



## The Republic of Korea

*Submission of Harm Reduction International to the UN Universal Periodic Review, Fourteenth session of the UPR Working Group of the Human Rights Council  
Human rights concerns associated with the Republic of Korea's anti-drug laws*

### The Death Penalty and the Right to Life

**International Law:** Capital punishment is significantly restricted under international law to those offences termed 'most serious crimes'. For more than two decades UN human rights bodies have interpreted this article in a manner that limits the number and type of offences for which execution is allowable under international human rights law explicitly excluding drug offences.<sup>i</sup> This principle has been articulated in the International Covenant on Civil and Political Rights, to which the Republic of Korea acceded on 10 April 1990<sup>ii</sup> and has been supported by the highest political bodies of the United Nations. The Economic and Social Council of the United Nations (ECOSOC) endorsed a resolution in 1984 upholding nine safeguards on the application of the death penalty, which affirmed that capital punishment should be used 'only for the most serious crimes'.<sup>iii</sup> The 'most serious crimes' provision was specified to mean crimes that were limited to those 'with lethal or other extremely grave consequences'<sup>iv</sup> and was also endorsed by the UN General Assembly.<sup>v</sup>

Unfortunately the Republic of Korea's domestic legislation is not consistent with its obligations under international law.

**Domestic application and debate:** The Republic of Korea is abolitionist de facto, not having carried out an execution since 1997 and "on 8 September, South Korean NGOs commemorated 5,000 execution-free days"<sup>vi</sup>. Yet, death sentences continue to be imposed and at the end of 2011 "sixty people were on death row" and one person was sentenced to death for a non-drug-related offence.<sup>vii</sup>

Even though it appears the death penalty is not currently being applied for drug offences, the law still prescribes it. Article 58 (Penal Provision) (2), carries the death penalty and states: "*Any person who has illicitly supplied the narcotics or drugs for habitual profit-making shall be punished by death penalty, imprisonment for life or for not less than 10 years.*"<sup>viii</sup>

The Republic of Korea courts has recently reviewed its capital punishment policies – though they unfortunately opted to retain them. In the case 161 KCCG 452, 2008Hun-Ka23, February 25, 2010, the judges found that "*The sentence of death in its practice has been rarely imposed only for the most serious crimes [...] so that the sentence of death could not be excessive compared to the cruelty of crime.*"<sup>ix</sup> Although the judges in this case actually referred to the internationally recognised criteria of 'most serious crimes' to justify the death penalty, the death penalty for drug offences still remains on the books.

Regrettably "the Constitutional Court stated that capital punishment did not violate 'human dignity and worth' protected in the Constitution."<sup>x</sup>

Nevertheless, South Korea has limited the application of the death penalty for drug offences in the past.

In 2003, the Korean Constitutional Court reviewed the provision of the Act on the Aggravated Punishment, etc, including Article 11(1) which provided that 'convicts of purchase or possession of drugs with a purpose of selling might be sentenced to death, life imprisonment, or over 10 year imprisonment'. Thus, this act imposed the same punishment for the purchase and possession of drugs as for an offense for profit and repeat offending.<sup>xi</sup> The Court found that the scope of the Article was disproportionate and held that this aggravated punishment was "an excessive abuse of state power to criminally punish"<sup>xii</sup>. It unanimously found the provisions to be unconstitutional, highlighting the importance of individualised sentencing. It also pointed out the 'differences in criminal quality' between those purchasing narcotics for profit and those purchasing them not-for-profit. Furthermore, the court described the act as 'inappropriate and unjust' because it "disallowed the judge to sentence corresponding to the actor's responsibility"<sup>xiii</sup>. It also "*singles out and aggravates punishment for such narcotics-related crimes as the purchase and the possession with the intent to sell of narcotic with no reasonable ground therefor*".<sup>xiv</sup>

This was a step in the right direction. Nevertheless, the death penalty is likely still possible for drug offences with a profit motive. Complete abolition of the death penalty for drug related offences for other activities is still needed in order for the government to bring its domestic legislation in line with international norms.

**Recommendation:** The government must abolish its capital drug laws to bring its national policies in line with Article 6(2) of the International Covenant on Civil and Political Rights.

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<sup>i</sup> See for example, UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, para. 19; UN Commission on Human Rights, Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, submitted pursuant to Commission on Human Rights resolution 1996/74, 24 December 1996, E/CN.4/1997/60; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/4/20, para. 51-52; UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/HRC/10/44, para. 66.

<sup>ii</sup> [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>iii</sup> ECOSOC (25 May 1984) Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Resolution 1984/50.

<sup>iv</sup> *ibid*

<sup>v</sup> UN General Assembly (14 December 1984) Human rights in the administration of justice, A/RES/39/118.

<sup>vi</sup> Amnesty International (2012) *Death Sentences and Executions 2011*, Page 26

[http://www.amnesty.org.uk/uploads/documents/doc\\_22432.pdf](http://www.amnesty.org.uk/uploads/documents/doc_22432.pdf)

<sup>vii</sup> Amnesty International (2012) *Death Sentences and Executions 2011*, Page 26

[http://www.amnesty.org.uk/uploads/documents/doc\\_22432.pdf](http://www.amnesty.org.uk/uploads/documents/doc_22432.pdf)

<sup>viii</sup> March 2004, Drug Control policy in Korea <http://new.ahrn.net/publication/DrugControlPolicyinKorea.pdf>

<sup>ix</sup> [http://english.court.go.kr/home/view2/xml\\_content\\_view02.jsp?seq=23022&cname=%BF%B5%B9%AE%C6%C7%B7%CA&eventNo=2008hun-ka23&pubflag=0&eventnum=&sch\\_keyword=&cid=01040002](http://english.court.go.kr/home/view2/xml_content_view02.jsp?seq=23022&cname=%BF%B5%B9%AE%C6%C7%B7%CA&eventNo=2008hun-ka23&pubflag=0&eventnum=&sch_keyword=&cid=01040002)

<sup>x</sup> South Korea: Death penalty abolition setback by Constitutional Court ruling

Communiqué de presse, 25 février 2010, <http://www.amnesty.org/fr/node/15612>

<sup>xi</sup> The Constitutional Court of Korea (2005), *Decisions of the Korean Constitutional Court 2003*, Page 239

<sup>xii</sup> The Constitutional Court of Korea (2005), *Decisions of the Korean Constitutional Court 2003*, Page 239

<sup>xiii</sup> The Constitutional Court of Korea (2005), *Decisions of the Korean Constitutional Court 2003*, Page 239

<sup>xiv</sup> The Constitutional Court of Korea (2005), *Decisions of the Korean Constitutional Court 2003*, Page 239