
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the fourth periodic report of the Republic of Korea*

1. The Committee considered the fourth periodic report submitted by the Republic of Korea (CCPR/C/KOR/4) at its 3210th and 3211th meetings (CCPR/C/SR.3210 and CCPR/C/SR.3211), held on 22 and 23 October 2015. At its 3226th meeting (CCPR/C/SR.3226), held on 3 November 2015, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the Republic of Korea, albeit somewhat late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KOR/Q/4/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The adoption of the Act on Special Cases of Punishing Child Abuse Crimes in 2014;
- (b) The adoption of the Refugee Act, Presidential Decree and Regulations in 2013;
- (c) The adoption of Act for the Prevention of Suicide and the Creation of Culture of Respect for Life in 2012;
- (d) The amendment to the Criminal Act, which changed the object of rape defined in Article 297 from "woman" to "person" in 2012;
- (e) The amendments to the Public Official Election Act to guarantee Korean nationals abroad the exercise of their right to vote in 2009;

* Adopted by the Committee at its 115th session (19 October–6 November 2015).

- (f) The identification of gender-discriminatory legislation from 2005 to 2006, leading to the rectification of a total of 385 legal provisions (rectification process completed in 2009);
 - (g) The adoption of the Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court to punish crimes under the jurisdiction of the International Criminal Court in 2007;
 - (h) The adoption of the Anti-Discrimination against and Remedies for Persons with Disabilities Act in 2007;
- 4. The Committee welcomes the ratification of the Convention on the Rights of Persons with Disabilities by the State party on 11 December 2008.
 - 5. The Committee welcomes the State party's withdrawal of its reservation to article 14 (5) of the Covenant on 2 April 2007.

C. Principal matters of concern and recommendations

Views under the Optional Protocol

6. The Committee remains concerned about the absence of a specific mechanism to implement the Committee's Views under the Optional Protocol. In particular, the Committee notes with concern that the State party has, except in one case, failed to implement the Committee's Views, notably the numerous cases concerning conscientious objection (art. 2).

7. The State party should establish mechanisms and appropriate procedures to give full effect to the Committee's Views so as to guarantee effective remedies in all cases of violations against the Covenant. It should also fully implement the Views the Committee has issued so far.

National Human Rights Institution

8. While noting the initiatives by the National Human Rights Commission of Korea (NHRCK), to secure legislative guarantees of its independence and a transparent and participatory process for the selection and appointment of its members, the Committee is concerned that the State party has not yet adopted legislation to this effect, which may be a crucial element in achieving its full independence in compliance with the Paris Principles (art. 2).

9. The State party should adopt the necessary legislation to ensure a fully transparent and participatory process regarding the selection and appointment of members of the NHRCK throughout all stages of the process, including by establishing an independent candidates nomination committee and to guarantee the independence of its members.

Business and Human Rights

10. The Committee notes that Korean companies may be acting abroad allegedly in contravention of relevant Human Rights standards, and is concerned that any remedies from the State party have proven difficult to access (art. 2).

11. The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or subject to its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is

also encouraged to take appropriate measures to strengthen the remedies for people who have been victims of activities of such business enterprises operating abroad, as well as strengthen the safeguards to prevent people from becoming victims to these.

Non-discrimination

12. While noting the existence of a number of individual laws prohibiting specific forms of discrimination, the Committee is concerned that comprehensive anti-discrimination legislation is lacking. It is particularly concerned about the current lack of legislation defining and prohibiting racial discrimination and discrimination on grounds of sexual orientation and gender identity (arts. 2 and 26).

13. The State party should adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting discrimination on all grounds, including discrimination based on race and sexual orientation and gender identity. This legislation should impose appropriate penalties for direct and indirect discrimination, committed by both public and private actors, and provide effective remedies.

Discrimination on the grounds of sexual orientation and gender identity

14. The Committee is concerned about:

- (a) The prevailing strong discriminatory attitude towards LGBTI persons, including violence and hate speech;
- (b) The punishment of consensual same sex sexual conduct between men in the military according to Article 92-6 of the Military Criminal Act;
- (c) The authorization of the usage of the buildings of the National Assembly and of buildings of the NHRCK to host so-called “conversion therapies”, for LGBTI persons;
- (d) The lack of any mention of homosexuality or sexual minorities in the new sex education guidelines; and
- (e) The restrictive requirements for legal recognition of a gender reassignment. (arts. 2, 17 and 26)

15. The State party should clearly and officially state that it does not tolerate any form of social stigmatization and discrimination, including propagation of so-called “conversion therapies”, hate speech, or violence against persons based on their sexual orientation or gender identity. It should strengthen the legal framework to protect LGBTI individuals accordingly, as well as repeal Article 92-6 of the Military Criminal Act, avoid the usage of State-owned buildings by private organizations for so-called “conversion therapies”, develop sexual education programs that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities, and facilitate access to the legal recognition of a gender reassignment. It should also develop and carry out public campaigns and training to public officials to promote sensitivity and respect for diversity in respect of sexual orientation and gender identity.

Discrimination against women

16. The Committee is concerned about:

- (a) On-going discrimination against women, including patriarchal attitudes and gender-based stereotypes concerning the role of women in the family and in society;

(b) The particularly small proportion of women in decision making positions, the high rate of women in non-regular employment, and the particularly high wage gap between men and women; and

(c) The frequent social stigma and discrimination against unwed mothers, including their unequal treatment with respect to the provision of child allowance compared to adoptive parents. (arts. 3 and 26)

17. The State party should develop measures to eliminate existing patriarchal attitudes and gender stereotypes, by inter alia implementing comprehensive awareness-raising programmes to foster a better understanding of, and support for, equality between women and men in the family and society. It should also:

(a) Intensify efforts to ensure equality of women in all spheres of both the private and public sector, including through temporary special measures;

(b) Take measures to eliminate the gender wage gap, ensuring equal pay for work of equal value, including by promoting conditions to accommodate employees with families in regular employment, and eliminate discrimination in irregular employment;

(c) Eliminate discrimination against, and increase support provided to unwed mothers, particularly in education, employment and housing as well as ensure that they receive the same child allowance as adoptive parents.

Violence and sexual violence against women

18. The Committee is concerned about the prevalence of violence against women, including domestic violence. It also notes with concern that marital rape is not a punishable offence as such under the Criminal Code, and that “suspension of indictment conditioned upon the completion of education or counselling”, ” continue to be implemented in cases of domestic violence, which does not adequately protect victims or sufficiently convey the gravity of domestic violence (arts. 3 and 7).

19. The State party should explicitly criminalize marital rape under all circumstances, and define all forms of rape in terms of absence of consent rather than intimidation or violence. The State party should adopt a comprehensive strategy to prevent and address gender-based violence in all its forms and manifestations. It should intensify its awareness-raising measures among the police, judiciary, prosecutors, community representatives, women and men on the gravity of domestic violence and its detrimental impact on the lives of victims. The State party should ensure that cases of domestic violence and marital rape are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and the victims adequately compensated. It should also revise measures to ensure that victims are not placed in a position where they are channelled into alternative dispute resolution mechanisms.

Counter-terrorism measures

20. The Committee notes that five bills on counter-terrorism, including two on counter-cyber terrorism, are pending before the National Assembly. It is concerned that the information provided by the State party is insufficient to determine whether the current working definition of terrorism, or the definition of terrorism set forth in the draft legislation, are in full compliance with the Covenant. It also notes with concern that the definition of cyber terrorism is particularly vague and may lead to arbitrary application (arts. 9, 14, 15 and 17).

21. **The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant, are applicable to terrorism alone and comply with the principle of non-discrimination. In particular, the State party should ensure that terrorist acts, including cyber terrorism, are defined in a precise and narrow manner, and that legislation adopted in this context is limited to crimes that would clearly qualify as acts of terrorism. Inspiration for an adequate definition of terrorism may be drawn from paragraph 28 of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on 10 areas of best practices in countering terrorism (A/HRC/16/51) and from paragraph 3 of Security Council resolution 1566 (2004).**

Death penalty

22. While acknowledging the current non-application of the death penalty, the Committee is concerned that a significant number of persons remain sentenced to death (art. 6).

23. **The State party should give due consideration to the legal abolition of the death penalty as well as to the commutation of all death sentences to terms of imprisonment. It should also consider acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on the occasion of the 25th anniversary of the Protocol.**

Self-inflicted deaths

24. While noting the measures taken to prevent and reduce the numbers of self-inflicted deaths (suicides), the Committee is concerned about the particularly high suicide rate, especially among young people between 20 and 30 years, with respect to whom it constitutes the highest cause of death, and among women with respect to whom it constitutes the second highest cause of death, as well as among older persons and within the military (arts. 2, and 6).

25. **The State party should increase its efforts to prevent self-inflicted deaths. In particular it should study and address the root causes of suicide and improve its suicide prevention policies accordingly.**

Torture and ill-treatment

26. The Committee is concerned that the State party's criminal legislation does not adequately ensure that acts covered by the internationally-accepted definition of torture are fully criminalized, especially mental torture. It is also concerned that an independent mechanism within its normal legal system, but separate from the police, to investigate allegations of torture and ill-treatment is lacking (art. 7).

27. **The State party should amend the Criminal Code to include a definition of torture that is fully in line with article 7 of the Covenant and other internationally established norms, preferably by codifying it as an independent crime. It should also ensure that all cases of torture and ill-treatment are properly investigated by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators, and that the law adequately provides for the prosecution and conviction of perpetrators and accomplices of such acts in accordance with their gravity before ordinary criminal courts, as well as for remedies to victims and their families, including rehabilitation and compensation.**

Involuntary hospitalization in psychiatric institutions

28. The Committee notes with concern reports about the large number of persons in mental health facilities who are involuntarily hospitalized, that the grounds for involuntary hospitalization are excessively broad and include circumstances in which the detained persons do not present a threat to themselves or others, and that procedural safeguards against involuntary hospitalization are inadequate (arts. 7 and 9).

29. The State party should ensure that psychiatric confinement is strictly necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others, applied only as a measure of last resort and for the shortest appropriate period of time. It should ensure that procedures for involuntary hospitalization respect the views of the individual, and that any representative genuinely represents and defends the wishes and interests of the individual. It should ensure that such confinement is accompanied by adequate procedural and substantive safeguards established by law.

Violence in the military

30. The Committee is concerned about the high number of cases of sexual, physical and verbal abuse in the military and that only a small number of cases are recorded and lead to indictment (art. 7).

31. The State party should conduct full and impartial investigations into all allegations of abuse in the military and ensure that perpetrators of human rights violations are tried and punished; a mere separation of the perpetrator from service or dismissal from army is not a sufficient response to violent crimes. Complaints should be treated confidentially and victims as well as witnesses should be protected against reprisals.

Right to counsel

32. The Committee notes with concern that access of detainees to counsel during interrogation may be limited under certain circumstances, which are insufficiently clearly defined and may lead to inappropriate exclusion of counsel (art. 9 and 14).

33. The State party should take the necessary legal amendments to ensure that the right of detainees to be assisted by counsel during interrogation is not restricted under any circumstance.

Prison conditions

34. The Committee is concerned about:

- (a) Overcrowding in prisons and limited access to medical aid outside prisons;
- (b) The reported frequent usage of protective devices in prisons for retributive purposes, and termination of their usage being subject to a decision by the prison guard; and
- (c) The use of solitary confinement, which can be imposed for up to 30 days, reportedly being the most commonly used form of disciplinary punishment of inmates, and the outside members of the Disciplinary Committee deciding on the types of disciplinary action, being appointed by the prison warden. (art. 10)

35. **The State party should:**

- (a) Ensure that solitary confinement is used only in the most exceptional circumstances and for strictly limited periods, and that the members of the Disciplinary Committee are appointed by an independent authority;**

- (b) **Ensure that implementation of Article 99 (2) of the Administration and Treatment of Correctional Institution Inmates Act is vigorously monitored, and that the usage of protective devices is subject to legally determined limits; and**
- (c) **Take concrete steps to bring their prison system into line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

Detention of DPRK “defectors” by the National Intelligence Service

36. The Committee notes with concern that “defectors” from the Democratic People’s Republic of Korea are detained in the “Centre for North Korean Defectors” upon their arrival, and may be held in the centre for up to 6 months. While noting the information by the delegation that detainees have access to human rights protection officers, the Committee is concerned that they do not have access to counsel. It is further concerned about reports suggesting that DPRK “defectors” may be deported to third countries without independent review, if it is determined that they do not qualify for protection (arts. 9, 10, and 13).

37. The State party should ensure that DPRK “defectors” are detained for the shortest possible period, and that detainees are given access to counsel during the entire length of their detention, that counsel be available during interrogations, and that the duration and methods of interrogation are subject to strict limits which comply with international human rights standards. It should also adopt clear and transparent procedures allowing review with suspensive effect by adequate independent mechanisms before individuals are deported to third countries,

Detention of asylum seekers

38. While welcoming the enactment of the Refugee Act, Presidential Decree and Regulations in 2013, the Committee is concerned, however, about the absence of any legally prescribed maximum duration for immigration detention, the immigration detention of children, and the poor living conditions in immigration detention facilities (arts. 9 and 24).

39. The State party should limit the period of immigration detention, and ensure that it is used as a measure of last resort, for the shortest appropriate period. It should ensure that children are not deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests in accordance with General Comment No. 35. It should also ensure that living conditions in immigration detention centres are in conformity with international standards and subject to regular independent control.

Migrant workers and trafficking for the purpose of forced labour

40. The Committee notes with concern that while the State party is a source, transit and destination country for human trafficking, traffickers are rarely prosecuted and convicted. It is also concerned that:

- (a) A significant number of agricultural workers are trafficked into the State party for the purpose of exploitation, including forced labour, and that migrant workers under the Employment Permit System (EPS) may change their employer upon their employer’s permission, or under the particularly limited conditions of article 25 of the Employment, Etc. Of Foreign Workers Act;
- (b) Women entering under the E-6 Entertainment visa are frequently trapped into prostitution;

(c) The State party does not have a mechanism in place to adequately identify victims of trafficking, which places them at risk of detention and deportation; and

(d) The definition of trafficking as such, in the Criminal Code solely criminalizes the act of buying and selling, which hinders the prosecution of persons, who have recruited and exploited migrant workers through contractual deception. (arts. 3, 7 and 8)

41. The State party should vigorously combat trafficking of human beings, in particular by combatting the demand for trafficking, and:

(a) Allow all workers under the EPS to freely change their employer;

(b) Strengthen efforts to prevent forced labour, including by increased labour inspection;

(c) Regulate the usage of E-6 Entertainment visas to ensure that they are not used to cover up trafficking for the purpose of prostitution; and

(d) Bring its trafficking definition into compliance with international standards, and establish a mechanism to identify victims of trafficking and ensure that they are treated as victims and have access to all necessary support.

Monitoring, surveillance and interception of private communication

42. The Committee notes with concern that according to Article 83 (3) of the Telecommunications Business Act subscriber information may be requested without warrant from any telecommunications business operator for investigatory purposes. It is also concerned about the operation and insufficient regulation in practice of so-called “base-station” investigations to identify participants at assemblies, and about the extensive use and insufficient regulation in practice of wiretapping, in particular by the National Intelligence Service (arts.17 and 21).

43. The State party should take the necessary legal amendments to ensure that any surveillance including for purposes of state security are compatible with the Covenant. It should inter alia ensure that subscriber information may be issued with a warrant only, introduce a mechanism to monitor the National Intelligence Service’s communication investigations, and increase the safeguards to prevent the arbitrary operation of so-called base-station investigations.

Conscientious Objection to military service

44. The Committee is concerned that in the absence of a civilian alternative to military service, conscientious objectors to military service continue to be subjected to criminal punishment. It also notes with concern that personal information of conscientious objectors may be disclosed online (art.18).

45. The State party should:

(a) Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service;

(b) Ensure that the criminal records of conscientious objectors are expunged, that they are provided with adequate compensation and that their information is not publicly disclosed; and

(c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility to perform an alternative service of civilian nature.

Criminal defamation laws

46. The Committee is concerned about the increasing use of criminal defamation laws to prosecute persons who criticize government action and obstruct business interests, and of the harsh sentences, including lengthy prison sentences, attached to such legal provisions. It further notes with concern that even a statement which is true may be criminally prosecuted, except if this statement was made for the purpose of public interest alone (art. 19).

47. The State party should consider decriminalizing defamation, given the existing prohibition in the Civil Act and should in any case restrict the application of criminal law to the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty. It should ensure that the defence of truth is not subjected to any further requirements. It should also promote a culture of tolerance regarding criticism, which is essential for a functioning democracy.

Prosecutions under the National Security Act

48. The Committee is concerned about continuing prosecutions under the National Security Act (NSA), in particular under its unreasonably broadly phrased article 7, which is vague, may have a chilling effect on public dialogue and is reported to have unnecessarily and disproportionately interfered with freedom of opinion and expression in a number of cases. The Committee notes with concern that the NSA is increasingly used for censorship purposes (art. 19).

49. The Committee recalls its General Comment on Freedom of Expression No 34 and its Views (CCPR/C/79/Add.114, para. 9 (1999)) and reminds the State party that “the Covenant does not permit restrictions on the expression of ideas, merely because they coincide with those held by an enemy entity or may be considered to create empathy for that entity. The State party should abrogate article 7 of the NSA”.

Dissolution of the UPP

50. The Committee is concerned that the dissolution of the Unified Progressive Party (UPP) ordered by the Constitutional Court in 2014 for the alleged violation of the “basic democratic order”, was significantly based on the alleged propagation of DPRK ideology by members of the UPP, regarding which they have already faced charges under article 7 of the NSA, (art. 19 and 22).

51. In view of the particularly far-reaching nature constituted by the dissolution of a political party, the State party should ensure that it is used as a measure of last resort, with utmost restraint, and embodies the principle of proportionality.

Freedom of peaceful assembly

52. The Committee is concerned about the severe restrictions placed on the right to peaceful assembly, including the operation of a de facto system of authorization of peaceful assemblies by the police, cases of usage of excessive force, of car and bus blockades, and the restriction of demonstrations held past midnight. It is concerned also about the frequent application of criminal law to impose fines and/or arrest journalists and human rights defenders for either organizing or participating in protests without due consideration of their right to freedom of assembly (arts. 7, 9 and 21).

53. The State party should ensure the enjoyment by all of the freedom of peaceful assembly, and that limitations on the right to freedom of assembly are in strict compliance with article 21 of the Covenant. It should further review its regulations on the use of force and ensure they are in compliance with the Covenant, and train its police officials accordingly.

Freedom of Association

54. The Committee is concerned about the undue restriction on the freedom of association of public officials. It is also concerned about cases of refusals to register trade unions on the ground that their membership includes dismissed employees (art. 22).

55. The State party should withdraw its reservation to Article 22 of the Covenant, and enable all parts of the labour force, including public officials, as well as employees who have been dismissed, to join trade unions.

Birth registration

56. The Committee notes with concern that foreigners are expected to approach their embassies to obtain birth registration for their children, which is frequently impossible for asylum-seekers, humanitarian status holders or refugees (art. 24).

57. The State party should ensure that birth registration is available to all children, irrespective of their parents' legal status and/or origin.

58. The State party should disseminate widely the Covenant, the text of its fourth periodic report and the present concluding observations, among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public.

59. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 15 (Discrimination on the grounds of sexual orientation and gender identity), 45 (Conscientious objection) and 53 (Freedom of peaceful assembly), above.

60. The Committee requests that the State party submit its next periodic report by 6 November 2019 and that it include in it specific up-to-date information on the implementation of all its recommendations and of the Covenant as a whole. The Committee requests that the State party, in preparing the report, broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.
