

## FOLLOW UP TO THE PREVIOUS REVIEW

1. South Korea initially supported 85 recommendations out of a total of 218 recommendations made during the previous review and noted three recommendations. After the review, South Korea held a public hearing with the participation of civil society representatives to exchange opinions over the remaining 130 recommendations. Subsequently, South Korea decided to support an additional 36 recommendations and to note 94 recommendations.<sup>1</sup>
2. Regrettably, South Korea noted 23 recommendations<sup>2</sup> relating to the adoption of a comprehensive law to combat discrimination on any ground, particularly on the grounds of race or sexual orientation, gender identity, expression and sex characteristics. It did not take any concrete step towards the adoption of this law during the reporting cycle.
3. Also regrettably, South Korea noted 20 recommendations on the abolition of the death penalty and to commute all remaining death sentences to terms of imprisonment.<sup>3</sup> In October 2021, members of the National Assembly co-sponsored and introduced the Special Bill on the Abolition of Death Penalty, which remained pending before the Legislation and Judiciary Committee in parliament and expired automatically as the year ended.<sup>4</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

### Anti-discrimination Law

4. LGBTI persons continue to face multiple legal, social and economic barriers, which increase social exclusion and isolation. Despite a concerted effort by civil society and repeated calls from the international community during the reporting period, South Korea has failed to adopt a meaningful and enforceable comprehensive anti-discrimination legislation which includes explicit protections for LGBTI persons.<sup>5</sup>

### Conscientious objectors

5. South Korea noted 12 recommendations to provide an alternative to military service for conscientious objectors. In 2018, the Constitutional Court issued a ruling requiring the government to introduce an alternative service of a civilian nature by the end of 2019. On 27 December 2019, the legislature enacted amendments to the Military Service Act.<sup>6</sup>
6. The legislation still violates the right to freedom of thought, conscience and religion or belief because it imposes unreasonable and excessive burdens on conscientious objectors. It stipulates a disproportionate length of the alternative service – 36 months, compared to 21 or 18 months for military service. It also provides that military authorities shall administer this alternative service.<sup>7</sup>
7. Since 30 June 2018, people objecting to compulsory military service have been able to apply for alternative service for the first time. The newly created Commission for Examination of Alternative Service operating under the purview of the Ministry of National Defense reviewed only those applications made on religious grounds and accepted some of them. In October 2020, the first batch of alternative service personnel started their 36-month duty, which was almost twice as long as the typical military service and limited to working in prisons or other correctional facilities.<sup>8</sup>

## Decriminalization of abortion

8. Abortion was decriminalized in January 2021 following a Constitutional Court decision in 2019 which declared the previous abortion ban unconstitutional.<sup>9</sup> However, as of June 2022, parliament had not revised the abortion law as ordered by the Constitutional Court. Several bills remain pending in the National Assembly, including those prescribing specific time limits for abortion access as well as some calling for full decriminalization. This prolonged legislative vacuum is causing confusion among medical service providers, creating legal uncertainty and negatively impacting access to safe abortion.<sup>10</sup>

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### Rights of LGBTI Individuals

9. Transgender individuals seeking legal gender recognition through the courts are required to meet excessive and disproportionate conditions such as undergoing sterilization and not having minor children.<sup>11</sup> Without legal gender recognition, transgender individuals cannot change their gender marker to match their gender identity on their national identification, which is required to obtain official documents and access essential services. These official documents are also necessary to obtain employment and when purchasing housing.
10. The authorities also continue to pathologize transgender as a mental disorder, which consequently bars transgender individuals from serving in the military.<sup>12</sup> While there is no law criminalizing civilians' consensual same-sex sexual conduct in South Korea, Article 92(6) of the Military Criminal Act continues to be used to punish consensual sexual activity between men with up to two years in prison under an "indecent acts" clause.<sup>13</sup> As a direct or indirect result of the criminalization of sex between men in the military, LGBTI soldiers experience discrimination, intimidation, violence and isolation.<sup>14</sup>
11. On 21 April 2022, the Supreme Court of South Korea overturned the convictions of two soldiers jailed in 2017 for engaging in consensual same-sex sexual acts while off duty. The Court reasoned that if same-sex sexual acts took place off base, while the soldiers were off duty and by mutual consent, the Military Criminal Act does not apply.<sup>15</sup>

### Rights of women and girls

12. There has been a noticeable increase of digital sex crimes as digital technology rapidly develops. The perpetrators use megabytes of cloud links and cryptocurrencies on closed overseas platforms such as Telegram to spread and purchase the illegally filmed content and sexually exploitative materials faster and more easily than ever.<sup>16</sup>
13. On 23 April 2020, South Korea announced measures to eradicate digital sex crimes in response to one such case on Telegram, the so-called "Nth Room" incident.<sup>17</sup> These included a commitment to strengthen the punishment of perpetrators of digital sex crimes and to establish a government-led victim support centre to ensure a constant support system for victims.<sup>18</sup>
14. However, the government did not put in place a sustainable emergency response system for digital sexual violence. Nor did it adopt sufficient measures such as cooperation with overseas platform operators to prevent the further distribution of illegal and non-consensual materials online. As a result, victims continue to be exposed to prolonged physical and mental harm including the constant fear that the content may be

distributed again.<sup>19</sup>

### Japan's military sexual slavery system before and during World War II

15. In a landmark ruling on 8 January 2021, the Central District Court in the capital, Seoul, ordered the Japanese government to compensate 12 women who had been forced into the Japanese military sexual slavery system before and during World War II. In a separate ruling in April 2021, however, another chamber of the same district court dismissed similar claims brought against Japan by another group of survivors.<sup>20</sup>
16. The second ruling in effect denied the victims an effective remedy, including by allowing Japan to use procedural hurdles such as state immunity to hamper efforts of survivors and their families to obtain full and effective reparations.<sup>21</sup>

### Freedom of peaceful assembly

17. In the previous review, South Korea supported four recommendations on the right to peaceful assembly<sup>22</sup>, an issue which was also raised in the first<sup>23</sup> and second<sup>24</sup> reviews. After the outbreak of the Covid-19 pandemic, bans on assemblies for the purpose of preventing infectious diseases were arbitrary and disproportionate. The revision to the Assembly and Demonstration Act (ADA) proposed in August 2020 contained a ban, in principle, on assembly and demonstration in areas where restrictions are imposed under the Infectious Disease Prevention Act.<sup>25</sup> The National Human Rights Commission expressed its opinion that it is undesirable to ban all assemblies without individualized judgements.<sup>26</sup>

### Freedom of expression

18. In the previous review, South Korea supported three<sup>27</sup> general recommendations on the right to freedom of expression, but disappointingly merely noted five others.<sup>28</sup> Undue restrictions on freedom of expression remain in place.
19. The Partial Amendment to the Development of Inter-Korean Relations Act, which took effect in March 2021, prohibits the distribution of leaflets and goods in the border area between South Korea and North Korea. Amnesty has expressed concern that the law could unduly limit freedom of expression, pointing to the ambiguity of language on what prohibited acts consist of and the possibility of severe punishment.<sup>29</sup>
20. The National Security Act (NSA) remains in effect. It has been continuously used as a means to censor and cast a chilling effect on and imprison those who exercised their right to freedom of expression.<sup>30</sup> The NSA has been used against human rights defenders who have expressed criticism of government policies and who have been labelled as "anti-government organizations", a concept which is broad and vaguely defined in the Act, and have therefore been considered "a threat to social order and the state."

### Refugees and asylum seekers

21. The arrival of nearly 500 asylum seekers from Yemen on Jeju Island in 2018 sparked a trend of increasingly strict immigration and refugee policies. In July 2018, more than 714,000 people in South Korea signed a petition urging then-President Moon Jae-in to reject the Yemenis' applications for asylum, alleging that they were "fake refugees" only seeking to take advantage of South Korea's economic stability.<sup>31</sup>
22. Reports that individuals were held at the airport transit zone for months during the Covid-19 pandemic raised concerns among legal experts. They noted that such extended confinement was often without valid

reasons and may have constituted arbitrary detention, as it grossly exceeded the necessary time - up to seven days according to the Refugee Act - for examining the admissibility of asylum applications.<sup>32</sup>

### **The death penalty**

23. Death sentences continue to be imposed in South Korea, although no executions have been carried out since 1997. In October 2021, Member of the National Assembly Lee Sang-min submitted a bill to abolish the death penalty with 30 co-sponsors. There have been nine such proposals tabled to date since 1999, but all previous bills have expired after being stalled at the National Assembly Legislative Committee. A complaint filed in 2019 on the constitutionality of statutes allowing for the death penalty remains pending at the Constitutional Court.<sup>33</sup>
24. Official figures provided to Amnesty International indicated that 59 men, including two Chinese nationals, were under sentence of death in South Korea at the end of 2021. All were convicted of murder, including four under military law.<sup>34</sup>

### **Climate justice**

25. An increased emission reduction target by 2030 was announced at the 26th UN Climate Change Conference (COP26) in November 2021 as part of South Korea's updated Nationally Determined Contribution. However, the new reduction target is far below the minimum required to keep the global temperature rise below 1.5°C, and the reduction plan was still evaluated as "highly insufficient" overall, risking violations of the rights to life, health and a healthy environment globally.<sup>35</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of South Korea to:**

#### **Anti-discrimination Law**

26. Enact comprehensive, meaningful and enforceable anti-discrimination legislation that prohibits discrimination based on, among others, sexual orientation, gender identity, expression and sex characteristics.

#### **Conscientious objectors**

27. Make provisions for conscientious objectors to carry out an appropriate alternative and non-punitive service of a genuinely civilian character and of a comparable length to military service with any additional length based on reasonable and objective criteria.
28. Ensure that the recognition of conscientious objectors and the administration of alternative service itself is undertaken by a civilian authority entirely separate from the military authorities and its compositions guarantees maximum independence and impartiality.
29. Immediately and unconditionally release all individuals imprisoned solely for exercising their right of refusing military service on grounds of conscience.

30. Clear the criminal records of all convicted conscientious objectors and provide them with effective reparation, including adequate compensation.

### **Decriminalization of abortion**

31. Swiftly reform the Criminal Act and ensure universal access to safe and legal abortion.

### **Rights of LGBTI individuals**

32. Repeal Article 92(6) of the Military Criminal Act, which prohibits and punishes consensual same-sex sexual conduct between men in the military.
33. Stop conditioning legal gender recognition for transgender individuals upon unreasonable and discriminatory requirements such as undertaking psychiatric diagnosis, seeking medical treatment (that is, forced sterilization or genital reconstruction), the prohibition to marry or having children, and that the recognition is made through swift, accessible and transparent administrative procedures based on individual self-declaration.

### **Rights of women and girls**

34. Promote gender equality by eliminating the drivers of discrimination against women, such as harmful gender stereotypes.
35. Recognize the transnational nature of online gender-based violence and encourage domestic and international private intermediaries to take all appropriate measures to eliminate all forms of online discrimination and violence.
36. Establish measures such as a comprehensive inter-agency mechanism which includes appropriate allocation of resources to create an enabling environment for women to access justice, report crimes and actively participate in criminal justice processes, and take measures to prevent retaliation against or the revictimization of women seeking recourse in the justice system.

### **Japan's military sexual slavery system before and during World War II**

37. Refrain from allowing the invocation of procedural hurdles such as state immunity to hamper efforts of survivors and their families to obtain full and effective reparation through justice procedures.
38. Work with the government of Japan and other affected countries to ensure that effective systems are put in place to implement reparation measures for survivors that take into account their views and needs.

### **Freedom of peaceful assembly**

39. Ensure that measures that restrict the freedom of peaceful assembly for reasons such as prevention of infectious diseases comply with international human rights law and standards, and that such measures do not result in stigmatization of peaceful assemblies.
40. Amend the Assembly and Demonstration Act to bring it in line with the obligations of South Korea under international human rights law including to specify the role of government authorities as facilitators of the right to peaceful assembly.

## Freedom of expression

41. Repeal, review or amend the National Security Act, in particular its article 7, so that it complies with international human rights law and standards. This law should not be used to harass, intimidate, arrest, prosecute or intimidate those who are lawfully exercising their rights to freedom of opinion and expression.

## Refugees and asylum seekers

42. Stop arbitrary denials of and detention during refugee status determination procedures and guarantee all refugees an effective opportunity to apply for refugee status.
43. Ensure that all asylum seekers have access to a full and fair, individualized, independent and effective asylum procedure.
44. Establish administrative and legislative mechanisms to ensure due process at its international borders so that all those who seek asylum are treated in accordance with international human rights law, including the principle of non-refoulement.

## The death penalty

45. Commute all death sentences without delay to terms of imprisonment and introduce and adopt legislative measures to fully abolish the death penalty which would lead to the full abolition of the death penalty in law.
46. Ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

## Climate Justice

47. Acknowledge that the climate crisis is a human rights crisis, and immediately raise the NDC target to be consistent with South Korea's human rights obligations and the imperative to keep the increase of the global average temperature as low as possible and no higher than 1.5°C above pre-industrial levels.

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<sup>1</sup> UN Human Rights Council (UNHRC), *Report of the Human Rights Council on its 37<sup>th</sup> session*, UN A Doc. A/HRC/37/2, para 705, 14 June 2018

<sup>2</sup> A/HRC/37/11/Add.1, recommendations 132. 26, 27, 32, 35, 36, 38, 39, 40, 43-45 and 132. 57-68 (United Kingdom of Great Britain and Northern Ireland, Chile, Israel, Sweden, Brazil, Honduras, Slovenia, State of Palestine, Australia, Norway, France, Ireland, United States of America, Canada, Costa Rica, Netherlands, Denmark, Italy, Colombia, Albania, Argentina, Uruguay)

<sup>3</sup> A/HRC/37/11/Add.1, recommendations 132. 70-89 (132.70 Abolish the death penalty (Honduras, Norway, Italy, Timor-Leste, Uzbekistan, Liechtenstein, Rwanda, Canada, Colombia, Panama, Switzerland, Mexico, Portugal, Australia, Montenegro, Namibia, Ireland, Spain, France)

<sup>4</sup> Amnesty International, *Death Sentences and Executions 2021*, 24 May 2022, <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>5</sup> Amnesty International, *South Korea: National Assembly of South Korea should act swiftly to enact anti-discrimination legislation*, 11 November 2021, <https://www.amnesty.org/en/documents/asa25/4957/2021/en/>

<sup>6</sup> Amnesty International, *South Korea: South Korea marks International Conscientious Objection Day with alternative service plan that falls short*, 15 May 2019, <https://www.amnesty.org/en/documents/asa25/0352/2019/en/>

<sup>7</sup> Amnesty International, *South Korea: Alternative to military service is new punishment for conscientious objectors*, 27 December 2019, <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for->

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<sup>8</sup> Act on the Assignment and Performance of the Alternative Service,  
[https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=53137&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=53137&lang=ENG)

<sup>9</sup> Amnesty International, *South Korea: Top court orders reform of abortion laws in historic victory for women's rights*, 19 April 2019,  
<https://www.amnesty.org/en/latest/news/2019/04/south-korea-abortion-ruling-2/>

<sup>10</sup> Amnesty International's Annual Report 2021/22, Entry on South Korea, p. 333,  
<https://www.amnesty.org/en/documents/pol10/4870/2022/en/>

<sup>11</sup> Supreme Court en banc Order 2009Seu117, 2 September 2011,  
<https://www.scourt.go.kr/eng/supreme/decisions/NewDecisionsView.work?seq=693&pageIndex=1&mode=6&searchWord=>

<sup>12</sup> BBC News, "South Korea's first transgender soldier found dead", 3 March 2021, [bbc.com/news/world-asia-56268409](https://www.bbc.com/news/world-asia-56268409)

<sup>13</sup> The Supreme Court in 2022 partially overturned convictions under the Article 92(6) of the Military Criminal Act. Amnesty International, *South Korea: Landmark judgement on same-sex sexual acts in military a huge victory for LGBTI rights*, 22 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/south-korea-landmark-judgement-on-same-sex-sexual-acts-in-military-a-huge-victory-for-lgbti-rights/>

<sup>14</sup> Amnesty International, *South Korea: Serving in silence: LGBTI people in South Korea's military*, 11 July 2019,  
<https://www.amnesty.org/en/documents/asa25/0529/2019/en/>

<sup>15</sup> Amnesty International, *South Korea: Landmark judgement on same-sex sexual acts in military a huge victory for LGBTI rights*, 21 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/south-korea-landmark-judgement-on-same-sex-sexual-acts-in-military-a-huge-victory-for-lgbti-rights/>

<sup>16</sup> Amnesty International, *Yoon Suk-yeol needs to change the way South Korea treats women*, 11 May 2022,  
<https://www.amnesty.org/en/latest/news/2022/05/yoon-suk-yeol-needs-to-change-the-way-south-korea-treats-women/>

<sup>17</sup> BBC, *Cho Ju-bin: South Korea chatroom sex abuse suspect named after outcry*, 25 March 2020, <https://www.bbc.com/news/world-asia-52030219>

<sup>18</sup> Yonhap News Agency, *New legislation aims to end digital sexual crimes, boost digital signature front*, 21 May 2020,  
<https://en.yna.co.kr/view/AEN20200521004600315>

<sup>19</sup> Hankyoreh, "You remove it but it keeps coming back": New laws leave adult digital sex crime victims little recourse, 12 December 2021, [https://english.hani.co.kr/arti/english\\_edition/e\\_national/1022931.html](https://english.hani.co.kr/arti/english_edition/e_national/1022931.html)

<sup>20</sup> Amnesty International, *South Korea: Disappointing Japan ruling fails to deliver justice to 'comfort women'*, 21 April 2021,  
<https://www.amnesty.org/en/latest/news/2021/04/south-korea-disappointing-japan-ruling-fails-to-deliver-justice-to-comfort-women/>

<sup>21</sup> Amnesty International, *South Korea: Disappointing Japan ruling fails to deliver justice to 'comfort women'*, 21 April 2021,  
<https://www.amnesty.org/en/latest/news/2021/04/south-korea-disappointing-japan-ruling-fails-to-deliver-justice-to-comfort-women-2/>

<sup>22</sup> A/HRC/37/11/Add.1, recommendations 130.38-39 and 130.41-42

<sup>23</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 29 May 2008, UN Doc. A/HRC/8/40

<sup>24</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 12 December 2012, UN Doc. A/HRC/22/10

<sup>25</sup> In the previous review, South Korea said, "Revision of the Assembly and Demonstration Act would be pursued to provide clearly defined criteria for restrictions on demonstrations, to expand the scope of assemblies that would not be subject to prior notification and to establish an online notification system," UN Doc. A/HRC/37/11, para 121

<sup>26</sup> Reuters, *South Korea police set up 'bus walls' to prevent protests amid COVID-19 concerns*, 3 October 2020,  
<https://www.reuters.com/article/us-health-coronavirus-southkorea-idUSKBN2600DJ>

<sup>27</sup> A/HRC/37/11/Add.1, recommendations 130.38-40 (Greece, Brazil, Italy)

<sup>28</sup> A/HRC/37/11/Add.1, recommendations 132.107-111 (Guatemala, United States of America, Germany, Iraq, Portugal)

<sup>29</sup> Amnesty International Korea, "대북전단금지법을 둘러싼 논란 - 국제앰네스티의 접근법", 17 May 2021,  
<https://amnesty.or.kr/41338/>

<sup>30</sup> The Diplomat, *Will Yoon Suk-yeol Finally Reform South Korea's National Security Law?* 15 March 2022,  
<https://thediplomat.com/2022/03/will-yoon-suk-yeol-finally-reform-south-koreas-national-security-law/>

<sup>31</sup> Amnesty International, *Yemeni refugees on South Korea's holiday island deserve hospitality not hostility*, 6 September 2018,  
<https://www.amnesty.org/en/latest/news/2018/09/yemeni-refugees-on-south-korea-jeju/>

<sup>32</sup> Korea JoongAng Daily, *Asylum seeker finally sees the sun after 423 days in Terminal 1*, 18 April 2021,  
<https://koreajoongangdaily.joins.com/2021/04/18/culture/features/refugee-asylumseeker-Congo/20210418153600468.html>

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<sup>33</sup> Amnesty International Korea, *Amicus Curiae Brief of Amnesty International in the Constitutional Court of the Republic of Korea*,

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December 2019 (2019HunBa59), <https://amnesty.or.kr/resource/%ec%98%81%eb%ac%b8-%ec%82%ac%ed%98%95%ec%a0%9c%eb%8f%84-%ed%8f%90%ec%a7%80-%eb%b2%95%eb%a5%a0%ec%9d%98%ea%b2%ac%ec%84%9c/>

<sup>34</sup> Amnesty International, *Death Sentences and Executions 2021*, <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

<sup>35</sup> Climate Action Tracker, *South Korea*, 4 November 2021, <https://climateactiontracker.org/countries/south-korea/>