

## **Status of Human Rights in South Korea for the 42<sup>nd</sup> Session of the Universal Periodic Review**

### **Introduction**

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting human rights around the world. The ECLJ holds Special Consultative status before the United Nations Economic and Social Council. This report discusses the status of human rights in the Republic of Korea (South Korea) for the 42<sup>nd</sup> Session of the Universal Periodic Review (UPR).

### **Background**

2. South Korea is located on the southern half of the Korean Peninsula and has an estimated population of 51.8 million people.<sup>1</sup> 56% of the population is non-religious,<sup>2</sup> approximately 19% identify as Protestant, 15% as Buddhist, and 7% as Catholic.<sup>3</sup>

3. South Korea's previous UPR was held on November 9, 2017.<sup>4</sup> As a result of the review, South Korea received 218 recommendations, 121 of which South Korea supported. One of the recommendations, made by India and noted by South Korea, was that the government "[r]espect reproductive rights of women which include decriminalization of abortions."<sup>5</sup> On the issue of human trafficking, it was recommended by Thailand and supported by South Korea, that the government "[t]ake further measures to combat trafficking in persons, particularly women and children, and sexual exploitation, by ensuring effective enforcement of the Criminal Act and providing victims with necessary assistance and protection throughout the process of investigation and trial."<sup>6</sup>

### **Legal Framework**

4. Under Article 34(1) of the Constitution of South Korea, "[a]ll citizens shall be entitled to a life worthy of human beings."<sup>7</sup>

5. On April 11, 2019, the Constitutional Court of South Korea ruled that its abortion laws were unconstitutional.<sup>8</sup> The Constitutional Court, therefore, set a deadline of December 31, 2020, for the National Assembly to pass new abortion legislation in conformity with the court's ruling.<sup>9</sup> The National Assembly was unable to pass new legislation before the deadline and, as a result, on January 1, 2021, abortion was decriminalized.<sup>10</sup>

6. South Korea is a party to the International Covenant on Civil and Political Rights (ICCPR) and has an obligation to uphold the principles enshrined within it:<sup>11</sup> "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."<sup>12</sup> South Korea also has a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR) and the 1994 Cairo Conference on Population and Development.

7. Article 289 of South Korea's Criminal Act establishes the crime of trafficking in persons, and provides criminal punishments for traffickers ranging from one to fifteen years,

depending on the type of trafficking.<sup>13</sup>

8. On March 24, 2021, the National Assembly passed the Prevention of Trafficking in Persons Act to further strengthen anti-human trafficking legislation.<sup>14</sup> The Act “was legislated to define concepts such as trafficking in persons . . . to prevent trafficking in persons and other offenses, and provide protection and support to victims.”<sup>15</sup> The law goes into effect January 1, 2023.<sup>16</sup>

9. Under Article 8 of the ICCPR, slavery of any kind is forbidden.<sup>17</sup>

South Korea is also a party to the U.N. Trafficking in Persons Protocol. Article 6 of which requires states parties to provide certain protections for human trafficking victims.<sup>18</sup>

### **Abortion in South Korea**

10. According to our on the ground sources, abortion statistics are not accessible in South Korea because there are no reporting requirements. Therefore, there is no way to accurately determine the effect that completely legalizing abortion with no restriction has had in South Korea. However, we do know that since abortion was legalized, obstetrics and gynecology clinics are now freely in the big business of promoting abortions. Additionally, since abortion was legalized, pregnancy resource centers have seen a dramatic decline in requests for pregnancy assistance, with one clinic alone seeing a 67% decline since 2019.

11. However, although prior to 2021, abortion in South Korea had long been *technically* illegal,

the country’s 1953 law that criminalized abortion went largely unenforced from the 1960s until the mid-2000s. Under the strong anti-natalist policies implemented by the government from the 1960s to the 1980s, abortion, contraception, and sterilization were widely encouraged to reduce the nation’s total fertility rate and, in some cases, were even used coercively among certain populations, including women with disabilities.<sup>19</sup>

12. “[T]he [South Korean] government . . . for decades encouraged doctors to perform abortion as a means of population control to foster economic growth.”<sup>20</sup> The population control messages from the government of South Korea led to eugenic issues related to abortion. “For example, people with disabilities, single mothers, and poor mothers were often subjected to forced abortions.”<sup>21</sup> In addition, the government’s pro-abortion stance over the years is largely responsible for<sup>22</sup> South Korea’s “shrinking and rapidly aging population,” where “[a] declining number of newborns was exceeded by a growing number of deaths, according to census data released by the South Korean government.”<sup>23</sup> Furthermore, in the opinion of a group of doctors, “South Korea’s low fertility rate has originated from its high abortion rate, which, in turn, was the result of the immoral and profit-oriented conducts of Korean medical doctors.”<sup>24</sup>

13. There is no international right to abortion, a fact that can be seen when looking at each country’s abortion legislation. Currently, a majority of the world has strict limitations when it comes to taking the life of a preborn baby. Out of the 193 member states of the U.N., an overwhelming majority (112) of them have strict limits on abortion: twenty countries prohibit abortion altogether; forty-two countries only permit abortion where the mother’s life is at risk; and fifty only allow abortion to preserve the health of the mother. Even in the sixty-two countries that have varying gestational limits for on-demand abortions, the majority of

these (53) have a gestational limit of twelve weeks or less, while some allow only up to fourteen weeks, or somewhere in-between. Only eleven countries allow abortion throughout pregnancy for social and economic grounds, including for rape, incest, or fetal impairment. Only two countries broadly allow pre-viability abortion. And finally, there are only six extreme outliers among the nations, including China and North Korea, which do not have a law indicating any gestational limit on abortion, though their regulatory mechanisms vary.<sup>25</sup>

14. While abortion laws and regulations vary across nations, what most countries do agree on is that the state has an interest, not only in protecting women and girls, but also in protecting the lives of all their citizens – including the unborn.<sup>26</sup> This interest is enshrined in national and international documents alike, as well as in the legislation of individual countries.

15. For instance, the Universal Declaration of Human Rights (UDHR) states that “recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,” and that “[e]veryone has the right to life . . . .”<sup>27</sup> Again, Article 6 of the ICCPR likewise states that “[e]very human being has the inherent right to life. This right shall be protected by law.”<sup>28</sup> And the preamble of the United Nations Charter states that “the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . . .”<sup>29</sup> It is important to note that, while virtually all international treaties contain provisions for the protection and promotion of the right to life, not one contains a “right to abortion.” Furthermore, since the 1994 Cairo Conference on Population and Development, U.N. Member States have had an affirmative commitment to “reduce the recourse to abortion”<sup>30</sup> and to “take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning.*”<sup>31</sup>

16. Abortion is one of the gravest of all offenses against human life and justice because it entails the deliberate killing of an innocent human being. South Korea must protect life at all stages. Any justification of abortion (aside from the extremely rare life vs. life situations where a mother is at risk of dying from continuing the pregnancy) fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, i.e., the right to life. That proposition is incompatible with international law, as discussed above. Moreover, the value of human life is not dependent upon the nature in which it begins, and the life of a preborn baby conceived by rape or incest is no less valuable and deserving of life than any other. Furthermore, babies born with disabilities, such as Down syndrome, are no less deserving of life than otherwise completely healthy babies. In fact, babies born with Down syndrome are capable of living long and otherwise healthy lives.<sup>32</sup> Additionally, the tests used to detect these abnormalities are not consistently reliable.<sup>33</sup>

17. Abortion can also cause physical harm to the mother, beyond the harm (i.e., death) to the preborn child. This can result directly from the procedure itself (e.g., perforation of the uterus, laceration of the cervix), from the deprivation of the health benefits of continuing pregnancy (e.g., eliminating the protective effect of a full-term pregnancy against breast cancer),<sup>34</sup> or by masking other dangerous symptoms (e.g., a woman with an infection or an ectopic pregnancy may believe her symptoms are merely normal after-effects of abortion, leading her to delay seeking medical help).<sup>35</sup> Remarkably, although lacking in legal authority, the World Health Organization’s newly published 2022 “Abortion care guideline,”<sup>36</sup> also acknowledges the complications of abortion.

18. In addition, post-abortive women experience a host of negative side-effects, from shame, to drug abuse and suicidal thoughts.<sup>37</sup> All of these factors contribute to the negative

and even devastating effects abortion has on women and girls. South Korea's complicated history with abortion and its use – often through eugenic means – to curb population growth, clearly illustrates some of the dangers that abortion poses to women and girls, in addition to preborn children.

### Sex Trafficking in South Korea

19. Prostitution is an overwhelming problem within South Korea.<sup>38</sup> According to a recent poll, 50.7% of men surveyed said they had purchased sex.<sup>39</sup> Twenty-six percent engaged with prostitutes on average of nearly 8.5 times in one year.<sup>40</sup> Sex trafficking is an extremely profitable industry, and traffickers most often prey upon the poor and vulnerable.<sup>41</sup> Sadly, “a majority of the victims are primarily children under the age of 16, with more than 80% of victims being poor runaways.”<sup>42</sup> The following are just a few examples of instances of trafficking occurring in South Korea.

20. In October 2021, South Korean police arrested twenty-seven people, including a court official, suspected of being involved in sex trafficking.<sup>43</sup> According to the Busan Metropolitan Police Agency, the suspects operated ninety-five prostitution establishments.<sup>44</sup> These establishments facilitated over 8,800 instances of prostitution and brought in 700 million won (\$599,000) over an 18-month period.<sup>45</sup>

21. In August 2021, a South Korean man was arrested for using his night club to facilitate sex trafficking.<sup>46</sup> This incident is widely known as the K-Pop Burning Sun club scandal. The club owner exploited women to provide “sexual favors” to potential business investors from Taiwan, Japan, and Hong Kong.<sup>47</sup> The court sentenced him to three years in prison and fined him one-million U.S. Dollars. According to the court, he deserved “severe punishment” as his crime involved “mobilizing many women to provide sexual services.”<sup>48</sup>

22. In April 2021, two individuals were arrested for their *twenty-three year* operation of brothels that made 12.8 billion won (\$11.5 million) in profit.<sup>49</sup> The arrests came after two women filed a complaint with the police stating that they were forced into prostitution and abused by the suspects for over a year.<sup>50</sup> The suspects targeted women who were in debt and offered to help pay off their debt in exchange for working in the brothels.<sup>51</sup>

23. In September 2019, seven Brazilian women were sold into prostitution after moving to South Korea to work in the music industry.<sup>52</sup> They were told by Korean men that they could help them break into the music industry and even provided the women with money for airfare.<sup>53</sup> Once in South Korea, the men confiscated the women's passports and sold them to different brothels for 2 million won (\$1,650) for each woman.<sup>54</sup>

24. In South Korea,

[t]he age of consent is 13, one of the lowest in the world, which means that if a child over the age of 13 claims to have had a sexual activity with an adult in a consensual situation, there is no clear set standard for regulation, and the punishment is up to judges' discretion. Hence, in 2017, the Supreme Court found a 49-year-old man ‘not guilty’ of impregnating a 15-year-old girl, because the victim claimed that she loved the offender.<sup>55</sup>

This low age of consent is especially concerning considering “South Korea has a long history of sexual exploitation of children in travel and tourism.”<sup>56</sup>

## Recommendations

25. It is unfathomable that South Korea is one of only six countries in the world that currently has absolutely no restriction on abortion. There is not a greater human rights violation than allowing the unrestricted killing of innocent babies, at any time and for any reason, before their birth. South Korea must immediately implement a law restricting abortion in order to protect women and preborn children from dangerous effects of abortion. Furthermore, it is critical South Korea work to put an end to the massive thriving sex industry that exists within its borders. The new law combatting human trafficking is commendable, but is not effective until 2023; the victims of sex trafficking who are suffering right now deserve protection, aid, and justice. All life is precious and deserves protection, whether it be from the devastations of abortion or sex trafficking.

<sup>1</sup> *South Korea*, WORLD FACTBOOK (4 Apr. 2022), <https://www.cia.gov/the-world-factbook/countries/korea-south/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Universal Periodic Review – Republic of Korea*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/kr-index>.

<sup>5</sup> *UPR of Republic of Korea – Thematic List of Recommendations*, A/HRC /37/11/Add.1 – Para. 36, OHCHR, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session28/KR/MatriceRecommendationsRepublicOfKorea.docx>.

<sup>6</sup> *Id.* at A/HRC/37/11 – Para. 130.

<sup>7</sup> Constitution of South Korea art. 34(1),

[https://constituteproject.org/constitution/Republic\\_of\\_Korea\\_1987.pdf?lang=en](https://constituteproject.org/constitution/Republic_of_Korea_1987.pdf?lang=en).

<sup>8</sup> *South Korea Decriminalises Abortion: A Historic Moment in Women’s Rights*, HUMAN RIGHTS PULSE (Jan. 15, 2021), <https://www.humanrightspulse.com/mastercontentblog/south-korea-decriminalises-abortion-a-historic-moment-in-womens-rights>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Ratification Status for Republic of Korea*, OHCHR,

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (last visited June 30, 2022).

<sup>12</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art 6.

<sup>13</sup> Criminal Act art. 289, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=28627&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG).

<sup>14</sup> *The Government of the Republic of Korea’s Response to the Joint Communication from Special Procedures*, OHCHR (Mar. 15, 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36322>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> International Covenant on Civil and Political Rights art. 8, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>18</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, art. 6, [https://www.unodc.org/res/human-trafficking/2021the-protocol-tip\\_html/TIP.pdf](https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf).

<sup>19</sup> Sunhye Kim, Na Young & Yurim Lee, *The Role of Reproductive Justice Movements in Challenging South Korea’s Abortion Ban*, HEALTH & HUM. RTS. J., Dec. 2019, at 97, 98.

<sup>20</sup> Susan Yoshihara, *How the Pro-Life Movement Changed the Abortion Debate in South Korea*, LIFESITENEWS (Aug. 31, 2012, 1:41 PM), <https://www.lifesitenews.com/opinion/how-the-pro-life-movement-changed-the-abortion-debate-in-south-korea/>.

<sup>21</sup> Kim et al., *supra* note 19.

<sup>22</sup> *Id.* at 99.

<sup>23</sup> Rick Gladstone, *As Birthrate Falls, South Korea’s Population Declines, Posing Threat to Economy*, N.Y. TIMES (Jan. 4, 2021), <https://www.nytimes.com/2021/01/04/world/asia/south-korea-population.html>.

<sup>24</sup> Yoshihara, *supra* note 20.

<sup>25</sup> *The World’s Abortion Laws*, CTR. FOR REPROD. RTS. (Feb. 23, 2021), [https://reproductiverights.org/sites/default/files/WALM\\_2021update\\_V1.pdf](https://reproductiverights.org/sites/default/files/WALM_2021update_V1.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, preamble, art. 3 (Dec. 10, 1948) (emphasis added).

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<sup>28</sup> ICCPR, *supra* note 17 (emphasis added).

<sup>29</sup> U.N. Charter preamble.

<sup>30</sup> Report of the International Conference on Population and Development, Cairo A/CONF/F.171/13/Rev.1 at 58 (5-13 Sept. 1994), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/231/26/IMG/N9523126.pdf?OpenElement>.

<sup>31</sup> *Id.* at 46 (emphasis added).

<sup>32</sup> *Data and Statistics on Down Syndrome*, CDC,

<https://www.cdc.gov/ncbddd/birthdefects/downsyndrome/data.html> (last visited May 12, 2022).

<sup>33</sup> *When They Warn of Rare Disorders, These Prenatal Tests Are Usually Wrong*, NEW YORK TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

<sup>34</sup> See Justin D. Heminger, Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco, 54 CATH. U.L. REV. 1273, 1288-89 & nn.119 & 121 (2005).

<sup>35</sup> See generally Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More, UNCHOICE, [www.theunchoice.com/physical.htm](http://www.theunchoice.com/physical.htm) (listing sequelae and referencing sources).

<sup>36</sup> *Abortion Care Guideline*, WORLD HEALTH ORGANIZATION & HUMAN REPRODUCTION PROGRAMME 79 (Mar. 8, 2022), <https://www.who.int/publications/i/item/9789240039483>.

<sup>37</sup> Priscilla K. Coleman, Ph.D., et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, JOURNAL OF AMERICAN PHYSICIANS & SURGEONS, Vol. 22 No. 4, p. 115, 116-17 (2017), available at <https://www.jpands.org/vol22no4/coleman.pdf>.

<sup>38</sup> Ock Hyun-ju, *Half of All Korean Men Pay for Sex: Report*, KOREA HERALD (updated May 1, 2017, 4:06 PM), <http://www.koreaherald.com/view.php?ud=20170501000589>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Daniel Seung Tak Oh, *INTERVIEW: Madam Violet, A Story of Survival and Triumph over South Korea's Sex Trafficking Epidemic*, ASIA MEDIA NEWS (Mar. 5, 2021), <https://asiamedia.lmu.edu/2021/03/05/interview-madam-violet-a-story-of-survival-and-triumph-over-south-koreas-sex-trafficking-epidemic/>.

<sup>42</sup> *Id.*

<sup>43</sup> Yonhap, *Bussan Police Bust 27 Sex Trafficking Suspects*, KOREAN HERALD (Oct. 25, 2021, 3:05 PM), <http://www.koreaherald.com/view.php?ud=20211025000833>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Elizabeth Shim, *K-Pop's Seungri gets 3 Years in Prison for Sex Trafficking at Seoul Nightclub*, UPI (Aug. 12, 2021, 9:41 AM), [https://www.upi.com/Top\\_News/World-News/2021/08/12/skorea-kpop-seungri-sex-trafficking/9751628774197/](https://www.upi.com/Top_News/World-News/2021/08/12/skorea-kpop-seungri-sex-trafficking/9751628774197/).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Ko Dong-hwan, *Two Arrested in Family-Run Brothel Case*, KOREA TIMES (Apr. 29, 2021, 4:44 PM), [https://www.koreatimes.co.kr/www/nation/2021/04/251\\_308027.html](https://www.koreatimes.co.kr/www/nation/2021/04/251_308027.html).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *K-pop Hopefuls from Brazil Forced into Prostitution in South Korea, Police Announce*, SOUTH CHINA MORNING POST (Sep. 2, 2019, 10:00 PM), <https://www.scmp.com/lifestyle/entertainment/article/3025314/k-pop-hopefuls-brazil-forced-prostitution-south-korea>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *South Korea: Country Overview*, ECPAT INTERNATIONAL, 6 (2018), <https://ecpat.org/wp-content/uploads/2021/06/ECPAT-Country-Overview-Korea.pdf>.

<sup>56</sup> *Id.*