



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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REFERENCE:GH/fup-124

8 November 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 15, 45, and 53 of the concluding observations on the report submitted by the Republic of Korea ([CCPR/C/KOR/CO/4](#)), adopted by the Committee at its 115th session in November 2015.

On 23 June 2017, the Committee received the reply of the State party. At its 124th session (8 October-2 November 2018), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see [CCPR/C/124/2](#)). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure (LOIPR), the additional information requested by the Committee will be included, as appropriate, in the list of issues prior to submission of the fifth periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

Her Excellency Ms. Ji-Ah Paik
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
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Report on follow-up to concluding observations of the Human Rights Committee, [CCPR/C/124/2](#):

Assessment of replies¹

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- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.
 - C Reply/action not satisfactory:** A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.
 - D No cooperation with the Committee:** No follow-up report has been received after the reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Republic of Korea

Concluding observations:	CCPR/C/KOR/CO/4 , 3 November 2015
Follow-up paragraphs:	15, 45 and 53
Follow-up reply:	CCPR/C/KOR/CO/4/Add.1 , 23 July 2017
Committee's evaluation:	Additional information required on paragraphs 15[E], 45[C] and 53[C]
Information from non-governmental organizations:	South Korean Human Rights Organizations Network (84 non-governmental organizations), 3 November 2016 ²

Paragraph 15: Discrimination on the grounds of sexual orientation and gender identity

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

¹ The full assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

² https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fKOR%2f27078&Lang=en.

Summary of State party's reply

Notwithstanding the lack of separate legislation prohibiting hate speech against a particular group of people, the State party notes that article 11 of the Constitution and the National Human Rights Commission Act explicitly prohibit sexual orientation and gender identity as grounds for discrimination.

The State party notes that discriminatory measures on grounds of sexuality are strictly forbidden in the military under the Unit Management Directive, but there are no plans to repeal article 92-6 of the Military Criminal Act. This decision is based on the judgment rendered by the Constitutional Court on 28 July 2016, which stated that the provision was not unconstitutional and, therefore, could not be regarded as a provision punishing homosexuals. In the Court's view, the restrictions are legitimate in order to preserve the distinct nature of the military, despite their discriminatory nature against homosexual servicemen.

Following consultation with experts, school and education offices, sex education materials for kindergarten, primary and secondary school have been standardized and supplemented. However, parents opposed the inclusion of diverse sexuality in sex education at schools for minors, who are yet to determine their sexual orientation. As a result, the Government decided to exclude diverse forms of sexual orientation and gender identity from sex education until the end of secondary school as it holds that public education should reflect social and culturally agreed values.

The Supreme Court's judgment of 2006 introduced the guidelines on handling applications for gender reassignment. The State party reiterates that the guidelines are subject to review if the socially accepted notions of a person's gender change.

Information from non-governmental organizations

South Korean Human Rights Organizations Network

The Korean authorities denied legal personality to a lesbian, gay, bisexual, transgender and intersex persons association called "Beyond the Rainbow Foundation", because only groups that work on broad themes of human rights are granted registration. The Korean authorities later appealed the court decision granting the foundation legal status. The Network also reports that several students and student groups hanging banners on university campuses in support of lesbian, gay, bisexual, transgender and intersex persons found them damaged. Investigations into the matter were not carried out thoroughly. Additionally, churches and universities restrict or prevent events organized by groups of lesbian, gay, bisexual, transgender and intersex persons or threaten individuals with expulsion. The legal framework has not been strengthened and there is no recognition of hate speech under criminal law.

As confirmed by the State in its follow-up report, article 92-6 of the Military Criminal Act has not been repealed as the Constitutional Court regarded the provisions to be constitutional and as even protecting servicemen from the risk of homosexual acts by superiors and as a way to preserve combat strength.

The sex education material issued nationwide by the Government contains blatant sexist and discriminatory remarks. Upon request by the Ministry of Education, a provider of online education for teachers cancelled a lesbian, gay, bisexual, transgender and intersex persons-inclusive sex education programme to which 700 teachers had applied.

Committee's evaluation

[E]: The Committee regrets the State party's position that it has no plans to repeal article 92-6 of the Military Criminal Act and that the Constitutional Court on 28 July 2016 found that article constitutional, despite its discriminatory nature against homosexual servicemen.

The Committee regrets that, contrary to the Committee's recommendation, the State party decided to exclude diverse forms of sexual orientation and gender identity from sex

education until the end of secondary school, on the grounds of reflecting social and culturally agreed values.

The Committee also regrets the State party's position that it will review the guidelines on gender reassignment in case of change of the socially accepted notions of a person's gender.

The Committee further regrets that no measures have been taken to implement its recommendations regarding: (a) clearly and officially stating that it does not tolerate any discrimination, hate speech, violence against lesbian, gay, bisexual, transgender and intersex persons or propagation of "conversion therapies"; (b) strengthening the legal framework to protect lesbian, gay, bisexual, transgender and intersex persons; and (c) conducting campaigns and training to promote tolerance and awareness of lesbian, gay, bisexual, transgender and intersex persons.

The Committee reiterates its recommendation.

Paragraph 45: Conscientious objection

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 conscientious objectors' criminal records are expunged, that they are provided with adequate compensation and that their personal information is not publicly disclosed;**
- (c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility of performing an alternative service of civilian nature.**

Summary of State party's reply

(a) While the State party stresses that the currently imprisoned conscientious objectors have enjoyed a fair and independent trial, its views have not changed since the follow-up to an individual communication of 2015 (see CCPR/C/112/D/2179/2012). The follow-up report stated that the conscientious objectors' immediate release, elimination of their criminal records and compensation would hamper the reliable and efficient functioning of the judicial system.

(b) Both conscientious objectors and those who seek to evade military service are subjected to disclosure of personal information if the court finds that their refusal to take part in military service is not based on "justifiable grounds" under the amended Military Service Act. Individuals affected may appeal such court decisions.

(c) The State reaffirms that it will review the matter of introducing alternative service for conscientious objectors when the security situation on the Korean Peninsula has stabilized and a social consensus regarding this issue has formed. The constitutional appeal for the introduction of alternative service is still pending before the Constitutional Court.

Information from non-governmental organizations

South Korean Human Rights Organizations Network

(a) Since the adoption of the Committee's concluding observations in 2015, no conscientious objector has been released, except those who have completed their sentence. Between November 2015 and August 2016 a total of 315 new conscientious objectors were imprisoned.

(b) In accordance with the amendments to the Military Service Act of 31 December 2014, regional military manpower offices drafted a list of evaders under their jurisdiction whose personal information was to be disclosed. As confirmed by the State

party the individuals affected would have a chance to appeal the inclusion of their names on that list. The Network states that, since the State party has a very high number of conscripts, such a law may not give rise to a significant increase in numbers, but the harm caused by putting people on that list is significant.

(c) The Constitutional Court is currently reviewing the provisions of the Military Service Act in the light of the right to freedom of conscience enshrined in the Constitution, since the Act provides for no exceptions from criminal sanctions for conscientious objectors. Despite introducing government-commissioned research on a detailed outline for a system of alternative service, the State party refuses to introduce it, relying on a poll that resulted in 58.3 per cent opposition. In contrast, several other polls prove that the majority of citizens support alternative service. On a positive note, the increasing trend of lower courts to rule in favour of conscientious objectors demonstrates the growing support for a change in legislation on this issue. Moreover, in 2016, for the first time in history, an appellate court acquitted three conscientious objectors on charges of evading military service.

Committee's evaluation

[C] (a), (b) and (c): The Committee regrets that the State party has not implemented its recommendation to immediately release all imprisoned conscientious objectors and that, since the individual communication, more conscientious objectors have been condemned to prison sentences. The Committee reiterates its recommendation.

The Committee notes the information provided by the State party, but regrets that no measures have been taken after the adoption of the Committee's concluding observations. In particular, the State party has not implemented the Committee's recommendation to expunge the conscientious objectors' criminal records and provide them with adequate compensation. The Committee reiterates its recommendation.

The Committee takes note of the pending constitutional appeal regarding the introduction of alternative service, but regrets that no measures have been taken to legally recognize conscientious objection to military service and alternative service. It requires information on the progress or outcome of the pending constitutional appeal. The Committee reiterates its recommendation.

Paragraph 53: Peaceful assembly

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

Summary of State party's reply

The State party stresses that the right to peaceful assembly is guaranteed by the Constitution in accordance with international human rights law. The Assembly and Demonstration Act requires assemblies and demonstrations to be reported to police in advance and it delineates specific reasons for their prohibition rather than a general ban. While assemblies are allowed at any time of the day or night, the Government will initiate a follow-up legislative process to bring the regulation on demonstrations into line with the Constitutional Court's decision, which ruled that they are only prohibited between midnight and sunrise. The Government notes in this regard that assemblies that turn into demonstrations after midnight may be forcibly dispersed, but the police do not usually resort to this measure. Investigations into individual acts during assemblies and demonstrations on the basis of the Criminal Act are only carried out if they constitute illegal acts, such as the obstruction of traffic or the assault of a police officer.

The Act on the Performance of Duties by Police Officers read in conjunction with the Regulations Regarding Guidelines on Usage of Hazardous Police Equipment clearly lay out provisions regarding the tools and equipment to be used by the police. Moreover,

police officers receive regular human rights and safety education related to the use of force during assemblies and demonstrations.

Information from non-governmental organizations

South Korean Human Rights Organizations Network

The current Assembly and Demonstration Act bans outdoor assemblies or demonstrations either before sunrise or after sunset, but the National Police Agency has suggested amendments so as to apply the ban only between midnight and 7 a.m. The Network recalls, nevertheless, that individuals should be free to choose the location, time and methods of assembly and restricting or banning them from making those choice still violates the essence of the right of assembly.

Notwithstanding article 6 (1) of the Assembly and Demonstration Act mentioning the mere need to notify the police of assemblies and demonstrations, the authorities have installed a de facto registration system, arbitrarily banning such gatherings on the basis of traffic congestion and concerns about violence and arson. When such bans are issued, the gatherings are labelled as “illegal”, which causes confrontations between the police and protesters, entailing criminal punishment for some of its organizers or participants.

On the day of the People’s Rally, the police set up bus barricades to significantly obstruct demonstrators, while mobilizing 19 water cannon trucks, 10 of which were used to fire at protestors directly. In this context, 69-year-old farmer Back Nam-gi was knocked to the ground by a high-powered water cannon. As a result, he underwent surgery for a cerebral haemorrhage and died after 317 days in a coma.

Committee’s evaluation

[C]: The Committee takes note of the information provided by the State party, including the envisaged legislation to bring the regulation of demonstrations into line with the Constitutional Court’s decision. The Committee regrets the lack of information on the specific measures taken after the Committee’s concluding observations, including on: (a) the training of police officers conducted after November 2015; (b) the measures taken to amend the Assembly and Demonstration Act to ensure strict compliance with article 21 of the Covenant; and (c) the measures taken to review the State party’s regulations on the use of force to ensure that they are in compliance with the Covenant, and requires information on the above, as well as information on the investigation into the death of the 69-year-old farmer Back Nam-gi following the use of water canon against demonstrators on the day of the People’s Rally, on prosecution of those responsible and on the reparation provided to victim’s family. The Committee reiterates its recommendation.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested will be included, as appropriate, in the list of issues prior to submission of the fifth periodic report of the Republic of Korea.

Next periodic report: 6 November 2019.
