

**Joint NGO Submission to the Committee against Torture
for the Consideration of the Republic of Korea's Sixth
Periodic Report**

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South Korean Human Rights Organizations Network (26 NGOs)

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Table of Contents

Introduction.....	4
LOIPR 2.....	5
LOIPR 3.....	6
LOIPR 4.....	7
LOIPR 5.....	9
LOIPR 6.....	11
LOIPR 7.....	13
LOIPR 8.....	14
LOIPR 9.....	15
LOIPR 10.....	18
LOIPR 11.....	21
LOIPR 12.....	22
LOIPR 13.....	24
LOIPR 14.....	25
LOIPR 15.....	26
LOIPR 16.....	26
LOIPR 17.....	28
LOIPR 18.....	30
LOIPR 19.....	32
LOIPR 20.....	36
LOIPR 21.....	39
LOIPR 22.....	41
LOIPR 23.....	44
LOIPR 24.....	46
LOIPR 25.....	48
LOIPR 26.....	50
LOIPR 27.....	51
Additional Issues.....	54

Introduction

We, a coalition of 26 civil society organizations from the Republic of Korea, present this joint submission for the Committee against Torture’s examination of the Republic of Korea’s sixth periodic report. This submission is organized as an alternative report, addressing each issue in the Committee’s list of issues prior to submission (“LOIPR”). The submission also addresses several additional issues not included in the LOIPR.

Based on our experience working closely with rights-holders on the ground, we aim to provide the Committee with accurate and detailed information on the State party’s implementation of the Convention. For each issue, we have included a list of suggested recommendations to strengthen our advocacy to improve the State party’s implementation of the Convention.

The human rights situation in the Republic of Korea stands at a critical juncture. In the past two years, we have witnessed a serious backsliding of human rights and fundamental freedoms on all fronts.¹ Inequality and discrimination against the socially marginalized have deepened. Public institutions mandated to protect and promote human rights have been undermined.

In one telling example, the National Human Rights Commission of Korea’s submission to the Committee for this review excludes key recommendations and contains weakened language,² due to objections from several Commissioners. During this discussion, one Commissioner remarked that “human rights are guaranteed to human beings, not beasts who wear human masks.”³

In the Republic of Korea, recommendations by UN human rights bodies play a crucial role in domestic advocacy to strengthen the protection and promotion of human rights. We respectfully request that the Committee carefully consider this submission in the examination of the State party’s report and hope that the process will create sufficient pressure to substantively improve the State party’s implementation of the Convention.

¹ See Human Rights Watch, World Report 2024: South Korea, <https://www.hrw.org/world-report/2024/country-chapters/south-korea>; Korea Pro, South Korea faces human rights backslide in 2023, 4 January 2024, <https://koreapro.org/2024/01/south-korea-faces-human-rights-backslide-in-2023/>.

² Hankyoreh, [Exclusive] National Human Rights Commission report to the UN excludes ‘repealing criminalization of homosexuality in the military’, 5 June 2024, https://www.hani.co.kr/arti/society/society_general/1143373.html.

³ Pressian, “Human rights is not guaranteed to beasts who wear human masks,” says human rights commissioner, 5 June 2024, <https://www.pressian.com/pages/articles/2024060518472190948>.

LOIPR 2

Definition of torture

The State party has made no effort to amend the Criminal Act to establish torture as a distinct crime that includes all elements covered in article 1 of the Convention.

Despite the Committee's repeated emphasis on the preventive effect of defining torture as a distinct crime and potential loopholes for impunity arising from discrepancies in its definition,⁴ the State party maintains the position that "torture and acts of cruelty in all forms" may be punished pursuant to article 125 ("violence and cruelty") of the Criminal Act and other domestic laws. However, the definition and scope of "violence and cruelty" under article 125 of the Criminal Act is much narrower than those of torture under the Convention. As previously noted by the Committee, article 125 does not stipulate the mental and psychological aspects of torture, thus leaving the matter to judicial interpretation. Further, the scope of the article is limited to persons "performing or assisting in activities concerning trial, prosecution, police, or other functions involving the restraint of the human body" and "while in the performance of his duties". This excludes non-state actors who may act "at the instigation of or with the consent or acquiescence of" state actors, as well as public officials acting outside their scope of duty. Other domestic laws cited in the State party report also fail to cover the elements of torture under the Convention.⁵ This clearly violates the State party's duty under article 4 of the Convention.

- **Take legislative measures, such as amendments to the Criminal Act, to establish torture as a distinct crime that includes all elements covered in article 1 of the Convention.**

Penalties for the crime of torture

The State party has made no legislative effort to ensure that the penalties for acts of torture are commensurate with the gravity of the crime.

Despite the gravity of the crime of torture, the penalties prescribed under article 125 of the Criminal Act are "imprisonment for not more than five years and suspension of qualification for not more than ten years", unless the acts result in injury or death., Thus the provision purported to punish torture

⁴ In its concluding observations on the State party's combined third to fifth periodic reports, the Committee drew the State party's attention to its general comment No. 2, which underscores the preventive effect of establishing crime of torture defined as a separate offense and the risk of impunity caused by discrepancies between the Convention's definition and that incorporated into domestic law.

⁵ Article 9 of the *Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court* only mentions torture as a form of crime against humanity. *Article 4-2 of the Act on the Aggravated Punishment, etc. of Specific Crimes* only proscribes aggravated sentencing for violations of article 124 or 125 of the Criminal Code that results in injury or death.

prescribes penalties comparable to those for “abuse of authority” under article 123⁶ and “acceptance of bribe” under article 129(1),⁷ and lower than those for “unlawful arrest” or “unlawful confinement” under article 124(1).⁸

- **Take legislative measures to ensure that acts of torture are punishable by penalties commensurate with the gravity of the crime.**

LOIPR 3

Elimination of statutes of limitations for torture and ill-treatment

The State party states that the non-applicability of the statute of limitations in the Act on the Punishment of Crimes Under the Jurisdiction of the International Criminal Court is an exception that should be applied on a case-by-case basis, taking into account the type and nature of the crimes of torture. This is contrary to international human rights standards, which exclude the application of statutory limitation periods not only for crimes of torture and ill-treatment but also for serious human rights violations.⁹ Additionally, the proposed bill that the State party mentioned in its report—the Act on Special Cases Concerning Non-Applicability of Statute of Limitations, etc. to State Crime Against Humanity submitted by Representative Jung Choun-sook—was discarded after the expiration of the National Assembly term. Other bills proposed to specify the non-applicability of the statute of limitations to enforced disappearance or State crimes against humanity¹⁰ were also discarded.

Since the State party has not fully incorporated the acts prohibited under the Convention into its system of criminal law, the statute of limitations can only be precluded through individual legislation.

⁶ **Article 123 (Abuse of Authority)** A public official who, by abusing his official authority, causes a person to perform the conduct which is not to be performed by the person, or obstructs the person from exercising a right which the person is entitled to exercise, shall be punished by imprisonment for not more than five years and suspension of qualifications for not more than ten years, or fine not exceeding ten million won.

⁷ **Article 129 (Acceptance of Bribe and Advance Acceptance)** (1) A public official or an arbitrator who receives, demands or promises to accept a bribe in connection with his duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years.

⁸ **Article 124 (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 official authority, he shall be punished by imprisonment for not more than seven years and suspension of qualifications for not more than ten years.

⁹ Committee Against Torture, Concluding observations on the combined third to fifth periodic reports of the Republic of Korea, CAT/C/KOR/CO/3-5, 30 May 2017, para. 10; UN General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, <https://www.refworld.org/legal/resolution/unga/2006/en/12095>, paras. 6-7.

¹⁰ Partial Amendment Bills to the Criminal Procedure Act, the Act of Punishments for Crimes of Enforced Disappearance, the Prevention of Enforced Disappearance, and Remedy for Victims(bill), The Act on Special Cases Concerning the Statute of Limitation for the State Crimes against Human Rights, etc.

Nonetheless, current legislation that excludes the statute of limitations are limited to seven cases,¹¹ signifying that the statute of limitations still applies to various crimes that may constitute torture and ill-treatment. Due to these statutes of limitations, perpetrators of torture and inhuman treatment—especially those involving past state violence—are neither investigated nor punished.

In contrast, the Amnesty Act broadly authorizes presidential pardons.¹² As a result, there have been instances in which perpetrators of torture and ill-treatment have been granted special pardons by the president. Meanwhile, statutes of limitations continue to apply to compensation claims against the State party for torture and ill-treatment. In particular, this has led to circumstances in which survivors of past state violence have been unable to receive compensation due to the statute of limitations.¹³

- **Take necessary legal measures to ensure that the offence of torture and ill-treatment are not subject to statutes of limitations.**
- **Take necessary legal measures to ensure that victims of torture and ill-treatment seeking compensations through civil proceedings are not subject to statutes of limitations.**
- **Take necessary legal measures, such as amending the Amnesty Act, to ensure the offence of torture and ill-treatment are not subject to amnesty.**

LOIPR 4

Right to information

Article 200-5 of the Criminal Procedure Act stipulates that whenever arresting a criminal suspect, every prosecutor or judicial police officer shall notify the criminal suspect of the gist of the suspected crime, the reasons for arrest, and the right to appoint a defense counsel, as well as an opportunity to vindicate oneself.¹⁴ However, in emergency or ‘flagrant offender’ arrests without warrant, the gist and reason of the alleged offense are not being fully explained. At the time of arrest, judicial police officers merely notify the Miranda warning, but do not explain the gist of the suspected crime in

¹¹ Crimes disrupting constitutional order; crimes of genocide, etc; rape and indecent act by compulsion against a child or youth under 13 and a person with disability; murder associated with rape against a child or youth under 13 and a person with disability; murder.

¹² Amnesty Act, Article 9 (Enforcement of Special Amnesty, etc.). Special amnesty, reduction of punishment and rehabilitation for a specific person shall be determined by the President.

¹³ KBS News, 14 October 2023, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=7793014>.

¹⁴ **Criminal Procedure Act Article 200-5 (Notice of Arrest and Suspected Crime)** Whenever arresting a criminal suspect, every prosecutor or senior judicial police officer shall notify the criminal suspect of the gist of the suspected crime, the reasons for arrest, and the right to appoint defense counsel and shall also give an opportunity to vindicate himself.

detail, either orally or in writing. Consequently, a criminal suspect captured in emergency or as a flagrant offender is often unaware of their exact charges or the facts of the suspected crime.

Right to language access

Since the Criminal Procedure Act and the Immigration Act do not require the provision of diverse language support in arrest or detention proceedings, procedural rights are not guaranteed to foreigners in the process of arrest or detention. The Refugee Act¹⁵ and the Immigration Act¹⁶ limit mandatory interpretation to a refugee applicant who is unable to express their will in Korean sufficiently, or a person who is unable to make oneself understood in the Korean language. As a result, even those who are not proficient in the Korean language are not provided with interpretation in administrative procedures, etc.

Right to counsel

Although the Criminal Procedure Act recognizes a court-appointed defense counsel, it does not guarantee legal representation before indictment for persons arrested without a warrant. This shows a gap in legal aid in the investigation process prior to indictment. The bill on the public defender system in criminal justice, which would have provided legal aid from a public defender from the earliest stages of an investigation, was discarded at the end of the National Assembly's term. While the court-appointed defense counsel is provided mandatorily for the review of the legality of arrest,¹⁷ it is not guaranteed before a detained person files for such review.

Right to health

A person arrested without a warrant may request medical care in accordance with the Rules on Guard and Detention of Crime Suspects,¹⁸ but the approval for a medical treatment is at the discretion of the main official in charge of detention.

Duration of detention for examining arrests and the right to defense

¹⁵ **Refugee Act Article 14(Interpretation)** Where a refugee applicant is unable to express his/her will in Korean sufficiently, the Minister of Justice may have an interpreter with a specific qualification prescribed by Presidential Decree interpret in the course of interview.

¹⁶ **Immigration Act Article 48 ((Requests to Appear and Interrogation of Suspects)**

(6) Any statement made by a person unable to make himself/herself understood in the Korean language or a person with hearing impairment or language impairment shall be interpreted by an interpreter: Provided, that a person with hearing impairment or language impairment may be interrogated or make a statement in writing.

¹⁷ **Article 33 (Court-Appointed Defense Counsel) 2)** Where the criminal defendant is unable to appoint a defense counsel because of poverty or for any other reason, the court shall appoint a defense counsel if the criminal defendant requests.

¹⁸ Article 31 of Rules on Guard and Detention of Crime Suspects.

The Criminal Procedure Act requires a preliminary examination of the arrest within 48 hours of receipt of the request, and a decision on the appropriateness of the arrest within 24 hours thereafter.¹⁹ This means that the examination of the arrest should be initiated within 48 hours, but it can take up to 72 hours to receive a ruling. Some courts do not promptly serve the warrant petition on defense counsel prior to the substantive review of the arrest warrant, which severely constrains the ability of the suspect to exercise their right to defense. As the State party mentioned in its report, the specific details regarding the detention are not recorded in the Korea Information System of Criminal Justice Services (KICS), so the families of the detained cannot access the detailed information.

- **Establish procedures to adequately inform the gist of the alleged offense and reason for arrest to the arrested persons.**
- **Guarantee interpretation to all foreigners in the procedures for criminal or administrative detention.**
- **Establish a system to provide legal aid during all stages of investigative proceedings.**
- **Guarantee full access to medical care within 24 hours to arrested persons.**
- **Ensure the delivery of a final ruling on the appropriateness of the arrest within 48 hours.**
- **Provide a copy of the warrant petition timely to enable the exercise of one's right to defense during the substantive review of the arrest warrant.**
- **Record the specific information about detention in the KICS.**

LOIPR 5

Follow-up procedures on the death of human rights activist and farmer Nam-gi Baek

On 5 June 2018, at the first trial, Koo Eun-soo, former Commissioner of the Seoul Metropolitan Police Agency (“SMPA”), was acquitted, and Shin Yoon-gyun, former Commander of the Fourth Mobile Corps of the SMPA, was fined 10 million KRW. Of the two officers assigned to control police water cannons, Han Seok-jin was sentenced to eight months in prison with two years’ probation, and Choi Yoon-seok was fined 70 million KRW.²⁰ In the court of appeals, all four defendants were

¹⁹ Article 106 of Regulations on Criminal Procedure

²⁰ Seoul Central District Court, 2017gohap1051 decided on 5 June 2018.

sentenced to fines ranging from 7 to 10 million KRW.²¹ The former Commissioner of the SMPA appealed to the Supreme Court but was dismissed, and his sentence was confirmed on 13 April, 2023. The other officers did not appeal and the court finalized their sentences.²²

No improvement in guaranteeing peaceful assemblies

The State party report asserts that it has implemented seven of the eight recommendations made by the Fact-Finding Commission on Human Rights Violations of the Korean National Police Agency.²³ However, many of the recommendations remain unfulfilled. Legislation to ban the use of high-pressure water cannon trucks in principle has not been enacted because the National Assembly has expired.²⁴ Revisions to subordinate regulations such as the Enforcement Decree would allow for the reintroduction of water cannon trucks, and the police have recently mentioned their return.²⁵ The government and police view assembly and demonstration as an illegal activity rather than a right to be protected, taking a firm stance by threatening with repression and arrests, which is contrary to international human rights standards.²⁶ Police are also issuing bans or restriction notices for nighttime protests and rallies near the president's official residence, saying they are illegal.²⁷ In addition, police have been exercising unjustified force against gatherings, such as declaring nighttime cultural festivals illegal and dispersing rally participants,²⁸ and forcibly removing an altar set up to commemorate a worker who self-immolated.²⁹ In light of this, it can only be concluded that recommendations such as the establishment of guidelines in line with international human rights standards, a paradigm shift in the regulation of public demonstrations, and the minimization of prohibition notices have not been implemented at all.

- **Implement the eight recommendations by the Fact-Finding Commission on Human Rights Violations of the Korean National Police Agency.**

²¹ Seoul High Court, 2018no1671 decided on 9 August 2019

²² Supreme Court, 2019do12195 decided on 13 April, 2023

²³ State party report, paras. 29-31.

²⁴ Partial Amendment Bill to the Act on the Performance of Duties by Police Officers.

²⁵ MBC NEWS, "Capsaicin, baton, and Water Cannon Truck... Police is putting the clock of Democracy back". 1 June 2023, https://imnews.imbc.com/replay/2023/nwdesk/article/6489632_36199.html.

²⁶ Seoul Shinmun, "Police, take a firm stance on assembly with repression and arrest...MINBYUN "Licensing on assembly violates the freedom", 22 September 2023, <https://www.seoul.co.kr/news/society/2023/09/22/20230922008008>.

²⁷ HANKYOREH, "Korea moves to ban late-night rallies in move criticized as circumventing courts", 22 September 2023, https://english.hani.co.kr/arti/english_edition/e_national/1109709.

²⁸ HANKYOREH, Police, "Search and seizure of the Construction Workers Union... stipulate the night-time assemblies are illegal", 9 August 2023, https://www.hani.co.kr/arti/society/society_general/1095243.html.

²⁹ Yonhap News Agency, "Police forcibly demolished memorial alter for Yang Hoe-dong... Arrest 4 labors of KCTU", 31 May 2023, <https://www.yna.co.kr/view/AKR20230531172851004>.

- **Take legislative measures to ban the use of water cannon trucks.**
- **Stop the use of physical force, unjustified arrests, and excessive bans and restriction notices on peaceful assemblies and demonstrations.**

LOIPR 6

Court proceedings regarding the one-year anniversary assembly

There has been no special investigation or official acknowledgment of state accountability for the excessive use of force against the bereaved families of Sewol Ferry disaster³⁰ and citizens during the one-year anniversary assembly. Rather, human rights activists who organized the assembly were prosecuted and convicted.³¹ Some assembly participants filed individual cases of state compensation claims for excessive use of force by the police, but they finally partially lost the cases.³² Meanwhile, the government filed a compensation claim to the bereaved families of Sewol Ferry disaster victims and related organizations that participated in the assembly. This case was not settled until 2018, when the court forced a mediation.³³

Court proceedings on state accountability

The appellate court ruling on state compensation claims filed by the Sewol Ferry disaster victims' bereaved families to hold the State party accountable for its actions during and after the disaster³⁴ was confirmed on March 3, 2023, as the State party waived its appeal.³⁵ While the court clarified the state's responsibility for the disaster, it was limited because among the State party's unlawful response in the aftermath of the disaster,³⁶ it only recognized systematic surveillance by the Defense Security Command (DSC) as an illegal act.

The court has not held senior state officials responsible for the disaster criminally accountable. The court acquitted high-ranking officials who obstructed the investigation into the Sewol Ferry disaster

³⁰ The tragedy that followed the sinking of the Sewol Ferry on April 16, 2014, in the Korean Peninsula Ocean near Jodo-myeon, Jindo-gun, Jeollanam-do, which caused a number of victims and sufferers.

³¹ Supreme Court, 2016do14995 sentenced on 25 March 2021.

³² News1, "The reporter, who was damaged by water cannon, overturns first trial and win part of second trial", 26 December 2017.

³³ The Kyunghyang Shinmun, "The lawsuit on groups who participate the assembly, finish without compensation", <https://m.khan.co.kr/national/court-law/article/201809032311005>.

³⁴ Seoul High Court, 2018na2047920, etc sentenced on 12 January 2

³⁵ HANKYOREH, the ruling on state's accountable, MOJ give up the appeal https://www.hani.co.kr/arti/society/society_general/1077652.html.

³⁶ Illegal surveillance, spreading false information, supporting opposing assemblies, Compulsory dissolution and obstruction of independent investigation, etc.

by forcibly dissolving the Special Commission on Social Disaster Investigation, and acquitted the coast guard leadership who failed to take adequate rescue measures at the time of the disaster.³⁷

Rehabilitation and compensation for victim families

Measures taken to rehabilitate and compensate the victims of the Sewol Ferry disaster are not enough. The memorial park requested by the victims' families to remember and honor the victims is supposed to be built according to the Special Act,³⁸ but the State party's insufficient cooperation has delayed its construction. The medical subsidies provided for the rehabilitation of victims under the Special Act were discontinued on April 15, 2024, due to its time limit. As the victims are suffering from trauma, it is necessary to amend the Special Act to provide medical assistance for an unlimited period of time, but the relevant ministries are opposed to amending the law.³⁹ A special bill was proposed to include rescue divers as victims and to provide medical assistance for an indefinite period of time, but the National Assembly approved an amended bill on May 28, 2024, which extended the medical assistance for only five years and deleted the inclusion of divers as victims. When the Special Commission on Social Disaster Investigation established by the Special Act concluded its activities on June 30, 2022, it made recommendations to the relevant ministries for victims' satisfaction and prevention of recurrence, but most of its recommendations have not been implemented.⁴⁰

Excessive restrictions on assemblies

On May 5, 2023, police announced a firm response regarding assemblies, noting that they would disperse the rally on site, arrest participants for criminal offenses, and possibly use capsaicin spray. It was later confirmed that there was an internal review to reuse high-pressure police water cannon trucks. As there is no legal standard for the use of water cannon trucks, the standard established by presidential decree after Mr. Baek's death could be revoked at any time.

- **Establish the 416 Memorial Park to memorialize victims of the Sewol Ferry disaster.**

³⁷ The Korea Times, "Supreme Court confirms acquittal of 9 ex-Coast Guard officials in Sewol ferry sinking", 2 November 2023, [Supreme Court confirms acquittal of 9 ex-Coast Guard officials in Sewol ferry sinking - The Korea Times](#); THE MARITIME EXECUTIVE, "Korea Supreme Court Upholds Coast Guard Officers' Acquittal in Sewol Loss", 2 November 2023, <https://maritime-executive.com/article/korea-supreme-court-upholds-coast-guard-officers-acquittal-in-sewol-loss>.

³⁸ Special Act on Remedy for Damage Caused by The April 16 Sewol Ferry Disaster and Assistance Therefor.

³⁹ Hankookilbo, "The government says, 'It's been 10 years since the disaster, so cutting off medical aid. is necessary'", 16 April 2024, <https://www.hankookilbo.com/News/Read/A2024040916060001321>.

⁴⁰ KBS NEWS, "No implementation of the recommendations... the tragedy has been repeated", 20 April 2024, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=7944600>.

- **Amend the Special Act⁴¹ to expand the scope of victims and remove time limits on medical assistance grants to ensure that victims of the Sewol Ferry disaster are rehabilitated and fully compensated.**
- **Implement the recommendations made by the Special Commission on Social Disaster Investigation on June 30, 2022, and disclose the result to prevent the recurrence of such a disaster.**
- **Acknowledge the State party’s accountability for the inadequate response during and after the disaster as well as the excessive use of force during the first anniversary of the Sewol Ferry disaster, punish those responsible, apologize to victims, and take concrete measures to prevent recurrence.**

LOIPR 7

National Security Act

A total of 398 persons have been charged with violating the National Security Act in the Republic of Korea over the past decade, averaging 40 per year. A total of 57 persons were charged in 2023,⁴² which was the last year before the National Intelligence Service's counterintelligence investigations were transferred to the police and it was the highest number in the past eight years. As of April 2024, there were five persons detained for violations of the National Security Act. The National Security Act has not been amended since 1991, when it was partially amended. In the 21st session of the National Assembly (May 2020 - May 2024), two draft bills to abolish the law and a draft bill to partially amend the law to remove Article 7, which punishes “anyone who praises, incites, or propagates the activities of an antigovernment organization” but they were never debated in the National Assembly and were automatically abandoned upon the expiration of the 21st National Assembly's term. In September 2023, the Constitutional Court ruled Article 7 of the National Security Act constitutional (2017 Heonba42, etc.).⁴³ However, for the section of the Article that also punishes anyone who holds or acquires any materials that praise, incite or propagate the activities of an antigovernment organization, five of the nine judges found it unconstitutional. There was also a minority opinion that Article 7 of the Act was an unconstitutional provision that violated freedoms of expression, conscience, and thought. In its last concluding observations, the Committee had reiterated its recommendation to repeal or amend the

⁴¹ Special Act on Remedy for Damage Caused by The April 16 Sewol Ferry Disaster and Assistance Therefor.

⁴² E-Country Indicators (official government statistics), Public Security Case Processing Status by Crime Type - Offenders of National Security Law, https://www.index.go.kr/unity/potal/main/EachDtlPageDetail.do?idx_cd=1745.

⁴³ Yonhap News Agency, Constitutional Court rules National Security Act as constitutional for 8th time, 26 September 2023, <https://en.yna.co.kr/view/AEN20230926006900315>.

National Security Act, particularly Article 7, the vague wording of which may violate the Convention. However, the State party has not accepted this recommendation.

- **Repeal the National Security Act in its entirety.**
- **Remove Article 7 of the National Security Act.**

LOIPR 8

Independent mechanism for investigation of torture and ill-treatment

In its report, the State party alleges that the Human Rights Violation Reporting Center of the Human Rights Bureau of the Ministry of Justice is an independent and effective mechanism for investigating allegations of torture and ill-treatment. However, this “center” is not an independent and effective mechanism as it is run by the Ministry of Justice, which oversees the Corrections Service and other detention facilities, and it does not take a victim-centered approach in investigations for fact-finding or accountability. While the National Human Rights Commission of Korea (“NHRCK”) plays some role in investigating torture and ill-treatment, including visits to correctional facilities, some establishments such as unaccredited detention facilities are excluded from its scope of investigation.⁴⁴ In addition, the NHRCK does not have the authority to investigate all cases of torture and ill-treatment because it only reviews petitions filed within one year of the event giving rise to the petition⁴⁵ and cases of human rights violations committed in connection with public authorities.⁴⁶

Independent investigative bodies should be able to visit detention facilities unannounced to prevent the possibility of torture, but the NHRCK must, in principle, notify the purpose, date, time, and place of the inspection to the detention facilities’ administration.⁴⁷ There is also no guarantee of confidentiality of conversations during the visit, as the detention facility staff may be present at the location where the NHRCK is interviewing the inmates.⁴⁸ Current law prohibits recording or transcribing conversations,⁴⁹ but allows for the correctional facility staff to listen within hearing

⁴⁴ 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.

⁴⁵ Article 32 (1) 4. of National Human Rights Commission of Korea Act.

⁴⁶ Article 30 (1) 1. of National Human Rights Commission of Korea Act.

⁴⁷ Article 3 (1) of Enforcement Decree of the National Human Rights Commission of Korea Act.

⁴⁸ Article 24 (5) of the National Human Rights Commission of Korea Act.

⁴⁹ Article 24 (5) of the National Human Rights Commission of Korea Act.

distance.⁵⁰ Currently, the Ministry of Justice permits the facility staff to be present or observe when the NHRCK investigators interview or investigate correctional facility inmates.⁵¹

There are instances where it is impossible to obtain medical evidence to support allegations of torture. In cases of inmate deaths, the NHRCK is unable to obtain medical records if there are no relatives of the deceased. This is because the Medical Service Act forbids the inspection or copying of medical records without the consent of the person directly involved or family member. The Medical Service Act provides exceptions for (1) seizure/search by prosecutor/judicial police officer, (2) damage relief for medical accidents, and (3) epidemiological investigation of infectious disease, etc., but not investigations by the NHRCK.⁵²

- **Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and take legislative and administrative measures to establish a national preventive mechanism.**
- **Authorize the NHRCK to conduct unannounced visits to all types of detention facilities including the unaccredited protective facilities and ensure that inmates have the right to confidentiality when recounting their distress during such visits.**
- **Amend the Medical Service Act to allow the NHRCK to obtain medical records in cases of deaths, even when there are no surviving family of the deceased.**

LOIPR 9

National Human Rights Institution

The NHRCK has received recommendations three times from the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) to amend the National Human Rights Commission Act or the Commission's administrative rules to establish a single independent Selection Committee with civil society participation,⁵³ but this has not been implemented to date. The NHRCK requires the President, the National Assembly, and the Chief Justice of the Supreme Court to nominate or elect 11 commissioners of the NHRCK, but there is no requirement to establish a

⁵⁰ According to the Article 31(6) of National Human Rights Commission of Korea Act, the Staff members cannot hear or record the conversation if the inmate filed a petition or intends to do so. The staff members cannot participate in the conversation (Article 4 (3) of Enforced Decree of National Human Rights Commission of Korea Act).

⁵¹ Article 16 of the Guidelines on work on human rights of inmates (Regulation 1300 of Ministry of Justice).

⁵² Article 21(3) of the Medical Service Act.

⁵³ Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 18-29, October 2021, https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf.

nomination committee with civil society participation, making it difficult to ensure that the composition of the NHRCK is sufficiently qualified and diverse in accordance with the Paris Principles. A single independent selection committee for the NHRCK should be established to prevent the appointment of human rights commissioners such as Lee Chung-sang and Kim Yong-won, who lack human rights sensitivity and basic qualifications, engage in hateful and discriminatory rhetoric, and disrespect the United Nations and its human rights mechanisms⁵⁴.

Lee Chung-sang publicly denounced the UN human rights mechanism, saying, "The UN Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women, and the Committee Against Torture are competing with each other in making [excessively progressive] recommendations in order to improve their performance and show their clarity," and repeatedly made unfounded anti-LGBTQ statements such as "male homosexuals wear diapers." Kim Yong-won, another standing member of the Commission, directly contradicted the position of the NHRCK and UN human rights bodies by stating that "the death sentence should not only be imposed, but executions should also be possible". Despite being the Commission's "Military Human Rights Protector", Kim requested the police to investigate the bereaved families of military who protested when visiting the NHRCK to request a meeting with the Chairperson.⁵⁵ In addition, Lee and Kim—who were nominated by the ruling party and the president, respectively—undermined the independence of the NHRCK by deliberately delaying or obstructing the decision to make recommendations to the government, and insisted that the paragraphs related to "Japanese military sexual slavery" and "enactment of anti-discrimination laws" be deleted from the NHRCK's independent report to be submitted to the UN Committee on the Elimination of Discrimination against Women, which was eventually submitted with the recommendation to enact anti-discrimination laws removed.⁵⁶

- **Amend the National Human Rights Commission Act to mandate the establishment of a single, independent selection committee for the Commissioners.**
- **Stop nominating unqualified national human rights commissioners who denounce the UN human rights mechanism and undermine efforts to protect and promote human rights.**

National Action Plan for the Protection and Promotion of Human Rights (NAP)

⁵⁴ Hankyoreh, "UN human rights bodies make recommendations to compete for performance" ... is Lee Chung-sang really a human rights commissioner? 11 April 2024, https://www.hani.co.kr/arti/society/society_general/1136251.html.

⁵⁵ KBS, Human Rights Commissioner Kim Yong-won and Lee Chung-sang "Imprisoned Bereaved Relatives of Military Deaths"...Requested Police Investigation, 3 November 2023, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=7809474>.

⁵⁶ Hankyoreh, Human Rights Committee approves report on women's discrimination to UN, but omits recommendation for anti-discrimination law, 27 March 2024, https://www.hani.co.kr/arti/society/society_general/1133857.html.

The State party failed to implement the recommendations of the UN Human Rights Committee and the NHRCK, as well as input from the civil society, in the development of the third National Human Rights Plans of Action (2018-2022). Despite 18 rounds of sectoral consultations, the NAP was criticized by civil society for its omission of LGBT rights altogether and for referring to undocumented migrants as "illegal aliens." In addition, the fourth NAP (2023-2028), which should have been developed in 2022, was only announced in April 2024 and did not even mention LGBT rights or deinstitutionalization of persons with disabilities. "Gender equality" was replaced with "equality between the two sexes" (a term endorsed by anti-LGBT groups) without any explanation. The civil society was not provided a meaningful opportunity to participate in the development of fourth NAP, and the government enabled the disruption of the public hearings by inviting hate groups. This is due to the government's lack of interest in the NAP and the failure to enact the Framework Act on Human Rights Policy, which would provide the legal basis for the development and implementation of the NAP. The previous administration introduced the legislative bill for the Framework Act Human Rights Policy in December 2021, but there has been no political will from the current administration or the National Assembly to enact it. Legislation is necessary to ensure that the NHRCK and civil society can play an active role in the NAP development and implementation process.

- **Develop the National Action Plan for the Protection and Promotion of Human Rights based on international human rights standards and ensure full participation of the NHRCK and civil society in the process.**
- **Enact the Framework Act on Human Rights Policy to ensure the effective development and implementation of the National Action Plan for the Protection and Promotion of Human Rights.**

Ratify the Optional Protocol to the Convention Against Torture

The State party has refused to ratify the Optional Protocol to the Convention Against Torture, claiming that the Subcommittee on Prevention of Torture's authority of access all places of detention, facilities, and equipment in the country under the Optional Protocol would conflict with the protection of military secrets and the prevention of leakage of professional secrets. The State party also maintains that ratification of the Optional Protocol is unnecessary because the NHRCK fulfills the role of an NPM. However, this is not true. The NHRCK lacks the manpower and funding to visit and inspect all 70 detention facilities under the Ministry of Justice's Corrections Service and Crime Prevention Policy Bureau, as well as all detention facilities under the Ministry of National Defense. The National Human Rights Commission Act also lists only a limited number of detention and protection facilities that can

be visited and inspected and does not include detention centers for North Korean escapees managed by the National Intelligence Service, departure waiting rooms at ports of entry, or waiting rooms for asylum seekers.⁵⁷

- **Ratify the Optional Protocol to the Convention against Torture and establish a national preventive mechanism.**

LOIPR 10

North Korean Escapees

The 2015 and 2023 Concluding Observations of the Human Rights Committee and the 2017 Concluding Observations of the Committee Against Torture recommended improvements to the detention center now known as the Protection Center for the Democratic People’s Republic of Korea Escapees (formerly called the Central Joint Interrogation Center).⁵⁸ In 2018 and 2019, amendments to the North Korean Defectors Protection and Settlement Support Act and the Enforcement Decree of the same law reduced the maximum time limit of the investigation period to three months; however, there is no time limit on the period for making a decision on whether to grant humanitarian protection to the person. Therefore, indefinite detention is still permissible.⁵⁹ The National Intelligence Service (“NIS”) continues to make

⁵⁷ "Article 2 (Definitions) of the National Human Rights Commission Act 2.

1. The term "human right" means any of human dignity and worth, liberty and rights which are guaranteed by the Constitution of the Republic of Korea, and recognized by international human rights treaties that the Republic of Korea signs and ratifies and by international customary laws;

2. The term "confinement or caring facility" means any of the following facilities:

(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 inquires into, detains, and accommodates persons in order to perform his or her duties;

(c) Military correctional institution (including its branch office and detention facility for detainees pending trial);

(d) Foreigner detention center;

(e) Facility for caring for many persons (referring to a facility for protecting and accommodating many persons, which is prescribed by Presidential Decree);

⁵⁸ It recommended that the State party: 1) ensure that DPRK escapees are detained for the shortest possible period of time;

2) ensure access to counsel throughout their detention, including during interrogation; and 3) distinguish between investigative proceedings to determine the grant of humanitarian protection of DPRK escapees in relation to resettlement and investigations into violations of the National Security Act.

⁵⁹ Article 12(3) of the Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act (Period of Investigation and Temporary Protection Measures). The period of investigation and temporary protection measures pursuant to Article 7(3) of the Act shall not exceed 90 days from the date of the applicant's entry into Korea (if the applicant applies for [humanitarian]protection after entering Korea, it shall be the date of the application for protection). However, if there are unavoidable reasons such as an increase in the number of people entering the country, the period may be extended for a period of 30 days on a one-time basis after deliberation by the Council.

Article 15 (Protection Decision, etc.). ② If the Chief of the National Intelligence Service intends to decide whether to protect an individual pursuant to Article 8 (1) (b) of the Act, the Chief shall decide whether to protect the individual within 30 days from the date of completion of the investigation and temporary protection measures pursuant to Article 7 (3) of the

all decisions regarding investigations and detention. Furthermore, the right to access to counsel is not guaranteed. Current practice does not strictly separate the relevant authorities and procedures for the investigation to decide on a grant of humanitarian protection and any criminal investigation. Conflating these investigations allows for human rights violations and abuses amounting to torture and ill-treatment, particularly as all Democratic People’s Republic of Korea (“DPRK”) escapees are, without any basis, presumed to be potential spies. In this NIS-operated detention center, there is only a single NIS-appointed human rights protection officer to identify and prevent all human rights violations in the facility—a task clearly beyond the capacity of one individual.⁶⁰

[Table] No. of DPRK escapees in 2017-2023 (Source: Ministry of Unification)

	2017	2018	2019	2020	2021	2022	2023
Male	188	168	202	72	40	35	32
Female	939	969	845	157	23	32	164
Total	1,127	1,137	1,047	229	63	67	196

The number of DPRK escapees in the Ministry of Unification's statistics above only refers to the number of people who have officially resettled in South Korea after going through the center. There are no statistics publicly available concerning the numbers of DPRK escapees who first enter the ROK asking for protection, those who were found to be ineligible for protection and deported after the investigation at the center, or those who died during the screening process.

There is no well-defined or transparent process, including for appeals, demand for a trial, or suspension of the deportation order regarding the repatriation of North Korean escapees. For the purposes of the Convention, the DPRK can be considered a separate state, and as such, the Republic of Korea failed to take appropriate precautionary measures required by Article 3 of the Convention in relation to the deportation of two North Korean fishermen to the DPRK on November 7, 2019.

- **Abolish the Protection Center for DPRK Escapees—where all DPRK escapees, upon**

Act. However, this shall not apply if there are unavoidable reasons.

⁶⁰ Article 12.5 of the Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act (Human Rights Protection Officer) ① To strengthen the protection of human rights of protection applicants, one human rights protection officer shall be appointed at the temporary protection facility. ② The human rights protection officer under Paragraph (1) (hereinafter referred to as the human rights protection officer) shall be appointed by the Chief of the National Intelligence Service from among persons falling under any of the following subparagraphs. ... ⑤ In addition to the matters stipulated in Paragraphs 1 through 4, the Chief of the National Intelligence shall prescribe the matters necessary for the operation of the human rights protection officer.

entry into the ROK, are subjected to prolonged detention and coercive interrogation—and introduce a non-coercive process similar to the Refugee Status Determination process.

- **Immediately ensure that all DPRK escapees detained at the Protection Center for DPRK Escapees have access to counsel and that laws and institutions are in place to effectively guarantee the right to appeal a decision to deny protection or enforce deportation.**
- **Strictly exclude the NIS from the humanitarian protection decision-making process for DPRK escapees and develop legislation to ensure that DPRK escapees are afforded due process in the resettlement process.**
- **Reform laws and practices to ensure that the Convention Against Torture's prohibition on refoulement applies to DPRK escapees.**

Refugees

The annual refugee recognition rate in South Korea is, on average, only 0-2%.⁶¹ The State party claims that it has been striving to improve the quality of the refugee status determination procedure, but there is no support or assistance for interpretation in the refugee application process. Under the Refugee Act, there are only four refugee screening officers nationwide, and there are no provisions or regulations to ensure the expertise or oversight of the refugee officers dedicated to reviewing applications for refugee status. The pool of interpreters is also poorly managed. Despite this situation, the Korean government is advocating for the implementation of an 'ineligibility for asylum seeker screening' system that would (i) omit interviews for certain asylum seekers; and (ii) deprive those individuals of the opportunity to appeal the first instance decision. This proposed policy has raised significant concerns.⁶²

Since 2015, there have been no discussions on amending the Enforcement Decree of the Refugee Act. Contrary to the Act's intent to deny asylum seekers access to the Refugee Status Determination (RSD) process only in the exceptional circumstance in which their applications are “incontestably

⁶¹ Recognition rates were 0.4% in 2019, 0.4% in 2020, 1% in 2021, 2.03% in 2022, and 1.53% in 2023. In 2023, there were a total of 18,838 asylum seeker applications, but only 101 were granted refugee status. This number includes family members of the person granted refugee status, UNHCR-recognized resettled in the ROK at the invitation of the government, and the only 75 refugees who have been recognized through an affirmative asylum process conducted by the Ministry of Justice, which is in charge of refugee screening. The Center for Refugee Human Rights (Nancen), “[Statistics] Domestic Asylum-Seeker Status (as of 2023.12.31),” 10 April 2024, <https://nancen.org/2405>.

⁶² As a result, relevant bodies such as UNHCR, the National Human Rights Commission, courts, civil society, and the Korean Bar Association have repeatedly raised this issue; however, despite these concerns, the government has proceeded to push for amendments.

groundless,” substantive reviews are still conducted at ports of entry. As a result, more than half of the applicants at ports of entry receive decisions of “non-referral,” meaning their case will not be forwarded to the RSD procedure. If an asylum seeker receives a non-referral decision and tries to contest it in court, the person must stay in the airport’s ‘departure waiting room’ managed by the Immigration Office. They must often wait at the airport for over a year, with no alternative housing facilities provided. The departure waiting room lacks proper sleeping arrangements, so individuals sleep on benches with blankets and are provided with only one in-flight meal each day. Moreover, when there are many people in the departure waiting room, the room becomes overcrowded and some people have to “sleep rough,” meaning sleep in front of the airport gate.

Similarly, as shown in government statistics, the majority of Yemeni refugees who entered Jeju Island (501 people) were granted humanitarian status. Humanitarian status holders in the Republic of Korea (“ROK”) are provided with temporary residence status, meaning that, as with asylum seekers, they are largely excluded from social rights. In particular, unlike recognized refugees, humanitarian status holders are not eligible for family reunification, meaning they cannot bring their family members living abroad to the ROK. Additionally, the residency status of their family members in ROK is not guaranteed, leaving them excluded from benefits such as health insurance and work permits and exposing them to the risk of detention and deportation.

- Cease the practice of abusing referral review procedures at ports of entry to detain asylum seekers at airports for extended periods and ensure that the right to apply for asylum is guaranteed to all asylum seekers.
- Enhance human and material resources to operate a thorough and professional Refugee Status Determination procedure, thereby increasing the refugee recognition rate and establishing procedures that meet international standards.
- Cease pursuing amendments to the Refugee Act that severely restrict the rights of refugees.

LOIPR 11

Training of public officials

While the State party report indicates that some human rights training is provided to prosecutors and police officials, it is not clear that 1) training on the absolute prohibition of torture and the provisions of the Convention is mandatory or adequate, or 2) relevant human rights training is provided to all public officials involved in deprivation of liberty.

Furthermore, as the State party report acknowledges, the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not included in the public officials training curriculum.

As a result, it is impossible to determine or assess the effectiveness or impact of training on the absolute prohibition of torture, the provisions of the Convention, and the Istanbul Protocol.

- Take immediate steps to ensure that the absolute prohibition of torture, the provisions of the Convention, and the Istanbul Protocol are properly taught to all relevant public officials, and that a practical evaluation system is put in place to determine and improve its effectiveness.

LOIPR 12

Room, material condition, exercise, medical treatment, etc. in correctional facilities

Despite a growing number of cases recognizing overcrowding as a human rights violation and holding states responsible for damages to inmates, the problem of overcrowding is not being fundamentally addressed. According to statistics from the Ministry of Justice, as of September 30, 2023, the detention rate was 118.1% compared to capacity.⁶³ Cheongju Women’s Correctional Institution is extremely overcrowded with the detention rate of 132.7% compared to capacity. Gimcheon Juvenile Correctional Institution, the only juvenile correctional facility in the ROK, has the occupancy rate of about 88% as of March 2022.⁶⁴ While the internal guidelines of the Ministry of Justice stipulate 2.58 square meters of room per an inmate, this is not required by law and is not properly adhered to. In December 2023, the NHRCK decided that a case where 2.41 square meters of space per an inmate for 119 days was a human rights violation and recommended improvements.⁶⁵

The State party intends to amend the law to lower the age of criminal responsibility from 14 to 13.⁶⁶ In response to the expected increase in inmates due to the lowered age, the State party introduced a bill to allow those under 19 to be detained in correctional facilities for adults,⁶⁷ which violates international human rights standards that require inmates under 19 to be detained separately from adults.⁶⁸

⁶³ Research Institute of Human Rights and Peace, *The Problems of Overcrowding in Correctional Facilities and Solutions*, 2023.

⁶⁴ Financial News, “The only juvenile prison accommodation rate is around 90 percent. The correction effect is poor.”, 4 April 2022, <https://www.fnnews.com/news/202204041805456845>.

⁶⁵ Decision of NHRCK on 1 December 2023, 23Jinjung0856800.

⁶⁶ Press release of MOJ, *Preparation of Comprehensive Measures for Juvenile Crimes*, 26 October 2022.

⁶⁷ Partial Amendment Bills to the Act on Execution of Sentences and Treatment of Inmates, proposed by the government on 28 December 2022 (Bill number: 1922).

⁶⁸ Rule 11 of United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Current laws deny inmates the right to apply for parole, and the matter of parole is not a right of the inmate or an obligation of the correctional facility but is granted at the discretion of the State party. In 2021, the State party stated that it is expanding parole by slightly easing the practical threshold for parole of 80% of the sentence and introducing a necessary review system. However, statistics show that the parole grant rate has since increased slightly to 74.5%, well below the rate of 92.4% in 2018.⁶⁹

The State party only provides statistics on the number of prison guards, medical staff, and public health doctors up to the year 2020. According to the NHRCK's investigational visits to all nationwide correctional facilities in 2021, the actual number of medical staff in correctional facilities was 89 compared to the quota of 117, which falls short by 25%. Of the 52 correctional facilities across the country, 38 did not have a full-time medical specialist.⁷⁰

One in three juvenile inmates in juvenile detention centers suffer from mental illness.⁷¹ In 2019, 98 out of 100 inmates at Cheongju Juvenile Reformatory were deemed to be in need of psychiatric care.⁷² There needs to be at least one psychiatrist in every juvenile detention center, but seven out of a total of ten juvenile detention centers across the country lack one. In 2015, the NHRCK recommended the establishment of a medical juvenile detention center to improve medical care in juvenile reformatories, but mental health care for juvenile inmates remains inadequate.

Regarding the material conditions of correctional facilities, in August 2016, two inmates in the investigation cell of Busan Prison died due to a heat wave. In response, the NHRCK recommended that standards of appropriate indoor temperature in correctional facilities be established through relevant law, which is still yet to take place. A visiting research by the NHRCK in 2022 also showed that hot water is provided unequally in each facility, and bathing time is limited to 15 minutes once a week in winter.⁷³ In addition, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide for a minimum of one hour of exercise in the open air daily, but the Enforcement Decree of the Act on Execution of Sentences and Treatment of Inmates provides for a maximum of one hour of exercise, which means that the actual time spent exercising excluding the travel time falls short of international human rights standards.

As for the use of protective equipment, the law does not specify the hours of use and leaves it to the discretion of prison guards. In 2023, the NHRCK noted the problematic use of excessive restraints on an inmate with mental disabilities and recommended a minimization of the use of protective equipment

⁶⁹ Institute of Justice, Crime White Paper, 2024.

⁷⁰ Recommendations of NHRCK on 2021, 21Bangmun0000300.

⁷¹ Yonhap News Agency, "3 out of 10 juvenile inmates suffer from mental illness.", 27 September 2022, <https://www.yna.co.kr/view/AKR20220926157900001>.

⁷² The Korea Herald, "98% of juvenile inmates needs counselling...we need infrastructure for the treatment", 28 October 2022, <https://news.heraldcorp.com/view.php?ud=20221028000169>.

⁷³ Recommendations of NHRCK on 2022, 21bangmun0000200.

on inmates to the Minister of Justice.⁷⁴ The Act on the Treatment of Protected Juveniles allows for the use of handcuffs, head protection equipment, protection belts, ropes, as well as gas guns and electric shock machines in juvenile detention centers.⁷⁵

- **Stipulate a living space per inmate that is consistent with international human rights standards in laws and develop measures to reduce overcrowding.**
- **Provide adequate compensation to victims of overcrowding in correctional facilities.**
- **Expand parole and guarantee inmates the application for parole as a right.**
- **Increase medical staffing in correctional facilities and expand access to external medical care. In particular, establish a medical system to protect the mental health of juvenile inmates.**
- **Stipulate by law the appropriate temperature, hot water supply, and bathing in correctional facilities.**
- **Adopt necessary legislative and administrative measures to prevent abuse of protective equipment, such as enshrining in law the principle of subsidiarity and restricting the usage of time.**
- **Maintain the minimum age of criminal responsibility at 14 years and ensure that children below that age are not treated as offenders and are never placed in detention.**

LOIPR 13

Solitary Confinement as a Disciplinary Action

Article 108 (14) of the Act on Execution of Sentences and Treatment of Inmates restricts the duration of the forfeiture of rights as a disciplinary action for up to 30 days. In the case of an aggravating circumstance, article 109 (2) of the Act provides that solitary confinement as a disciplinary action may be imposed for an additional period of up to ½ of the original 30-day period, up to a total of 45 days, and it can also be imposed consecutively. The NHRCK recommended that the upper limit of solitary confinement as a disciplinary action be limited to 15 days, but the Ministry of Justice rejected

⁷⁴ Decision of NHRCK on 20 April 2023, 22jinjung0514100.

⁷⁵ Article 14-2 of Act on The Treatment of Protected Juveniles,
https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55208&lang=ENG.

it.⁷⁶ Among the complaints brought to the NHRCK, there was a case in 2021 where one has been in solitary confinement for 102 days as a disciplinary action⁷⁷ and a case in 2023 where one has been in solitary confinement for 114 days as a disciplinary action.⁷⁸

According to the laws,⁷⁹ a medical officer must frequently carry out separate monitoring of the mental state of a detainee in solitary confinement before and during the confinement, but such monitoring is not conducted daily. In the above-mentioned case of the complaint brought to the NHRCK, monitoring by a medical officer occurred only 25 times during a total of 102 days of solitary confinement.⁸⁰

The disciplinary committee at each correctional facility, which decides on the disciplinary action, is composed of correctional facility staff, and external members who are all appointed by the warden, making it difficult to ensure an independent and objective decision-making process for disciplinary action. Also, direct right of appeal against the imposition of disciplinary action is not guaranteed. It is possible to seek redress against disciplinary action through ordinary administrative appeals, lawsuits, complaints to the NHRCK, or petitions, but most of them are ineffective because they are filed after the execution of disciplinary action.

- Amend the laws, including the Act on Execution of Sentences and Treatment of Inmates, to limit the duration of solitary confinement as disciplinary action to a maximum of 15 days.
- Establish effective appeal procedures against unlawful disciplinary action to provide inmates with effective remedy.

LOIPR 14

“Substitute Cells”

It was not until the first half of 2020 that the use of “substitute cells” for detainees was fully abolished.⁸¹ New detention centers have been built, or existing facilities have been relocated, rebuilt, expanded, or

⁷⁶ Recommendation of NHRCK, 18 bangmun0001500.

⁷⁷ Decision of NHRCK on 2 July 2021, 21 jinjung-010880.

⁷⁸ Korea Times, “Inmates should not be subjected to solitary confinement for extended period: rights watchdog”, 7 September 2023, https://www.koreatimes.co.kr/www/nation/2024/06/113_358677.htm.

⁷⁹ Article 112 of the Act on Execution of Sentences and Treatment of Inmates, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=62199&lang=ENG.

⁸⁰ Decision of NHRCK on 2 July 2021, 21 jinjung-010880.

⁸¹ Hankook Ilbo, MOJ plans to abolish “substitute cells” from police stations in the first half of this year, 13 January 2020, <https://www.hankookilbo.com/News/Read/202001131831374719>.

renovated, but the problem of overcrowding has not been solved.

- **Solve the problem of overcrowding in detention facilities.**

LOIPR 15

Pre-trial facility and correctional facility investigations, deaths in detention

While the State party regularly discloses the number of death and suicide deaths in correctional facilities through statistical data, it does not specifically classify such deaths by age, gender, type, and cause. The loophole in the State party's statistics on inmate deaths is in the suspension of execution of detention.⁸² If a critically ill inmate dies after being suspended from execution of detention, it is not included in the statistics on inmate deaths, and the State party also does not disclose the number of inmates suspended from execution of detention as statistical data.⁸³

The so-called "Busan Detention Center Death Case" is a representative case of an inmate's death due to the lack of proper medical care while in detention, where a mentally ill inmate was left unattended with hands and feet tied for a long time and eventually died.⁸⁴ The State party disciplined about 18 people after an internal inspection, but there has been no independent investigation, and none of the prison guards have been held criminally responsible.⁸⁵

- **Disclose the number of inmates suspended from execution of detention and inmates who died after such suspension in statistical data related to inmate deaths.**
- **Provide the reports of autopsy and the internal investigation results conducted after the death of an inmate to the bereaved family.**

LOIPR 16

The death penalty

The ROK has not carried out an execution in more than 25 years, with the last execution taking place

⁸² NHRCK also pointed out this problem in its recommendation on 5 July 2021, 21bangmun000030.

⁸³ EDAILY, "Do I have to die to get out of prison?"How to improve the controversial 'suspension of execution'", 5 October 2022, <https://www.edaily.co.kr/news/read?newsId=02496086632489968&mediaCodeNo=257>

⁸⁴ Yonhap News Agency, "panic disorder detainee dead in detention center has been tied up for 14 hours", 21 May 2024, <https://www.yna.co.kr/view/AKR20200521160400051>

⁸⁵ KBS NEWS, "'Busan Detention Center Death Case', Disciplinary actions and personnel measures on 18 persons", 3 July 2020, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=4485893>

on December 30, 1997. Prosecutors seek the death penalty, but no cases have been finalized since the Supreme Court last upheld the death penalty in 2017. As of April 2024, there were a total of 59 people on death row, with 55 held in detention facilities under the Ministry of Justice and four under the Ministry of Defense, and two people have died in custody in the past eight years. The State party voted in favor of the "moratorium on executions" resolutions adopted by the UN General Assembly in 2020 and 2022. The international community has repeatedly recommended the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights to Abolish the Death Penalty and to Protect All Persons from Execution, including the Fourth Universal Periodic Review Recommendation on the Republic of Korea in 2023 (A/HRC/53/11) and the Concluding Observations on the Fifth Periodic Report of the Committee on Civil and Political Rights on the Republic of Korea (CCPR/KOR/CO/5). The NHRCK also submitted an opinion on the abolition of the death penalty to the Constitutional Court in 2021 after expressing an opinion on the abolition of the death penalty in 2005 and has issued a statement on the abolition of the death penalty every year on the World Day for the Abolition of the Death Penalty. From the 15th to the 21st National Assembly, a total of nine special bills to abolish the death penalty were proposed, but all were abandoned due to the expiration of the National Assembly's term.

In July 2022, the Government stated that "the existence of the death penalty is not a criterion for determining a human rights state, and that it is necessary to maintain the death penalty because it does not violate the essential content of the right to life," during public hearing at the Constitutional Court for its third constitutional challenge. In addition, the Minister of Justice has ordered the maintenance of execution facilities and made statements to the effect that the death penalty and executions are necessary to maintain law and order. Furthermore, the Ministry of Justice has proposed a government bill to the National Assembly to amend the Criminal Act to introduce an absolute life sentence without parole without the premise of abolishing the death penalty, which has drawn strong criticism from civil society as the government seems to propagate that harsher punishment is the only way to prevent crime.

- **Cease the introduction of absolute life imprisonment and officially declare a moratorium on executions.**
- **Commute all death row inmates to life imprisonment.**
- **Enact the Death Penalty Abolition Act to fully abolish the death penalty and ratify the Second Optional Protocol to the UN International Covenant on Civil and Political Rights.**

LOIPR 17

Criminalization in the military

While the State party claims in its report that there are protections against human rights violations for LGBT service members, the existence of Article 92-6 of the Military Criminal Act, which disproportionately targets or affects certain groups, undermines these protections and creates potential human rights violations. Regardless of how often it is enforced, this provision fosters an environment of fear and discrimination. A comparative analysis of other countries that maintain military discipline demonstrates that this provision is not necessary for military readiness.

On October 26, 2023, the Constitutional Court of Korea ruled that Article 92-6 of the Military Criminal Act is constitutional (5 Justices: constitutional, 4 Justices: unconstitutional).⁸⁶ This was the fourth time the provision was ruled constitutional in the past 21 years. In April 2022, the Supreme Court acquitted two military officers accused of engaging in consensual sexual acts outside their barracks,⁸⁷ ruling that the scope of the provision might be reduced in the future. However, the provision itself still poses potential harm and threat to gay soldiers.

- **Repeal Article 92-6 of the Military Criminal Act, which criminalizes consensual same-sex sexual activity between adults.**

Measures against human rights abuses in the military and the Military Human Rights Protection Officer

1) Limitation of the Military Human Rights Protection Officer

Although the National Assembly amended the NHRCK Act in 2021 and introduced the office for military human rights protection, the office is concurrently held by one of the standing commissioners of the NHRCK, and it lacks personnel independence and autonomy in budgets, resulting in limited effectiveness. The office does not have the authority to visit the military bases without prior notice, which may be suspended by the request of the Minister of National Defense,⁸⁸ and its power to request

⁸⁶ Constitutional Court of Korea, Court, October 26, 2023, Decision 2017Hun-Ga16.

⁸⁷ Supreme Court of Korea, April 21, 2022, Decision 2019Do3047 en banc.

⁸⁸ <NHRCK Act> **Article 50-2** (Military Human Rights Protection Officer) A full-time commissioner appointed by the President pursuant to Article 5 (2) 2 shall hold a concurrent position as a military human rights protection officer.

Article 50-4 (Visits to Military Units for Inquiry) (2) Where a military human rights protection officer intends to pay a visit to a military unit for inquiry pursuant to paragraph (1), he or she shall notify the head of the relevant military unit of the purpose, date, place, etc. in advance: ...; **(3)** Where matters involving national secrets in the military, diplomacy, and inter-Korean relations are likely to have a significant impact on the national welfare, or to cause hindrance during national emergencies or to military operations, and where there are other special circumstances under which receiving a visit for inquiries under paragraph (1) would be difficult, the Minister of National Defense may request that a visit for investigations be suspended, by explaining the reasons therefor. ...

information is limited. On the other hand, while the investigative jurisdiction is transferred to the civilian courts according to the revised Military Court Act, the office cannot request attendance for the death case except for the military investigative agencies.⁸⁹ Recently, Kim Yong-won, one of the standing commissioners of the NHRCK who concurrently holds the position of the Military Human Rights Protection Officer, insulted human rights defenders and referred the family members of the deceased soldiers to the police.⁹⁰

2) Limitation of the Military’s Internal Counseling System

Even though the Framework Act on Military Status and Service has clauses for the duty of reporting military (sexual) violence, verbal abuse, and maltreatment, as well as the protection of the identity of an informant,⁹¹ there was no reported case of the clause’s application since its effective date in June 2016. Additionally, in spite of the 3,000 cases of counseling are provided by the Ministry of National Defense (MND) and each force’s human rights centers⁹² and the 5,000 cases of counseling by the Criminal Investigation Command (Military Police) of the MND,⁹³ most cases are not processed as official reports but closed without a separate investigation.⁹⁴ Moreover, it is a tendency that about one-

⁸⁹ <NHRCK Act> Article 50-6 (Notification of Death Cases and Attendance at Inquiries and Investigations) ... the Commission, etc. may request ... (excluding the head of an investigative agency in charge of offense cases falling under the subparagraphs of Article 2 (2) of the Military Court Act).

⁹⁰ Address to the Special Rapporteurs on human rights defenders; freedom of peaceful assembly; torture; the promotion of truth, dated on 8 March 2024.

⁹¹ <Framework Act on Military Status and Service> Article 43 (Duty to Report) (1) Where a soldier becomes aware of any private sanction committed by other soldiers such as beating, verbal abuse, harsh treatment, bullying or any sexual molestation or sexual violence during his or her military life, he or she shall promptly report it to his or her superior or notify it to the officer for protection of soldier’s human rights under Article 42 (1) or a military investigative agency, etc.

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.

⁹² Information disclosed by the MND in 2023 to the CMHRK (10951746): Number of Counseling Cases of the MND and Each Force’s Human Rights Centers

Year	Case Number
2020	3,032
2021	4,122
2022	4,078
Jun-23	3,306

⁹³ Information disclosed by the MND in 2023 to the CMHRK (11036681): Number of Defense Help Call Counseling

Year	Sexual Distress	Reporting of Crime(s)	Barrack Life Issues
2020	29	110	58,239
2021	66	204	56,189
2022	110	275	50,068
Jun-23	82	148	26,297

⁹⁴ Reconstructed Information disclosed by the MND in 2023 to the CMHRK (10951746)

Year	Psychological Aid	Providing Information/ Suggesting Solution	Referring to Commander	Referring to Military Police/ Inspector
2020	15.80%	69.60%	14.00%	0.51%
2021	32.90%	48.50%	17.80%	0.88%
2022	32.00%	47.90%	18.90%	1.13%
Jun-23	36.60%	44.00%	17.90%	1.08%

fifth of the cases rely on the commanders' discretion. Meanwhile, the 'counselors specialized in military life issues'⁹⁵ who are civilians suffer from inadequate working conditions, a high risk of PTSD,⁹⁶ and job insecurity.⁹⁷ Overall, the structure appears to be quite difficult for the military's internal self-depuration devices to function properly, and there is a lack of cooperation with external organizations or institutions.

- **Ensure the independence and autonomy of the Military Human Rights Protection Officer.**
- **Enhance the expertise of the military counselors and cooperation with the civil society.**

LOIPR 18

Japanese military sexual slavery during the Second World War

On December 28, 2015, the foreign ministers of the ROK and Japan announced at a press conference (the "2015 Korea-Japan Comfort Women Agreement") that the issue of Japanese military sexual slavery during the Second World War had been "finally and irreversibly resolved" without the participation nor consent of the victims. Numerous UN human rights mechanisms, including the Committee Against Torture, have repeatedly expressed concern and recommended that the agreement should be revised to comply with international human rights standards.⁹⁸ Despite repeated recommendations from the

⁹⁵ <Framework Act on Military Status and Service> Article 41 (Special Counselor) (1) A counselor specialized in military life shall be assigned to each military unit or agency of not less than the size prescribed by Presidential Decree in order to provide counseling on distresses or difficulties of military life where a soldier complains of any distress or difficulty in his or her military life due to any of the following matters: 1. Maladjustment to military life; 2. Family relationships and personal affairs; 3. Violations of fundamental rights in the military, such as beating, verbal abuse, harsh treatment, and bullying; 4. Physical conditions, such as a disease, illness or deterioration in health; 5. Social welfare, such as the education of children and maladjustment to local life of by family members of long-term service soldiers; 6. Other matters concerning the distresses or difficulties associated with military life.

⁹⁶ According to a survey report, issued in August 2022, about 400 respondents out of the total 630 counselors specialized in barrack life issues, the average number of clients was 943.7 per capita (min. 20 to max. 2,500), 45% of the respondents worked more than 40 hours a week, and 50% worked on weekends and holidays. 18.8% of the respondents reported of symptoms of PTSD, which is a triple of that of the firefighters (5.7%). 17.5% of them, reportedly, experienced a client's suicide (Korean Public Service and Transport Workers' Union & Labor and Health (2022). Presentation of the State of the Labor of the MND Counselors Specialized in Barrack Life Issues and Pursuit of Improvement of Labor Condition.).

⁹⁷ According to the Information disclosed by the MND in 2023 to the CMHRK (10951746), the average career year (consecutive employment) of the counselors specialized in barrack life issues as of the first half of 2023 was 4.5 years, and 63% of the counselors were under a 2-year contract. According to the Korean Public Service and Transport Workers' Union & the Labor and Health (2022), counselors' performance was evaluated 7 to 19 times every year. Currently, the <Ministerial Ordinance on the Operation of the Counselors Specialized in the Barrack Life Issues> Article 22 states that the result of a counseling may be reported to the client's commander when there is a threat of life of the client or others, a risk of accidents, or the counselor recognizes a violation of the fundamental rights, upon the request of the commander, without the client's consent or notification thereto. Article 27 thereof states that a suicide case should be reflected in the performance evaluation of the counselor, shifting the responsibility of a commander to a counselor.

⁹⁸ Committee on the Elimination of Discrimination against Women, CEDAW/C/JPN/CO/7-8/para 28.-29, 2016, Committee on the Elimination of Discrimination against Women, CEDAW/C/KOR/Q/9/para. 10, 2023,

international community, the State Party has implemented the agreement as a bilateral agreement.⁹⁹ The State Party added that it will strive to “restore the honor and dignity of victims and heal their psychological wounds.” Still, it has not made any diplomatic efforts to resolve the issue or concrete measures. The State Party has only reiterated its stance of upholding the agreement to avoid the truth of the Japanese military sexual slavery issue.

On November 23, 2023, the 33rd Civil Division of the Seoul High Court in the ROK ruled in favor of the victims’ claim for damages against the Japanese government, acknowledging the Japanese state’s liability for its wrongdoings.¹⁰⁰ The victims filed a lawsuit against the state of Japan on December 28, 2016. However, the State Party has insisted on recognizing the 2015 Korea-Japan Comfort Women Agreement¹⁰¹ to downplay the issue without any diplomatic efforts or specific statements to support the victims.

The issue of distortion of truth, defamation and re-victimization of victims has not only gained attention in Japan but also in the ROK.¹⁰²¹⁰³ On November 10, 2022, an amendment was proposed regarding the “Act on Protection, Support and Commemorative Projects for Sexual Slavery Victims for the Japanese Imperial Army.” This amendment aimed to establish regulations preventing the denial, distortion, and dissemination of false information aimed at defaming victims.¹⁰⁴ However, the bill remained undiscussed in the relevant committee for approximately two years and was ultimately discarded. It is imperative that the bill be reintroduced in the next session of the National Assembly of Korea.

Committee against Torture, CAT/C/KOR/CO/3-5/para. 47, 2017, Committee on the Elimination of Racial Discrimination, CERD/C/JPN/CO/10-11/para. 27, 2018, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/54/24/Add.1/para. 84, 2023, International Labour Organization, Application of International Labour Standards 2024, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 112th Session, 2024, p.395.

⁹⁹ The Fourth Universal Periodic Review Cycle of the Republic of Korea, January 26, 2023, Comments by the state; Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabian Salvioli, on his visit to the Republic of Korea, A/HRC/54/24/Add3. Rev.1/para. 46, 2023.

¹⁰⁰ Seoul High Court The 33rd Civil Chamber Judgement, Case No. 2021 Na 2017165 Compensation for Damage (Others), https://www.scourt.go.kr/portal/dcboard/DcNewsViewAction.work;jsessionid=CUsrTumGvfq0WO3eOiPRKzRb3RApaRnLoyDwPsfAWaOcMDJ1n1vvO0yFlsh2tlPo.BJEUWS04_servlet_SCWWW?gubun=44&searchOption=&searchWord=&seqnum=25497.

¹⁰¹ Yi Wonju, “Foreign ministry says it respects ‘2015 comfort women deal’ following high court ruling, *YONHAPNEWS*, November 24, 2023, <https://en.yna.co.kr/view/AEN20231124005000315>.

¹⁰² Yoon Min-sik, “Former Yonsei professor faces jail term for calling ‘comfort women’ voluntary prostitutes, *The Korea Herald*, Dec 15, 2023, <https://www.koreaherald.com/view.php?ud=20231215000548>.

¹⁰³ Kwak Yeon-soo, “Police reinforce patrols near girl statue in Busan after vandalism involving sushi, Japanese beer”, *The Korean Times*, May 5, 2024, https://www.koreatimes.co.kr/www/nation/2024/05/113_374055.html.

¹⁰⁴ Led by Representative Kim Sang-hee of the Democratic Party of Korea, 28 members of the National Assembly of the Republic of Korea proposed an amendment. Most of the victims and bereaved families were elderly or deceased, and many of them were unable to form families as a result of damages from Japanese military sexual slavery. Thus, the amendment was proposed because it is difficult for them to file defamation charges under current Korean law; BillNO.2118291. A partial amendment of the Act On Protection, Support And Commemorative Projects For Sexual Slavery Victims For The Japanese Imperial Army https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_P2L2J1U0B1V3E1A7S4M3F2D2Q7U1Y4.

As of 2024, only nine of the 240 victims registered with the ROK government are still alive.¹⁰⁵ Owing to the victims' age, effective measures should be provided for victims, immediately fulfilling their demands, and restoring their honor. In 2023, Fabián Salvioli, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, concluded in his report that the State Party “should spare no effort to urgently accomplish this pressing task.”¹⁰⁶

- **Discard the 2015 Korea-Japan Comfort Women Agreement, which does not comply fully with the scope and content of the Committee’s general comment no.3, and provide specific measures to “restore the honor and dignity of victims and heal their psychological wounds.”**
- **Amend the Act on Protection, Support and Commemorative Projects for Sexual Slavery Victims for the Japanese Imperial Army to restore the honor of victims and to guarantee non-recurrence.**
- **Take diplomatic measures and efforts to ensure effective measures to the victims in accordance with the demands of victims and their bereaved families, as well as respecting the ruling of the Seoul High Court on November 23, 2023.**

LOIPR 19

Issues related to solving domestic violence and sexual violence crimes and protecting victims

The State party states that it strengthened the effectiveness of the Domestic Violence Punishment Act through bolstering on-site response to domestic violence crimes and providing criminal punishment for violations of protection orders and temporary measures.¹⁰⁷ However, the purpose clause of the Domestic Violence Punishment Act—which expressly aims to maintain the family rather than protect the victim’s human rights—has not been amended. The arrest rate of domestic violence perpetrators is low at less than 20%.¹⁰⁸ Additionally, victim protection measures are inadequate.¹⁰⁹ In 2017, the Committee

¹⁰⁵ Ko Byung-chan, “Another death leaves only nine surviving Korean “comfort women”, *HANKYOREH*, May 3, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1090418.

¹⁰⁶ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/54/24/Add.1/para. 85, 2023.

¹⁰⁷ State party report, paras. 98, 106.

¹⁰⁸ According to the Domestic Violence Investigation Results and Judicial Processing Status report, the data submitted by the National Police Agency to the office of Rep. Kwon In-sook in 2023, out of 225,609 domestic violence cases reported in 2022, only 44,816(19.8%) of the cases resulted in arrests. Of the 52,146 people arrested, 67.3% (35,108 people) of cases resulted in a family protection case or non-indictment instead of criminal punishment.

¹⁰⁹ According to the 2023 Judiciary Yearbook of the Supreme Court of Korea, of the 25,074 family protection cases processed, 46.9% (11,756 cases) did not result in a disposition. Among resolved cases, a high proportion were referrals for counseling (22.9%) and orders for community service/ training (11%). Only 0.4% of cases resulted in restrictions on access (e.g. a no-

recommended that measures be taken to ensure that perpetrators of domestic violence are prosecuted and punished,¹¹⁰ due to the fact that the existing victim protection measures were insufficient. Perpetrators could receive deferred prosecution—effectively being acquitted—provided they agree to receiving education and/or counseling. In spite of this, the provisions of the Domestic Violence Punishment Act permitting deferred prosecution in exchange for counseling have not been removed. During the past five years, there has been an increase in the percentage of domestic violence cases that have been processed as family protection cases rather than criminal cases, resulting in protective disposition (civil remedies) including deferred prosecution agreements with counseling as a condition.¹¹¹

The State party presented that the statutory punishment of grave sexual violence—such as “special rape and sexual violence,” the legal term for cases with certain aggravating factors, such as child rape or sexual assault by a person in a position of authority— had been enhanced, suggesting strong punishments are in effect.¹¹² However, the rate of prosecution for sexual crimes was found to be lower than that of other violent crimes.¹¹³ Furthermore, the rate of criminals sentenced to prison for rape and indecent act by compulsion had actually decreased.¹¹⁴

Currently, proof of means of violence or intimidation is required to convict a perpetrator of rape. Thus, various contexts in which sexual violence occurs are disregarded,¹¹⁵ permitting deeply rooted stereotypes and misconceptions of sexual violence to continue. This leads to the mishandling of numerous sexual violence crimes.

The State party reported that, as marital rape is punishable under the current law, there is no significant need for separate legislation in accordance with the Supreme Court's precedent (Supreme Court ruling 2012Do14788).¹¹⁶ However, in that case, the Court decision recognized the crime of rape in a specific situation in which a weapon was used in conjunction with assault and threats in a dissolved common-law marriage. Furthermore, the decision emphasized the principle that the State should “refrain from

contact order) that could actually protect the victims.

¹¹⁰ Committee Against Torture, Concluding observations on the combined third to fifth periodic reports of the Republic of Korea, CAT/C/KOR/CO/3-5, 30 May 2017, paras. 37-38.

¹¹¹ According to the Domestic Violence Investigation Results and Judicial Processing Status report, the data submitted by the National Police Agency to the office of Rep. Kwon In-sook in 2023, the processing rate of home protection cases (cases aiming to ensure the safety of the victim in their own home) continued to increase from 34% in 2018 to 49% in 2022.

¹¹² State party report, paras. 99-100.

¹¹³ According to the 2022 Crime Analysis published by the Supreme Prosecutors' Office, of the 31,991 sexual crime perpetrators suspects in 2021, 42.9% (n=13,740 people) were indicted, and of those, only 4.8% (n=1,535 people) were arrested. This is higher than the overall criminal indictment rate (30.3%) but is significantly different from the indictment rate for other violent crimes such as murder (68.8%), robbery (66.9%), and arson (53.8%).

¹¹⁴ Statistics on Violence Against Women in 2022, p. 322.

¹¹⁵ According to the Korean Association of Sexual Violence Relief Centers (KASVRC)'s Analysis of Rape Counseling Cases in 2022 report, of the total 4,765 rape cases counted through affiliated organizations from January 1 to December 31, 2022, 62.5% or 2,979 cases did not involve direct assault or intimidation.

¹¹⁶ State party report, para. 105.

intervening in the sexual relations of a married couple from the perspective of maintaining the family,” significantly limiting its applicability in other judgments on crimes of rape. In addition, this decision considered marital rape under the Domestic Violence Punishment Act, a statute with the express purpose of maintaining the family. As such, this family-maintaining perspective was likely taken into careful consideration in the Court’s judgment. Therefore, this precedent alone cannot adequately guarantee criminal punishment for perpetrators of marital rape. Meanwhile, the statistics on crimes related to sexual violence that the State party compiles do not classify whether a case involves a spousal relationship between the victim and perpetrator, making it impossible even to determine the current status of criminal punishment for marital rape.

In 2017, the Committee recommended that the State party ensure the provision of support services and shelters for victims of domestic violence.¹¹⁷ However, shelters where victims of gender-based violence reside do not adequately guarantee the minimum standard of residential accommodation.¹¹⁸ Furthermore, upon departing a shelter, victims are not guaranteed stable housing due to the shortage of housing support facilities and national public housing.

Among all the policies that the current government has implemented, virtually none respond to gender-based violence against women.¹¹⁹ In fact, there have been repeated attempts to abolish the Ministry of Gender Equality and Family—the ministry that oversees policies on violence against women—and reduce its budget.¹²⁰ Meanwhile, because cases of violence against women are governed by separate laws depending on their nature, there are legislative gaps in the punishment of perpetrators for cases of violence against women that fall outside of the existing legal framework. For example, the Act on the Punishment of Stalking Crimes applies exclusively to enumerated actions; thus, any offense that does not fall neatly into a pre-defined category cannot be punished under this statute. In addition, in the case of dating violence, there is no punishment provision that fits the nature of the crime.¹²¹

¹¹⁷ Committee Against Torture, Concluding observations on the combined third to fifth periodic reports of the Republic of Korea, CAT/C/KOR/CO/3-5, 30 May 2017, para. 38(c).

¹¹⁸ According to the Ministry of Gender Equality and Family’s Operational Guidelines for Women’s and Children’s Rights Promotion Programs, the standard for installation of shelters is (capacity for admission) X 6.6 m², which is less than half the minimum residential area standard put forth by Ministry of Land, Infrastructure and Transport and Article 17 of the Basic Housing Act (Establishment of Minimum Housing Standards) and Article 12 of the Enforcement Decree of the same Act, which states that the minimum housing standard required for citizens to have an adequate standard of living is 14 square meters of living space for one person.

¹¹⁹ In the 3rd Basic Plan of Policies to Prevent Violence Against Women announced by the government in 2023, all references to ‘women’ were replaced with other expressions such as ‘family’ and ‘sex’ or otherwise deleted. Furthermore, ‘violence against women’ was exempt from the six key tasks in the 2023 Implementation Plan of the Ministry of Gender Equality and Family, the main ministry in charge of addressing violence against women.

¹²⁰ The Korea Times, “Proposal to abolish gender equality ministry reemerges as key issue ahead of elections: Women’s groups demand Yoon to appoint a new minister,” 23 February 2024, https://www.koreatimes.co.kr/www/nation/2024/04/113_369380.html.

¹²¹ Among these various laws, the Domestic Violence Punishment Act is the one law that can regulate violence against women in intimate partner relationships, but its narrow scope limits ‘family members’ to traditional family relationships, failing to

- **Amend the Domestic Violence Punishment Act provision that explicitly aims to maintain the family. Ensure criminal prosecution and punishment of perpetrators to adequately guarantee victims' human rights.**
- **Revise the definition and criteria of rape so that, rather than the means of violence and intimidation, the crime is based on the lack of freely given consent. Explicitly criminalize marital rape and ensure adequate punishment for the crime.**
- **Include comprehensive provisions in the Act on the Punishment of Stalking Crimes that go beyond the current narrow list of enumerated offenses that define stalking to minimize the gap in punishment for stalking and ensure victims' safety.**
- **Secure an adequate number of housing support facilities and public housing and improve the physical environment of shelters to guarantee the rights of victims of violence against women to live with dignity.**
- **Maintain and strengthen the Ministry of Gender Equality and Family—the body responsible for overseeing policies on violence against women—and ensure the Ministry has an adequate budget.**

Providing support and services to female migrant survivors of domestic violence.

Incidents of domestic violence and sexual violence against migrant women are steadily increasing, and at times, migrant women have been by their spouses. In 2023, for example, three migrant women were killed by their husbands.¹²² The number of requests for consultations at migrant women counseling centers across the country is consistently rising. As of 2023, there are three types of government-supported hotlines for migrant women victims: the Danuri Call Center, migrant women counseling centers, and migrant women shelters. The Danuri Call Center—which provides 24-hour multilingual counseling and interpretation supports migrant women victims—handles consultations for Korean men about issues like “runaway foreign wives”. Therefore, it would strain credulity to categorize the center as a service solely for gender violence victims. There are only ten migrant

ensure the rights of victims of dating violence. However, as this Act currently allows perpetrators of domestic violence to be exempted from criminal punishment, mere expansion of its scope is not enough to guarantee the punishment of perpetrators of violence against women in intimate partner relationships or ensure victims' safety and rights throughout the judicial process.¹²² According to the data provided in 2024 by the Ministry of Gender Equality and Family's Rights Protection Division, the number of domestic violence counseling cases increased by 703 to 11,050 in 2023 compared to 2022, accounting for 31% of all counseling cases. Compared to 2022, the number of sexual violence counseling cases increased by 300 to 1,849.

women counseling centers nationwide, with continuous support available in just two or three languages.

Although the State party claims to have established a government-funded official support system of hotlines, counseling centers, and shelters, the current support system has significant gaps due to policies primarily focusing on married migrants and limitations in social security systems. Most policies are designed for legally married spouses of Koreans, leaving gaps in support and residency guarantees for victims of domestic violence among non-Korean couples. Additionally, migrant women who give birth to children out of wedlock cannot register their child's birth without the acknowledgment of the Korean partner.

- **Expand specialized counseling centers for female migrant victims of gender-based violence.**
- **Conduct a survey on the trends of gender-based violence against migrant women.**
Guarantee the rights of residence and social security for the victims.

LOIPR 20

Protections for migrant victims of human trafficking

Since 2014, the State party has conducted government inspections of “foreigner-exclusive entertainment establishments” (clubs) to verify whether the actual conditions of the establishments match the reported conditions and to check for any instances of sexual violence and ill-treatment by employers. However, these inspections are ineffective because club owners are notified of the inspections in advance. Before the inspections, club owners and operators force the migrant women to rehearse false answers repeatedly in order to prepare for the inspections. Furthermore, establishment owners actively and effectively conceal the fact that club owners who engage in illegal activities, such as sexual exploitation and human trafficking, continue to operate their businesses by registering them under another person’s name.

Since 2020, migrant workers must complete in person a Human Trafficking Victim Identification Index form when applying for an extension for their Arts and Entertainment status of stay (E-6 visa); however, this form is provided in English only, making the accessibility for non-English speakers low. In addition, migrant workers must complete the form in front of their club owners or promoters rather than in a separate, private place, making it difficult for workers to describe their actual situation in the club.

The G-1-11 visa—which provides immigration status to migrant victims of certain crimes in Korea, such as sexual crimes, prostitution, recurrent violence and abuse—is granted only to trafficking and abuse victims who undergo a legal process (e.g., lawsuit, investigation, trial). The visa does not include victims who need shelter services, medical care, recovery, etc. In addition, even if investigators come across a situation of sexual exploitation, they often consider migrant women victims as voluntary participants in “prostitution”; therefore, officials deport these migrants without informing them of Korea’s legal support system and G-1-11 visa for victims. Furthermore, while G-1-11 visa holders are permitted to work, they are required to apply for a “permit to engage in activities not covered by the status of sojourn” (work permit) on a regular basis and pay expensive immigration fees. Finally, while employment is possible, the field of employment that G-1-11 visa holders can access is strictly limited to “simple labor”. As such, it is impossible for victims to accept employment opportunities as survivor activists or interpreters.

There are procedures in place for victims to access rights and remedies. However, even if victims pursue legal proceedings against their perpetrators, cases are frequently dismissed due to insufficient evidence, thus leaving perpetrators unpunished.

- **Conduct government inspections without advance notice to improve the effectiveness of the inspections.**
- **When extending E-6 visas, ensure that counselors conduct face-to-face interviews with visa holders in an environment separate from their employers; complete identification indicators of human trafficking based on the interviews; and provide interpretation for non-English speakers.**
- **Establish a system that immediately separates victims -- as identified according to the Human Trafficking Victim Identification Index -- from their establishment owners (perpetrators).**
- **Expand the criteria for visa authorization for victims of sexual exploitation so that they are permitted to stay in the country for the purpose of recovery (e.g., medical and psychological support, shelter services).**
- **Mandate extensive training on sexual exploitation for government officials.**

Exploitation of migrant workers

All nine migrant worker support centers mentioned in the State party report were closed by the end of 2023. Additionally, the personnel costs of dedicated counselors at the 44 migrant worker support centers that were operated with government budget support were all cut. As a result, all related consultation services have been discontinued.¹²³

Seasonal migrant workers are now being subjected to a wide range of exploitation tactics, including passport confiscation, violations of employment contracts, exploitation through brokers,¹²⁴ and the setting of security deposits to prevent escape. In addition, seasonal migrant workers are unable to leave the islands without the employer's permission, and therefore, are effectively being deprived of their liberty and subjected to forced labor. Since January 2024, recognizing the seriousness of the situation, the Philippine government has temporarily suspended sending seasonal workers to Korea.¹²⁵ On February 27, 2024, the Philippine House of Representatives held a hearing on the long working hours and abuse of seasonal workers in Korea.¹²⁶

The State party has failed to take effective action against racist groups that have been illegally arresting and assaulting immigrants for years, even though the groups have been disseminating this violence online to incite further violence and hatred against migrants. One group, "National Alliance for the Protection of Korean Citizens", has been traveling across the country, using violence to make "citizen arrests" of migrants suspected of being undocumented and hand them over to the authorities.¹²⁷ Most of the group's members are still active, and their website and YouTube channel have not been subject to any sanctions.

- **Expand interpretation, labor, legal, and life counseling for migrant workers, including significant expansion of migrant worker support centers and counselors.**
- **Investigate and prosecute the confiscation of passports, labor contract violations, exploitation, and surveillance for the purpose of preventing the absconding of all**

¹²³ Korea Herald, "Korea to shut down foreign worker support centers despite labor expansion", 14 September 2023, https://www.koreaherald.com/view.php?ud=20230914000617&ACE_SEARCH=1.

¹²⁴ KBS News, "'Threatening to extort wages' ...The actual 'broker' [Tracking seasonal workers broker]", 22 March 2024, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=7920326>.

¹²⁵ Philippine News Agency, "DMW to regulate deployment of OFWs to Korea under sisterhood deal", 19 February 2024, <https://www.pna.gov.ph/articles/1219142>.

¹²⁶ Facebook of Philippine House of Rep. Marissa Magsino, https://www.facebook.com/story.php?story_fbid=422841083575693&id=100075494157207&mibextid=oFDknk&rdid=wRKSFfQCe1qpVSQb.

¹²⁷ The group's leader, Park Jin-jae, operates a YouTube channel where he regularly uploads videos that spread racial prejudice and hatred. Park also ran for the 22nd National Assembly election as a candidate for the far-right Liberty Unification Party, where he continued to spread racist hatred. Some members of the group have even been arrested for extortion and intimidation of undocumented migrants. See Korea Herald, "Far-right lawmaker candidate forcefully detains migrant workers", 28 March 2024, https://www.koreaherald.com/view.php?ud=20240328050529&ACE_SEARCH=1 grants.

migrant workers, including seasonal migrant workers. Immediately implement measures to prevent recurrence.

- **Investigate and prosecute racist groups.**
- **Establish institutional mechanisms to address expressions that incite violence and hatred against immigrants.**

LOIPR 21

Non-referral to refugee status determination procedure at ports of entry

When a refugee applicant receives a non-referral decision barring them from the Refugee Status Determination procedure at ports of entry, there is no separate appeal procedure apart from filing an administrative lawsuit. Given that filing a lawsuit at the airports requires submitting a complaint to the court, it is practically impossible for refugee applicants to file a lawsuit without a lawyer. If a lawsuit is filed, the refugee applicant is not forcibly deported; however, the individual must remain detained at the airport during the legal proceedings, causing many to give up on the process and return to their country of origin.¹²⁸

The Refugee Committee—the body that reviews objections to the Ministry of Justice’s non-referral decisions of refugee applications—is unable to function effectively as it reviews approximately one thousand cases in a single meeting. In situations where the government decides it has grounds to forcibly deport the person, a refugee applicant may be detained at an immigration detention center regardless of their application for refugee status.

Immigration detention

The current Immigration Act allows for indefinite detention.¹²⁹ In March 2023, the Constitutional Court ruled the current immigration detention system unconstitutional, citing the absence of a maximum limit on the detention period and the lack of judicial review or any kind of oversight in the commencement and extension of detention.¹³⁰ As a result, the Ministry of Justice is obliged to amend

¹²⁸ The Korea Herald, “Hidden lives of terminal dwellers in South Korea”, 15 May 2023, <https://www.koreaherald.com/view.php?ud=20230515000710>.

¹²⁹ Article 63(1) of the Immigration Act. If it is impossible to immediately repatriate a person subject to a deportation order out of the Republic of Korea as the person has no passport or no means of transportation is available, or for any other reason, the head of a Regional Immigration Service may detain the person in any detention facility until he or she can repatriate the person. The longest detained person to date is a refugee applicant, who has been detained for 4 years and 8 months.

¹³⁰ Voice of America, “South Korean Activists Urge Better Treatment of Asylum-seekers,” 2 January 2022, <https://www.voanews.com/a/south-korean-activists-urge-better-treatment-of-asylum-seekers/6378557.html>; 2020Hun-Ka1,

the law by May 31, 2025. However, the recent amendment bill proposed by the Ministry of Justice does not comply with the decision of the Constitutional Court, allowing for a detention limit of 36 months with the possibility of re-detention.¹³¹ According to the proposed bill, extensions are reviewed by an internal committee under the Ministry of Justice, while the detention commences, as before, with the Ministry of Justice conducting the review. Furthermore, the current Immigration Act does not have separate provisions prohibiting the detention of migrant children. In cases where parents are subject to detention, even infants are detained with their parents.¹³² Between 2015 and 2017, a total of 225 children under the age of 18 were detained, with an average detention period of 7.7 days and a maximum detention period of 140 days.

Migrants who are detained at immigration detention centers are kept in cells with limited space, cannot freely enter or exit the cells, and are subject to strict regulations. Immigration officials exercise coercive force over detainees to maintain order within the facilities. Using the provision of the Immigration Act that allows immigration officials to exercise coercive force on detainees or place a detainee in isolation when he or she ‘intends to commit suicide or self-injury’ or ‘inflicts harms on other persons or intends to do so’ effectively constitutes punishment. In 2021, a refugee applicant from Morocco detained at Hwaseong Immigration Detention Center was confined to a solitary cell, had his hands and ankles bound, and was forced to bend over with his hands and feet touching the floor, a form of torture known as ‘hog-tying’.¹³³

- **Amend the current Immigration Act to reflect the Constitutional Court decision, setting a reasonable upper-limit on detention and ensuring independent assessment by a separate and independent institution upon commencement and extension of immigration detention.**
- **Prohibit immigration detention of children and accompanying parents, pregnant women, persons with disabilities, refugees, etc., in accordance with the UN Global Study**

2021Hun-Ka10 (consolidated) Case on Detention of Deportees with No Upper Time Limit, <https://english.ccourt.go.kr/site/eng/ex/bbs/List.do?cbldx=1143>. On March 23, 2023, the Constitutional Court, in a 6-to-3 opinion held that Article 63, Section (1) of the Immigration Control Act did not conform to the Constitution given that the statute allowed a person under a deportation order to be detained while not setting a maximum time limit on the detention. The Court explained that the provision violates both the rule against excessive restriction and the principle of due process of law, thus infringing the physical freedom of the detainee.

The Korea Herald, “Extended detention of foreign nationals subject to deportation is unconstitutional: top court”, 24 March, 2023, <https://www.koreaherald.com/view.php?ud=20230324000538>.

¹³¹ Announcement 2024-140 by the Ministry of Justice, Proposal for Amendment of the Immigration Act, 11 April 2024, <https://opinion.lawmaking.go.kr/gcom/ogLmPp/77530?>.

¹³² Cases have been reported where a 10-month-old infant was detained for 2 months and a 26-month-old infant was detained for 50 days. *See, e.g.*, the Korean Bar Association, Report on the Conditions of Immigration Detention Centers, 2015; National Human Rights Commission Decision of July 26, 2018, and the Opinions on Partial Amendment Bills to the Immigration Act.

¹³³ 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>

on Children Deprived of Liberty. Additionally, alternative measures to detention must be provided for individuals such as refugee applicants for whom immigration detention serves no purposes.

- **Ensure that the living conditions in immigration detention facilities comply with international standards and make efforts to prevent recurrence of torture incidents within the facilities, while also providing compensation and rehabilitation for victims of torture.**

LOIPR 22

Insufficient and confusing definition of trafficking

The Criminal Act of the State party defines the act of trafficking in persons as ‘buying or selling’¹³⁴ which is not in line with the definition under the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”). This narrow definition of trafficking in persons has led to the rare punishment of the crime of human trafficking. From 2013, when the article on human trafficking was newly enacted in the Criminal Act, to 2020, merely five cases were punished; among 251 cases charged as human trafficking, 9 cases were indicted and 5 cases were found to be guilty.¹³⁵ Furthermore, based on the definition in the Criminal Act, no conviction was made for the purpose of labor trafficking.

Despite the severe criticism from civil society¹³⁶ and the UN experts,¹³⁷ the Act on Prevention of Trafficking and Protection of Victims, etc. (“APTPV”) was enacted in March 2021. Instead of complying with the definition of trafficking under the Palermo Protocol, the APTPV created terms such

¹³⁴ Criminal Act, Article 289 (Trafficking in Persons).

¹³⁵ Recently, the case was reported that the convicted men who admitted the fact that they traded the woman with mental disability to exploit sexually for 400,000 KRW during the investigation changed their statements during the judicial proceedings were exonerated as the court found that mere statements by the offenders were not enough evidence for buying or selling. This shows that the State party’s judiciary requires the monetary exchange with the physical evidence to admit the ‘buying or selling’ to comprise the crime of trafficking in persons. See Huh Jinmu (2021. 3. 19) “Arrested as Offender of Human Trafficking...Unpunished for ‘Human Trafficking’”, The Kyunghyang Shinmun, <https://www.khan.co.kr/national/court-law/article/202103190600035> (access date: 2023. 9. 11).

¹³⁶ Coalition for the Enactment of Special Law on Human Trafficking (2021. 2. 8), “[Statement] Government and the National Assembly should enact the Special Act on Human Trafficking!” <https://apil.or.kr/press-releases/17511>; Coalition for the Enactment of Special Law on Human Trafficking (2021. 3. 5) “[Press Release] Enactment of Special Act on Human Trafficking, CSOs Urge Effective New Act” <https://apil.or.kr/press-releases/17827>.

¹³⁷ Letter from Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on contemporary forms of slavery, including its causes and consequences to the Republic of Korea (2021. 3. 15) OL KOR 2/2021

https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/JointOpenLetter_OL_KOR_15.03.21.pdf.

as ‘human trafficking, etc.’ and ‘crime of human trafficking, etc.’ which brought confusion to relevant agencies.¹³⁸

Lack of eradication measures against trafficking

The labor inspection by the State party has been considered ineffective due to, among others, insufficient number of labor inspectors.¹³⁹ It was reported that the unpaid wages to the migrant workers amounts to 121.5 billion KRW as of March 2024, but the labor inspectors fail to provide the remedy to the migrant workers.¹⁴⁰

The State party clarified that their policy to address human trafficking is to crack down on the business places where the vulnerable migrant workers are employed. However, the crackdowns do not lead to punishing the offenders or to protect the victims. According to the press release by the Ministry of Justice after the crackdown on the entertainment and massage shops, none of the foreigners found during the crackdown were investigated as potential victims of the human trafficking; instead, all of them were deported or reported to the police as perpetrators for illegal employment or violation of the relevant laws.¹⁴¹ The extensive crackdowns have caused severe rights infringements against the migrant workers instead.¹⁴²

The State party insists that they make the foreigners fill out the forms regarding the victim identification indicators and the health insurance when they visit the immigration office. However, the foreigners are accompanied by the agencies when they visit the immigration office, and they are monitored and guided by the agencies not to disclose the real conditions of their workplace. There has been no case where the

¹³⁸ Act On Prevention of Human Trafficking and Protection of Victims, Article 2 (Definitions).

¹³⁹ The number of the labor inspector is still insufficient, and one labor inspector is in charge of about 1,000 workplaces. Kwak Ju-hyun (2022. 9. 12), “Labor Inspection Rate Drops to 30%...Workers Give Up Their Case Not Trusting Reporting”, Hankook Ilbo, <https://www.hankookilbo.com/News/Read/A2022091213410004406> (access date: 2023. 9. 11).

¹⁴⁰ Sung Do-hyun (2024. 3. 25) “Migrant Organizations ‘Unpaid Wages to the Migrant Workers Amount to 121.5 billion KRW...Eradication Measures Necessary’”, Yonhap News <https://www.yna.co.kr/view/AKR20240325131800371?section=economy/job-foundation>; In fact, the State party abandoned its obligation to eradicate the trafficking by closing down the Counseling Center for Foreign Workers and the Korea Support Center for Foreign Workers, which played crucial roles to assist vulnerable migrants in 2024. See Kim Tae-hyung (2024. 4. 1) “Where Do We Go If We Are Exploited? Increasing Migrant Workers, Decreasing Support Centers”, YTN, https://www.ytn.co.kr/_ln/0103_202404010513191680.

¹⁴¹ Ministry of Justice (2022. 8. 19) “Ministry of Justice, Special Inspection on Illegally Employed Foreigners in Entertainment and Massage Industry for Strict Immigration Order.” <https://www.moj.go.kr/bbs/moj/182/562235/artclView.do> (access date: 2023. 9. 11).

¹⁴² In March 2023, the immigration officers even raided the concert where a famous Thai singer was performing and 83 migrants without legal status were deported. In the same month, even the church where the migrants were having religious service were raided and 9 Filipinos without legal status were deported. In April 2023, a Nepali migrant worker who got hurt during the crackdown was deported without proper treatment. See Lee Jaeho (2023. 5. 4) “Raid Even to the Church...Human Rights Violation against Migrant Workers by Minister of Justice Han Dong-hun.” Hankyoreh, https://www.hani.co.kr/arti/society/society_general/1090424.html (access date: 2023. 9. 11).

immigration officers identified the victims of human trafficking based on the indicators submitted by the foreigners on their visit to immigration office. Thus, it is clear that the State party's measures fail to prevent or eradicate human trafficking.

Ineffective victim identification system

Despite the law prohibiting the punishment of prostitution by the victims of sexual trafficking and compelled actions, the law is rarely invoked in the real world as the investigators do not go through the trafficking victim identification procedure. It is natural and lawful for the investigators not to undergo the victim identification procedure lacking no legal obligation. Instead of imposing the legal requirement for victim identification procedures for the investigators or relevant agencies, the APTPV merely requires the Ministry of Gender Equality and Family (hereinafter 'MOGEF') to *develop* a 'victim identification indicators' and to *recommend* the use of the indicators to the head of the relevant agencies such as prosecutors, police, immigration officers and other public officers working for foreigners. As a result, there has been not a single case where the public officers found out the victims of the human trafficking by using the victim identification indicators.¹⁴³

The State party also alleges that the public officers are exempted from the obligation to report the undocumented foreigners 'when the remedying of an injury is deemed to be a priority for the foreigner.' However, as 'not to report' is under the discretion of the public officers, the public officers rarely exercise such discretion, and the undocumented foreigners are usually reported to the immigration. Thus, it is common for foreign victims to be detained and deported after the crackdown instead of being identified and protected. There are numerous cases of immigration deporting 'illegal foreigners' upon the crackdown on entertainment and massage places.¹⁴⁴

¹⁴³ The first case to issue the certificate of the victim under the new APTPV was initiated by the civil society organizations in early 2023. However, due to the absence of the controlling agency to manage the victim identification procedure, the victims had a hard time going through the identification procedure. Even if the victims successfully obtain the certificate of the victims of human trafficking, they are not entitled to receive any financial or housing support, which are crucial for the victims to sustain their lives to rehabilitate as well as to seek justice. In addition, as the victim identification procedure is completely independent from the investigation procedure, holding the certificate of the victims of human trafficking does not guarantee them to be recognized as the victims through the criminal procedure.

¹⁴⁴ For example, the victims of human trafficking from Thailand filed a case against the police officers who investigated them as the suspects of the prostitution without the victim identification procedure. The victims came to the State party with false information regarding the workplace and were forced to work at the prostitution business. The police did not conduct the victim identification procedure despite the prevalent human trafficking scheme against Thai women; instead, the police investigated the women as the perpetrator of prostitution without notifying the right to be accompanied by the persons with reliable relationship and right to be visited by the Consulate while the women were hospitalized due to the injury suffered from the crackdown. The National Human Rights Commission of Korea found that the Thai women's rights were infringed and recommended the police agencies to set up the relevant regulation and manual for the identification procedure and protection measures for the human trafficking victims, to provide the training to each police officers and to review the relevant regulations to ensure that the migrant women to have persons with reliable relationships to accompany during the

Even with the new APTPV, the victims of human trafficking cannot be properly protected as they have to prove themselves as the ‘victims’ to be entitled to receive the ‘certificate of the victim’ from the MOGEF apart from the investigative procedure. As a result, the police do not recognize victim identification as their task but rather consider it as the task of the Minister of Gender Equality and Family.¹⁴⁵

The Committee on the Elimination of Discrimination against Women also found that the State party failed to identify and protect the migrant women as trafficking victims by its decision of the complaint.¹⁴⁶ However, the State party has not taken any remedies to the victims.

- **Amend the Act on Human Trafficking and Protection of Victims to newly install a provision for the punishment of the crime of human trafficking and to revise the definition of human trafficking to comply with the Palermo Protocol.**
- **Provide legal grounds to mandate utilization of human trafficking victim identification index for immigration, law enforcement, and judicial authorities, particularly in dealing with migrants in industries vulnerable to human trafficking, including but not limited to entertainment venues, massage industries, agricultural sectors, and fisheries.**
- **Establish public agencies nationwide responsible for and capable of holistic support for victims of human trafficking, including but not limited to legal aid, psychological counseling, residence, and medical support, which can cater to specific categories of victims, i.e. women, people with disabilities, and migrants, etc.**

LOIPR 23

Corporal Punishment of Children

The State party stated that it introduced an amendment to the Civil Code to delete the disciplinary power provision in Article 915 of the Civil Code to prohibit corporal punishment of children, which took effect

investigation proceedings. See National Human Rights Commission of Korea, “Human Rights Violation Found Against Migrant Women Hospitalized After Fallen for Excessive Investigation and Lack of Identification Procedure on the Human Trafficking” (2021. 4. 12)

<https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7606483&searchCategory=&page=1&searchType=total&searchWord=%EC%9D%B8%EC%8B%A0%EB%A7%A4%EB%A7%A4&menuLevel=3&menuNo=91>.

¹⁴⁵ The police agency stated that the identification and issuing the certificate of the victim of human trafficking are the mandate of the MOGEF and they do not have any information regarding the victim identification procedure in the answer to the information disclosure request by the reporting organization.

¹⁴⁶ The Committee on the Elimination of Discrimination against Women, “Korea failed to protect three Filipino women trafficking victims and ensure their effective access to justice, UN Committee finds” (2023. 11. 24)

<https://www.ohchr.org/en/press-releases/2023/11/korea-failed-protect-three-filipino-women-trafficking-victims-and-ensure>

on 26 January 2021.¹⁴⁷ However, there is still a lack of awareness of the prohibition of corporal punishment. In 2022, one year after the law took effect, 78.8% of adults were unaware of the removal of the right to discipline in the Civil Code,¹⁴⁸ and in 2023, a survey showed that 68% of adults were unaware of it¹⁴⁹ and 65% of parents still believe that corporal punishment is possible to discipline children.¹⁵⁰

In 2022, parents accounted for 82.7% of all child abuse perpetrators, and 81.3% of abuse occurred in the home.¹⁵¹ In addition, the number of children who died due to child abuse totaled 50, an increase of 10 from the previous year. These statistics show that verbal abuse and corporal punishment in the name of discipline continue to occur in the home, and that emotional and physical abuse has not decreased.

– Number of Children who died of child abuse¹⁵²

2018	2019	2020	2021	2022
28	42	43	40	50

There are still cases of parents using violence and emotional abuse against their children in the name of discipline. There is a case of a couple who punished their elementary school-aged child with bruises all over his body for disrespecting the family hierarchy,¹⁵³ and a case of a couple who repeatedly abused their child by beating and threatening him until he was covered in blood.¹⁵⁴ In each case, they justified their actions as necessary corporal punishment to "restore order and discipline" in the family.

To raise awareness about child abuse and prevent domestic violence, the State party designated 19 November as the Child Abuse Prevention Day and the week therefrom as the Child Abuse Prevention Week.¹⁵⁵ However, this effort is not sufficient to change social awareness that corporal punishment remains an acceptable method of discipline.

- **Take steps to strengthen social awareness of the prohibition of corporal punishment of children.**

¹⁴⁷ State party report, CAT/C/KOR/6, para. 134.

¹⁴⁸ *Hankyoreh*, 27 June 2022, https://www.hani.co.kr/arti/society/society_general/1048589.html.

¹⁴⁹ *The Naeil News*, 14 June 2023, <https://www.naeil.com/news/read/463882>.

¹⁵⁰ *The Dong-A Ilbo*, 27 June 2022, <https://www.donga.com/news/article/all/20220627/114166322/1>.

¹⁵¹ MOHW, 'The vital Statistics of Child Abuse 2022' 31 August 2023, p. 29.

¹⁵² The table below shows the number of Children who died of child abuse. MOHW, <table 2-1-1>, 'The vital Statistics of Child Abuse 2022', 31 August 2023, p. 66.

¹⁵³ *Yonhap News Agency*, 13 April 2024, <https://www.yna.co.kr/view/AKR20240412096300062?input=1195m>.

¹⁵⁴ *SBS News*, 18 April 2024, https://news.sbs.co.kr/news/endPage.do?news_id=N1007615877&plink=ORI&cooper=NAVER.

¹⁵⁵ State party report, CAT/C/KOR/6, para.136.

- **Promote the enactment of legislation prohibiting corporal punishment of children.**
- **Increase opportunities to provide training for child caregivers.**

LOIPR 24

Military (sexual) violence and impunity

While cases of assault in military bases should be prosecuted unconditionally according to the Military Criminal Act Article 60-6, the rate of imprisonment is merely 0.09% despite the increasing number of cases of military violence.¹⁵⁶ Moreover, punishment is weak for those responsible other than the direct perpetrators, and the investigative authorities responsible for suspicious deaths are not even brought before a court. A well-known incident was the story of an army private first class who died in April 2014.¹⁵⁷ Even though the Army Chief of Staff resigned, the commander(s), the coroner(s), and the investigators who were engaged in the manipulation and concealment of the cause of death were not indicted, because their malicious intention could not be confirmed. In the meantime, impunity for military sexual violence is prevalent. A significant number of sex offenders (65%) received suspended sentences as of 2022.¹⁵⁸ Survivors and reporters of sexual abuse are even exposed to revictimization, such as crime of insulting one's superior under the Military Criminal Act¹⁵⁹ or defamation.¹⁶⁰ For

¹⁵⁶ From 2016 to June 2020, a total of 4,275 cases of military violence occurred (reported), which was increased by 600 cases compared to 3,643 cases from 2011 to June 2015. However, 1,238 cases were not indicted (28.9%), 51 cases were suspended with sentencing, 127 cases were suspended with execution of penalty, and only 4 cases were imprisonment with labor (0.09%) (Lawmaker So Hyeongcheol. (2020). State Inspection 2020.); For instance, in 2021, a marine sergeant made 7 junior marines hang themselves on the bed's ladder, assaulted them during snow clearing, bit them with K-2 rifle, and forced them to pose combat-swimming stroke, but he was sentenced to six months of imprisonment with suspension for a year (*NEWSIS*, 2022. 7. 22).

¹⁵⁷ Late Army Private First Class Yoon Seungjoo died of tortures and sexual molestations which lasted about a month since March 2014. However, initially, the Army announced the cause of death as 'suffocation from eating ready-made dumpling.' Later, the bereaved family and a civil society organization revealed that the actual cause was concussion caused by battery (*The New York Times*, Aug. 6, 2014). Additionally, the Army firstly announced the cause of death of Late Army Private Kim Sangyheon as 'accidental discharge of a rifle' in November 2022, but later it was revealed that the deceased was exposed to verbal abuses and bullying (*Yonhap News Agency*, Feb. 8, 2023).

¹⁵⁸ KOREA PRO. Apr. 6, 2023. Note that the cases of the revised <Military Court Act> are excluded from the statistics of the MND and the militaries; it is improbable to have the statistics of the military sex crimes. Neither the Ministry of Justice nor the Supreme Public Prosecutor's Office oversee the cases of soldiers (victims and perpetrators) separately; there is only the statistics of the applied legal provisions, which is only blanket statistics.

¹⁵⁹ Note that the NHRCK submitted amicus curiae brief to the Constitutional Court on 29 August 2023 regarding the <Military Criminal Act> Article 64(2), arguing that the provision is unconstitutional because it violates the right to freedom of expression and the right to privacy (NHRCK. (2023). Submission of Opinion to the Case of Constitutional Adjudication on the Article 64(2) of the Military Criminal Act.).

¹⁶⁰ An air force major reported a case of sexual molestation by his superior but indicted for insult to superior; he was acquitted in 2022 after four years of legal struggle (*MBC*, Sep. 15, 2022); In March 2020, an air force first lieutenant was sexually molested by three technical sergeants and one master sergeant, but the perpetrators took advantage of their long-term career in the unit and exploited their personal connections to gather petitions for them; they even attempted to search out the informant (*Hankook Ilbo*, Apr. 28, 2020).

instance, a service-woman received a suspended indictment in March 2023 for entering another soldier's quarters under the coercion of a sex offender in 2022, after which she left the military and filed a complaint with the Constitutional Court.¹⁶¹

- **Reinforce investigation and punishment of the cases of military (sexual) violence.**
- **Abolish the crime of insult to superior in the Military Criminal Act.**

Limitations of the amended Military Court Act

As the amendments to the Military Court Act came into effect in July 2022, the appellate court was transferred to the civilian, and adjudicator and convening authority were terminated during peacetime. Also, the civilian courts will try crimes that led to death and sex crimes that occurred after July 2022. Nevertheless, the definition of 'a crime leading to death' is vague, and the jurisdiction of revictimization of sex crimes is still with the court-martials.¹⁶² Furthermore, the Minister of National Defense has the authority to designate the jurisdiction notwithstanding the amendment to the court-martials.¹⁶³ Although the 'adjudicators,' non-judicial soldiers presiding court-martials, are now removed during peacetime, military justice personnel are far from independent. Military judges and military prosecutors are all under the personnel authority of the Minister of National Defense and each military branch's chief of staff. Thus, they are all selected from and rotated within the 'military judicial officer' pool. The military judicial police officers who conduct the primary investigation are under the authority of the unit commanders. On the other hand, the current law contains numerous legal errors. Firstly, in the case of death, there is controversy over what constitutes a crime leading to death, showing the need for changes in the structure in which the military decides the direct cause of death. Meanwhile, the chief investigator of the Marine Corp, who undertook the investigation of a marine's death during a search operation for flood victims in July 2023,¹⁶⁴ was indicted for the crime of insubordination, for refusing to comply with the upper command's illegal order to stop the transfer of the notification of crime to civilian

¹⁶¹ *The Hankyoreh*. Aug. 7, 2022. The sexual molestation happened in the 15th Fighter Wing. The military prosecutor who investigated the case of trespassing also investigated the molestation case as well.

¹⁶² <Military Court Act> Article 2, Para. (2), Subparas. 1 and 2.

¹⁶³ <Military Court Act> Article 2, Para. (4): Minister of National Defense may decide to indict a case to the military court even when the case falls under the Para. (2), when there is a concern for the insurance of national security, protection of military secrets, and other circumstances equivalent thereto. Provided That, the Minister shall not decide so after the case is indicted to the civilian court.

¹⁶⁴ <Military Court Act> Article 264 (Autopsy of Unnatural or Unexplained Deaths) (1) When the body of a person who suffers or is suspected of having suffered an unnatural or unexplained death is the body of a person who falls under Article 2, the military prosecutor shall conduct an autopsy. ... (4) The military prosecutor may have a military judicial police officer or judicial police officer conduct disposition prescribed in paragraphs (1) through (3).

authorities.¹⁶⁵

- **Abrogate the court-martial during peacetime and transfer all the pending non-military crimes to the civilian courts.**
- **Transfer the personnel authority and the commandship over military judicial officers who are to be in charge of investigation and trials, such as military judge, military prosecutor, and the military judicial police officer, to competent civilian authorities.**
- **Remove the legal provision that grants the Minister of National Defense to arbitrarily intervene in jurisdiction.**

LOIPR 25

Involuntary hospitalization

While “hospitalization by legal guardians” was ruled unconstitutional, it still continues without a deadline for legislative implementation. “Hospitalization with consent” was introduced as an alternative, but it still requires a guardian’s consent for discharge, making it effectively involuntary. However, official statistics classify the “hospitalization with consent” as voluntary hospitalization. This results in uncertainty about the true number of consent-based hospitalizations.¹⁶⁶ Some persons with learning disabilities, without any signs of mental illness, have been subject to consent-based hospitalization to avoid complex admission procedures¹⁶⁷. This highlights the arbitrary nature of the psychiatric hospitalization criteria, the “need for treatment” or the “need for hospitalization.”

¹⁶⁵ The deceased marine stepped into the rapid torrents without a life jacket, the Chief of the Marine Investigation Department (Colonel), who became a criminal defendant, referred eight soldiers, including the Marine 1st Division Leader, to the civilian police on 2 August 2023 under alleged charges of professional negligence resulting in death. The defendant obtained approvals of the Minister of National Defense, et al. on 30 July 2023 after explaining the summary result of the investigation which was scheduled to be disclosed to the public on 31 July 2023. However, the Marine Colonel, who was responsible for the investigation, was booked for ‘Collective Insubordination’ on 2 August, for he transferred the case; he was ultimately indicted on 6 August 2023 (*The Korea Times*. Aug. 11, 2023; *The Korea Herald*. Sep. 11, 2023; *The Yonhap News Agency*. Oct. 6, 2023). Currently, his charge is changed to simple ‘insubordination’ and his trial is ongoing. The National Assembly submitted a motion for the Bill of Special Prosecution regarding this death case and the obstruction of justice and passed it on 2 May 2024. Note that the defendant was also indicted for the crime of insulting the defense minister, for he interviewed with a public television for 30 minutes and explained himself regarding the insubordination scandal.

¹⁶⁶National Human Rights Commission, June 3, 2021, "Comprehensive review of the consent-based hospitalization system in mental health institutions needed."

National Human Rights Commission, February 8, 2022, "Restrictive measures for punitive purposes and consent-based hospitalizations without the patient's confirmation of intent constitute human rights violations in mental health institutions."

¹⁶⁷ Hanhyoreh, Child less than 10 years old fed ADHD medication and sent to psychiatric institution by head of group home, 23 November 2022, <https://www.hani.co.kr/arti/society/schooling/1068554.html>. NHRCK, Hospitalization process for persons with mental disability must be reformed, 17 August 2021, <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7607126&page=73&searchCategory=>

When it comes to hospitalization by legal guardians, the amended Act on The Improvement of Mental Health and The Support for Welfare Services for Mental Patients requires a consensus among two psychiatrists from different mental medical institutions on the result of the examination. However, the objectivity of the examinations is questionable as (a) the Act allows a psychiatrist from the same medical institution to perform additional examination under exceptional circumstances¹⁶⁸, and (b) even the examination by a psychiatrist from a different medical institution can merely be a written or perfunctory examination. Furthermore, there has never been any independent external institution that monitors forced hospitalization.

While the State party claims that the Committee for Examination as to Legitimacy of Admission reviews the legitimacy of non-voluntary hospitalizations, in reality, the Committee does not function as such. The Committee is only required to hold a meeting at least once a month, and it takes an average of 21.1 days to be held. This means that the patient, without any alternative, is forced to stay in the hospital for nearly a month before the result of the examination is notified to the medical institution. Furthermore, only 24.9% of all examinations were conducted face-to-face, and only 1.41% of all examination cases were concluded as unfit for admission.¹⁶⁹

The face-to-face Examination to Admission is conducted only when the patient applies for it. Without any proper notice of one's right, patients may not even know about the option for a face-to-face examination. Less than 1% of patients are discharged after the Examination regarding the Extension of the Period of Admission, and the discharge rate after the Examination regarding Discharge or Improvement of Treatment is only 4%. The extremely low discharge rate shows how ineffective the current examination system is. The discharge cases from habeas corpus petitions based on Habeas Corpus Act are also very rare, with a 6.6% discharge rate in 2018.¹⁷⁰

Of the 22,776 complaints filed with the NHRCK between 2010 and 2019, the majority of cases were about human rights violations in psychiatric hospitals, with 58.5% of the cases regarding illegal admission and discharge cases, 7% of the cases regarding unjustified isolation or other restrictions. However, the NHRCK has not functioned as an institution for the protection of human rights, leading to only 6% of these complaints being admitted, while 22% were dismissed and 72% were rejected.¹⁷¹

[&searchType=&searchWord=&displayType=&year=&month=&menuLevel=&menuNo=.](#)

¹⁶⁸ National Center for Mental Health, Information on Admission and Discharge according to the Mental Health Act, 2022.

¹⁶⁹ Lee Man-woo, Problems with and way to reform admission suitability assessments, National Assembly Research Service, vol. 91, p. 31.

¹⁷⁰ NHRCK, Report on the Human Rights Situation of Persons with Mental Disability, 2021, p. 164.

¹⁷¹ NHRCK, Report on the Human Rights Situation of Persons with Mental Disability, 2021, p. 54.

- **Abolish forced “hospitalization by legal guardians” and “hospitalization with consent” permitted by the Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients.**
- **Improve the hospitalization process to prevent human rights violations of persons with psychosocial disabilities by holding weekly admission suitability assessments, mandating in-person evaluations, and removing the exception to the requirement for diagnoses from two specialists.**
- **Establish an independent system to monitor mental health institutions and create a mechanism to promptly address human rights violations experienced by individuals with psychosocial disabilities within the healthcare system.**

LOIPR 26

Act on counter-terrorism

The State party insists that counter-terrorism measures under the Act on Counter-Terrorism for the Protection of Citizens and Public Security (“CTA”)¹⁷² do not affect the protection of human rights since they are carried out in accordance with the procedures provided by current laws of the ROK such as the Criminal Procedure Act. The State party also maintains that activities pertaining to human rights protection are conducted through the system of Counter-Terrorism Human Rights Protection Officer. However, the CTA stipulates certain vague concepts such as ‘terrorist suspects,’ ‘counter-terrorism activities,’ ‘counter-terrorism investigation,’ etc., which may be arbitrarily expanded by the intelligence and investigative agencies.¹⁷³

Since the procedures under the laws such as CTA and Protection of Communications Secrets Act recognize exceptions on counter-terrorism activities and investigations, the NIS can collect sensitive personal information and trace terrorist suspects without a warrant in such cases.¹⁷⁴ There is neither an organization that regularly and independently oversees the gathering of information and tracking of suspects by the NIS, nor a legal safeguard to regulate it.¹⁷⁵

The system of Counter-Terrorism Human Rights Protection Officer, as stipulated in Article 7 of the CTA, is not independent as it is under the authority of the National Counter-Terrorism Committee,

¹⁷² Act On Counter-terrorism For the Protection of Citizens and Public Security.

¹⁷³ Article 2 3., 6., 8. of Act on Counter-terrorism For the Protection of Citizens and Public Security.

¹⁷⁴ Article 7 (1) of Protection of Communications Secrets Act.

¹⁷⁵ Seoul Economy Daily, “In the name of counterterrorism... 36 hours of warrantless tracking of financial and telecommunications transactions”, 20 May 2020, <https://www.sedaily.com/NewsView/1Z2TNGSOFD>.

which is composed of governmental agencies. The Counter-Terrorism Human Rights Protection Officer's activities are also not transparently disclosed.¹⁷⁶

After the enactment of the CTA, the investigative agency has arrested and prosecuted a foreigner in 2018.¹⁷⁷ The first instance court convicted the foreigner, but the appeal court acquitted the foreigner in 2019, and this case is being heard by the Supreme Court.^{178 179}

- **Abrogate the CTA that grants excessive authority to investigative intelligence agencies such as the NIS, including extensive collection of information without warrants.**
- **Establish independent and effective judicial oversight mechanisms and safeguards to protect human rights against the counter-terrorism activities and investigations of the NIS, etc.**
- **Ensure the counter-terrorism legislation includes transparent procedures when the government designates terrorist suspects.**

LOIPR 27

Measures taken related to hospitals and group residential facilities during the COVID-19 pandemic

The vulnerability of group residential settings to infectious diseases has been empirically confirmed in the ROK. In the closed ward of a psychiatric hospital where the first COVID-19 death occurred, 101 out of 102 inpatients were confirmed to be infected.¹⁸⁰ The cumulative infection rate in institutions for persons with disabilities was approximately 10 to 23 percentage points higher compared to the general population.¹⁸¹

¹⁷⁶ Article 7. of Act on Counter-terrorism For the Protection of Citizens and Public Security.

¹⁷⁷ During the trial, the prosecutors claimed that the foreigner's meeting with families due to the childbirth was contacting terrorists. The prosecutor also insists that the foreigner's tool for fixing cars were the ingredients of the 'proposal bomb'. The foreigner WAS stigmatized as a terrorist in his community after the prosecution.

¹⁷⁸ Yonhap News Agency, "Prosecutor rejects the guilty of a foreigner, and appealed to the Supreme Court, 22 July 2019, <https://www.yna.co.kr/view/AKR20190722099600065>.

¹⁷⁹ MINBYUN, [Statement] Abstract fear in the name of 'terrorism' cannot violate human rights, 12 July 2019, <https://www.minbyun.or.kr/?p=43049>.

¹⁸⁰ BBC News Korea "4 things we know about Cheongdodaenam Hospital, wherer COVID-19 deaths are concentrated", 26 February 2020, <https://www.bbc.com/korean/news-51640056>.

¹⁸¹ According to the Ministry of Health and Welfare, as of March 31, 2022, a total of 9,904 residents in residential institutions for persons with disabilities had tested positive for COVID-19. This accounts for 35.6% of the facility capacity. During the same period, the cumulative infection rate for the general population was 25.9%. Particularly in large residential institutions for persons with disabilities with more than 100 residents, 2,428 individuals were confirmed to be infected, representing 48.8% of the facility capacity, or nearly one in two residents. (Source: Office of National Assembly Member Jang Hye-young),

The State party, rather than implementing “emergency deinstitutionalization,”¹⁸² non-custodial alternatives, and the release of vulnerable groups in correctional facilities following international human rights standards, enforced the “preventive cohort isolation” which worsened the isolation of institutional settings. The preventive cohort isolation involved comprehensive restrictions on entry and exit in institutional settings (such as long-term care hospitals, nursing homes, and residential institutions for children, youth, and adults with disabilities), even though there were no confirmed COVID-19 cases.

The NHRCK recommended to the Korea Disease Control and Prevention Agency (KDCA) to abolish preventive cohort isolation. However, the KDCA refused to implement the recommendation.¹⁸³ No government policy is in place to prevent the preventive cohort isolation in another pan/epidemic. Furthermore, no comprehensive data was collected about the impacts of “preventive cohort isolation” on persons in institutional settings.

In addition, the response to COVID-19 in institutional settings was also problematic. In detention centers and residential institutions for persons with disabilities, preventive measures and information provision were inadequate. Moreover, proper diagnosis, contact tracing, and quarantine measures were insufficient.

The Shina Rehabilitation Center, where 117 persons with disabilities lived, failed to provide proper COVID-19 information to the residents and did not separate non-infected individuals when cases were confirmed, leading to a mass infection.¹⁸⁴ The center also cut off communication with the outside to hide these facts. Despite serious concerns from the UN Special Rapporteur on the rights of persons with disabilities,¹⁸⁵ the State Party took insufficient action and sent all the residents to other facilities but after few days returned them to Shina Rehabilitation Center, where the risk of infection persisted.¹⁸⁶

<https://janghyeyeong.com/20/?q=YToyOntzOjEYoiJrZXI3b3JkX3R5cGUiO3M6MzoiYWxsJitzOjc6ImtleXdvcmluX3M6MTI6luqxsOyivOyLnOyEpCI7fQ%3D%3D&bmode=view&idx=11479444&t=board>

¹⁸² Committee on the Rights of Persons with Disabilities, Guidelines on deinstitutionalization, including in emergencies, CRPD/C/5, 9 September, 2022.

¹⁸³ The National Human Rights Commission of Korea. Public Announcement of the Response Plans from the Ministry of Health and Welfare and the Korea Disease Control and Prevention Agency regarding the Recommendation to Amend the ‘Infectious Disease Control and Prevention Act.’ 4 April 2023.

https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609006&menuLevel=3&menuNo=91&fbclid=IwAR0cr69zBEJop--mMd7R8Z4h0ZywaoxRle5hmcuyFUzagDkmaiK_oJaIDGM

¹⁸⁴ Financial News, “‘Cohort’ crushes lives of persons with disabilities...New confirmed cases found among non-infected groups of Shinawon”, 6 January 2021, <https://www.fnnews.com/news/202101061327284266>.

¹⁸⁵ UN Special Rapporteur on the rights of persons with disabilities, Communication to the Republic of Korea, 8 February 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25863>

¹⁸⁶ Beminor, “Human Rights Commission Recognizes Only 1 Out of 8 Human Rights Violations at Sinhawon; Disability Community Condemns Decision”, 17 February, 2022. <https://www.beminor.com/news/articleView.html?idxno=22827>.

Measures on detainees in correctional facilities during the COVID-19 pandemic

Civil society had urged the State party to take active measures on correctional facilities since the early stage of the spread of COVID-19. However, the State party did not any special measures other than completely isolate inmates from society. Administrative measures were not disclosed transparently.¹⁸⁷ In some facilities, the inmates were put into producing sanitary products, such as masks, not only during the day but also at night and on holidays.¹⁸⁸

In December 2020, more than 1,000 detainees were infected by COVID-19 at Seoul Dongbu Detention Center for people under criminal charges,¹⁸⁹ and some died due to the lack of emergency care.¹⁹⁰ Especially, some of the detainees did not receive special protective care even though they are vulnerable detainees, such as older persons. Some detainees filed compensation claims against the government, but these were dismissed.¹⁹¹ The bereaved families received no apologies or compensation from the state.¹⁹² The deceased detainees were cremated without the families' consent, and the families could not see the bodies.¹⁹³

During the stage of mass infection, there were no appropriate regulations and guidelines to prevent the infection, the medical staff and experts were absent, and the environment of the facilities were vulnerable due to overcrowding and non-solitary confinement.¹⁹⁴ The measures suggested by the international human rights standards, such as alternatives to detention and emergency release of vulnerable groups were not taken. Furthermore, the right to communicate and access to external medical treatment was not ensured.

- **Investigate the damage caused by “preventive cohort isolation” during the COVID-19 pandemic.**

¹⁸⁷ COVID-19 Human Rights Response Network. Covid-19 and Human Rights - Social Guideline for Human Dignity and Equality, 2020, pp.172-180.

¹⁸⁸ Dong-a ilbo, “Prisoners are also making masks... Yeosu Correctional facility plan to supply more than 10,000 copies, 19 March 2020, <https://www.donga.com/news/Society/article/all/20200319/100239822/1>.

¹⁸⁹ Yonhap News Agency, “More than 180 virus cases reported at Seoul detention center.”, 19 December 2020, <https://en.yna.co.kr/view/AEN20201219002500320>.

¹⁹⁰ Korea Times, “Another inmate dies at detention center”, 31 December 2020, https://www.koreatimes.co.kr/www/nation/2024/05/113_301777.html.

¹⁹¹ MAEIL BUSINESS NEWSPAPER, "Another Lawsuit for Compensation by Inmates from Eastern Detention Center COVID-19 Outbreak Rejected", 29 November 2023, <https://www.mk.co.kr/news/society/10886566>.

¹⁹² OhMyNews, "National Compensation Claim for COVID-19 Prison Outbreak Deaths", 4 January 2024, https://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002990937.

¹⁹³ Yonhap News Agency, "Families of Deceased from 'COVID Prison Outbreak' at Eastern Prison File Lawsuit Against the State", 4 January 2024, <https://www.yna.co.kr/view/AKR20240104076300004>.

¹⁹⁴ Korean Institute of Criminology and Justice, Changes in the Criminal Justice System in the Post-Corona Era (II) - Changes in Corrections and Probation during the Pandemic and Adaptation to New Trend, 2022.

- **Implement regulations prohibiting “preventive cohort isolation” for individuals who are not infected or have not had contact with infected persons and establish appropriate mechanisms such as emergency deinstitutionalization in accordance with international human rights standards.**
- **Ensure that all residents of group residential settings, regardless of the type of facility, who contract infectious diseases receive treatment at external medical facilities.**
- **Apologize to the victims of infections and the bereaved families within group facilities and establish compensation measures and policies to prevent recurrence.**
- **Disclose the administrative actions related to the response to infectious disease within the correctional facilities transparently, including the statistics, regulations and guidelines related to Covid-19.**
- **Develop and implement non-custodial measures, such as parole and suspension of execution of sentence to protect detainees from infectious disease.**
- **Acknowledge that the forced cremation of deceased detainees during the COVID-19 pandemic was a violation of human rights.**

Additional Issues

Institutionalization on the basis of discrimination

Despite the Convention’s prohibition of institutionalization based on any discrimination, including gender, disability, age, and nationality, various forms of institutionalization still occur in the ROK. The absence of deinstitutionalization policies and inadequate community support lead to severe human rights violations during both the admission process and within institutions.

In mental health institutions and psychiatric nursing facilities, severe human rights violations occur during both the admission process and within these institutions. In this regard, the Constitutional Court has ruled that protective hospitalization in mental health institutions is akin to detention.¹⁹⁵ The role of the NHRCK in addressing these violations is extremely limited.¹⁹⁶ Among group facilities for persons with disabilities, more than 50% of abuse incidents occur in residential institutions. Despite ongoing issues, the State party continues to neglect the problems. In 2022, the government announced

¹⁹⁵ Constitutional Court, September 29, 2016, Decision No. 2014Hun-Ka9.

¹⁹⁶ The decisions of the NHRCK regarding human rights violations in closed wards after involuntary hospitalization are merely recommendations, making it difficult to guarantee substantial rights protection.

measures to address human rights violations in residential facilities for persons with disabilities; however, the guidelines have yet to be established, leaving victims vulnerable to violence. Serious lack of support for the victims of gender-based violence with disabilities results in de facto institutionalization of the victims, since they cannot leave shelters.

Similarly, over 70% of children protected in child welfare facilities are in child-rearing institutions, indicating an over-reliance on institutional care.¹⁹⁷ Particularly severe is the case for children abandoned in baby boxes, with 96.6% being placed in institutional care.¹⁹⁸ Within these institutional facilities, various child rights abuses, such as emotional, physical, and sexual abuse, exposure to inadequate caregiving environments, and the imposition of unreasonable living rules, have been documented. Despite serious abuses, such as forced admission to psychiatric hospitals and misuse of medication prescriptions for children exhibiting so-called ‘problematic behaviors,’¹⁹⁹ the State party has neither developed proper measures nor accurately assessed the situation.

The issue of indefinite detention of undocumented migrants also raises problems. Despite the Constitutional Court ruling²⁰⁰ and the recommendations from the NHRCK following the “hog-tying” torture incident,²⁰¹ there have been no government-level discussions on alternatives to detention. Consequently, migrants still remain detained for overly long periods in immigration detention centers and at ports of entry without any alternatives.

The State party claims that it has proposed the “Deinstitutionalization Roadmap for Supporting Independent Living of Persons with Disabilities in the Community,” the plan for the “Roadmap for deinstitutionalization of children in care,” and the Amendment Bill of the Immigration Act as countermeasures to the issues. However, these measures do not effectively constitute a deinstitutionalization policy. The ‘Deinstitutionalization Roadmap for Supporting Independent Living of Persons with Disabilities in the Community’ excludes persons with psychosocial disabilities in mental health institutions and psychiatric nursing facilities. The initially proposed ‘Roadmap for

¹⁹⁷ In 2021, 72.8% of children separated due to abuse reports were institutionalized, and 53.8% continued to live in institutions.

¹⁹⁸ Sisain, “The deaths of two young men that everyone got wrong”, 29 September 2022, <https://www.sisain.co.kr/news/articleView.html?idxno=48488>.

¹⁹⁹ KNN, “Youth psychotherapy centers controversially overprescribe medication”, 8 May 2024, <https://news.knn.co.kr/news/article/156896>.

²⁰⁰ 2020Hun-Ka1, 2021Hun-Ka10 (consolidated) Case on Detention of Deportees with No Upper Time Limit, On March 23, 2023, the Court, in a 6-to-3 opinion, held nonconforming to the Constitution Article 63, Section (1) of the Immigration Control Act, which allows a person under a deportation order to be detained while not setting an upper time limit of the detention. It explained that the provision violates both the rule against excessive restriction and the principle of due process of law and thus infringes the physical freedom of the detainee. <https://english.ccourt.go.kr/site/eng/ex/bbs/List.do?cbIdx=1143>.

²⁰¹ NHRCK complaint 21-jinjung-0520600, 3 December 2021, <https://case.humanrights.go.kr/ezpdf/customLayout.jsp?bencdata=L25hc3R5Zm9udGVzZXVjaXNfZGV0YWIwZmFsc2UmZmFsc2U=>.

deinstitutionalization of children in care’ was revised to the ‘Roadmap for transition to family-like living for children in care’, deliberately omitting the term ‘deinstitutionalization’. The proposed Amendment Bill of the Immigration Act sets the maximum detention period to 36 months, failing to address the fundamental problems regarding institutionalization.

- **Acknowledge that institutionalization is torture based on disability, age, race or immigration status constitutes discrimination and immediately cease institutionalization policies.**
- **Shift policy direction from institution-centered to community-centered support for individuals such as persons with disabilities, children, and old persons.**
- **Improve the "Roadmap to Deinstitutionalization" by reflecting specific plans and budgets according to a reasonable timeline.**
- **Ensure effective rights to redress and fair and adequate compensation, including full rehabilitation measures for full inclusion and participation in society of institutional abuse.**

Right to remedy and reparation for victims of institutionalization and past state violence

In the last century, the ROK experienced Japanese imperial rule, military dictatorship, and authoritarian regimes. Many have suffered various forms of state violence. The State party has not adopted an accountability process or prosecutorial strategy to criminally investigate and prosecute the perpetrators of serious human rights violations. The State party has not officially apologized to most of the victims of past state violence.

As a result, impunity has been tolerated in most Past state violence cases, such as emergency measure cases, forced conscription cases, the Seosan Gaechokdan Camp case, the Samcheong Concentration Camp case, and government-led illegal intercountry adoption cases. Past state violence and institutionalization represent major instances of torture and ill-treatment prohibited by the Convention. Since the statutes of limitations apply to both civil and criminal cases, the access to remedy for the victims of past state violence and institutionalization have proven difficult.

In the perspective of transitional justice, victims’ right to effective remedy has not been properly guaranteed. The Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of

Non-Recurrence has confirmed this and made recommendations as a result of the country visit in 2023, but most of the recommendations have not yet been implemented.²⁰²

The second iteration of the Korean Truth and Reconciliation Commission, established for truth-seeking on human rights violations and reparations for victims under the Framework Act on Settling the Past for Truth and Reconciliation, began the investigative activities on 27 May 2021, and is scheduled to end the investigation activities on May 26 2025. As of 31 December, 2023, 9,899 cases are under investigation, and some cases are unlikely to be investigated. The Commission closed the application for truth-seeking on 9 December, 2022, so many victims of Past state violence were not able to apply for truth-seeking investigations within the period.²⁰³

The chairperson of the Commission, appointed by the President, has actually undermined investigations on cases of Past state violence. He has made appalling comments, such as “people can be killed without trials during the war time,” “compensation for the victims of civilian massacre during the Korean War is unjust,” “civilian massacre is just a collateral damage, not illegal killing,” and so on.²⁰⁴ He ordered re-investigation of the cases of civilian massacres during the Korean War to overturn the case,²⁰⁵ and is passive in recognizing the victims of serious human rights violations as subjecting them as “people who served on the left wing.”²⁰⁶ As a result, the Commission recognized the status of 35 out of 41 victims of the “Jindo Incident” in May 2024, but decided to withhold the recognition of 6 victims.²⁰⁷

Although the Act on the Establishment and Operation of the National State Violence Trauma Treatment Center took effect on 8 June 2022, the rehabilitation measures have not been actively taken to address the trauma of the victims. The government reduced the budget and personnel of the National Trauma Centers.²⁰⁸ Regionally, the Centers are only located in Gwangju and Jeju Island, so accessibility for victims is not guaranteed.

²⁰² The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, visit to the Republic of Korea: Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, A/HRC/54/24/Add.1, 6 July 2023.

²⁰³ BEMINOR, “19 more survivors and victims of the institutionalizations... TRC says ‘the ex-officio investigation is difficult’”, 27 May 2023.

²⁰⁴ Hankyoreh, [Exclusive] Truth commission chief says No Gun Ri was ‘collateral damage,’ not illegal massacre by US troops, 30 May 2024, https://english.hani.co.kr/arti/english_edition/e_national/1142771.

²⁰⁵ The Kyunghyang Shinmun, “‘Secret re-investigation’ Kim Kwang-dong, the chairman of the TRC is accused by the organizations for Past State Violences”, 21 March 2024, <https://www.khan.co.kr/national/national-general/article/202403211347001>.

²⁰⁶ Hankyoreh, “Under conservative chief, Korea’s TRC brands teenage wartime massacre victims as traitors”, 30 April 2024, https://english.hani.co.kr/arti/english_edition/e_national/1138775.

²⁰⁷ Yonhap News Agency, “TRC suspends the recognition of victims of Jindo incident during the Korean War”, 12 March 2024, <https://www.yna.co.kr/view/AKR20240312143800004>.

²⁰⁸ The Voice of Jeju, “The National Trauma Healing Center, 1/3 of the national expenditure, is a stray bullet, and the ‘fire on the foot’ of the Jeju branch”, 3 September 2023, <https://www.jejusori.net/news/articleView.html?idxno=418847>; Hankyoreh,

The State party has not taken any diplomatic protective measures to remedy victims of past state violence that involve companies or other countries such as Japan. The government has failed to guarantee the right to compensation of the victims of forced mobilization during Japanese imperial rule and has been taking unilateral steps to reimburse the plaintiffs through a public foundation. The government decided not to officially request an apology from the perpetrators, the Japanese state or companies.²⁰⁹ Regarding the issues of Japanese military sexual slavery, the government has not taken any diplomatic measures or efforts to realize the victims' right to compensation except for the position that the '2015 Korea-Japan Comfort Women Agreement' is the official agreement,²¹⁰ even though the Seoul High Court held the liability of Japan for damages for torts against the victims in November 2023.²¹¹ Impunity, lack of compensation and rehabilitation, and lack of victim-centered approach are the problems not only for the Past state violence, but also in torture and ill-treatment, such as institutionalization which is still occurring in ROK.

Institutionalization is itself a form of torture and ill-treatment. It is a discriminatory isolation measure based on disability, age, nationality, social or economic status, etc. Many who had been detained in the facilities for the homeless, still are detained in institutions and hospitals for persons with disabilities, homeless persons, and psychosocial care. In 2021, the government prepared a deinstitutionalization road map for residential institutions for persons with disabilities, but this does not include homeless shelters or psychosocial care institutions. The roadmap has been criticized due to its focus on the measures and investment on small-scale facilities, not a complete shift to deinstitutionalization. However, the current administration is not implementing even this roadmap. Rather, the Seoul Metropolitan Council has been discussing the abolition of the ordinance on deinstitutionalization, which has been in effect for just 2 years.²¹²

- **Present official public apologies to the victims of past state violence and institutionalizations, in full consultation with them, and publicly record the apologies to restore the victims' honor.**

““May 18 in words only”...The government drastically cuts the budget and manpower of Gwangju National Trauma Center”, 31 March 2024, <https://www.hani.co.kr/arti/area/honam/1134571.html>.

²⁰⁹ Hankyoreh, “Why demand apology, money is enough? This is the position of the government on forced mobilization”, 24 August 2023, https://www.hani.co.kr/arti/politics/politics_general/1105731.html.

²¹⁰ Hankyoreh, “UN Special Rappoetur recommends the revision of 2015 agreement... Government says it respects the agreement”, 14 September 2023, https://www.hani.co.kr/arti/international/international_general/1108511.html.

²¹¹ Seoul High Court Decision on 23 November 2023, 2021na2017165.

²¹² AbleNews, “Seoul Metropolitan Government decided to abolish the ordinance for de-institutionalizations”, 22 March 2023, <https://www.ablenews.co.kr/news/articleView.html?idxno=211533>.

- **Establish an accountability process or prosecutorial strategy to ensure the criminal investigation, prosecution, and sanctioning of perpetrators of past state violence and institutionalization.**
- **Extend the period of receiving petitions and investigation activities of the 2nd Truth Commission.**
- **Conduct investigations into cases of past state violences with a victim-centered approach and without any prejudice during the second Truth and Reconciliation Commission.**
- **Ensure sufficient budget and human resources to the National Trauma Centers for stable operation.**
- **Take necessary diplomatic measures with a victim-centered approach to provide effective remedy to the victims of forced mobilization and Japanese military sexual slavery and to restore their reputation.**
- **Establish a process of remedy for the victims of institutionalization, improve the deinstitutionalization roadmap to include facilities for homeless and psychosocial care, and implement the roadmap timely with a secured budget.**

Conscientious Objections, the Punitive Alternative Service

In the ROK, after the decision of the Constitutional Court in 2018²¹³ and the enactment of the Act on Assignment to and Performance of Alternative Service was enacted in December 2019, alternative service has been in effect since October 26, 2020. However, no remedy²¹⁴ was provided to the conscientious objectors who had been punished before the implementation of alternative service. Since punishment for conscientious objection is unjust, the effective remedy should be provided to the victims.²¹⁵

²¹³ Constitutional Court Decision on 28 June 2018, 2011hunba379 etc.

²¹⁴ such as expunging the criminal records and providing adequate compensation (Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2846/2016, CCPR/C/128/D/2846/2016).

²¹⁵ Committee against Torture, General comment no. 3: Implementation of article 14 by State parties, CAT/C/GC/3, 13 December 2012, para. 5.

The alternative service has been criticized as a punitive system that discriminates alternative service contrary to international human rights standards.²¹⁶ The current alternative service system does not allow the conscience objection for active soldiers, and the Alternative Service Commission which screens conscientious objectors is not independent because it is under the Military Manpower Administration under the Ministry of National Defense. The length of alternative service is 36 months, twice as long as regular military service, the location of service is limited to correctional facilities, and service in camp is compulsory. The current system, as shown above, discriminates against people who choose alternative service. Due to the punitive nature of the alternative service, there are also conscientious objectors who refuse the alternative service. However, the Constitutional Court rejected all constitutional complaints, denying the punitive characteristics of the alternative system on 30 May 2024.²¹⁷

- **Provide effective remedy, such as expunging the criminal records and providing adequate compensation, to conscientious objectors punished before the implementation of alternative service.**
- **Take legislative and administrative measures to recognize the right to conscientious objection of active soldiers and ensure the independence of the Alternative Service Commission.**
- **Reduce the length of the alternative service by less than 1.5 times the length of regular military service and expand the places of the alternative service beyond correctional facilities to hospitals, social-welfare facilities, environmental facilities, etc.**

Physically Invasive Transgender Gender Legal Recognition Requirements

The Committee²¹⁸ and the Special Rapporteur on Torture²¹⁹ have highlighted the issue of transgender people being required to undergo unwanted sterilization as a prerequisite for legal recognition of their

²¹⁶ Amnesty International, "South Korea: Alternative to military service is new punishment for conscientious objectors", 27 December 2019, <https://www.amnesty.org/en/latest/press-release/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors/>.

²¹⁷ Constitutional Court Decision on 30 May 2024, 2021hunma117 etc.

²¹⁸ UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, 3 February 2016, CAT/C/CHN-HKG/CO/5, at para 28. ("the Committee is concerned about reports that transgender persons are required to have completed sex-reassignment surgery, which includes the removal of reproductive organs, sterilisation and genital reconstruction, in order to obtain legal recognition of their gender identity.")

²¹⁹ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, A/HRC/22/53. ("In many countries, transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.")

gender identity.

In the ROK, since the Supreme Court's 2006 ruling, the requirements for legal gender change have been established as guidelines by the Supreme Court rather than as law. Despite the discretionary nature of the term "investigation," some courts have treated it as a de facto prerequisite. Consequently, only a very limited group of transgender people—unmarried adults diagnosed with transsexualism, who have undergone psychiatric/hormonal treatment, and have been sterilized—are eligible for gender reassignment. This surgical requirement forces transgender people to undergo discriminatory and physically invasive surgery for gender recognition, restricting their bodily autonomy and reproductive rights.

- **Exclude involuntary sterilization, involuntary medical treatment, and other physically invasive requirements as prerequisites for the legal gender recognition of transgender people.**

Intersex bodily harm

Intersex people are almost invisible in the ROK. Statistically, there are about 230,000 newborns per year in the ROK, of which an estimated 0.1%, or about 239, are born with Klinefelter syndrome. Many other intersex variations exist, estimated to be up to 1.7% of the population. Therefore, the number of intersex newborns could be as high as 3,910 per year. When parents register their child's birth, the Resident Registration Act requires them to choose the child's legal gender, either male or female, and list it on the registration form. If they want to change this gender later, they must go through a legal gender correction procedure. In socialization and public education, it is also common for adults, including parents and teachers, to educate children according to the gender binary. For this reason, parents sometimes determine the legal sex of their children without their consent and force them to undergo irreversible surgery.

- **Ensure the bodily integrity of intersex people, especially infants, children, and adolescents, by prohibiting unnecessary medical interventions performed without their free and informed consent.**

Corporate accountability

The State party has failed to ensure that all business enterprises under its jurisdiction, including state-owned enterprises, do not cause or contribute to acts prohibited under the Convention. Without an

effective legal or policy framework to ensure that business enterprises respect human rights, companies under the State party's jurisdiction continue to cause or contribute to torture or ill-treatment, and victims are left without adequate remedy.

For example, major Korean corporations continued to profit from salt produced with forced labor and ill-treatment in Sinan County years after the issue became public.²²⁰ Also, the government is actively encouraging Korean companies to participate in Saudi Arabia's NEOM project,²²¹ with support from the state-owned Export-Import Bank,²²² despite concerns raised by rights groups and Special Procedures mandate holders of the torture and ill-treatment of Howeitat activists opposing the project.²²³

The State party has a general duty to protect the rights of all persons under its jurisdiction from abuse by third parties, including business enterprises. The State party's willingness to profit from overseas development projects tainted with allegations of torture and ill-treatment is clearly contrary to the object and purpose of the Convention.

- **Adopt binding legislation to require human rights due diligence by business enterprises to ensure they do not cause or contribute to acts prohibited under the Convention.**
- **Establish an independent mechanism with the authority to investigate human rights abuses, including torture and ill-treatment, by business enterprises subject to the State party's jurisdiction.**
- **Ensure access to effective judicial and non-judicial remedies for victims of human rights violations, including torture and ill-treatment, due to activities of business enterprises subject to the State party's jurisdiction.**

²²⁰ Business & Human Rights Resource Centre, *S. Korea: Forced labour in Sinan salt farms reportedly unaddressed after 2014 exposé; company responses included*, 13 September 2022, <https://www.business-humanrights.org/en/latest-news/south-korea-victim-exposes-chronic-forced-labour-issues-unaddressed-after-2014-expos%C3%A9-in-sinui-island-salt-farms/>.

²²¹ The Korea Times, *Korean firms boost ties with NEOM through Seoul exhibition*, 26 July 2023, https://www.koreatimes.co.kr/www/tech/2024/04/129_355669.html.

²²² Business Korea, *Korea Eximbank Establishes 'Saudi Desk' for Dedicated Support in Middle Eastern Projects*, 29 January 2024, <https://www.businesskorea.co.kr/news/articleView.html?idxno=210326>.

²²³ UNHRC Special Procedures Joint Communication, UA KOR 2/2023, 28 April 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28040>.