

Joint NGO Submission to the Human Rights Committee for Lists of Issues Prior to Reporting

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South Korean Human Rights Organizations Network (97 NGOs)

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Preface

The South Korean Human Rights Organizations Network composed of 97 human rights organization in the Republic of Korea submits its report to the Human Rights Committee in advance of the preparation of the list of issues prior to reporting (LoIPR) for the review of the 5th periodic report of the Republic of Korea, at its 126th session from 1th July to 26th July 2019.

In this report, we, the South Korean Human Rights Network, would like to propose and enumerate below particularly noteworthy points of inquiry to be put forth to the Korean government. We present first our assessment of the situation of human rights in the South Korea, and suggest the list of issues and questions.

Introduction

In 2017, with the new government, many human rights pledges were made and there were some improvements concerning the right to assembly, etc. However, the State party lacks clear vision or overall policy related to human rights. The State party is reiterating the previous position on so-called “sensitive issues” like abolition of death penalty and abolition of the National Security Act, and is not properly keeping its own promises such as ratification of the International Labour Organization fundamental conventions and abolition of discrimination against non-regular workers. Even though there have been increasing dialogues with the civil society, they rarely result in meaningful outputs and the establishment and implementation of the National Action Plan for the Promotion and Protection of Human Rights and its contents have been all too formalistic. Drafting process of the Basic Act on Human Rights, which consists of the process of implementing recommendations of the UN human rights bodies, and the Anti-discrimination legislation had no progress for many years, and human rights violation is getting more and more serious in relation to the right to privacy, etc.

Hatred and discrimination against LGBTIs, migrants and refugees are getting worse but the State party, rather than publicly expressing clear principles on this issue, has not taken any measures against hate speeches and has made refugee recognition more difficult defining most refugees as “fake refugees”. The State party refused the Human Rights Committee’s recommendation to clearly and officially state that it does not tolerate discrimination based on sexual orientation or gender identity, and simply described the related legal situation in response to the Committee’s recommendations on conscientious objection and the right to assembly. Furthermore, despite the active #MeToo movement across the country since 2018, the State party’s actions have merely focused on short-term, makeshift measures, rather than addressing the root causes of severe gender discriminatory structure. Such attitude of the State party is indicative of how it sees the weight of human rights. If the State party is not serious enough like this in approaching the recommendations of the Committee and the need for improving human rights situation, there can be hardly any room for improvement for individual and concrete human right issues. If the State party does not change its attitude and take substantial measures, it can become a repressive regime with regressive steps or such regime can come at any moment.

General Comments

1. Effect of the Covenant and the case applied for a trial

According to the Constitution, a signed and ratified treaty has the same effect as domestic law. However, while the Court acknowledges that the treaty is effective as a law under the domestic law, it is extremely rare to use the ratified convention as a criterion for concrete judgment. Furthermore, even if the convention is used as a criterion for judgment, it is the Court's own right to interpret the convention in detail and does not even acknowledge the validity of the Committee's general comment or view on individual complaint.

Suggested Questions

- Please provide statistics on cases in which the human rights treaties have been used as the basis for judgment in actual trials.
- Please provide a plan whether the State party would legislate a basic law or policy that compensates for the implementation of recommendations for General Comment and view of individual complaint.

2. Effort to Implement the Views of Individual Complaints

The Committee rendered its views against the government in violation of the Covenant in 125 cases submitted by 561 individuals.¹ First, one hundred fifteen cases are concerned with conscientious objection. In November 2018, the Supreme Court found not guilty in conscientious objection,² which results in implementation of the Committee's views. Second, eight cases dealt with the National Security Law violating article 19 of the Covenant. The government has defended that the restriction is a legitimate measure for the national security reason and that it has strictly interpreted and applied the Law to minimize infringement of freedom of expression.³ It has failed to implement the Committee's views.

1

	Case	Case Number	Violated Article(s)
1	Geuntae Kim v. ROK	CCPR/C/64/D/574/1994	Article 19.2
2	Tae Hoon Park v. ROK	CCPR/C/64/D/628/1995	Article 18.1, 19.1, 19.2, 26
3	Shin v. ROK	Communication No. 926/2000	Article 19.2
4	Jong-Kyu Sohn v. ROK	CCPR/C/54/D/518/1992	Article 19.2
5	Gi-geong Nam v. ROK	CCPR/C/78/D/693/1996	Article 19.2
6	Yong-joo Kang v. ROK	CCPR/C/78/D/878/1999	Article 10.1, 10.3, 18.1, 19.1, 26
7	Kim Jong-Cheol v. ROK	CCPR/C/84/D/968/2001	Article 19.2, 25, 26
8	Lee Jeong-eun v. ROK	CCPR/C/84/D/1119/2002	Article 22
9	Ajaz and Jamil v. ROK	CCPR/C/66/D/644/1995	Article 6, 7, 9, 10, 14
10	Andrea Vandom v. ROK	CCPR/C/123/D/2273/2013	Article 17, 26, 14.1
11	Yoon and Choi v. ROK	CCPR/C/88/D/1321-1322/2004	Article 18
12	Jung et al v. ROK	Communications Nos. 1593 to 1603/2007	Article 18
13	Min-Kyu Jeong et al v. ROK	CCPR/C/010/D/1642-1741/2007	Article 18
14	Jong-nam Kim et al v. ROK	Communication No. 2179/2012	Article 18.1, 9.1

² Supreme Court, 2016Do10912

³ Fourth periodic reports of State parties submitted by the Republic of Korea, Paras. 26-30

Suggested Questions

- Please list the government's effort to implement the views of the Committee in individual complaints.
- Please provide the plans with respect to the law and policy that aim to implement the views of Committee in the individual complaint.

3. Compliance of Counter-Terrorism Legislation with the Covenant

A lot of key concepts related to the acts of terrorism are abstract and vague even though the Committee recommended in its fourth concluding observation that the State party should define acts of terrorism in a precise and narrow (para. 21). The Act On Counter-terrorism For The Protection of Citizens And Public Security allows the director of National Intelligence Service to inspect widely and broadly a person who is designated as a 'terrorist-suspect' by admitting the collection of the person's i) information related to his or her immigration, financial transaction, and communication uses-including communication restricting measures, such as wiretapping, etc, ii) personal information-including sensitive information,⁴ and iii) tracing.⁵ The act, however, has defined 'terrorist-suspect' abstractly like this: "a member of a terrorist group, a person who has propagated a terrorist group, raised or contributed funds for terrorism, or engaged in other activities of preparing, conspiring, propagandizing, or instigating terrorism, or a person who has a good ground to be suspected of having performed such activities."⁶ The process of determining a 'terrorist-suspect' is unclear, and there is no ex-post device to control the results of the collected information.

⁴ The definition of sensitive information is prescribed in article 23 (1) of the Personal Information Protection Act like this: "A personal information controller shall not process any information prescribed by Presidential Decree (hereinafter referred to as "sensitive information"), including ideology, belief, admission to or withdrawal from a trade union or political party, political opinions, health, sexual life, and other personal information that is likely to threaten the privacy of any data subject noticeably"

⁵ The Act On Counter-terrorism For The Protection of Citizens And Public Security Article 9 (Collection of Information on Terrorism Suspects)

(1) The Director of the National Intelligence Service may collect information on terrorist suspects, such as information on their entry into and departure from the Republic of Korea, financial transactions, and use of communications. In such cases, the collection of related information, such as information on their entry into or departure from the Republic of Korea, financial transactions, and use of communications, shall be subject to the procedures provided for in the Immigration Act, the Customs Act, the Act on Reporting and Using Specified Financial Transaction Information, and the Protection of Communications Secrets Act.

(2) The Director of the National Intelligence Service may request the Chairman of the Financial Services Commission to take such measures as suspension of payment, etc. against any financial transaction used or likely to be used for terrorism as a result of the collection and analysis of information prescribed in paragraph (1).

(3) The Director of the National Intelligence Service may request personal information (including sensitive information prescribed in the Personal Information Protection Act) and location information of a terrorist suspect from a personal information controller provided for in Article 2 of the Personal Information Protection Act and a personal location information provider provided for in Article 5 (7) of the Act on the Protection and Use of Location Information and a location of things service entity provided for in Article 5-2 (3) of the same Act. <Amended by Act No. 15608, Apr. 17, 2018>

(4) The Director of the National Intelligence Service may conduct counter-terrorism investigations and trace terrorist suspects to collect information or materials necessary for counter-terrorism activities. In such cases, he/she shall report such fact to the Chairperson of the National Counterterrorism Committee.

⁶ Article 23 of Act On Counter-terrorism For The Protection of Citizens And Public Security

Suggested Questions

- Please provide the number of people who are designated as ‘terrorist-suspects,’ the information collection activities conducted against them, and the number of the activities.
- Please clarify if there is a device to control that can prevent the excessive violations of human rights of the people who are designated as ‘terrorist-suspects.’ Please also answer what kind of remedies can be provided for the victims of the excessive violations of human rights.

4. National Action Plan

The government announced the 3rd National Action Plan for the Promotion and Protection of Human Rights (NAP) in August 2018. However, the civil society is showing a negative perspective toward the NAP’s establishment process and contents since Moon administration promised to respect human rights fully. In the process of establishing NAP, the Ministry of Justice reveals its limitation. Majority of the ministries failed to show their understanding and will regarding the establishment and implementation of the NAP. Plans for human rights protection of LGBTI were still incomplete in the 3rd NAP. What was worse is that the 3rd NAP even retrogressed, eliminating LGBTI from the list of minorities⁷ and no clear explanation of reason for the omission was offered. Issues including the abolition of the death penalty and National Security Law, or Anti-Discrimination legislation were not even included in the 3rd NAP. It is regrettable that the government reserves its position on numerous human rights problems for the sake of ‘political sensitivity’ and decided to ‘research’ more about those issues.

Suggested Questions

- Please provide plans regarding human rights protection of minorities, including LGBTIs, refugees, immigrants, through the implementation of 3rd NAP and establishment of 4th NAP.
- Please provide plans to overcome the limitations of establishing NAP, such as Ministry of Justice in the leading role. Also, provide institutional measures to strengthen the NAP’s status.

5. Business and Human Rights

The government organized a separate chapter regarding business and human rights in the 3rd NAP, for the first time. However, as they took a stance to hold institutionalization of human rights compliance for only public enterprises, practical measures to solve human rights violation to local workers in Korean transnational corporates were not considered. Moreover, the government hasn't clearly mentioned human rights due diligence (HRDD) action plans as deferring the introduction of human rights impact assessment in the official development assistance (ODA).

Regarding human rights violations in Korean companies overseas, the government commented in NAP to "share major issues and establish a cooperation system with related domestic and foreign institutions." However, it is unclear which department will take charge of the work, under what

⁷ [Joint Statement] “The CSO denounces the third NAP”, Aug. 14, 2019 available at [http://www.khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=523&ncount=499&s_text=&s_title=&pageno=2&basic_url=\(in Korean\)](http://www.khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=523&ncount=499&s_text=&s_title=&pageno=2&basic_url=(in Korean))

purpose. Specific plans are still not being presented. While the Korean National Contact Point (NCP) empathizes on neutrality, it rather protects Korean companies overseas other than providing a remedy for victims. This is the result of NCP not guaranteeing institutional participation of trade unions and civil society. The government isn't coming up with any specific measures about Korean companies' abuses in ASEAN Region despite of the President's order⁸.

Suggested Questions

- Please clarify the introduction of Human Rights Impact Assessment to public enterprises and business on which the government budget is spent, including ODA. Please clarify when will the Human Rights Impact Assessment be introduced, and what scope will they cover.
- Please provide plans for utilizing Korean judicial proceedings with the enhancement of NCP's effectiveness, for human rights violation victims by Korean firms overseas?
- Please provide plans of holding human rights violation prevention discipline for Korean firms, or cooperating with local human rights activists to make diplomatic offices actively engage in preventing Korean companies' human rights violation.

6. National Human Rights Institution

National Human Rights Commission of Korea (NHRCK) has maintained their A status since Global Alliance of National Human Rights Institutions (GANHRI) deferred its reaccreditation four times in a row in May 2016, but failed to carry out their role due to the conservative government's independence violation. After the 2016 candlelight protest, Moon's administration took place, promising to strengthen NHRCK's status. However civil society strongly criticized that without NHRCK's self-reflection and renovation, the authority shouldn't be strengthened. Accordingly, the civil society took the lead in forming the Innovation Committee of the NHRCK. Through their 3-month tasks, the Innovation Committee recommended specific measures for NHRCK's renovation while NHRCK is under process⁹. In 2016, GANHRI again granted 'A' status to NHRCK but called in to reform the appointment process by making an independent Candidate Recommendation Committee under civil society's scrutiny¹⁰. In May 2018, the Presidential Office accepted the recommendation and directed the constitution of Candidate Recommendation Committee, for the next Chairperson of NHRCK. With the participation of civil society,¹¹ Ms. Choi Young-ae started her term since August 2018. However, the renovation of NHRCK act to constitute the Candidate Recommendation Committee still hasn't passed through the National Assembly. Moreover, Liberty Korea Party that elects 1 standing commissioner and 1 non-standing commissioner of the committee is recommending personnel, who are consistently showing anti-human rights behavior such as hatred toward LGBTs.

⁸ In March 2019, president Moon ordered solution of Korean firm's payment delay in Indonesia, and research and prevention of similar cases in ASEAN regions, for the first time ever as a Korean high-ranking officer.

See the article of *Koreatimes*, available at https://www.koreatimes.co.kr/www/nation/2019/03/356_264992.html

⁹

<https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=3&menuid=002002005&pagesize=10&boardtypeid=7013&boardid=7601808>

¹⁰ <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

¹¹ https://www.ytn.co.kr/_ln/0101_201805141518204021

Suggested Questions

- Please provide plans for a revised NHRCK Act that constitutes a Candidate Recommendation Committee under civil society's participation to pass the National Assembly.
- Please clarify the preventive measure to block personnel who show hatred toward minorities, from being elected as NHRCK commissioner.

Article 2

1. Comprehensive Anti-discrimination legislation

The enactment of a comprehensive anti-discrimination legislation, including race, sexual orientation and gender identity, is a recurrent recommendation from the Committee and several treaty bodies. Nevertheless, the government kept avoiding the issue of the enactment of the legislation on the grounds of "lack of social consensus". Considering the government said "Although there is a claim that legal grounds should be laid to protect LGBTI persons in relation to the enactment of the anti-discrimination legislation, the opposition from the religious groups and other is strong" and delete the chapter on LGBTs in the 3rd NAP in 2018, the negative attitude of the government is a bigger problem in that it has the effect of increasing discrimination. There are no plans to implement the legislative initiative in the 20th National Assembly, whose term ends in April 2020.

Suggested Questions

- Please provide plans for the enactment of the comprehensive anti-discrimination law.
- Please provide what specific legislative and administrative responses the State have in regard to the hatred and discrimination against minorities such as LGBTI persons, refugees, immigrants, and persons with disabilities.

2. Legal Recognition of Transgender Persons

Since the decision of the Supreme Court in 2006, the Court's guideline, not a law, presents the procedure of the legal recognition of transgender persons and the investigative points. However, the above guideline is ambiguous and doesn't provide the information necessary to make an application. In addition, since the guideline is an established rule by the Court, not a law, sometimes judges give out arbitrary decisions violating human rights. According to a 2018 survey of 70 transgender persons about difficulties in legal gender recognition, 41.4% of respondents said they 'could not find information', and 37.1% said that 'there are too many documents to submit'. There were many cases of unnecessary revision of application recommendations or insulting questions during the interrogation process.

Suggested Questions

- Please provide statistical data on human rights violations in the legal recognition process, and if the data are not available, please clarify if the Court is attempting to identify the statistics.
- Please provide the Court's plan to establish a quick, transparent, accessible legal gender recognition procedure in line with international human rights standards.

3. Article 92-6 of the Military Criminal Act

Article 92-6 of the Military Criminal Act punishes consensual same-sex sexual conduct between men in the military and is only provision in the country that criminalizes consensual same-sex sexual conduct. Many UN bodies, including this Committee in 2015, have recommended the abolition of this provision. In the third constitutional review of this article in the past 14 years, in July 2016, the Constitutional Court upheld the former 92-5 of the Act in a 5 (constitutional) to 4 (unconstitutional) decision. The government replied during the UPR, "The provision is aimed at establishing a military sexual morale, not punishment for sexual orientation." In 2017, the press and media reported a crackdown on gay soldiers for violating the Military Criminal Act in the army.¹² The military investigators tracked down gay soldiers using gay dating apps and/or social media. One officer, known as Captain A, was prosecuted and sentenced to 6 months of imprisonment and 1 year of probation.

Suggested Questions

- Please provide statistics of investigation, prosecution and punishment under this provision.
- Please declare and suspend the investigation and enforcement based on this provision. Please provide statistical data on human rights violations in the legal recognition process, and if the data are not available, please clarify if the Court is attempting to identify the statistics.
- Please provide the Court's plan to establish a quick, transparent, accessible legal gender recognition procedure in line with international human rights standards.

4. Non-recognition of Same-sex Couples

In 2014, the Seodaemun-gu Office in Seoul rejected a marriage application of a same-sex couple. In May 2016 Seoul western district court dismissed the application for dismissal of the rejection, saying, "We cannot conclude that the union of same-sex is allowed as 'marriage' by law interpretation only under the current law system." In December 2016, the Court also rejected the appeal. The government does not apply the right recognized according to statutes and judgments of non-marital heterosexual couples to same-sex couples. Accordingly, same-sex couples are discriminated against in the enjoyment of social rights such as pensions, housing, and health insurance. The Life partnership Act, a law granting rights to social welfare such as property issues, medical decision-making rights, public housing and national health insurance, was prepared for unions living outside the marriage relationship, but was not initiated by the National Assembly until this date.

Suggested Questions

- Please submit information on measures to enable same-sex couples to enjoy economic, social, and cultural rights including social security on an equal footing with opposite-sex couples.
- Please provide plans to introduce gender-neutral civil union bill.

¹² CNN, "Dozens arrested as South Korean military conducts 'gay witch-hunt'", June 12, 2017. <http://edition.cnn.com/2017/06/11/asia/south-korea-lgbt-military/index.html>

5. Social Disasters and Human Rights

In 2014, 304 people including 250 high school students died in the Sewol Ferry Disaster. From 1994 to 2011, at least hundreds of people died and thousands of people suffered ill health owing to exposure to hazardous chemicals found in humidifier sterilizers. Concerning the Sewol Ferry Disaster, several UN bodies expressed concern over: the State party's repression of assemblies by the victim families of the Sewol Ferry Disaster; dissolution of a related special investigation commission; and rejection of registration of the victim families' organization.¹³ Concerning humidifier sterilizers, several UN bodies pointed out: the number and situation of victims not properly identified; the State party's poor supervision; companies' violation of due diligence; limited recognition of harm; and delay of providing remedies.¹⁴ The problems mentioned above are mostly still ongoing. In addition, 1) the exact truth of the two social disasters has not been revealed, 2) it was discovered that the Sewol Ferry victim families have been under systematic surveillance by the Defense Security Command (DSC)¹⁵ and the police¹⁶ but the surveillance by the National Intelligence Service (NIS) has not been revealed, 3) not all of those responsible for the Sewol Ferry Disaster were prosecuted, 4) still human rights-based approach to disaster response (e.g. guaranteeing victims' right to truth, access to information and freedom of assembly and association) to prevent recurrence of similar social disasters is not in place.

Suggested Questions

- In relation to the Sewol Ferry Disaster, please provide information on measures being taken and the future plans by the State party for investigation of the cause of the disaster, investigation of surveillance of the victim families by government bodies including the NIS, and prosecution of all of those responsible.
- In relation to humidifier sterilizers, please provide information on measures being taken and the future plans by the State party for searching victims and identifying the actual size of damage, expansion of the scope of remedies for victims, and recognition of the government's accountability and establishment of plans to prevent future recurrences.
- Please describe how human rights-based approach to disaster response including guarantee of victims' right to truth, access to information and freedom of assembly and association is reflected in law, institution and practice of the State party.

6. Detention of "Escapees" from the Democratic People's Republic of Korea (DPRK) by the

¹³ The concluding observations of the Committee against Torture in 2017 and the mission report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2016

¹⁴ the mission reports of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes in 2016 and of the Working Group on the issue of human rights and transnational corporations and other business enterprises in 2017

¹⁵ "DSC formed a task force to systematically surveil the Sewol Ferry bereaved families," MBC News (2 July 2018), http://imnews.imbc.com/news/2018/politic/article/4676794_22672.html (Last visited: 1 May 2019).

¹⁶ "Police, Suggested to the Park Geun Hye's Blue House "public opinion struggle to obstruct the Sewol Ferry Special Investigation Commission"", KBS News (14 April 2019), <http://news.kbs.co.kr/news/view.do?ncd=4179733&ref=A> (Last visited: 1 May 2019)

National Intelligence Service (NIS)

The concluding observations of the Committee in 2015 (paras. 36-37) and the Committee against Torture in 2017 (paras. 17-18) demanded the State party on the “Center for the Protection of North Korean Escapees” (formerly the “Central Joint Interrogation Center”): 1) detention of DPRK “escapees” for the shortest possible period; 2) access to counsel during the entire length of detention, including during interrogation; 3) differentiation between the investigation process to decide on protection for DPRK “escapees” regarding settlement as opposed to criminal investigation processes for the violation of the National Security Law, etc. Even though the revisions of the Act on the Protection and Settlement Support of Residents Escaping from North Korea and its Presidential Decree reduced the maximum investigation period to 3 months, indefinite detention is still possible with no limit of the period for “decision on protection.” Still the NIS decides everything concerning detention and investigation, and there is no substantial change related to due process including guarantee of access to counsel. Unless the related authorities and procedures for the investigation to decide on protection and criminal investigation are strictly differentiated, human rights violations and abuses regarding DPRK “escapees” as potential DPRK spies will inevitably continue.

Suggested Questions

- Please provide information on how the related authorities and procedures for the investigation to decide on protection and criminal investigation of DPRK “escapees” are differentiated or on whether the State party has plans to differentiate those two.
- Please describe the legal and institutional reforms and related measures to substantially guarantee due process including guarantee of access to counsel.
- Please provide information in details on the number of applications for protection not accepted, their reasons for being denied protection and the measures taken to these cases.

7. Discrimination in Realizing Civil and Political Rights of the children in Schools

The civil and political rights of the children in schools are not explicitly defined under the current legal system. As a result, the rights of the children have been violated arbitrarily by school regulations or teachers’ guidance. For example, Article 18 (1) of the Elementary and Secondary Education Act and Article 9 (1) 7 of the enforcement decree of the act allows to make regulations that regulate the children’s appearance, such as hair, clothes, and so on, the inspection of belongings, and the confiscation of cell phones.¹⁷ The act, however, has not been revised yet. Meanwhile, the Ordinance of Student Rights has been enacted only in Gyeonggi, Gwangju, Seoul, and Jeonbuk. The enactment of the ordinance has been failed in other areas since 2013. There has been an attempt to enact the ordinance in Gyeongnam in 2019. The attempt, however, is proceeding with difficulty - the removal of essential articles, and so on - due to the opposition of the hate groups, such as anti-LGBT groups and the lack of the understanding of human rights of students in schools.¹⁸

¹⁷ The National Human Rights Commission of Korea, The Field Study on the Human Rights of Students in Schools, 2016: 53. 5% of the students answered that there had been a regulation of hair and 79.4% of students answered that there has been a regulation of cell-phone uses.

¹⁸ <http://www.newsjoy.or.kr/news/articleView.html?idxno=222897>

Suggested Questions

- Please provide information on the specific measures to eliminate the discrimination in realizing civil and political rights of the children in schools, including the plans to revise the Elementary and Secondary Education Act.
- Please provide the specific plans to preventing the violations of the human rights of the children in schools, such as provision of remedies to the violations, public campaign, and so on.

8. Women's Representation in Political and Public Sectors

The percentage of women public officials at senior levels is still below 20%. Women officials at senior and managerial levels in the central government account for 6.7% and 17.5%, respectively. Only 15 of senior public officials in local governments are women. In public institutions, the rate of women in senior executive positions is recorded at merely 17.9%.¹⁹ Meanwhile, the government recently announced that the average percentage of women members on government committees was 41.9% as of 2018. However, its survey results are only based on the numbers of commissioned members. Furthermore, the government recommended that committees, where the rate of male members is below 40%, should increase men's participation. However, this undermines the original aim of the active action (AA) stipulated in the Framework Act on Gender Equality, focused on enhancing women's participation in decision-making processes. The government needs to conduct a comprehensive survey on the actual gender ratio of members of all government committees, including the ex officio members, and make relevant recommendations. In political areas, the rates of women members in the National Assembly, and metropolitan and local councils are 17%, 19%, and 30%, respectively. There are no elected female leaders among the metropolitan governments, and only 3.5% of leaders in local governments are women. In order to enhance women's political representation, the government should take action to make political reforms, including 1) introducing a system of proportional representation (PR) linked with districts in the National Assembly, 2) making gender quotas mandatory in single-member districts (SMDs), and 3) strengthening gender quota systems.

Suggested Questions

- Please provide information on specific measures to increase the effectiveness of policies aimed at improving women's representation in public sectors, including public officials at senior levels, senior executive positions in public institutions and government committees.
- Please provide information on measures taken by the State party to enhance women's political participation.

9. Gender Wage Gap and Gender Discrimination at Work

As of 2017, the gender wage gap was 37%, the highest among OECD countries for the last 16 years. Recent news reports have indicated that women face many barriers in accessing decent work, with several public institutions and finance companies fabricating scores to disqualify female applicants and

¹⁹ MOGEF, 'Plan for enhancing women's representation in public areas: status in 2018 and plan for 2019', Mar. 18, 2019.

hire male ones in their recruitment process.²⁰ Although prevalent gender discrimination in the labor market restricts women to low wages, unstable employment (such as part-time or non-regular jobs), rigid job segregation by gender, and repetitive career interruption, there is no specific policy system to rectify gender discrimination in terms of employment. The government's policies on women's employment only focus on short-term, makeshift measures, such as increasing employment rates or supporting the reemployment of women on a career break, rather than addressing the structural causes of gender discrimination.

Suggested Questions

- Please provide information on the government's specific plans to strengthen legal and policy frameworks aimed at realizing the principle of equal pay for equal value work, which is one of the ways of addressing the gender pay gap.
- Please provide information on concrete measures to make the labor committee properly carry out its job of rectifying gender discrimination in employment.

10. Payment of Child Maintenance

According to the 2015 Survey on Single-Parent Families by the Ministry of Gender Equality and Family (MOGEF), the average monthly household income of single-parent families is less than half of the average income of all households. Poverty among single-parent families, directly linked to child poverty, serves as a key obstacle to the healthy development of a child. While the payment rate of child maintenance by non-custodial parents is only 11.6%,²¹ existing enforcement measures for payment are not being properly implemented. According to Article 4 of the Act on Enforcing and Supporting Child Support Payment (regarding the State party's responsibilities and obligations to support custodial parents), there is an urgent need to introduce a policy whereby the government can collect child maintenance from a non-custodial parent through enforcement measures after paying it to a custodial parent instead, especially for those who cannot handle complex litigation procedures by themselves or who cannot rely on the private support system.

Suggested Questions

- Please provide information on measures that the State party has taken to increase the payment rate of child maintenance, including investigation of the properties of a non-custodial parent and effective enforcement measures, as well as concrete action plans to introduce a policy through which the government collects child maintenance from a non-custodial parent through enforcement measures after providing it to a custodial parent instead.

²⁰ 'South Korea's glass ceiling: the women struggling to get hired by companies that only want men,' Feb. 2, 2019, CNN, <https://edition.cnn.com/2019/01/31/asia/south-korea-hiring-discrimination-intl/index.html>.

²¹ According to the 2015 Survey on Single-Parent Families by the MOGEF, the percentages of cases in which custodial parents have received child maintenance by non-custodial parents regularly, irregularly and in a lump sum in the last year are 11.6%, 3.7% and 0.8%, respectively.

11. The Framework Act on Healthy Families and Family Policy in Korea

The Framework Act on Healthy Families, which views families formed by heterosexual marital relations to be 'healthy families,' serves as an impediment in establishing policies that support families of various forms. For instance, it is prescribed that a family is considered as a basic unit of society, formed by marriage, blood or adoption (same Act, Article 3, para. 1) and that all citizens shall recognize the social importance of marriage and childbirth (same Act, Article 8). Furthermore, the Act reinforces existing myths, social prejudices, and discrimination against families that do not meet the criteria for 'healthy families,' including single-parent families, by classifying them as 'families in crisis' or 'disadvantaged families.' The State party should take action to fundamentally revise the Act and make relevant legal and policy frameworks that embrace families of various forms and guarantee the right to form a family.

Suggested Questions

- Please explain what policy measures are in place to embrace families of various forms and the right to form a family.
- Please provide information on concrete plans for a fundamental revision of the Framework Act on Healthy Families.

12. Decriminalization of Abortion and Women's Reproductive Rights

Abortion is penalized by articles 269 and 270 of the Criminal Act in Korea. Anti-abortion law has been used as a tool to control women's bodies in the government's population policy for the last 66 years. It was rarely enforced, especially during campaigns to reduce the high birth rate between the 1960s and early 1990s. However, as the low birth rate has become a serious issue recently, the government has stepped up its enforcement. Women's long campaign for the decriminalization of abortion finally led to the Constitutional Court ruling (on April 11, 2019) that the criminalization of abortion is unconstitutional. Lawmakers were ordered to pass a revision in a manner that fully respected women's basic right to decide to terminate a pregnancy. Therefore, a law should be enacted or revised to ensure the safe termination of a pregnancy and fully guarantee women's basic rights in this process. In particular, the whole of Chapter 27 (Crimes of Abortion) of the Criminal Act should be deleted to ensure that the termination of a pregnancy is not regarded as a crime but a women's rights issue. Furthermore, the Mother and Child Health Act, which stipulates permissible grounds for abortion, should be fundamentally revised in a way that fully respects women's reproductive rights, including guaranteeing access to safe termination of a pregnancy.

Suggested Questions

- Please provide information on concrete steps to revise the Criminal Act with a view to guaranteeing the right to termination of pregnancy as a woman's basic right, and explain what specific measures are in place to ensure that women are no longer harmed by the anti-abortion law for as long as it remains in effect before the revision.
- Please provide information on policy measures to fundamentally revise the Mother and Child Health Act and to improve relevant legal and policy frameworks aimed at guaranteeing women's reproductive rights, including the right to safe termination of pregnancy.

Article 3

1. Apparent Judicial Treatment of Domestic Violence Crime

The indictment rate for domestic violence is less than 10%. This is overwhelmingly lower than the indictment rate of other crimes²², which shows domestic violence crimes are virtually unpunished. This is because the Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence focuses on 'family maintenance' through the correction of the perpetrators conducts and restoration of relationships with perpetrators and treats domestic violence perpetrators differently from other criminal offenders as an exception to criminal punishment on condition of counseling or training.²³ In particular, dispute resolution mechanisms such as reconciliation and mediation are

²² Indictment rate of Overall Crime: 38.1% in 2014, 36.8% in 2015, 38.8% in 2016.
 Indictment rate of Violent Crime: 29.0% in 2014, 25.2% in 2015, 24.7% in 2016.
 Indictment rate of Sexual Violence Crime: 42.2% in 2014, 35.9% in 2015, 33.0% in 2016.
 - Source: Crime and Criminal Justice Statistics(www.crimestats.or.kr)

Cases received and handled regarding domestic violence offenders (Unit: Persons)

Period	Cases received	Cases handled							
		Total cases handled	Indictment		Nonindictment		Other		
			Sub total	Indictment rate	Sub total	Nonindictment rate	Sub total	Transferred to home protection	Rate of transferred to home protection
2011	2,939	2,942	529	18.0%	1,997	67.9%	416	384	13.1%
2012	3,154	3,159	469	14.8%	2,006	63.5%	684	629	19.9%
2013	17,191	17,131	2,574	15.0%	10,080	58.8%	4,477	4,238	24.7%
2014	23,527	23,457	3,125	13.3%	12,688	54.1%	7,644	7,185	30.6%
2015	47,007	46,545	3,970	8.5%	23,437	50.4%	19,138	18,207	39.1%
2016	54,191	53,237	4,527	8.5%	27,273	51.2%	21,437	20,311	38.2%
2017	47,036	46,912	4,489	9.6%	23,298	49.7%	19,125	17,184	36.6%
2018.7	21,526	21,289	1,966	9.2%	10,253	48.2%	9,070	8,236	38.7%
total	216,571	214,672	15,194	7.1%	77,481	36.1%	81,991	76,374	35.6%

* Source: Information submitted by Ministry of Justice, 2018.07.04.

* Nonindictment: Without Charge, Suspension of indictment (condition of counseling, education, etc.), No offense, No right of arraignment, Dismissal.

* Other: transferred to family protection, transferred to juvenile protection, others

²³ A prosecutor may suspend the indictment of a domestic violence offender on condition of counseling (Article 9-2) or handle domestic violence crime as a home protection case in consideration of the personality and behaviors of the offender, etc. (Article 9) under the 'Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence'. The use of those procedures is being conducted by perfunctorily judging a victim's intention and situation to maintain the marital relationship' with perpetrators without the principles, procedures and expertise to ensure the safety and rights of victims. In the case of a home protection case, most of offenders do not receive any disposition, or when they are disposed, while counseling, education, and social service occupy most of the disposal, the dispositions to secure victim's safety such as prohibition of access to victims, prohibition of telecommunication access, limitation on parental rights, etc. are extremely low.

[Data1] Home protection cases received classified by a name of a crime in 2016 (Source: 2017 White Paper on Crime, Institute of Justice)

- Injury/Assault 18,589 persons (82.7%); Abandonment/Abuse/Child Abuse 4 persons (0.0%); Intimidation 1,830 persons(8.1%); Property Damage 1,827 persons(8.1%), Other 232 persons(1.1%).

[Data2] Disposition results of home protection cases in 2016 (Source: Judiciary Yearbook of 2017, The National Court

indiscriminately applied to spousal violence including marital rape in judicial process. The judiciary's lackadaisical perception of spousal violence is revealed in the Supreme Court's ruling on marital rape.²⁴ The government has never provided any official statistics on crimes and its judicial process where perpetrator and victim are married. The Court orders victim a couple counseling and parental education accompanying with perpetrator and grants visitation right and custody to perpetrators for the sake of family restoration. This threatens safety and life of domestic violence victims and their children. Under these circumstances, domestic violence victims has no choice but to leave their own home and run to unstable places such as relative's or friend's house, lodging facilities, or temporary shelters, giving up their jobs, schools, and personal relationship in order to protect themselves from perpetrators' chase and violence.²⁵

Suggested Questions

- Please provide reasons why domestic violence crimes were handled with the suspension of indictment on condition of counseling or protective disposition involving counseling or training instead of criminal punishment. Please provide legislative measures to solve problems of not handling domestic violence as criminal cases without appropriate indictment and punishment, and leaving victims with dispute resolution mechanisms as the Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence aims at maintaining and restoring the family.
- Please provide comprehensive statistics on criminal cases including marital rape and their judicial process where perpetrator and victim are married.

Administration

- Protective orders 11,368 persons (52.1%); Non-disposition 8,412 persons (38.6%); Other 2,022 persons (9.3%).

- The type of protective orders disposed: 1-ho(Restrictions on a domestic violence offender's access to the victims or family members) 78 persons(0.4%); 2-ho(Restrictions on a domestic violence offender's access to the victims or family members through telecommunications) 2 persons(0.0%); 3-ho(Restrictions on a domestic violence offender's exercise of parental authority over the victims) 0 person(0.0%); 4-ho(Order for community service or a lecture under the Act on Probation, Etc.) 2,614 persons(12.0%); 5-ho(Probation under the Act on Probation, Etc.) 1,622 persons(7.4%); 6-ho(Entrustment of the custody of offenders to protective facilities specified in the Act on the Prevention of Domestic Violence and Protection, etc. of Victims) 0 person(0.0%); 7-ho(Entrustment of the treatment of offenders to medical institutions) 104 persons(0.5%); 8-ho(Entrustment of the counseling for offenders to counseling centers, etc.) 4,393 persons(20.1%); 1-5-ho 63 persons(0.3%); 4-5-ho 1,356 persons (6.2%); 5-8-ho 455 persons (2.1%); Other 681 persons(3.1%).

²⁴ The Supreme Court's decision in 2013(2012do14788), which has been applied as a precedent judgment to criminalize marital rape in courts, admitted crime of the marital rape not because of 'absence of consent' but only when accompanying with severe violence or threat that made wife impossible or significantly difficult to resist. It stated 'the government's intervention in married couple's sexual relationship should be restrained as much as possible based on perspective of maintaining family'.

²⁵ [Case] On October 22, 2018, a woman who had been subject to domestic violence for 25 years was stabbed multiple times and murdered by her ex-husband. During the marriage, the victim and her three children were subject to repeated violence, including assault, stalking, death threats, use of weapons, and attempted arson, and continued to receive death threats after divorce. Despite multiple reports filed by the victim, the police ignored the victim's request for help, leaving the scene after only listening to the perpetrator or saying, "Call us when it happens again." The perpetrator had been arrested on charges of bodily harm, but he was not detained and was released several hours after he was taken to the police station. In the absence of separation from the victim or punishment against the perpetrator, the victim changed her cell phone number ten times, moved six times, and even changed her named. However, the perpetrator found out the location of the victim's workplace, residence, and relatives' home, and often came to make death threats. Eventually, the victim was killed in the parking lot in front of her home

2. Gender-Based Violence against Women (GBVAW)

Since 2018, women in Korea have been actively calling for the transformation of the current gender-discriminatory social structure and violent culture by sharing their own experiences of sexual violence through the revolutionary #MeToo movement. Despite the legal and policy frameworks in place to address GBVAW, victims' rights are not properly guaranteed in practice. In particular, the current definition of rape, which requires proof of 'means of violence or intimidation', has an overall negative impact on victims. The crucial elements in understanding the nature of GBVAW center on the question of what to define as a sexual violence crime, that is, the criteria for judging sexual violence. The various UN human rights treaty bodies and mechanisms have repeatedly recommended²⁶ that the State party should reform the legal system regarding sexual violence so that all forms of rape are defined based on the lack of consent rather than the violence or intimidation. Although nine relevant amendment bills have been submitted to the National Assembly, it is still being discussed and yet to be passed. Therefore, the State party's actions are urgently required for the revision of the law.

Suggested Questions

- Please provide information on specific plans with a clear time frame for amending the Article 297 of the Criminal Act to define rape on the basis of the lack of consent, rather than the violence or intimidation.
- Please provide information on specific plans for providing systematic and effective gender sensitization trainings for those in politics, economics, culture, arts, media, and education sectors, as well as the police, prosecutors and the judiciary.

3. Violation of Online Sexual Violence Victim's Rights

Under current Act on Special Cases Concerning the Punishment, Etc. Of Sexual Crimes, threatening to release sexually explicit images or sharing deepfake pornography which transposes someone's face on to sexual images, are not punishable.²⁷ Although there are clear instances of sexual violence stemming from gender inequality, victims of this violence must resort to legal procedures only tangentially related to the actual crimes, such as Blackmailing (Criminal Act Article 283) and Insult (Act On Promotion Of Information and Communications Network Utilization and Information Protection, Etc Article 70). Due to this gap in the legal system, the rights of victims to be protected by appropriate

²⁶ ICCPR, Concluding observations (2015), CCPR/C/KOR/CO/4, at para. 19.

CEDAW, Concluding observations (2018), CEDAW/C/KOR/CO/8, at para. 23(a).

The CEDAW General Recommendation No. 35 (2017) also ensures that sexual assault, including rape, is characterized as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances (para. 29(e)).

²⁷ [Case 1] If the victim does not act in the way the perpetrator wishes, threatening to post sexually explicit images taken with the consent of all persons filmed but agreed by the same parties to be deleted afterwards. Through repetitive threats to release such videos online, the victim is coerced to maintain a romantic relationship with the perpetrator: Applied Criminal Act Article 283.

[Case 2] Distributed dozens of deepfakes that transposed victim's face on to sexual images, along with her private information and other false details; Causing this victim to move her work and change her home address; Although a clear and life-threatening form of sexual violence: Applied 「Act On Promotion Of Information And Communications Network Utilization And Information Protection, Etc」 Article 70.

laws are violated. Moreover, the mere existence of sexually explicit images distributed without consent cause irreparable harm to victim. Because these distributions often take place through uncontrollable online platforms, many cases violate the victim's social right.²⁸ Thus, the victims should have the right to delete images taken without consent when wanted, and those who possess them must be forced to delete them or otherwise be punished. However, victims are not guaranteed the right over images of themselves.²⁹

Suggested Questions

- Please clarify plans to improve the legal and policy systems so that the threatening of distribution and deepfake distribution, which are excluded from the current categories of sexual violence, can be punished under Act on Special Cases Concerning The Punishment, Etc. of Sexual Crimes.
- Please provide specific measures to fully guarantee victim's rights such as controlling their sexually explicit images.

Article 6

1. Death Penalty

Although more than 21 years have passed since the death penalty was last carried out, the State party has not made any active efforts to abolish the death penalty. In September 2018, the NHRCK recommended the accession to the Second Optional Protocol to the ICCPR,³⁰ and in October of the same year, 32 members of the National Assembly initiated a resolution calling for its ratification. However, the State party has not clarified its position on ratifying the Second Optional Protocol to the ICCPR, and on officially suspending and abolishing the death penalty.

Suggested Questions

- Please provide detailed information on the State party's plans to officially declare the suspension of the death penalty as pledged when joining the European Convention on Mutual Assistance in Criminal Matters.³¹
- Please provide information on the State party's plans to abolish the death penalty.

Article 7

²⁸ See the article of the Korea Bizwire, "Victims Feel Unprotected by Lax Rules on Revenge Porn", Last modified Oct. 19, 2018, available at <http://koreabizwire.com/victims-feel-unprotected-by-lax-rules-on-revenge-porn/126205>

²⁹ Victim does not have the right to legally stop the distribution of, delete, and otherwise control sexually explicit images featuring her body and taken without her consent. Right to delete such images belongs solely to those running the platforms on which the images are uploaded. In the current legal system, cannot legally punish the possession of victim's sexually explicit images.

³⁰ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

³¹ See the article of Hankyoreh, available at http://www.hani.co.kr/arti/society/society_general/374399.html

1. Efforts to Prohibit Torture and Inhumane Treatment during the Investigation Process

Even though the physical tortures during the process of investigation have been decreasing, various inhumane treatments still exist. There have been lots of inhumane treatments, such as coercion on unfavorable testimony on himself/herself, the long hours of investigation at night, violation of personal rights by using abusive languages and swearing, and performing violence and cruel acts according to the types of the petitions against police or prosecutors submitted to NHRCK in 2017.³² The Article 12 (2) of the Constitution states, “No citizen shall be tortured or be compelled to testify against himself/herself in criminal cases”, but the unjust practice of the investigations where the investigator infringes the right to silence of suspects by asking questions repeatedly has not been improved. There are no effective legal devices that can prohibit tortures and inhuman treatments of investigation agency, thus the effective punishments on torture or inhuman treatments done by investigation agencies in the past are not in place since the statute of limitations have been expired.

Suggested Questions

- Please provide the number of accusations due to inhumane treatments, the types of the treatments, the result of accusations (the rate of prosecution), the number of petitions submitted to NHRCK and the result of the petitions.
- Please provide the measures that can substantially protect the right to silence and prevent the unjust practice of the investigations where the the investigator infringes the right to silence of suspects by asking questions repeatedly.
- Please provide the measures to punish and apply civil liability to the investigative agencies for tortures and inhuman treatments in the past.

2. Violation of Bodily Integrity of Transgender Persons

The Supreme Court’s guideline presents the investigative points of the legal recognition of transgender persons. The word ‘investigative points’ implies discretion, but the Court accepts it as a prerequisite. According to the guidelines, one has to be over 19 years-old, did sterilization surgery and sex reassignment surgery, non-married or divorced, doesn’t have minor children. Also, even though you are an adult, you must also include your parents’ consent. There have been some courts that do not require external genitalia surgery since 2013, but many courts still require sex reassignment surgery,

³² According to the consultations of human rights abuses that the National Human rights Commission of Korea had done in 2017, there were 6,048 cases of compelling to testify against himself/herself or the long investigations at night, 5,863 cases of performing violence cruel acts, and using excessive accoutrements, 4,481 cases of violations of personal rights by using abusive language and swearing out of total 26,548 cases of human rights abuses done by police. Likewise, there were there were 1,617 cases of compelling to testify against himself/herself or the long investigations at night, 754 cases of violations of personal rights by using abusive language and swearing, 165 cases of using excessive accoutrements out of total 4,515 cases of human right abuses done by prosecutors.

There were 3,191 cases of compelling to testify against himself/herself or the long investigations at night, 4,815 cases of performing violence cruel acts, and using excessive accoutrements, 3,369 cases of violations of personal rights by using abusive language and swearing out of total 18,584 petitions against the police. And there were 998 cases of compelling to testify against himself/herself or the long investigations at night, 143 cases of performing violence cruel acts, and using excessive accoutrements, 525 cases of violations of personal rights by using abusive language and swearing out of total 2,873 petitions against prosecutors (National Human Rights Commission of Korea, The statistics of National Human Rights Commission in 2017).

including external genitalia surgery.

Suggested Questions

- Please provide the Court's position about different rulings about the legal gender recognition from the lower courts.
- Please provide the Court's plan to revise the established rules in line with the recommendations (para. 15) from the Committee in 2015.

Article 8

1. Human trafficking for the Purpose of Forced Labor

Migrant workers in the agriculture, livestock and fishery industries are subject to long hours and low wages due to the absence of legal standards on maximum working hours. The workers face risks of human trafficking and forced labor especially because it is difficult for them to change their workplace despite having suffered from long hours, inhumane living conditions, abuse and discrimination. For many, leaving their workplace with poor working conditions is not an option because of the large deposit money that they had paid to the recruitment agency. At the same time, some employers and managers in the agriculture, livestock industries illegally send their workers to work in different farms, which clearly constitutes an act of human trafficking. Yet the narrow definition of human trafficking allows for the perpetrators to go without being charged, and law enforcement officials fail to identify victims of human trafficking, depriving human trafficking victims of foreign nationalities of protection and subjecting them to detention and deportation instead.

Suggested Questions

- Please disclose minimum working condition standards; whether to meet living condition standards and to violate human rights are being monitored; and government's measures of preventing human rights violation and compelling compliance with working and living condition standards for workers in the agriculture, livestock and fishery industries through labor inspection.
- Please provide if there has been a case where a business owner or an employment agency was charged with human trafficking crimes; if there exists a set of indicators for identifying human trafficking victims; if so, if there have been relevant trainings for police officers and immigration office officials in the field; and if there has been a case where migrant workers were identified as human trafficking victim and received protection during police raids after such trainings.

2. Trafficking Women for Prostitution and Sexual Exploitation

The Korean sex industry is estimated to amount to approximately 6 trillion KRW (5.2 billion USD), five times greater than the value of the film industry, and the proportion of men paying for sex is 56.7

percent.³³ While the ‘victims’ of prostitution are not penalized in the existing Act on the Punishment of Arrangement of Commercial Sex Acts, etc., the ‘victim’ here only refers to those who have been sexually exploited forcefully or under coercion. Therefore, women are often classified as ‘selling sex voluntarily’ and are penalized for it. In fact, various groups of women in situations of sexual exploitation (including not only Koreans but also migrant women and children/juveniles) are subject to penalization for selling sexual services. The State party should decriminalize prostituted women and intensify the penalty for buying sex to enhance the actual effectiveness of the punishment. It is also necessary to unify the investigation process and establish a unit specializing in prostitution, ensuring expertise is applied to the crackdown policy on prostitution and the sex trade.

On the other hand, the numbers of sexual exploitation cases of migrant women are increasing; for instance, entertainment visas are being used as a channel for human trafficking, and women from Thai or other countries that have entered Korea through the visa waiver system are being drawn into the sex industry. Meanwhile, the Ministry of Justice has reiterated that it does not have any plans to enact a comprehensive law on human trafficking. The State party should improve legal and policy frameworks, including strengthening the penalties for perpetrators of human trafficking, and protecting and supporting victims.

Suggested Questions

- Please provide information on concrete policy alternatives centered on the human rights of women in prostitution with a view to dismantling the exploitative structure of the sex industry.
- Please explain why the Act on the Protection of Children and Juveniles against Sexual Exploitation has not been revised yet, despite the recommendation made by the NHRCK to revise the Act to classify children and juveniles who have been counterparts in the act of purchasing sex as ‘victims’ rather than ‘children and juveniles involved’ and to provide holistic support and protection for them, and despite the relevant amendment bill, which was passed by the Gender Equality and Family Committee at the National Assembly.
- Please provide concrete policy measures with a clear time frame for fully guaranteeing the rights of migrants, including enacting a comprehensive law on human trafficking and issuing work visas to migrant women.

Article 9

1. Principle of Non-Detention

If a criminal defendant is sentenced to an imprisonment, the Court decides whether to detain the defendant at the courtroom immediately after the verdict. The criteria for this decision are prescribed not in Criminal Procedure Act but in the Supreme Court Enforcement Rule.³⁴ As the rule allows the Court to confine the defendant at the courtroom ‘unless there is good cause,’ the judge can arbitrarily decide whether to detain a defendant even before the case is finalized.

³³ MOGEF (2013), <Situation Report on Prostitution in Korea>

³⁴ Supreme Court Enforcement Rule 1410-8 Article 57

Suggested Questions

- Please report on measures to be taken to ensure the detention is determined based on the law. Please indicate whether steps will be taken to clarify the principle of non-detention throughout trial in legislation.

2. Defense Counsels' Right to Participate in Interrogation

Under current Criminal Procedure Act, “a prosecutor or a senior judicial police officer shall allow the defense counsel to participate in the interrogation of the suspect, *unless there is good cause.*”³⁵ As there are no criteria for this “*good cause*”, the defense counsel’s right to participate in the interrogation is often subject to an arbitrary decision made by the investigator. It is also not easy to give legal advice to the suspect during the interrogation as the law regulates that a defense counsel may make a statement in the middle of the interrogation “*with the approval from the prosecutor or the senior judicial police officer.*”³⁶

Suggested Questions

- Please report on measures taken: (a) to address the problems of restricting defense counsels’ right to participate in the interrogation; (b) to implement training curriculum for interrogation officers to guarantee defense counsels’ right to participate in the interrogation.
- Please provide information on the guideline enacted by the Ministry of Justice in May 2018³⁷, whereby prosecutors are required not to ban defense counsels’ participation while interviewing the suspect. Please provide information on how the guideline is put in practice.
- Please report on measures that are to be taken to resolve problems that are pointed out in the decisions made by the Constitutional Court in 2017 and 2019.³⁸ Please clarify whether the State party is planning to propose an amendment in order to fully guarantee defense counsels’ right to participate in the interrogation.

3. Emergency Arrests

Statistics show that in the last 10 years judicial police officers have released total 24.0 percent of those criminal suspects under emergency arrest³⁹ even without requesting a warrant of detention.⁴⁰ Many concern the abuse of emergency arrest by investigative agencies, and the violation of warrant requirement.

³⁵ Criminal Procedure Act Article 243-2 (1)

³⁶ Criminal Procedure Act, Article 243-2 (3)

³⁷ Ministry of Justice Directive 556

³⁸ Case No. 2016Hun-Ma503 (Decision Date: Nov. 30, 2017) and Case No. 2015Hun-Ma1204 (Decision Date: Feb.28, 2019). The Constitutional Court reconfirmed that the defense counsels’ right to participate freely in the middle of the interrogation should be fully protected.

³⁹ Criminal Procedure Act, Article 200-3 (Emergency Arrest) (1) , Article 200-4 (Emergency Arrest and Term of Request for Warrant) (1) and (2)

⁴⁰ Statistics submitted by Ministry of Justice to Congressman Keum, Tae Sup. See the related article of *Kyunghyang News*, available at http://news.khan.co.kr/kh_news/khan_art_view.html?art_id=201810121001001

Suggested Questions

- Please indicate whether the State party plans to take any action, such as requiring every officer to request arrest warrants immediately after emergency arrests or reducing the time limit for requesting warrant of detention, to protect rights of suspects and to prevent the abuse of emergency arrest. Please provide information on such measures that are to be taken.
- Please clarify whether the State party plans to suggest a revision of the Criminal Procedure Act to ensure the principle that investigation into a criminal suspect is conducted without putting him/her under detention by strengthening the requisite for emergency arrest.

4. Right to Take Proceedings before a Court on Unlawful Detention

The grounds for detention are not specifically defined in current Criminal Procedure Act⁴¹ and therefore the burden of proving that there is no need for detention is often on the defendant. Moreover, defendants face difficulty in proving the illegality of the detention at court because in most cases the defense counsels are not notified promptly after the detention⁴² and are denied full access to investigation records.⁴³

Suggested Questions

- Please clarify whether the State party plans to implement a specific guideline for detention or to suggest revisions of regulations that serve to guarantee defendants' full right of defense during hearings for examination. Please report on other measures that are to be taken with regards to this issue.

5. Habeas Corpus Act

According to Article 2 of Habeas Corpus Act, those who are detained according to the Immigration Act do not come under the category of 'inmate' and thus cannot file petition. Moreover, the number of inmates released from confinements through petition is 288, or 7.24 percent of total petitioners. Most of the court decisions on these petitions lack concrete reasons.⁴⁴

Suggested Questions

- Please clarify the State party's position on the Amendment to Habeas Corpus Act that allows persons who are detained according to the Immigration Act to file petitions.
- Please clarify whether the State party plans to let independent institutions to present

⁴¹ Criminal Procedure Act Article 70 (Grounds for Detention)

⁴² In 2017 the prosecution reform committee has recommended that prosecutors should send text messages to defense counsels so that they are notified promptly after the suspect is detained. Though the Supreme Prosecutors' Office in December 2017 has implemented a guideline with reference to the recommendation, the guideline is rarely enforced. See the article of *Moneytoday News*, available at <http://thel.mt.co.kr/newsView.html?no=2018042514418242560>

⁴³ Though any defense counsel to participate in the examination of the suspect may peruse the request for detention warrant filed to the judge, the complaint, written accusation and the statement of the suspect and the documents submitted by the suspect which are attached to such request, in many cases the judge restricts the perusal of the document for the sole reason that investigation is in progress. (Article 96-21 (3) of Regulation on Criminal Procedure)

⁴⁴ Symposium on Habeas Corpus Act, Jun. 27, 2018, National Assembly (Organized by Congressman Park, Joo-min and Korean Bar Association)

professional opinions on each petitions so that the court can take into account different perspectives other than those of the institutions that the petitioners are confined in. Please respond to concerns that current system falls short on preventing unlawful confinements and report on measures that are to be taken to ensure its effectiveness.

6. Right to Compensation for Unlawful Detention

A defendant in a case finalized by a verdict of ‘not guilty’ in the ordinary procedure, retrial or extraordinary appeal procedure may claim compensation for such detention to the State in accordance with Act of Criminal Compensation and Restoration of Impaired Reputation. However, because it takes a considerable amount of time until the decision is made and the maximum amount of compensation is too low (the compensation is not more than quintuple of minimum daily wage under the Minimum Wage Act⁴⁵), the number of claims filed is very low (total 7,347 claims were filed in 2017).

Suggested Questions

- Please provide statistical data that show the total number of defendants who can claim compensation for pre-trial detention and the percentage of those who actually file the claim.
- Please report on measures that are to be taken by the State party to readjust the amount of compensation and to shorten the period of time required for compensation decisions.

7. Guardhouse Detention

“Detention in a guardhouse” is arbitrary detention as a commander confines only a conscript⁴⁶ up to 15 days per each *administrative disposal* without a warrant issued by a judge. It has dwindled,⁴⁷ and its repeal is under progress. While the passage is uncertain,⁴⁸ another concern is entailed since “Military Discipline Training” (MDT) is to be its substitute.⁴⁹ This scheme, to see the past,⁵⁰ is so likely

⁴⁵ Act of Criminal Compensation and Restoration of Impaired Reputation, Article 5 (1)

⁴⁶ Military Personnel Management Act (MPMA) Article 57 (2) 2. ... “detention in a guardhouse” means detention in a guardhouse in a unit, a ship or other detention facilities for a period not exceeding 15 days. Act on the Establishment and Operation of Auxiliary Police Companies and Act on the Establishment of Obligatory Fire Fighter Article 5 (1) also stipulates “detention in a guardhouse” (See footnote 50(c))

⁴⁷ According to a report for inspection on state administration submitted by the Ministry of National Defense (MND) in 2018 to Honorable Choi Jae-seong (the Democratic Party), the total number of “detention in a guardhouse” after 2014 is as follows: 14,151 in 2014, 12,492 in 2015, 10,778 in 2016, 9,246 in 2017. It was 5,261 till the end of August 2018.

⁴⁸ Partial Revision (Alternative) to MPMA has passed the National Defense Committee in September 2017; however, the Legislation and Judiciary Committee has not even initiated reviewing process as the Korea Liberty Party opposed (See the article of National Assembly News, goo.gl/ySKacb); the MND stated abolition of guardhouse detention in the “Plan of National Defense Human Rights Policies for 2019 to 2023” (bitly.kr/Fy0sm).

⁴⁹ Partial Revision (Alternative) to MPMA Article 57 (2) 5. Reads; “MDT refers to operation of education and training programme of military discipline and service attitude under a designated institute by the Ministry of National Defense (MinND) Ordinance, and its term shall not exceed 15 days.”

⁵⁰ (a) Even after Private Yoon’s beaten-to-death case in 2014 (See the article of BBC News, goo.gl/DjLTFN), the Army has operated various MDTs. A troop had operated so-called “Volunteering Unit” since 2012. A total of 143 military personnel, just for the first-half of 2016, were summoned and imposed of physical labor on Saturday mornings (NHRCK (2016). “16Complaint047070”); (b) also, in the Air Force, in 2015, an incident of forcing the trainees to perform 7 different types of physical labor more than half an hour (NHRCK (2016). “15Complaint0707500”); (c) The Center for Military Human Rights Korea found that the Seoul Riot Police Academy committed numerous tortures during “Discipline Training” course under the guise of “personality education”: e.g. all sorts of physical labor, shouting at every step, maintaining sitting up straight for daytime, standing against the chilly wind with wearing only underwear in subfreezing weather (National Police Agency(NPA)

to degenerate into the *torture* of coercing physical labor and religious and mind training under the pretense of education that the NHRCK also expressed concerns.⁵¹ This is, too, deprivation of the right to rest and personal liberty because of its arbitrary decision process. Lastly, prolonging service by excluding training period is double jeopardy.⁵²

Suggested Questions

- Please disclose all the existing regulations relevant to MDT and the state of its execution (including Footnote 50(e)).
- Please elaborate all the alternatives to guardhouse and plans of their operation that the State party considers including “MDT” and its official position on MDT stipulated in the pending amendment.

8. Defense Security Support Command (DSSC, former DSC⁵³)

The DSSC was constituted in September 2018 after renaming, restricting and downsizing the DSC which ultra vires influenced political affairs, spied on the bereaved of Sewol Ferry and conspired a coup d'état. They unlawfully perused personal information of guests and visitors to military facilities and monitored phones and social media. Even phone calls between late President Roh and then-Minister of National Defense (MinND) were tapped.⁵⁴ Demonstration participants were inspected based on the violation of National Security Act (NSA).⁵⁵ Crucially, they conspired a coup: its “Action Plan: Wartime Martial-law and Joint Investigation” in March 2017 prescribes candlelight vigil rallies for the impeachment of former President Park as insurrectionists⁵⁶ to declare martial law for armed repression.⁵⁷ Still, the

(2018). “Disbandment of the NPA Reformation Committee”); (d) “Social Work Personnel” whose medical conditions are unsuitable for active duty service is not different. According to the MMA’s report to the inspection on state administration (2014), so-called “Mind Training Course” by the “Special Forces Command”, known for intensive training, has been officially introduced; (e) existing regulations are too detailed to observe: Army Regulation 120 “Spiritual Drill”, Navy Regulation 2-1-6 “MDT”, Air Force Regulation 2-24 “Punishment of Love” and other relevant regulations of each force’s training centers.

⁵¹ NHRCK (2018), “Opinion Statement on Revision to MPMA for Abolition of Guardhouse Detention”

⁵² Military Service Act Article 18 (3) ... the number of days during which ... he is confined to a military detention facility ... shall not be included in his period of active duty service.

⁵³ It stands for “Defense Security Command”.

⁵⁴ See the article of *The Donga Daily*, available at <http://bitly.kr/QglVg>

⁵⁵ The DSC and the NIS secures access to the NPA’s computer network of criminal and investigation records and personal data on the basis of Regulation on Security Work (RSW) Article 45. The DSC was allocated with one IP address, yet it divided the IP into thirty terminals, letting de facto anyone of its agents access the network. Also, it inspected citizens indiscriminately based on Subpara. 6 of Para. 3 of Article 33 of the Regulation. Victims vary from journalists, judge and prosecutor appointees, and those who visited military hospital or troops, all of whom are not related to the military. The DSC concealed this massive censorship by opening a case of an internal investigation for the NSA and closing it later. (See the articles of The Korea Times, goo.gl/LnA7sH; News1, goo.gl/MvFkQo; The Yonhap News Agency goo.gl/iVMq8n).

Regulation on Security Work Article 45 (1) The NIS Director may delegate some of the authority related to Article 33’s background checks to the MinND and the Chief of the NPA. However, delegation to the MinND is limited to the military personnel, civilian workers in the military and personnel of the defense industry and institute stated in the Defense Acquisition Program Act.

Article 33 (Background Checks) (3) A person who is subject to background checks is as follows: ... 6. Others who are either prescribed in other laws or recognized by heads of each agencies as needed for national security.

⁵⁶ The maximum number of rallies surpassed 200,000 (See the article of The Korea Herald, bitly.kr/WL4sx), and the Friedrich-Ebert-Stiftung in 2017 awarded the vigil’s peaceful assembly with FES Human Rights Prize (bitly.kr/OINGJ).

⁵⁷ In fact, the DSC has no authority over martial law. Still, they were, historically, the main culprit of military coups abusing martial-law (See the article of The Hankyoreh, goo.gl/i7BDSr; The Hankyoreh, goo.gl/rAjfw2), spying on the bereaved of Sewol Ferry (See the article of The Korea Times, goo.gl/grbNkY), conspiracy of a coup d’état, etc. (AP News, goo.gl/NoeBjV).

DSC's missions and mandates are preserved,⁵⁸ citizen's government can be overturned at any time.

Suggested Questions

- Please present what restraints and monitoring systems will be introduced in cooperation with civil society to prevent DSC's misdeeds and protect the rights of citizens.
- Please provide information on preventive plans and punishment measures, for coup d'état attempt of the DSC is confirmed.

The DSC planned to extend martial law up to two months by declaring Garrison Decree which are less familiar to the people, then disturbing lifting of the decree with the help of the conservative party and President Park's veto. To prevent dissenting demonstrations, it planned to prosecute principal politicians and figures and close social media (Lim, Tae-hoon. (2018). "Truth of the Plan of Armed Crackdown on Candlelight Vigil and Tasks of the DSC Reform", Urgent Debate: Candlelight Armed Crackdown and DSC's Surveillance on Citizens). Nonetheless, the General Military Court of the MND allowed bail to protect the defendants' right to defense for Major General So Gang-won and Brigadier General Kim Byeong-cheol who were indicted for deploying 60 agents to spy on the bereaved of Sewol Ferry and manipulated public opinion on Dec.28, 2018 (The Chosun Daily, <http://bitly.kr/ED0x7b>).

⁵⁸ The current DSSC Regulation inherits toxicity from its predecessor; they must be removed. For instance, Article 4 stipulates its duties most of which have been misused. (a) Subpara. 1 is already conducted by a security section in each troop; the DSC agents abused this to intervene and monitor work of units (it is same for Article 6 (2) 7.: Military Security Institute). They even extralegally searched personal belongings of soldiers; (b) it abused Subpara. 3's the phrase "military-related" to broadly censor citizens along with the 「National Security Act」(NSA). Item B.'s subject is uncertain; hence, citizens can be inspected along with the 「Counterterrorism Act」. Item C. is too broad. Item D., known for "trend observation", has been overused to censor the privacy of military personnel; (c) its authority to investigate in Subpara. 4 is redundant. It has been employed for all sorts of the DSC's misdeed. Technically speaking, investigations have already been done by the police and the NIS; (d) "Support work" in Subpara. 5 was used for the DSC agents to influence political affairs illegally.

Regulation on the DSSC Article 4 (Duty) (1) The Command carries the following duties:

1. Military Security Works as stated below:

- a. Background checks devolved to the MinND by RSW Article 45 (1)
- b. Investigation on security incidents and security assessment devolved to the MinND by RSW Article 45(2)
- c. Support for establishment and improvement of military and military-related security countermeasures
- d. Security work on military personnel, civilian workers in the military, facilities, document, and info-communication determined by the MinND

3. Collect, produce and process military-related information on:

- a. Home and abroad military intelligence and defense industry
- b. Counter-state-subversion, counterespionage and counterterrorism: "Antiterrorism and Counterespionage"
- c. Institutes and organizations under the MinND's adjustment and supervision: Agency for Defense Development (ADD) of the ADD Act and defense enterprises and specialized agencies under the 「Defense Industry Act」
- d. Illegality and corruption of military personnel, appointees for commissioned and noncom officers of the MPMA and for civilian workers in the military of the Civilian Workers in the Military Management Act

4. Investigation on crimes of Subpara. 2 of Article 44 of the Military Court Act

5. Works of support for:

- a. Information operation conditions strategy and info-war
- b. Protection of main info-communication infrastructures (ICI) of the security sector among main ICIs designated by Article 8 of the ICI Protection Act
- c. Military security tasks related to the defense industry of the Defense Acquisition Program Admin
- d. Research and military security

Military Court Act Article 44 ... 2. Persons prescribed in subparagraph 2 of Article 43: Offenses prescribed in Chapters I and II of Part II of the Criminal Act, offenses prescribed in Chapters I and II of Part II of the Military Criminal Act, offenses prescribed in Articles 80 and 81 of the Military Criminal Act, and offenses prescribed by the NSA, the Military Secret Protection Act, the Inter-Korean Exchange and Cooperation Act and the Assembly and Demonstration Act(limited to cases where persons who committed offenses prescribed by the NSA have committed offenses prescribed by the Assembly and Demonstration Act).

Article 10

1. Treatment of Persons Deprived of Their Liberty

According to Articles 108 and 109(2) of the Administration and Treatment of Correctional Institution Inmates Act, inmates in correctional institutions may be subject to up to 30 days of solitary confinement, and when there are two or more grounds for disciplinary action, the disciplinary action may be increased by up to one-half of the original length, which allows inmates to be isolated for a maximum of 45 days. This constitutes prolonged solitary confinement for a time period in excess of 15 consecutive days prohibited by Rules 43(1) and 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. According to a 2018 survey conducted in 10 correctional facilities by the NHRCK, between August 2017 and July 2018, the number of inmates who had been subject to solitary confinement exceeding 15 days accounted for about 41 to 60 percent of the total inmates who had been in solitary confinement, which shows that long-term solitary confinement is prevalent.⁵⁹

Suggested Questions

- Please provide statistics on the number of cases of solitary confinement by length of punishment.
- Provide information on the State party's plans to amend the Administration and Treatment of Correctional Institution Inmates Act to reduce the maximum length of solitary confinement to 15 consecutive days or less.

2. Immigration Detention and Crackdown

While being detained, detainees are provided with a 6-square meter-room only and kept under strict discipline.⁶⁰ Nevertheless, the MOJ repeatedly states that there is no such thing as 'arbitrary detention' because the immigration detention is for people subject to deportation who always may leave the country⁶¹. Since the Immigration Act lacks a provision regarding detention of migrant children,⁶² nor the time limit provision in terms of the length of detention, there have been cases of detention of children with parents who are subject to deportation.⁶³ During the designated period of intensive crackdown, immigration officers have entered buildings without the permission of the property owners and arrested undocumented migrants without any prior notice. The crackdown against undocumented migrants remains violent, resulting in severe injuries and deaths of migrants. The

⁵⁹ NHRCK, "Recommendation for the promotion of inmates' human rights issued as a result of the 2018 survey in correctional facilities," 18Visit0001500, Jan.16, 2019

⁶⁰ The current Immigration Act defines 'detention' (in Korean, the word 'protection' is used to describe 'detention') as "immigration control official's enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation at immigration detention room or immigration detention center".

⁶¹ There have been more and more cases of refugee applicants undergo their refugee status determination procedure in detention centers. There was a refugee applicant who had been detained for 4 years and 8 months by 2018.

⁶² The Immigration Amendment Bill on prohibition of detention of migrant children was introduced in 2017, however the Bill is still pending in the National Assembly.

⁶³ 67 children had been detained in Hwasung Detention Center in last 3 years. 70 children over 14 years old had been detained in 2016. From January 2015 to December 2017, 225 children were believed to be detained in immigration detention centers in the Republic of Korea. (Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015).

current Immigration Act requires the prior approval from the MOJ for detention exceeding 3 months, however, indefinite immigration detention is possible, and reviews by independent authorities, such as judicial review procedure do not exist for immigration detention.

Suggested Questions

- Please provide the statistics on the detention of migrant children, including the statistics on current states and the duration of the detention. Also, please provide measures to use detention as the last resort, and to consider the best interests of the child when it comes to the detention of children for unavoidable reasons.
- Please provide plans to improve the current immigration detention system, regarding the start, continuance, and the maximum length of detention to avoid arbitrary detention of migrants.

Article 13

1. Rights of Refugees

Those who apply for refugee status at the port of entry are subject to a 'referral procedure' before entering the proper refugee status determination (RSD) process. Even though the referral procedure is only a preliminary process, it is operated under the strict standard which left the referral rate only at 10% in 2017. Moreover, the refugee recognition rate at MOJ level remains merely at 0.66% over the past five years.⁶⁴ The Refugee Committee, which reviews the appeals, handles around a thousand cases in one meeting,⁶⁵ thus cannot properly reviews the reasons for appeal nor provide a proper remedy. Refugee applicants must submit a health examination report that includes test result of HIV AIDS, and the MOJ has the history of conducting a urine testing and investigating former criminal records of refugee applicants from certain countries.⁶⁶ Since refugee applicants in an immigration detention center cannot be deported due to the non-refoulement principle in the Refugee Convention, alternative measures should be considered for each case.

Suggested Questions

- Please provide the standards of referral procedure on refugee application at the port of entry, and provide plans to solve the extremely low rates of referral at the port of entry and refugee recognition in RSD process.
- Please provide plans to eliminate human rights infringement elements in the entire RSD process, including appeals, and to reinforce information accessibility and expertise.

⁶⁴ Statistics from the Ministry of Justice that show the number of recognized refugees, excluding those who were granted refugee status according to a direct family member's recognition as a refugee and resettled refugees. December 31, 2017.

⁶⁵ Ministry of Justice, Refugee Committee meetings in 2017, Dec. 31, 2017

⁶⁶ NHRCK, Decision '18JinJung0606700.' January 16, 2019. : In year 2018, the Korean Ministry of Justice forced 481 out of the 484 Yemeni refugee applicants, except for three preschool children, to do urine tests and investigated their former criminal records. This treatment has been concluded as a human rights violation by the Korean National Human Rights Commission in December, 2018.

- Please provide an alternative solution to immigration detention to the refugee applicants who can be detained for an unlimited period.

Article 14

1. Judicial Monopoly and Manipulation

14 former and incumbent judges, including the former Supreme Court Chief Justice Yang Sung-tae, were indicted on March 5, 2019. The investigation on the Monopoly of jurisdiction of the Supreme Court Chief Justice Yang Sung-tae which was revealed by the behind-the-scenes investigation of judges and the pressures to overthrow the academic event hosted by the judges in March 2017, was eventually wrapped up. Suspicions about the fact that the former Supreme Court Chief Justice Yang Sung-tae extensively engaged in "judicial monopoly and manipulation" that undermined the independence and fairness of trials, including violating the independence of judges and using trials as bargaining chips for de facto Second Supreme Court the during his tenure, have been confirmed to some extent. Reform of the National Court Administration, which contributed to the Yang Sung-tae's monopoly of jurisdiction, is also pending. Nevertheless, other than the indictment of only 14 judges above, it is hard to find any action form the State Party to resolve the judicial monopoly, to ensure the independence of judges and trials, and thus to guarantee the people's right to a fair trial.⁶⁷

Suggested Questions

- Please provide the punitive measures against judges who actively participated in judicial manipulation, and the measures for preventing recurrence.
- Please provide the preventive measures and plans against the recurrence of the judicial monopoly including reform measures of the Court Administration.

Article 15

1. The Preventive Detention System

The preventive detention system was abolished in 2005. However, Article 2 of the supplementary provisions of the Social Protection Act allows exception that the abolition did not apply to detainees who had already received final rulings before the abolition or were under the preventive detention at that time of abolition. The Constitutional Court found that the exception was constitutional in 2015.⁶⁸ The number of detainees were 84 in January 2018, and the detainees practically receive the treatment as same as the other prisoners in regular prisons since they were also in the regular prisons.⁶⁹ In 2017, the group of detainees at Gyeongbuk North 3rd prison went through a hunger strike to protest that

⁶⁷ Nov. 15, 2018 <The UN Special Rapporteur on the independence of judges and lawyers> Diego Garcia Sayan letter (Diego García-Sayán) sent to South Korea

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24183>

⁶⁸ Constitutional Court of Korea 2015. 9. 24. 2014Heon-ba222

⁶⁹ <http://www.seoul.co.kr/news/newsView.php?id=20180131010017>

the expansion of parole and the shortening of the period were necessary.⁷⁰

Suggested Questions

- Please provide the number of detainees under the preventive detention system, and information on the specific improvement plans, such as plans for parole or release of detainees.
- Please indicate the actual situation of detainees, who have been continuously detained after the abolishment of the preventive detention system, and specific plans for further improvement.

Article 17

1. Protection of Communications Secrets Act

Current Protection of Communications Secrets Act cause excessive violation of people's rights to privacy by using 'base station' investigations,⁷¹ 'real-time location tracking'⁷², and 'extensive use of wiretapping' including Deep Packet Inspection (DPI) in particular by the National Intelligence Service. On this, in 2014, the NHRCK⁷³ recommended revision of this Act to minimize violation of human rights in the information society. In 2018, the Constitutional Court⁷⁴ ruled the above issues in the Act unconstitutional. In 2015, the Committee noted concerns about using and insufficient regulation of 'base station' investigations, extensive use and insufficient regulation in practice of wiretapping, and providing subscribers information without a warrant.⁷⁵ Nonetheless, the State party does not suggest proper alternatives.

⁷⁰ http://www.hani.co.kr/arti/society/society_general/810968.html

⁷¹ An investigation method that do not specify the subject but provides all cellular phone history signal that are received by the wireless base station around a specific spot such as an assembly place in order to identify participants in the specific assembly.

⁷² 'real-time location tracking' means that communication service providers provide real-time location of cell phone or internet access devices by request from investigative authorities. When investigative authorities need location information, they should get permission from the court because location information is one of communication confirmation data. However, the condition to get a court's permission is loose, because investigative authorities only have to prove the need for investigation. In 2013, in order to arrest rail worker union's leadership who was striking, police had tracked real-time location of strikers and their family members including ID on the Internet.

⁷³ NHRCK, recommendation for improving provision of subscriber data of Telecommunications Business Act and provision of communication confirmation data of Protection of Communication Secrets Act, Apr. 9, 2014

⁷⁴ The Constitutional Court, ruled 2018.6.28, 2012Heonma538. Provision of communication confirmation data for base station investigations is violating the right to self-determination over personal data and freedom of communication, contradictory to the principle of excess prohibition.

The Constitutional Court, ruled 2018.6.28, 2012Heonma191-550, 2014Heonma357(unified), Provision of data on tracking location is violating the right to self-determination over personal data and freedom of communication because it is against principle of excess prohibition.

The Constitutional Court, ruled 2018.8.30, 2016Heonma253, In the absence of means to check the abuse of power of investigative agency, allowing Internet wiretapping is a serious threat to the secret and freedom of communication and private life, and thus it is violating the principle of excessive prohibition.

⁷⁵ CCPR/C/KOR/CO/4. Para 42 and 43

Suggested Questions

- Please present the improvement plan to secure the right to privacy by laying down sufficient regulation on base station investigation, real-time location tracking, and provision of subscriber information without a warrant and extensive permission of wiretapping.

2. Resident Registration Number (RRN)

Resident Registration Number (RRN)⁷⁶ is the identification number, which is given to all citizens, and enables combine and track personal information from different sources. Thus, it can be abused for the purpose of crime or surveillance. Hence, both 1st UPR (2008)⁷⁷ and NHRCK (2014)⁷⁸ made a recommendation to limit the uses of RRN to ‘necessary for the provision of public services’ and ‘administrative and judicial administration only’. Since August 7, 2014, collecting RRN without a legal basis has been prohibited but still RRN is widely collected even in the private sector. So, until today, there are lots of problems such as not only leakage of RRN⁷⁹ but also violating human rights.⁸⁰ It is not decreased until now. On the contrary, the State party designated identification agency⁸¹ and broadly allowed collecting RRN and CI, a kind of online RRN.⁸² NHRCK recommended the introduction of ‘Random Number system’⁸³, but the State party does not embrace that.

Suggested Questions

- Please ensure implementation of recommendation of UPR and NHRCK.
- Please provide a way to replace the RRN with a “random number system” so that personal information is not disclosed.

⁷⁶ RRN system in Korea is made up 13 digits, six digits at the front including birth date, and rear 7 digits including sex, birth place, order of birth registration in that day, and error verification number. The RRN is given at birth to all citizens, and it is hard to change the number except under certain exceptional circumstances.

⁷⁷ A/HRC/8/40, para. 64-13.

⁷⁸ NHRCK, Recommendation for improvement of RRN system, May 8, 2014.

⁷⁹ S.Korea’s resident registration system leads to increase in information leaks

http://english.hani.co.kr/arti/english_edition/e_business/309086.html

⁸⁰ The Constitutional Court mentioned that “Due to the unique characteristics of the RRN, it is used routinely not only in various administrative areas but also in the private sector. As a result, leakage or misuse of RRN can seriously infringe privacy of an individual at any time. After the leakage of RRN, it can be directly linked to personal damage such as using stolen RRN for crime” on December 23, 2015 at the decision, 2014Heonma449

⁸¹ According to Public Official Election Act, Article 82-6, during the election campaign period, if any Internet press agency allows anyone to post information including text, voice, pictures or video clips expressing his/her support for or opposition to candidates or political parties on the bulletin board and chatting page, etc., of its Internet Web-site, it shall take technical measures to have his/her real name identified. By following Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., Korean government designates identification service agencies, and allows them to collect and handle RRN. In this way, RRN is accumulated by several companies, which makes them easy target to hack. For instance, one of identification agency(i-Pin) was hacked from February 28 to March 2 in 2015, so there were 750,000 illegal issuances of i-Pin. (http://www.koreatimes.co.kr/www/nation/2018/07/113_174690.html)

⁸² CI means Connecting Information. It is a personal identification number composed with 88bytes codes. CI is based on the RRN and has a unique identification number for each individual, which serve as an ‘online resident registration number’.

⁸³ Unlike current RRN system, it means random number system that does not disclose personal information such as age, place of birth, and sex.

3. Insufficient Protection of Suspect's Information during Investigations

The publication of facts of suspected crimes are conducted not by laws, but by administrative rules. It results the extensive publications of facts by investigative agencies and therefore there have been lots of the violations of suspect's personality rights. For example, there have been cases where investigation agencies publicized the nationality and the name of the foreign suspect⁸⁴ or the wrong facts.⁸⁵ These kinds of the publications can bring out the prejudice not only on individual foreign suspect but also on the group of foreigners who has the same nationality. Even though the Criminal Act criminalizes the publication of facts of suspected crimes by investigative agencies, no indictment by the prosecutor was made during the period from 2013 to August 2018 according to the report which Ministry of Justice submitted to the National Assembly.

Suggested Questions

- Please provide information related to the rates of prosecution where the suspects have accused the investigative agencies of publication of facts of suspected crime, defamation, interference with business, interference with auction or bidding. etc for unjust publication of the facts of suspected crimes.
- Please provide information related to the specific plans that can prevent the violations of personal rights of suspects due to the unjust publication of the facts of suspected crimes by investigative agencies.

4. Insufficient Protection on Information of Victims and Witnesses during Investigation

According to the data of the MOJ in 2018, there had been 2,020 retaliation crimes for five years from 2013 to May 2018, which means there have been an average of 400 retaliation crimes annually.⁸⁶ There have been cases that whistleblowers who did public interest reporting have suffered defamation, intimidation and so on because their personal information was leaked.⁸⁷ There also have been cases where the personal information of victims of sexual violence crime were provided to perpetrator since the protection of the information was failed.⁸⁸ Even though there are related laws, such as the Act on Protection Of Specific Crime Informants, Etc, it is necessary to improve the system and the perspective of state agencies on victims protection.

Suggested Questions

- Please provide information on the legal and institutional measures to prevent the abusing situation due to the leakage of personal information of whistleblowers, victims, and witness in the circumstance that hundreds of the retaliation crimes are occurring.
- Please provide measures to prevent the damage due to the leakage of personal information

⁸⁴ The case that the nationality and the name of the suspect was revealed

http://m.mbn.co.kr/tv/program_view.mbn?seq=552&bcast_seq=1194393&pnum=2&bday=20181008#270

⁸⁵ The case that the investigation agencies publicize that the items of the foreign suspect, which the suspect had for his job as the material of the bomb: See the article of the SBS News, available at <https://bit.ly/2VgCvTU>

⁸⁶ <http://www.gokorea.kr/news/articleView.html?idxno=48270>

⁸⁷ http://h21.hani.co.kr/arti/society/society_general/46385.html

⁸⁸ <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=150987>

of whistleblowers, who did public interest reporting and the failure of personal protection on them.

5. Mandatory Monitoring of Minors' Smartphones

According to the Telecommunications Business Act⁸⁹, mobile carriers must provide means to block contents harmful to minors and obscene information on all minors' smartphones. The Act does not allow parents or minors to opt-out. This smartphone monitoring mandate violates privacy and the right to informational self-determination of minors and parental rights of the parents. In addition, those smartphone control apps installed as a blocking means not only blocks harmful contents but also have monitoring and control features such as monitoring of the usage, monitoring of the contents of communication, and location tracking, that infringe on minors' rights. Moreover, they are inherently vulnerable and expose minors to security risks.

Suggested Questions

- Please provide plans to stop enforcing the mandate and provide a reasonable guideline to minimize the privacy and security risks on minors.
- Please provide measures to repeal or amend Article 32-7 of the Telecommunications Business Act.

6. Provision of Subscriber's Information

Sub-article (3) of Article 83 of the Telecommunication Business Act provides that law enforcement bodies, including court, prosecutor, police, national intelligence and tax authorities can collect subscriber's name, ID number, address, phone number as well as the dates of subscription and its expiry dates from the telecommunication service providers. In practice, this provision is operated in a way that the telecommunication business cannot say NO to the requests of those law enforcement bodies, even though such requests do not have legitimate grounds, such as warrants or any other types of court permission. To the contrary, the telecommunication service providers do not have to provide their subscribers with the fact that their information is disclosed to a third party.

In particular, The State party has a very systematic national ID system called 'citizen's registration number (CRN)' The registration number of a citizen consists of 13 digits and each of these digits contains a particular individual information of that citizen. Knowing one's CRN in ROK means knowing almost all information about a person. Therefore, the provision of CRN to be at the discretion of law enforcement bodies without due process means that the fundamental human rights like rights to privacy is more seriously violated in Korea than any other countries.

⁸⁹ Article 32-7 (Blocking of Media Products Harmful to Juveniles)

(1) Any telecommunication business operator using allocated frequencies under the Radio Waves Act must provide the means to block the media products harmful to juveniles under Article 2 Subparagraph 3 of the Juvenile Protection Act and the obscene information under Article 44-7(1)1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. when entering into a contract on telecommunications service with a juvenile under the Juvenile Protection Act.

(2) The Korea Communications Commission may inspect the practice of providing blocking means under (1).

(3) Necessary matters such as methods and procedures in providing the blocking means under (1) shall be prescribed by Presidential Decree.

Suggested Questions

- Korean government does not have intention to change the way it collects, classifies, keeps and otherwise uses personal information based on the CRN. Under this CRN environment, the system for the provision of subscriber's personal information may violate the fundamental rights of Koreans compared to any other citizens on earth. Please provide plans to improve the system in details.
- In order to improve the said problems, the way in which the personal information and communication records of subscriber is provided to the law enforcement bodies should be improved. Please provide plans to strengthen the self-control power over one's personal information.

7. Keeping Subscriber's Communication Records

Since 2005, telecommunication service providers should keep the communication records of their subscribers for the certain period of time according to the Enforcement Decree of Protection of Communications Secrets Act. Sub-article 2 of Article 41 of the Decree sets that the mobile service providers, wire communication service providers, and internet service providers should keep the said records at least for 12, 6, and 3 respectively. Subscribers' communication records include date and time of communication, contacted numbers, location of communication, log records. There have been many concerns about the fact that such long periods of keeping the records may seriously infringe the privacy. Also the fact that one's privacy is restricted by a decree and not by the Act legislated by the Parliament is problematic.

Suggested Questions

- Please provide plans to improve relevant Act or the decree on the compulsory retention of communication records.

8. HIV/AIDS and the right to privacy

There is a clause in the Prevention of Acquired Immunodeficiency Syndrome Act⁹⁰ to prevent the infringement of people with HIV's privacy rights by medical personnel, but the privacy of people with HIV is frequently infringed in the medical field or prison setting. Also, under article 19 of the act, the State party still criminalizes people with HIV with an undetectable viral load for "spreading AIDS".⁹¹

⁹⁰ Article 7 (Prohibition against Divulgence of Confidential Information)

No person falling under any of the following shall, except for cases provided for in this Act or an order issued under this Act, or in any other Act or subordinate statute, or cases where the person himself/herself has given consent, divulge any confidential information he/she has learnt about such infected person in the course of performing his/her duties not only during his/her term of office but after his/her retirement:

1. Persons who engage in affairs regarding the prevention and management of AIDS and the protection of and support to infected persons in the State or local governments;
2. Persons who have participated in the diagnosis, autopsy, medical treatment and nursing of infected persons;
3. Persons who keep and manage records regarding infected persons.

⁹¹ Article 19 (Prohibition against Carrying and Spreading AIDS)

No infected person shall perform any act of carrying and spreading AIDS to another person through blood or body fluids.

Suggested Questions

- Please provide statistics of violation against people with HIV's rights to privacy in the medical field and prison setting.
- Please provide statistics of investigation, prosecution, and punishment under article 19 of the Prevention of Acquired Immunodeficiency Syndrome Act.

Article 18

1. Conscientious Objection

The Constitutional Court ruled the Military Service Act unconformable to the Constitution on the ground of its failure to provide alternative service to conscientious objectors. According to the decision, legislators should introduce alternative service until 31 December 2019. The State party announced a bill for alternative service on 28 December 2018 and collected opinions on its legislation until 7 February 2019.

The State party's bill set the length at twice, 36 months, that of the current military service serving in a correctional institution and does not recognize the right to conscientious objection of soldiers in active service. The State party plans to propose the bill in April which will be then discussed in the parliament with other bills.

Suggested Questions

- Please explain reasonable and appropriate reasons why the alternative service for conscientious objectors has such a lengthy period of service compared to the current military service.
- Please explain a reason that the State party does not recognize the right to conscientious objection for those who serve currently in the military service and reserve force, and a plan to improve a current situation.

Article 19

1. Korea Communications Standards Commission (KCSC)

Korea Communications Standards Commission (KCSC), since its establishment in 2008, has been in charge of contents deliberation in the broadcasting and internet sector as administrative agency⁹². Its deliberation of internet contents is based on the Deliberation rule of Information and Communication. The deliberation of internet contents by KCSC violates users' freedom of expression⁹³ because

⁹² Although government has argued KCSC is private organization, Korean court and constitutional court reach verdicts for several times that KCSC is administrative agency.

⁹³ For example, KCSC blocked twitter account, '2MB18nomA(<http://twitter.com/2MB18nomA>) in 2011 because the account could remind people of insult to then president. KCSC also recommended cancellation of account, which was 'shut down' practically, of 'Hanchongryun' (Korean University Student Councils) website on the grounds that it violated National Security

deliberation standards are very broad⁹⁴ and its decision on illegality is arbitrary, resulting in criticism of government and/or companies also being deleted. The members of the Commission consist of people recommended by the government and the National Assembly. In addition to illegal information, “harmful” information, which is based on abstract and unclear standards, is subject to the deliberation of KCSC. According to these standards, KCSC deletes and blocks about 150,000 Internet sites and posts a year on average.⁹⁵As UN Special Rapporteur on Freedom of Expression⁹⁶ indicated, communication deliberation of KCSC is functioning as practical post-censorship. In hence, the National Human rights Commission of Korea (2010)⁹⁷, report of UN Special Rapporteur on the right to freedom of opinion and expression on his mission to the Republic of Korea⁹⁸, and 2nd UPR also recommended to transfer authority of KCSC to independent commission and to comply with international standards on freedom of expression and freedom of press.⁹⁹

Suggested Questions

- Please provide plans to ensure the active implementation of recommendation of NHRCK, UN Human Rights Council and the UN Special Rapporteur on the Freedom of Expression.
- Please provide plans to discontinue administrative deliberation on the Internet and to transfer the authority from the KCSC to an independent body that is free from the political, commercial, and other unjustified external influence.
- Please provide plans to revise the law to limit the KCSC’s deliberation authority to the

Act in 2011. Also, the contents on civil boycott campaign in protest against major media companies publishing distorted reports, had been mass-deleted in 2009 on the grounds that it was second boycott that attempted, aided, or abetted to commit a crime. North Korea ICT web page(<https://www.northkoreatech.org>) run by Martyn Williams, reporters of England, had been blocked in violation of National Security Law in 2016, but the decision of KCSC was reversed by a court. Recently, SNI(Server Name Indication) blocking method has been introduced in the name of eradication of illegal videos and illegal filming, thereby, strengthening de facto post-censorship infringing the freedom of expression online.

According to ‘the third KCSC white paper’ published in 2017, KCSC has deliberated Internet contents from 150,000 to 200,000 annually, and among them 94% to 95% of corrective actions are deletion, cancellation of account, and blocking.

<Table 3-2-1> Present condition of Deliberation (unit: cases, %)

Sort	Deliberation	Correction Request					Harmful to Minors		n/a	Dismissal, etc.
		Delete	Cancellation	Blocking	Etc.	Sub-total	Set	Revoke		
2014	140,421 (100)	24,581 (17.5)	10,031 (7.1)	97,095 (69.1)	1,177 (0.8)	132,884 (94.6)	274 (0.2)	14 (0.0)	7.96 (5.1)	153 (0.1)
2015	158,073 (100)	9,821 (6.2)	9,821 (6.2)	111,008 (70.2)	272 (0.2)	148,751 (94.1)	145 (0.1)	3 (0.0)	8,825 (5.6)	349 (0.2)
2016	211,187 (100)	35,709 (16.9)	8,422 (4.0)	157,451 (74.6)	209 (0.1)	201,791 (95.6)	143 (0.1)	5 (0.0)	8,771 (4.2)	477 (0.2)
Total	509,681	87,940	28,274	365,554	1,658	483,426	562	22	24,692	979

⁹⁴ According to Deliberation rule of Information and Communication, Chapter 2 Standards of Deliberation, KCSC deliberates very broadly by these standards such as the international peace order (Article 5), violation of the constitutional order (Article 6), violation of crime and other laws (Article 7), goodwill and other social order violations (Article 8), etc., without any specific standards.

⁹⁵ Korea Internet Transparency Report 2018, http://transparency.kr/wp-content/uploads/2018/08/2018-KTIR_eng.pdf

⁹⁶ A/HRC/17/27/Add.2, para 93.

⁹⁷ NHRCK, Remedial Recommendation for Deliberation Provision on Information Communication, Oct. 18, 2010.

⁹⁸ A/HRC/17/27/Add.2

⁹⁹ A/HRC/22/10, para 124.50/51/52.

deliberation on clearly illegal information and to change the political composition of the members of the KCSC.

2. Net Neutrality

The government implemented “sender-pays” principle introduced by the interconnection regulation (the Telecommunications Equipment Interconnection Standard)¹⁰⁰ from April 1, 2016, and forced network providers to settle the cost of cumulative traffic by making the net sender network pay the net receiver network. This regulation discouraged network providers from hosting content providers (CPs) many people want to access, thereby reducing competition among network providers and allowing network providers charge Internet users and CPs who are their customers higher access fees. As a result, Korea became the only country in the world where Internet access fees are not getting cheaper. Korea's Internet access fee is \$ 9.22/Mbps as of 2018, which is 4.3 times and 7.2 times that of the US and Europe respectively, and much higher than Japan's \$ 1.39 and Singapore's \$2 (Telegeogrphay 2018). Furthermore, network providers are now demanding to be paid for every packet passing through their networks, and this is in violation of the net neutrality principle. The net neutrality principle has been regarded as a part of human rights because it has provided a substantive basis for exercising the freedom of expression online.¹⁰¹

Suggested Questions

- Please provide a plan to abolish the “sender-pays” principle under the Interconnection Standard undermining net neutrality.

3. Freedom of Expression in School

According to the "Survey on the Status of Student Rights in School Life" conducted in 2016, 83.1% of the respondents said that there is a clause that restricts or violates the freedom of expression, assembly and association in school rules. When students posted their hand-written posters in 2018 as a part of the school's anti-sexual violence campaign ("School MeToo"), some school officials tore down the posters or demanded the school principals' approval for the publication of the posters.

Religion-affiliated universities such as Handong University, Soongsil University, and Seoul Jangsin University continue to violate students' freedom of expression by denying students lectures or festivals related to feminism, LGBTIs, or disciplining students who have expressed support for LGBTIs. The NHRCK has recommended that the universities should rectify the discrimination and disciplinary measures against the students. However, Handong University and Soongsil University rejected the recommendations citing that it is against ‘the values of foundation of the school’.

¹⁰⁰ <http://www.law.go.kr/admRulSinfoP.do?chrClsCd=&admRulSeq=2200000020261>

¹⁰¹ Frank LaRue, Dunja Mijatović (Organization for Security and Co-operation in Europe), Catalina Botero Marino (Organization of American States), and Faith Pansy Tlakula (African Commission on Human and Peoples' Rights), Special Rapporteurs' Joint Declaration on Freedom of Expression and the Internet, June 2011, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=848&IID=1> ("There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and / or destination of the content, service or application. ")

Suggested Questions

- Please provide measures against infringement of freedom of expression, assembly, and association in secondary schools.
- Please provide measures against discrimination and infringement of freedom of expression at religious universities.

4. National Security Act

The Committee requested the abrogation of article 7 of the National Security Act in its concluding observations on the fourth periodic report of the Republic of Korea (para 49.) The government evaluated the joint declarations between the leaders of North and South Korea in the last years as the de facto declaration of the end of the war. This means that the environment of national security is fundamentally changed. There are no grounds for not only article 7 of the National Security Act but also the act itself. However, the government has not established any annual legislative plans to abrogate article 7 of the act. The government has not even proceeded the hearing of opinion to abrogate the article. Instead, there have been the cases of being prosecuted or confined for the violation of article 7 of the act until recently.

Suggested Questions

- Please provide specific plans to abrogate article 7 of the National Security Act.
- Please indicate the position of the State party about the amnesty and reinstatement of people who are sentenced as guilty or in the trial procedure for the violation of article 7 of the act.

5. Criminal Defamation/Insult

Current Korean laws¹⁰² punish truth defamation as well as defamation by falsehood, and it is a criminal offense to insult someone. Meanwhile, in March 2019, the Supreme Court Sentencing Committee passed sentencing standards for the imprisonment of defamation and insult, which were set at a level comparable to that of the crime of bodily injury.

¹⁰² Criminal Act, Article 307 (Defamation)

(1) A person who defames another person by publicly alleging facts shall be punished by imprisonment or imprisonment without labor for not more than two years or by a fine not exceeding five million won.

(2) A person who defames another person by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.

Article 311 (Insult)

A person who publicly insults another person shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.

Article 70 (Penal Provisions)

(1) A person who defames another person by disclosing a fact to the public through an information and communications network purposely to disparage his/her reputation shall be punished by imprisonment with labor for up to three years, or a fine not exceeding 30 million won.

(2) A person who defames another person by disclosing a false fact to the public through an information and communications network purposely to disparage his/her reputation shall be punished by imprisonment with labor for up to seven years, suspension of qualification for up to ten years, or a fine not exceeding 50 million won.

(3) The public prosecution may not prosecute a person who committed a crime under paragraph (1) or (2) against the victim's will explicitly manifested.

Suggested Questions

- Please provide a plan to decriminalize truth defamation and insult as recommended by the Committee and the UN Special Rapporteur on Freedom of Expression.
- Please provide reasons for the sentencing standards that impose strict punishment for defamation and insult contrary to the recommendations of the United Nations.

6. Temporary Measures

Current law¹⁰³ imposes an obligation on online service providers to delete information if someone alleges that his/her right such as privacy or reputation is infringed by the information. Accordingly, about 450,000 online postings are being deleted annually¹⁰⁴, and there's a suspicion that most of them are negative consumer reviews and criticism of public figures such as celebrities and religious leaders. Also, the law doesn't give the poster a right to appeal when his/her posting is removed, thus infringing on the freedom of expression of internet users.

Suggested Questions

- Please provide a plan to abolish the temporary blocking system or to improve the current system to better guarantee the freedom of expression and the right to access information.
- Please provide explanations whether the government is taking measures such as managing and disclosing current status and statistics of temporary measures to monitor whether temporary measures are being abused as a means of restraining criticism against corporations or public figures.

¹⁰³ Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., Article 44-2 (Request for Deletion of Information)

(1) Where information provided through an information and communications network purposely made public infringes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who managed the information to delete the information or publish a rebuttable statement (hereinafter referred to as "deletion or rebuttal"), presenting explanatory materials supporting the alleged violation.

(2) A provider of information and communications services shall, upon receiving a request for deletion or rebuttal of the information under paragraph (1), delete the information, take a temporary measure, or any other necessary measure, and shall notify the applicant and the publisher of the information immediately. In such cases, the provider of information and communications services shall make it known to users that he/she has taken necessary measures by posting a public notification on the relevant message board or in any other way.

(3) A provider of information and communications services shall, if there is any unwholesome medium for juvenile published in violation of the labeling method under Article 42 in the information and communications network operated and managed by him/her or if a content advertising any unwholesome medium for juvenile is displayed in such network without any measures to restrict access by juvenile under Article 42-2, delete such content without delay.

(4) A provider of information and communications services may, if it is difficult to judge whether information violates any right or it is anticipated that there will probably be a dispute between interested parties, take a measure to block access to the information temporarily (hereinafter referred to as "temporary measures"), irrespective of a request for deletion of the information under paragraph (1). In such cases, the period of time for the temporary measure shall not exceed 30 days.

(5) Every provider of information and communications services shall clearly state the details, procedure, and other matters concerning necessary measures in its standardized agreement in advance.

(6) A provider of information and communications services may, if he/she takes necessary measures under paragraph (2) for the information circulated through the information and communications network operated and managed by it, have its liability for damages caused by such information mitigated or discharged.

¹⁰⁴ <https://opennet.or.kr/nomoreblocking>

7. Blacklist in Culture and Art

Cultural artists in ROK disclosed Park-Geun-hye administration's state crime of blacklisting the artists and have done art protest by occupying Gwanghwamun Square in Seoul for five months. During this protest, the artists made a complaint against key government officials, such as Park-Geun-hye, Kim Ki-chun, and Cho Yoon-sun to the Special Prosecutor. The State party officially confirmed and published the state crimes in the period of Park-Geun-hye and Lee-Myeong-bak administrations through operating 'the Committee for finding the truth and improving the system' from July 2017 to June 2018. Even though the committee did not have the power to investigate, the victims of the state crime of cultural blacklist during the period of Park-Geun-hye and Lee-Myeong-bak were about "342 organizations, and 8,031 cultural artists." The Committee also found out the facts that the crime have been done not only by the Blue House, NIS, Police, and the Ministry of Culture, Sports and Tourism, but also by a lot of other governmental agencies. The Committee recommended the government to investigate the accountability-Investigation to punish people who are in charge of and to take disciplinary action against 131 people-and to improve the system and provide follow-up measures-nine recommendation related to the reform of law organizations.

Suggested Questions

- Please provide plans for enacting the special act tentatively named "Special Act on Investigating the Truth of Blacklists in Cultural art" and to operate the committee for finding truth with the power to investigate and inspect.
- Please provide action plans to implement the recommendations by 'the committee for finding the truth and improving the system' responsively.

Article 20

1. Regarding Hatred towards Immigrants, Refugees and LGBTIs

Hatred and instigation of hatred towards immigrants and refugees are rapidly increasing. There are groups that produce and spread fake news in order to instigate hatred towards immigrants and refugees.¹⁰⁵ Some politicians also take part in discrimination through their hate speeches. On the internet, some people systematically leave numerous negative comments on any news article related to immigrants and refugees, which attribute to the negative public opinion.¹⁰⁶ Some even create and post web comics to instigate negative images, and some people use strategic methods such as regular demonstrations in order to express and instigate hate against immigrants and refugees.¹⁰⁷ Nevertheless, the State party does not have any legal system to restrict or punish hate speech and any plan to legislate an anti-discrimination act against racism.

¹⁰⁵ CNN(Sep. 13, 2018) "In South Korea, opposition to Yemeni refugees is a cry for help", , <https://edition.cnn.com/2018/09/13/opinions/south-korea-jeju-yemenis-intl/index.html>

¹⁰⁶ New York Times(Oct. 17, 2018) "South Korea Denies Refugee Status to Hundreds of Fleeing Yemenis" <https://www.nytimes.com/2018/10/17/world/asia/south-korea-yemeni-refugees.html>

¹⁰⁷ Hangyoreh(Sep.17, 2018) "Pro-refugee and anti-refugee demonstrators engage in verbal dash on Seoul city center" http://english.hani.co.kr/arti/english_edition/e_international/862438.html

According to a survey by NHRCK in 2016, 94% of LGBTI persons experienced online hate speech. When the general and local election season comes, anti-LGBTI hate speech by the candidates of members of the National Assembly, mayors, and the superintendents of local education office is prevalent. The candidate for Seoul mayor Kim Moon-soo said, "Homosexuality is much more harmful than smoking. You cannot stop it if you taste it once." The current Public Official Election Law prescribes the prohibition of public slander of candidates and the prohibition of publicity of false facts, but there are no provisions prohibiting and sanctioning candidates' hate speech against minorities.

Suggested Questions

- Please provide the plan to improve the law and the practice so that discriminatory actions, instigation of hatred, or hate-groups against immigrants and refugees can be restricted or punished.
- Please provide the plan to prevent and prohibit hate speech against LGBTIs including the election process.

Article 21

1. Amendment on the Bill of Assembly and Demonstration

With concluding observations on the fourth periodic report, the Committee expressed its concern about the operation of a de facto system of authorization of assemblies, usage of excessive force, of car and bus blockades, the restriction on demonstrations held past midnight, and the frequent application of criminal law to either organizers or participants. Thus the Committee recommended that limitations on the rights to freedom of assembly are in strict compliance with article 21. They largely overlap with the recommendations given by the Police Reform Committee which was set up by the government. The police seemed to accept them by proposing plans for implementation but nothing specific hasn't been implemented yet. Meanwhile, the Constitutional Court issued a decision finding provisions in the Assembly and Demonstration Act barring assemblies and demonstrations within 100m of the National Assembly building to be in violation of the Constitution and ordered that the law must be revised by the end of 2019.

Suggested Questions

- Please provide detailed information on the specific measures to ensure the recommendations made by the Committee and the Police Reform Committee.
- Please provide a revised bill of Assembly and Demonstration which includes abolishment of Article 11(Places Prohibited for Outdoor Assembly and Demonstration) and reflects recommendations made by the Committee, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Police Reform Committee.

2. Freedom of Expression and Assembly of Students

A lot of schools - including elementary, middle, and high schools - have school regulation that limits the rights to freedom of expression and association of the students. According to the field study of the

NHRCK¹⁰⁸, 83.1% of school regulations have articles that limit the rights of expression and assembly. For example, there are regulations that punish the children who participate the assembly held outside of schools, prohibit or limit the voluntary gatherings of the students, require the students to obtain the permission to hold an assembly in the school from the principal, and so on. There have been many reports of the cases of the schools which imposed disadvantages on the children for participating the assembly and restrained their participation. There are no measures taken by the State Party to improve the rights to freedom of expression and association of the students in schools. The State Party even brought a lawsuit against the article of Seoul Ordinance of Student Rights that ensures the right to freedom of expression and association of the students on the grounds that such ordinance could be a threat to “the teacher’s right to educate students”.

Suggested Questions

- Please provide plans to abolish the school regulations that violate the right to freedom of expression and association of the children in schools.

3. Violation of the Right of Assembly of the LGBTIs

In 2018, the organizing committee of Incheon Queer Culture Festival applied for the use of a place at Dong-gu Office in Incheon City, but Dong-gu office rejected based on the unreasonable grounds such as parking lot which is not in the regulation. This was also the case when the Jeju Queer Cultural Festival applied in 2017. Local governments throughout the country are dismayed at the holding of the Queer Culture Festival and are creating an excuse to refuse the event regardless of regulations. It is not only a violation of the right of assembly of the LGBTIs, but also serves as a justification for discrimination and violence against LGBTIs.

Suggested Questions

- Please provide plans to ensure the freedom and safety of that local pride events and their assembly.
- Please provide plans to educate the local police agencies in the country regarding the safety of pride events and LGBTI human rights.

Article 22

1. Freedom of Association

The Committee in its 4th concluding observation recommended the State party to withdraw the reservation of the article 22 and to make sure that all workers including public servant and the dismissed can freely join unions. However, the State party has never announced a plan for the withdrawal and has taken no action to ratify the ILO convention 87 and 98, which is directly related to the withdrawal of the article, on the pretext of opposition by the employer’s organization, as of April 30. The legislations which put restriction on exercising right to organize, to bargain collectively and act

¹⁰⁸ NHRCK(2016), The Field Study on the Human Rights of Students in Schools

collectively are still retained. Especially, the Article 2 of the Trade Union and Labor Relation Adjustment Act (TULRAA) define 'worker' and 'employer' in narrow way and workers in non-standard forms or workers are not able to exercise the right to freedom of association. In the union certification process, the administration has the discretionary power which makes the system de facto 'permit system'. Right to collective bargaining and right to strike are allowed in limited range and in case a union exceed this range, criminal sanction and civil lawsuit for damage claims are followed. The special laws on trade union for civil servant and teachers restrict the qualification for membership and union activity.

Suggested Questions

- Please identify the major obstacles for withdrawal of the reservation of Article 22 of the Covenant and present a specific plan for withdrawal including time line.
- Please specify the measures taken by the state party to guarantee the right to form and join trade unions for all workers including public servant and those who are excluded from the TULRAA such as the dismissed, the unemployed and non-standard forms of workers (the specially employed)
- Please identify any concrete measures taken by the state party to stop the practice of criminal and civil sanction for exercising the right to freedom of association

Article 23

1. Child Care Policy

Of the 4,184 daycare centers used by children aged 0 to 5, only 13 percent are state-run daycare centers, and 51 percent are entrusted to individuals. The direction of the government's child care policy focuses on cost support rather than directly providing services, and thus the founders of daycare centers sought profits for their debt repayment or cost preservation, in addition to the payment for the principal of daycare center. In order to prevent illegal activities, daycare centers are required to regularly report their accounts to the child care integrated information system and those are automatically disclosed, but only general data are available and specific details remain unknown. Even if illegality or expedient act is revealed in this process, child care fees are currently provided to parents through a voucher system, which makes it difficult to supervise account book and to punish the usage outside of purpose.

Suggested Questions

- The President pledged to guarantee a 40 percent use of national and public daycare center and to establish a social service center to expand the public supply of social services. However, the law based on establishing social service centers has not passed the National Assembly. Please provide answer how the government plans to push for the establishment of social service centers and expand the public supply of social services such as child care and senior care.

2. Returned Marriage Migrant Women and Children of Multicultural Families Abroad

The women who have returned to their home countries alone or with their children after the divorce

or the separation with Korean spouses, in many cases, have not clearly dissolved their marriages or have unilaterally been divorced, so could barely have secured their necessary rights such as children custody. Since some countries allow them to divorce only under the condition of having the marriage certificate and the divorce certificate of Korea as required by local law, the concerned women must receive all documents from the legally entrusted person, currently residing in Korea. However, the entrusted person without Korean citizenship would be hardly issued those documents if not knowing the identity information of those women's spouses. Currently, the subjects of the Multicultural Families Support Act are only foreigners residing in Korea. As Korean citizens as well as minors, therefore, the children of the returned marriage migrant women would have various problems such as stay abroad, education, medicare, etc. if their mothers, as guardians, are out of contact with or not supported from their Korean fathers. In case that their passports are expired, they also cannot receive any help from the Korean Consulate because there is no way to extend their expired passports.

Suggested Questions

- Please provide plan to commission civil services such as confirmation of Korean spouses' address, marriage situation, and issue and delivery of divorce certificates to the Korean embassy or consulate in the country of returned marriage migrant women.
- Please provide plan to amend the related laws or measures for the children of the returned marriage migrant women to extend their expired passports and receive welfare benefits if necessary.

Article 24

1. Birth Registration

The current birth registration system in ROK requires parents with Korean nationalities to report birth of their child.¹⁰⁹ The government imposes parents who are negligent to birth registration a fine of KRW 50,000,¹¹⁰ but there is no monitoring mechanism on parents' compliance with their registration. As a result, about 200 children whose births are not registered,¹¹¹ and cases of fake registration are found every year. Also, the government has refused to register births of children of foreign nationals. Parents may register through the embassies of their nationalities; however births of children of refugees, humanitarian status holders, and undocumented migrants who are often reluctant to approach to embassies of the government which in many cases persecuted them, are unable to be registered in Korea.¹¹²

¹⁰⁹ Article 46 of the Act on the Registration, etc. of Family Relations.

¹¹⁰ Article 122 of the Act on the Registration, etc. of Family Relations (Administrative Fines) When a person who is responsible for filing a report pursuant to this Act fails to file a report or application within a specific period of time without good cause, he/she shall be subject to an administrative fine not exceeding fifty thousand won.

¹¹¹ Statistics Korea, "Statistics on children in-need". Retrieved at: http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1421

¹¹² The Korea Herald(Feb. 10, 2019), [Multicultural Korea] Undocumented children in South Korea deprived of basic rights. Retrieved at: <http://www.koreaherald.com/view.php?ud=20190208000401>

Suggested Questions

- Please provide the measures taken by the government to understand the current status of children whose births are not registered.
- Please provide the plan of the government which provides all children, regardless of their race, color, gender, language, religion, national or social origin, property or birth, the right to birth registration.

2. Nationality of Children

Children born in the ROK acquire Korean nationality only when either parent is Korean, or both of the child's parents are unknown or proven stateless.¹¹³ Otherwise children are not given Korean nationality. Meanwhile, a child who is born to a Korean father and a foreign mother in *de facto* marriage is unable to acquire Korean nationality without father's cooperation, because a child is only able to acquire Korean nationality when the father acknowledges his child, then registers the child's birth at the Immigration Office. Also, there is no statelessness determination procedure in ROK, therefore basic rights of stateless children are not guaranteed.

Suggested Questions

- Please provide information on the number of stateless children, and cause of statelessness.
- Please provide plans to introduce a proper statelessness determination procedure, and to guarantee the rights of stateless children.

3. Corporal Punishment and Non-Educational Disciplinary in Schools

Though the Child Welfare Act prohibits physical and mental abuse,¹¹⁴ according to a study by National Youth Policy Institute, 5% elementary students and 15% high school students were still reported to suffer physical punishment. Enforcement decree of the Elementary and Secondary Education Act facilitated the ban of corporal punishment in schools,¹¹⁵ but the Ministry of Education announce this did not extend to 'indirect corporal punishment' in 2011, does not take active measures to inform and educate the ban on corporal punishment in schools toward related workers including teachers. Students who suffered verbal violence by high school teachers are one out of four.¹¹⁶ In other research results, 28.2% reported they suffered or witnessed punishment like beating, 35.8% responded to the corporal punishment forced painful posture or movement.¹¹⁷ However, the Child Welfare Act does not apply to teacher who use punishment and the sanctions imposed on perpetrators are inadequate.

¹¹³ Article 2 of the Nationality Act

¹¹⁴ Para. 2, Art. 5 of the child Welfare Act

¹¹⁵ Para. 8, Art. 31 of the Enforcement decree of the Elementary and Secondary Education Act

¹¹⁶ National Youth Policy Institute (2108), the study of implementation International Convention to the child and youth – the actual condition on the rights of the child and youth 2018 summary report.

¹¹⁷ The National Human Rights Commission (2016), the Survey on the Status of Human Rights of Students Protection in School Life

Suggested Questions

- Please provide plans to eliminate all corporal punishment in schools.
- Please indicate public campaign plan to inform the ban of corporal punishment and promote awareness of child rights.
- Please provide the statistics data including criminal punishment and administrative disposition for perpetrators.

division	2018					2018				
	Physical punishment by teachers					insulting word(swearing) by teachers				
	None	1-2 times a year	1-2 times in 2-3 month	1-2 times a month	More than 1-2 times a week	None	1-2 times a year	1-2 times in 2-3 month	1-2 times a month	More than 1-2 times a week
Elementary school	94.7	3.0	1.2	0.5	0.5	92.6	4.5	1.4	0.7	0.7
Middle school	85.1	7.4	3.4	2.2	1.9	76.8	11.3	4.4	4.2	3.3
High school	84.6	8.3	2.9	2.1	2.1	75.5	12.8	5.1	2.9	3.8

4. Protection of the Children to the Violence in School

Though the “#School MeToo” movement is ongoing from Apr. 2018, the investigation of actual condition is not adequate, and the rights of student victims are not guaranteed in the process. According to the Ministry of Education, among the 33 cases of sexual harassment and sexual violence in the middle and high school, there is only 1 case the teacher is subject to a severe disciplinary.¹¹⁸ Students who suffered an insulting word (swearing) or attack by peer or senior-junior in school, were found more in elementary school than middle and high school¹¹⁹. In addition, the Autonomous Committee for Countermeasures against School Violence (hereinafter referred to as "autonomous committee") stays perfunctory and the number of applications for a retrial against autonomous committee has risen from 764 in 2013 to 1,868 in 2017, over the past 5 years.¹²⁰ Otherwise, according to a survey by the Korea Communications Commission, of the 4,500 students surveyed, 24.8% suffered cyber violence. The most kind of cyber violence is through chatting, 50.3% of respondents were perpetrators and 45.6% of respondents were victims.¹²¹ However, there is only one institution (*Healing center, “Haemalgum”*) supporting student victims, the government has insufficiently taken measures.

Suggested Questions

- Please provide the statistics data of the violence in school disaggregated by victims and types.
- Please specify measures taken to address the growing incidence of bullying, online violence and sexual abuse, including by teachers, and measures taken to protect student who reported the violence and to support student victim.

¹¹⁸ Kookmin Ilbo, Feb 18, 2019. SchoolMetoo 1 year, the school has not changed. Retrieved at: <http://bitly.kr/YEILH>

¹¹⁹ National Youth Policy Institute (2108), the study of implementation International Convention to the child and youth – the actual condition on the rights of the child and youth 2018 summary report.

¹²⁰ Joonangs.joins, Jan 21, 2019. The Ministry of Education is debating carefully 'the regulation on the Minor School Violence does not report in school records', Why not?. Retrieved at: <https://news.joins.com/article/23306542>

¹²¹ Korea Communications Commission (2017), 2017 the Survey on the Status of Cyber Violence.

5. Securing Child Support

The Child Support Agency enforces child support. However, with only a single center in Seoul, it has inadequate capacity to operate effectively nationwide. As of September 2018, the payment of child support rate was 31.9%,¹²² but sanctions including the court-ordered confinement against non-compliance are rarely executed in practice.¹²³ The number of cases in which the payment of child support has been paid more than three times was only 46.9% of the total. Moreover, the temporary emergency child support rate is only 36.6%.¹²⁴ Consequently, it limits the rights of child to development in a safe and healthy family environment.

Suggested Questions

- Please provide legislative, administrative and judicial measures to effectively enforce child support.
- Please provide the results of the State party's evaluation of its temporary emergency child support system, and specify plans to improve.

6. Visitation Rights of Children of Incarcerated Parents

Currently, the parents of estimated 54,000 children (about 0.5% of the under-19 population) are inmates and annually parents of around 27,500 children are newly incarcerated. However, the recognition of the right to raise a child extends only to those female inmates who have given birth in the correction facility and the decision of whether a child can live with a parent at the correctional facility is at the discretion of the warden.¹²⁵ Also, children cannot visit their parents without partitions unless the level of security of their parents is categorized as open treatment level.¹²⁶ If it is heavy security level, children are not eligible for Days of the Family Reunions program.¹²⁷ Meanwhile, impediments include restrictions on legal holidays, the expenses and hardship of traveling to the facility, and the negative perception of prison staff and foster parents limit the visitation rights of children¹²⁸.

¹²² According to Policy report of the Ministry of Gender Equality and Family, the actual number of cases for which implement the obligation to the payment of child support compared with confirmed decision was 21.2% in 2015, 29.6% in 2016 and 32.0% in 2017.

Retrieved at: http://www.mogef.go.kr/nw/enw/nw_enw_s001d.do?mid=mda700&bbtSn=705999

¹²³ Art. 18 of the Act on Enforcing and Supporting Child Support Payment.

¹²⁴ National Assembly Research Service (2018), Problems and Improvement Assignments of Child Support Management System. The material submitted to the Ministry of Gender Equality and Family on Oct 31, 2018.

¹²⁵ Art. 53 of the Administration and Treatment of Correctional Institution Inmates Act, Art. 80 of the Enforcement Decree of the Same Act.

¹²⁶ Convicted prisoners shall be treated according to the "level of security". There are more limitations as higher the level, It is classified as following; (1) open treatment level, (2) Relaxed security level, (3) General security level, (4) Heavy security level; the level is determined by the type of crime first, and it may be adjusted upward according to their correctional recodes

¹²⁷ Art 72 – 80 of the Enforcement Decree of the Administration and Treatment of Correctional Institution Inmates Act.

¹²⁸ NHRCK(2017), the report on the status of human rights of children of incarcerated parents.

Suggested Questions

- Please provide statistics on the number of children born to prisoners and status of children living with their mother in prison.
- Please provide statistical data of the number, time, way and place of visits with their children of the prisoners by the level of security
- Please specify the measures taken to support children of incarcerated parents

7. Protection of the Children Victims of Sexual Exploitation

The current legal system does not cover all children exploited in prostitution as victims. If children are classified not into ‘victimized children’ but into ‘children involved’,¹²⁹ who sell sex voluntarily as counterparts to a buyer of sex, they are excluded from the sexual violence support system provided by the Government,¹³⁰ may be subject to juvenile trials under the Juvenile Act, same as children perpetrator,¹³¹ and they cannot seek damages against the perpetrators.¹³² In sum, the provisions on children involved view such children as accomplice of crimes of sex trade. According to a research by the NHRCK, for the first venue of sex trade for children, 59.2% of the respondents used smart phone chatting apps, followed 27.2% for internet communities and chatting.¹³³ Though crimes against exploitation of children through applications are on the rise, no legislative and administrative measures to the operators have been taken.

Suggested Questions

- Please clarify the State party’s stance on the amendment to delete, within the Act on the Protection of Children and Juveniles against Sexual Abuse, definitions of and provisions pertaining to children and juveniles involved.
- Please provide the policies to support children victims of sex exploitation differently from adults, including statistics data of both ‘victimized children’ and ‘children involved’ under the current Act.
- Please indicate plan to the on-line ‘sex exploitation’ and ‘grooming’.

Article 25

1. Amendment of the Public Official Election Act

The Public Official Election Act does not fully protect the voting rights of citizens. ROK is the only country among OECD countries that grants the right to vote only to people who are 19 years of age or above. There have been requests that the voting age should be lowered to 18 years of age or under,

¹²⁹ Sub-para 6 and 7, Art. 2, Para 2, Art. 13 of the Act on the Protection of Children and Juveniles Against Sexual Abuse

¹³⁰ Item B, sub-para. 1, Art. 1-2, of the Regulations on Public Prosecutor’s Appointment of State-Appointed Legal Counsels, etc.

¹³¹ Art. 40 of the Act on the Protection of Children and Juveniles Against Sexual Abuse

¹³² Sub-para. 2, Para. 1, Art. 24 of the Act on Special Cases Concerning Expedition, etc. of legal Proceeding

¹³³ NHRCK(2016), Research on Environment of Sex trafficking of Children and Adolescents and their Human Rights

but it have not been recognized. Young people's direct participation in politics are blocked since the right to be the candidate is granted only to people who are 24 years of age and above- 40 years of age or above in case of presidential election. The Act is bringing a chilling effect on the rights to freedom of expression of people by excessively restricting the acts of people during the election period. The Act blocks the people's freedom to criticize their candidates and political parties during the election period by prohibiting the distribution of documents which contains the contents recommending or opposing a political party or candidate and the photographs and the pictures showing the name of candidates from 180 days before the election to the day of the election.

Through the decision of the Constitutional Court, the election campaigns are allowed for adults. The minors(people aged 19 or under), however, are deprived of the right to freedom of expression by not being allowed to recommend or criticize a political party or a candidate during the election period since the Act categorized minors as persons barred from election campaign.

Moreover, the electoral system of Parliamentary Election according to the Act, which are single-member constituency and simple plurality/major system, have brought out the results that the votes of majority became 'wasted votes'. The numbers of parliamentary seats by proportional representations are very small compared to seats representing local constituencies, which is 47:253 and there is no run-off election system. The current electoral system continuously derives unreasonable consequences to the minor political parties and the voters who support them.

Suggested Questions

- Please provide the State Party's plan to lower the age of voting and age being candidates.
- Please provide the State Party's plan to improve minors and voters right to freedom of expression during the election period.
- Please provide the State Party's plan to increase proportionality between actual votes to the number of seats in the parliamentary election and to improve minors and voters right to freedom of expression during the election period.

2. Voting Rights of the Convicted Person

The Article 18 (1) 2 of The Public Official Election Act has suspended voting rights of a convicted person who is sentenced to imprisonment with or without prison labor for at least one year, but whose sentence execution has not been terminated or whose sentence execution has not been decided to be exempted. Therefore the convicted people in correctional facility who were sentenced imprisonment with for more than one year or parolees are deprived of rights. The convicted people submitted a petition to Constitutional Court of Korea in July 2016 for constitutional review on article 18 (1) 2 of the Act. The court, however, held that the article was constitutional because suspending convicted people's voting rights has the retaliatory purpose for the crimes they have committed.¹³⁴ Because of the Act, the convicted people, who are conscientious objectors or committed crimes by negligence, are deprived of voting rights without considering specific content of their crimes only because they were sentenced to imprisonment more than one year.

¹³⁴ The Constitutional Court of Korea, May 25, 2017, 2016Heonma292 etc

Suggested Questions

- Please provide information on the number of convicted people who were sentenced to the imprisonment more than a year, and the types of their crimes. Please also provide any specific measures taken to guarantee voting rights to the convicted people, such as plans to revise the Public Official Election Act.

3. Voting Rights of the Person Subject to Medical Treatment and Custody

Article 47(2) of the Act on Medical Treatment and Custody, etc suspends the voting rights of the person subject to medical treatment and custody until the performance of medical treatment and custody terminates or such person is exempted from such performances. According to the article, such person who is in the medical treatment and detention facility is deprived of voting rights without exception.

Suggested Questions

- Please provide information on the number of people subject to medical treatment and custody who are deprived of their voting rights, the reason of medical treatment and custody. Please also provide any specific measures taken to guarantee voting rights to the person subject to medical treatment and custody.

Article 26

1. Hate Crimes against LGBTIs

Over the last few years, college LGBTI student unions and clubs have been victims of hate crimes, such as tearing the welcome banners for LGBTI and non-LGBTI students in the campus. Hate crimes against LGBTIs lead to violence against real people beyond online hate speech and property damage. At the 2018 Incheon Queer Culture Festival, the anti-LGBT group not only prevented the festival and the parade, but also carried out insulting remarks, physical violence, and sexual harassment against festival participants.

Suggested Questions

- Please provide the measures the State party did after the incident of hate crimes such as the crimes at the 2018 Incheon Queer Culture Festival.
- Please provide the plans to investigate the effects and harm of hate crimes based on sexual orientation bias and gender identity bias.
- Please provide plans for the implementation of measures to prevent and counter hate speech and hate crimes, such as legal or institutional measures.