



**The Republic of Korea's Compliance with International Convention on the Elimination of All Forms of Racial Discrimination:
The Death Penalty**

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty,

and

Transitional Justice Working Group

**for the 115th Session of the Committee on the Elimination of Racial Discrimination
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Transitional Justice Working Group (TJWG) is a human rights documentation NGO established in Seoul in 2014 that aims to develop the best practices to address mass human rights violations and to realize victim-centered approach and justice in societies that are making a transition from or have yet to make a transition from armed conflict or dictatorship.

EXECUTIVE SUMMARY

1. In January 2025, the coauthors submitted a Suggested List of Themes Report to this Committee. The current report provides brief updates to that report in response to the Committee’s List of Themes.

I. Detention of undocumented migrants (List of Themes para. 12)

2. The Committee in its List of Themes requested information on “[m]easures taken to set up alternative and less restrictive measures to detention of undocumented migrants who cannot be immediately deported, to periodically review the lawfulness of the detention by an independent mechanism and to establish strict time limit for the detention.”¹
3. As discussed in greater detail in the coauthors’ report at the list of themes stage, South Korea has not codified the principle of non-refoulement or procedures to limit detention of North Korean escapees to the shortest possible time period.² The law includes exceptions that allow authorities to extend the 90-day “provisional protection” detention period.³ Nor has South Korea implemented other relevant recommendations from the Committee Against Torture concerning fundamental legal safeguards for escapees.⁴

II. Foreign nationals in conflict with the law (List of Themes para. 12)

4. The Committee also asked for “[s]tatistics on reported crimes by undocumented migrants who have been victims of human rights violations since the adoption of the Enforcement Rules on Immigration Act.”⁵
5. As discussed in greater detail in the coauthors’ report at the list of themes stage, there are two foreign nationals under sentence of death.⁶ One of them, Mr. Wang Liwei (왕리웨이 or 王立伟/王立偉), a Chinese national of Han Chinese ethnicity, was unlawfully staying in South Korea at the time of his crimes and arrest. There is little information available about their cases, particularly whether South Korea complied with its consular notification obligations under the Vienna Convention.⁷

¹ Committee on the Elimination of Racial Discrimination, *List of themes in relation to the twentieth to twenty-second periodic reports of Republic of Korea*, UN Doc. CERD/C/KOR/Q/20-22 (21 Feb. 2025), ¶ 12.

² The Advocates for Human Rights, the World Coalition Against the Death Penalty, and Transitional Justice Working Group, *The Republic of Korea’s Compliance with International Convention on the Elimination of All Forms of Racial Discrimination: Suggested List of Themes Relating to The Death Penalty*, Jan. 27, 2025, ¶¶ 30-31, <https://www.theadvocatesforhumanrights.org/Res/TAHR%20TJWG%20WCADP%20LoT%20CERD%20DP%20final.pdf> [hereinafter List of Themes Report].

³ List of Themes Report ¶¶ 28, 32.

⁴ List of Themes Report ¶¶ 32-33.

⁵ Committee on the Elimination of Racial Discrimination, *List of themes in relation to the twentieth to twenty-second periodic reports of Republic of Korea*, UN Doc. CERD/C/KOR/Q/20-22 (21 Feb. 2025), ¶ 12.

⁶ List of Themes Report ¶ 11.

⁷ List of Themes Report ¶ 12.

III. Asylum application processing (List of Themes para. 14)

6. The Committee requested an “[u]pdate on the measures taken to improve the refugee determination procedure and related training of public officials and to solve the extremely low rate of refugee recognition,” and also requested an “[u]pdate on the amendment of the Refugee Act that will guarantee interpretation services during the application and submission processes for refugee applicants.”⁸
7. The coauthors’ report at the list of themes stage provides relevant information about different standards for asylum seekers depending on their country of origin and potentially depending on ethnicity.⁹ The refugee determination procedure gives immigration officers full discretion whether to refer a refugee applicant at a port of entry to the formal refugee status determination process, and if they decide not to refer, authorities can deport the applicant without providing access to legal counsel or judicial review.¹⁰ Authorities at ports of entry can subject these applicants to prolonged administrative detention at make-shift facilities.¹¹
8. Moreover, the refugee recognition rate is extremely low overall.¹² The head of counterintelligence of the National Intelligence Service provides a risk assessment about the applicant’s country of origin, and in practice that assessment can be dispositive, regardless of the individual merits of an applicant’s claim.¹³

IV. Discrimination against refugees (List of Themes para. 15)

9. The Committee requested that South Korea provide “[r]esults of the measures taken to fully integrate recognized refugees into society and the budget allocated for this purpose.”¹⁴
10. As discussed in greater detail in the coauthors’ report at the list of themes stage, South Korean authorities allow the Chinese Government to conduct surveillance of ethnic Uyghurs, and authorities fail to protect Uyghurs from threats and harassment.¹⁵

V. Discrimination against refugees and escapees from North Korea (List of Themes para. 15)

11. The Committee requested that South Korea provide “[r]esults of the measures taken to fully integrate recognized refugees into society and the budget allocated for this purpose.”¹⁶

⁸ Committee on the Elimination of Racial Discrimination, *List of themes in relation to the twentieth to twenty-second periodic reports of Republic of Korea*, UN Doc. CERD/C/KOR/Q/20-22 (21 Feb. 2025), ¶ 14.

⁹ List of Themes Report ¶¶ 35-37.

¹⁰ List of Themes Report ¶¶ 39-40.

¹¹ List of Themes Report ¶ 39.

¹² List of Themes Report ¶ 38.

¹³ List of Themes Report ¶ 42.

¹⁴ Committee on the Elimination of Racial Discrimination, *List of themes in relation to the twentieth to twenty-second periodic reports of Republic of Korea*, UN Doc. CERD/C/KOR/Q/20-22 (21 Feb. 2025), ¶ 15.

¹⁵ List of Themes Report ¶ 43.

¹⁶ Committee on the Elimination of Racial Discrimination, *List of themes in relation to the twentieth to twenty-second periodic reports of Republic of Korea*, UN Doc. CERD/C/KOR/Q/20-22 (21 Feb. 2025), ¶ 15.

12. As discussed in greater detail in the coauthors' report at the list of themes stage, South Korean authorities in principle treats over 34,000 refugees and escapees from North Korea who have come to South Korea as South Korean citizens.
13. In practice, however, refugees and escapees from North Korea face discrimination in the enjoyment of their civil, political, economic, social and cultural rights because of their descent and national origin in North Korea, which begins with the denial of due process rights during their initial "provisional protection" under the de facto detention by the National Intelligence Service (NIS).

VI. Suggested recommendations for the Government of South Korea

14. The coauthors suggest the following recommendations for the Government of South Korea:
 - Amend the Refugee Act to ensure access to legal counsel, judicial review and referral to the formal screening process for port of entry refugee applicants and to extend the non-refoulement protection to them.
 - Annually disclose (1) the number of foreigners who have applied for the refugee status at ports of entry; (2) the number of those who have been referred to the refugee status screening; (3) the number of those who have been deported after the authorities decided against their referral to the refugee status screening; (4) the number of those who have been granted the humanitarian stay status after the authorities decided against their referral to the refugee status screening (disaggregated by nationality and port of entry).
 - Remove intelligence officials from the refugee status determination process, including the Refugee Committee.
 - Mandate other government offices, such as the Ministry of Foreign Affairs (MOFA), to collect and share information about the countries of origin and publish the country-specific assessment to provide objective guidelines and to strengthen transparency in the refugee determination process.
 - Provide adequate protection to Uyghurs and others at risk of transnational repression.
 - Disclose the annual number of (1) refugee applicants and those recognized as refugees disaggregated by nationality and (2) Uyghur, Tibetan and Falun Gong refugee applicants and those recognized as refugees.
 - Consider instituting an investigation or inquiry about Mr. Abuduwaili's reported disappearance in May 2023.
 - Guarantee the following for refugees and escapees from North Korea: (1) the right not to be subjected to refoulement, (2) the right to be brought promptly before a judge, (3) the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, (4) the right to legal counsel and (5) the procedural right to appeal the decisions on protection or forcible repatriation.