



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the fourth periodic report of the Republic of Korea\*

1. The Committee considered the fourth periodic report submitted by the Republic of Korea (CCPR/C/KOR/4) at its 3210th and 3211th meetings (see CCPR/C/SR.3210 and 3211), held on 22 and 23 October 2015. At its 3226th meeting, held on 3 November 2015, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission, albeit somewhat late, of the fourth periodic report of the Republic of Korea and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KOR/Q/4/Add.1 and Corr.1) to the list of issues (CCPR/C/KOR/Q/4), which were supplemented by the oral responses provided by the delegation during the dialogue, and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

(a) The adoption of the Act on Special Cases of Punishment for Child Abuse Crimes, in 2014;

(b) The adoption of the Refugee Act and the accompanying presidential decree and regulations, in 2013;

(c) The adoption of the Act for the Prevention of Suicide and the Creation of a Culture of Respect for Life, in 2012;

(d) The amendment to article 297 of the Criminal Act, changing the definition of the victim of rape from "woman" to "person", in 2012;

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\* Adopted by the Committee at its 115th session (19 October-6 November 2015).



(e) The amendments to the Public Official Election Act to guarantee nationals of the Republic of Korea abroad the exercise of their right to vote, in 2009;

(f) The identification in 2005 and 2006 of gender-discriminatory legislation, leading to the rectification of a total of 385 legal provisions by 2009;

(g) The adoption of the Act on the Punishment of Crimes under the Jurisdiction of the International Criminal Court, in 2007;

(h) The adoption of the Anti-Discrimination against and Remedies for Persons with Disabilities Act, in 2007.

4. The Committee welcomes the State party's ratification of the Convention on the Rights of Persons with Disabilities in 2008.

5. The Committee welcomes the State party's withdrawal of its reservation to article 14 (5) of the Covenant in April 2007.

### **C. Principal matters of concern and recommendations**

#### **Views under the Optional Protocol**

6. The Committee remains concerned about the absence of a specific mechanism to implement the Committee's Views under the Optional Protocol. In particular, the Committee notes with concern that, in all cases except one, the State party has failed to implement the Committee's Views, notably in the numerous cases concerning conscientious objection (art. 2).

**7. The State party should establish mechanisms and appropriate procedures to give full effect to the Committee's Views so as to guarantee effective remedies in all cases of violation of the Covenant. It should fully implement the Views that the Committee has issued to date.**

#### **National human rights institution**

8. The Committee notes the efforts of the National Human Rights Commission of Korea to secure legislative guarantees of its independence and a transparent and participatory process for the selection and appointment of its members. The Committee is, however, concerned that the State party has not yet adopted legislation to that effect, as that legislation could be a crucial element in the Commission's achievement of full independence in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

**9. The State party should adopt the legislation necessary to ensure a fully transparent and participatory process for the selection and appointment of members to the National Human Rights Commission of Korea at all stages of the process, to establish an independent committee to nominate candidates and to guarantee the independence of the members of the Commission.**

#### **Business and human rights**

10. The Committee notes that the actions abroad of companies under the jurisdiction of the Republic of Korea may allegedly be contravening relevant human rights standards, and it is concerned that any remedies from the State have proven difficult to obtain (art. 2).

**11. The State party is encouraged to stipulate clearly the expectation that all business enterprises domiciled in its territory and/or subject to its jurisdiction respect the human rights standards enshrined in the Covenant throughout their operations. It**

is also encouraged to take appropriate measures to strengthen the remedies available to people who have been victims of the activities of such business enterprises operating abroad, and to strengthen safeguards to prevent people from becoming victims.

#### **Non-discrimination**

12. While noting the existence of a number of individual laws prohibiting specific forms of discrimination, the Committee is concerned that comprehensive anti-discrimination legislation is lacking. It is particularly concerned about the current lack of legislation defining and prohibiting racial discrimination and discrimination on the grounds of sexual orientation or gender identity (arts. 2 and 26).

13. **The State party should adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including race, sexual orientation and gender identity. The legislation should impose appropriate penalties for direct and indirect discrimination committed by both public and private entities, and should provide for effective remedies.**

#### **Discrimination on the grounds of sexual orientation and gender identity**

14. The Committee is concerned about:

(a) The widespread discrimination against lesbian, gay, bisexual, transgender and intersex persons, including violence and hate speech;

(b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to article 92-6 of the Military Criminal Act;

(c) The authorization of the use of the buildings of the National Assembly and of buildings of the National Human Rights Commission to host so-called “conversion therapies” for lesbian, gay, bisexual and transgender persons;

(d) The lack of any mention of homosexuality or sexual minorities in the new sex education guidelines;

(e) The restrictive requirements for legal recognition of gender reassignment (arts. 2, 17 and 26).

15. **The State party should clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, including the propagation of so-called “conversion therapies”, hate speech and violence. It should strengthen the legal framework to protect lesbian, gay, bisexual, transgender and intersex individuals accordingly, repeal article 92-6 of the Military Criminal Act, avoid the use of State-owned buildings by private organizations for so-called “conversion therapies”, develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities, and facilitate access to the legal recognition of gender reassignment. It should also develop and carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.**

#### **Discrimination against women**

16. The Committee is concerned about:

(a) Ongoing discrimination against women, including patriarchal attitudes and gender-based stereotypes concerning the role of women in the family and in society;

(b) The particularly small proportion of women in decision-making positions, the high rate of women in irregular employment and the markedly high wage gap between men and women;

(c) The widespread social stigma and discrimination against unmarried mothers, including their unequal treatment with respect to the provision of child allowance compared to adoptive parents (arts. 3 and 26).

**17. The State party should develop measures to eliminate existing patriarchal attitudes and gender stereotypes, inter alia, by implementing comprehensive awareness-raising programmes to foster a better understanding of, and support for, equality between women and men in the family and in society. It should also:**

**(a) Intensify efforts to ensure equality between women and men in all spheres of both the private and public sectors, including through temporary special measures;**

**(b) Take measures to eliminate the gender wage gap, ensuring equal pay for work of equal value, including by promoting conditions to accommodate employees with families in regular employment, and eliminate discrimination in irregular employment;**

**(c) Eliminate discrimination against, and increase support provided to, unmarried mothers, particularly in education, employment and housing, and ensure that they receive the same child allowance as adoptive parents.**

#### **Violence and sexual violence against women**

18. The Committee is concerned about the prevalence of violence against women, including domestic violence. It notes with concern that marital rape is not a specific punishable offence under the Criminal Code, and that perpetrators of domestic violence continue to be offered the chance to have the charges against them suspended in exchange for undergoing a period of education or counselling, which does not adequately protect victims or sufficiently convey the gravity of domestic violence (arts. 3 and 7).

**19. The State party should explicitly criminalize marital rape under all circumstances, and define all forms of rape in terms of absence of consent rather than intimidation or violence. The State party should adopt a comprehensive strategy to prevent and address gender-based violence in all its forms and manifestations. It should strengthen its measures to raise awareness among the police, the judiciary, prosecutors, community representatives, women and men about the gravity of domestic violence and its detrimental impact on victims' lives. The State party should ensure that cases of domestic violence and marital rape are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated. It should also revise its current procedures to ensure that victims are not channelled into alternative dispute resolution mechanisms.**

#### **Counter-terrorism measures**

20. The Committee notes that five bills on counter-terrorism, including two on counter-cyberterrorism, are pending before the National Assembly. It is concerned that the information provided by the State party is insufficient for it to determine whether the current working definition of terrorism or the definition of terrorism set forth in the draft legislation is in full compliance with the Covenant. It also notes with concern that the definition of cyberterrorism is particularly vague, which could result in its arbitrary application (arts. 9, 14, 15 and 17).

21. **The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant, are applicable to terrorism alone and comply with the principle of non-discrimination. In particular, the State party should ensure that acts of terrorism, including cyberterrorism, are defined in a precise and narrow manner, and that legislation adopted in that context is limited to crimes that would clearly qualify as acts of terrorism. Inspiration for an adequate definition of terrorism may be drawn from paragraph 28 of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on ten areas of best practices in countering terrorism (A/HRC/16/51) and from paragraph 3 of Security Council resolution 1566 (2004).**

#### **Death penalty**

22. While acknowledging the current non-application of the death penalty, the Committee is concerned that a significant number of persons remain sentenced to death (art. 6).

23. **The State party should give due consideration to the legal abolition of the death penalty as well as to the commutation of all death sentences to terms of imprisonment. On the occasion of the twenty-fifth anniversary of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the State party should also consider acceding to that instrument.**

#### **Suicides**

24. While noting the measures taken to prevent suicides, the Committee is concerned about the particularly high suicide rate, especially among young people between 20 and 30 years of age, for whom it is the highest cause of death, and women, for whom it is the second highest cause of death, as well as older persons and within the military (arts. 2 and 6).

25. **The State party should increase its efforts to prevent suicides. In particular, it should study and address the root causes of suicide and improve its suicide prevention policies accordingly.**

#### **Torture and ill-treatment**

26. The Committee is concerned that the State party's criminal legislation does not adequately ensure that acts covered by the internationally accepted definition of torture are fully criminalized, especially mental torture. It is also concerned that there is no independent mechanism within the normal legal system, but separate from the police, to investigate allegations of torture and ill-treatment (art. 7).

27. **The State party should amend the Criminal Code to include a definition of torture that is fully in line with article 7 of the Covenant and internationally established norms, preferably by codifying it as an independent crime. It should ensure that all cases of torture and ill-treatment are properly investigated by an independent mechanism and that there is no institutional or hierarchical connection between the investigators and the alleged perpetrators. It should also ensure that the law adequately provides for the prosecution and conviction of perpetrators and accomplices of such acts, in accordance with the gravity of the acts, before ordinary criminal courts, as well as for remedies for victims and their families, including rehabilitation and compensation.**

### **Involuntary hospitalization in psychiatric institutions**

28. The Committee notes with concern reports that a large number of individuals in mental health facilities are involuntarily hospitalized, that the grounds for involuntary hospitalization are excessively broad and include circumstances in which the detained persons do not present a threat to themselves or others, and that procedural safeguards against involuntary hospitalization are inadequate (arts. 7 and 9).

**29. The State party should ensure that psychiatric confinement is strictly necessary and proportionate, is for the purpose of protecting the individual in question from serious harm or from preventing injury to others, and is applied only as a measure of last resort and for the shortest appropriate period of time. It should also ensure that procedures for involuntary hospitalization respect the views of the individual, and that any representative genuinely represents and defends the wishes and interests of the individual concerned. It should further ensure that such confinement is supported by adequate procedural and substantive safeguards established by law.**

### **Violence in the military**

30. The Committee is concerned about the high number of cases of sexual, physical and verbal abuse in the military, and that only a small number of such cases are recorded and lead to indictment (art. 7).

**31. The State party should conduct full and impartial investigations into all allegations of abuse in the military and ensure that perpetrators of human rights violations are tried and punished. Merely suspending perpetrators of violent crimes from their duties or dismissing them from the army is not an adequate response. Complaints should be treated confidentially and victims and witnesses should be protected against reprisals.**

### **Right to counsel**

32. The Committee notes with concern that detainees' access to counsel during interrogation may be limited under certain circumstances, and that those circumstances are not clearly defined, which could lead to the inappropriate exclusion of counsel (art. 9 and 14).

**33. The State party should introduce the legal amendments necessary to ensure that the right of detainees to be assisted by counsel during interrogation is not restricted under any circumstances.**

### **Prison conditions**

34. The Committee is concerned about:

- (a) Overcrowding in prisons and limited access to medical aid outside prisons;
- (b) The reported frequent use of protective devices in prisons for retributive purposes, and termination of their use being subject to a decision by the prison guard;
- (c) The reported use of solitary confinement, which can be imposed for up to 30 days, as the most common form of disciplinary punishment of inmates;
- (d) The fact that external members of the disciplinary committees, which decide on the type of disciplinary action to be taken, are appointed by the prison warden (art. 10).

35. **The State party should:**

(a) **Ensure that solitary confinement is used only in the most exceptional circumstances and for strictly limited periods, and that the members of the disciplinary committees are appointed by an independent authority;**

(b) **Ensure that the implementation of article 99 (2) of the Administration and Treatment of Correctional Institution Inmates Act is vigorously monitored, and that the use of protective devices is subject to legally determined limits;**

(c) **Take specific steps to bring the prison system into line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

#### **Detention by the National Intelligence Services of “defectors” from the Democratic People’s Republic of Korea**

36. The Committee notes with concern that “defectors” from the Democratic People’s Republic of Korea are detained, upon their arrival, in a particular centre and that they may be held there for up to six months. While noting the information provided by the delegation that detainees have access to human rights protection officers, the Committee is concerned that they do not have access to counsel. It is also concerned about reports suggesting that “defectors” from the Democratic People’s Republic of Korea may be deported to third countries without independent review if it is determined that they do not qualify for protection (arts. 9, 10 and 13 ).

37. **The State party should ensure that “defectors” from the Democratic People’s Republic of Korea are detained for the shortest possible period, that detainees are given access to counsel during the entire length of their detention, that counsel is available during interrogations, and that the duration and methods of interrogation are subject to strict limits that comply with international human rights standards. It should adopt clear and transparent procedures that provide for review with suspensive effect by adequate independent mechanisms before individuals are deported to third countries.**

#### **Detention of asylum seekers**

38. While welcoming the enactment of the Refugee Act and the accompanying presidential decree and regulations in 2013, the Committee is concerned about the absence of any legally prescribed maximum duration for immigration detention, the immigration detention of children, and the poor living conditions in immigration detention facilities (arts. 9 and 24).

39. **The State party should limit the period of immigration detention and ensure that such detention is used as a measure of last resort, for the shortest appropriate period. It should also ensure that children are not deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests in accordance with the Committee’s general comment No. 35 (2014) on liberty and security of person. It should also ensure that living conditions in immigration detention centres are in conformity with international standards and are subject to regular independent monitoring.**

#### **Migrant workers and trafficking for the purpose of forced labour**

40. The Committee notes with concern that, while the State party is a source, transit and destination country for human trafficking, traffickers are rarely prosecuted and convicted. It is also concerned that:

(a) A significant number of agricultural workers are trafficked into the State party for the purpose of exploitation, including forced labour, and migrant workers cannot change employer without their existing employer's permission, under the Employment Permit System, or only under the particularly limited circumstances set out in article 25 of the Act on Foreign Workers' Employment etc.;

(b) Women entering the country on E-6 (Culture and Entertainment) visas are frequently trapped into prostitution;

(c) The State party does not have a mechanism in place to adequately identify victims of trafficking, which places them at risk of detention and deportation;

(d) The definition of trafficking as such in the Criminal Code criminalizes only the acts of buying and selling, which hinders the prosecution of persons who have recruited and exploited migrant workers through contractual deception (arts. 3, 7 and 8).

**41. The State party should vigorously combat human trafficking, in particular by combating the demand for trafficked persons, and by:**

**(a) Allowing all migrant workers under the Employment Permit System to freely change their employer;**

**(b) Strengthening efforts to prevent forced labour, including by increasing the number of labour inspections;**

**(c) Regulating the use of E-6 (Culture and Entertainment) visas to ensure that they are not used to cover up trafficking for the purpose of prostitution;**

**(d) Bringing its definition of trafficking into compliance with international standards, establishing a mechanism to identify victims of trafficking and ensuring that they are treated as victims and have access to all the necessary support.**

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

42. The Committee notes with concern that, under article 83 (3) of the Telecommunications Business Act, subscriber information may be requested without a warrant by any telecommunications operator for investigatory purposes. It is also concerned about the use and insufficient regulation in practice of base station investigations of mobile telephone signals picked up near the site of demonstrations in order to identify participants, and about the extensive use and insufficient regulation in practice of wiretapping, in particular by the National Intelligence Service (arts. 17 and 21).

**43. The State party should introduce the legal amendments necessary to ensure that any surveillance, including for the purposes of State security, is compatible with the Covenant. It should, inter alia, ensure that subscriber information may be issued with a warrant only, introduce a mechanism to monitor the communication investigations of the National Intelligence Service, and increase the safeguards to prevent the arbitrary operation of base station investigations.**

#### **Conscientious objection**

44. The Committee is concerned that, in the absence of a civilian alternative to military service, conscientious objectors continue to be subjected to criminal punishment. It notes with concern that conscientious objectors' personal information may be disclosed online (art. 18).

**45. The State party should:**

**(a) Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service;**



(b) **Ensure that conscientious objectors' criminal records are expunged, that they are provided with adequate compensation and that their personal information is not publicly disclosed;**

(c) **Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility of performing an alternative service of civilian nature.**

#### **Criminal defamation laws**

46. The Committee is concerned about the increasing use of criminal defamation laws to prosecute persons who criticize government action and obstruct business interests, and about the harsh sentences, including lengthy prison terms, handed down in such cases. It notes with concern that people can be criminally prosecuted even for making statements that are true, except when such statements are made solely for public interest (art. 19).

47. **The State party should consider decriminalizing defamation, given the existing prohibition in the Civil Act, and should in any case restrict the application of criminal law to the most serious defamation cases, bearing in mind that imprisonment is never an appropriate penalty. It should ensure that the defence of the truth is not subject to any further requirements. It should promote a culture of tolerance regarding criticism, which is essential for a functioning democracy.**

#### **Prosecutions under the National Security Act**

48. The Committee is concerned that prosecutions continue to be brought under the National Security Act. In particular, it is concerned that the unreasonably vague wording of article 7 of the Act could have a chilling effect on public dialogue and is reported to have unnecessarily and disproportionately interfered with freedom of opinion and expression in a number of cases. The Committee notes with concern that the Act is increasingly used for censorship purposes (art. 19).

49. **The Committee recalls its general comment No. 34 (2011) on freedoms of opinion and expression and its concluding observations on the second periodic report of the State party (see CCPR/C/79/Add.114, para. 9) and reminds the State party that the Covenant does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create empathy for that entity. The State party should abrogate article 7 of the National Security Act.**

#### **Dissolution of the Unified Progressive Party**

50. The Committee is concerned that the dissolution of the Unified Progressive Party, which was ordered by the Constitutional Court in 2014 for the alleged violation of the basic democratic order, was substantially based on the alleged propagation of the ideology of the Democratic People's Republic of Korea by the party members, who have already faced charges under article 7 of the National Security Act (arts. 19 and 22).

51. **In view of the particularly far-reaching consequences of dissolving a political party, the State party should ensure that the measure is used with utmost restraint and as a last resort only, and that it reflects the principle of proportionality.**

#### **Peaceful assembly**

52. The Committee is concerned about the severe restrictions placed on the right to peaceful assembly, including the operation of a de facto system of authorization of peaceful assemblies by the police, cases of use of excessive force, car and bus blockades, and the

restriction on demonstrations held past midnight. It is also concerned about the frequent application of criminal law to impose fines on and arrest journalists and human rights defenders for either organizing or participating in protests without due consideration for their right to freedom of assembly (arts. 7, 9 and 21).

53. **The State party should ensure that all persons enjoy the right to peaceful assembly, and that limitations on that right are in strict compliance with article 21 of the Covenant. It should review its regulations on the use of force and ensure that they are in compliance with the Covenant, and train its police officials accordingly.**

#### **Freedom of association**

54. The Committee is concerned that unreasonable restrictions are being placed on public officials' freedom of association. It is also concerned about cases in which trade unions have been refused registration on the ground that their membership includes employees who have been dismissed (art. 22).

55. **The State party should withdraw its reservation to article 22 of the Covenant and enable all sectors of the labour force, including public officials and employees who have been dismissed, to join trade unions.**

#### **Birth registration**

56. The Committee notes with concern that foreigners are expected to apply to their embassies to register the births of their children, which is frequently impossible for asylum seekers, humanitarian status holders and refugees (art. 24).

57. **The State party should ensure that the births of all children can be registered, irrespective of their parents' legal status and origin.**

### **D. Dissemination of information relating to the Covenant**

58. **The State party should widely disseminate the Covenant, the First Optional Protocol thereto, the text of its fourth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.**

59. **In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 15 (discrimination on the grounds of sexual orientation and gender identity), 45 (conscientious objection) and 53 (peaceful assembly) above.**

60. **The Committee requests that the State party provide in its next periodic report, due for submission on 6 November 2019, specific up-to-date information on the implementation of all its recommendations made in the present concluding observations and on the Covenant as a whole. The Committee requests that the State party, in preparing the report, continue its practice of broadly consulting civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.**