep Packet Inspection (DPI), 'base station' investigations, and real-time location tracking, but the State Party failed to implement the decision.¹²² Measures to control the abuse of interception were limited to the interception using DPI, not wiretapping in general, and the intercepted data was to be kept by the investigative agency, not the court. Article 12 of the Act, where the Constitutional Court was concerned about the "routine monitoring and collection of information by the intelligence services," was not improved, nor was the intercepted party given the opportunity to access the intercepted material and challenge the lawfulness of the interception.

- Introduce judicial control over access to subscriber's information by intelligence and investigative agencies.
- Amend the Protection of Communications Secrets Act to provide controls on communications surveillance in line with the 2018 Constitutional Court decision.

LOIPR 21

Measures to protect conscientious objectors [State Party Report 169-174]

¹¹⁹ Third-party Intervention Submission by David Kaye, UN Special Rapporteur on the Right to Freedom of Opinion and Expression, 9 May 2017.

¹²⁰ Visit to the Republic of Korea, Report of the Special Rapporteur on the right to privacy, Joseph Cannataci, 25 June 2021. A/HRC/46/37/Add.6 (para 62)

¹²¹ Ministry of Science and ICT, Press Release, Announcement of the Status of Provision of subscriber's information and meta data in the First Half of 2022, 23 December 2022. <https://www.msit.go.kr/bbs/view.do?sCode=user&bbsSeqNo=94&nttSeqNo=3182568>.

¹²² Civil Society Joint Statement on Amendments to the Protection of Communications Secrets Act (Korean) (2020.3.2.) <https://www.peoplepower21.org/publiclaw/1688300>, Statement of condemnation after the National Assembly passed the amendment to the Protection of Communications Secrets Act (Korean) (2020.3.5.) <https://act.jinbo.net/wp/42316/>.

The State Party has been implementing an alternative service system for conscientious objectors since October 2020. Although the State Party claims to have made efforts to create a reasonable alternative service system through polls and public hearings,¹²³ the current system is clearly discriminatory compared to general military service.¹²⁴ Conscientious objectors are forced to serve unconditionally for a term of 36 months, which is two times longer than that of regular soldiers (18 months) with the same payment and service type (in-camp). In addition, the alternative service institutions for conscientious objectors are limited to correctional facilities, and the right to conscientious objection of active soldiers is not recognized.¹²⁵ As the Alternative Service Commission belongs to the Military Manpower Administration under the Ministry of National Defense¹²⁶ and since these bodies nominate 40% of the Commission members,¹²⁷ the military is over-represented in the Commission and cannot be operated independently. It also makes it difficult to form a Commission of members with diverse experience, knowledge, and human rights sensitivity.

- Eliminate the discriminatory treatment of conscientious objectors compared to regular soldiers immediately, particularly by reducing the excessively long periods of service.¹²⁸
- Expand the areas of service and adjust the length and type of service, taking into account the physical and economic circumstances of the objectors.
- Recognize the right to conscientious objection of active soldiers.
- Make the Alternative Service Commission completely independent, both legally and practically, from the Ministry of Defense and the Military Manpower Administration.

¹²³ https://kookbang.dema.mil.kr/newsWeb/20200604/2/BBSMSTR_000000010026/view.do.

¹²⁴ The National Human Rights Commission of Korea is also concerned that the current alternative service system serves as a "punitive measure," and specifically recommends that the duration of the alternative service should not be more than 1.5 times that of regular soldiers. <https://www.newspim.com/news/view/20181119000726>.

¹²⁵ The United Nations Human Rights Council recognized the right to conscientious objection in 1988, stating "aware that persons performing military service may develop conscientious objections," (United Nations Human Rights Council, 1998, Resolution 77, E/CN.4/RES/1998/77), and countries such as Germany, Switzerland, Denmark, Sweden, Finland, Austria, Argentina, and Brazil had recognized (in countries where conscription has been discontinued) or recognize the right to conscientious objection for active military personnel accordingly.

¹²⁶ The Alternative Service Commission had announced a proposal to improve the problems of the system by shortening the service duration and so on (<https://www.khan.co.kr/national/national-general/article/202307030830001>), but the head of the Military Manpower Administration practically rejected the proposal calling it as premature (<https://www.news1.kr/articles/5098909>). This was only possible because the Commission is under the Armed Forces Administration, which shows its dependence.

¹²⁷ Out of the 13 commission members, two are recommended by the head of the National Human Rights Commission, two by the Minister of Justice, two by the National Assembly Defense Committee, two by the head of the Korean Bar Association, three by the Minister of National Defense (including the chairman of the Commission), and two by the head of the Military Manpower Administration.

¹²⁸ The duration of alternative service has been recommended not to exceed 1.5 times that of military service by the European Court of Human Rights in 2017 for Armenia (*Adyan and others v. Armenia*, no.75604/11, ECHR, <http://hudoc.echr.coe.int/eng?i=001-177429>) and by the UN Committee on Economic, Social and Cultural Rights in 2015 for Austria (UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, 3 December 2015, CCPR/C/AUT/CO/5, paras 33-34, <http://undocs.org/CCPR/C/AUT/CO/5>).

LOIPR 22

Decriminalization of defamation [State Party Report 175-176]

The State Party has yet to establish truth as a complete defense to criminal defamation.¹²⁹¹³⁰ The central problem with the criminal defamation laws is that criticism against state policies or opinions about illegal or unlawful acts, political satire, parodies, as well as articles, commentaries, and even product reviews are punishable as defamation, regardless of their truthfulness. The government claims to seek a compromise between the protection of individual reputation and freedom of expression. However, protecting individual reputation by suppressing people from telling the truth is a facade and hypocrisy. Those in power, perpetrators and others who are targets of criticism can abuse the law of defamation as a means of private retaliation, threatening the democratic public forum and impeding the development of social trust based on facts.¹³¹ Indeed, the President's Office, the Minister of Justice and the Minister of the Interior Safety have filed defamation lawsuits against journalists who raised criticisms against them.¹³² Furthermore, the government stated that the prosecutors have a system to dismiss a case without investigation when the suspicion at issue is not worth being punished to prevent indiscriminate accusations of defamation. Nevertheless, there is no predictability as the outcome depends on the discretion of the police and prosecutors, and the fact that the victim has to bear the burden of proving the statement's public interest raises problems.

- Amend criminal defamation laws so that truth is a complete defense to defamation and not subject to any further requirements.

Article 7 of the National Security Act [State Party Report 177-178]

Over the past seven years, an average of 26 people per year have been charged with violating the National Security Act,¹³³ As of August 2023, 10 people were jailed for violating the National Security Act and extensive search and seizure is under way.¹³⁴ The Constitutional Court, which is conducting its ninth unconstitutional review of the National Security Act, held its first public hearing in history.¹³⁵ The Ministry

¹²⁹ UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association(2011), UN Human Rights Committee(2015), UN Universal Periodic Review(2017) recommended the decriminalization of defamation to the government of Republic of Korea.

¹³⁰ In response to these challenges, numerous amendments for the abolition or decriminalization of defamation have been introduced in the 21st National AssemblyNational Assembly. Representative Kim Yong-min (Bill No. 2111649, introduced on July 22, 2021), Representative Park Min-joo (Bill No. 2112050, introduced on August 13, 2021), Representative Choi Kang-wook (Bill No. 2109360, introduced on March 4, 2021), Representative Cho Eun-hee (Bill No. 2119118, introduced on December 26, 2022).

¹³¹ https://h21.hani.co.kr/arti/society/society_general/49789.html.

¹³² <https://omn.kr/2309u>.

¹³³ https://www.index.go.kr/unity/potal/main/EachDtlPageDetail.do?idx_cd=1745 e- national indicator, Status of handling public security cases by crime type - violation of the National Security Act.

¹³⁴ JIBS, "a violation of the National Security Act ' Expanded search and seizure of allegations," 14 June 2023.

¹³⁵ In September 2022, Article 2 of the National Security Act on the definition of anti-government organizations and Article 7 on praise and Incitement, etc.

of Justice, which participated on behalf of the government, said, "It is difficult to see the ICCPR as a treaty signed and promulgated by the Constitution under Article 6 of the Constitution, and the ICCPR is subject to respect and consideration, but it is not legally binding." The Ministry of Justice also claimed, "It is punished by possession of pornography and child sexual exploitation itself, considering technological development and Social Networking Service, the risk of possessing of pro enemy expressions is never lower than that of drugs or illegal weapons."¹³⁶ The international community has repeatedly recommended abolishing the National Security Law or revising Article 7, but the government has not accepted it at all.¹³⁷

- Abolish the National Security Act completely, which violates freedom of thought and freedom of expression.
- Abolish Article 7 of the National Security Act immediately.

Internet Censorship

The State Party has the "Deliberation on online information" system, in which the Korea Communications Standards Commission (KCSC), an administrative agency, can deliberate "illegal information" and "harmful information" on the Internet and request online service providers to block such information.¹³⁸ With this

¹³⁶ In the first public hearing of the National Security Law at Constitutional Court, the Ministry of Justice presented "pornography and child sexual exploitation."

¹³⁷ The Universal Periodic Review (UPR), which was held four times in 2008, 2012, 2017, and 2023, was concerned about the overall National Security Act and recommended to be abolished or revised. The International Covenant on Civil and Political Rights Committee recommended the revision or abolition of the National Security Act four times: 1992, 1999, 2006, and 2015. Committee Against Torture recommended the abolition or revision of Article 7 of the National Security Act on three occasions: 1996, 2006, and 2017. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pointed out the problems of Article 7 of the National Security Act and recommended abolition or revision.

¹³⁸ Act On The Establishment And Operation Of Korea Communications Commission, Article 21 (Duties of the Korea Communications Standards Commission)

Deliberation on information prescribed by Presidential Decree as necessary for nurturing sound communications ethics, from among information disclosed to the public and distributed via telecommunication circuits, or requests for correction;

Enforcement Decree Of The Act On The Establishment And Operation Of Korea Communications Commission, Article 8 (Information Subject to Deliberation by Standards Commission)

(1) "Information prescribed by Presidential Decree" in subparagraph 4 of Article 21 of the Act means information deemed necessary to be deliberated on, such as illegal information and information harmful to adolescents under Article 44-7 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, among information distributed through information and communications networks.

(2) Kinds of requests for corrective action under subparagraph 4 of Article 21 of the Act shall be as follows:

1. Deletion of the relevant information or blocking access thereto;
2. Suspension or termination of the use of the relevant information to users;
3. Fulfillment of the duty to label information harmful to juveniles or alterations of labeling methods, and other matters deemed necessary.

(3) Where an information and communications service provider or a person who manages and operates a bulletin board receives a request for corrective action under paragraphs (1) and (2), he/she shall immediately notify the Standards Commission of the results of corrective action taken.

system, which functions as an administrative censorship of Internet information, more than 200,000 cases of information are blocked annually.¹³⁹ Deliberation is made not only on information with significant and obvious illegality, but also on information that requires meticulous legal judgment such as defamation and violation of the National Security Act, as well as on “harmful” information such as “violation of social order”. This system has the danger of potential abuse of censoring the ideas and controlling public opinion.

- Ensure the authority of deliberation on online information be transferred from the KCSC to a private self-regulatory organization, as recommended by the National Human Rights Commission of Korea, the UN Human Rights Council, and the UN Special Rapporteur on Freedom of Expression.¹⁴⁰
- Limit restriction measures to information with clear, grave, and urgent illegality.

Press freedom

Press freedom violations have escalated since the Yoon Administration was instated. On November 10, 2022, the presidential office refused to allow MBC journalists to board the presidential plane for an overseas trip, citing their “repeated distorted and biased coverage of recent foreign relations issues.”¹⁴¹ There has also been a spate of defamation lawsuits against the press by government ministers.¹⁴² The Minister of Justice filed a defamation suit against a daily newspaper reporter who raised allegations about his child during a personnel hearing. Likewise, the Minister of the Interior and Safety sued a daily newspaper reporter who wrote about his involvement in a bribery case when he was a lawyer during a personnel hearing. These instances exemplify how ministers in charge of state institutions misuse the system to silence public criticism of their performance.

Meanwhile, the government appointed Lee Dong-kwan, who spearheaded the media takeover campaign during his tenure as the PR chief of the Lee Myung-bak administration, as the head of the Korea Communications Commission. This appointment occurred despite opposition disqualification reports and opposition from civil society. A series of documents, produced by the National Intelligence Service at the time, revealed the government's concerted efforts to assert control over the broadcasting industry. These efforts included purging reporters and editors accused of “leftist leanings” and canceling problematic programs. Media organizations and civil society groups are deeply concerned that Lee Dong-kwan's appointment signifies a setback for press freedom and democracy.

- Ensure press freedom and freedom of expression.

¹³⁹ Korea Internet Transparency Report, <http://transparency.kr/>.

¹⁴⁰ Frank La Rue (2011), “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mission to the Republic of Korea,” A/HRC/17/27/Add.2, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/27/Add.2.

¹⁴¹ AP News, “S Korea leader criticized for banning broadcaster from plane,” <https://apnews.com/article/biden-travel-asia-indonesia-648b818c3e76e36c676b74479f798c73>.

¹⁴² Kyunghyang Shinmun, “Media “targets” of lawsuits, accusations, and investigations,” <https://www.khan.co.kr/national/national-general/article/202210052045005>.

- Cease filing defamation lawsuits against journalists and media for publishing articles that raise questions about government officials.

Repression of the civil society

The current administration has attempted to curb criticism against the government by attacking trade unions and civil society organizations through the dissemination of distorted and biased information through the media in the name of “advancement of the civil society,” as well as conducting search and seizures for alleged violations of the National Security Act and conducting audits on public subsidies. The State Party unilaterally repealed the Regulation for the Vitalization of Civil Society and Promotion of Public Interest Activity, which laid down the state’s responsibility to support the civil society, and on 7 October 2022, dissolved the Civil Society Committee, an institution for the communication and cooperation between the government and the civil society. Further, legal instruments (ordnances), institutions (support organizations), programs, and budgets related to villages communities and social economy, non profit public interest activities, and democratic citizenship education have either been eliminated or drastically reduced. As a result, civil society organizations are at risk of serious violations of the right to political participation and freedom of association.

Also, citing the improper use of public subsidies by a small minority of private organizations,¹⁴³ the current administration has labeled the entire civil society as an ‘vested-interest cartel’¹⁴⁴ and is creating a repressive social environment through excessive regulation¹⁴⁵ and drastic cuts on subsidies and exclusion from support for all private organizations. The civil society remains concerned that the State Party, rather than trying to address the issue caused by a small minority of organizations, has taken the opportunity to restrict the activity of civil society organizations critical of the government and is propagating negative images of civil society organizations through the media. In a speech on 15 August 2023, the President stated that “the forces of communist totalitarianism have always disguised themselves as democracy activists, human rights advocates, or progressive activists while engaging in false propaganda and despicable and depraved tactics,” attacking

¹⁴³ On 4 June 2023, the Office of the Secretary to the President for National Agenda under the Office of the President announced that, as a result of a joint audit conducted by 29 government agencies on public subsidies by private organizations in the last 3 years, of the 6.8 trillion KRW in subsidies disbursed to 12,133 organizations, 31.4 billion KRW(0.46%) were improperly used.

¹⁴⁴ During a cabinet meeting on 13 June 2023, the President stated that “[the audit results on subsidies for non profit private organizations] constitute swindling of taxpayers and exploitation of future generations. Corrupt vested-interests cartels must be smashed.” Sisa IN, “Controversy around Private Organization Subsidy, There is Something Else at Stake,” 27 June 2023 (in Korean only), <https://www.sisain.co.kr/news/articleView.html?idxno=50544>.

¹⁴⁵ Consecutive implementation of regulations on general civil society activities include: Ministry of the Interior and Safety(MOIS) memorandum requesting 'inspection cooperation' on registered entities collecting donations (June 2023), MOIS announcement of plan to cancel registration of (approximately 25%) non profit private organizations (June 2023), MOIS request to 17 regional governments for an overall re-examination of support programs for non profit private organizations in the next year (June 2023), Office of President policy recommendation for 'strengthening the conditions for and restriction of assembly and demonstrations' (July 2023), ruling party(People's Power Party)'s proposal for 'reinstatement of provisions on non-payment of subsidies for organizations engaging in illegal protests' (July 2023).

civil society and human rights defenders critical of the government and threatening the safety of human rights defenders and civil society space.¹⁴⁶

- Stop repression of the civil society through hostile measures and comments targeting civil society which is endangering the foundations of democracy.
- Establish legal instruments to vitalize the civil society and promote public interest activities in order to address social issues through active grassroots participation.
- Establish legal instruments and institutions for the communication and cooperation between the government and the civil society.

LOIPR 23

Trade unions [State Party Report 179-183]

The State Party ratified ILO conventions no.87 and no.98 in April 2021.¹⁴⁷ In December 2020, before the ratification, the National Assembly partially amended 3 laws in relation to the ratification.¹⁴⁸ However most of the existing restrictions on exercising the 3 basic labor rights guaranteed by the Constitution still remain. These include the narrow definition of 'worker'¹⁴⁹ and 'employer'¹⁵⁰ that excludes a wide range of workers including those in non-standard forms of employment, the report system of union establishment which in

¹⁴⁶ Speech of the President on the 78th anniversary of the Liberation Day of Korea, <https://www.president.go.kr/president/speeches/mSgAkgfP>.

¹⁴⁷ However, as of August 2023, the state party maintains its reservation to Article 22 of the Covenant.

¹⁴⁸ The partial amendment bills for <Trade Union and Labor Relation Adjustment Act, TULRAA>, <Act on the Establishment and Operation, etc of Public Officials' Trade Unions, APOU>, <Act on the Establishment and Operation, etc of Teachers' Unions, ATUA> were passed in the plenary of the National Assembly on December 9, 2020, proclaimed on January 5, 2021, and enforced since July 6, 2021, as Act No.17864, Act No. 17860 and Act No.17861, respectively. In this revision, union membership of dismissed workers was permitted (by deleting the proviso of the Article 2.4(d) of the TULRAA, revising the Article 6 of the APOU and article 4-2 of ATUA, and Article 6(Membership Eligibility) of APOU was revised to delete the restriction on union membership by public official service class, to allow union membership of firefighters and education officers and to rearrange the provision on restriction of union membership by job characteristics.

¹⁴⁹ The Expert Panel established under the Chapter 13 of the Korea-EU Free Trade Agreement (Trade and Sustainable Development) according to the European Commission's claim that ROK violated its obligation to conform to International Labour Standards under the Chapter found that the definition of 'worker' under the article 2.1 of TULRAA and the court's interpretation of the article (Supreme Court Decision 2014Du12598, 2014Du12604 (combined) decided on June 15, 2018) is not consistent with the principles concerning the fundamental rights of freedom of association. It observed that the criteria to decide whether a certain worker falls into the definition is based on the dependency to a specific employer and therefore has the effect of excluding many classes of self-employed workers including 'dependent contractors' and so called 'platform workers' whose tasks are delivered to them via automated means and who may be legally defined as entrepreneurs and is contrary to the ILO CFA principle that states that freedom of association should be guaranteed to all workers without distinction whatsoever, including liberal professions(lawyers, medical doctors, architecture, etc.). <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/d4276b0f-4ba5-4aac-b86a-d8f65157c38e/details>.

¹⁵⁰ ILO Committee on Freedom of Association after examining the cases filed by the KCTU (the case No. 2602 and No. 3047) regarding the obstacles workers, in subsidiary companies with subcontracting arrangements, face in exercising their organizational and bargaining rights because prime contractors deny direct employment relationship, requested the Government, "taking due consideration of the various obstacles to freedom of association alleged in this case, to provide information on the steps it has taken to develop, in consultation with the social partners, appropriate mechanisms to strengthen the protection of subcontracted workers' rights to freedom of association and collective bargaining.", ILO CFA Report No.363 (March 2012), paras. 456-457 and 467, and report No. 381 (March 2017), para. 359.

practice is operated as a 'permission system'¹⁵¹, the restriction on collective bargaining rights and prohibition on collective action of teachers and public officials¹⁵², the narrow range of justifiable strike that allows for a broad range of criminal and civil sanction for union activity¹⁵³ and more. An amendment bill to improve a number of these problems is pending in the national assembly but President Yoon has strongly suggested that he will veto the bill if it passes.

- Withdraw reservation to article 22.
- Amend the TULRAA and other related laws to bring them in line with the principle of freedom of association.

Since Yoon administration's inauguration: Government-led union repression

After the Yoon administration took office in May 2022, systematic government-led smear campaigns against trade unions, along with administrative interference into union operation and judicial harassment of union activities have severely curtailed freedom of association. Since late 2022, senior government officials including the president have labeled trade unions as 'one of the 3 pillars of corruption that must be eradicated'¹⁵⁴ in their public statements and requested that unions submit a list of documents related to their' internal operations, including financial documents, beyond that legally required¹⁵⁵ and excluded the Korean Confederation of

¹⁵¹ Article 2.4 of the TULRAA provides for the possible disqualification of trade unions which in relation to the Article 10 (Report on Establishment of Trade Union), Article 12.1~12.3 gives discretionary power to a certain degree to the administrative bodies in the process of issuance of certificates of union establishment reports.

¹⁵² State Public Officials Act Article 66(Prohibition of Collective Action), APOU Article 3 (Guarantee and Limitation of Trade Union Activities), Private School Act Article 55 (Duties), ATUA Article 1 (Purpose), APOU Article 4 (Prohibition of Political Activities), ATUA Article 3 (Prohibition of Political Activities), State Public Officials Act and Local Public Officials Act Article 65(Prohibition of Political Activities), Enforcement Decree Article 27 (Political Actions), APOU Article 11 (Prohibition of Industrial Actions), ATUA Article 8 (Prohibition of Industrial Actions), APOU Article 16(Confirmation, etc., of Arbitration Awards), APOU Article 8(Authority, etc., to Bargain and Conclude Collective Agreement), Enforcement Decree of APOU Article 4 (Non-negotiable Matters).

¹⁵³ Although the Constitution and the TULRAA guarantee the right to strike in principle, the requirements for a strike to be legal are so restrictive that it is practically impossible to exercise the right to strike. Especially, the justifiable purpose of industrial action clause is interpreted in such narrow way that only strikes over collective bargaining matters at the disposal of employers are considered legitimate strikes and any strike staged in protest of the government's labor policy, to raise legislative demands, over layoffs and structural adjustment plans which are considered as employers's entrepreneurial decision, or staged by subcontracting workers against their prime employer are considered illegal. In the public sector, essential services that should be maintained during the strike are too broadly defined. In case a strike is not considered legitimate, strikers face criminal punishment (Criminal Law Article 314, Obstruction of Business) and civil lawsuit for damage compensation, even for peaceful strikes. <Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea >(A/HRC/32/36/Add.2) paras. 70~73, ILO CFA report No.382 (June 2017) paras. 82, 87, 89, 90, 93, and 95.

¹⁵⁴ Since late 2022, senior government officials including the president and the prime minister have led a smear campaign against trade unions by referring to trade unions in their public statement as "one of the three major corruption that should be eradicated" and "vested cartels" and by raising unsubstantiated allegations of irregularity in unions' accounting management. "Trade union corruption consists of the 3 major corruptions that that should be eradicated along with public office corruption and corporate corruption" (President Yoon's speech in the economic policy reporting meeting), 21 December 2022, https://english.hani.co.kr/arti/english_edition/e_national/1072766.html; "Transparency of labor union accounting is the starting point for labor union reform,"(17 February 2023, <https://en.yna.co.kr/view/AEN20230217007500315>).

¹⁵⁵ On 29 December 2022, the Ministry of Employment and Labor sent out notice requesting unit-unions or federations/confederations with 1,000 members or more to strengthen self-inspections on accounting transparency and later on February 1, 2023, requested that they submit the results of their self-inspections and supporting documents. Trade union organizations who considered this request as illegitimate interference beyond the scope of the TLURAA and a violation of trade union autonomy, rejected to comply with some part of the demands. After the rejection of government demands, labor unions members, especially those of KCTU and FKTU, the 2 most representative workers' organizations, have been excluded from various tripartite committees.

Trade Unions(KCTU) and Federations of Korean Trade Unions(FKTU) from various tripartite committees, on the grounds that they did not comply with government requests.¹⁵⁶ Under the government-created concept of 'Rule of Law in Labor Relations'¹⁵⁷, the government destroyed the cargo truckers' strike¹⁵⁸ and is overruling collective bargaining agreement correction orders.¹⁵⁹ This union-bashing rhetoric has set a hostile national tone and was immediately echoed in workplace labor relations with increasing violent attacks against unions.¹⁶⁰

- Cease overall union repression.
- Fully guarantee freedom of association at work.

Judicial harassment and stigmatization of the Korean Construction Workers' Union (KCWU)

Since 2022, the government has suppressed the union activities of construction workers, labeling such activities as "organized crime."¹⁶¹ As of August 24, 2023, the police have summoned and investigated more

¹⁵⁶ KCTU and FKTU have been excluded from <National Pension Fund Management Committee>, <National Health Insurance Finance Committee>, <Long-Term Care Committee> and <National Qualification Policy Deliberation Council> as the government dismissed members nominated by the confederations.

¹⁵⁷ "Rule of Law" is generally understood to mean "No one shall be government by anything other than the law" and "No one shall violate individual rights except in accordance with the law". However, the Yoon administration has linked the "Rule of Law" to labor relations and distorted it to "compliance", meaning "not only management but also trade unions must abide by the law and violation of the law will be punished." By creating a new concept of "Rule of Law in labor relations," the government is spreading the idea that industrial relation is a domain of judicial control and punishment rather than dialogue based on autonomy and the distorted perception that trade unions are primarily law-breakers.

¹⁵⁸ In November 2022, when Korean Public Services and Transport Workers Union(KPTU-KCTU) TruckSol Division went on a strike to demand a widened 'Safe Rates System' and its permanent application, the government destroyed the strike by declaring the strike illegal claiming that it did not follow proper legal procedures for strikes and ordered strikers to return to work immediately. In June 2022, when subcontracting shipbuilding workers of Daewoo Shipbuilding and Marine Engineering (DSME) went on a strike demanding the withdrawal of a 30% pay cut imposed on them, the government labeled the strike illegal. After the union went back to work, DSME foisted a 47 billion KRW (approximately USD 35.6 million or EUR 32.3 million) lawsuit on 5 union leaders claiming damages resulted from missed production targets during the strike.

¹⁵⁹ This is concentrated on the trade unions of teachers and public officials who are not fully guaranteed the right to collective bargaining and the right to strike.

¹⁶⁰ On 4 May 2023, a manager of ILJIN Hysolus, which is a supplier of Hyundai Motor and BMW, rammed his car into the local trade union leaders hitting 3, and causing serious injuries to the union's vice chair.

¹⁶¹ The National Police Agency's National Office of Investigation launched a 200 day "Special Crackdown on Illegal Activities at Construction Sites" on December 8, 2022. On June 25, 2023, the office announced that 1,484 were arrested and transferred to prosecutors during the special crackdown period and that it would extend the period by 50 days. According to the police, while 30% of the arrested, which is 551 persons, were members of violent criminal organizations or pseudo-media organizations, the remaining 70% were trade union members. During the special crackdown President Yoon, using the neologism 'goenpok,' which portrays construction unions as violent organizations, ordered that "prosecutors, the police, the Ministry of Land, Infrastructure, and Transport, and the Ministry of Employment and Labor cooperate to clamp down on organized illegal activities, such as extortion and violence, on construction sites." Construction sites are characterized by rampant multi-level illegal subcontracting and precarious employment. To tackle these issues labor unions have signed collective agreements to directly connect workers with construction companies in an attempt to maintain transparent employment relationships and decent working conditions. The government and police, without regard to the extreme job insecurity and substandard working conditions construction workers face, have regarded union demands towards employers to abide by their collective agreements with the union to hire union members as criminal coercion and union rallies against employers who do not comply as criminal intimidation and obstruction of business. Moreover, the government argues that construction unions have forced employers to pay wages for their full-time union officers and that such conduct constitutes a criminal violation of coercion. However, the Trade Union and Labor Relations Adjustment Act states that trade unions can sign collective bargaining agreements that oblige employers to provide paid time-off for full-time union officers. In the construction industry characterized by temporary employment and frequent mobility from one construction site to another, the paid time-off provisions under the collective bargaining agreements are what guarantees minimum salary standards for full-time union officers. The ILO Committee on Freedom of Association, commenting on a similar type of criminal investigation, by the Korean government, against a construction union in the early 2000s, stated that "the detention of trade union leaders or members for reasons connected with their activities in defense of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular [see Digest,

than 1,550 union members, detained 37 (9 released), and conducted 20 forced seizures, alleging that union efforts to apply its collective agreement with employers' organizations, amount to criminal coercion, racketeering, intimidation, and obstruction of business. Additionally, administrative fines for violating the Fair Trade Act have been imposed on KCWU's Construction Equipment Operators' Division.¹⁶²

- Immediately release detained union members and drop all charges related to union activities.
- Develop appropriate collective bargaining mechanisms for construction sites.

LOIPR 24

Prohibition of teachers' unions from engaging in political activity [State Party Report 185]

Unlike ordinary citizens, public officials and teachers are completely prohibited from expressing political opinions and joining a political party under the Political Parties Act¹⁶³, Public Official Election Act¹⁶⁴, National Public Officials Act¹⁶⁵, and Local Public Officials Act¹⁶⁶. They are even subject to criminal punishment if they violate these provisions. In addition, the Public Official Election Act comprehensively restricts not only civil servants and teachers but also civilian workers in public institutions and cooperatives from participating in election campaigns.¹⁶⁷ Although the duty of political neutrality of public officials, teachers, public institutions,

op. cit., para. 71]. The arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities [see Digest, op. cit., para. 76]. This intimidating effect is likely to be even stronger in the case of precarious, and therefore particularly vulnerable, workers who had just recently exercised their right to organize and bargain collectively. " (340th Report of the Committee on Freedom of Association, 2006, para 778) The committee recommended that the government " The Committee requests the Government to take all necessary measures for the effective recognition of the right to organize of vulnerable "daily" workers in the construction sector"(353rd Report of the Committee on Freedom of Association, 2009, para 749 (i)).

¹⁶²The government argues that since union members of the KCWU Construction Equipment Operators' Division, are not " employees" under the Labor Standard Act (Article 2 of the Act defines an "employee" as a person, regardless of the kind of occupation, who offers labor to business or a workplace for the purpose of earning wages), even though they are regarded as "workers" under the Trade Union and Labor Relation Adjustment Act(Article 2 of the Act defines a "worker" as any person who lives on wages, a salary, or any other income equivalent thereto, regardless of the person's occupation) and therefore individually registered as businesses, the KCWU, their umbrella organization, should be considered as a business organization, subject to the Monopoly Regulation and Fair Trade Act. According to the government KCWU union activities constitute unfair Illegal Cartel Conduct(Joint Activities) prohibited by Article 40(1) of Act and Unfair Trade Practices prohibited by Article 45(1) of the Act. The Fair Trade Commission imposed a 3 billion won fine on the Machinery Branch's Busan Chapter for demanding employment at nine construction sites and confirmed a fine of 269 million won. Moreover, the Commission is expected to impose a fine of 2 billion won on the Jeju, Daejeon Sejong, and Gyeongnam chapters of the Machinery Branch, for demanding employment at four sites and rent increase.

¹⁶³ Article 2 (Qualification of Party Members and Promoters), Political Parties Act.

¹⁶⁴ Article 9 (Responsibilities of Public Officials for Neutrality), Public Officials Election Act.

¹⁶⁵ Article 65 (Prohibition of Political Activities), State Public Officials Act.

¹⁶⁶ Article 57(Prohibition of Political Campaign), Local Public Officials Act.

¹⁶⁷ Article 60 (Persons Barred from Election Campaign), Public Official Election Act.

(1) None of the following persons shall engage in an election campaign: Provided, That this shall not apply where a person referred to in subparagraph 1 is the spouse of a preliminary candidate or candidate, or where a person referred to in any of subparagraphs 4 through 8 is the spouse of a preliminary candidate or candidate or a lineal ascendant or descendant of a candidate:

1. A person who is not a national of the Republic of Korea: Provided, That this shall not apply where a foreigner specified in Article 15 (2) 3 engages in a campaign for the relevant election;
2. A minor (referring to a person under 18 years of age; hereinafter the same shall apply);
3. A disfranchised person as provided for in Article 18 (1);

and co-operative employees aims to ensure political impartiality in performing public service duties, it results in excessive restrictions on political expression in all aspects of daily life, unrelated to such duties.

In February 2019, the ILO Committee of Expert on Application of Conventions and Recommendations(CEACR) observed that legal provisions that prohibit public officials and teachers from joining political parties and election campaigns violate ILO convention no. 111 (Non-discrimination in Employment and Occupation) and provided recommendations.¹⁶⁸ In October 2020 a legislative petition to amend the laws signed by 100,000 citizens and related bills were presented to the National Assembly. However no related legislative progress has been made so far.

- Revise the relevant laws so that public officials, teachers, public institutions, and cooperative workers who are not high-ranking or elected officials are fully guaranteed the freedom of political expression.

The right to vote of prisoners and persons under medical treatment custody [State Report 186-189]

4. A State public official as provided for in Article 2 of the State Public Officials Act and a local public official as provided for in Article 2 of the Local Public Officials Act: Provided, That this shall not apply to a person who is eligible to become a member of a political party (excluding a public official in political service other than members of the National Assembly or local councils) provided for in the proviso of Article 22 (1) 1 of the Political Parties Act;

5. A person who falls under Article 53 (1) 2 through 7 (including a full-time employee in cases falling under subparagraphs 5 and 6);

6. A company commander, or a higher-ranking officer of the reserve forces;

7. The head of a Tong/Ri/Ban, and the members of a residents' self-governing committee (referring to the committee set up by competent district of the Eup/Myeon/Dong offices by municipal ordinances for the purpose of operating the residents' self-governing center; hereinafter the same shall apply) which is established in the self-governing center of Eup/Myeon/Dong residents (collectively calling various facilities for culture, welfare and convenience set up by the municipal ordinance as a part of conversion of the function of Eup/Myeon/Dong offices, regardless of their names; hereinafter the same shall apply);

8. A full-time executive officer or employee of an organization which is a national movement organization established pursuant to special Acts and which the State or each local government has invested in or subsidized (referring to the Society for a Better Tomorrow, the Saemaul Movement Council, or the Korea Freedom Federation), and the representatives of these organizations, etc. (including City/Do organizations and Gu/Si/Gun organizations);

9. The master of the ship which a seafarer who has filed a shipboard voting report is.

(2)If a member of an election commission at any level, a company commander or a higher-ranking officer of the reserve forces, a member of a residents' self-governing committee, or the head of a Tong/Ri/Ban intends to serve as an election campaign manager, chief of an election liaison office, an election campaign worker, an assistant under Article 62 (4), an accountant in charge, an election campaign speechmaker, an interviewer, a debater, a voting observer, or an early voting observer, he or she shall resign from his or her office at least 90 days before the election day (in cases of a special election where the reason to hold the election becomes definite after 90 days prior to the election day, within five days from the time when the reason to hold the election becomes definite); and shall not be reinstated to his or her former office within six months after the election day (until the election day in cases of a member of a residents' self-governing committee). In such cases, Article 53 (4) shall apply mutatis mutandis with respect to the time a person is deemed to resign from his or her office.

¹⁶⁸ The ILO CEACR examined ROK's implementation of the ILO convention 111 and recommended the following. First, in relation to the ban on political activity of teachers, the Committee urged the government to take immediate steps to ensure that elementary, primary, and secondary school teachers enjoy protection against discrimination based on political opinion. It also stated that insofar as political activities undertaken by elementary, primary, and secondary school teachers are held outside of the school establishment and are unrelated to teaching should be guaranteed and measures to ensure that teachers are not subject to disciplinary measures for such reasons should be taken. Regarding the political activity of public officials, the committee asked the government to "consider limiting the prohibition of political activities to certain positions and therefore to consider the possibility of adopting, in the near future, a list of jobs in the public service for which political opinion would be considered an inherent requirement." 2021 ILO Report on the Application of International Labour Standards (Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)), page 493 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf.

The State Party said that if necessary it would submit a revised opinion to the National Assembly regarding Article 18 (1) 2 of the Act on Execution of Sentences and Treatment of Inmates, which deprives the right to vote of those who have been sentenced to more than one year in prison. However, the government did not actually take any action. According to the Ministry of Justice's annual report on prison statistics, 86.7% of the total 34,475 inmates are prisoners sentenced more than one year.¹⁶⁹ Therefore, almost all prisoners are deprived of the right to vote. Article 47 Subparagraph 2 of the Act on Medical Treatment and Custody, which suspends the right to vote for a person under medical treatment custody, has also not been discussed for any revision since 2015.

- Take all necessary legislative and administrative measures, including the revision of the Act on Execution of Sentences and Treatment of Inmates and the Act on Medical Treatment and Custody, to guarantee the right to vote of prisoners and persons under medical treatment custody.

LOIPR 25

Freedom of Assembly [State Party Report 190-197]

Under the Yoon Administration, the numbers of bans and restrictions on rallies have soared. In particular, rallies and marches within 100 meters of the president's office have been banned¹⁷⁰ shortly after the relocation of the president's office to the location of the Ministry of National Defense in Yongsan (April, 2022). According to the number of bans on rallies in Seoul from January 2022 to January 2023, Yongsan Police Station banned 173 out of 3,919 reports (4.41%), far higher than Namdaemun Police Station (1.86%), Jongno Police Station (1.69%), Seodaemun Police Station (1.60%), and Yeongdeungpo Police Station (0.46%).¹⁷¹ A rally near the presidential office can be held only after going through the procedure of "report → ban notice by police → application for suspension of execution of police disposition → court's decision to quote." The court has repeatedly decided to suspend the execution, and even in the main case, it has ruled that banning rallies in front of the presidential office is illegal, but the police continue to notify the ban and file lawsuits. This is an act that causes time and economic costs, disrupting rallies and tormenting citizens. Recently, the Enforcement Decree of the Assembly and Demonstration Act was revised to include Itaewon-ro on the main roads under Article 12 of the Assembly and Demonstration Act,¹⁷² and rallies in front of the president's office were added to the reason for the ban.

¹⁶⁹ The Ministry of Justice, Korea Correctional Service Statistics 2023.

¹⁷⁰ Despite the court's repeated decision that the president's office does not constitute an official residence, the police prohibit it by applying Article 11 of the Assembly and Demonstration Act.

¹⁷¹ The average percentage of ban on rallies in Seoul in 2018 and 2019 is 0.002-0.003%.

¹⁷² The Kyunghyang Shinmun, "Banning rallies in front of the presidential office, effectively operating as a 'permission system,'" 21 May 2023.

When the president defined the construction union's two-day rally as an illegal rally in May 2023 and ordered strict law enforcement¹⁷³, the ruling party proposed a revision of the law banning rallies from late at night to morning¹⁷⁴. And police suppressed the monthly held non-regular workers' night rally. The participants were injured during the forced dissolution of the police, and about 40 people have since been summoned for questioning. The president's office asked the Cabinet Office and the National Police Agency to revise the law, saying it was damaged by commuting time, late-night rallies, and major road rallies, but there is no specific basis for regulating the assembly. However, since the president's order, the police have banned rallies during rush hour, allowing rallies only between 10 a.m. and 5 p.m.¹⁷⁵In particular, rallies of workers and the disabled have become the main targets and are being severely suppressed by the police. In May 2023, two days after a protest on top of a steel tower, a POSCO subcontractor was dragged down bleeding after being hit in the head with a police baton and taken into custody.¹⁷⁶The police are also using physical force and sending subpoenas to human rights defenders who are responsible for monitoring human rights violations by law enforcement officers at a rally, which dampens human rights defenders' activities.

Local governments are following suit after the central government. In 2022, the Seoul Metropolitan Government banned rallies at Gwanghwamun Square, which has long been used as a gathering space for citizens. This year the use of the Seoul Plaza by Seoul Queer Parade was also banned based on the decision of the Seoul Open Square Steering Citizens' Committee.¹⁷⁷ The parade has been held annually in the same place since 2015. The Daegu Metropolitan Government filed a complaint against the Daegu Queer Parade Organizing Committee and the Daegu Police Agency on charges of obstructing general traffic.

- Guarantee the right to peaceful assembly under Article 21 of the ICCPR and General Comment No.37.
- Stop banning rallies near the president's office and on major roads and remove Article 11 of the Assembly and Demonstration Act, which stipulates places to ban outdoor rallies, and Article 12, which stipulates restrictions on rallies for smooth flow of traffic.
- Stop anti-human rights attempts to restrict and ban rush hour and nighttime rallies.

Violation of the Right to Liberty of Movement and Freedom of Assembly for Persons with Disabilities

The mobility impaired, including persons with disabilities and the elderly, are not guaranteed the right to movement. The proportion of wheelchair accessible buses is only 30.7% nationwide, and only two buses in

¹⁷³ Hankyoreh, "As Korea's ruling party and government move to restrict public assemblies, police train to break up protests," 25 May 2023, https://www.hani.co.kr/arti/english_edition/e_national/1093345.html.

¹⁷⁴ The ban on nighttime rallies was invalidated in 2009 by the Constitutional Court.

¹⁷⁵ From 2019 to 2022, there has been no ban on rallies due to late-night hours or commuting hours, and only two cases have been banned from 2022 to the present due to quiet private life.

¹⁷⁶ Hankyoreh, [Video] Korean police bludgeon protesting unionist over head, sending him to hospital, 1 June 2023, https://www.hani.co.kr/arti/english_edition/e_national/1094281.html.

¹⁷⁷ Donga-Ilbo, Seoul Metropolitan Government Disallows Queer Festival at Seoul Plaza...Youth events come first, 4 May 2023.

the country have wheelchair accessibility.¹⁷⁸ In the case of subways, many deaths have occurred due to insufficient transfer facilities.

Meanwhile, activists and civic groups that continued their rallies to guarantee the rights of persons with disabilities are under unprecedented oppression from the current government. Violent suppression of rallies through excessive use of force,¹⁷⁹ indiscriminate arrest and prosecution of rally participants,¹⁸⁰ and politicians' disparaging remarks on protests were unprecedented.¹⁸¹ In 2023 April, UN special officials expressed deep concern to the Korean government about restrictions on freedom of assembly and the arrest of human rights activists.¹⁸²

- Establish a public transportation environment to guarantee the right to movement for the disabled. Replace all buses with wheelchair accessible buses.
- Stop arresting and prosecuting civic groups and activists and suppressing excessive rallies to ensure free and peaceful human rights activities.

LOIPR 26

Measures taken to combat discrimination and hate speech [State Party Report 200-201]

In the ROK, there is no legal definition of racism or criteria for racist crimes. Thus, acts of racist hate speech or discriminatory behavior that do not constitute criminal offenses under the Criminal Act remain unpunishable.¹⁸³ In the midst of the entry of 500 Yemenis refugees in 2018 and the COVID-19 pandemic, Korean society has witnessed a surge in public hate speech and policies targeting migrants. Yet, there is still

¹⁷⁸ Ministry of Land, Infrastructure and Transport, Survey on Transportation Convenience for the Transportation Disadvantaged, 2021. http://www.molit.go.kr/USR/NEWS/m_71/dtl.jsp?id=95087050.

¹⁷⁹ On January 2, 2023, about 600 riot police (10 units) violently suppressed a subway propaganda campaign (rally) held by about 250 disabled persons human rights activists in the Samgakji stations of Seoul Subway Line 4, calling for the reflection of the budget for the rights of the disabled. This resulted in damage to the wheelchairs of rally participants and the suspension of access elevators.

¹⁸⁰ Kyunghyang Shinmun, "Reckless arrest and prosecution: Will Jeon Jang-yeon be arrested again today?" There is also criticism of excessive response to repeated red-light arrests," 18 July 2023, <https://www.khan.co.kr/national/national-general/article/202307181548001>.

¹⁸¹ Hankook Ilbo, "First day of 'Line 2 protest' ... Lee Jun-seok "uncivilized" VS Jeon Jang-yeon "extremely partisan," 31 March 2023, <https://www.hankookilbo.com/News/Read/A2022033111030001913>.

¹⁸² In April 2023, UN special rapporteurs said, "It has been raised that there have been arbitrary restrictions (by the government) on the right to freedom of peaceful assembly," and "expressed concern and also raised concerns about the arrest and detention of Representative Park Kyung-seok, a protester and human rights defender. A letter was sent to the Korean government saying, "We express our concerns." Able News, June 29, 2023. "UN, "Concerns over excessive repression by the Korean government regarding the subway riding behavior of disabled people" (<https://www.ablenews.co.kr/news/articleView.html?idxno=205104>).

¹⁸³ The laws cited in the government report do not have specific provisions regulating "racial" hatred, and the obligation of information and communication service providers in Article 6 of the Broadcasting Law is only a declarative statement to ask "not make discriminatory reports in relation to racial depictions," but does not provide specific criteria. So eventually it is impossible to punish racist behavior.

no legal framework to sanction racist statements made by politicians and other public officials.¹⁸⁴¹⁸⁵ In 2020, following the government order to halt the construction of a Muslim mosque in Daegu, South Korea, residents left pig heads at the construction site and even held a pig barbecue. Despite the prevalence of such hate expressions, there is no legislation against racial discrimination to regulate them, and government authorities have not taken any action.¹⁸⁶

- Enhance policies and legislation aimed at deterring or punishing hate speech and incitement to hatred or violence against migrants and refugees.

Refugees [State Party Report 198-199, 202-208]

The refugee recognition rate in the ROK is only 0-2% per year.¹⁸⁷ While the government includes individuals granted humanitarian stay permits in its refugee recognition (protection) statistics, those granted such permits¹⁸⁸ have a temporary status similar to asylum-seekers and are largely excluded from social rights.

The government provides financial support for the living expenses of asylum seekers, but only less than 2% of asylum seekers receive the support¹⁸⁹, and it is only provided for 3-4 months. The Immigration Reception

¹⁸⁴ In the case of the current president, Yoon Seok-yeol, he even made a campaign promise that stoked xenophobia during the presidential election. https://www.koreatimes.co.kr/www/nation/2023/07/113_323186.html.

¹⁸⁵ Discrimination against migrants has been an issue since the beginning of the COVID-19 outbreak, including discrimination against Chinese in Korea, the exclusion of most migrants from public mask purchases, the exclusion of migrants (other than permanent residents and married migrants) from receiving government or municipal COVID-19 relief funds, and the issuance of executive orders by many local governments requiring selective testing of migrant workers for COVID-19. <https://www.koreaherald.com/view.php?ud=20211025000321>; https://www.koreatimes.co.kr/www/nation/2020/11/177_300037.html.

¹⁸⁶ Regarding a mosque to be built in Daegu, South Korea, a serious conflict has continued for the past two years between local residents, Muslim students, and the Bukgu District Office in the City of Daegu (hereinafter 'the Bukgu District Office'). The conflict was further aggravated by the intervention of the Bukgu District Office (which was later found to be illegal by the Court) and eventually became a nationwide issue.¹ Recently, despite residents obstructing the construction by barbecuing pork and displaying several pig heads and severed pork legs right in front of the construction site, the Korean government failed to take any measure to intervene on grounds such as that the pig heads are 'a necessary item for the residents' and 'the matter is not something the government should intervene'. Such a position by the government tolerates such religious hatred and aggravates the conflict. Recently, residents disrupted the construction by hosting pig barbecues and displaying pig heads and severed pig legs right in front of the construction site, but the government took no action to intervene, stating that "pig heads are necessary item for the residents" and "it is not the government's business". The government's such stance that tolerates religious hatred has exacerbated the conflicts. <https://www.nytimes.com/2022/03/01/world/asia/south-korea-diversity-muslims.html>; <https://www.koreaherald.com/view.php?ud=20221111000214>.

¹⁸⁷ 0.4% in 2019, 0.4% in 2020, 1% in 2021, and 2.03% in 2022. In 2022, a total of 11,539 refugee applications were filed during the year, but only 175 were granted refugee status. This number includes both family reunification of existing refugees and resettlement refugees and only 22 refugees were granted refugee status through refugee screening. NANCEN Refugee Rights Center, Refugee Statistics in South Korea (as of December 31, 2022), <https://nancen.org/2043>.

¹⁸⁸ The term "person granted a humanitarian stay permit (hereinafter referred to as "humanitarian sojourner") means a foreigner granted a stay permit from the Minister of Justice as prescribed by Presidential Decree as a person who has rational grounds for recognizing that his/her life, personal liberty, etc. is very likely to be infringed by torture, other inhumane treatment or punishment or other events. A total of 67 people have been granted humanitarian status in 2022. <https://nancen.org/2043>.

¹⁸⁹ The Ministry of Justice, which is in charge of refugee protection, operates a living costs system in which the government pays a certain amount of money every month for a certain period of time to support the livelihood of those whose refugee status is under review. However, the living costs are only provided up to six months from the date of application for refugee recognition, and according to statistics provided by the Ministry of Justice as of December 31, 2022, only 177 out of 11,539 asylum seekers received them in 2022, and the average payment period was only 4.1 months. NANCEN Refugee Rights Center, Refugee Livelihoods Status (as of December 31, 2022), <https://nancen.org/2346>.

Center was established by the government for housing support, but less than 2% of asylum seekers use it,¹⁹⁰ and their movements are heavily controlled by the government, restricting their freedom of movement. The support system for asylum seekers under the Refugee Act only establishes regulations, but does not adequately protect the livelihoods of asylum seekers.

While the government claims that it is making efforts to establish a refugee status determination system in line with international standards, there is no interpreter support and assistance during the application process. Under the Refugee Act, there are only four refugee screening officers nationwide, and there is a legislative gap in ensuring the expertise and supervision of officials responsible for actual refugee screening,¹⁹¹ and the pool of interpreters is poorly managed.¹⁹²

The government has been pushing to revise the Refugee Act to address its current shortcomings, however the focus of the government's proposed amendment is the "ineligibility system" which excludes interviews for certain asylum seekers and denies them the opportunity to appeal. This issue has been raised repeatedly by organizations such as UNHCR, the National Human Rights Commission of Korea, the courts, as well as civil society and lawyers' associations, however, the government has not accepted these recommendations and continues to push for revisions.¹⁹³

- Establish a professional asylum system to increase the refugee recognition rate and safeguard the livelihoods and procedural rights of asylum seekers who face lengthy waiting periods.
- Stop pushing for amendments to the Refugee Act that would severely limit the rights of asylum seekers.
- Build human and material capacity to create a refugee recognition system in accordance with international standards.

LOIPR 27

Universal birth registration and birth notification system [State Party Report 209-210]

¹⁹⁰ NANCEN Refugee Rights Center, Refugee Livelihoods Status (as of December 31, 2022), <https://nancen.org/2346>.

¹⁹¹ Rights Exposure & NANCEN, Shouldering Responsibility: Reviewing South Korea's Refugee Status Determination procedures seven years after the implementation of the Refugee Act (2020. 7. 1.), <https://nancen.org/2069>.

¹⁹² From around November 2014 to April 2017, the government systematically ordered poor screening, which resulted in manipulation of asylum interviews in which officials and interpreters colluded to make false statements in asylum interviews that were not made by the asylum seekers. The case was officially recognized by the court in 2018, followed by governmental inspections and disciplinary actions in 2019, a confirmation of human rights violations by the National Human Rights Commission in 2020, and the court's recognition of the state's responsibility for compensation in 2021. https://english.hani.co.kr/arti/english_edition/e_national/1022348.html.

¹⁹³ UNHCR's Comments on the Legislative Amendment Proposal to the Refugee Act of the Republic of Korea (2021. 2. 17.), <https://www.refworld.org/pdfid/602cf8954.pdf>.

In June 2023, the Board of Audit and Inspection of Korea announced the audit results, revealing that there were more than 6,000 children born in hospitals from 2015 to 2022 whose births were not registered. The State Party conducted a comprehensive survey involving 2,236 children with Korean nationality,¹⁹⁴ and subsequently amended the Act on Registration of Family Relations to implement the birth notification system. However, as the State Party survey excluded over 4,000 migrant children born in hospitals, the Korean birth registration system including the newly introduced birth notification system, does not encompass migrant children – which means that children who fall under categories such as refugees, humanitarian status holders, or those who are undocumented face challenges in registering their births. Unless the parents return to their countries of origin or register through their country’s diplomatic missions, the births of children cannot be officially registered anywhere.

Meanwhile, the birth notification system is scheduled to take effect in 2024, however the State Party has not yet prepared a plan for its introduction. Despite the findings from the Board of Audit and Inspection, there appear to be no measures in place to support pregnancies in need or protect children. Rather, based on the prejudice that the introduction of the birth notification system could encourage child abandonment, the State Party is hastily considering implementing an anonymous birth system that would prevent parents from revealing their identities without obtaining (parental) consent.¹⁹⁵ This has raised concerns regarding violations of children's rights to their identity, rights to know and be cared for by their parents.

- Introduce universal birth registration so that all children born in the ROK can be registered immediately after birth without discrimination, regardless of their parents’ legal status, nationality, etc.
- Stop attempting to adopt an anonymous birth system, and ensure every child’s rights to identity and rights to know and be cared for by their parents.

¹⁹⁴ Yonhap News Agency, “State audit shows over 2,000 babies unregistered in S. Korea after birth since 2015”, 22 June 2023, <https://en.yna.co.kr/view/AEN20230622005300315>.

¹⁹⁵ The Korea Herald, “Bill pushed to let women give birth anonymously”, 28 June 2023, <https://www.koreaherald.com/view.php?ud=20230628000731>.

- Issues that have arisen since the LOIPR submission

Impact of COVID-19 on human rights

The State Party has not made clear official comments about human rights violations generated by the control measures for COVID-19. At the initial phase of the pandemic, it revised the Infectious Disease Control and Prevention Act (IDCPA) and added a new definition of ‘person suspected of contracting an infectious disease’ (“suspected person”)¹⁹⁶. Even though the definition of the suspected person is legally abstract and vague, the government ordered them to take compulsory COVID-19 tests¹⁹⁷ and quarantines by executive orders, and often punished them excessively. The NHRCK recommended removing the definition of the suspected person from the law, but the Ministry of Health and Welfare rejected it.¹⁹⁸ According to the investigation by human rights activists, 439 persons were fined from 300 USD to 15,000 USD, and 126 persons were imprisoned from 2 months to 2 years among 566 cases who violated the IDCPA as the suspected person.¹⁹⁹ Furthermore, many local governments restricted people's freedom of movement and detained lots of people through an executive order called ‘preventive cohort quarantine’ which has not been stated in any law. The State Party did not accept that NHRCK recommendations to prohibit the executive order of preventive cohort quarantine.²⁰⁰

Moreover, rallies were prohibited or restricted at higher level than general social distancing measures to prevent the transmission of COVID-19 from the initial phase of the pandemic. Local governments designated most main places as prohibited areas for rally without any notification of the order's termination date regardless of the real risk of COVID-19 transmission²⁰¹. Additionally, the State Party mandatorily collected the entry records of all those in all restaurants and department stores, ordered that the people who violated the quarantine must wear electronic bracelet to trace their location, and considered all citizens who temporarily stayed nearby an outbreak spot as the suspected cases with collecting all their personnel information.²⁰²

¹⁹⁶ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=62523&lang=ENG.

¹⁹⁷ Neha Banka, “Indians in South Korea say Seoul’s Covid-19 testing order on foreigners lacks clarity,” *The Indian Express*, 21 March 2021.

¹⁹⁸ National Human Rights Commission. ‘Announcement of responses to implementation plan of the Ministry of Health and Disease Control and Prevention Agency, in terms of recommendations to revise Infectious Disease Control and Prevention Act’. 12. April. 2023. Available at: https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609006&menuLevel=3&menuNo=91&fbclid=IwAR0cr69zBEJop--mMd7R8Z4h0ZywoaxRle5hmcuyFUzagDkmaiK_oJaIDGM.

¹⁹⁹ Ranghee, Hanhee Park, Chaewan Seo, Juhee Lee, Jaehyeong Jeong, Eunho Jo, Hojoon Hwang. 2021. Criminalization and COVID-19: Current situation and problems of prosecution about COVID-19. Public Interest and Human Rights Litigation Center in MINBYUN – Lawyers for a Democratic Society and Research group for Human rights and COVID-19.

²⁰⁰ National Human Rights Commission of Korea, 12 April 2023.

²⁰¹ <https://monitor.civicus.org/explore/union-leader-arrested-amid-protests-south-korea-while-restrictive-press-law-revisions-shelved/>.

²⁰² Oh, Byoung-il, Chang, Yeokyung, and Jeong, SeonHwa. 2020. COVID-19 and the Right to Privacy : An Analysis of South Korean Experience. Available from: [Covid_19_and_the_right_to_Privacy_an_analysis_of_South_Korean_Experiences.pdf](#) (apc.org).

- Delete the definition of the suspected person who could include many unspecified people and discontinued all types of excessive punishments, criminalization and violation of privacy of the suspected persons.
- Stipulate for prohibiting ‘preventive cohort quarantine’ targeting the general population who are not in close contact with infectious disease patients.
- Prepare a safe measure to allow rally during the pandemic period.

Climate crisis and human rights

In the ROK, people suffer from climate disasters including heat waves and heavy rains every year. As not only ordinary citizens but also workers' right to life is seriously threatened, in December 2020, a petition against human rights violations, including the right to life, health, and freedom of occupation caused by the climate crisis was filed with the National Human Rights Commission of Korea.²⁰³ In June 2023, a 29-year-old worker who was managing an outdoor parking lot at a large grocery store died while working in weather with a heat warning in effect.²⁰⁴ Although ROK's heatwave threatens construction workers, outdoor agricultural workers, and indoor workers with insufficient ventilation and air conditioning facilities, the Occupational Safety and Health Act does not sufficiently regulate numerous blind spots where labor in extreme heat occurs. More serious damage is occurring due to the working environment in which workers cannot exercise freely their right to stop working. In summer of 2023, 14 people died on Osong Underground Road, and at least 49 people died nationwide due to heavy rainfall. The Ministry of Environment predicted that annual precipitation could increase by 41.3% in the late 21st century (2071-2100) if current levels of greenhouse gas emissions continue.²⁰⁵ Due to the increasing heavy rainfall, grave violation of an individual's right to life is expected.

However, according to the ‘Carbon Neutral Green Growth Basic Plan’, approved April 2023, the State Party lowered the reduction rate of the industrial sector, the largest source of greenhouse gas emissions in the country, from 14.5% to 11.4% compared to the last NDC (‘21). As a result, the industry was allowed to emit as much as 8.1 million tons of carbon. The State Party announced plans to fill the shortfall by extending the lifespan of old nuclear power plants, expanding carbon dioxide capture, storage, and utilization technology (CCUS), which is an uncertain means of reduction. The State Party's plan to approach carbon reduction numerically with markets and technologies cannot guarantee the rights to life and safety from the aggravating climate crisis.

²⁰³ 41 citizens including agricultural and livestock workers, fishermen, outdoor workers, residents and general consumers in areas of rising sea levels, victims of health problems such as climate depression, filed a complaint with the National Human Rights Commission regarding human rights violations caused by the climate crisis, claiming violations of the right to life, health, freedom of employment, property rights, freedom of housing, and the right to food. <https://www.greenkorea.org/activity/weather-change/climatechangeaction-climate-change/86044/>.

²⁰⁴ The deceased's direct cause of death was recorded as pulmonary embolism, 'excessive dehydration'. According to the work record, the deceased worker worked continuously for 2 hours and 45 minutes and 3 hours and 30 minutes without a break even on June 18, when the heat wave warning was in effect. <https://www.koreaherald.com/view.php?ud=20230629000695>

²⁰⁵ <http://www.me.go.kr/home/web/board/read.do?pagerOffset=0&maxPageItems=10&maxIndexPages=10&searchKey=&searchValue=&menuId=286&orgCd=&boardMasterId=1&boardCategoryId=&boardId=1398830&decorator=>

- Implement laws to ensure the life and safety of individuals and workers in the event of climate disasters such as heat waves and heavy rainfall, and completely reorganize its Carbon Neutral Green Growth Basic Plan.
- Establish annual reduction targets for the next 20 years that take into account cumulative emissions and carbon budgets, and implement drastic reductions within the current government's term.