



**The Republic of Korea's Compliance with the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment**

**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**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established 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 publications. 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 hold a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty (WCADP)**, an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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. This report provides additional information on the human rights issues identified by the Committee Against Torture (“the Committee”) in its June 2020 List of Issues Prior to Report (“List of Issues”),<sup>1</sup> with a particular focus on issues that touch on the death penalty and related issues.
2. The existing penal provisions fail to fully cover all acts of torture under the Convention, and in its List of Issues, the Committee requested information from the Government of the Republic of Korea (“South Korea”) on its attempts to define torture as a distinct crime and to ensure that the penalties for torture are commensurate with the gravity of the crime.<sup>2</sup> The Committee also asked for information on whether the Government intended to accede to the Optional Protocol to the Convention Against Torture.<sup>3</sup>
3. There have been reports of torture in South Korea being employed by Government officials, in particular in the military.<sup>4</sup> The Government acknowledged human rights violations at a detention center for undocumented foreigners.<sup>5</sup> The Constitutional Court in a 5-4 decision upheld the constitutionality of the 36-month alternative civilian service for conscientious objectors introduced in 2020 (case no. 2021 Hun-Ma 117, etc.), but it is considered punitive and the condition may be considered as deliberate infliction of severe pain or suffering for the act of conscientious objection.
4. In 2018, the Constitutional Court held that a detained person’s right to legal counsel applies to the administrative procedure, in particular the detention and deportation of undocumented foreigners, but this has not been codified by legislation and the immigration detention centers lack the private space for private meetings with lawyers.<sup>6</sup> The Criminal Procedure Act stipulates that the prosecutor and police must allow the defense counsel to participate in the interrogation of a criminal suspect “unless there is good cause”, but there have been cases of the legal counsel being arbitrarily removed from the interrogation, as seen in the Supreme Court’s ruling in March 2020 (case no. 2015 Mo 2357). The curtailment of the prosecutor’s oversight of the police investigation in 2020 has raised concerns though the prosecutor can still investigate police misconduct under Article 197-3 of the Criminal Procedure Act.

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<sup>1</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6.

<sup>2</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶¶ 2-3.

<sup>3</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 9.

<sup>4</sup> U.S. Department of State, *2019 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2020 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2021 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2022 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2023 Country Reports on Human Rights Practices: South Korea*, Section 1.C.

<sup>5</sup> *Gov't acknowledges rights violation at detention center for undocumented immigrants*, THE KOREA TIMES (1 Nov. 2021), available at [https://www.koreatimes.co.kr/www/nation/2024/04/113\\_318026.html](https://www.koreatimes.co.kr/www/nation/2024/04/113_318026.html)

<sup>6</sup> Oh In-ae, “Violations of the right to legal counsel in the refugee and immigration-related administrative investigation frequent; must provide for explicit clauses [난민·출입국 행정조사에서 변호인 조력권 침해

‘빈발’... “명시적 조항 마련을]”, Korean Legal News (December 12, 2023), available at <https://news.koreanbar.or.kr/news/articleView.html?idxno=29552>

5. In October 2023, the Human Rights Committee in its concluding observations on South Korea's fifth periodic report recommended South Korea to guarantee the principle of non-refoulement for North Korean escapees, codify the procedures and safeguards concerning North Korean escapees and ensure that they are detained for the shortest possible time. In response, the National Intelligence Service (NIS) claimed among other things that the "protection" of North Korean escapees in its facilities are "voluntary" and therefore does not qualify as "detention" and that its investigation of the North Korean escapees is an administrative one, not a criminal one.<sup>7</sup> The NIS-appointed "human rights protection officers" failed to prevent or even report on the deportation of two North Korean escapees to North Korea on November 7, 2019 and, as of June 2024, the Government has yet to codify the principle of non-refoulement in the domestic law.
6. In November 2023, a South Korean appeals court denied Japan's jurisdictional immunity for its World War II-era military sexual slavery on the territorial tort ground and ordered compensation (case no. 2021 Na 2017165),<sup>8</sup> but Japan criticized the judgment as violating its sovereign immunity under international law while South Korea has not made its position on clear and has taken no action for its enforcement. The victims, their families and supporters in the Asia-Pacific have jointly called upon the South Korean Government to initiate inter-state proceedings against Japan pursuant to Articles 21 and 30 of the Convention against Torture.<sup>9</sup> The survivors have also asked the South Korean Government to create a permanent fact-finding body to continuously research and publicize newly discovered documents or evidence of Japan's wartime military sexual slavery and other atrocities to counter the history deniers.
7. South Korea's progress on abolishing the death penalty has been mixed. There is a case pending before the Constitutional Court, originally filed in 2019, challenging the constitutionality of the death penalty (case no. 2019 Hun-Ba 59), but as of June 2024, no ruling has been made. South Korea has also continued to deport individuals to States that actively implement the death penalty and to States where there are substantial grounds for believing that they would be in danger of being subjected to torture.
8. Article 92-6 of the Military Penal Code criminalizes consensual sex between adults for "anal intercourse ... or any other indecent act".<sup>10</sup> The Government has neglected to condemn conversion therapy. In May 2023, the National Human Rights Commission recommended that the Supreme Court delete references to gender-affirming surgery in its guideline for handling transgender persons' application for legal gender change and that the National Assembly enact a new law governing the requirement, procedure and methods for the gender revision. There is also a common practice of "correcting" the physical sex (surgically altering to more closely

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<sup>7</sup> National Intelligence Service (NIS) press release, "The UN Human Rights Committee's claim about the South Korean government's detention of North Korean escapees is not consistent with the facts", 2023. 11. 9., available at [https://www.nis.go.kr/CM/1\\_4/view.do?seq=257](https://www.nis.go.kr/CM/1_4/view.do?seq=257)

<sup>8</sup> [Judgement] 23 November 2023, The Appellate Judgement of a Case brought by Victims of Japanese Military 'Comfort Women' Against Japan (Korean, English), available at <https://womenandwar.net/resources-eng/?q=YToxOntzOjEyOiJrZXI3b3JkX3R5cGUiO3M6MzoiYWxsJt9&bmode=view&idx=18323576&t=board>

<sup>9</sup> Kim Tong-Hyung, "S. Korean slavery victim seeks UN justice as time runs out", AP, March 21, 2022, <https://apnews.com/article/japan-asia-seoul-united-nations-south-korea-f2df28d5ca1a09b112d5ff5da25f2b0c>.

<sup>10</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, MILITARY CRIMINAL ACT [Enforcement Date 01. July 2022.] [Act No.18465, 24. Sept, 2021., Amendment by Other Act], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=235555&viewCls=engLsInfoR>

conform to binary male and female anatomy) of intersex children before 12 months of age in order to register them under the Resident Registration Act.<sup>11</sup>

9. Under Article 6 of the Refugee Act, the Ministry of Justice (MOJ)/immigration offices have full discretion about whether to refer the refugee status applications submitted at the ports of entry to the formal refugee status determination process.<sup>12</sup> The immigration authorities have even used their discretion to deport the port of entry refugee applicants before the refugee lawyers could meet with them.<sup>13</sup> The Refugee Committee, the Ministry of Justice (MOJ)'s internal review body created under the Refugee Act to hear administrative appeals, includes an intelligence official whose risk assessment about the refugee applicant's country of origin plays a decisive role in practice. It is also a matter of concern that Chinese Government agents have been allowed to set up "secret police stations" in South Korea with impunity to surveil ethnic Uyghurs and practitioners of Falun Gong.<sup>14</sup>

## **South Korea fails to uphold its obligations under the Convention Against Torture**

### **I. Torture (List of Issues para. 2)**

10. The Committee in its List of Issues requested information on whether South Korea's Criminal Code has incorporated amendments aimed at "incorporating a definition of torture that makes it a distinct crime, includes all elements covered in Article 1 of the Convention, including the mental and psychological aspects of torture, and goes beyond only specific individuals in the investigation and trial processes"<sup>15</sup> and "ensuring that penalties for acts of torture prosecuted under domestic criminal law are commensurate with the gravity of the crime."<sup>16</sup> The Committee further requested information concerning any amendments to national legislation aimed at "ensuring that the prohibition of torture is absolute and non-derogable and that there is no statute of limitations for acts of torture, attempts to commit torture or acts constituting complicity or participation in torture."<sup>17</sup>
11. In response to the List of Issues, the Government of South Korea stated that since the Committee's Concluding Observations were issued, the Government has enacted no

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<sup>11</sup> Lee Yu-myeong, '남자야 여자야?' 애매한 신생아, 성별은? ('Is it a man or a woman?' Ambiguous newborn baby, what is its gender? MEDICAL TODAY, June 26, 2007, available at <https://www.mdtoday.co.kr/mdtoday/?no=26865&cate=0&sub=&key=&word=&page=9419>.

<sup>12</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, REFUGEE ACT [Enforcement Date 20. Dec, 2016.] [Act No.14408, 20. Dec, 2016., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=188376&viewCls=engLsInfoR>

<sup>13</sup> NANCEN Refugee Rights Center, "Cases of the violation of the right to meet attorneys for port of entry refugee applicants (2018) [출입국향 난민신청자에 대한 변호사접견권 침해사례(2018)]", 2019. 1. 18., available at <https://nancen.org/1854>

<sup>14</sup> Advocates for Public Interest Law (APIL) press release, "The Chinese government's religious persecution and harassment of overseas refugees (Uyghurs, the Church of Almighty God, Falun Gong, etc.) comes under criticism [중국정부의 종교박해, 해외에 있는 난민(위구르, 전능신교, 파룬궁 등)들에 대한 괴롭힘이 비판받다]" (June 21, 2019), available at <https://apil.or.kr/press-releases/12293>

<sup>15</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 2.

<sup>16</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 2.

<sup>17</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 3.

amendments to its criminal statute (“Criminal Act”) relating to “torture and acts of cruelty.”<sup>18</sup> The Government noted that torture may be prosecuted under existing provisions in its Criminal Act,<sup>19</sup> but further stated that in light of the Committee’s direction, it intends to “carefully review the necessity of newly inserting a provision” defining torture.<sup>20</sup> The Government also discussed the statute of limitations on its prohibitions against acts of torture, noting that while certain crimes of torture that are also “crime of genocide, crimes against humanity, war crimes” are not subject to its statute of limitations, “the non-applicability of the statute of limitations to crimes of torture...is not sufficient on its own to reach the conclusion that other crimes of torture in all forms shall not be subject to the statute of limitations.”<sup>21</sup>

12. The Criminal Code [형법] provides that “a person who performs or assists in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body, arrests or imprisons another by abusing his or her official authority [or attempts to commit such a crime] ... shall be punished by imprisonment with labor for not more than seven years and suspension of qualifications for not more than ten years” under Article 124 (Unlawful Arrest and Unlawful Confinement [불법체포, 불법감금]) while “a person who, in performing or assisting in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body, commits an act of violence or cruelty against a criminal suspect or against another person while performing his or her duties, shall be punished by imprisonment with labor for not more than five years and suspension of qualifications for not more than ten years” under Article 125 (Violence and Cruel Act [폭행, 가혹행위]).<sup>22</sup> In addition, Article 4-2 (Aggravated Punishment of Arrest and Confinement) of the Act on the Aggravated Punishment [특정범죄 가중처벌 등에 관한 법률] provides that “(1) Any person who commits a crime provided for in Article 124 or 125 of the Criminal Act, resulting in the injury of any person, shall be punished by imprisonment with labor for a limited term of not less than a year” and “(2) Any person who commits a crime provided for in Article 124 or 125 of the Criminal Act, resulting in the death of any person, shall be punished by imprisonment with labor for an indefinite term or by imprisonment with labor for not less than three years”.<sup>23</sup>

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<sup>18</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 2.

<sup>20</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 2.

<sup>20</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 2.

<sup>21</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 3.

<sup>22</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, CRIMINAL ACT, [Enforcement Date 08. Aug. 2023.] [Act No.19582, 08. Aug. 2023., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=253323&viewCls=engLsInfoR>

<sup>23</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, ACT ON THE AGGRAVATED PUNISHMENT OF SPECIFIC CRIMES, [Enforcement Date 27. Dec, 2022.] [Act No.19104, 27. Dec, 2022., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=246619&viewCls=engLsInfoR>

13. These provisions are not as widely applicable as Article 1(1) of the Convention which defines “torture” to include the act of inflicting severe mental pain or suffering and the act perpetrated by private citizens with the consent or acquiescence of a public official. Moreover, the punishment prescribed by these provisions cannot be considered “appropriate penalties which take into account their grave nature” for the purpose of Article 4(2) of the Convention as the default maximum penalty is five years in prison while even acts resulting in the injury or death have the minimum penalty of one or three years in prison respectively.<sup>24</sup> The failure to define and punish torture as a distinct crime and to ensure that the penalties for torture are commensurate with the gravity of the crime also appears to be incompatible with the stipulation of Article 12(2) of the Constitution that “No citizen shall be tortured or be compelled to testify against himself/herself in criminal cases”.<sup>25</sup>
14. As of June 2024, South Korea has not ratified or acceded to the Optional Protocol to the Convention Against Torture.<sup>26</sup> Although it received several recommendations to do so during its fourth-cycle Universal Periodic Review on 26 January 2023, the Government noted all such recommendations.<sup>27</sup>
15. There have been reports of torture being employed by Government officials, in particular numerous instances of violence and cruel treatment in the military reported by the Center for Military Human Rights Korea as well as suicides of military service members where bullying,

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<sup>24</sup> While the domestic implementation legislation of the Rome Statute (the Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court [국제형사재판소 관할 범죄의 처벌 등에 관한 법률]) provides for a sentence of five years to life in prison for crimes against humanity and war crimes of torture in articles 9(2)(5) and 10(2)(2), these provisions are applicable only if the acts in question are committed “by making an extensive or systematic attack directed against any civilian population in connection with the policies of the State, organizations or institutions to commit such attack” (crimes against humanity) or “in relation to international or non-international armed conflict” (war crimes). Ministry of Government Legislation (MOLEG) Korean Law Information Center, ACT ON PUNISHMENT, ETC. OF CRIMES UNDER JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT [Enforcement Date 12. Apr, 2011.] [Act No.10577, 12. Apr, 2011., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=112303&viewCls=engLsInfoR>

<sup>25</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, CONSTITUTION OF THE REPUBLIC OF KOREA [Enforcement Date 25. Feb, 1988.] [Constitution No.10, 29. Oct, 1987., Whole Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=61603&viewCls=engLsInfoR>

<sup>26</sup> United Nations Treaty Collection (UNTC), 12. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New York, 15 December 1989), available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en).

<sup>27</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea* (23 March 2023), U.N. Doc. A/HRC/53/11, ¶ 139.18 Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, as well as accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Luxembourg); ¶ 139.26 Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Denmark); ¶ 139.27 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Mongolia); ¶ 139.28 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Italy); ¶ 139.29 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Finland); ¶ 139.30 Intensify ongoing processes leading up to the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ghana).

hazing, and violence played a part, in the United States Department of State's annual Country Reports on Human Rights Practices.<sup>28</sup>

16. In November 2021, the Ministry of Justice (MOJ) acknowledged human rights violations of a Moroccan man at a detention center for undocumented foreigners who had his four limbs tied behind his back in what is known as a “shrimp’s posture” and had been put in solitary confinement.<sup>29</sup> One local human rights organization highlighted this incident as evidence that “nothing has been changed” with regard to the treatment of immigrants in South Korea since a 2007 incident where ten immigrants died in a fire after officers refused to open the detention center doors for fear the immigrants would escape.<sup>30</sup> On 9 May 2024, the Seoul Central District Court ordered the Government to pay a solatium of 10 million won (app. 7,200 USD) to the Moroccan detainee for the solitary confinement and “shrimp’s posture” (case no. 2022 Ga-Hap 5379759).
17. In February and March 2024, ten members of a nationalist vigilante group, the Citizen’s Protection Solidarity, have been charged for targeting undocumented foreigners, checking and “arresting” them without legal authority for minor traffic violations in Daegu.<sup>31</sup>
18. On 30 May 2024, the Constitutional Court in a 5-4 decision upheld the constitutionality of the 36-month alternative civilian service at correctional facilities adopted in 2020 for the conscientious objectors to the military service, mostly Jehovah’s Witnesses, but the dissenting minority held that the 36-month service period which is twice that of most enlisted men (18 months) is punitive and violates the freedom of conscience (case no. 2021 Hun-Ma 117, etc.). Given that the alternative civilian service requires staying at correctional facilities for 36 months, except when on leave, the condition may be considered as deliberate infliction of severe pain or suffering for the act of conscientious objection to the military service for the purpose of Article 1(1) of the Convention against Torture.

## **II. People in detention’s fundamental legal safeguards (List of Issues para. 4)**

19. The Committee in its List of Issues requested “updated information on any measures taken to ensure that all detained persons... are afforded in practice all fundamental legal safeguards in accordance with international standards from the outset of their deprivation of liberty.”<sup>32</sup> This included, first, the right “[t]o be informed, both orally and in writing and in a language that they understand, of the charges against them and their rights and how to exercise them.”<sup>33</sup> Additionally, the Committee inquired about the right “[t]o have confidential access to a

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<sup>28</sup> U.S. Department of State, *2019 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2020 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2021 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2022 Country Reports on Human Rights Practices: South Korea*, Section 1.C.; U.S. Department of State, *2023 Country Reports on Human Rights Practices: South Korea*, Section 1.C..

<sup>29</sup> *Gov’t acknowledges rights violation at detention center for undocumented immigrants*, THE KOREA TIMES (1 Nov. 2021), available at [https://www.koreatimes.co.kr/www/nation/2024/04/113\\_318026.html](https://www.koreatimes.co.kr/www/nation/2024/04/113_318026.html).

<sup>30</sup> Nancen Refugee Rights Center, *Joint statement on the 15th anniversary of Yeosu Detention Center fire tragedy* (16 March 2022), <https://nancen.org/2238>.

<sup>31</sup> Jung Min-ho, “10 face indictment for detaining undocumented foreigners without legal authority”, Korea Times (May 30, 2024), available at [https://www.koreatimes.co.kr/www/nation/2024/06/113\\_375661.html](https://www.koreatimes.co.kr/www/nation/2024/06/113_375661.html)

<sup>32</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

<sup>33</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

qualified and independent lawyer, including one of the detainee's choice or to free legal aid when needed, from the very outset of detention and during all stages of the proceedings against them, including when there are reasons of 'good cause' established by the prosecution or the police."<sup>34</sup> The Committee also raised the right "[t]o request and receive a medical examination by a qualified medical doctor within 24 hours of their arrival in a place of detention and to have access to an independent doctor upon their request; please also clarify whether doctors can bring medical reports of injuries suspected of being caused by torture directly to the attention of the public prosecutor on a confidential basis."<sup>35</sup> The Committee further asked about the right "[t]o notify a family member or any other third person of their choice of their detention immediately after their apprehension," as well as the right "[t]o be brought before a judge within 48 hours of apprehension and to have their detention."<sup>36</sup> Finally, it inquired about the right "[t]o challenge the legality of... detention with the assistance of a lawyer."<sup>37</sup>

20. In response to the List of Issues, the Government stated that non-citizens in detention receive notice of their rights either orally or in writing, including notice that they can request a written summary of the grounds for their detention.<sup>38</sup> Additionally, people in detention's right to "prompt assistance of counsel" is safeguarded in Article 12(4) of the South Korean Constitution.<sup>39</sup> Further, Article 84 of the South Korean Administration and Treatment of Correctional Institution Inmates Act ("CIA") states that correctional officials may not intervene in visits with counsel and that the time and frequency of such visits shall be unlimited.<sup>40</sup> The Government also reported on the South Korean Supreme Prosecutors' 2020 guidelines to increase participation of counsel in interrogations with some restrictions.<sup>41</sup> Moreover, it stressed that "[t]o prevent human rights violations during investigation procedures, the Government is preparing a criminal public attorney system to provide suspects whose attendance is required by an investigator with the assistance of a court-appointed defense counsel."<sup>42</sup>

21. Responding to the request for information about access to doctors, the Government stated that, under Article 16 of the CIA, medical examinations of newly detained individuals must be

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<sup>34</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

<sup>35</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

<sup>36</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

<sup>37</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 4.

<sup>38</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 5.

<sup>39</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 13.

<sup>40</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 13.

<sup>41</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 12.

<sup>42</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 13.



conducted within three days and people in detention may receive medical treatment by a doctor working for the correctional facility any time upon request.<sup>43</sup> The newly detained individuals may receive treatment by an external doctor in consideration of the opinion of the medical officer pursuant to Articles 37 and 38 of the CIA.<sup>44</sup> Additionally, a medical officer may choose to submit a medical report about a person in detention to the prosecutor if the requirements Article 218 of the South Korean Criminal Procedure Act are fulfilled and approval is obtained from the head of the facility under Article 21(3) of the South Korean Medical Service Act.<sup>45</sup>

22. As to the right to provide notice of detention to a family member, the Government reported that this right is guaranteed in the Constitution.<sup>46</sup> With regard to the right to be brought before a judge within 48 hours, the Government responded that anyone suspected of a crime must be immediately released unless a request for a warrant of detention is filed within that time frame, and judges receiving such requests are to “examine the suspect without delay.”<sup>47</sup> This process is also guaranteed in the Constitution and constitutes people in detention’s option to challenge the legality of their detention with the assistance of counsel.<sup>48</sup>
23. On 31 May 2018, the Constitutional Court overturned its previous ruling of 23 August 2012 (case no. 2008 Hun-Ma 430) and held that Articles 12(4) and (5) of the Constitution<sup>49</sup> guaranteeing an arrested or detained person’s right to legal counsel and right to be informed of the reason for arrest or detention applies to the administrative procedure, in particular the detention and deportation of undocumented foreigners under the Immigration Act, as well as the criminal procedure (case no. 2014 Hun-Ma 346). While Article 34 of the Immigration Detention Rules [외국인보호규칙], the Ministry of Justice (MOJ)’s delegated legislation under the Immigration Act, has provided for “special visits” by lawyers for the detained foreigners since the 1990s on paper, the right of the foreigners under administrative detention to legal counsel and its detailed procedure has not been codified by legislation and the

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<sup>43</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 15.

<sup>44</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 18.

<sup>45</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 19.

<sup>46</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 20.

<sup>47</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 22.

<sup>48</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 28.

<sup>49</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, CONSTITUTION OF THE REPUBLIC OF KOREA [Enforcement Date 25. Feb, 1988.] [Constitution No.10, 29. Oct, 1987., Whole Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=61603&viewCls=engLsInfoR>

immigration detention centers often lack the private space for the detainees to meet with their lawyers in confidence, notwithstanding the Constitutional Court's ruling in 2018.<sup>50</sup>

24. Article 243-2 (Defense Counsel's Participation) of the Criminal Procedure Act, which was newly added in 2007, stipulates that the prosecutor and police must allow the defense counsel to participate in the interrogation of a criminal suspect "unless there is good cause" and that the legal counsel "may raise an objection to any unfair interrogation manner even in the middle of the interrogation".<sup>51</sup> On 12 September 2008, the Supreme Court interpreted the "good cause" in Article 243-2(1) as "instances where it is objectively manifest that the legal counsel is obstructing the interrogation or leaking investigative secrets" (case no. 2008 Mo 793), but there have been cases of the legal counsel being arbitrarily removed from the interrogation for raising objections that resulted in courts finding such removals unlawful, for instance, in the Supreme Court's ruling of 17 March 2020 (case no. 2015 Mo 2357).<sup>52</sup>
25. In 2021, the revision of the Criminal Procedure Act removed the obligation of police officers to comply with the prosecutor's instructions in the criminal investigation under Article 196(3).<sup>53</sup> Under new Article 245-5 of the Criminal Procedure Act, the police officers can also end the criminal investigation where they determine that there is no criminal case. The curtailment of the prosecutor's oversight of the police investigation has raised concerns though the prosecutor can still investigate the breach of the law, human rights violations and manifest abuse of investigative authority in the police investigation under new Article 197-3.
26. With regard to people in detention's access to a doctor, Article 15 of the Enforcement Decree of the Administration and Treatment of Correctional Institution Inmates Act provides for a medical examination within three days, not within 24 hours of detention, and a visit by an independent external doctor for medical treatment requires a special permission by the warden.<sup>54</sup> Under Articles 19 and 21 of the Medical Service Act, doctors and other medical

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<sup>50</sup> Oh In-ae, "Violations of the right to legal counsel in the refugee and immigration-related administrative investigation frequent; must provide for explicit clauses [난민·출입국 행정조사에서 변호인 조력권 침해 '빈발'... "명시적 조항 마련을]", Korean Legal News (December 12, 2023), available at <https://news.koreanbar.or.kr/news/articleView.html?idxno=29552>

<sup>51</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, CRIMINAL PROCEDURE ACT [Enforcement Date 09. Dec, 2021.] [Act No.17572, 08. Dec, 2020., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=223447&viewCls=engLsInfoR>

<sup>52</sup> The case-law follows the Ministry of Justice (MOJ)'s Prosecutors' Case Administration Regulation, as revised on January 7, 2008 and thereafter, which provides that obstruction of the interrogation and the leaking of secrecy of investigative secrets constitute "good causes" to remove the legal counsel from interrogations for the purpose of article 243-2 of the Criminal Procedure Act.

<sup>53</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, CRIMINAL PROCEDURE ACT [Enforcement Date 09. Dec, 2021.] [Act No.17572, 08. Dec, 2020., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=223447&viewCls=engLsInfoR> ; CRIMINAL PROCEDURE ACT [Enforcement Date 19. Dec, 2017.] [Act No.15257, 19. Dec, 2017., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=199774&viewCls=engLsInfoR>

<sup>54</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, ENFORCEMENT DECREE OF THE ADMINISTRATION AND TREATMENT OF CORRECTIONAL INSTITUTION INMATES ACT [Enforcement Date 24. Oct, 2019.] [Presidential Decree No.30134, 22. Oct, 2019., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=210854&viewCls=engLsInfoR>

personnel are not permitted to disclose or obligated to share individuals' medical records with third parties based solely on their suspicion that injuries have been caused by torture.<sup>55</sup>

### **III. Deportation procedures for people escaping from the Democratic People's Republic of Korea (List of Issues Para. 10)**

27. The Committee in its List of Issues requested information on whether people escaping from the North Korea can lawfully be detained for six months, whether the people who defected can be detained indefinitely by the National Intelligence Service (“NIS”), whether a legal maximum time period has been established for the detention of such individuals, whether such escapees “are afforded fundamental legal safeguards, including the right to legal counsel during interrogation and the entire length of detention, and whether the methods and duration of interrogation comply with international standards” and whether “[c]lear and transparent procedures exist with regard to ensuring the right to appeal for decisions concerning the deportation of persons escaping from the Democratic People's Republic of Korea, with suspensive effect while they are being reviewed.”<sup>56</sup>
28. In response to the List of Issues, the Government stated that the temporary protection of North Korean defectors is designed to “determine whether to protect and support them” and is not “forceful detention.”<sup>57</sup> The Government further noted that it amended the Enforcement Decree of the North Korean Refugees Protection and Settlement Support Act in February 2018 to shorten the temporary protection period from 180 days to 90 days.<sup>58</sup> Additionally, the Government responded that after the temporary protection period, North Korean defectors join the Settlement Support Center and stay there before the determination of protection is made.<sup>59</sup> The Government also stated that North Korean defectors are afforded an external attorney as a human rights protection officer “to be sufficiently given legal assistance during a temporary protection and investigation process, to monitor whether there has been human rights violation that may occur during such process and to ensure North Korean defectors who need legal assistance to get one-on-one counseling therewith.”<sup>60</sup> It emphasized that in July 2019, “tasks, qualifications, terms, [and] independent status,” among other factors, of the human rights protection officer has been determined “to reinforce legal grounds” for affording such a human

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<sup>55</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, MEDICAL SERVICE ACT [Enforcement Date 01. May, 2024.] [Act No.19818, 31. Oct, 2023., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=255803&viewCls=engLsInfoR>

<sup>56</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 10.

<sup>57</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 50.

<sup>58</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 50.

<sup>59</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 50.

<sup>60</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 53.

rights protection officer.<sup>61</sup> It further stated that an outside institution’s recommendation for a human rights protection officer is requested “to secure the fairness of the [human rights protection officer’s] appointment process[.]”<sup>62</sup> The Government, however, did not respond to the request for information regarding the procedures regarding appealing the decisions concerning the deportation of people escaping from North Korea.<sup>63</sup>

29. In October 2023, the Human Rights Committee in its concluding observations on South Korea’s fifth periodic report on the implementation of the International Covenant on Civil and Political Rights stated that it was “troubled by reports that persons from the Democratic People’s Republic of Korea who have been denied protection status, as occurred in November 2019, have been returned to the Democratic People’s Republic of Korea despite the risk of being subjected to serious human rights violations, in contravention of the principle of non-refoulement” and “also expresses its concern about the detention of escapees upon arrival, about exceptions provided for in the decree on enforcing the North Korean Defectors Protection and Settlement Support Act that allow for detention beyond the maximum of 90 days, and that the right to independent legal counsel is not guaranteed”.<sup>64</sup>
30. The Human Rights Committee accordingly recommended that South Korea: “(a) Guarantee the principle of non-refoulement by ensuring that no individuals seeking or in need of international protection, including escapees from the Democratic People’s Republic of Korea, 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 escapees from the Democratic People’s Republic of Korea, 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”.<sup>65</sup>
31. In response, the National Intelligence Service (NIS) in its press release of 9 November 2023 claimed that: (1) the “protection” of North Korean escapees in its facilities are “voluntary” and therefore does not qualify as “detention” and the “protection period” has been shortened from 180 to 90 days; (2) the NIS’s investigation of the North Korean escapees is an administrative one to provide assistance and protection, not a criminal one for the penal purpose, and in any case legal counsel has been provided by the “human rights protection officers” since October

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<sup>61</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 53.

<sup>62</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 53.

<sup>63</sup> See generally Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6.

<sup>64</sup> Human Rights Committee, *Concluding observations on the fifth periodic report of the Republic of Korea* (24 November 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 37.

<sup>65</sup> Human Rights Committee, *Concluding observations on the fifth periodic report of the Republic of Korea* (24 November 2023), U.N. Doc. CCPR/C/KOR/CO/5, ¶ 38.

2014; (3) the Government is in the process of codifying the principle of non-refoulement in the relevant law.<sup>66</sup>

32. North Korean escapees newly arriving in South Korea, though in theory automatically entitled to the South Korean citizenship, however, in practice have no choice but to go through the Government's screening process to be eligible for the South Korean citizenship. The NIS may be asked to explain how many newly arriving North Korean escapees, if any, in the past few decades have refused to be "protected" in NIS facilities.
33. The NIS is also silent about the fact that the 90-day "protection period" can be extended by the authorities. In this regard, those detained in the administrative procedure as well as in the criminal procedure should be entitled to independent legal counsel and it is worth noting that the NIS-appointed "human rights protection officers" failed to prevent or even report on the deportation of two North Korean escapees to North Korea on November 7, 2019. Lastly, as of June 2024, the Government has yet to codify the principle of non-refoulement in the domestic law.

#### **IV. Solitary confinement (List of Issues para. 13)**

34. The Committee in its List of Issues requested information on "any amendments to ensure that solitary confinement is applied for a duration that does not exceed 15 days, is not renewed or prolonged and is an exceptional measure of last resort[.]" "whether the physical and mental condition of detainees in solitary confinement is monitored daily by qualified medical personnel and whether the detainees concerned have the right to an independent hearing and to appeal the decision of the disciplinary committee."<sup>67</sup>
35. In response to the List of Issues, the Government stated that solitary confinement may be imposed for up to 30 days. It also noted that under Article 112(6) of the Administration and Treatment of Correctional Institution Inmates Act ("CIA") and Article 13394) of the Enforcement Decree thereof, individuals subject to solitary confinement are "frequently" checked by a medical officer and that under Article 111(6) of the CIA, the individuals subject to solitary confinement are given a "sufficient opportunity to make a statement by attending the committee."
36. Since 2017, the Government has not made progress on ensuring that solitary confinement does not exceed 15 days in line with international standards and that physical and mental health of inmates subject to solitary confinement are monitored daily by qualified medical personnel throughout the period of solitary confinement. As noted in the Government's responses to the List of Issues above, solitary confinement may still be imposed for up to 30 days and "daily" attention of medical professional is not required.

#### **V. Victims of sexual slavery during World War II (List of Issues para. 18)**

37. The Committee in its List of Issues asked for "information on any steps taken to ensure that" so-called "comfort women" who were forced into sexual slavery during the Second World War

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<sup>66</sup> National Intelligence Service (NIS) press release, "The UN Human Rights Committee's claim about the South Korean government's detention of North Korean escapees is not consistent with the facts", 2023. 11. 9., available at [https://www.nis.go.kr/CM/1\\_4/view.do?seq=257](https://www.nis.go.kr/CM/1_4/view.do?seq=257)

<sup>67</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 13.

receive “adequate redress, including the right to compensation and rehabilitation and the right to truth, reparation, and assurances of non-repetition.”<sup>68</sup>

38. In response to the List of Issues, the Government stated that it “has made efforts to communicate with” comfort women and “redress the issue of sexual slavery victims of the Japanese Imperial Army.”<sup>69</sup> In addition, South Korea has made these women “eligible for livelihood stability support” and “medical benefits and costs of nursing services.”<sup>70</sup>
39. On 23 November 2023, the Seoul High Court denied Japan’s jurisdictional immunity for its World War II-era military sexual slavery on the territorial tort ground and ordered compensation to the victims (case no. 2021 Na 2017165).<sup>71</sup> However, the Japanese Government criticized the judgment as violating its sovereign immunity under international law, repeating the claim it made against an earlier decision by the Seoul Central District Court on 8 January 2021 which also rejected Japan’s immunity on jus cogens grounds (case no. 2016 Ga-Hap 505092).<sup>72</sup> The South Korean Government has not made its position on these court rulings clear and has taken no action to facilitate their enforcement.
40. With respect to *Bouzari v. Islamic Republic of Iran* in Canada which upheld Iran’s sovereign immunity and dismissed the torture victim’s claims, the Committee against Torture has repeatedly expressed concerns about the State Immunity Act and recommended its revision.<sup>73</sup>
41. After decades of waiting for justice and Japan’s outright rejection of the South Korean court rulings against it, the victims, their families and supporters in South Korea, China, the Philippines, Indonesia and East Timor have jointly called upon the South Korean Government to initiate inter-state proceedings against Japan pursuant to Articles 21 and 30 of the Convention against Torture.<sup>74</sup> The survivors have also asked the South Korean Government to create a permanent fact-finding body to continuously research and publicize newly discovered documents or evidence of Japan’s wartime military sexual slavery and other atrocities.

## VI. The death penalty (List of Issues para. 16)

42. The Committee in its List of Issues requested “updated information on any consideration given to abolishing the death penalty, voting in favor of the recurring resolutions of the General

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<sup>68</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 18.

<sup>69</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 98.

<sup>70</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 98.

<sup>71</sup> [Judgement] 23 November 2023, The Appellate Judgement of a Case brought by Victims of Japanese Military 'Comfort Women' Against Japan(Korean, English), available at <https://womenandwar.net/resources-eng/?q=YToxOntzOjEyOiJrZXI3b3JkX3R5cGUiO3M6MzoiYWxsJt9&bmode=view&idx=18323576&t=board>

<sup>72</sup> [Judgement] 8 January 2021, The First Trial Judgement of a Case brought by Victims of Japanese Military 'Comfort Women' Against Japan(Korean, English, Japanese), available at <https://womenandwar.net/resources-eng/?q=YToxOntzOjEyOiJrZXI3b3JkX3R5cGUiO3M6MzoiYWxsJt9&bmode=view&idx=18323479&t=board>

<sup>73</sup> Conclusions and recommendations of the Committee against Torture: CANADA, U.N. Doc. CAT/C/CR/34/CAN (7 July 2005), ¶¶ 4(g) and 5(f); Concluding observations of the Committee against Torture: Canada, U.N. Doc. CAT/C/CAN/CO/6 (25 June 2012), ¶ 15; Concluding observations on the seventh periodic report of Canada, U.N. Doc. CAT/C/CAN/CO/7 (21 December 2018), ¶¶ 40 and 41.

<sup>74</sup> Kim Tong-Hyung, “S. Korean slavery victim seeks UN justice as time runs out”, AP, March 21, 2022, <https://apnews.com/article/japan-asia-seoul-united-nations-south-korea-f2df28d5ca1a09b112d5ff5da25f2b0c>.

Assembly on a moratorium on the use of the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.”<sup>75</sup> Additionally, the Committee asked the State Party to “provide information on the number of prisoners on death row, whether death sentences continue to be imposed by courts, whether and how many have been commuted to prison terms and whether prisoners who were formerly on death row have been commuted to prison terms and whether prisoners who were formerly on death row benefit from the same regime as other prisoners, in accordance with international standards.”<sup>76</sup>

43. In response, the Government concurred that South Korea intends to take all necessary measures to protect the natural dignity of humans and the right to life, as evidenced by South Korea acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights.<sup>77</sup> The Government noted that South Korea is “‘de facto abolitionist’ in the global community” since it has not carried out the death penalty since 1997.<sup>78</sup> In response to the question of a de jure abolition of the death penalty in South Korea, however, the Government noted that the death penalty is “a material issue related to the foundation of the State’s right to punishment,” and the Government “plans to comprehensively review this matter.”<sup>79</sup> The Government added that, as of April 28, 2021, the number of prisoners on death row was 59, and no death sentences had been imposed by courts since May 2017.<sup>80</sup> The Government also observed that people on death row were generally treated the same as other inmates, having access to “a living room, religious activities, outdoor exercise, meals, medical treatment and sending and receiving of mail.”<sup>81</sup> Additionally, the Government reported that prisoners are provided “in depth-counseling and counseling with external experts . . . for psychological stability and normal confinement of prisoners sentenced to death penalty.”<sup>82</sup>
44. Since 2017, South Korea’s progress on abolishing the death penalty has been mixed. In its National Report submitted on November 15, 2022, as part of its fourth-cycle Universal Periodic Review, South Korea noted that it had voted for the 75th General Assembly resolution on the use of Moratorium on Death Penalty in November 2020, and the 48th Human Rights

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<sup>75</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 16.

<sup>76</sup> Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the Republic of Korea* (9 June 2020), U.N. Doc. CAT/C/KOR/QPR/6, ¶ 16.

<sup>77</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 83.

<sup>78</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 83.

<sup>79</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 83.

<sup>80</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 84.

<sup>81</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (21 March 2022), U.N. Doc. CAT/C/KOR/6, ¶ 85.

<sup>82</sup> Committee Against Torture, *Sixth periodic report submitted by the Republic of Korea under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2021* (Mar. 21, 2022), U.N. Doc. CAT/C/KOR/6, ¶ 85.

Council resolution on the Question of the Death Penalty in October 2021.<sup>83</sup> In December 2022, South Korea also voted in favor of resolution 77/222, supporting a moratorium on the use of the death penalty.<sup>84</sup> As part of its National Report, South Korea committed to considering the issue of the death penalty domestically through “careful review with comprehensive consideration of public opinion, [the death penalty’s] function in criminal justice, and domestic and international circumstances, including resolutions of the [General Assembly].”<sup>85</sup> Unfortunately, however, South Korea noted all of the recommendations it received pertaining to the death penalty.<sup>86</sup>

45. During the reporting period, the courts have been reluctant to hand down death sentences and even those from lower courts have been reduced to life imprisonment on appeal to the Supreme Court, which last condemned civilian and military defendants to death on 27 August 2015 (case no. 2015 Do 5785) and on 19 February 2016 (case no. 2015 Do 12980) respectively. The total number of prisoners on death row in South Korea currently stands at 59.<sup>87</sup>
46. Further, various sectors of the Government and politicians have expressed support for the death penalty and have acted inconsistently with a uniform commitment to abolition. There is a case pending before the Constitutional Court, originally filed in 2019, challenging the constitutionality of the death penalty (case no. 2019 Hun-Ba 59), but as of June 2024, no ruling has been made.. Additionally, the National Assembly passed a bill, backed by the Ministry of Justice (MOJ), in June 2023 to remove the prior 30-year statute of limitations for carrying out a sentence in death penalty cases.<sup>88</sup> The bill ensured that Won Eon-shik, who among the 59 surviving death-row inmates has been awaiting the longest time the execution of his death sentence which was confirmed by the Supreme Court in November 1993 would definitely

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<sup>83</sup> Human Rights Council, *National Report Submitted Pursuant to Human Rights Council resolutions 5/1 and 16/21, Republic of Korea*, (Nov. 15, 2022), U.N. Doc. HRC/WG.6/42/KOR/1, ¶ 69.

<sup>84</sup> U.N. General Assembly, *Seventy-Seventh Session 54<sup>th</sup> Plenary Meeting*, (Dec. 15, 2022), U.N. Doc. A/77/PV.54, p. 19.

<sup>85</sup> Human Rights Council, *National Report Submitted Pursuant to Human Rights Council resolutions 5/1 and 16/21, Republic of Korea*, (Nov. 15, 2022), U.N. Doc. HRC/WG.6/42/KOR/1, ¶ 69.

<sup>86</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea* (23 March 2023), U.N. Doc. A/HRC/53/11, ¶ 139.15 Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and take the necessary measures to ensure its implementation (Côte d’Ivoire); ¶ 139.52 Consider abolishing the capital punishment and introducing alternatives to death penalty (Kazakhstan); ¶ 139.53 Take concrete steps towards the formal abolition of the death penalty (Marshall Islands); ¶ 139.54 Entrench its moratorium on executions through the formal abolition of the death penalty, including by taking legislative action to permanently remove the death penalty from Korean law (New Zealand); ¶ 139.55 Take steps towards the formal abolition of the death penalty, based on the longstanding moratorium (Norway); ¶ 139.56 Take steps towards the legal abolition of the death penalty, while commuting the existing sentences to life imprisonment (Slovakia); ¶ 139.57 Continue its review of its legislation and policy with a view to abolishing the death penalty de jure (Timor-Leste); ¶ 139.58 Continue efforts on abolishing the death penalty at the legislative level (Uzbekistan); ¶ 139.59 Fully abolish the death penalty, which has been under a de facto moratorium for 25 years (Canada); 139.60 Abolish the death penalty (Costa Rica); ¶ 139.61 Formally abolish the death penalty and commute death sentences to lesser punishment or full pardons (Cyprus); ¶ 139.62 Consider adopting a de jure moratorium on capital executions (Italy).

<sup>87</sup> *Worldwide Wednesday’s International Roundup: Zimbabwe, Vietnam, South Korea, Singapore, Iran, and Saudi Arabia*, DEATH PENALTY INFORMATION CENTER, June 7, 2023, <https://deathpenaltyinfo.org/news/worldwide-wednesdays-international-roundup-zimbabwe-vietnam-south-korea-singapore-iran-and-saudi-arabia>.

<sup>88</sup> *Cabinet approves bill to remove sunset clause for death sentence*, THE KOREA HERALD, Jun. 5, 2023, <https://www.koreaherald.com/view.php?ud=20230605000586>.



remain on the death row.<sup>89</sup> It has also been reported that in 2023, the National Assembly passed a bill increasing the potential punishment for killing an infant to include imposition of the death penalty.<sup>90</sup> The Ministry of Justice also ordered inspections of execution facilities in Seoul, Busan, Daegu and Daejeon in August 2023.<sup>91</sup>

47. In addition, the Ministry of Justice has also submitted a bill to introduce life imprisonment without parole in the Criminal Code to the National Assembly in October 2023.<sup>92</sup> This development has spurred organizations, such as the National Human Rights Commission of Korea, to call for abolition given the option of this stronger, alternative punishment for serious offenders.<sup>93</sup>
48. Political figures in South Korea have also publicly expressed support for the death penalty, such as in 2021 when then-presidential candidate, Hong Joon-pyo, posted on Facebook about a case of rape and infanticide as the kind of case for which the death penalty would be applied if he were president.<sup>94</sup>
49. South Korea has also continued to deport individuals to States that actively implement the death penalty. In 2019, the Government deported two North Korean defectors, who came on a fishing vessel, on suspicion that they had murdered 16 others on the boat before defecting. The Government, under President Moon Jae-in, concluded that, although North Korean defectors are normally granted protection and resettlement support, deportation was proper since the fishermen had killed other crewmen and therefore were “grotesque criminals” and not sincere defectors.<sup>95</sup> Observers such as Human Rights Watch argued that South Korea refoiled the defectors before sufficiently investigating their claims and did so without regard to the probability the defectors would be tortured or killed in North Korea.<sup>96</sup> On-the-ground sources have subsequently reported that the Ministry of Unification, charged with incorporating North Korean defectors, has since determined that the fishermen were sincere in their intention to defect.<sup>97</sup>
50. South Korea has also deported Chinese nationals at risk being tortured upon their return to China. In 2022, South Korea deported “Mr. Kim,” who had fled China after killing a Chinese

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<sup>89</sup> *Cabinet approves bill to remove sunset clause for death sentence*, THE KOREA HERALD, Jun. 5, 2023, <https://www.koreaherald.com/view.php?ud=20230605000586>.

<sup>90</sup> *Parents in South Korea who kill newborns now face death penalty after law passed*, THE STRAITS TIMES, Jul. 19, 2023, <https://www.straitstimes.com/asia/east-asia/south-korea-parents-who-kill-newborns-now-face-death-penalty-after-law-passed>.

<sup>91</sup> *Justice Minister Orders Correctional Institutions to Properly Maintain Execution Facility*, KBS WORLD, Aug. 30, 2023, [https://world.kbs.co.kr/service/news\\_view.htm?lang=e&Seq\\_Code=180144](https://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=180144).

<sup>92</sup> *Cabinet approves revision to allow life sentences without possibility of parole*, THE KOREA TIMES, Oct. 31, 2023, [https://www.koreatimes.co.kr/www/nation/2024/04/113\\_362176.html](https://www.koreatimes.co.kr/www/nation/2024/04/113_362176.html).

<sup>93</sup> *Statement by the Chairperson of National Human Rights Commission of Korea on the 21<sup>st</sup> World Day Against the Death Penalty*, National Human Rights Commission of Korea, Oct. 26, 2023, <https://www.humanrights.go.kr/eng/board/read?boardManagementNo=7003&boardNo=7609569&searchCategory=&page=2&searchType=&searchWord=&menuLevel=2&menuNo=114>

<sup>94</sup> *Death penalty revisited*, THE KOREA HERALD, Jul. 19, 2022, <https://www.koreaherald.com/view.php?ud=20220719000602>.

<sup>95</sup> *South Korea forcibly deported only two of 200 North Korean fishermen since 2010, ministry says*, Reuters, Jul. 15, 2022, available at <https://www.reuters.com/world/asia-pacific/skorea-forcibly-deported-only-two-200-nkorean-fishermen-since-2010-ministry-2022-07-15/>.

<sup>96</sup> *South Korea Deports Two From North to Likely Abuse*, Human Rights Watch, Nov. 12, 2019, <https://www.hrw.org/news/2019/11/12/south-korea-deports-two-north-likely-abuse>.

<sup>97</sup> *Jung Min-ho, Ministry Shifts stance on deportation of North Korean fishermen*, The Korea Times, Jul. 12, 2022, [https://www.koreatimes.co.kr/www/nation/2024/03/103\\_332614.html](https://www.koreatimes.co.kr/www/nation/2024/03/103_332614.html).

police officer 29 years ago.<sup>98</sup> The Government deported Mr. Kim after his case was tried in front of the Supreme Court, and observers have noted that those who kill officers of the state in China are likely to be sentenced to death.<sup>99</sup> Human Rights Watch has observed that South Korea continues to deport individuals to countries that retain the death penalty, including North Korea, China, Japan, and the United States, putting those who are deported at risk of being sentenced to death.<sup>100</sup>

51. South Korea must also consider how its treatment of women aligns with its obligations under international law, including the Convention Against Torture. Observers report that South Korea's infanticide law, which now permits for application of the death penalty, may have greater consequences for South Korean women since 80% of those convicted of the offense between 2014 and 2023 were teens or women younger than 30 years of age.<sup>101</sup>
52. The Advocates for Human Rights have also previously noted that, where a death sentence is an available punishment, women are particularly vulnerable to receiving death sentences for murder convictions where the convicted woman was protecting herself from domestic abuse.<sup>102</sup> There are no women currently under a death sentence in South Korea.<sup>103</sup>

## VII. Rights of LGBTQ+ people

53. South Korea must also consider how its treatment of members of the LGBTQ+ community aligns with the State's obligations under the Convention Against Torture and other international law.
54. Article 92-6 (Indecent Act) of the Military Penal Code provides that "a person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) [military personnel] or any other indecent act shall be punished by imprisonment with labor for not more than two years".<sup>104</sup> Such punishment of adults for consensual sex cannot be considered "lawful sanctions" for the purpose of Article 1(1) of the Convention against Torture.

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<sup>98</sup> Kim Ki-yoon, [단독]조선족→한족→한국인 신분 세탁한 30년 전 중국 공안 살해범 송환 사건 (Korean-Chinese-Han-Chinese-Korean identity repatriated to China for murdering public security guards 30 years ago), DONGA ILBO, May 18, 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>.

<sup>99</sup> Kim Ki-yoon, [단독]조선족→한족→한국인 신분 세탁한 30년 전 중국 공안 살해범 송환 사건 (Korean-Chinese-Han-Chinese-Korean identity repatriated to China for murdering public security guards 30 years ago), DONGA ILBO, May 18, 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>.

<sup>100</sup> *Joint Letter to South Korea's Abolition of the Death Penalty*, Human Rights Watch, Mar. 27, 2023, <https://www.hrw.org/news/2023/03/27/joint-letter-south-koreas-abolition-death-penalty>.

<sup>101</sup> *Parents in South Korea who kill newborns now face death penalty after law passed*, THE STRAITS TIMES, Jul. 19, 2023, <https://www.straitstimes.com/asia/east-asia/south-korea-parents-who-kill-newborns-now-face-death-penalty-after-law-passed>.

<sup>102</sup> *The Republic of Korea's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women Suggested List of Issues Relating to the Death Penalty Submitted by The Advocates for Human Rights, The World Coalition Against the Death Penalty, and The Cornell Center on the Death Penalty Worldwide for the 86<sup>th</sup> Session of the Committee for the Elimination of Discrimination Against Women (Pre-Sessional Working Group) 27 February-3 March 2023*, The Advocates for Human Rights, Jan. 30, 2023, <https://www.theadvocatesforhumanrights.org/Res/South%20Korea%20CEDAW%20DP%20FINAL.pdf>.

<sup>103</sup> *Death penalty revisited*, THE KOREA HERALD, Jul. 19, 2022, <https://www.koreaherald.com/view.php?ud=20220719000602>.

<sup>104</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, MILITARY CRIMINAL ACT [Enforcement Date 01. Jul, 2022.] [Act No.18465, 24. Sep, 2021., Amendment by Other Act], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=235555&viewCls=engLsInfoR>

55. The Government has neglected to condemn conversion therapy, with various reports of instances of conversion therapy including the Government hosting conversion therapy seminars<sup>105</sup> and failing to prevent instances of conversion therapy, including treatments such as electric-shock treatments and exorcisms.<sup>106</sup> The former Independent Expert on sexual orientation and gender identity has said that conversion therapies “can amount to torture, cruel, inhuman or degrading treatment.”<sup>107</sup>
56. In its fourth-cycle Universal Periodic Review, South Korea accepted Iceland’s recommendation to “stop conditioning legal gender recognition for transgender persons upon psychiatric diagnosis, medical treatment and the prohibition to marry or have children and introduce instead a transparent administrative process based on individual self-declaration”.<sup>108</sup>
57. The absence of the legislative action from the Government and the National Assembly to address the issue of legal gender change has left the courts, which oversee the maintenance of the family registrars [가족관계등록부] for every South Korean citizen and records the legal gender of every person, has been left to approve or reject the individual requests to change legal gender. The Supreme Court sitting en banc has ruled on the matter on 22 June 2006 (case no. 2004 Seu 42), on 2 September 2011 (case no. 2009 Seu 117) and on 24 November 2022 (case no. 2020 Seu 616). While the Supreme Court’s 2006 ruling was historic for approving the change of legal gender, the 2006 and 2011 decisions required gender-affirming surgery, including genital surgeries, and the Supreme Court’s Administrative Processing Guideline for Cases of Transgender Persons’ Application for Permission to Revise the Gender, etc., first enacted on 6 September 2007, also contained this surgery requirement. However, beginning with the Seoul South District Court’s ruling of 15 March 2013 (case no. 2012 Ho-Pa 4225), some lower courts, whose decision to accept the request for revisions to the family registrars cannot be appealed, started to disregard the Supreme Court’s instructions and approve legal gender change for transgender applicants who have not had genital surgeries. The Supreme Court, too, revised its Guideline on 21 February 2020<sup>109</sup> to make proof of surgery a point to take note, not to investigate, and its 2022 ruling is silent about the surgery requirement. While the courts are moving in a positive direction, the absence of legislation has resulted in conflicting rulings by different courts and the lack of a binding, uniform standard for the legal gender change.
58. On 11 May 2023, the National Human Rights Commission recommended that the Supreme Court delete references to gender-affirming surgery in its Guidelines and that the National

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<sup>105</sup> *Harmful Treatment: The Global Reach of So-Called Conversion Therapy*, OutRight Action International, accessed on May 8, 2024, [https://outrightinternational.org/sites/default/files/2022-09/ConversionFINAL\\_Web\\_0.pdf](https://outrightinternational.org/sites/default/files/2022-09/ConversionFINAL_Web_0.pdf).

<sup>106</sup> U.S. Department of State, *2023 Country Reports on Human Rights Practices: South Korea*.

<sup>107</sup> Human Rights Council, *Practices of so-called “conversion therapy”: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, (1 May 2020), U.N. Doc. A/HRC/44/53, ¶ 62.

<sup>108</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea (23 March 2023)*, U.N. Doc. : Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Doc. A/HRC/53/11/Add.1 (13 June 2023), ¶ 7.A/HRC/53/11, ¶ 139.163 Ban conversion therapies (Iceland).

<sup>109</sup> The original Korean version is available at <https://help.scourt.go.kr/nm/nboard/MinwonNoticeViewAction.work?seqnum=375&gubun=49>

Assembly enact a new law governing the requirement, procedure, and methods for the gender revision.<sup>110</sup>

59. Additionally, there is a common practice of “correcting” the physical sex of intersex children before 12 months of age in order to register them under the Resident Registration Act.<sup>111</sup> The Special Rapporteur on torture has determined that such non-consensual surgeries on intersex children leave intersex people with “permanent, irreversible infertility and caus[es] severe mental suffering,” which may constitute torture or other forms of ill-treatment.<sup>112</sup>

### VIII. Protection of Refugees and Asylum-seekers

60. Under Article 6 of the Refugee Act, the Ministry of Justice (MOJ)/immigration offices have full discretion about whether to refer the refugee status applications submitted at the ports of entry to the formal refugee status determination process.<sup>113</sup> Those whose applications the immigration officials decide not to refer to the refugee status determination process can be deported under the Immigration Act without access to legal counsel or judicial review. A port of entry refugee applicant technically does not fall under “a refugee, humanitarian sojourner, nor refugee applicant” who is protected from refoulement under Article 3 of the Refugee Act because the definition of “a refugee applicant” under Article 2(4) excludes a port of entry refugee applicant. The port of entry refugee applicants, mostly at Incheon International Airport, can also be subjected to prolonged administrative detention at make-shift facilities.
61. The immigration authorities have used their discretion to deport the port of entry refugee applicants before the refugee lawyers could meet with them: On 23 May 2018, the Incheon Airport Immigration Office repatriated a Chinese Uyghur asylum-seeker to Turkey on the same day that it decided not to refer the case to the refugee status determination process despite strong protests from the refugee lawyers; on 31 May 2018 an Egyptian sought asylum at Incheon Airport, but the authorities informed him of the decision not to make a referral to the refugee status determination process on 29 June and, despite immediately arranging to meet with the refugee lawyers on 4 July, he was deported even before the meeting could take place.<sup>114</sup>
62. The Refugee Act should be amended 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. The authorities should also disclose annually (1) the

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<sup>110</sup> National Human Rights Commission, Recommendation to amend articles in the Supreme Court’s established rule concerning the gender revision for transgender persons such as the surgery requirement that may violate human rights [트랜스젠더 성별정정 관련 대법원 예규 중 수술요건 등 인권침해 소지 조항 개정 권고], 2023. 5. 25., available at <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609145>

<sup>111</sup> Lee Yu-myeong, '남자야 여자야?' 애매한 신생아, 성별은? ('Is it a man or a woman?' Ambiguous newborn baby, what is its gender? MEDICAL TODAY, June 26, 2007, available at <https://www.mdtoday.co.kr/mdtoday/?no=26865&cate=0&sub=&key=&word=&page=9419>.

<sup>112</sup> Human Rights Council, Twenty-Second Session, Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/22/53 (Feb. 1, 2013), ¶¶ 77, 79.

<sup>113</sup> Ministry of Government Legislation (MOLEG) Korean Law Information Center, REFUGEE ACT [Enforcement Date 20. Dec, 2016.] [Act No.14408, 20. Dec, 2016., Partial Amendment], available at <https://www.law.go.kr/lsInfoP.do?lsiSeq=188376&viewCls=engLsInfoR>

<sup>114</sup> NANCEN Refugee Rights Center, “Cases of the violation of the right to meet attorneys for port of entry refugee applicants (2018) [출입국향 난민신청자에 대한 변호사접견권 침해사례(2018)]”, 2019. 1. 18., available at <https://nancen.org/1854>

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).

63. The Ministry of Justice (MOJ)'s internal review body created under the Refugee Act to hear administrative appeals against the decisions made by the immigration officials, the Refugee Committee [난민위원회], includes the National Intelligence Service (NIS)'s head of counterintelligence corps, in accordance with Article 2(2)(3) of the detailed operational rules for the Refugee Committee (Ordinance of the Ministry of Justice no. 1378, last revised on 25 August 2021),<sup>115</sup> whose risk assessment about the refugee applicant's country of origin plays a decisive role in practice. The formal role of intelligence officers in the refugee status determination is difficult to understand or justify and other government offices, like the Ministry of Foreign Affairs (MOFA), should 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.
64. It is also a matter of concern that Chinese Government agents have been allowed to set up "secret police stations" in South Korea with impunity to surveil ethnic Uyghurs and practitioners of Falun Gong.<sup>116</sup> A Uyghur student who attended a human rights discussion received threatening WeChat messages from a person who claimed to be a Chinese Public Security agent and another Uyghur student was visited by Chinese agents at home in blatant examples of transnational repression while the South Korean police failed to protect them; the former fled to a third country while the latter applied for the refugee status which was rejected by the Ministry of Justice (MOJ) but eventually granted by court.<sup>117</sup> The Government claims that it does not take into consideration the nationality, ethnicity or religion of refugee applicants in their refugee status determination, but it should disclose the annual number of (1) refugee applicants and those recognized as refugees disaggregated by nationality and (2) the Uyghur, Tibetan, and Falun Gong refugee applicants and those recognized as refugees.
65. In May 2023, Abuduwaili Abudureheman, a Uyghur student studying in Seoul, reportedly disappeared in Hong Kong Airport for three weeks before reappearing and claiming that he had never left South Korea during the time in question after Amnesty International went public with his disappearance.<sup>118</sup> Amnesty International which first raised the issue deleted its initial

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<sup>115</sup> The original Korean version (난민위원회 운영세칙 [시행 2021. 8. 25.] [법무부훈령 제1378호, 2021. 8. 25., 일부개정]) is available at <https://www.law.go.kr/admRulLsInfoP.do?chrClsCd=&admRulSeq=2100000203989>

<sup>116</sup> Advocates for Public Interest Law (APIL) press release, "The Chinese government's religious persecution and harassment of overseas refugees (Uyghurs, the Church of Almighty God, Falun Gong, etc.) comes under criticism [중국정부의 종교박해, 해외에 있는 난민(위구르, 전능신교, 파룬궁 등)들에 대한 괴롭힘이 비판받다]" (June 21, 2019), available at <https://apil.or.kr/press-releases/12293>

<sup>117</sup> Moon Jae-yeon, "Surveillance by Chinese Public Security after coming to South Korea; Uyghurs endure the secret police [한국 왔더니 中 공안이 감시... 비밀경찰에 시달리는 위구르인들]", Hankook Ilbo 2023.02.27., available at <https://www.hankookilbo.com/News/Read/A2023022323250003687>

<sup>118</sup> Joel Guinto, "Abuduwaili Abudureheman: Hong Kong denies detaining Uyghur student", BBC (29 May 2023), available at <https://www.bbc.com/news/world-asia-china-65743731>

presser without explanation and the Hong Kong authorities demanded Amnesty International to apologize for making a false accusation which it refused to do.<sup>119</sup>

66. After Mr Abuduwaili's disappearance became public, the South Korean media and members of the National Assembly asked the Ministry of Justice (MOJ) to confirm whether he had indeed left South Korea during the time of his reported disappearance, but the MOJ authorities refused on privacy grounds before his sudden resurfacing. While it is fortunate that Mr. Abuduwaili reappeared in Seoul, the absence of any investigation or fact-finding about his reported disappearance exposes him and other Uyghurs residing in South Korea to the risk of torture, ill-treatment, and other human rights violations.
67. It would be helpful therefore for the authorities to clarify whether Mr Abuduwaili had ever left South Korea in the month of May 2023 and whether he is still residing in safety in South Korea. Incidentally, in September 2009, the Government detained for 42 hours at Incheon Airport Dolkun Isa, then-Secretary General and now-President of the World Uyghur Congress, who was planning to attend the World Forum for Democratization in Asia in Seoul.<sup>120</sup> It is fortunate that Mr. Dolkun was not deported to China as has happened to numerous Uyghur activists in other countries.

### **IX. Suggested recommendations for the Government of South Korea**

68. The coauthors of this report offer the following suggested recommendations for the Government of South Korea:
- Adopt legislation incorporating a definition of torture that makes it a distinct crime, includes all elements covered in Article 1 of the Convention, in particular the mental and psychological aspects of torture, and applies to all potential perpetrators.
  - Ensure that the prohibition of torture is absolute and non-derogable and that there is no statute of limitations for acts of torture, attempts to commit torture or acts constituting complicity or participation in torture.
  - Ratify or accede to the Optional Protocol to the Convention Against Torture.
  - Monitor detention centers for immigrants to end torture and ill-treatment such as “shrimp’s posture” and provide compensation to the victims.
  - Ensure that the condition of the alternative civilian service for the conscientious objectors to the military service is not punitive and does not deliberately inflict severe pain or suffering for the act of conscientious objection to the military service.
  - Codify the right of the foreigners under administrative detention to legal counsel and its detailed procedure and provide the private space for the people in detention to meet with their lawyers in in confidence at the immigration detention centers.
  - Ensure that the defense attorneys are not arbitrarily removed from the criminal interrogation.

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<sup>119</sup> Hannah Ritchie, “Uyghur student not missing in Hong Kong - Amnesty”, BBC (31 May 2023), available at <https://www.bbc.com/news/world-asia-china-65751232>

<sup>120</sup> Amnesty International, “South Korea: Dolkun Isa release welcome but authorities should not have denied him entry” (September 18, 2009), available at <https://www.amnesty.org/en/latest/press-release/2009/09/south-korea-dolkun-isa-release-welcome-authorities-should-not-have-denied>

- Ensure that the prosecutor will investigate the breach of the law, human rights violations and manifest abuse of investigative authority in the police investigation.
- Enact legislation to close gaps in the right to counsel during criminal pre-trial proceedings.
- Enact legislation to ensure that people in detention are entitled to a medical inspection within 24, rather than 72, hours of their detention.
- Amend the Medical Service Act to provide an additional exception to the rule against disclosure of patient medical records for the situation where a doctor suspects the patient's injuries may have been caused by torture.
- Codify in law the principle of non-refoulement for North Korean escapees.
- 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.
- Ensure that North Korean escapees are detained for the shortest possible period.
- Respond to the Committee's prior request for information on the procedures regarding appealing the decisions concerning the deportation of people escaping from North Korea.
- Take all possible measures to clarify the fate and whereabouts of the two North Korean escapees forcibly repatriated to North Korea on 7 November 2019.
- Amend current legislation to ensure that solitary confinement does not exceed 15 days.
- Enact legislation to ensure that individuals subject to solitary confinement are monitored daily for physical and mental conditions by qualified medical personnel.
- Clarify the Government's position on the court decisions of 8 January 2021 (case no. 2016 Ga-Hap 505092) and 23 November 2023 (case no. 2021 Na 2017165) denying sovereign immunity for World War II-era military sexual slavery.
- Consider instituting inter-state proceedings against Japan pursuant to Articles 21 and 30 of the Convention against Torture and creating a permanent fact-finding body to continuously research and publicize newly discovered documents or evidence of Japan's wartime military sexual slavery and other atrocities to counter the history deniers.
- Institute a formal moratorium on executions and commute to imprisonment the sentences of all those who have been condemned to death.
- Enact legislation formally abolishing the death penalty.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- End the deportation or extradition of individuals to other States if they can be subjected to the death penalty.
- End the criminalization of consensual same-sex sexual activity between adults, in particular by abolishing Article 92-6 of the Military Penal Code.

- Condemn unequivocally conversion therapy.
- Stop conditioning the change of the legal gender for transgender persons upon medical surgery and the prohibition to marry or have children.
- Enact a new law governing the requirement, procedure and methods for the gender revision.
- Prohibit non-medically necessary surgeries on intersex children until they are old enough to consent to such surgeries.
- 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.
- Disclose annually (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 the 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) the 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.