

# **Joint NGO Submission**

## **to the WGAD for the Visit to the ROK**

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South Korean Human Rights Organizations Network (34 NGOs)

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# **I. Introduction**

1. The 34 human rights and civil society organizations of the Republic of Korea (hereinafter “ROK”) submit this report for the country visit of the United Nations Working Group on Arbitrary Detention (hereinafter “WGAD”) to the ROK. This report presents key issues and cases of arbitrary detention that warrant the attention of the WGAD during its country visit. It covers a broad range of detention-related issues, including not only arrest and detention in the criminal justice process, but also juvenile justice, immigration and asylum procedures, persons who have escaped from the Democratic People’s Republic of Korea (hereinafter “DPRK”), mental health care, facilities for persons with disabilities, children, older persons and homeless persons, detention of women, military detention facilities and the detention of conscientious objectors to military service, responses to infectious diseases, and victims of past human rights violations.

2. Based on the experience in providing counselling, support and advocacy in the field, the submitting organizations seek to bring to the attention of the WGAD the situation of arbitrary detention in the ROK and the related institutional problems. Recommendations of the United Nations human rights mechanisms have served as important standards and opportunities for civil society advocacy aimed at protecting and promoting human rights in the ROK. We request that the WGAD give due consideration to this report in the course of its visit to the ROK and the preparation of its subsequent report, and that it make specific and effective recommendations to prevent and remedy arbitrary detention in the ROK.

## II. General Issues

### Ratification of International Standards

3. The ROK has ratified all but one of the nine core international human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). With regard to optional protocols, the ROK has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the Optional Protocol to the Convention against Torture (OPCAT), or the Third Optional Protocol to the Convention on the Rights of the Child (OPIC). Since the ROK has not ratified the OPCAT, a National Preventive Mechanism (NPM) has not been established. In order to ensure effective remedies for victims of arbitrary detention, including migrant workers, children, and persons deprived of their liberty, it is necessary to ratify the international human rights treaties and optional protocols to which the ROK is not yet a party.

#### **Suggested Recommendation**

- Promptly ratify the international human rights treaties and optional protocols to which the ROK is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention against Torture.

### Domestic Legal Effect of International Standards

4. Article 6(1) of the Constitution of the ROK provides that “treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same effect as the domestic laws of the ROK.” However, in judicial proceedings, international human rights treaties are used merely as reference materials, and it is difficult to regard them as having secured the status of substantive standards for adjudication. In proceedings before the Constitutional Court and other courts, general comments, decisions and other pronouncements of treaty bodies are not accorded due effect on the ground that they are not legally binding. In addition, it is also difficult to regard international standards

applicable to persons deprived of their liberty, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which constitute part of the standards of reference for the WGAD, as having secured the status of standards for adjudication.

#### **Suggested Recommendation**

- Ensure the full implementation, throughout the legislative, administrative and judicial systems, of international standards relating to arbitrary detention, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

#### **Definition and Criminalization of Arbitrary Detention**

5. There is no law in the ROK that defines arbitrary detention, nor are concepts related to arbitrary detention, such as torture, cruel treatment and enforced disappearance, specifically defined. Article 124<sup>1</sup> of the Criminal Act provides for unlawful arrest and unlawful confinement, while article 276<sup>2</sup> provides for the general offense of arrest and confinement. In order to ensure full accountability for arbitrary detention and for criminal acts committed in the course of, or arising from, such detention, it is necessary to incorporate the elements of arbitrary detention, torture, cruel treatment and enforced disappearance into the criminal law framework. In addition, with regard to detention occurring outside criminal proceedings, numerous laws use terms such as “protection”<sup>3</sup> and “treatment”,<sup>4</sup> even where the measures concerned constitute detention in practice.

#### **Suggested Recommendations**

- Take legislative measures to ensure that the elements of arbitrary detention, torture, cruel, inhuman or degrading treatment or punishment, and enforced disappearance,

<sup>1</sup> Criminal Act, art. 124: “(1) A person who, in performing or assisting in judicial, prosecutorial, police or other duties involving physical restraint, abuses official authority to arrest or confine another person shall be punished by imprisonment for not more than seven years and suspension of qualifications for not more than ten years. (2) An attempt to commit the offense prescribed in paragraph (1) shall be punished.”

<sup>2</sup> Criminal Act, art. 276 (Arrest, Confinement, Arrest or Confinement of Lineal Ascendant), para. (1): “A person who arrests or confines another person shall be punished by imprisonment for not more than five years or by a fine not exceeding seven million won.”

<sup>3</sup> Juvenile Act, art. 1.

<sup>4</sup> Medical Treatment and Custody Act, art. 1.

as defined under international human rights standards, are fully incorporated into the domestic criminal law and criminal justice system.

- Recognize as detention all measures that constitute a deprivation of liberty in practice, regardless of their designation or legal form, including those referred to as “protection” or “treatment”, and ensure that international human rights standards and procedural safeguards relating to arbitrary detention apply, without exception, to all forms of deprivation of liberty.

### **Arrest without a Warrant and Exemption from Criminal Liability**

6. Article 12 of the Constitution of the ROK guarantees personal liberty and due process of law and, in principle, requires a warrant issued by a judge for arrest, detention, seizure or search. In accordance with the Constitution, the Criminal Procedure Act provides for the warrant requirement for arrest and detention,<sup>5</sup> while providing for emergency arrest and arrest in flagrante delicto as exceptions to this requirement.<sup>6</sup> Emergency arrest and arrest in flagrante delicto have given rise to considerable controversy, particularly in the context of demonstrations and strikes, and have been criticized as being applied harshly to persons participating in strikes and assemblies. The Criminal Procedure Act permits arrest without a warrant for minor offenses only when the residence of the person concerned is unknown. However, the excessively narrow scope of offenses classified as minor has been subject to criticism. Article 11-5 of the Act on the Performance of Duties by Police Officers provides for the mitigation or exemption of criminal liability for harm caused to others in the course of the performance of duties by police officers, the introduction of which has been controversial.

#### **Suggested Recommendations**

- Strictly regulate the use of arrest without a warrant and prevent its misuse, ensuring in particular that it is not used for minor offenses.
- Ensure that provisions allowing the mitigation or exemption of criminal liability do not apply to arbitrary arrest or detention.

<sup>5</sup> Criminal Procedure Act, arts. 200-2 and 201.

<sup>6</sup> Criminal Procedure Act, arts. 200-3, 211 and 212..

## Right to Legal Assistance

7. Although the Criminal Procedure Act provides for court-appointed counsel, it does not guarantee access to court-appointed counsel prior to indictment for persons arrested without a warrant. There is therefore a gap in legal assistance during the pre-indictment investigation stage. In addition, the proposed public criminal defense system, which was intended to provide assistance by court-appointed counsel from the early stages of a criminal investigation, was not enacted, as the relevant bill was discarded upon the expiration of the term of the National Assembly. Court-appointed counsel is mandatorily provided in proceedings for judicial review of arrest; however, it is not guaranteed at the stage before the arrested person files a request for such a review.

### Suggested Recommendations

- Establish a legal framework to ensure that all persons deprived of their liberty have access to legal aid, without exception, throughout the entire period of deprivation of liberty.

## Remedies for Victims of Arbitrary Detention

8. A comprehensive framework for remedy and reparation for victims of arbitrary detention, as required by international standards, has not been sufficiently established in the domestic legal system. Many victims of arbitrary detention face difficulties from the very stage of accessing remedial procedures, and the meaning of remedy and reparation as required under international standards has also not been fully realized.

9. In principle, the National Human Rights Commission of Korea (hereinafter “NHRCK”) does not investigate complaints concerning facts that occurred more than one year before the complaint was filed.<sup>7</sup> In addition, the Habeas Corpus Act excludes from those entitled to seek relief persons arrested or detained pursuant to criminal proceedings,

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<sup>7</sup> National Human Rights Commission of Korea Act, art. 32 (Dismissal of Petitions, etc.), para. (1): “The Commission shall dismiss a petition if it falls under any of the following subparagraphs: ... 4. The petition is filed more than one year after the occurrence of the facts giving rise to the petition; provided that this shall not apply where the applicable criminal or civil limitation period has not expired and the Commission decides to investigate the matter.”

convicted prisoners and persons placed under “protection” pursuant to the Immigration Act, and therefore does not provide a universal remedy for all persons deprived of their liberty.<sup>8</sup>

10. In his report on the country visit to the ROK, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence identified, in relation to remedies for victims of gross human rights violations, including arbitrary detention committed during the period of authoritarian rule, issues including the absence of official apologies, the absence of criminal accountability for perpetrators, and the limitations of obtaining remedies through individual litigation.

#### **Suggested Recommendations**

- Issue a public apology to past and present victims of arbitrary detention.
- Establish a comprehensive legal and institutional framework to ensure that victims of arbitrary detention have access to full and effective remedy and reparation in accordance with international human rights standards.
- Fully implement in domestic laws, policies and practices the 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.

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<sup>8</sup> Habeas Corpus Act, art. 2 (Definitions), para. (1): “The term ‘detainee’ means a person confined, protected or detained against their free will in a medical, welfare, detention or protective facility operated by the State, a local government, a public corporation, an individual or a private organization (hereinafter ‘detention facility’); provided that persons arrested or detained pursuant to criminal procedure, convicted prisoners and persons detained under the Immigration Act are excluded.”

### III. Criminal Justice System

#### A. Arbitrary Detention of Prisoners in Correctional Facilities

##### Overcrowding

11. Despite a continuing series of court decisions finding overcrowding to constitute a human rights violation and recognizing the State's liability to compensate prisoners for resulting harm,<sup>9</sup> the problem of overcrowding has not been fundamentally resolved. Overcrowding constitutes detention that violates human dignity and discriminatory detention of prisoners in vulnerable situations, and therefore falls within Categories I and V of arbitrary detention.

12. The occupancy rate of correctional facilities decreased from 115.4% in 2017 to 106.4% in 2021, but subsequently began to rise again. In 2025, it reached 127.7%, the highest level recorded in the past 10 years.<sup>10</sup> As of June 2026, the prison population stood at 63,048, representing an occupancy rate of 124.6%. Since the floor space per prisoner used as the basis for determining the capacity of each correctional facility also varies from one prison to another, the problems caused by overcrowding may be more serious than the occupancy rates alone suggest. As of June 2026, Cheongju Women's Prison, the only women's prison in the ROK, had an occupancy rate of 138.8%.<sup>11</sup> The occupancy rate at Gimcheon Juvenile Prison increased from 125.8% at the end of 2024 to 127.5% at the end of 2025 and, in 2026, remained above capacity at 119.6%. Adult prisoners are also held at Gimcheon Juvenile Prison.<sup>12</sup> The Government has not developed clear measures to resolve the problem. Under the current law, prisoners do not have the right to apply for parole. Accordingly, parole is not a right of prisoners or an obligation of correctional facilities, but a matter determined at the discretion of the Government.<sup>13</sup>

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<sup>9</sup> Supreme Court of Korea, Decision No. 2017Da266771 (14 July 2022).

<sup>10</sup> Kim Min-i and Cho Ha-young, "Overcrowding in Correctional Facilities through Data," National Assembly Library, *Data & Law*, No. 2026-11 (Issue No. 49) (9 September 2026), p. 1.

<sup>11</sup> Kim Min-i and Cho Ha-young, "Overcrowding in Correctional Facilities through Data," p. 2.

<sup>12</sup> *Newspim*, "[What Law-Breaching Minors Are Missing, Part 2] Juvenile Prison Overcrowding Forces It to House Adult Offenders Too... 'Juvenile Justice Infrastructure Must Be Expanded'" (16 August 2026), <https://www.newspim.com/news/view/20260812000449>.

<sup>13</sup> Administration and Treatment of Correctional Institution Inmates Act, arts. 121 (11) and 122 (2).

### **Suggested Recommendations**

- Specify in law the minimum living space per prisoner in accordance with international human rights standards, develop measures to address overcrowding, and provide adequate reparation to victims of overcrowding.
- Expand the use of parole and guarantee the right of prisoners to apply for parole.
- Improve the treatment of women prisoners by increasing the number of prisons equipped with detention conditions appropriate for women.
- Ensure the complete separation of juvenile prisoners from adult prisoners and minimize the detention of juveniles in accordance with the principles that detention of children should be used only as a measure of last resort and for the shortest appropriate period.

### **Detention in Extreme Heat**

13. There is a continuing problem with ensuring appropriate temperatures as part of the material conditions in correctional facilities. The Act on Execution of Sentences and Treatment of Inmates requires correctional facilities to provide adequate space and facilities for ventilation and heating, but does not prescribe specific standards for appropriate temperatures.<sup>14</sup> Detention in conditions where appropriate temperatures are not ensured constitutes treatment that is inconsistent with international standards and falls within Categories I, III and IV of arbitrary detention.

14. In August 2016, two prisoners confined in investigation cells at Busan Prison died during extreme heat.<sup>15</sup> The NHRCK subsequently recommended that relevant laws and regulations establish standards for appropriate indoor temperatures in prisoners' living quarters, but such standards have still not been established.<sup>16</sup> In 2026, the Ministry of Justice pursued a project to install cooling equipment, including air conditioners, in the corridors of prison wings accommodating older persons, persons with disabilities, patients and others vulnerable to heat-related illnesses, as well as in some overcrowded women's prison wings.

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<sup>14</sup> Administration and Treatment of Correctional Institution Inmates Act, art. 6 (2).

<sup>15</sup> *Busan Ilbo*, "Two Prisoners in Busan Died of 'Heatstroke'" (10 November 2016), <https://www.busan.com/view/busan/view.php?code=20161110000347>.

<sup>16</sup> Ministry of Justice, response and implementation plan concerning National Human Rights Commission of Korea Decision No. 19Visit0000100, *Recommendation to Improve the Human Rights of Prisoners Following Visits to Correctional Facilities* (3 July 2020).

However, the Ministry suspended further installations following controversy generated by media coverage and expressions of hostility.<sup>17</sup>

#### **Suggested Recommendations**

- Establish specific legal standards concerning appropriate temperatures, the provision of hot water and access to bathing.

### **Solitary Confinement**

15. Article 108 (14) of the Act on Execution of Sentences and Treatment of Inmates sets the maximum period of disciplinary confinement at 30 days.<sup>18</sup> Article 109 (2) of the same Act permits the period to be increased by up to one half, to 45 days, where grounds for aggravated disciplinary punishment exist, and also allows consecutive imposition of such punishment. Solitary confinement exceeding 15 days constitutes detention contrary to international standards<sup>19</sup> and falls within Categories I, III and IV of arbitrary detention. Among complaints submitted to the NHRCK, there was a case in 2021 involving 102 days of solitary confinement as a disciplinary punishment,<sup>20</sup> and a case in 2023 involving 114 days of solitary confinement as a disciplinary punishment.<sup>21</sup> Cases involving actual prisoners also demonstrate that disciplinary confinement has been imposed consecutively.

#### **Suggested Recommendations**

- Amend the relevant legislation governing the execution of sentences to ensure that the maximum period of solitary confinement imposed as a disciplinary punishment does not exceed 15 days.

### **Instruments of Restraint**

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<sup>17</sup> *Seoul Shinmun*, “‘Air-Conditioner Installation Suspended’: Ice Water Given to Prisoners as Prison Temperatures Reach 37°C” (7 August 2026), <https://www.seoul.co.kr/news/society/2026/08/07/20260807500068>.

<sup>18</sup> Administration and Treatment of Correctional Institution Inmates Act, arts. 108 (14) and 109 (2).

<sup>19</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, Rule 43(1)(b), Rule 44.

<sup>20</sup> National Human Rights Commission of Korea, *Unjust Consecutive Disciplinary Confinement in a Correctional Facility*, Case No. 21Petition0108800.

<sup>21</sup> National Human Rights Commission of Korea, *Unjust Consecutive Disciplinary Punishments in a Detention Centre*, Case No. 22Petition0652400.

16. With respect to instruments of restraint used in correctional facilities, the law does not specifically prescribe the duration for which they may be used, leaving their use to the discretion of correctional officers.<sup>22</sup> The Act on the Treatment of Protected Juveniles, Etc. also permits the use in juvenile reformatories of instruments of restraint including handcuffs, protective headgear, protective restraints and restraining ropes, as well as gas guns and electroshock devices.<sup>23</sup> Physical restraint through the use of such instruments constitutes arbitrary detention falling within Categories I and III.

#### **Suggested Recommendations**

- Adopt the necessary legislative and administrative measures to prevent abuse, including by prescribing in law the duration of the use of instruments of restraint and the principle that such measures may be used only as a last resort.

#### **Medical Treatment**

17. Correctional facilities continue to suffer from shortages of medical personnel. The number of medical personnel in correctional facilities remained at only approximately 300 to 400, with 343 in 2020, 365 in 2021, 386 in 2022, 409 in 2023 and 411 in 2024. Approximately 400 medical personnel are responsible for 7 million to 9 million medical consultations annually, amounting to approximately 20,000 to 30,000 consultations per medical staff member each year, or roughly 100 consultations per day.<sup>24</sup> For reference, among medical personnel in correctional facilities, those who actually provide medical consultations are medical officers and public health doctors, and there were 92 medical officers and 81 public health doctors in 2025.<sup>25</sup> This issue is directly related to prisoners' right to health, and detention in an environment in which the right to health is not adequately guaranteed falls within Categories I and V of arbitrary detention.

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<sup>22</sup> Administration and Treatment of Correctional Institution Inmates Act, arts. 97–99.

<sup>23</sup> Act on the Treatment of Protected Juveniles, art. 14-2.

<sup>24</sup> *Munhwa Ilbo*, “Severe Shortage of Doctors in Correctional Facilities...About 100 Consultations per Doctor per Day” (11 February 2026), <https://www.munhwa.com/article/11567792>.

<sup>25</sup> Ministry of Justice, 2026 *Correctional Statistics Yearbook*, <https://www.moj.go.kr/bbs/moj/160/608664/artclView.do>.

### **Suggested Recommendations**

- Increase the number of medical personnel in correctional facilities and expand access to external medical treatment.

## **Pretrial Detention**

18. Pretrial detainees are subject to the Act on Execution of Sentences and Treatment of Inmates, rather than to separate legislation, and have fundamental rights while in detention, including the right to legal assistance, visits, correspondence and the submission of complaints. However, the treatment of pretrial detainees is not clearly distinguished from that of convicted prisoners.

19. Although the Criminal Procedure Act establishes investigation without detention as a general principle, suspects and accused persons continue to be held in pretrial detention. In 2025, the average daily prison population nationwide was 63,680, of whom 21,648 were pretrial detainees, accounting for 34.0% of the total.<sup>26</sup> The proportion of pretrial detainees released on bail was only 30.5%.<sup>27</sup> Effective measures are needed to limit the use of pretrial detention.

### **Suggested Recommendations**

- Ensure that pretrial detention is used only as an exceptional measure, when strictly necessary and proportionate, and for the shortest possible period.
- Expand the use of bail and other alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).
- Ensure that pretrial detainees are treated in accordance with international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in a manner consistent with the presumption of innocence and their legal status.

<sup>26</sup> Ministry of Justice, *2026 Correctional Statistics Yearbook*, <https://www.moj.go.kr/bbs/moj/160/608664/artelView.do>.

<sup>27</sup> National Court Administration, *2025 Judicial Yearbook*, <https://www.scourt.go.kr/portal/news/NewsViewAction.work?pageIndex=1&searchWord=&searchOption=&seqnum=11&gubun=719>.

## Deaths in Correctional Facilities and Preventive Measures

20. The Government regularly publishes statistical data on the number of prisoners who die in custody and those who die by suicide, but does not provide detailed disaggregation by age, sex, type or cause of death. A gap in the Government's statistics on deaths in custody concerns the system for suspension of execution of sentences. Where a prisoner in a serious or critical condition dies after the execution of their sentence has been suspended, the death is not included in statistics on deaths in custody. The Government also does not publish statistical data on the number of prisoners whose sentences are suspended.<sup>28</sup> Continuing to detain seriously or critically ill prisoners who should have been granted early release on health grounds constitutes detention that violates the rights to liberty and health and falls within Categories I and V.

### Suggested Recommendations

- Publish, as part of statistics concerning deaths in custody, the number of prisoners granted suspension of execution of sentence and the number of prisoners who die following such suspension.
- Disclose to the bereaved families the reports of internal investigations and autopsy reports prepared following the death of a prisoner.

## B. Arbitrary Detention Prior to Indictment

21. In the ROK, arrests by investigative authorities, confinement during investigations and other forms of deprivation of liberty are frequently imposed in connection with the exercise of rights guaranteed under the International Covenant on Civil and Political Rights, including human rights advocacy activities. Such arrests and confinement may amount to arbitrary detention under Categories I, II, and III, where they lack a legal basis or are imposed as a consequence of the exercise of protected rights.

22. There have been cases in which workers, citizens and human rights defenders participating in peaceful assemblies were arrested or punished not under the Assembly and

<sup>28</sup> *Edaily*, ““Must One Die to Leave Prison?...How Should the Controversial Suspension of Sentence Execution System Be Improved?” (5 October 2022), <https://www.edaily.co.kr/news/read?newsId=02496086632489968&mediaCodeNo=257>.

Demonstration Act, but for offenses such as general obstruction of traffic, obstruction of business, refusal to comply with an order to leave, trespass and defamation:

- a case in which the police arrested citizens and workers participating in a protest demanding the reinstatement of dismissed teachers;<sup>29</sup>
- a case in which a court issued a detention warrant for a dismissed worker with a known residence on the ground that there was a risk of flight;<sup>30</sup>
- a case in which a disability rights activist holding a silent protest in the concourse of a subway platform was arrested;<sup>31</sup>
- a case in which the police arrested a teacher who had made a public-interest disclosure concerning sexual violence while the teacher was conducting a high-altitude protest;<sup>32</sup>
- a case in which three disability rights activists conducting a high-altitude protest on the bell tower of a cathedral were arrested immediately after ending the protest and coming down;<sup>33</sup>
- a case in which two construction workers conducting a high-altitude protest on an advertising tower in Yeouido were arrested after ending the protest and coming down;<sup>34</sup>
- a case in which a suspect who had voluntarily appeared was called outside and then placed under emergency arrest.<sup>35</sup>

23. In particular, journalists documenting assemblies have also been arrested and detained on charges of trespass and obstruction of business.

- a case in which a journalist filming a violent assembly was arrested and punished for trespass.<sup>36</sup>

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<sup>29</sup> *Labor Today*, “Ko Jin-su, Head of the Sejong Hotel Branch, Detained after Calling for Ji Hye-bok’s Reinstatement” (17 April 2026), <https://www.labortoday.co.kr/news/articleView.html?idxno=233876>.

<sup>30</sup> *Kyunghyang Shinmun*, “[Exclusive] Union Leader Ko Jin-su: ‘Calling a Worker Engaged in Protest a Flight Risk Is Deeply Insulting’” (26 May 2026), <https://www.khan.co.kr/article/202605261644001>.

<sup>31</sup> *Kyunghyang Shinmun*, “Solidarity Against Disability Discrimination Activist Arrested During Silent Protest at Hyeohwa Station” (13 December 2023), <https://www.khan.co.kr/article/202312131127001>.

<sup>32</sup> *Labor Today*, “Teacher Ji Hye-bok Arrested during High-Altitude Protest Demanding Reinstatement” (16 April 2026), <https://www.labortoday.co.kr/news/articleView.html?idxno=233838>.

<sup>33</sup> *Hankyoreh*, “Three Disability Rights Activists Taken into Custody Immediately after Ending a 14-Day Protest in a Cathedral Bell Tower” (2 May 2025), [https://www.hani.co.kr/arti/society/society\\_general/1195606.html](https://www.hani.co.kr/arti/society/society_general/1195606.html).

<sup>34</sup> *Kyunghyang Shinmun*, “Two Construction Workers Begin High-Altitude Protest on a 30-Metre Billboard in Yeouido” (2 October 2024), <https://www.khan.co.kr/article/202410021017001>.

<sup>35</sup> *YTN*, “Police Urgently Arrest Suspect Who Appeared Voluntarily... ‘Even Falsified Documents’” (14 July 2026), [https://www.ytn.co.kr/\\_ln/0103\\_202607142057583434](https://www.ytn.co.kr/_ln/0103_202607142057583434).

<sup>36</sup> *Hankyoreh*, “Filmmaker Jeong Yun-seok Files Constitutional Complaint after Conviction for Filming Seoul Western District Court Riot” (28 May 2026), [https://www.hani.co.kr/arti/society/society\\_general/1260788.html](https://www.hani.co.kr/arti/society/society_general/1260788.html).

24. There have also been cases in which suspects under investigation were subjected to arbitrary detention, including arrest and confinement in interrogation rooms, after exercising their right to remain silent:

- a case in which an arrest warrant was issued and executed against a suspect under the National Security Act after the suspect refused to comply with a summons, stating that they would exercise the right to remain silent;<sup>37</sup>
- a case in which a suspect under the National Security Act was confined for a prolonged period in an interrogation room, rather than a detention cell, after exercising the right to remain silent during questioning.<sup>38</sup>

#### **Suggested Recommendations**

- Cease the detention and punishment of citizens and workers for the exercise of peaceful assembly and the right to collective action through the application of offenses such as general obstruction of traffic, obstruction of business, refusal to comply with an order to leave, trespass and defamation.
- Cease the detention and punishment of journalists documenting matters of public interest at assemblies through the application of the offense of trespass.
- Closely review laws and regulations affecting the exercise of the rights to freedom of expression and peaceful assembly, with a view to bringing them into line with international standards and preventing the arbitrary detention of citizens, workers and human rights defenders.
- Prohibit arrest and detention on the ground of exercising the right to remain silent.

### **C. Protective Custody under the Social Protection Act**

25. The Social Protection Act, enacted by a special legislative body during the period of authoritarian rule, established a system under which prisoners who had completed their

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<sup>37</sup> *News1*, “Jeju Police Arrest Three Progressive Activists...Civil Society Groups Denounce ‘Government Security Crackdown’” (28 October 2024), <https://www.news1.kr/local/jeju/5581733>.

<sup>38</sup> *Jajusibo*, “Committee Supporting Kwon Mal-seon Files Complaint against Police for Unlawful Detention under the National Security Act” (5 January 2026), <https://www.jajusibo.com/69352>.

sentences were confined in separate detention facilities.<sup>39</sup> The Social Protection Act was repealed on 4 August 2005 due to human rights violations, including double punishment and prolonged detention. However, pursuant to article 2 of the Addenda to the Act repealing the Social Protection Act, protective custody orders that had become final before the repeal remained effective, and persons who were already subject to, or scheduled to be subject to, the execution of protective custody continued to be confined under the previous system.<sup>40</sup> Protective custody constitutes detention following the completion of a prison sentence as well as discriminatory detention of certain prisoners, and therefore falls within Categories I and V.

26. Statistics concerning persons subject to protective custody are currently not publicly available in a transparent manner. According to the findings of a visit conducted by the NHRCK, as of 2022, 14 persons were being held under protective custody and 25 prisoners were scheduled to be placed under protective custody.<sup>41</sup> Persons subject to protective custody are prisoners held in long-term detention who require support for social reintegration and rehabilitation; however, educational programs, vocational training and other forms of support were largely unavailable.<sup>42</sup> Protective custody constituted arbitrary detention that extended the confinement of certain offenders, including habitual offenders. Although the Act has been repealed, no remedy has been provided to victims who were subjected to protective custody orders prior to its repeal.

#### **Suggested Recommendations**

- Immediately end the detention of persons subject to protective custody.
- Repeal the supplementary provisions of the Social Protection Act that are still in force, and completely abolish the protective custody system.
- Provide appropriate reparation to persons subjected to protective custody, including compensation for arbitrary detention, support for social reintegration and a public apology.

<sup>39</sup> *The Sisa Law*, “[Special Report] Social Protection Act Repealed, but Three Persons Remain under Protective Custody in Correctional Facilities” (24 September 2025), <https://tsislaw.com/mobile/article.html?no=25797>.

<sup>40</sup> *Act Repealing the Social Protection Act*, Act No. 7656 (repealed and effective 4 August 2005).

<sup>41</sup> National Human Rights Commission of Korea, Policy Recommendations for the Protection and Promotion of Prisoners’ Human Rights Following the 2022 Visits to Correctional Facilities, Case No. 22Visit0000200, p. 5 and 11.

<sup>42</sup> National Human Rights Commission of Korea, Policy Recommendations for the Protection and Promotion of Prisoners’ Human Rights Following the 2022 Visits to Correctional Facilities, Case No. 22Visit0000200, p. 19–20.

## D. State of Emergency

27. Article 77 (3) of the Constitution of the ROK provides that, when the President proclaims emergency martial law, “special measures may be taken with respect to the requirement of warrants, freedom of speech, the press, assembly and association, or the powers of the Government or the courts.”<sup>43</sup> Article 9 (1) of the Martial Law Act also provides that, in an area under emergency martial law, “the martial law commander may take special measures concerning arrest, detention, seizure, search, or freedom of the press, publication, assembly, association, or collective action, if necessary for military reasons,” and provides for relevant cases to be tried by military courts.<sup>44</sup> During the unconstitutional emergency martial law declared on 3 December 2024, the President at the time and the Martial Law Commander also authorized arrests without warrants, along with a comprehensive prohibition on assemblies and media activities.<sup>45</sup>

28. Allowing arrests and detention without warrants on a broad basis under emergency martial law, and placing such cases under the jurisdiction of military courts, violates rights under the International Covenant on Civil and Political Rights, including the non-derogable right to liberty of person, freedom of expression and the right of peaceful assembly, and undermines due process. Accordingly, the emergency martial law system, which permits special measures with respect to the warrant requirement and rights, gives rise to arbitrary detention falling within Categories I, II, and III and should be reformed.

### **Suggested Recommendations**

- Amend the Constitution and the Martial Law Act, which permit arbitrary detention, including arrest and detention without a warrant, during a state of emergency.
- Amend the Constitution and the Martial Law Act to ensure the right to a fair trial before ordinary courts even during a state of emergency.

<sup>43</sup> *Constitution of the Republic of Korea*, art. 77(3).

<sup>44</sup> *Martial Law Act*, art. 9(1), art. 10.

<sup>45</sup> *Martial Law Command, Proclamation No. 1* (Dec. 3, 2024).

## IV. Military Service and National Security

### A. Alternative Service for Conscientious Objectors of Military Service

29. Following the 2018 decisions of the Constitutional Court and the Supreme Court,<sup>46</sup> the ROK enacted the Act on Assignment to and Performance of Alternative Service, which has been in force since October 2020. However, alternative service personnel are required, without exception, to reside collectively in communal quarters within correctional facilities for 36 months, which is twice the length of active duty service in the army. If they leave the facility without authorization, five times the number of days of absence is added to their period of service, and if the total period of absence reaches eight days or more, their assignment to alternative service is cancelled, exposing them once again to the risk of criminal punishment.<sup>47</sup> The duties assigned to alternative service personnel are also largely identical to those previously performed by conscientious objectors while serving prison sentences.<sup>48,49</sup>

30. Meanwhile, in a survey conducted in January 2026 of 56 conscientious objectors who were serving or had completed alternative service, 42.8% reported having experienced human rights violations or ill-treatment by staff of correctional facilities. Hate speech directed at LGBTQ+ personnel, failure to provide meals consistent with vegan beliefs, and other forms of insulting and discriminatory treatment based on minority identities were reported, while the procedures provided by law for reporting such violations and seeking remedies remain inadequate.<sup>50</sup> Also, the Alternative Service Commission, which determines eligibility for assignment to alternative service, is established under the Military Manpower Administration. Of its 13 members, five are recommended by the Ministry of National Defense and the Military Manpower Administration. Its review proceedings are conducted in private, and no

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<sup>46</sup> Constitutional Court of Korea, Decision 2011Hun-Ba379, June 28, 2018; Supreme Court of Korea, Decision 2016Do10912, Nov. 1, 2018.

<sup>47</sup> *Act on Assignment to and Performance of Alternative Service*, art. 18(1), art. 21(2), art. 24(1), art. 25(1); Enforcement Decree of the Act on Assignment to and Performance of Alternative Service art. 18.

<sup>48</sup> Hyung Hyeokgyu, "Measures to Eliminate the Punitive Character of the Alternative Service System," in Collected Papers of the National Assembly Forum on Directions for Improving the Alternative Service System (Jan. 22, 2026), p. 76.

<sup>49</sup> *Enforcement Decree of the Act on Assignment to and Performance of Alternative Service*, art. 19.

<sup>50</sup> Jang Gilwoan, "Survey on Perceptions of the Alternative Service Personnel System" (survey conducted Jan. 14–16, 2026, 56 respondents), in Collected Papers of the National Assembly Forum on Directions for Improving the Alternative Service System (Jan. 22, 2026), p. 51–52, 55–67; *OhmyNews*, "Why Sexual Minorities Performing Alternative Service Can't Bring Themselves to Say 'I'll Try to Adapt,'" Dec. 2, 2024, [https://www.ohmynews.com/NWS\\_Web/View/at\\_pg.aspx?CNTN\\_CD=A0003083793](https://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0003083793).

procedure for reconsideration is available. Persons over the age of 30, persons whose enlistment has already commenced and active duty military personnel are not eligible to apply for assignment to alternative service.<sup>51</sup> The United Nations Human Rights Committee has found the 36-month period of service and the restriction of alternative service to correctional facilities to be discriminatory and punitive.<sup>52</sup> The WGAD and the Special Rapporteur on Freedom of Religion or Belief also sent a joint communication in 2025;<sup>53</sup> however, the ROK has maintained the existing system, citing differences in the intensity of service.

31. As described above, the alternative service system constitutes a punitive form of detention imposed as a consequence of the exercise of freedom of conscience guaranteed under article 18 of the International Covenant on Civil and Political Rights,<sup>54</sup> as well as discriminatory detention that disadvantages the minority of individuals who choose the alternative service system. It therefore amounts to arbitrary detention under Categories II and V.

32. Of the 3,786 applications for assignment to alternative service based on religious beliefs between 2020 and 2025, 0.26% were rejected or dismissed, whereas only 28 applications were made on the basis of personal or political beliefs, of which 28.6% were rejected or dismissed. Applications for assignment to alternative service decreased by 83%, from 1,962 in 2020 to 335 in 2025. As of January 2026, 11 conscientious objectors who had abandoned or refused alternative service were at risk of criminal punishment.<sup>55</sup> Persons who refuse alternative service or discontinue it before completion are issued new notices of enlistment for active duty service<sup>56</sup> and are subsequently prosecuted and punished again for violations of the Military Service Act. One individual, who was prosecuted for conscientious objection following an enlistment notice in 2014 and whose acquittal became final in 2020, subsequently refused to the currently available alternative service and was convicted at both the first instance and on appeal. Another individual, who discontinued alternative service in

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<sup>51</sup> *Act on Assignment to and Performance of Alternative Service*, art. 4(1), art. 5; Enforcement Decree of the Act on Assignment to and Performance of Alternative Service, art. 9(4); Yang Yeook, in *Collected Papers of the National Assembly Forum on Directions for Improving the Alternative Service System* (Jan. 22, 2026), p. 42–44.

<sup>52</sup> CCPR/C/KOR/CO/5, paras. 51–52

<sup>53</sup> A/HRC/62/24, para. 36.

<sup>54</sup> *International Covenant on Civil and Political Rights*, art. 18; CCPR/C/21/Rev.1/Add.4, para. 11.

<sup>55</sup> Military Manpower Administration, data submitted (as of Dec. 31, 2025), in *Collected Papers of the National Assembly Forum on Directions for Improving the Alternative Service System* (Jan. 22, 2026), p. 53, 74–75.

<sup>56</sup> *Act on Assignment to and Performance of Alternative Service*, art. 25; *Military Service Act*, art. 71(1).

May 2023, was subsequently issued another enlistment notice, prosecuted for violating the Military Service Act and convicted at first instance.<sup>57</sup> The detention and criminal punishment of persons whose personal or political beliefs are not recognized as grounds of conscience, and the repeated detention of persons who refuse alternative service following criminal punishment, constitute arbitrary detention falling within Categories II, III and V.

33. Meanwhile, in its Concluding Observations of 2015 and 2023, the United Nations Human Rights Committee repeatedly recommended that reparation be provided to conscientious objectors to military service.<sup>58</sup> However, no remedy has been made available to conscientious objectors who were punished before the introduction of the alternative service system. In this regard, the Constitutional Court held in 2018 that the National Assembly could not be considered to have a separate legislative obligation to adopt remedial measures, such as expungement of criminal records and adequate compensation,<sup>59</sup> and no separate legislation is currently being pursued by the National Assembly.

#### **Suggested Recommendations**

- Amend the Act on Assignment to and Performance of Alternative Service to reduce the period of alternative service to no more than 1.5 times the length of active duty service in the army (27 months), expand the fields of alternative service to civilian sectors such as firefighting and social welfare, and abolish the requirement that all alternative service personnel reside collectively in designated facilities.
- Transfer the Alternative Service Commission to a civilian body that is fully independent of military control, introduce a reconsideration procedure, and abolish restrictions on eligibility to apply based on age, commencement of enlistment or active duty military status.
- Explicitly provide by law for the prohibition of discrimination based on the nature of a person's beliefs or minority status, and establish procedures for obtaining remedies for human rights violations.
- Prohibit repeated enlistment notices and prosecutions of persons whose conscientious objection has already been established through judicial or

<sup>57</sup> *Weekly Kyunghyang*, "Someone's Conscience Is Still Guilty," June 16, 2025, <https://weekly.khan.co.kr/article/202506160600061>

<sup>58</sup> CCPR/C/KOR/CO/4, para. 45, CCPR/C/KOR/CO/5, paras. 51-52.

<sup>59</sup> Constitutional Court of Korea, Decision 2011Hun-Ma306 et al., July 26, 2018.

administrative review, and provide all conscientious objectors who were subjected to criminal punishment prior to 2018 with effective remedies, including financial compensation and measures to restore their honor at the State-level.

## **B. Compulsory Placement in Military Service Review Management Units**

34. The ROK's current Directive on Military Unit Management provides for the establishment of Military Service Review Management Units at the corps level or above. Under this directive, soldiers who are considered unfit for active duty service due to suicide risk or physical or mental illness, and who require further observation, are placed in such units for medical treatment and observation, after which their military service status may be altered through a discharge review.<sup>60</sup> The ROK's statutes governing military service do not provide a specific legal basis for authorizing the isolation and confinement of soldiers in designated facilities for the purpose of conducting such military service reviews.<sup>61</sup> Since soldiers have no practical alternative but to enter these units in order to undergo the review process for determining their unfitness for active duty service, placement in a Military Service Review Management Unit constitutes, in effect, a forced deprivation of liberty. Given that soldiers are not permitted to leave the facility freely and are subject to additional restrictions on their liberty, including solitary confinement and restrictions on communications, such placement goes beyond the scope of ordinary management inherent in military service. Placement and confinement in Military Service Review Management Units therefore constitute detention without a legal basis and detention resulting from discrimination against persons with physical or mental illnesses, constituting arbitrary detention under Categories I and V.

35. A case of a soldier supported by the Center for Military Human Rights Korea (CMHRK) demonstrates the problems with the above-mentioned Military Service Review Management Units system. The soldier in question developed symptoms of depression after being assigned to his unit and, despite his parents' request that he be granted leave, was sent to and detained in a Military Service Review Management Unit on 3 November 2023. His

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<sup>60</sup> Matters necessary for the organization and operation of the Military Service Review Management Unit shall be determined by the Chief of Staff of each military service branch.

*Directive on Military Unit Management*, arts. 235-238.

<sup>61</sup> *Military Service Act*, art. 65(11); Enforcement Decree of the Military Service Act, art. 137.

family reported that his mental health deteriorated further while he spent approximately two weeks at the unit with no contact with other people. After leaving the unit, the soldier suffered severe self-harm and was hospitalized for an extended period.<sup>62</sup>

#### **Suggested Recommendations**

- Review the system of compulsory placement in Military Service Review Management Units and reform the relevant laws and systems to ensure that discharge reviews for determining unfitness for active duty service prioritize measures that do not involve deprivation of liberty, such as reviews of medical and service records and interviews.
- Where restrictions on liberty are unavoidable, stipulate by law the grounds, purpose, procedure, point of termination, and maximum period of confinement for such restriction, as well as independent procedures for seeking remedies.
- Even where restrictions on liberty are unavoidable, guarantee that the person is able to contact and communicate with others.

### **C. Arbitrary Detention of North Korean Defectors**

#### **Relevant Legal Framework**

36. The ROK detains escapees from the DPRK who have come to the country seeking protection, for extended periods at the North Korean Defectors Protection Center (formerly the “Central Joint Interrogation Center”), a secret detention facility. While conducting investigations such as those into espionage without guaranteeing due process rights, including the right to counsel, the ROK also fails to guarantee the right to appeal when the DPRK escapees are sent to countries such as China on the grounds that they are not DPRK escapees. Although the ROK claims that all these procedures are carried out in accordance with the North Korean Defectors Protection and Settlement Support Act, this law stipulates only protection and administrative investigation, not detention or criminal investigation.<sup>63</sup>

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<sup>62</sup> *Segye Ilbo*, “‘I Failed to Protect My Son’...Parents Petition the National Human Rights Commission after Their Previously Healthy Son Develops Depression Following Military Enlistment” (13 February 2024), <https://www.segye.com/newsView/20240213511175>.

<sup>63</sup> *North Korean Defectors Protection and Settlement Support Act*.

Such detention of the DPRK escapees by the ROK can be interpreted as falling under all five categories of arbitrary detention defined by the WGAD.

### **Problematic Reality**

37. The 2015 and 2023 Concluding Observations of the Human Rights Committee and the 2017 and 2024 Concluding Observations of the Committee Against Torture recommended the ROK ensure 1) detention of the DPRK escapees for the shortest possible period, 2) the right to counsel throughout the entire period of detention, including during interrogations, 3) distinguishing between the investigation procedures for determining the protection status of the DPRK escapees in relation to resettlement and the investigation procedures for violations of the National Security Act.<sup>64</sup>

38. However, these recommendations were not accepted, and the situation has not improved at all. While there is a maximum limit on the duration of the investigation period, there is no limit on the period for making protection decisions, so indefinite detention remains possible. The National Intelligence Service continues to make all decisions regarding investigation and detention, and the right to counsel is not guaranteed. The current practice, in which the relevant authorities and procedures for protection determination investigations and criminal investigations are not strictly separated, enables human rights violations and abuses amounting to torture and cruel treatment through an approach that regards all DPRK escapees as potential spies without a legal basis.

#### **Suggested Recommendations**

- Abolish the North Korean Defectors Protection Center led by the National Intelligence Service, where all DPRK escapees are subjected to prolonged detention and coercive interrogation upon entry, and revise relevant laws and systems to introduce non-coercive procedures equivalent to refugee recognition procedures.
- Immediately guarantee the right of the DPRK escapees detained at the North Korean Defectors Protection Center to meet with their attorneys, and establish laws

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<sup>64</sup> CCPR/C/KOR/CO/4, CCPR/C/KOR/CO/5, CAT/C/KOR/CO/3-5, CAT/C/KOR/CO/6.

and systems to ensure that the right to appeal decisions denying protection or ordering forced deportation is effectively upheld.

#### **D. National Security Act**

39. Despite repeated recommendations by United Nations treaty bodies,<sup>65</sup> the National Security Act has not been repealed. The National Security Act,<sup>66</sup> which criminalizes acts related to the DPRK, including praising, encouraging, possessing and acquiring certain materials, imposes punishment for the exercise of rights under the International Covenant on Civil and Political Rights, including freedom of expression, thought and conscience, and provides for the arrest and detention of persons holding particular opinions and beliefs. It therefore falls within Categories I and V of arbitrary detention.

40. As of 2025, the number of prosecutions under the National Security Act had increased to 105, while cases continued to be received and investigated.<sup>67</sup> Among victims who were convicted under the National Security Act during the period of authoritarian rule, some have been unable to obtain remedies through judicial proceedings on the ground that they do not meet the requirements for requesting a retrial.<sup>68</sup> These victims are also unable to have their cases investigated by the Truth and Reconciliation Commission, because the Framework Act on the Settlement of Past Affairs for Truth and Reconciliation, in principle, excludes cases in which a final judgment has been rendered from the scope of investigation.<sup>69</sup> From the perspective of victims' right to effective remedy, including reparation and guarantees of non-recurrence, it is therefore necessary to repeal the National Security Act and establish appropriate remedial procedures.

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<sup>65</sup> A/HRC/54/24/Add.1, paras. 70, 86(t).

<sup>66</sup> *National Security Act*, art. 7 (1)(5).

<sup>67</sup> In 2025, 105 persons were indicted for violations of the National Security Act, up from 88 in 2024, and 171 cases were received in total.

Ministry of Justice and Supreme Prosecutors' Office, "Violations of the National Security Act," e-National Indicators,

[https://www.index.go.kr/unity/potal/main/EachDtlPageDetail.do?idx\\_cd=1745](https://www.index.go.kr/unity/potal/main/EachDtlPageDetail.do?idx_cd=1745).

<sup>68</sup> Bill to Partially Amend the National Security Act, proposed by National Assembly Member Park Jie-won and 13 others, Bill No. 2219404 (22 June 2026), p. 2,

<https://opinion.lawmaking.go.kr/gcom/nsmLmSts/out/2219404/detailRP>; Lee Jae-seung, "Retrial of the Offense of Praising and Encouraging," *Democratic Legal Studies*, No. 78 (2022), p. 57–59, [https://www.kci.go.kr/kciportal/landing/article.kci?arti\\_id=ART002819890](https://www.kci.go.kr/kciportal/landing/article.kci?arti_id=ART002819890).

<sup>69</sup> *Framework Act on Settling Past Incidents for Truth and Reconciliation*, art. 2 (2).

**Suggested Recommendations**

- Repeal the National Security Act.
- Ensure effective remedies for victims of the National Security Act, including access to remedial procedures, a public apology, restoration of honor and financial compensation.
- Amend the Framework Act on the Settlement of Past Affairs for Truth and Reconciliation, which excludes cases in which a final judgment has been rendered from the scope of investigation.

## **V. Migration, Border Management and Immigration Detention**

### **A. Right to Consular Notification and Access upon Arrest and Detention**

41. Under the Vienna Convention on Consular Relations, to which the ROK is a State party, foreign nationals who are arrested or detained must be guaranteed the right to request that their consulate be informed of their detention, as well as the right to communicate with and have access to consular officers (the right to consular notification and access). However, in criminal proceedings, the relevant obligations concerning consular notification and access are provided only in subordinate regulations and administrative guidelines, such as the Rules on Police Investigation and the Guidelines on Consular Notification and Related Procedures. Moreover, there is insufficient publicly available data and no adequate independent oversight mechanism to verify whether foreign nationals are informed of and able to exercise these rights upon arrest or detention. Nor is there a specific remedy for violations of these obligations other than seeking redress through individual litigation. Violations of the right to consular notification and access constitute a serious infringement of the right to due process and a fair trial, and thus fall under Category III of arbitrary detention.

42. In 2022, the Supreme Court held that the arrest and detention of a foreign national without informing them of their right to consular notification was unlawful as a violation of the Vienna Convention. Nevertheless, the Court admitted evidence subsequently obtained on the ground that the individual had suffered no substantial harm. Consequently, even where a violation of the right to consular notification and access is established, effective redress cannot be expected.<sup>70</sup>

#### **Suggested Recommendations**

- Strengthen the legal and procedural safeguards necessary to ensure that foreign nationals can effectively exercise their right to consular notification

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<sup>70</sup> Supreme Court of Korea, Decision No. 2021Do17103 (28 April 2022).

and access from the outset of any deprivation of liberty, and ensure that they are informed of this right without delay and in a language they understand.

- Ensure that compliance with the right to consular notification and access is systematically recorded and subject to effective oversight, and provide an effective remedy in cases of violation.

## **B. The Issue of Detaining Migrants in Immigration Detention Centers**

43. The Immigration Act provides that foreign nationals who have received a deportation order may be detained at facilities such as immigration detention centers pending their repatriation. In March 2023, the Constitutional Court ruled that the law must be amended on the grounds that it does not set an upper limit on the duration of detention and that the operation of immigration detention centers is not overseen by an independent and neutral body.<sup>71</sup> Subsequently, the amended law took effect in June 2025, introducing a specific upper limit (9 months) on the detention period and establishing the Immigration Detention Review Committee. However, this committee, which reviews the extension and legality of detention, is housed within the Ministry of Justice, and its independence is not guaranteed. Furthermore, under the amended law, asylum seekers may be detained for up to 20 months while their asylum application or related litigation is pending, effectively permitting long-term detention of asylum seekers.

44. Under the current system, non-custodial alternatives are not considered, and as a general rule, foreign nationals subject to deportation are effectively detained immediately. Even individuals who cannot be repatriated—such as asylum seekers and stateless persons—may be detained for extended periods, and filing an asylum claim can actually serve as grounds for extending their detention. Even if they are released from detention, they face the risk of being detained again because they are not guaranteed stable residency status or the right to work to support themselves.

45. There is also a lack of independent oversight of detention. The IDRC is under the MOJ, and its operations are handled by immigration officials, creating a structure in which the MOJ reviews the legality of its own detention decisions. Furthermore, the criteria for

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<sup>71</sup> Constitutional Court of Korea, Decisions Nos. 2020Hun-Ga1 and 2021Hun-Ga10 (23 March 2023).

selecting individuals subject to enforcement actions and detention are not sufficiently disclosed, and interpretation, translation, and legal assistance are not effectively guaranteed, thereby limiting the detainees' right to a defense.<sup>72</sup> According to a recent survey by the NHRCK, out of 360 applications for extension of the protection period, 355 (98.6%) were uniformly filed for the statutory maximum of three months; thus, it is difficult to conclude that the procedural rights of detained foreign nationals are being adequately guaranteed.<sup>73</sup>

46. The conditions inside detention facilities are also problematic. In 2021, at the Hwaseong Immigration Detention Center, an asylum seeker who had been in long-term detention was isolated in a solitary confinement cell and subjected to the so-called “hog-tying” torture, where the hands and feet are bound behind the back. Although relevant regulations were subsequently revised, the types of restraints permitted were actually expanded, and specific criteria for solitary confinement and the use of restraints rely on non-public guidelines, making independent external oversight difficult.

#### **Suggested Recommendations**

- Limit immigration detention to a last resort, and provide meaningful non-custodial alternatives in cases where deportation is delayed or impossible.
- Ensure that the legality and continued necessity of detention are reviewed promptly and regularly by independent bodies, such as courts.
- Limit the long-term detention of migrants—such as asylum seekers and stateless persons—whose return is difficult or impossible, and strengthen independent oversight of the use of force and living conditions within immigration detention centers.

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<sup>72</sup> Accordingly, in 2025, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern that the amended “*Immigration Act*” permits the detention of asylum seekers for up to 20 months and questioned whether a committee under the Ministry of Justice could ensure an independent and effective review of such detentions; it recommended the repeal of the provision allowing for the prolonged detention of refugees for 20 months and the introduction of an independent judicial review. CERD/C/KOR/CO/20-22, paras. 27-28.

<sup>73</sup> The NHRCK conducted on-site inspections of the Seoul Immigration and Foreigners' Affairs Office, and the Hwaseong and Cheongju Immigration Detention Centers. It confirmed that, as of August 30, 2025, 355 out of 360 applications for extension of detention—or 98.6 percent—had been uniformly filed for the statutory maximum period of three months. The Commission recommended that the immigration detention system be reformed to function as an effective safeguard against long-term and arbitrary detention.

### C. Violation of the Reproductive Health Rights of Women Migrant Detainees

47. The Immigration Act contains no provision setting gender-specific medical and hygiene standards for women held in immigration detention facilities. Its subordinate enforcement rule, the Regulation on Immigration Detention, likewise guarantees only priority medical examinations for pregnant and elderly detainees upon request; it sets no minimum standard covering matters such as the assignment of female medical staff or standards for the provision of sanitary products.<sup>74</sup> Such treatment contravenes Articles 5 (free provision of hygiene products) and 10 (the right, upon request, to be examined by female medical staff) of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),<sup>75</sup> as well as the WGAD's Revised Deliberation No. 5, which calls for the presumptive exclusion of pregnant and nursing women from detention and for effective means of complaint and redress.<sup>76</sup>

48. At the immigration detention centers in Hwaseong, Cheongju, and Yeosu, women account for approximately 30% of detainees, yet gynecological visits made up less than 0.1% of all medical visits in 2023–2024.<sup>77</sup> There was a case reported where a detainee who sought care for a reproductive health issue was dismissively told by an elderly male doctor that she had come in “for nothing,” and her condition was left unaddressed.<sup>78</sup> Sanitary products are likewise distributed in a single size regardless of body type or flow, and detainees must purchase supplemental supplies at their own expense.<sup>79</sup>

49. There have also been cases where a combination of immigration raids, denial of medical care, and forced deportation led to a miscarriage. In June 2024, a migrant worker who was four weeks pregnant was injured while fleeing an immigration raid. Two general hospitals, including one under contract with the MOJ, refused to treat her, citing the difficulty

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<sup>74</sup> *Regulation on Immigration Detention*, art. 20 (2).

<sup>75</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), rules 5 and 10 (2010); National Human Rights Commission of Korea, International Human Rights Standards Information Portal, <https://uhr.humanrights.go.kr/pub/uhrstd/1115>.

<sup>76</sup> Working Group on Arbitrary Detention, revised deliberation No. 5 on deprivation of liberty of migrants, annex to A/HRC/39/45, (7 February 2018).

<sup>77</sup> Majung, *2024 Majung Activity Report*; Ministry of Justice, *Medical Care Status at the Hwaseong, Cheongju and Yeosu Immigration Detention Centers, 2023–2024*, obtained through a request for disclosure of information (2025), p. 26.

<sup>78</sup> Majung, *2025 Majung Activity Report: A Survey of the Human Rights Conditions of Detainees at Immigration Detention Centers* (2026), p. 59.

<sup>79</sup> Majung, *2025 Majung Activity Report*; Ministry of Justice, *Nationwide Operational Status of Specialized Foreigner Detention Facilities*, obtained through a request for disclosure of information (2026), p. 29.

of administering medication or X-rays to a pregnant patient, and no emergency call was made.<sup>80</sup> This woman, who was forcibly deported just one day after being detained for an immigration violation, was later diagnosed with a miscarriage in Thailand.

#### **Suggested Recommendations**

- Exclude pregnant and nursing women from immigration detention as a matter of principle, and ensure immediate release upon any confirmation of pregnancy during detention.
- Include gynecological examinations by default in periodic health checks for women in immigration detention, establish minimum standards for the assignment of female medical staff and the provision of sanitary products, and regularly disclose, and subject to independent verification, data on women's access to specialized medical care.<sup>81</sup>

### **D. Immigration Detention of Migrant Children**

50. The Immigration Act lacks explicit provisions prohibiting the detention of migrant children who do not hold Korean nationality. Article 56-3 merely contains a declaratory provision stating that “a person under 19 years of age shall be given special protection.”<sup>82</sup>

51. In particular, the ROK claims that children under the age of 14 are not detained, referring to them as “accompanied children”<sup>83</sup> rather than “detained children” on the grounds that detention orders are not issued directly against the children. However, when deportation orders are issued against parents, there are rarely any alternative options available for their children, effectively leading to the forced detention of children under 14 alongside their

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<sup>80</sup> The support organization requested inpatient treatment through the temporary release, but the immigration detention center demanded a 20 million won security deposit, and when the organization was unable to provide the deposit, the request for temporary release was denied.

Jang Ji-hyun, “Undocumented Migrant Injured Jumping Over Wall During Raid... Forced Deportation Followed by Miscarriage,” *Yonhap News Agency* (3 July 2024), <https://www.yna.co.kr/view/AKR20240703141900057>.

<sup>81</sup> Lee, Ju-Yeun, “Healthcare Access and Health of Detainees in South Korea’s Immigration Detention Facilities: National Conditions and International Comparison,” *Journal of Critical Social Policy*, Vol. 92 (2026): 95–125.

<sup>82</sup> *Immigration Act*, art 56-3.

<sup>83</sup> “The Head of an Office or Branch Office may permit a child to reside with an alien in detention even if the child is not subject to detention, provided that the alien in detention is supporting a child under 14 years of age and no person other than the alien in detention is willing to support the child.” *Regulations on the Protection of Foreigners*, Art. 4(2).

parents. Since any situation resulting in the deprivation of liberty constitutes detention, regardless of official administrative decisions, if individuals are not free to leave a facility, it unambiguously amounts to detention. Therefore, forcing a child into confinement due to a parent's detention constitutes arbitrary detention under Category I (detention lacking a legal basis) and Category IV (detention of migrants and refugees). According to statistics, the detention of infants and children alongside their parents, despite not being subject to detention orders, occurs regularly. The number of children under the age of 3 detained in immigration detention facilities reached 16 in 2020, 12 in 2021, and 13 in 2022. Expanding the scope to children under 14, the numbers were 28 in 2019, 25 in 2020, 16 in 2021, 19 in 2022, 23 in 2023, and 7 as of August 2024.<sup>8485</sup>

52. Meanwhile, the government issues detention orders without any restriction against children aged 14 and older—the age threshold for criminal responsibility. Although Article 4, Paragraph 4 of the Enforcement Rule on the Detention of Foreigners stipulates that entrusted education may be provided to children under the age of 18 who are detained for one month or longer, no actual cases of such education being conducted in detention facilities have been confirmed. As international bodies, including the WGAD and the UN CRC, have consistently declared that the detention of children based on their migration status is strictly contrary to the best interests of the child and can never be justified under any circumstances, the system of immigration detention of children in the ROK, which proceeds without any alternative arrangements, is unequivocally arbitrary.

#### **Suggested Recommendations**

- Take all necessary measures to immediately end the administrative detention of children based on their migration status, including those accompanied by parents.

### **E. Immigration Detention at Ports of Entry**

53. Every year, hundreds of asylum seekers are detained at ports of entry, yet no explicit legal basis exists for their detention. A foreign national who applies for refugee status at a

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<sup>84</sup> Office of National Assembly Member Jeon Hyun-heui, data provided by the Ministry of Justice, “Status of Migrant Child Detention, 2019–August 2024.”

<sup>85</sup> While the government claims to be considering legislative amendments to limit the detention of children under 14, its proposed bill excludes accompanied children. Ultimately, this makes the measure a mere loophole that continues to justify child detention under the label of “accompanied children.”

port of entry undergoes a referral screening that determines whether the application will be accepted for processing;<sup>86</sup> if the applicant receives a decision not to refer, the refugee application is refused acceptance, and the applicant becomes subject to repatriation. Where a decision not to refer is issued, the applicant may enter the country only after filing suit and definitively prevailing; an asylum seeker who cannot return to their country of origin is thus, in effect, detained at the airport until they win their case. When an asylum seeker at a port of entry receives a decision not to refer and files suit, they are detained for the average period it takes to obtain a first-instance ruling—approximately six months—but even where the first-instance ruling results in either a loss or a win, this period is frequently extended further when the Ministry of Justice, as the opposing party, appeals. The longest officially recorded period of detention at a port of entry is 423 days.<sup>87</sup>

54. The authorities take the position that this does not constitute detention, since a foreign national may purchase a plane ticket and depart at any time. For asylum seekers who fear persecution in their home country, however, remaining at the airport is their only option, and this plainly constitutes arbitrary detention under both Category I and IV (detention of migrants and refugees).

55. Because there is no legal basis whatsoever, no separate procedure exists to review the necessity of detention. Any foreign national whose asylum application is denied at a port of entry is detained without exception if they choose to remain in the ROK, meaning that vulnerable groups (children, pregnant women, older persons, and others) are likewise detained without exception. Indeed, 12 asylum seekers under the age of 19 applied for refugee status at ports of entry.<sup>88</sup> Among them was a 10-year-old child from Mali who, together with his father, applied for refugee status at Incheon Airport, was detained for over a year, and was ultimately repatriated to his home country.<sup>89</sup>

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<sup>86</sup> *Refugee Act*, art. 6 (Application Filed at Ports of Entry and Departure).

<sup>87</sup> *Kyunghyang Shinmun*, “423 Days Living in an Airport Transit Area... Do You Know the ‘Incheon Airport Refugees’?” <https://www.khan.co.kr/en/article/202604100906017>.

<sup>88</sup> Ministry of Justice, Information Disclosure Decision No. 15937761, Status of Detention at Ports of Entry (2025).

<sup>89</sup> The Korea Times, “Rights Watchdog Calls for Ensuring Education Rights for 10-Year-Old Asylum Seeker in Limbo at Airport,” <https://www.koreatimes.co.kr/southkorea/20260811/rights-watchdog-calls-for-ensuring-education-rights-for-10-year-old-asylum-seeker-in-limbo-at-airport>.

**Suggested Recommendations**

- Take all measures necessary to establish a separate residential facility outside the airport in order to eliminate the prolonged detention of asylum seekers at ports of entry.

## VI. Child and Juvenile Justice

### A. Arbitrary Institutionalization of Children on Grounds of “Child Protection”

56. In ROK, decisions to place children in institutional care are made without adequate procedural safeguards, and there is no independent and periodic assessment of the necessity of such institutional placement or of its continuation. As a result, the principle of institutionalization as a measure of last resort is not implemented in practice, and children remain in institutional care for an average of 12 years.<sup>90</sup> Because children are not guaranteed a right to participate in decisions concerning their institutional placement or restrictions on their liberty, nor are they afforded independent review and appeal procedures, their institutionalization in ROK constitutes arbitrary detention falling within Categories I and III.

57. There is no national roadmap for the deinstitutionalization of children. In 2025, 48% (703 of 1,466) of children newly identified as being in need of protection were placed in institutions, and among children subject to temporary protective measures, 93.3% (475 of 509) were placed in institutions.<sup>91</sup> As of December 2024, 69.3% of children placed in child welfare institutions were housed in large-scale residential childcare institutions.<sup>92</sup> In 2022, two young people who had grown up in residential childcare institutions died by suicide in separate incidents,<sup>93</sup> and in August 2025 a 16-year-old fell to death after leaving a note citing distress caused by disciplinary practices at the institution.<sup>94</sup> These incidents underscore the need to end the arbitrary institutionalization of children.

58. A 2025 review of the house rules of 197 residential childcare institutions nationwide found that most institutions imposed widespread restrictions on children’s liberty to go out and communicate with others. In particular, rule violations were reportedly met with sanctions, including notifications under the Juvenile Act as “juvenile prone to commit a

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<sup>90</sup> Lee Sang Jung et al., *Study on Policies to Support Independent Living : Comparison between Foster Care and Run-away/Homeless Youth* (Korea Institute for Health and Social Affairs, 2020), <https://repository.kihasa.re.kr/handle/201002/37364>.

<sup>91</sup> Ministry of Health and Welfare, *Report on the Status of Children in Need of Protection* (2026).

<sup>92</sup> Ministry of Health and Welfare, *2025 Status of Child Welfare Facilities* (2025; data as of 31 December 2024).

<sup>93</sup> SisaIN, “The Deaths of Two Young People That Everyone Misunderstood” (29 September 2022), <https://www.sisain.co.kr/news/articleView.html?idxno=48488>.

<sup>94</sup> *Kyunghyang Shinmun*, “Teenager in Residential Childcare Institution Falls to Death, Leaving Note Saying ‘Disciplinary Practices Made Life Difficult’” (26 August 2025), <https://www.khan.co.kr/article/202508261004001>.

crime” thereby subjecting the child to juvenile protection proceedings.<sup>95</sup> This practice is contrary to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules,” A/RES/45/113), which guarantee the right to communication and visitation for juveniles deprived of their liberty and prohibit the use of such rights as a means of punishment.

59. Meanwhile, serious problems persist in the involuntary psychiatric hospitalization of children who exhibit so-called “problem behavior,” used by institutions as a means of control, as well as in the misuse and overuse of prescription medication without regular monitoring.<sup>96</sup> Yet the government has neither conducted a comprehensive investigation into these practices nor developed adequate measures to address them. Decisions to involuntarily commit a child to a psychiatric hospital for up to six months for reasons such as undergoing double-eyelid plastic surgery without permission, running away, or smoking are effectively left to the discretion of the institution’s director,<sup>97</sup> and because the institution’s director often also serves as the child’s legal representative, the child’s right of access to counsel can scarcely be meaningfully guaranteed in practice. There have also been reported cases in which directors of residential childcare institutions were investigated for child abuse in connection with involuntary psychiatric hospitalization.<sup>98</sup> The rate of ADHD medication use among children in institutional care rose from 1,229 children (12.8%) in 2021 to 2,076 children (25.7%) in 2025, roughly doubling in four years.<sup>99</sup> An analysis of data on prescription records for ADHD and other psychiatric medications administered to children in childcare institutions as of April 2026 found that most prescriptions continued without any record of discontinuation, and that discontinuation records were also difficult to confirm even for children who had been taking the medication for six years or more.<sup>100101</sup>

<sup>95</sup> *SisaIN*, “[Exclusive] Bans, Confiscation, Restitution, Deprivation... An Analysis of the House Rules of 197 Residential Childcare Institutions Nationwide” (10 November 2025), <https://www.sisain.co.kr/news/articleView.html?idxno=56758>.

<sup>96</sup> *Ulsan Maeil Shinmun*, “‘Because They Wouldn’t Listen’...Allegations of ADHD Medication Abuse at Local Childcare Institution” (19 January 2025), <https://www.iusm.co.kr/news/articleView.html?idxno=1048571>.

<sup>97</sup> *Nocut News*, “Police Conduct Full Investigation of Orphanage Residents Over Allegations of Forced Psychiatric Hospitalization and Abuse” (4 October 2018), <https://www.nocutnews.co.kr/news/5040252>.

<sup>98</sup> *Munhwa Ilbo*, “Director of Child Welfare Institution in Her 60s Referred to Prosecution on Charges of Verbally and Physically Abusing Five Minors” (21 March 2023), <https://www.munhwa.com/news/view.html?no=2023032101039910226004>.

<sup>99</sup> *Hankyoreh*, “One in Four Children in Residential Childcare Institutions on ADHD Medication... There’s a Need for Smaller-Scale Institutions Yet Debates Are ‘Going in Circles’” (14 July 2026), [https://www.hani.co.kr/arti/area/area\\_general/1268249.html](https://www.hani.co.kr/arti/area/area_general/1268249.html).

<sup>100</sup> Office of National Assembly Member Baek Hye-ryun, data submitted by the Ministry of Health and Welfare (June 2026).

<sup>101</sup> Because a differential diagnosis of ADHD is inherently difficult in preschool-age children, and because children in institutional care have often experienced complex trauma such as abuse or family breakdown that

60. Under Article 53(1) of the Act on Execution of Sentences and Treatment of Inmates, only female inmates may raise their infants under 18 months of age with them while in custody, and only with the warden's permission. Between 2016 and 2025, the number of pregnant women confirmed to be held in correctional institutions each year ranged from 8 to 20, and in 2025, 17 infants were held in correctional institutions together with their caregivers.<sup>102</sup> It is difficult to conclude that non-custodial alternatives to the detention of children's primary caregivers are given priority, and there are no provisions in place to guarantee the rights of children who are detained together with a caregiver in a correctional institution.

#### **Suggested Recommendations**

- Progressively abolish institutional care through a concrete deinstitutionalization plan for children that includes measures to prevent arbitrary institutionalization.
- Establish independent and periodic review procedures for all decisions regarding the institutional placement of children.
- Assess the situation of children placed in psychiatric hospitals, including the misuse and overuse of medication, and adopt effective measures to ensure their systematic transition out of such placements and to prevent further harm.
- Give priority consideration to non-custodial alternatives when a primary caregiver is convicted, and, where a child is detained together with a caregiver in a correctional institution, establish the relevant regulations and provide services to guarantee the child's rights to survival, protection, development, and participation.

### **B. Arbitrary Deprivation of Liberty within Juvenile Protection Institutions**

61. Article 32(1)6 of the Juvenile Act provides that where a juvenile falls under any of the following circumstances: the degree of delinquency is low but the risk of repeated delinquency is high due to the absence of a family or a vulnerable family environment; the

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requires a higher level of clinical evaluation to distinguish trauma-related responses from ADHD symptoms, these findings support the inference that the medication was administered not for treatment but to control behavior.

<sup>102</sup> Korea Correctional Service, Ministry of Justice, *Correctional Statistics Yearbook (2026)*, p. 136.

juvenile is a repeat offender whose family has a limited capacity for care but shows potential for improvement; or the degree of delinquency is high but guidance through relatively compassionate protection, rather than strict institutional correction, can be expected to be effective, and the juvenile has not yet been subject to a disposition under Subparagraph 9 or 10 that would subject them to a transfer to a juvenile reformatory (hereinafter, “juvenile subject to protective measures,” *daesang-sonyeon*),<sup>103</sup> a juvenile department judge may entrust the juvenile subject to protective measures for care and custody to a child welfare institution under the Child Welfare Act or other to another juvenile protection institution (hereinafter, “institution under Subparagraph 6 disposition”).<sup>104</sup>

62. As is evident from the criteria defining “juvenile subject to protective measures,” decisions to impose a Subparagraph 6 disposition are frequently based not on the gravity of the delinquent conduct itself, but on factors such as the vulnerability of the family environment, the guardian’s limited capacity, violations of institutional rules, and etc. In other words, such dispositions may be based on the child’s living circumstances, relationship with their guardian, or particular attitudes unrelated to any offense. There is even guidance suggesting that juveniles with severe violent tendencies should, where possible, be excluded from a Subparagraph 6 disposition regardless of the nature of the offense because they are difficult to manage.<sup>105</sup> This is not a proportionate response to the underlying conduct but reflects a structure in which children who are effectively victims of abuse and neglect are deprived of their liberty because of the consequences of that victimization, such as running away from home or exhibiting defiant behavior. This constitutes arbitrary detention falling within Categories II and V.

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<sup>103</sup> National Court Administration. (2014). *Court Practice Manual: Juvenile Cases*, p. 351.

<sup>104</sup> Under the Juvenile Act, the judge of the competent Juvenile Department may make the following dispositions:

1. To consign a juvenile concerned of the care and custody of his or her guardian or any person who can provide protection for the juvenile in substitution for the guardian;
2. To issue an order to attend a lecture;
3. To issue a community service order;
4. To place a juvenile concerned under the short-term probation of a probation officer;
5. To place a juvenile concerned under the long-term probation of a probation officer;
6. To entrust a juvenile concerned for the care and custody to a child welfare institution under the Child Welfare Act or other juvenile protection institution;
7. To entrust a juvenile concerned to a hospital, a sanatorium or a juvenile medical rehabilitation school under the Act on the Treatment of Protected Juveniles;
8. To transfer a juvenile to the Juvenile Reformatory within one month;
9. To transfer a juvenile to the Juvenile Reformatory for a short-term; and
10. To transfer a juvenile to the Juvenile Reformatory for a long-term.

<sup>105</sup> *Ibid.*

63. Moreover, when a juvenile subject to an institution under Subparagraph 6 disposition breaks away, the disposition period is suspended and resumes only when the juvenile is re-entrusted to the institution (Article 33(7) of the Juvenile Act). However, whether a juvenile has broken away from the institution is treated as a mere factual determination, with no procedure to examine whether there was a justifiable reason for doing so, such as having suffered abuse within the institution. In addition, at the stage of extending or re-entrusting a Subparagraph 6 disposition, which may result in deprivation of liberty for six months or longer, the appointment of a court-appointed assistant is left to the court's discretion (Article 17-2 of the Juvenile Act). This effectively renders meaningless the child's right to challenge the lawfulness of the detention, and constitutes a violation of the right to a fair trial, thereby also falling within Category III.

#### **Suggested Recommendations**

- Reconsider whether the Subparagraph 6 disposition should remain a custodial measure within the criminal justice framework, given that it functions in practice to deprive children of their liberty based on family vulnerability and the need for protection rather than delinquency, and establish clear principles and guidelines that prioritize non-custodial alternatives (such as foster care and community-based support).
- Make it a mandatory procedural requirement that the child concerned and their assistant be given a meaningful opportunity to state their views not only at the commencement of a Subparagraph 6 disposition, but also in any decision to extend or re-entrust such a disposition.
- Require review by an independent judicial body as a mandatory procedural safeguard both when an institutional disposition is imposed and when a child is re-entrusted to an institution.
- Procedurally guarantee the right of access to counsel or to an independent human rights institution for every child subject to a protective disposition involving institutional placement.

### C. Arbitrary Deprivation of Liberty within the Juvenile Justice System

64. The Juvenile Act provides that a child aged 10 or older who has not actually committed a criminal act but is considered likely to commit an act in violation of penal statutes in the future in light of their delinquent tendencies (hereinafter, “crime-liable youth,” ubeom-sonyeon), may be notified to the court. Pursuant to such notification, children are detained in juvenile classification review centers, juvenile reformatories, and similar facilities, while the necessity of detention is left to the subjective judgment of those authorized to make the notification (guardians, school principals, directors of social welfare institutions, and etc.). Between 2019 and 2023, crime-liable youths accounted for 74.0% of all notifications (1,661 out of 2,244 cases), and 37.1% of all notifications were made by school principals or directors of institutions,<sup>106</sup> showing that judicial sanctions are being used as a substitute means of controlling children within schools and institutions. Because the legal basis invoked to justify such detention violates international law, and the detention arises from age-based discrimination, it constitutes arbitrary detention falling within Categories I and V.

65. There is also a movement to lower the current 14-year threshold for the minimum age of criminal responsibility under the Criminal Act, citing the increasing severity of offenses committed by children who violate penal statutes while under the age of criminal responsibility (hereinafter, “law-breaching minor,” chokbeop-sonyeon).<sup>107</sup> However, there is no empirical evidence that lowering this age threshold is effective in preventing juvenile crime. The sharp rise in the rate of court decisions not to commence a trial, from 15.9% in 2015 to 28.4% in 2024,<sup>108</sup> reveals that an excessive number of cases not requiring judicial intervention are nonetheless being referred to trial. The Juvenile Act already permits the detention of children aged 10 or older in juvenile classification review centers, juvenile reformatories, and similar facilities.<sup>109</sup> Nevertheless, in August 2026 the President once again

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<sup>106</sup> National Court Administration. (2024). *Practical Handbook on Juvenile Notification*.

<sup>107</sup> Under Article 4(1) of the *Juvenile Act*, a “criminal youth” (beomjoe-sonyeon) means a child aged 14 or older who has committed an offense, while a “law-breaching minor” (chokbeop-sonyeon) means a child aged 10 or older but under 14 who has committed an act in violation of penal statutes.

<sup>108</sup> National Court Administration. (2025). *Judicial Yearbook*.

<sup>109</sup> *Juvenile Act*, Arts. 4, 32.

called for legislation to lower the age of criminal responsibility (currently 14) by one to two years for serious and repeat offenses.<sup>110</sup>

66. Moreover, unlike criminal youths, law-breaching minors and crime-labile youths are entirely barred from diversion to non-judicial proceedings because police chiefs are required to refer every such case directly to the court.<sup>111</sup> A court-appointed assistant is mandatorily assigned only when a child has been entrusted to a juvenile classification review center,<sup>112</sup> meaning that legal assistance is not institutionally guaranteed throughout the investigation and trial stages. There is also no procedure to appeal a decision entrusting a child to a juvenile classification review center, which functions as a pretrial detention facility.<sup>113</sup> The requirements for the compulsory appearance and detention of a child who violates probation conditions also remain unclear, and no hearing procedure is guaranteed for the child concerned. This constitutes arbitrary detention falling within Category III.

67. Overcrowding at these facilities is another concern. As of 2025 the average annual occupancy rate at the Seoul Juvenile Classification Review Center reached 144% (132% for boys and 191% for girls), and the average annual occupancy rate across juvenile reformatories and juvenile classification review centers nationwide reached 114% (152% for girls' juvenile reformatories).<sup>114</sup> Gimcheon Juvenile Prison, the only facility dedicated to juvenile inmates, is estimated to hold roughly four times as many adult inmates (approximately 400 to 500) as juvenile inmates (approximately 110).<sup>115</sup> Adults and children are also held together in detention centers.<sup>116</sup> This overcrowding and the mixing of adults and children worsen detention conditions and impede both judicial review and the exercise of the right to a defense.

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<sup>110</sup> *Hankyoreh*. (Aug. 25, 2026). "President Lee: 'I Hope We Can Swiftly Reach a Conclusion on Lowering the Age Threshold for Law-Breaching Minors.'" <https://www.hani.co.kr/arti/politics/bluehouse/1274573.html>.

<sup>111</sup> Under Article 4(2) of the *Juvenile Act*, a police chief who identifies a child falling under the law-breaching minor or crime-labile youth categories under Article 4(1) shall transfer the case directly to the competent juvenile department of the court.

<sup>112</sup> *Juvenile Act*, Art. 17-2(1).

<sup>113</sup> *Juvenile Act*, Art. 18.

<sup>114</sup> Ministry of Justice. (Apr. 8, 2026). Press Release: "Ansan Juvenile Classification Review Center, Korea's Only Facility Dedicated to Girls, Begins Operation." <https://www.moj.go.kr/bbs/moj/182/605273/artclView.do>.

<sup>115</sup> *Newspim*. (Aug. 16, 2026). "[What Law-Breaching Minors Are Missing, Part 2] Juvenile Prison Overcrowding Forces It to House Adult Offenders Too... 'Juvenile Justice Infrastructure Must Be Expanded.'" <https://www.newspim.com/news/view/20260812000449>.

<sup>116</sup> *Act on Execution of Sentences and Treatment of Inmates*, Art. 11(1)(3).

68. Furthermore, once a child is committed to a juvenile reformatory or similar facility, basic liberties such as visitation, correspondence, and telephone communication may be restricted at any time based solely on a facility staff member's judgment that such contact would have a negative influence on the child or be detrimental to their education.<sup>117</sup> Asserting these rights may even result in an aggravated deprivation of liberty, such as placement in disciplinary confinement (solitary confinement).<sup>118</sup> These treatment practices constitute arbitrary detention falling within Categories II, III, and V.

### **Suggested Recommendations**

- Maintain the minimum age of criminal responsibility at 14 and immediately halt efforts to lower this threshold or introduce a dual system conditioned on serious offenses.<sup>119</sup>
- Abolish the provision concerning crime-labile youths and the notification system (Article 4(1)(3) and Article 4(3) of the Juvenile Act, respectively).
- Set out clear standards for deprivation of liberty in the *Juvenile Act*, use detention only as a measure of last resort and for the shortest possible period, and review it periodically with a view to its discontinuation.
- Ensure that children's conditions of detention, including family visitation, complaint mechanisms, and the protection of privacy, conform to international standards.

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<sup>117</sup> *Act on the Treatment of Protected Juveniles*, Art. 18; *Enforcement Decree of the Act on the Treatment of Protected Juveniles*, Arts. 36 through 39-2.

<sup>118</sup> *Act on the Treatment of Protected Juveniles*, Art. 15(1)(7); proviso to Art. 18(1).

<sup>119</sup> In its 2024 report on its visit to the Bahamas, the WGAD expressed concern that the minimum age of criminal responsibility was too low and stated that it should be raised to conform with international standards. In its 2025 report on its visit to Canada, the WGAD urged the State party to ensure that children are not sentenced as adults regardless of the circumstances or gravity of the offense.

## VII. Health and Disability

### A. Arbitrary Detention of Persons with Psychosocial Disabilities

#### Relevant Legal Framework

69. Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients (hereinafter “*Mental Health Welfare Act*”) of the ROK still permits involuntary hospitalization provisions based on disability.<sup>120</sup> It broadly allows deprivation of liberty on grounds of risk of harm to self or others linked to disability, and on grounds of the need for inpatient treatment. This violates Article 9 of the ICCPR and Article 14 of the UN CRPD,<sup>121</sup> and falls under Category V. In addition, the person concerned has difficulty promptly and effectively challenging the lawfulness of the deprivation of liberty. This also raises a Category I arbitrary detention problem.

#### Problems in practice

70. The Government explains that involuntary hospitalization is controlled through the Committee for the Examination as to Legitimacy of Admission (CELA), the Mental Health Deliberation Committee (MHDC), and the Procedural Assistance scheme.<sup>122</sup> All three operate only after liberty has already been deprived, and none is guaranteed to every person as a matter of obligation. In 2024 the CELA granted relief in 1.4 percent of cases (443 cases), and the Seoul MHDC in approximately 1 percent.<sup>123</sup>

Furthermore, where an existing hospitalization can no longer be maintained because a

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<sup>120</sup> Mental Health Welfare Act, articles 46 and 47 (committee for the examination as to legitimacy of admission and subcommittee for the examination of admission), articles 55 and 56 (mental health deliberation committee; petition for discharge and examination thereof), and article 38-2 (procedural assistance).

<sup>121</sup> In 2022 the CRPD Committee recommended that the Government repeal the provisions allowing persons with disabilities to be deprived of their liberty on the ground of perceived dangerousness (CRPD/C/KOR/CO/2-3 para.32)

<sup>122</sup> Mental Health Welfare Act, articles 46 and 47 (committee for the examination as to legitimacy of admission and subcommittee for the examination of admission), articles 55 and 56 (mental health deliberation committee; petition for discharge and examination thereof), and article 38-2 (procedural assistance).

<sup>123</sup> Biotimes. (2024. 12. 11.) What does the data reveal about the psychiatric hospitalization system? National Assembly Library publishes Data & Law.

<https://www.biotimes.co.kr/news/articleView.html?idxno=18691> ;

Office of Rep. Kim Ye-ji, People Power Party. (2024). Internal materials for the Ministry of Health and Welfare work report.

psychiatric institution or a ward has closed, persons detained continue to be transferred en masse to other psychiatric hospitals without their own wish to be released, or the possibility of transition to the community, first being ascertained.<sup>124</sup> This relocates the place of detention rather than ending the deprivation of liberty, and institutionalization continues.

#### **Suggested Recommendations**

- Fully repeal all laws that permit involuntary hospitalization and institutionalization on the basis of disability.
- Independently review the deprivation of liberty status of all persons currently detained in psychiatric hospitals; ensure independent legal and procedural assistance that allows them to challenge such deprivation promptly and effectively, without this assistance being used to justify continued detention; and develop and implement plans, together with community-based support, to end their deprivation of liberty.
- Guarantee the direct and meaningful participation of persons with psychosocial disabilities and their representative organizations in formulating, implementing, and monitoring the laws and policies for abolishing involuntary hospitalization and moving to community-based support.

### **B. Institutionalization of Persons with Disabilities – Deprivation of Liberty on the Basis of Disability**

71. Institutionalization of persons with disabilities in the ROK meets at least two of the five categories: Category III: residents have no effective way to file a complaint, seek judicial remedy, or access legal counsel. Category V: UN CRPD Articles 14 and 19, General Comment No. 5, and the Deinstitutionalization Guidelines define institutionalization itself a violation of the Convention and a deprivation of liberty based on disability.<sup>125</sup>

The Act on Welfare of Persons with Disabilities treats institutions admission merely as a

<sup>124</sup> The Hankyoreh, Ko Kyoung-tae, "[Exclusive] Bangudae Hospital: 'plan to transfer 85.7% of patients' — concerns over 'recycling closed wards'" 28 Aug. 2026 (in Korean), <https://n.news.naver.com/article/028/0002820582>

Media Life, "When the psychiatric hospital closed, back to another psychiatric hospital", 2026 (in Korean), <https://www.imedialife.co.kr/news/articleView.html?idxno=68186>

<sup>125</sup> CRPD/C/5 para.6

'contract' between the individual or guardian and the institutions. It includes no independent judicial review, no periodic reassessment, and no complaint procedure. The government published a Roadmap for Deinstitutionalization of Disability Institutions in 2021, but the roadmap still envisions institutions even after its completion point, violating international norms.<sup>126</sup> Meanwhile, human rights violations continue — including sexual violence against the entire female resident population by a institutions director, and resident deaths from neglect or violence. Yet the government's response is weak and few perpetrators are punished or institutions closed.<sup>127</sup>

72. Admission is largely involuntary. A NHRCK survey found that 67.9% of residents were admitted against their own will, and 30.1% never personally signed the admission contract.<sup>128</sup> A 2025 Ministry of Health and Welfare survey<sup>129</sup> found an average stay of 24.3 years — a de facto life sentence. Restrictions on phone and money use isolate residents from the outside world, creating conditions that conceal human rights violations.<sup>130</sup> Budget allocation reflects the same pattern: 2026 government budget allocates KRW 736.4 billion (approx. USD 550.0 million) to disability institutions operations, but only KRW 7.8 billion (approx. USD 5.8 million) to deinstitutionalization support. UN CRPD General Comment No. 5 states that institutionalization cannot be a 'choice,'<sup>131</sup> yet the government conditions deinstitutionalization support on an “clear expressed wish to leave,” in effect continuing disability-based deprivation of liberty.<sup>132</sup>

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<sup>126</sup> CRPD/C/KOR/CO/2-3 para.42.(a)

<sup>127</sup> The Korea Herald, “Korea Eyes Shift to Care in Community, but Funding Still Lacking, Disability Groups Divided” (9 February 2026), <https://www.koreaherald.com/article/10672734>.

<sup>128</sup> National Human Rights Commission of Korea, Survey on the Living Conditions of Residents with Severe and Psychosocial Disabilities in Institutions (2017).

<sup>129</sup> Ministry of Health and Welfare, Comprehensive Survey on Human Rights Conditions in Large-Scale Institutions (27 November 2025; covering 107 institutions with 50 or more residents and 7,070 residents in total).

<sup>130</sup> Yonhap News Agency, “6% of Institutionalized Persons with Disabilities Report Being Barred from Phone or Money Use... Some Also Report Physical and Sexual Abuse” (27 November 2025), <https://www.yna.co.kr/view/AKR20251127084400530>.

<sup>131</sup> CRPD/C/27/3, para. 6, 8, 29, 37, 58.

<sup>132</sup> UN CRPD Guidelines on Deinstitutionalization, including in Emergencies para.37 acknowledges that for those who have lived their whole lives in institutions, the institution may be the only living environment they have ever known, and makes clear that neither communication difficulties nor the degree of impairment can justify continued institutionalization. Moreover, given that the Ministry of Health and Welfare's survey found that 48.9% of all residents in institutions cannot communicate in verbal language, restricting deinstitutionalization support to those who can “clearly express a wish to leave” would in effect leave nearly half of all residents in institutions.

### **Suggested Recommendations**

- Immediately halt all new admissions to disability institutions, and prohibit further investment in existing institutions.
- Introduce deinstitutionalization support procedures for all persons with disabilities currently in institutions.
- Substantially increase the deinstitutionalization budget, and enact into law a deinstitutionalization roadmap with a binding end date.
- Conduct a parliamentary inquiry into systemic abuse in disability institutions and enact legislation providing reparations and compensation for victims.

## **C. Arbitrary Detention of Older Persons**

73. Long-term care and institutional services for older persons are primarily provided under the Act on Long-Term Care Insurance for Older Persons, the Welfare of Older Persons Act and the Medical Service Act. With regard to the right of older persons to make their own decisions concerning admission to facilities, the law provides, in principle, that an admission contract is to be concluded between the older person concerned and the head of the facility.<sup>133</sup> Only where recognized by the head of the relevant local government may a person with a duty of support exceptionally become a party to the contract on behalf of the older person. With regard to physical restraint in long-term care facilities for older persons, neither the Welfare of Older Persons Act nor the Act on Long-Term Care Insurance for Older Persons contains explicit legal provisions directly authorizing the physical restraint of older persons or prescribing the conditions, duration and procedures for its use.

74. However, an investigation by the Gyeonggi Provincial Human Rights Commission found that, in 84.6% of cases, admission contracts were received on behalf of older residents by their guardians rather than directly by the residents themselves. The investigation also found that physical restraints were being used on older residents despite the absence of a legal basis for such restraints, and that 35% of facilities had no internal guidelines concerning the use of physical restraints.<sup>134</sup> In addition, an investigation by the NHRCK found that physical restraints were used on 100 of 801 older residents. Consent to the use of physical

<sup>133</sup> Enforcement Rule of the Welfare of Senior Citizens Act, arts. 19 (5), 19 (6) and 15 (7).

<sup>134</sup> Gyeonggi Province Human Rights Commission, *Recommendation to Improve the Support System Following a Survey of the Human Rights of Older Persons in Long-Term Care Facilities* (28 December 2024), p. 5, table 2.

restraints was obtained from guardians rather than from the older residents themselves, and such consent was obtained in advance and on a blanket basis.<sup>135</sup> In other words, older persons are excluded from decisions concerning both the commencement of their confinement and their treatment thereafter, which may include physical restraint.

These systems and practices fall within Category I, as they restrict liberty without a legal basis or an assessment of individual necessity, and within Category V, as they constitute detention on the basis of old age.

#### **Suggested Recommendations**

- Prohibit, in principle, the use of physical restraints in long-term care facilities for older persons and establish a system to monitor whether physical restraints are being used.
- Take the necessary legislative and administrative measures to ensure that older persons can enter and leave long-term care facilities in accordance with their own will.
- Establish a human rights-based legal and administrative framework that guarantees a community-based care system, enabling older persons to choose to continue living in their communities rather than being placed in institutions.

### **D. Forced Contraception and Deprivation of Liberty of Women with Disabilities in Residential Institutions: The Dongmyeongwon Case**

75. The Committee on the Rights of Persons with Disabilities recommended that the ROK prohibit and monitor the forced institutionalization of persons with disabilities and arbitrary or coercive treatment; eliminate forced sterilization of women with disabilities living in institutions; identify and investigate such cases; and provide full reparation.<sup>136</sup> However, as the case below shows, these recommendations have not been implemented. In addition, medical interventions involving contraception for women with disabilities must be based on free and fully informed consent.<sup>137</sup> The WGAD considers that preventing a person from

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<sup>135</sup> National Human Rights Commission of Korea, *Recommendation to Improve Laws and Systems Following Visits to Long-Term Care Facilities for Older Persons* (3 August 2022), p. 5 and 11.

<sup>136</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of the Republic of Korea, CRPD/C/KOR/CO/2-3 (2022), paras. 37–38.

<sup>137</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 3 on women and girls with disabilities, CRPD/C/GC/3 (2016), paras. 32, 44–45.

leaving a psychiatric hospital or similar institution against their will may constitute deprivation of liberty.<sup>138</sup>

76. Dongmyeongwon, which began operating in 1972 in Mokpo, Jeollanam-do Province, as an institution for so-called “street children,” reportedly inserted intrauterine devices (IUDs) in nine women with disabilities residing in the institution after a woman with an intellectual disability became pregnant and gave birth in 2010. It has been confirmed that they were not provided with sufficient information and therefore did not give free and valid consent.<sup>139</sup>

77. Forced contraception should be addressed on a continuum with other measures involving deprivation of liberty, including institutionalization and involuntary hospitalization. According to testimony, the women’s living quarters at the institution were locked from the outside every day from 18:00 until 06:00 the following morning, restricting movement, at least from 2006 to 2014. Records also confirm that a pregnant woman with a disability was admitted to a closed psychiatric ward without her consent from the seventh month of pregnancy until shortly before delivery, and for approximately four months after giving birth. Although traces of these locking devices were found during a local government inspection in 2015, no effective follow-up measures were taken.

#### **Suggested Recommendations**

- Independently investigate the circumstances and interrelationship of forced contraception, confinement in living quarters, and involuntary psychiatric hospitalization of women with disabilities at Dongmyeongwon, as well as the knowledge and management and supervisory responsibility of the State and local governments.
- Provide victims with confidential interviews, medical examinations, follow-up medical support, and effective remedies, and establish a monitoring system that guarantees individual consent based on free and fully informed decision-making in

<sup>138</sup> WGAD, Report of the Working Group on Arbitrary Detention, E/CN.4/2005/6 (2004), paras. 47–58, deliberation No. 7 on issues related to psychiatric detention.

<sup>139</sup> Some women did not know even after leaving the institution that an IUD had been inserted, and one victim had the adherent device removed only in 2017. Materials provided by the Public Interest Law Center Donghaeng, “Forced Contraception and Deprivation of Liberty of Women with Disabilities in Residential Institutions: The Dongmyeongwon Case,” section on “Forced Contraceptive Procedures”.

medical and reproductive matters, as well as freedom of movement and freedom to leave the institution for persons with disabilities living in institutions.

## VIII. Trafficking in Persons and Labor Exploitation

### A. Deprivation of liberty of Migrant Workers in the Context of Human Trafficking

78. Migrant fishers and seasonal workers face a risk of de facto deprivation of liberty through retention deposits, passport and document confiscation, and physical movement restrictions. On 21 July 2026, approximately 20 Indonesian transit fishers bound for a Chinese vessel, were unlawfully confined in a motel in ROK by recruitment and security agencies. Passports were confiscated, doors locked from outside, windows barred, and security personnel guarded access. Two fishers attempted to escape; one died and the other suffers severe injuries.<sup>140</sup>

79. Under article 5-3 of the Guidelines on the Management of Foreign Seafarers, the Ministry of Oceans and Fisheries delegates the management of foreign migrant fishers' employment to shipowners' associations, including the National Federation of Fisheries Cooperatives (Suhyup). In practice, Suhyup and security personnel enforce document confiscation and movement control before and after embarkation. Moreover, the state-subsidized Welfare and Education Center for Distant-Water Foreign Seafarers operates de facto as a detention facility, featuring exterior-locked doors, window bars, internal CCTV monitoring, and security guards.<sup>141</sup>

80. Although article 50-2 of the Seafarers Act prohibits shipowners from retaining fishers' passports, it restricts the direct obligation solely to "shipowners," thereby it fails to regulate third-party management entities. A September 2021 survey by NHRCK and civil society organizations revealed that approximately 90% of 221 surveyed migrant fishers had their passports confiscated, nearly half also losing IDs and bankbooks—mostly by Suhyup cooperatives acting as delegated management bodies.<sup>142</sup> Regarding seasonal workers, a 2024 NHRCK decision recognized a Haenam case as human trafficking for labor exploitation, citing passport confiscation, financial guarantee extortion, joint family liability, and threats of

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<sup>140</sup> Hankyoreh, "Busan Is Becoming a Stopover for Human Trafficking by Fishing Operations" (7 August 2026), [https://english.hani.co.kr/arti/english\\_edition/e\\_national/1271745.html](https://english.hani.co.kr/arti/english_edition/e_national/1271745.html).

<sup>141</sup> IOM in the ROK and Advocates for Public Interest Law (APIL), *Trapped at Sea* (2016).

<sup>142</sup> Network for Migrant Fishers' Rights, press release, "Complaint Filed with the NHRCK Regarding the Confiscation of Passports of Migrant Fishers" (7 October 2021).

legal action upon workplace departure.<sup>143144</sup>

81. Despite awareness through media and inspections, the ROK tolerates this structural discrimination by failing to enforce public accountability, investigation, or effective remedies. These circumstances raise serious concerns of arbitrary deprivation of liberty falling within Categories I and V of WGAD’s established categories.

### **Suggested Recommendations**

- Establish an independent public oversight mechanism regulating private entities in migrant recruitment, employment, and residence management.
- Ease workplace change criteria and ensure effective protection for migrant workers subject to deprivation of liberty.

## **B. Deprivation of Liberty in Salt-Farm Labor Exploitation**

### **Relevant Legal Framework**

82. Despite of the article 8 (forced labor) and 9 (arbitrary deprivation of liberty) of the ICCPR<sup>145</sup> and the Employment Security Act that regulates employment placement, labor supply and related oversight,<sup>146</sup> forced labor cases of disabled persons in salt-farms have been repeated over a decade. Regarding this, the Human Rights Committee<sup>147</sup> and the UN CRPD Committee also called for protection and remedies against exploitation, violence and abuse of persons with disabilities.<sup>148</sup>

### **Situation of Concern**

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<sup>143</sup> National Human Rights Commission of Korea, *Recommendation on Measures to Prevent Recurrence and Improve the System Concerning Cases of Human Trafficking Victims under the Foreign Seasonal Worker Program (10 October 2024)*. In March 2026, 15 female seasonal workers at a Goheung oyster farm faced constant surveillance, including night headcounts by a male broker, indoor CCTV monitoring, and deportation threats for unaccompanied store visits.

<sup>144</sup> OhmyNews, “A Man Visiting the Female Accommodation Every Night at 10 PM...What Happened at an Oyster Processing Facility in Goheung” (16 March 2026).

<sup>145</sup> Human Rights Committee, General Comment No. 35, CCPR/C/GC/35 (2014), para. 7.

<sup>146</sup> *Employment Security Act*, arts. 19, 33, 39 and 41.

<sup>147</sup> Human Rights Committee, Concluding observations on the fifth periodic report of the Republic of Korea, CCPR/C/KOR/CO/5 (2023), paras. 33–34.

<sup>148</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of the Republic of Korea, CRPD/C/KOR/CO/2-3 (2022), paras. 35–36.

83. In a 2026 salt-farm case in Yeonggwang, three workers, including persons with disabilities, were placed through employment agencies and were found to have experienced forced labor, assault, unlawful confinement and wage exploitation. The Ministry of Oceans and Fisheries reported over KRW 163 million (approx. USD 121,800) in wage exploitation; prosecutors alleged up to five years of work averaging 17 hours a day and about KRW 300 million (approx. USD 224,200) in unpaid wages.<sup>149</sup>

84. The inquiry should examine whether victims were genuinely free to leave throughout recruitment and placement, transport, accommodation and economic control, worksite assignment and restrictions on exit. The Human Rights Committee defines deprivation of liberty by reference to absence of free consent, while WGAD applies a broad concept of de facto deprivation of liberty.<sup>150 151</sup>

#### **Suggested Recommendations**

- In high-risk sectors such as salt farms, investigate the full recruitment and placement chain and indicators of de facto deprivation of liberty, including control of movement, identity documents, bank accounts, debt, accommodation and outside contact; link findings promptly to criminal investigation and victim protection.
- For persons with disabilities and other vulnerable jobseekers placed in isolated workplaces, independently verify consent, working conditions, workplace and accommodation, and conduct post-placement monitoring to ensure a genuine ability to leave and access reporting and remedies.

<sup>149</sup> Ministry of Oceans and Fisheries, press release on labor and human-rights violations of salt-farm workers, 5 Aug. 2026; SBS News(25 June and 8 July 2026)

<sup>150</sup> Human Rights Committee, General Comment No. 35, CCPR/C/GC/35 (2014), paras. 3, 5–7.

<sup>151</sup> WGAD, Deliberations on deprivation of liberty, including discussion of de facto deprivation of liberty.

## **IX. Other Forms of Deprivation of Liberty**

### **A. Arbitrary Detention in Past Mass Confinement Facilities**

85. During the period of authoritarian rule in the ROK, numerous instances of institutional confinement were carried out by State authorities and private actors.<sup>152</sup> Widespread detention was imposed on ordinary citizens, human rights defenders, women, children and persons with disabilities. These cases constitute arbitrary detention falling within all categories, as such detention was carried out without a legal basis, without compliance with due process, against socially vulnerable persons, or in connection with the exercise of the freedoms of assembly and expression.

86. Investigative bodies established under relevant special legislation, including the Truth and Reconciliation Commission established pursuant to the Framework Act on the Settlement of Past Affairs for Truth and Reconciliation, have been established on several occasions.<sup>153</sup> However, recommendations made by these investigative bodies, including official apologies, measures for the restoration of victims' rights and measures to prevent recurrence, have not been properly implemented.<sup>154</sup> In particular, even where victims obtain a truth-finding determination from the Truth and Reconciliation Commission, they are required to separately pursue State compensation litigation, preventing them from obtaining timely remedies and causing psychological harm. Claims are also sometimes dismissed on grounds such as statutes of limitations.<sup>155</sup>

87. Meanwhile, the third Truth and Reconciliation Commission, whose specialized investigative functions concerning human rights violations in social welfare facilities have been strengthened, has been operating since the end of February 2026.<sup>156</sup> In addition to the Brothers Welfare Center and Seongam Academy, which have already been investigated, cases of arbitrary detention and human rights violations occurring in various social welfare facilities, including facilities for children, homeless persons and persons with disabilities, that

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<sup>152</sup> A/HRC/54/24/Add.1, paras. 6, 9(e).

<sup>153</sup> A/HRC/54/24/Add.1, paras. 11, 18, 19.

<sup>154</sup> A/HRC/54/24/Add.1, paras. 50, 55, 58.

<sup>155</sup> A/HRC/54/24/Add.1, paras. 38, 39, 47.

<sup>156</sup> Ministry of the Interior and Safety, press release, "Launch of the Third Truth and Reconciliation Commission and Opening of Applications for Truth-Seeking Investigations" (25 February 2026), <https://www.jinsil.go.kr/fnt/bbm/bbs/selectBoardArticleView.do?nttId=22949>.

have operated for decades and continue to operate today have been submitted and are scheduled for investigation.<sup>157</sup> However, as the Commission operates for a limited period, it may be insufficient to provide remedies to all victims.<sup>158</sup>

88. In 2023, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence recommended that the Government of the ROK provide comprehensive remedies to victims of State violence and institutional confinement.<sup>159</sup> In 2024, the United Nations Committee against Torture recommended, in particular, that the State ensure, including through amendments to domestic legislation, that all victims of past State violence and institutional confinement, including victims in social welfare institutions, child welfare institutions and other closed institutions, have access to effective remedy and reparation, including compensation, satisfaction and rehabilitation services, without being required to file a formal complaint.<sup>160</sup>

89. A Special Bill on Compensation for Victims of Mass Confinement Facilities, aimed primarily at establishing a system for prompt compensation and effective support for victims of mass confinement facilities, has been introduced in the National Assembly.<sup>161</sup> However, the Government and the National Assembly have not yet commenced substantive deliberations on the bill.

#### **Suggested Recommendations**

- Take effective legislative and administrative measures, including the enactment of special legislation on compensation for victims of mass confinement facilities, to guarantee comprehensive remedies for victims of arbitrary detention resulting from past State violence and institutional confinement.

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<sup>157</sup> Truth and Reconciliation Commission, press release, “Applications for Truth-Seeking Investigations Rise Sharply One Month after the Launch of the Third Truth and Reconciliation Commission” (26 March 2026), [https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR\\_000000000710&nttId=326926](https://www.jinsil.go.kr/fnt/nac/selectNoticeDetail.do?bbsId=BBSMSTR_000000000710&nttId=326926).

<sup>158</sup> Ministry of the Interior and Safety, press release, “Launch of the Third Truth and Reconciliation Commission and Opening of Applications for Truth-Seeking Investigations” (25 February 2026).

<sup>159</sup> A/HRC/54/24/Add.1, para. 86(n).

<sup>160</sup> CAT/C/KOR/CO/6, paras. 38–39(a).

<sup>161</sup> *Special Bill for Victims of Human Rights Violations in Mass Detention Facilities and Similar Institutions*, proposed by National Assembly Member Nam In-soon and 11 others, Bill No. 2217719 (25 March 2026).

- Ensure comprehensive remedy and reparation, including official apologies, rehabilitation and psychological services, and compensation, for victims whose violations have been established by the Truth and Reconciliation Commission.
- Immediately close confinement facilities in which detention, forced labor, sexual violence and other abuses have been perpetrated, and establish plans to support the independent living of persons confined in such facilities.

## **B. Criminalization and Discriminatory Punishment of Women in Prostitution**

90. The current Act on the Punishment of Acts of Arrangement of Commercial Sex Acts (hereinafter referred to as the "Sexual Traffic Punishment Act") operates under the principle of prohibition, which penalizes all acts of arranging commercial sex acts, buying sex, and selling sex. However, in consideration of human rights violations faced by women in prostitution, the Act includes a provision for "victims of prostitution" and exempts their acts of prostitution from criminal punishment. That is, under the Act, women in prostitution hold a dual status as both "perpetrator of prostitution" (subject to punishment) and "victims of prostitution" (subject to protection).<sup>162</sup> The penalization of women in prostitution falls under Category I due to the uncertainty of punishment and reliance on arbitrary law enforcement by investigative authorities, while the application of advertising offenses to women in prostitution constitutes Category V: discriminatory law enforcement based on gender.

91. Because the punishment of women in prostitution depends on the uncertainty of whether they will be punished and on the arbitrary enforcement of the law by investigative authorities, it falls within Category I. The application of the advertising offense to women in

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<sup>162</sup> Relevant provisions of the *Sexual Traffic Punishment Act* include:

Article 21(1): A person who engages in prostitution shall be punished by imprisonment of not more than one year or a fine of not more than three million won.

Article 2(4): "Victim of prostitution" means:

- (a) a person who was compelled to engage in prostitution by deception, abuse of power, or other similar means;
- (b) a person who engaged in prostitution after being made addicted to narcotics, etc. by a person who protects or supervises him/her by reason of a business, employment, or other relationship;
- (c) a minor, a person lacking or deficient in the capacity to discern matters or to decide intentions, or a person with a significant disability, who was arranged or lured into prostitution;
- (d) a person who was subjected to trafficking for the purpose of prostitution.

Article 6(1): The prostitution of a victim of prostitution shall not be punished.

Article 20(3): A person who advertises to solicit or lure the purchase of sexual acts shall be punished by imprisonment of not more than three years or a fine of not more than thirty million won.

prostitution constitutes discriminatory enforcement of the law on grounds of gender and therefore falls within Category V.

92. Although the current Act defines a “victim of sexual traffic” (Article 2 (1) 4), practices and relevant case law interpret the scope of coercion by means of a deceptive scheme or by force extremely narrowly, leaving the vast majority of women engaged in sexual traffic unrecognised as victims. According to an analysis of 85 support cases for women in sexual traffic across counselling centres for victims of sexual traffic nationwide in 2022, investigative authorities investigated 45 cases reported as “;victims of sexual traffic” by applying them as “persons who engaged in sexual traffic” instead (Case 1). In 27 cases, the women asserted that they were victims but were unable to even report to the authorities out of fear of punishment (Case 2), while only 13 cases were recognised as “victims of sexual traffic” by investigative authorities (Case 3). In reality, however, there were no meaningful differences in the conditions, context, or details of harm between Case 1 and Case 3; rather, investigations depended largely on the gender sensitivity and willingness of the investigative authorities.<sup>163</sup>

93. In this regard, in the constitutional case 2013Hun-Ga2 (unconstitutionality of punishment of persons in prostitution), the minority opinion holding the provision unconstitutional s found that “criminal punishment against persons selling sex constitutes an excessive exercise of penal power that violates the principle of prohibition against excess (proportionality), and is thus unconstitutional”.<sup>164</sup> The elements of an offense regarding the punishment of women selling sex must be strictly defined; however, under current law, there exists a persistent risk that the State may criminally punish victims of sexual traffic whom the law ought to protect.<sup>165</sup> Women in prostitution are particularly vulnerable to rape, violence, illegal filming, stalking, fraud, exploitation, and human trafficking. Even when suffering from such criminal harm, many of these women are unable to report to the authorities out of

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<sup>163</sup> 2023 National Assembly Forum Materials, “Toward a Gender-Equal Model: Forum on the Complete Revision of the Anti-Prostitution Act” (Anti-Prostitution Act Revision Solidarity & National Solidarity for Solving the Prostitution Problem, 6 Nov. 2023), “Current State and Limits of the Anti-Prostitution Act.” (<https://jkyd2004.org/library/?q=YToyOntzOjEyOiJrZXI3b3JkX3R5cGUlO3M6MzoiYWxsJltzOjQ6InBhZ2UiO2k6NDt9&bmode=view&idx=168070703&t=board>)

<sup>164</sup> Constitutional Court of Korea, Constitutionality of Article 21(1) of the Act on the Punishment of Arrangement of Commercial Sex Acts, 2013Hun-Ka2 (31 March 2016).

<sup>165</sup> 2025 National Assembly Forum Materials, “National Assembly Forum for the Protection of the Human Rights of Women in Prostitution” (NSASEW ect., Dec. 2025), Presentation 1, “The Reality of Punishing Women in Prostitution.”

fear that they may be punished as persons who engaged in sexual trafficking; as a result, women in prostitution remain deprived of legal protection even when falling victim to crimes.<sup>166</sup>

94. Meanwhile, the Sexual Traffic Punishment Act was enacted to “block suppliers and intermediaries of sexual trafficking”,<sup>167</sup> for the convenience of investigations, the investigative authorities have been applying the crime of advertising sexual traffic against women in prostitution, subjecting them to crackdowns and punishment. In 2024, 80% of those “apprehended” for the prostitution advertising offense were women.<sup>168</sup> This has a discriminatory effect, as it punishes only women in prostitution while leaving buyers unpunished.

#### **Suggested Recommendations**

- Amend the Sexual Traffic Punishment Act so that the punishable conduct is redefined as “the act of purchasing another person’s sexual acts,” thereby decriminalizing women in prostitution.

### **C. Isolation, Detention, and De Facto Detention During the COVID-19 Pandemic**

95. The Infectious Disease Control and Prevention Act which governs the management of infectious diseases such as COVID-19, defines “persons suspected of having an infectious disease”—who are subject to quarantine—based on a broad range of criteria, including contact with a patient with an infectious disease, visits to or transit through specific areas, and exposure to risk factors. Furthermore, while the law allows for broad public health measures without specific details, provisions for special protection of vulnerable individuals are inadequate.<sup>169</sup> This can be interpreted as falling under Categories I, II, or V of the five categories of arbitrary detention defined by the WGAD.

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<sup>166</sup> *The Hankyoreh*, “Women in Prostitution as Victims of Sexual Crimes: ‘Protection and Support Should Come First’” (2 December 2025), <https://www.hani.co.kr/arti/society/women/1232453.html>

<sup>167</sup> *Act on the Punishment of Arrangement of Commercial Sex Acts*.

<sup>168</sup> *Newstomato*, “80% of Those Arrested for Prostitution Advertising Are Women: ‘Entrapment Investigations’ Undermine the Purpose of the Anti-Prostitution Act” (5 January 2026), <https://www.newstomato.com/ReadNews.aspx?no=1286856>

<sup>169</sup> *Infectious Disease Control and Prevention Act*.

96. During the COVID-19 pandemic, the ROK—despite the fact that the definition of “persons suspected of having an infectious disease,” who are subject to isolation under the Act on the Prevention and Control of Infectious Diseases, was not legally specified—abused this definition to excessively impose administrative measures such as mandatory isolation on groups not included in the category of close contacts. Many local governments employed a method not explicitly provided for by law—known as “preventive cohort isolation”—to confine numerous individuals in long-term care hospitals, nursing homes, and welfare facilities for children, adolescents, and people with disabilities, and to restrict their freedom of movement for extended periods. The NHRCK recommended that such measures be prohibited and that the law be amended, but the ROK did not accept these recommendations.<sup>170</sup> Furthermore, the ROK took no special measures regarding correctional facilities during the COVID-19 pandemic other than imposing a complete lockdown to isolate them from the outside world. In December 2020, a mass outbreak occurred at the Seoul Eastern Detention Center, where over 1,000 inmates tested positive for COVID-19.<sup>171</sup> Subsequently, some inmates died because they did not receive proper emergency care.<sup>172</sup>

#### **Suggested Recommendations**

- Delete the broadly defined term “person suspected of having an infectious disease,” which, under the Infectious Disease Control and Prevention Act could include the general public; cease excessive quarantine measures based on this definition; and explicitly stipulate in the law provisions prohibiting “preventive cohort quarantine” targeting the general public who are neither patients nor close contacts of infectious disease patients.
- Establish legislative and administrative measures to protect residents who are particularly vulnerable to infectious diseases or require special protection—such as the older persons, people with disabilities, those with underlying medical conditions, and pregnant women—during an infectious disease outbreak; officially

<sup>170</sup> National Human Rights Commission of Korea, Announcement of the Ministry of Health and Welfare and the Korea Disease Control and Prevention Agency’s Responses Regarding Implementation Plans for Recommendations to Amend the “Infectious Disease Control Act,” 2023.04.12. <https://shorturl.at/pyCFq>

<sup>171</sup> More than 180 virus cases reported at Seoul detention center (Yonhap News Agency) <https://en.yna.co.kr/view/AEN20201219002500320>

<sup>172</sup> Another inmate dies at detention center (The Korea Times) <https://shorturl.at/xG9ch>

apologize to the families of residents who died as a result of the COVID-19 outbreak, and provide appropriate compensation.

#### **D. Detention of LGBTQ+ Persons**

97. Article 92-6 of the Military Criminal Act criminalises same-sex sexual activity within the armed forces.<sup>173</sup> In 2022 the Supreme Court, sitting en banc, held that consensual acts taking place in private premises outside military facilities fall outside the scope of the provision.<sup>174</sup> On 24 April 2025, however, the Third Division of the Supreme Court found that acts occurring inside barracks or while on duty directly and specifically harm military discipline, and quashed the acquittal below.<sup>175</sup> On remand, the Uijeongbu District Court dismissed the appeal on 28 August 2026, leaving intact the suspended imposition of a four-month prison sentence.<sup>176</sup> In August 2017 the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the Vice-Chair of the WGAD and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed an urgent appeal to the Government concerning the targeting and arrest of soldiers perceived to be gay, drawing attention to the absence of due process and confirming that arbitrary arrest and detention breach international law.<sup>177</sup> The provision nonetheless remains in force. That punishment and deprivation of liberty on grounds of sexual orientation contravene articles 17 and 26 of the Covenant is the settled position of both the Human Rights Committee and the WGAD. Detention under this provision has no legal basis (category I) and rests on discrimination on grounds of sexual orientation (category V).<sup>178</sup>

98. Under the Enforcement Decree of the Act on the Execution of Sentences and the Treatment of Inmates, solitary accommodation takes two forms: accommodation for

<sup>173</sup> Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labor for not more than two years.

<sup>174</sup> Supreme Court of Korea, Judgment of 21 April 2022, 2019Do3047 (en banc)

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

<sup>175</sup> Supreme Court of Korea, Decision No. 2022Do15950 (24 April 2025).

<sup>176</sup> Newstomato, “Disciplinary Action for Breach of Military Discipline Would Suffice—The Law Punishing Gay Soldiers Goes to Court: What Is at Stake?” (28 August 2026).

<sup>177</sup> UA KOR 2/2017 (August 2017).

<sup>178</sup> WGAD, Deliberation No. 12, A/HRC/48/55, annex, paras. 40–41.

treatment purposes, under which the inmate is held alone only at night and on non-working days, and accommodation for custodial purposes, under which the inmate is held alone at all times and contact with other inmates is prohibited.<sup>179</sup> LGBTQ+ inmates should as a rule be subject to the former, yet some correctional facilities apply the latter as their standard practice. One facility recently argued in litigation that custodial solitary accommodation was necessary because an LGBT inmate might engage in sexual activity. Continuous denial of contact amounts to solitary confinement within the meaning of the Nelson Mandela Rules and, beyond fifteen days, to the prolonged solitary confinement those Rules prohibit.<sup>180</sup> Discriminatory isolation on grounds of sexual orientation renders the detention itself arbitrary (category V).<sup>181</sup>

99. Confinement for the purpose of conversion practices is frequently carried out by private actors such as family members or religious institutions. The WGAD treats deprivation of liberty as a question of fact, turning on whether the person is able to leave at will,<sup>182</sup> and has confirmed that LGBTQ persons must not be detained for the forcible administration of such practices in any setting, public or private, including hospitals, psychiatric institutions, places of worship and the home.<sup>183</sup> In the ROK these practices take place largely in the form of prayer and counselling. In March 2016 a young transgender person was subjected to compulsory counselling by a pastor, assaulted in the course of it, and escaped.<sup>184</sup> This form of confinement has no legal basis whatsoever (category I) and, being grounded in sexual orientation and gender identity, rests on discrimination (category V).

#### **Suggested Recommendations**

- Repeal article 92-6 of the Military Criminal Act. Pending repeal, cease all investigations and prosecutions under that provision.
- Prohibit custodial solitary accommodation imposed on grounds of sexual orientation or gender identity and ensure that solitary accommodation of LGBT inmates takes the form of accommodation for treatment purposes, with the inmate's

<sup>179</sup> *Enforcement Decree of the Act on the Execution of Sentences and the Treatment of Inmates*, art. 5.

<sup>180</sup> Nelson Mandela Rules, rules 43(1), 44.

<sup>181</sup> WGAD, Deliberation No. 12, A/HRC/48/55, annex, paras. 45–47

<sup>182</sup> WGAD, Fact Sheet No. 26/Rev. 1 (2024), p. 10

<sup>183</sup> WGAD, Deliberation No. 12, A/HRC/48/55, annex, para. 44.

<sup>184</sup> Newsjoy, “Conversion Practices That Exploit the Need to Belong: Violence Inflicted on Those Who Are Most Emotionally Vulnerable” (20 August 2021).

own wishes ascertained.

- Prohibit all interventions aimed at changing a person's sexual orientation or gender identity, in medical, religious, educational and counselling settings alike, whether public or private.

## **E. Detention of Homeless Persons**

### **Compulsory Placement in Welfare Facilities for Homeless Persons**

100. Article 10 (1) of the Act on Support for Welfare and Self-Reliance of the Homeless, Etc. provides that the State may place homeless persons under “protection” in welfare facilities for homeless persons and other facilities in the name of housing support. The provision was introduced for the welfare of homeless persons and also provides for the supply of rental housing and support for temporary housing expenses. In practice, however, placement in facilities is often prioritized over housing support. The absence of a genuine choice effectively compels homeless persons to enter facilities and constitutes arbitrary detention falling within Categories I, III, and V.

101. For example, in Wonju, Gangwon Province, most homeless persons are placed in residential facilities for homeless persons because there are no housing alternatives other than institutional placement.<sup>185</sup> The Seoul Metropolitan Government operates a “temporary housing expense support” programme, but rather than directly providing accommodation, it subsidizes the rent for low-cost privately owned accommodation.<sup>186</sup> The quality of the housing provided is poor, and the head of the homeless facility is made a party to the rental contract rather than the user, thereby excluding the user from tenancy rights.

102. The absence of housing alternatives in the community ultimately increases admissions to residential facilities for homeless persons, while also making it difficult for residents to leave such facilities and settle in the community. This is also reflected in the findings of the

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<sup>185</sup> Gangwon State, *2024 Implementation Results and 2025 Implementation Plan for the Second Comprehensive Plan for the Welfare and Self-Reliance of Homeless Persons*, materials received by the Office of National Assembly Member Seo Mi-hwa.

<sup>186</sup> Seoul Metropolitan Government, *2025 Implementation Plan for the Temporary Housing Support Programme for Homeless Persons*.

Ministry of Health and Welfare’s 2024 survey: among homeless persons, including those living on the streets and those residing in facilities, 16.8% were living on the streets, while 83.2% were residing in facilities.<sup>187</sup> A more serious problem is that institutionalization becomes chronic and prolonged. According to the same survey, 30.5% of residents had been institutionalized for 20 years or more, while 55.4% had been institutionalized for 10 years or more. In nursing facilities for homeless persons, which are one type of residential facility for homeless persons, “discharge due to death” accounts for more than 20% of all discharges.<sup>188</sup> In other words, for homeless persons, such facilities function as places that, once entered, they cannot leave and from which they are discharged only upon death.

### **Suggested Recommendations**

- Ensure that all local governments provide “temporary housing expense support”. Such support should allow applicants to choose, according to their own wishes, between rental assistance and the provision of accommodation. Where accommodation is provided, minimum housing standards should be established and met. Users should also be made parties to rental contracts so as to guarantee their tenancy rights.
- Significantly expand the supply of public rental housing, including supported housing, to enable homeless persons living on the streets or in facilities to access adequate housing.

## **Involuntary Hospitalization of Homeless Persons**

103. Police officers, psychiatrists and heads of local governments may, pursuant to the *Mental Health Welfare Act*, hospitalize a person “suspected of posing a risk of harm to their own health or safety or to others” in a “designated mental health institution” regardless of the person’s wishes.<sup>189</sup> In 2015, a complaint was filed with the NHRCK concerning a psychiatric institution that had approached homeless persons staying near public transport stations in a metropolitan area and induced them to be hospitalized in order to attract patients, while improperly managing their discharge and other matters. Following deliberations, including a

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<sup>187</sup> Ministry of Health and Welfare, *2024 Survey on the Conditions of Homeless Persons*.

<sup>188</sup> Korea Institute for Health and Social Affairs, *Study for the Development of the Second Comprehensive Plan for the Welfare and Self-Reliance of Homeless Persons*.

<sup>189</sup> *Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients*, art. 44.

visit to the institution, the National Human Rights Commission issued recommendations in 2016<sup>190</sup> that the institution cease problematic practices, including inducing hospitalization; that the head of the relevant local government strengthen the management and supervision of the institution; and that the Minister of Health and Welfare develop measures to eradicate the practice of inducing homeless persons to be hospitalized.

104. Despite this case, homeless persons continue to be involuntarily hospitalized in psychiatric institutions in inappropriate and arbitrary ways, irrespective of their wishes. Among recent cases identified by several civil society organizations was a homeless person who was admitted to a psychiatric institution after police officers, staff of a homeless facility and others arbitrarily applied relevant guidelines, even though the requirements for involuntary hospitalization were not met. Although the person repeatedly expressed a wish to be discharged, the medical institution disregarded those requests, and the head of the local government responsible for management and supervision also failed to take action. The homeless person concerned has currently filed a complaint concerning the matter with the NHRCK.<sup>191</sup>

#### **Suggested Recommendations**

- Establish stricter requirements for the involuntary hospitalization of persons with addictions and mental health conditions, including homeless persons, in order to prevent the misuse of involuntary hospitalization.
- In order to prevent involuntary hospitalization from being misused as a means of social control over homeless persons, persons living in poverty and persons with mental health conditions, expand support based on community living, disease management and harm-reduction models, rather than treatment centred on hospitalization and segregation.

#### **Detention on the Ground of Homelessness**

<sup>190</sup> National Human Rights Commission of Korea, *Recommendation to Improve Practices of Inducing Hospitalization and Related Issues Following the 2015 Visits to Psychiatric Institutions*.

<sup>191</sup> Hankyoreh 21, “Calls for an Investigation into Unlawful Administrative Hospitalization of Homeless Persons: ‘The Law Is Always Too Slow and Inadequate’” (4 September 2025), [https://h21.hani.co.kr/arti/society/society\\_general/57944.html](https://h21.hani.co.kr/arti/society/society_general/57944.html).

105. The Criminal Procedure Act, in principle, restricts arrest and detention for minor offenses. However, where a suspect has no fixed residence, it exceptionally permits the issuance of an arrest warrant and detention, and also permits arrest without a warrant of a person caught in the act of committing a minor offense where that person's residence is unclear.<sup>192</sup> In other words, in cases involving minor offenses, the mere fact that a person does not have a fixed residence operates as a ground justifying arrest and detention. The Punishment of Minor Offenses Act classifies as a minor offense the act of begging in a public place in a manner that obstructs or causes inconvenience to the passage of others<sup>193</sup>. Accordingly, a homeless person without a fixed residence may be arrested and held in pretrial detention solely for begging.

106. As a result, persons who have become homeless for various reasons face difficulties under the current law in benefiting from the principle that "investigations of suspects shall, in principle, be conducted without detention",<sup>194</sup> and such cases can still readily be found. During the COVID-19 pandemic, for example, there was a case in which a homeless person who had difficulty accessing food stole delivered food and was detained on the ground of having "no fixed residence".<sup>195</sup>

107. Furthermore, the Act on the Aggravated Punishment, etc. of Specific Crimes provides that a person who habitually commits theft may be sentenced to imprisonment for up to 20 years.<sup>196</sup> Accordingly, a homeless person who commits petty theft because of economic hardship may be sentenced to a lengthy term of imprisonment. Such laws and systems constitute arbitrary detention under Category V, as they result in the detention of homeless persons who, by the very nature of their circumstances, may have no fixed residence.

#### **Suggested Recommendations**

- Take the necessary measures, including legislative amendments, to ensure that the principle of investigation and trial without detention can also be applied to persons who, as a result of homelessness, unavoidably have "no fixed residence".

<sup>192</sup> Criminal Procedure Act, proviso to art. 200-2 (1).

<sup>193</sup> Punishment of Minor Offenses Act, art. 3 (18).

<sup>194</sup> *Criminal Procedure Act*, art. 198.

<sup>195</sup> Korea Center for City and Environment Research and Kyunghyang Shinmun, *Report on Poverty and Crime among People without Stable Housing* (April 2020).

<sup>196</sup> *Act on the Aggravated Punishment of Specific Crimes*, art. 5-4 (5) 1.

- Take the necessary measures, including repealing or amending laws that criminalize and permit the detention of persons for acts, such as begging,<sup>197</sup> that they may be compelled to engage in for survival while experiencing homelessness.

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<sup>197</sup> *Punishment of Minor Offenses Act*, art. 3.