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**Human Rights Committee****Concluding observations on the fifth periodic report of the Republic of Korea\***

1. The Committee considered the fifth periodic report of the Republic of Korea<sup>1</sup> at its 4054<sup>th</sup> and 4055<sup>th</sup> meetings,<sup>2</sup> held on 19 and 20 October 2023. At its 4068<sup>th</sup> meeting, held on Monday 30 October, it adopted the present concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the fifth periodic report of the Republic of Korea and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for the oral responses provided by the delegation during the dialogue, and for the supplementary information provided to it in writing.

**B. Positive aspects**

3. The Committee welcomes the various legislative, policy and institutional measures implemented by the State party during the reporting period, with a view to strengthening human rights protection under the Covenant, including but not limited to:

(a) The Act on Prevention of Human Trafficking and Protection of Victims, adopted in April 2021;

(b) The Act on Assignment to and Performance of Alternative Service, adopted on 27 December 2019;

(c) The Framework Act on Prevention of Violence Against Women, enacted on 24 December 2018.

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, in January 2023;

(b) The Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD), in December 2022;

(c) ILO Conventions: No. 29, No. 87, and No. 98, in April 2021, which all took effect domestically on 20 April 2022.

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\* Adopted by the Committee at its 139<sup>th</sup> session (9 October - 3 November 2023).

<sup>1</sup> [CCPR/C/KOR/5](#).

<sup>2</sup> See [CCPR/C/SR.4054](#) and [CCPR/C/SR.4055](#).

## C. Principal matters of concern and recommendations

### Views under the Optional Protocol (art. 2)

5. The Committee remains concerned that the State party has not yet set up a specific procedure for the implementation of the Views adopted under the Optional Protocol and that its Views in a number of cases have yet to be fully implemented, despite the amount of time that has elapsed since their adoption. The Committee welcomes the State party's indication that the Government is preparing to enact the Human Rights Policy Framework Act, which will contain a domestic implementation mechanism for recommendations of international human rights bodies, including the Committee's Views. The Committee is nonetheless concerned by the State party's statement that decisions of Korean courts cannot be invalidated by the Committee's Views,<sup>3</sup> and reports indicating that the judiciary is generally unfamiliar with the applicability, content and interpretation of international human rights treaties ratified by the State party.

6. **The State party should ensure the implementation of the recommendations contained in the concluding observations and Views adopted by the Committee, including through domestic courts, so as to guarantee the right of victims to an effective remedy. It should consider adopting legislation recognizing the right of authors of communications to whom the Committee has granted any measure of reparation to demand before the domestic courts the implementation of such measures. It should provide specific training on the Covenant to public officials, including judges, prosecutors and law enforcement officials. It should also consider establishing a national mechanism to monitor the implementation of the recommendations and Views of the Committee.**

### National human rights institution (art. 2)

7. While noting the State party's indication that a bill is currently before the National Assembly that would establish a candidate selection committee for Commissioners of the National Human Rights Commission of Korea (NHRCK), the Committee is concerned that legislation does not yet provide for a fully transparent and participatory procedure for their selection and appointment. The Committee is also concerned that the Commission lacks the necessary financial resources to implement its mandate in full.

8. **The State party should take the necessary measures to ensure a fully transparent and participatory procedure for the selection and appointment of Commissioners, including through the establishment of an independent committee for the nomination of candidates, and ensure the financial independence and autonomy of the NHRCK to enable it to implement its mandate in full.**

### Business and human rights

9. The Committee takes note of the publication of Guidelines on Business and Human Rights by the Ministry of Justice in 2021, which are non-binding. The Committee remains concerned by continued reports of alleged violations of the Covenant, including the right to life and the prohibition of forced labour, by business enterprises subject to the State party's jurisdiction, including business enterprises domiciled in the Republic of Korea operating abroad, and by the lack of effective mechanisms to address them. The Committee is concerned that victims of such violations continue to face difficulties in accessing effective remedies, as well as by the lack of information received on remedies provided to victims, particularly judicial remedies (art. 2, 6, 8).

10. **Bearing in mind the Committee's previous recommendation,<sup>4</sup> the State party should:**

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<sup>3</sup> CCPR/C/KOR/5, para. 5.

<sup>4</sup> CCPR/C/KOR/CO/4, para. 11.

(a) **Enhance the effectiveness of existing mechanisms to ensure that all business enterprises subject to its jurisdiction respect human rights standards, including when operating abroad;**

(b) **Consider adopting binding legislation to require human rights due diligence by business enterprises, including a system for disclosure of related information;**

(c) **Consider establishing an independent mechanism with the power to investigate human rights abuses committed both domestically and abroad by business enterprises subject to its jurisdiction;**

(d) **Take additional steps to ensure access to judicial and non-judicial remedies for victims of human rights violations caused by the activities of business enterprises subject to its jurisdiction, including those operating abroad.**

#### **Non-discrimination, hate speech and hate crime**

11. The Committee remains concerned by the absence of comprehensive anti-discrimination legislation in the State party covering discrimination and hate speech on the basis of grounds including but not limited to race, ethnicity, age, nationality, religion, migration status, disability, sexual orientation and gender identity. The Committee is also concerned by continued reports of discrimination and hate speech targeting specific groups, including North Korean escapees, muslim migrants and refugees, and the reported rise in hate speech towards migrants, asylum-seekers and refugees during the COVID-19 pandemic, including by politicians and public figures, both offline and online (arts. 2, 19, 20 and 26).

#### **12. The State party should:**

(a) **Adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting direct, indirect and intersectional discrimination on grounds including race, ethnicity, age, nationality, religion, migration status, disability, sexual orientation and gender identity, as well as ensuring access to effective and appropriate remedies for victims of discrimination;**

(b) **Strengthen its awareness-raising efforts aimed at promoting respect for human rights and tolerance for diversity, and eradicating stereotypical prejudices based on race, ethnicity, religion or sexual orientation and gender identity, or any other grounds protected under international human rights law;**

(c) **Encourage the reporting of hate crimes and ensure that such crimes are effectively and thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and victims are provided with effective remedies;**

(d) **Provide adequate training to central and local authorities, law enforcement officials, judges and prosecutors on addressing hate speech and hate crimes, and to media workers on promoting acceptance of diversity.**

#### **Sexual orientation and gender identity**

13. The Committee is concerned about the lack of laws and policies which specifically prohibit discrimination based on sexual orientation and gender identity, despite the ongoing and widespread discrimination, hate speech and violence faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons within the State party. The Committee is also concerned by the continued criminalisation of same-sex sexual conduct in the military, under article 92-6 of the Military Criminal Act, notwithstanding the Supreme Court's decision in April 2022 overturning the conviction of two soldiers for engaging in consensual sexual activity outside of military facilities. The Committee expresses additional concern in regard to the lack of legal recognition for same sex couples, and resulting economic and social discrimination against same sex couples and their children in areas such as health insurance. Furthermore, the Committee is concerned by the absence of a law governing recognition of gender reassignment and the continued application of the Supreme Court's "Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People", which include

requirements such as a diagnosis of “transsexualism”, sterilisation and gender reassignment surgery (arts. 2, 7, 17 and 26).

**14. The State party should:**

**(a) Adopt laws and policies which specifically prohibit and proactively address discrimination based on sexual orientation and gender identity;**

**(b) Repeal Article 92-6 of the Military Criminal Act, which criminalizes consensual same-sex sexual conduct among military personnel;**

**(c) Adopt or amend legislation to ensure that same-sex couples and their children are not subject to discrimination in the economic and social sphere, including by amending the Civil Code or introducing civil union.**

**(d) Facilitate access to legal recognition of gender reassignment, including by removing requirements such as a diagnosis of “transsexualism,” sterilization and genital reconstructive surgery, and conditions linked to marital status;**

**(e) Develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities;**

**(f) Develop and implement public campaigns and provide training for public officials to promote awareness and respect for diversity in sexual orientation and gender identity.**

**Gender equality and discrimination against women**

15. While noting the various measures taken to promote gender equality including the adoption of targets for increased representation of women in the public sector, the Committee is concerned that women’s representation remains low in the public and private sectors, including at senior decision-making levels, as well as in political life. The Committee is also concerned by the low-level targets set in the public sector, as well as by the gender pay gap in the private sector, which is exacerbated by structural factors including career interruption due to childbirth. The Committee is further concerned about the potential negative impact of the abolition of the Ministry of Gender Equality and Family (MOGEF) on the State Party’s capacity to address structural gender discrimination and promote gender equality (arts. 2, 3, 25 and 26).

**16. The State party should:**

**(a) Adopt more ambitious targets for female representation in public sector employment and step up its efforts to increase the representation of women in decision-making positions in the public and private sector;**

**(b) Strictly enforce the Equal Employment Opportunity and Work-Family Balance Assistance Act to implement the principle of equal pay for work of equal value and consider expanding the scope of mandatory disclosure of gender-disaggregated wage structure to include small businesses;**

**(c) Take measures to address the structural factors contributing to the gender pay gap, including career interruption due to childbirth;**

**(d) Take measures to improve the representation of women in positions of elected office including through robust enforcement of existing quotas for female candidates in the Public Official Election Act and the Political Parties Act, and consider increasing quotas to achieve gender balance;**

**(e) Ensure that plans to abolish the Ministry of Gender Equality and Family are subject to a human rights impact assessment, and do not result in reduced capacities or roll-back of progress towards addressing discrimination against women and girls, including structural gender discrimination.**

### **Violence against women, including domestic violence**

17. The Committee acknowledges the broad range of measures implemented by the State party to address violence against women, including domestic violence and online sex offences. The Committee nonetheless remains concerned by the continued prevalence of gender-based violence against women, including online. The Committee is concerned by the low reporting of gender-based violence by victims, the low rates of prosecution and conviction for perpetrators and reportedly lenient sanctions. The Committee remains concerned that the legal definition of rape is based on ‘violence or intimidation’ and not the absence of consent, and that marital rape is not explicitly criminalised as a specific punishable offence (arts. 2, 3, 6, 7 and 26).

18. **Echoing the recommendations of the Committee on the Elimination of Discrimination against Women<sup>5</sup>, the Committee calls on the State party to:**

**(a) Ensure that all cases of violence against women, including domestic violence, are reported and thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated;**

**(b) Provide victims with access to effective remedies and means of protection and legal, medical, financial and psychological assistance, notably access to accommodation or shelters and other support services;**

**(c) Explicitly criminalize marital rape under all circumstances and define all forms of rape in terms of absence of consent rather than intimidation or violence;**

**(d) Take measures to prevent retaliation against or the revictimization of women seeking recourse in the justice system;**

**(e) Ensure effective implementation of measures to prevent and address online sex offences, including by ensuring swift takedowns of criminal content, including upon the request of victims, and by imposing appropriate and effective sanctions on online platforms and distributors that fail to delete or block criminal content from their platforms.**

### **Voluntary termination of pregnancy and sexual and reproductive rights**

19. The Committee is concerned at the delay in taking appropriate legislative and other measures further to the Constitutional Court’s decision in April 2019 which decriminalized abortion, in order to ensure effective access to safe voluntary termination of pregnancy. In this regard, the Committee regrets the delay in reviewing the safety and efficacy of abortion pills (arts. 6, 7, 8).

20. **Bearing in mind paragraph 8 of the Committee’s general comment No. 36 (2018), the State party should take all necessary steps without delay to ensure effective access to safe and voluntary termination of pregnancy, including through the enactment of appropriate legislation which protects access to safe and legal abortion. It should introduce access to medical abortion pills in the country, and ensure health insurance coverage of abortion, access to contraception, abortion care and other reproductive health services.**

### **Counter-terrorism measures**

21. The Committee is concerned that the legal framework governing counter-terrorism efforts does not provide adequate safeguards for ensuring full respect of rights guaranteed under the Covenant, in particular with regard to judicial authorisation of surveillance of the communications of terrorism suspects. The Committee notes in particular the broad discretionary powers granted to the Director of the National Intelligence Service under Articles 9(3) and 9(4) of the Act On Counterterrorism For The Protection of Citizens and Public Security, to conduct counterterrorism investigations and surveillance with only an ex-post reporting requirement to the National Counterterrorism Committee. The Committee

<sup>5</sup> CEDAW/C/KOR/CO/8, paras. 22-23.

regrets the lack of information provided with regard to the safeguards in place to ensure the independence and effectiveness of the role of Counter-Terrorism Human Rights Protection Officer, established under Article 7 of the Act (arts. 14, 15 and 17).

**22. The State party should take steps to ensure that counter-terrorism legislation includes adequate safeguards and is not used to limit unjustifiably any rights enshrined in the Covenant. It should guarantee independent and effective oversight of law enforcement and security forces in the context of counter-terrorism investigations and surveillance, including timely judicial supervision and review.**

#### **Death penalty**

23. While acknowledging the de facto moratorium on the application of the death penalty observed by the State party since 1997, the Committee observes with grave concern that courts continue to impose the death penalty and that a significant number of persons remain sentenced to death. The Committee regrets the apparent lack of measures undertaken with a view to abolishing the death penalty, including awareness-raising measures in favour of abolition (art. 6).

**24. In light of and bearing in mind the Committee's general comment No. 36 (2018) on the right to life, the State party should:**

**(a) Abolish de jure the death penalty and commute all death sentences to terms of imprisonment;**

**(b) Consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;**

**(c) Implement appropriate awareness-raising measures to increase public support for the abolition of the death penalty;**

**(d) Provide adequate legal and financial assistance to enable individuals sentenced to death to re-examine convictions on the basis of newly discovered evidence, including new DNA evidence.**

#### **Prevention of suicide**

25. The Committee acknowledges the various measures taken by the State party to prevent suicides, but remains concerned that suicide rates remain high, including among the elderly, youth and within the military. The Committee is concerned by reports indicating that the State party's approach suffers from a lack of resources, particularly at the local level in regard to suicide prevention centres. The Committee welcomes the specific measures taken to address suicide in the military, including increased access to anonymous externally provided counselling services, but is concerned at reports indicating that large numbers of military personnel suffer from mental illness linked to the high levels of pressure they are subjected to in the course of service (arts. 2 and 6).

**26. With reference to the Committee's general comment No. 36 (2018) on the right to life, the State party should implement measures to address the social root causes of suicide, including the very high levels of pressure in educational, working and military environments, and with regard to individuals in particularly vulnerable situations. It should also increase financial resources allocated to suicide prevention and allocate appropriate budgets to local governments with a view to strengthening the network of dedicated suicide prevention centres at the local level and providing psychological support at the local level.**

#### **Right to life – Itaewon disaster**

27. The Committee is concerned that the State party allegedly failed to ensure that adequate measures were in place to prevent and respond to the crowd crush disaster that occurred on 29 October 2022 in Itaewon, Seoul, which resulted in the death of 159 people and left hundreds injured. The Committee expresses disappointment that a full-scale, independent investigation of the causes of the incident does not appear to have been carried out to determine the truth and that effective remedies have not been provided to victims.

Furthermore, the Committee is disturbed by reports that authorities have obstructed efforts to memorialize victims of the disaster, including by using excessive force at memorial rallies and investigating human rights activists who participate in such rallies (arts. 2 and 6).

**28. Bearing in mind the Committee's general comment No. 36 (2018), the State Party should: establish an independent and impartial body to investigate the disaster and determine the truth; ensure that those responsible are brought to justice, including those in senior positions, and if convicted, punished with appropriate sanctions; provide adequate reparation and memorialization for victims and bereaved families; and guarantee non-recurrence.**

#### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

29. Recalling its previous concluding observations and the concluding observations of the Committee Against Torture<sup>6</sup>, the Committee remains concerned that the State party's legislation does not ensure that all acts covered by the internationally accepted definition of torture are fully criminalized, especially mental torture, and that the penalties which can currently be applied are not commensurate with the gravity of the crime. The Committee regrets the lack of information provided on measures to ensure the independence of the Human Rights Violation Reporting Center of the Human Rights Bureau of the Ministry of Justice, with regard to its role in investigating complaints of torture. The Committee is also concerned that although the National Human Rights Commission of Korea is an independent investigative body for human rights and does review complaints of torture, it does not have the necessary mandate and resources to perform this function effectively and comprehensively (arts. 7, 9, 10, 14 and 17).

**30. The State party should:**

**(a) Review its legislative framework to ensure that the definition of torture contained in the Criminal Act is in full compliance with article 7 of the Covenant and other international norms prohibiting torture, and that penalties are commensurate with the seriousness of the crime;**

**(b) Ensure that all suspected cases of torture or ill-treatment are thoroughly investigated, that the alleged perpetrators are prosecuted and, if found guilty, sentenced to appropriate penalties and that the victims receive full reparations including medical and psychological;**

**(c) Ensure that there is no statute of limitations for acts of torture, in line with international standards;**

**(d) Establish an independent mechanism to investigate all allegations of torture and ill-treatment, including torture and ill-treatment caused by private entities;**

**(e) Establish an effective national mechanism for the prevention of torture mandated to inspect all places of deprivation of liberty;**

**(f) Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

#### **Human rights abuses in the military**

31. The Committee welcomes the various measures taken by the State party to prevent and address human rights violations in the military, including the creation of an independent military human rights protector at the National Human Rights Commission and the amendment of the Military Courts Act to reduce the scope of military jurisdiction. However, the Committee remains concerned at the continued occurrence of human rights violations in the military, including ill treatment, harassment and sexual violence (arts 6 and 7).

**32. The State party should strengthen the system and procedures for conducting transparent and fair investigations of human rights violations within the military, ensure that perpetrators are prosecuted and, if convicted, punished with appropriate**

<sup>6</sup> CAT/C/KOR/CO/3-5, para. 7

sanctions, and that victims receive full reparations, including adequate compensation and legal, medical, financial and psychological assistance. It should also enhance efforts to reinforce the human rights protection system in the military and work to foster a culture that respects human rights in the military.

#### **Elimination of human trafficking, slavery and servitude**

33. The Committee acknowledges the range of measures taken by the State party to prevent trafficking in persons, protect and support victims, and strengthen prosecution of perpetrators, including the adoption of the Act on Prevention of Human Trafficking and Protection of Victims in 2021 and the Comprehensive Plan for Prevention of Human Trafficking (2023-2027) in March 2023. The Committee is nonetheless concerned that trafficking in persons for the purposes of labor and sexual exploitation remains prevalent in the State party, that identification of victims remains deficient, and that migrant workers are particularly exposed to labor exploitation and forced labor due to practices such as the confiscating of identification documents by employers. The Committee is also concerned that the definitions of trafficking and related provisions on punishment in its legislation do not fully comply with the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), which may result in gaps in punishing some human trafficking cases and protecting the victims in such cases (arts. 3, 7, 8 and 14 ).

#### **34. The State party should:**

(a) **Ensure the alignment of the Criminal Act and the Act on Prevention of Human Trafficking and Protection of Victims with international standards on trafficking in persons, including by supplementing, as appropriate, the punishment provisions and amending the definition of trafficking to ensure its comprehensiveness;**

(b) **Ensure that all cases of human trafficking are investigated thoroughly and that perpetrators, if convicted, receive adequate and deterrent punishment;**

(c) **Strengthen relevant systems to ensure the effective implementation of measures to identify, protect and support victims of human trafficking, including victims of labor exploitation;**

(d) **Strengthen punishment and penalties for employers who confiscate passports and identification documents of migrant workers.**

#### **Right to counsel**

35. The Committee remains concerned that the right to counsel may be limited under a range of vaguely defined circumstances, including those contained in the Criminal Procedure Act and the Operating Guidelines on Participation of Counsel in Interrogation and Investigation, leaving broad discretion to the prosecutor or judicial police officer to exclude counsel (arts. 9 and 14).

36. **With reference to the Committee's general comment No. 35 (2014) on liberty and security of person, and in line with article 9 of the Covenant, the State party should revise the Criminal Procedure Act and related regulations to ensure that the right of detainees to be assisted by counsel during interrogation is not restricted under any circumstances.**

#### **Non-refoulement and treatment of North Korean escapees**

37. The Committee takes note of the State Party's assurance that North Korean escapees who are denied protection under the North Korean Defectors Protection and Settlement Support Act are able to lodge an appeal against their forcible return under the Immigration Act, with suspensive effect. However, the Committee is troubled by reports that North Koreans who have been denied protection status, as in November 2019, have been returned to North Korea despite the risk of being subjected to serious human rights violations, in contravention of the principle of non-refoulement. The Committee also expresses its concern about the detention of escapees upon arrival, and exceptions provided for in the Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act which allow



for detention beyond the maximum of 90 days, and that the right to independent legal counsel is not guaranteed (arts. 9, 10, 13 and 14).

**38. The State party should:**

(a) **Guarantee the principle of non-refoulement by ensuring that no individuals seeking or in need of international protection, including North Korean escapees, are expelled or returned to a country where there is a risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant;**

(b) **Codify in law the procedures and safeguards concerning North Korean escapees, including with regard to interrogation and detention, the right to legal counsel, the duration and judicial review of administrative detention and the right to appeal any decision to a judicial body — including decisions on deportation or rejection of protection —and ensure that escapees have effective access to such safeguards in practice;**

(c) **Ensure that escapees are detained for the shortest possible period.**

**Involuntary hospitalization in psychiatric institutions**

39. While welcoming certain reforms implemented during the reporting period, the Committee is concerned that persons admitted to psychiatric institutions voluntarily can be denied discharge on the basis of a psychiatrist's diagnosis if they applied for discharge without the consent of their legal guardian, and that their status can be changed to "hospitalization by legal guardians." The Committee is also concerned by the low percentage of patients discharged from medical facilities as a result of an admission review, which may reflect a predominance of medical professionals in review committee structures lacking the necessary impartiality and independence, and reliance on written materials without face-to-face interviews with patients (arts. 7 and 9).

**40. The State party should ensure that any deprivation of liberty is applied only as a measure of last resort and for the shortest appropriate period of time and must be accompanied by adequate procedural and substantive safeguards established by law, including judicial review. It should end the system based on legal guardianship and introduce supported decision-making to ensure respect for the views of the individual concerned. The State party should also consider reforming the current committee structures and procedures for review of involuntary hospitalization to ensure the necessary independence and impartiality and guarantee that deprivation of liberty is only extended in cases of necessity.**

**Conditions of detention**

41. While acknowledging certain measures undertaken, the Committee is concerned that conditions of detention are still not fully compliant with the provisions of article 10 of the Covenant as well as the UN Standard Minimum Rules for the Treatment of Prisoners ('Mandela rules'). While noting that the overall occupancy rate in detention facilities has decreased to 108% of capacity in 2023, overcrowding remains a problem, in particular insufficient space per prisoner in shared rooms and wards. The Committee is also concerned about excessive recourse to solitary confinement as a punishment, including solitary confinement of prolonged duration. The Committee expresses additional concern with regard to insufficient access to medical care, including for mental illness, and the supervision of women by male staff in investigation detention rooms (art. 10)

**42. The State party should ensure that conditions of detention are in compliance with relevant international human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners ('Mandela rules') and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). It should, in particular:**

(a) **Continue efforts to prevent and reduce overcrowding, including through increased recourse to non-custodial measures and the construction of new and remodelled detention facilities, and ensure minimum living space per inmate is in line with international standards;**

**(b) Take steps to reduce recourse to solitary confinement as a punishment, bring the statutory maximum duration of solitary confinement in line with the ‘Mandela rules’, and prohibit consecutive periods of solitary confinement;**

**(c) Increase the number of qualified medical staff and relevant budgets in correctional institutions and enhance the detention environment to ensure inmates’ right to health;**

**(d) Ensure that women are not supervised by male staff in investigation detention rooms.**

#### **Immigration detention conditions**

43. The Committee is concerned about reportedly inadequate conditions of detention in immigration detention centres and at ports of entry, including in government-operated “waiting rooms” at airports which constitute de facto immigration detention facilities, and about the lack of regular independent monitoring of these centres and ports of entry. It is also concerned about detention of children in immigration in these locations (arts. 7, 10 and 24).

**44. The State party should:**

**(a) Ensure that living conditions in immigration detention centres and ports of entry serving as de facto places of detention are in conformity with international standards and are subject to regular independent monitoring;**

**(b) Ensure that children are not deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests in accordance with the Committee’s general comment No. 35 (2014) on liberty and security of person.**

#### **Migrants, Refugees and Asylum Seekers**

45. The Committee is concerned by reports of systematic recourse to administrative detention of irregular migrants and frequent detention of asylum seekers with irregular migration status. It notes that such detention is often of a prolonged nature and that legislation does not provide for a legal limit to the duration of such detention or for the automatic judicial review of immigration detention. The Committee is also concerned about the numerous cases of denial of access to refugee status determination procedures at ports of entry when asylum seekers are not considered to meet the minimum criteria to be referred (“non-referral” decisions), despite legal provisions that limit non-referral to narrowly defined exceptions, and is concerned that this practice appears not to be in conformity with international standards on non-refoulement. The Committee also expresses its concern about access to work permits, healthcare and basic needs assistance for asylum seekers and holders of humanitarian protection status, and the exclusion of humanitarian protection status holders from legal provisions granting rights to family reunification (arts. 2, 7, 9, 13, 14).

**46. The State party should:**

**(a) Ensure that immigration detention is used as a measure of last resort, for the shortest appropriate period;**

**(b) Further to the Constitutional Court decision of 23 March 2023, amend the Immigration Act without delay to provide safeguards against arbitrary immigration detention, including of asylum-seekers, inter alia by introducing a strict upper limit on length of detention and ensuring periodic judicial review of detention orders, in line with international standards;**

**(c) Fully respect the principle of non-refoulement by ensuring that the right of asylum seekers to lodge asylum applications at ports of entry is effectively guaranteed in practice;**

**(d) Grant the right to family reunification for humanitarian protection status holders;**

(e) **Amend national legislation and policies to ensure effective access to work permits, essential health care and basic needs assistance for asylum-seekers and holders of humanitarian protection status;**

(f) **Guarantee adequate training of border guard officials and immigration personnel to ensure full respect of the rights of asylum seekers under the Covenant and other applicable international standards.**

#### **Judicial independence and impartiality**

47. While acknowledging various measures to combat corruption in the judiciary and of public officials more broadly, the Committee is concerned that corruption investigations may be impeded by the apparent concentration of judicial power in the office of the Chief Justice of the Supreme Court and judges appointed to the National Court Administration. The Committee notes with concern the lack of adequate sanctions of 14 former and incumbent judges, including the former Chief Justice, who were indicted for abuses of judicial administrative power between 2011 and 2017, with only two judges having been sanctioned, and only with disciplinary measures, while eight judges are currently on trial (arts. 2 and 14).

48. **The State party should take all measures necessary to safeguard the full independence and impartiality of the judiciary and the public prosecution service and guarantee that they are free to operate without any undue pressure or interference. It should also ensure that the procedures for the selection, appointment, suspension, transfer, removal and disciplining of judges and prosecutors comply with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary and the Guidelines on the Role of Prosecutors. In addition it should ensure that any abuses of judicial power are effectively investigated, prosecuted and sanctioned with commensurate penalties.**

#### **Monitoring, surveillance and interception of private communication**

49. The Committee is concerned about the lack of sufficient safeguards against arbitrary interference with the right to privacy in the State party's legislation, owing, inter alia, to the wide powers granted to security and law enforcement agencies to monitor Internet traffic, to access all subscriber information, and to intercept communications and retrieve data without a court order. The Committee takes note of the amendment to the Protection of Communications Secrets Act in December 2022, to require that investigative agencies apply for permission to the court in the context of emergency surveillance and interception activities, but observes that this requirement applies only ex post (arts. 17, 19 and 21).

50. **The State party should:**

(a) **Ensure that all types of surveillance activities and interference with privacy — including online surveillance, interception of communications and communications data (metadata) and retrieval of data — are governed by appropriate legislation that is in full conformity with the Covenant, in particular with the principles of legality, proportionality and necessity in article 17, and that State practice conforms thereto;**

(b) **Ensure that surveillance and interception are subject to judicial authorization ex ante and to effective and independent oversight mechanisms;**

(c) **Ensure that affected persons are notified of the surveillance and interception activities to which they have been subjected, where possible, and have access to effective remedies in cases of abuse.**

#### **Conscientious objection**

51. The Committee welcomes the introduction of an alternative service system through the adoption of the Act on Assignment to and Performance of Alternative Service on 27 December 2019, which came into effect in January 2020. However, the Committee is concerned that the current alternative service system sets the service period at 36 months seems discriminatory and punitive compared to active-duty service (18-21 months) and that alternative service is limited to service in correctional facilities. The Committee takes note

of persons who have refused alternative service, whose claims are now pending before the Constitutional Court, and that serving members of armed forces are not permitted to express objections of conscience. While welcoming that, further to the Constitutional Court's decision of 28 June 2018, conscientious objectors have been released from prison and had their criminal records expunged, the Committee is concerned at the reported lack of compensation provided to them, contrary to its previous recommendations<sup>7</sup> and Views<sup>8</sup> (arts. 17 and 18).

**52. The State party should eliminate the discriminatory treatment of conscientious objectors compared to those enrolled in military service by reducing the excessively long duration of alternative service and expand alternative service to locations other than correctional facilities. It should also consider amending its legislation to recognize the right to conscientious objection of active members of the armed forces and, in line with the Committee's previous recommendations and Views, to provide compensation to conscientious objectors who, further to the Constitutional Court's decision of 28 June 2018, have been released from prison and had their criminal records expunged.**

### **Freedom of expression**

53. With reference to its previous recommendations,<sup>9</sup> the Committee is concerned that no steps appear to have been taken to decriminalise defamation and that imprisonment of up to seven years can be applied under criminal law provisions. It is particularly troubled that journalists who express views critical of government or business interests have been criminally prosecuted, and notes that senior public officials and elected holders of public office continue to file criminal complaints against journalists who criticise them. With reference to its previous recommendations,<sup>10</sup> the Committee remains concerned that prosecutions continue to be brought under the National Security Act, and in particular under the excessively vague wording of article 7 of the Act. The Committee continues to be concerned by the chilling effect of criminal defamation laws and the National Security Act on freedom of expression in the Republic of Korea (arts. 9, 15 and 19).

**54. The State party should consider decriminalizing defamation and should in all cases restrict the application of criminal law to the most serious defamation cases, bearing in mind that imprisonment is never an appropriate penalty for defamation, as set out in the Committee's general comment No. 34 (2011). It should ensure that criminal laws are not used to silence journalists or dissenting voices and promote a culture of tolerance of criticism, which is essential for a functioning democracy. The State party should also abrogate article 7 of the National Security Act, or at least define more precisely the prohibited conducts within its scope, thereby fulfilling the requirements of legal certainty imposed under article 15 of the Covenant.**

### **Right of peaceful assembly**

55. The Committee is concerned that the banning of a significant number of rallies to ensure smooth flow of traffic, particularly in the vicinity of the President's office, based on Articles 11 and 12 of the Assembly and Demonstration Act, is not in conformity with the principles of proportionality and necessity. The Committee is also concerned at reports of heavy-handed policing of protests by disability rights activists in the Seoul subway, including use of excessive force to block and remove protestors, and application of criminal law to arrest, investigate and fine protest organisers and participants. The Committee is concerned about the proportionality, necessity, and chilling effect, of such measures, which appear to reflect authorities' low tolerance for disruption (arts. 6, 7, 9 and 21).

**56. With reference to the Committee general comment No. 37 on the Right of peaceful assembly (2020), the State party should foster an enabling environment for the**

<sup>7</sup> CCPR/C/KOR/CO/4, para.45.

<sup>8</sup> Jong-nam Kim et al. v. Republic of Korea (CCPR/C/106/D/1786/2008); Young-kwan Kim et al. v. Republic of Korea (CCPR/C/112/D/2179/2012); Jong-bum Bae et al. v. Republic of Korea (CCPR/C/128/D/2846/2016).

<sup>9</sup> CCPR/C/KOR/CO/4, para. 47

<sup>10</sup> CCPR/C/KOR/CO/4, para. 49

**exercise of the right to peaceful assembly and ensure that limitations on that right are in strict compliance with article 21 of the Covenant and the principles of proportionality and necessity. With this in mind, the State party should consider repealing or amending Articles 11 and 12 of the Assembly and Demonstration Act. The State party should ensure that all law enforcement officers systematically receive training on the use of force, especially in the context of demonstrations.**

### **Freedom of association**

57. The Committee welcomes amendments to laws, including the Trade Union and Labor Relations Adjustment Act in 2021, which have removed certain restrictions on the right to form and join trade unions, including by allowing union membership for dismissed workers. However, the Committee is concerned that not all public officials, teachers and workers in non-standard forms of employment such as “dependent contractors” and “platform workers” are able to exercise this right, and that a number of restrictions on collective bargaining and collective action by teachers and public officials continue to apply. In this regard, the Committee regrets that the State party maintains its reservation in relation to article 22 of the Covenant. The Committee is also concerned at a reported significant crackdown on trade union activities since 2022, including alleged judicial harassment and stigmatisation of the Korean Construction Workers Union, which has reportedly been subjected to multiple forced seizures and heavy administrative fines, and whose members have reportedly been subjected to investigation, detention and in some cases to imprisonment (art. 22).

**58. The State party should ensure that individuals fully enjoy their rights to freedom of association and that any restrictions on the exercise of such rights comply with the strict requirements of article 22, paragraph 2 of the Covenant. In particular, it should:**

**(a) Amend the Trade Union and Labor Relations Adjustment Act and other related laws in order to ensure that all workers – including public officials, teachers and workers in non-standard forms of employment – can fully exercise the right to form and join a trade union, the right to collective bargaining and the right to strike, and that limitations on that right are in strict compliance with Article 22 of the Covenant;**

**(b) Ensure that trade unions are not subjected to stigmatisation, interference and judicial harassment, and instead foster an enabling environment for the exercise of the right to freedom of association;**

**(c) Consider withdrawing its reservation to Article 22 of the Covenant.**

### **Right to participate in public life**

59. The Committee is concerned that the State party forbids the political expression of public officials and teachers in their private capacity as citizens, through laws such as the State Public Officials Act, the Local Public Officials Act and the Public Official Election Act, on the vaguely defined justification that it could undermine their political neutrality (arts. 15, 19, 22 and 25).

**60. The State party should amend the State Public Officials Act, the Public Official Election Act and other laws to ensure that public officials and teachers, as citizens, are able to enjoy the right to participate in public life as guaranteed under Article 25 of the Covenant.**

### **Birth registration**

61. Recalling its previous Concluding observations,<sup>11</sup> the Committee regrets that foreigners are reportedly still required to apply to their embassies to register the births of their children, noting that refugees, asylum-seekers, humanitarian status holders, stateless persons and undocumented migrants are often unable or unwilling to avail themselves of assistance from their embassy; or are denied registration by the embassy, or face insurmountable administrative obstacles (art. 24).

<sup>11</sup> CCPR/C/KOR/CO/4, paras 56-57

62. The State party should expedite enactment of the bill on Birth Registration for Foreign Children currently before the National Assembly, adopt adequate safeguards to guarantee an application procedure that is easily accessible to all foreign children and their guardians, and ensure that the information obtained from birth registration is only used for the protection of foreign children.

#### **D. Dissemination and follow-up**

63. The State party should widely disseminate the Covenant, its two Optional Protocols, its fifth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the periodic report and the present concluding observations are translated into the official language of the State party.

64. In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, the State party is requested to provide, by 3 November 2026, information on the implementation of the recommendations made by the Committee in paragraphs 12 (Non-discrimination, hate speech and hate crime), 56 (Right of peaceful assembly) and 58 (Freedom of association) above.

65. In line with the Committee's predictable review cycle, the State party will receive in 2029 the Committee's list of issues prior to the submission of the report and will be expected to submit within one year its replies, which will constitute its sixth periodic report. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in 2031 in Geneva.

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