



UPR – Republic of Korea (South Korea)

March 2017

This submission highlights concerns about the Republic of Korea’s compliance with its international human rights obligations since its previous Universal Periodic Reviews (UPR) in 2012 and 2008. The submission focuses on problems related to National Security Law, the Criminal Defamation Law, restrictions on women’s reproductive rights, travel restrictions based on HIV status, and LGBT rights and sex education in schools.

National Security Law

The National Security Law, originally adopted in 1948 as a temporary measure to counter the military threat posed by the Democratic People’s Republic of Korea (North Korea), criminalizes any sort of positive comments about North Korea or the dissemination of what South Korea classifies as North Korean ‘propaganda.’

The National Security Law imposes significant restrictions on the freedom of South Koreans to create and join political associations, or even to meet with other people. The law imposes severe criminal penalties on anyone who joins or induces others to join an “anti-government organization.” That term is not clearly defined in the law, and has been applied by successive South Korean governments to everything from North Korea itself to organizations that simply express ideological views at odds with those of the South Korean government. The law further imposes criminal penalties on anyone who “constitutes or joins an organization aimed at propagating, inciting, praising, or acting in concert with an anti-government organization.”¹

Under article 7(5) of the law, the mere possession of books that contain content similar to that disseminated by the North Korean state can lead to a jail term of up to seven years.

Meeting those who are known to express views that the South Korean government deems to be in sympathy with the North Korean government may also incur criminal punishment, as article 8(1) of the law applies to “any person who makes contact with a member of an anti-state organization or a person who has received an order from it, by means of a meeting, correspondence or other method, with the knowledge of the fact that it threatens to endanger the existence and security of the nation or democratic fundamental order.”² Article 7(3) of the law states that it applies to “those who organize or join a group intending to commit acts that praise, encourage, disseminate or cooperate with anti-state

¹ Human Rights Watch, “South Korea: Cold War Relic Law Criminalizes Criticism”, May 28, 2015, <https://www.hrw.org/news/2015/05/28/south-korea-cold-war-relic-law-criminalizes-criticism>, (accessed March 27, 2017).

² *Ibid.*

groups, members or those under their control, being aware that such acts will endanger the national security and the democratic freedom.”

In 2012, South Korea rejected a recommendation made during the UPR process to “specify modalities for the implementation of the National Security Law so that this law cannot be used against freedoms of expression, association and peaceful assembly.” Since then, 420 persons have been charged with violating the National Security Law. During that period of 2012-2016, prosecutors indicted 240 of those 420 persons.³

South Korea has been urged by the United Nations special rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN special rapporteur on the situation of human rights defenders, the UN Human Rights Committee, and many non-governmental organizations to abolish or substantially amend the National Security Law to bring it into line with international legal standards. Instead, successive administrations have used the law with increasing frequency.

Recommendations

- Although total repeal or comprehensive reform of the National Security Law is the best solution there is an urgent need for immediate steps that should be taken by the legislature to strictly limit this law’s application to organizations, actions and expression that create a genuine threat to national security, as follows:
 - The law should make clear that merely expressing views that agree with views of either domestic or foreign “anti-State groups” (consistently interpreted by the South Korean government to mean groups supporting North Korea) or making positive comments about some aspect of North Korea does not by itself create or provide evidence of a risk to national security. In particular, the definition of “anti-state organization” in article 2 should be amended to include only groups that advocate the violent overthrow of the government. With respect to provisions that criminalize disclosure of military or state secrets (articles 4(1)(2)(a) and (b)), the law should be amended to establish a “whistleblowing” defense, where it can be shown that benefit from public disclosure of particular military or state secrets outweighs the harm caused by the disclosure in circumstances where no adequate alternative means of exposing wrongdoing is available.
 - Article 7 should be abolished in its entirety as it uses undefined and broad terms to refer to outlawed acts such as praising, spreading or joining an “anti-state organization,” and circulating “false facts” that “threaten confusion of the social order.”
 - Article 8, which prohibits making contact with a member of an “anti-state organization,” should be abolished in its entirety;
 - Article 9(2), which provides a 10-year sentence for offering “any convenience” to someone who has committed or is going to commit one of the very broad “crimes” prescribed in the law, should be abolished in its entirety; and

³ Statistics Korea, http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1745 (accessed March 23, 2017).

- In the meantime, amend each of the provisions that has been held “constitutional on condition of proper interpretation” by the Constitutional Court of Korea, including article 4(1)(2)(b) on disclosure of military and state secrets and article 6(2) on infiltration or escape from an area controlled by anti-state groups. The amended language should explicitly reflect the interpretation that the court found to be constitutional so that prosecutors and the National Intelligence Service are fully cognizant of the limitations imposed by the Constitutional Court.

Criminal Defamation Law

The South Korean government continues to use draconian criminal defamation laws to silence the media and civil society activists expressing views or making reports that go against the government’s views. Human Rights Watch opposes all criminal defamation laws as a disproportionate and unnecessary response to the need to protect reputations, and note that such criminal laws chill freedom of expression.

International human rights law allows for restrictions on freedom of expression to protect the reputations of others, but such restrictions must be necessary and narrowly drawn. As repeal of criminal defamation laws in an increasing number of countries demonstrates, using criminal laws are not necessary to protect reputations.

Criminal defamation law in South Korea focuses solely on whether what was said or written was in the public interest, and not whether it was factually true or not. If the court finds defamatory intent using “facts,” that is, truthful information, a person can still face as many as three years in prison or a fine up to 20 million won (\$US 17,950). Defamation using “openly false facts” can result in a prison sentence of up to seven years or fines up to 50 million won (\$US 44,880).⁴

Recent cases in which the criminal defamation laws have been abused to silence activists or reporters include:

- A 2014 lawsuit by senior South Korean government officials against six reporters and staffers of the *Segye Ilbo* newspaper, who reported a news story using a leaked official document from then President Park Geun-hye’s office. The lawsuit was only dropped by prosecutors in 2016.⁵
- The prosecution of Tatsuya Kato, the Seoul bureau chief of the *Sankei Shimbun* newspaper of Japan, for a report that included information about then President Park’s alleged whereabouts and activities during the initial hours of the MV Sewol ferry disaster on April 16, 2014. While Kato was finally acquitted and left the country, the prosecution caused a serious diplomatic rift between

⁴ Human Rights Watch, “South Korea: Stop Using Criminal Defamation Laws”, December 14, 2014, <https://www.hrw.org/news/2014/12/14/south-korea-stop-using-criminal-defamation-laws> (accessed March 17, 2017).

⁵ *Ibid.*

South Korea and Japan.⁶ Others, like activist Park Sung-Su, were prosecuted and imprisoned for circulating the same information that Kato had reported on.⁷

- The National Intelligence Service's filing of defamation lawsuits against reporters and human rights activists involved in publicizing illegal NIS involvement in the 2012 election, though many of these cases were later dropped after a year or two.⁸

Recommendations

- South Korea should immediately end prosecutions of persons under criminal defamation laws, drop criminal defamation cases currently being prosecuted in the courts, and unconditionally release all persons currently imprisoned for criminal defamation.
- South Korea should revoke its criminal defamation laws, and instead employ civil defamation and criminal incitement laws, which under international human rights law are sufficient for protecting reputations and maintaining public order. The government should ensure its civil defamation and criminal incitement laws are written and implemented in ways that provide protections for freedom of expression.

Restrictions on Women's Reproductive Rights

During the 2012 UPR process, South Korea accepted numerous recommendations to further promote and protect women's rights, such as one recommendation to "take all procedures to prevent all forms of violence against children and women." Nevertheless, many obstacles remain to fulfillment of such recommendations.

South Korea's laws on abortion are punitive and harmful to women and girls. Abortion is considered a crime, and any woman who undergoes an abortion is subject to up to one year of imprisonment or fines up to 2 million won (US \$1800), and healthcare workers who provide abortions can face up to two years in prison.⁹

Exceptions are permitted only in cases of rape or incest, if the parents cannot marry legally, if continuation of the pregnancy is likely to jeopardize the pregnant woman's health, or when the pregnant woman or her spouse has one of several hereditary disorders or communicable diseases that are designated by government decree. Women who are married must have their spouse's permission to obtain an abortion, and all abortions, for any reason, are prohibited after 24 weeks of pregnancy.¹⁰

⁶ *Ibid.*

⁷ Choe Sang-Hun, New York Times, "South Korean Government Accused of Using Defamation Laws to Silence Critics", March 5, 2016, https://www.nytimes.com/2016/03/06/world/asia/defamation-laws-south-korea-critics-press-freedom.html?_r=0 (accessed March 20, 2017)

⁸ Manyan Lai, Pen America, "South Korea's Defamation Laws: A Dangerous Tool", December 28, 2016, <https://pen.org/south-koreas-defamation-law-a-dangerous-tool/> (access March 21, 2017).

⁹ Heather Barr, "Abortion Should Not be a Crime", The Korea Times, November 10, 2016, http://www.koreatimes.co.kr/www/news/opinion/2016/11/197_217614.html, (accessed March 22, 2017).

¹⁰ *Ibid.*

The criminalization of abortion means that many abortions are illegally performed in South Korea. This reality forces women and girls who seek abortions into a legal no man's land where abortion care is unregulated, clandestine, and far more dangerous than if the procedure were legal. In 2016, the South Korea government threatened to make this law even worse by toughening penalties on medical providers who perform abortions illegally. Public protests opposing these changes took place in Seoul in October.¹¹

The government has expressed concern about the country's falling birth rate, but further restricting abortion is not an appropriate or legal response. To accomplish policy goals related to population, the government should respect women's rights to make their own reproductive decisions, and instead consider adopting measures that make it easier for people to have children, or have more children.

Recommendations

- The South Korean government should immediately amend its laws to decriminalize abortion and remove all penalties for women who seek abortions, and for doctors and other medical personnel involved in providing abortions.
- The South Korean government should adopt regulations and policies that enhance access to quality pre-natal and obstetric care, provide parental leave for both women and men, and eliminate discriminatory provisions in law and policy that disadvantage a single parent, or parents who are not officially married, and their children.

Travel Restrictions Based on HIV Status

In 2016, National Human Rights Commission of South Korea (NHRC) issued two important rulings on South Korea's discriminatory travel ban for people living with HIV. Under South Korea's Prevention of Acquired Immune Deficiency Syndrome Act, foreigners who want apply for a visa for an extended stay in the country are required to prove that they are HIV negative in order to be eligible.¹²

In August 2016, the NHRC ruled that regulations banning people who are HIV positive from receiving scholarships to study in South Korea are discriminatory.¹³ The decision focused on the Foreign Graduate School Students Program's policy of turning away HIV-positive applicants, or taking away their scholarships, based on their HIV positive status.

A week later, the NHRC ruled that mandatory HIV testing of foreign English language teachers was discriminatory since Korean nationals are not subjected to the same requirement, and stated the requirement was not justified on public health or any other grounds.¹⁴ Specifically, the NHRC found that

¹¹ Amnesty International, "South Korea: Stop Criminalization of Abortion", October 28, 2016, <https://www.amnesty.org/en/latest/news/2016/10/south-korea-stop-criminalization-of-abortion/> (accessed March 15, 2017).

¹² Law on the Prevention of AIDS (1987), <http://criminalisation.gnplus.net/country/republic-korea-south-korea> (accessed March 21, 2017).

¹³ National Human Rights Commission of Korea, Discrimination Remedy Committee Decision, "Discrimination against HIV-infected Persons during Selection of Government-invited Foreign Students," August 31, 2016.

¹⁴ National Human Rights Commission of Korea, Standing Committee Decision, "Recommendation for revising the medical examination requirement for foreign E-2 visa holders and preparing domestic procedures for individual communications under U.N. human rights treaties," September 8, 2016.

mandatory HIV testing of foreigners holding E-2 teaching visas (foreign English language teachers) amounted to racial discrimination, since ethnic Koreans were not subject to the same requirement. The NHRC decision related to the May 2015 UN CERD case L.G. v. Republic of Korea¹⁵ in which Committee on the Elimination of Racial Discrimination (CERD) made the same determination, which was ignored by the South Korean government.

Both decisions noted that restrictions on the entry of people living with HIV into the country do not yield any public health benefit.

Public health experts long ago concluded that travel restrictions based on HIV status are ineffective and discriminatory. As early as in 1987, the World Health Organization (WHO) announced that there was no justification for such restrictions, and that screening international travelers was not an effective strategy to prevent the spread of HIV.¹⁶ In 2006, the Office of the High Commissioner on Human Rights and UNAIDS reiterated that the practice is “discriminatory and cannot be justified by public health concerns.”¹⁷

International human rights law, including the International Covenant on Civil and Political Rights to which South Korea is a state party, has been interpreted to prohibit travel bans based on HIV status.¹⁸ In June 2015, the UN Committee on the Elimination of Racial Discrimination found South Korea’s mandatory HIV testing of foreign teachers to be in violation of the International Covenant on the Elimination of Racial Discrimination.¹⁹

In 2010, the South Korean government itself recognized that the restrictions constituted a form of discrimination and pledged to remove all HIV-related travel restrictions on foreigners.²⁰ Moreover, during its 2012 UPR, South Korea accepted a recommendation to “continue efforts to strengthen access to quality education and health services, especially for the vulnerable segments of society.” However, for reasons that remain unclear the government never fulfilled its pledge. In the hearing before the Commission in 2016, the government justified the policies claiming that people living with HIV have “difficulty studying for a long term as they are likely to contract various infectious diseases...and are medically incurable”; that physical exchanges between students at school facilities could promote HIV

¹⁵ UN Office of the High Commissioner of Human Rights, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/86/D/51/2012&Lang=en, (accessed March 26, 2017).

¹⁶ World Health Organization, "Statement on Screening of International Travelers for Infection with Human Immunodeficiency Virus," WHO/GPA/INF/88.3, 1988.

¹⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), "International Guidelines on HIV/AIDS and Human Rights."

¹⁸ Human Rights Watch, "Discrimination, Denial and Deportation: Human Rights Abuses Affecting Migrants Living with HIV", June 18, 2009, <https://www.hrw.org/report/2009/06/18/discrimination-denial-and-deportation/human-rights-abuses-affecting-migrants>, (accessed March 29, 2017).

¹⁹ International Labor Organization, "UN CERD Committee strikes down mandatory HIV testing of foreign teachers in South Korea," 2015, http://www.ilo.org/aids/Whatsnew/WCMS_376967/lang--en/index.htm (accessed March 21, 2017).

²⁰ UNAIDS, "UN Secretary-General Applauds the Removal of Entry Restrictions Based on HIV Status by United States of America and Republic of Korea," 2010, <http://www.unaids.org/en/resources/presscentre/featurestories/2010/january/20100104travelrestrictions> (accessed March 21, 2017). Statement by the Republic of Korea at the 13th session of the Human Rights Council on March 2, 2010, <http://www.un.org/webcast/unhrc/archive.asp?go=100302> (accessed March 21, 2017).

infection in South Korea; and that treatment of HIV would place a financial burden on the government. In early 2017, the South Korean government announced it would not implement either of the Commission's rulings.

Recommendation

- South Korea should immediately amend the Prevention of Acquired Immune Deficiency Syndrome Act, and all relevant related regulations and policies, to eliminate all aspects of discriminatory travel restrictions against persons with HIV and AIDS.

LGBT Rights and Sex Education in Schools

Education ministry officials in Seoul stated in February 2017 that South Korea's new national sex education curriculum will not mention homosexuality. This continues a backsliding that began nearly two years ago, when the government started training district education officials country-wide on new sex education guidelines that made no mention of sexual minorities.²¹ In 2012, South Korea rejected four out of five recommendations related to discrimination against citizens based on sexual orientation and gender identity, including one recommendation to "include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation."

This policy discriminates against LGBT youth and violates their right to education, information, and health. Human Rights Watch believes the policy also violates South Korea's international human rights commitments, and could be harmful to young people and negatively affect public health. Human Rights Watch notes that HIV infections have increased sharply in South Korea since 2000, and infections are increasing fastest among men in their 20s.²²

The South Korean government has attempted to clarify that the curriculum's silence should not be taken as exclusionary, with an official saying that, "The fact that the guideline does not contain sexual minorities does not necessarily mean that teachers should not do the related lessons."

But a curriculum that neglects inclusion of information about sexual orientation and gender identity fails students. Ad hoc or optional training programs for teachers are not an adequate substitute.

Recommendation

- The government should immediately reverse this decision to exclude mention of homosexuality in the national sex education curriculum, and halt teacher training programs under the new sex

²¹ Kyle Knight, Human Rights Watch, "South Korea Backslides on Sex Education", February 17, 2017, <https://www.hrw.org/news/2017/02/17/south-korea-backslides-sex-education> (accessed on March 27, 2017); and Human Rights Watch, "Letter to the Government of South Korea on Human Rights and Comprehensive Sexuality Education", July 20, 2015, <https://www.hrw.org/news/2015/07/21/letter-government-south-korea-human-rights-and-comprehensive-sexuality-education>, (accessed on March 15, 2017).

²² Korea Centers for Disease Control and Prevention, Division of HIV and Tuberculosis Control. "HIV/AIDS Control in the Republic of Korea." 2011. http://www.unaids.org/sites/default/files/country/documents//ce_KR_Narrative_Report%5B1%5D.pdf; Hae-Wol Cho. "What's next for HIV/AIDS in Korea?" *Osong Public Health Res Perspectives*. 2013 Dec; 4(6): 291–292. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3922106/#bib2>

education guidelines until the policy can be amended in to comport with the government's international human rights obligations to ensure the rights to information, education, and health for all persons in South Korea.