



Ludwig Boltzmann Institute  
Human Rights

# CIVIL AND POLITICAL RIGHTS IN THE REPUBLIC OF KOREA AND IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

An overview of the main human rights challenges  
on the Korean Peninsula





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Vienna, November 2014



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## List of acronyms

AHRC	Asian Human Rights Commission
AI	Amnesty International
CAT	UN Convention Against Torture
CAT Committee	UN Committee Against Torture
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CERD Committee	UN Committee on the Elimination of All Forms of Racial Discrimination
CERD	United Nations International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR Committee	UN Committee on Economic, Social and Cultural Rights
COI	UN Commission of Inquiry
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
CSO	Civil society organisation
DMZ	Demilitarised Zone
DPRK	Democratic People's Republic of Korea
EPS	Employment Permit System of the Republic of Korea
FIDH	International Federation for Human Rights
HR Committee	UN Human Rights Committee
HRC	UN Human Rights Council
HRI	International Human Rights Instruments
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	UN International Covenant on Civil and Political Rights
ICESCR	UN International Covenant on Economic, Social and Cultural Rights
ICPPED	UN International Convention for the Protection of All Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
ICRMW	UN International Convention on the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
KCSC	Korea Communications Standards Commission of the Republic of Korea
KEPCO	Korean Electric Power Corporation of the Republic of Korea



KINU	Korea Institute for National Unification
KWP	Korean Workers' Party of the DPRK
LGBT	Lesbian, gay, bisexual, and transgender
LiNK	Liberty in North Korea
MPS	Ministry of People's Security of the DPRK
MTU	Migrant Trade Union of the Republic of Korea
NDC	National Defense Commission of the DPRK
NHRCK	National Human Rights Commission of the Republic of Korea
NIS	National Intelligence Service of the Republic of Korea
NGO	Non-Governmental Organisation
NKDB	Database Centre on North Korean Human Rights
NKHR	Citizens' Alliance for North Korean Human Rights
NSA	National Security Act of the Republic of Korea
OPCAT	UN Optional Protocol to the Convention Against Torture
RAH	Resettlement Assistance Headquarters of the Republic of Korea
ROK	Republic of Korea
SPA	Supreme People's Assembly of the DPRK
SR	UN Special Rapporteur
SSD	State Security Department of the DPRK
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	UN Universal Periodic Review
USDS	United States Department of State
WGEID	UN Working Group on Enforced or Involuntary Disappearances



In 1948, after decades of Japanese rule, the Korean Peninsula was divided into two political entities by the victorious powers of World War II, the Soviet Union and the United States. While a totalitarian 'socialist State' was installed in the North (Democratic People's Republic of Korea - DPRK), the presidential constitutional Republic (Republic of Korea – ROK) was proclaimed in the southern part of the peninsula. In 1950, the Korean War broke out when the DPRK invaded the South, seeking for a unification of Korea under its control. The war left three million Koreans dead or wounded and ended in 1953 with an Armistice Agreement and the reinforcement of the separation of the country along a Demilitarised Zone (DMZ).

Since the end of the Korean War the two countries have developed into completely different directions, politically and economically. Both countries have declared their joint commitment to work towards reunification in the June 15th North–South Joint Declaration. However, the goal of reunification appears not to be in sight, as serious tensions between the two countries continue.

Despite the division, the authors were commissioned to write a report on the situation of human rights in both countries. This pays account to the common history, the families spread over both sides of the DMZ and how the situation in one country influences the other. In the eyes of many, they form one country that was temporary split and may be reunited again in the future. Nevertheless, it is obvious that the situation of human rights in the two countries is completely different. Thus, the report does not compare the situation in both countries but is clearly divided in two separate parts, covering each a country and its specific human rights challenges.

The report was written on the basis of in-depth desk research carried out from Vienna and complemented by a visit to Seoul in March 2014, where the team interviewed experts from various institutions working on human rights issues in the Republic of Korea or in the DPRK (see list of stakeholders). The report therefore presents an overview of the main human rights violations identified in the ROK as well as the DPRK.

The aim of the report is to offer an overview of the situation of civil and political rights, as reported in the numerous publications of international and national human rights actors and confirmed during the interviews in Seoul. The report does by no means pretend to provide a complete account of the violations but focuses on the most evident issues identified by the different actors. Naturally, each of these topics could be analysed in much more depth, with precise details and testimonials to evidence the statements. This is what numerous stakeholders met have been doing over the last years or decades and we strongly recommend their excellent publications for further reading (see bibliography).





**THE SITUATION OF CIVIL AND POLITICAL RIGHTS  
IN THE REPUBLIC OF KOREA**



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## EXECUTIVE SUMMARY

The Republic of Korea (ROK) has undergone an impressive development since the end of the Korean War, both economically and politically. The human rights record has gradually improved over the years, the authorities have ratified the majority of the core UN human rights treaties and the current Government has shown a great willingness to cooperate with international human rights actors, receiving several UN independent experts over the last years. The National Human Rights Commission of the ROK (NHRCK) and numerous strong and active civil society organisations (CSOs) have greatly contributed to the promotion and protection of human rights.

Still, there are numerous areas of concern in the human rights field, many of them related to the problematic security situation the country is facing with the neighbouring Democratic People's Republic of Korea (DPRK). The ROK severely restricts the freedom of expression on national security grounds, mainly on the basis of the infamous National Security Act (NSA), which allows for a broad interpretation and particularly restricts the public debate on the DPRK. Moreover the crime of defamation is excessively applied, creating a chilling effect on whistle-blowers, e.g. denouncing corruption.

The ROK does not permit conscientious objection to military service, in violation to the freedom of conscience and religion.

The freedom of assembly and association has been continuously restricted over the past. The State has interfered in the formation and activities of unions, sanctioning the right to strike. Assemblies and demonstrations have been obstructed in many instances, and the use of excessive force against demonstrators without accountability has constituted a serious problem.

While torture in police detention and prisons is very rare, the prison regime is reportedly marked by a high degree of control and repression. Disciplinary methods are applied without adequate oversight and often misused for punishment. The abuse in military centres, migrant detention facilities, schools, welfare centres as well as in private settings continues to be a serious problem. Regrettably, the ROK has not criminalised torture in line with article 4 Convention against Torture (CAT). The complaints mechanisms available to detainees are not effective, mostly due to a fear of reprisals. A key problem raised is the absence of a system of regular and independent monitoring, creating an atmosphere of opacity in places of detention and increasing the risk of abuse and impunity for perpetrators. It has thus been recommended that the ROK ratify the Optional Protocol to the Convention Against Torture (OPCAT) and establishes a National Preventive Mechanism.

The protection from refoulement of persons seeking protection in the ROK has been criticised as inadequate, with a rate of accepted asylum applications of around only 10%. Foreigners with HIV/AIDS are summarily prevented from entry and often deported.

The ROK has not abolished the death penalty but enacted a moratorium in 1998 and has since not carried out executions. However, persons are still sentenced to death and the society often reopens the debate on its use.

The ROK is still missing a comprehensive Anti-Discrimination Bill, including sexual orientation, largely due to opposition by powerful religious groups. This only exacerbates the discrimination of LGBT persons in society. Also, migrant workers are frequently victims of abuse and discrimination due to a lacking legal protection and the restrictive system of permits and visas driving many into illegality. Labour inspections have increased over the last years, however they seem rather focused on detecting irregular migrants than protecting employees from abuse at the workplace. While North Korean defectors receive comprehensive support from the State and CSOs upon arrival, their integration into society remains difficult, due partly to lacking psychological care and common prejudices against defectors from employers and in educational facilities. As a result, many defectors drop out of school and fall into unemployment making social integration even more difficult.



## Introduction<sup>1</sup>

After the 1953 armistice that split the peninsula along a Demilitarised Zone (DMZ), South Korea remained mainly under military rulers, who had tight control over the country and its society. Experiencing economic and political difficulties in the first years, the ROK achieved high economic growth starting with the presidency of Park Chung-Hee, who took the power in 1961 through a coup d'état. Driven by the increasing industrialisation, the poor and agrarian country became one of the world's leading economies. With a low unemployment rate,<sup>2</sup> South Korea is now one of the G-20 major economies, its market economy ranking 15<sup>th</sup> in the world by nominal GDP. South Korea is also ranked 15<sup>th</sup> in the UNDP's Human Development Index.<sup>3</sup>

Since she took office in February 2013, President Park Geun-Hye has launched a trustpolitik with the DPRK, which aims at an inter-Korean reconciliation. It has not provided for many visible results so far, as the DPRK time and again has been issuing hostile statements and testing missiles in disputed waters. The tone of the relationships of the different regional powers also changed over the last months, and while China is trying to reshape alliances and weigh in more heavily, South Korea manoeuvres carefully. The ROK has been courted by the Chinese, and President Xi visited Seoul officially in June 2014 before even having invited his homologue from the North or been to Pyongyang, showing clearly an increasing interest in a strong partnership with South Korea. However, the ROK knows that this bears the risk of alienating its privileged relationship with the United States, who has long supported it with nearly 30,000 troops present in the country, and which seems to also be leaning toward a closer cooperation with Japan. China, however, remains a close friend of the DPRK, and the security concerns of the South towards the North might not be taken by China with the same supportive attitude the US offered so far. The ROK is aware of this and therefore evolving cautiously in this moving environment, redefining friendships and continuing its attempts to reach out to the DPRK.<sup>4</sup>

Amid a delicate geopolitical climate, and despite astonishing economic achievements, the country is said to be undergoing an *"identity crisis"* propelling it to the top of an unfortunate statistic: it has been number one for eight years in a row in terms of suicide rate, with an average of 40 deaths a day.<sup>6</sup> Suicide is the first cause of mortality in the country. It is said to be due to several factors, such as the breakdown of traditional family models, a difficult economic climate, and intense pressure on students at school.<sup>7</sup> Despite this high rate of suicides, the ROK has one of the poorest systems for providing mental health care, and a very low understanding and acceptance of mental

<sup>1</sup> For more detailed information, see UN International Human Rights Instruments (HRI), Core document forming part of the reports of States parties: Republic of Korea, UN Docs. HRI/CORE/KOR/2010, 23 February 2011 [hereinafter: HRI, HRI/CORE/KOR/2010].

<sup>2</sup> Trading Economic, South Korea Unemployment Rate 1999 – 2014, available from: <http://www.tradingeconomics.com/south-korea/unemployment-rate>; see also: HRI, HRI/CORE/KOR/2010, Annex.

<sup>3</sup> See UN Development Programme, Human Development Index, available from: <http://hdr.undp.org/en/data>.

<sup>4</sup> For more details see Scott A. Snyder, Can Beijing and Seoul Become Strategic Partners?, Council on Foreign Relations, 1 July 2014; and Jane Perez, Chinese President's Visit to South Korea Is Seen As Way To Weaken U.S. Alliances, The New York Times, 2 July 2014.

<sup>5</sup> Philippe Pons, Le Pape dans une Corée du Sud déprimée, Le Temps Monde, 15 August 2014 [hereinafter: Philippe Pons, 2014.]

<sup>6</sup> Young-Ha Kim, South Korea's Struggle With Suicide, The New York Times, 2 April 2014.

<sup>7</sup> International Crisis Group, Strangers at Home: North Koreans in the South, Asia Report No. 208, 14 July 2011 [hereinafter: International Crisis Group, 2011].

health issues.<sup>8</sup> The rate of suicide started growing steeply after the 1997 financial crisis in Asia. A certain moroseness seems now to touch a wider part of the society, tired of institutional lethargy, widespread clientilism and a series of human catastrophes, such as the Sewol ferry accident next to Jeju Island on 16 April 2014.<sup>9</sup>

The conservative Korean authorities, caught in their pursuit of national security, and keen on pleasing the industries that have played a large role in the transformation of the country, seem to address social conflicts in a repressive way rather than by dialogue. The violent reactions of law-enforcement officials during labour strikes and candlelight vigils, a typical outdoor assembly to protest or denounce issues, and in particular during peaceful vigils, such as the one organised in the framework of the Sewol ferry disaster, show a strong disconnect between authorities and citizens. A fragmented civil society has also been mentioned by analysts as a reason for the strong influence exerted by the State over the population, which makes way for a broad interpretation of the NSA<sup>10</sup> and other laws restricting the freedoms of expression and assembly.<sup>11</sup> Indeed, despite a comprehensive legal framework, political rights and civil liberties have been severely restricted by the Government, invoking the ongoing de facto war between North and South Korea. Military conscription in the name of national security has also been repeatedly denounced as a violation of the freedom of conscience. The country faces other human rights challenges, including the absence of a comprehensive anti-discrimination law, a lack of protection of minorities such as the LGBT (lesbian, gay, bisexual, and transgender), women or foreigners, as well as restriction of workers' rights. Also, a large part of the total workforce is said to be made up of irregular workers, who face legal and societal discrimination.<sup>12</sup> Furthermore, the country still has not abolished the death penalty.

Despite these issues, the ROK has also been commended for several achievements in the field of human rights. The seriousness of the Government in the implementation of the recommendations made by States at the first Universal Periodic Review (UPR) of the United Nations (UN) in 2008 has been seen as exemplary. The authorities have also been keen on accepting Special Procedures mandate-holders from the UN Human Rights Council (HRC) for fact-finding investigations. In relation to its HRC candidacy, the Government stated that it was *"committed to upholding the highest standards in the promotion and protection of human rights, with a strong commitment to human rights as a universal value [...] fully implementing the provisions of the international human rights instruments at the national level [...] enhancing cooperation and partnership with civil society for the advancement of human rights and good governance."*<sup>13</sup>

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<sup>8</sup> Ibid.

<sup>9</sup> Philippe Pons, 2014.

<sup>10</sup> Republic of Korea (ROK), National Security Act of 1 December 1948, last amended by Act No. 11042 of September 2011 [hereinafter: ROK, NSA].

<sup>11</sup> See Andrew Yeo, South Korean Civil Society – Implications for the U.S.-ROK Alliance, Council on Foreign Relations, June 2013 [hereinafter: Andrew Yeo, 2013].

<sup>12</sup> In 2009, the UN Committee on Economic, Social and Cultural Rights (CERD Committee) mentioned a figure of 34% of irregular workers. See CERD Committee, Concluding Observations: Republic of Korea, UN Docs. A/C.12/KOR/CO/3, 17 December 2009, para. 15 [hereinafter: CERD Committee, A/C.12/KOR/CO/3].

<sup>13</sup> Annex to the note verbale dated 4 September 2012 from the Permanent Mission of the ROK to the UN, addressed to the President of the General Assembly, on the candidature of the ROK to the Human Rights Council, 2013-2015, UN Docs. A/67/355, 12-50112, paras. 10–15.

## 1. NATIONAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

### Legal framework

The Constitution is a product of the country's democratisation process in the late 1980s and based on six basic principles: the people's sovereignty; the separation of powers; the pursuit of peaceful and democratic unification of North and South Korea; the pursuit of international peace and cooperation; the rule of law; and the State's responsibility to promote the welfare of its citizens.<sup>14</sup> It has been amended last on 29 October 1987 and contains a wide catalogue of rights and duties in Chapter II ranging from civil and political (e.g. human dignity, equality and non-discrimination, right to liberty and procedural safeguards, right to fair trial) to economic, social, cultural (e.g. right to education, work) and even collective rights (e.g. the right to a healthy and pleasant environment).<sup>15</sup>

According to the Constitution, international treaties and *"the generally recognised rules of international law shall have the same effect as the domestic laws"*.<sup>16</sup> The Republic has ratified a wide range of UN treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1978), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1990), the International Covenant on Civil and Political Rights (ICCPR, 1990), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1984), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1995), the Convention on the Rights of the Child (CRC, 1991), and the Convention on the Rights of Persons with Disabilities (CRPD, 2008).

It has not yet ratified the International Convention on the Rights of All Migrant Workers and Members of Their Families (ICRMW); the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty; the OPCAT; the Optional Protocol to the CRC on a communications procedure; the Optional Protocol to the CRPD, and several major conventions of the International Labour Organisation (ILO).

### Mechanisms for the protection of human rights

All State bodies are bound by the Constitution. The main independent bodies for the promotion and protection of human rights in the country are the NHRCK as well as numerous CSOs working in this area.

### The National Human Rights Commission

The NHRCK is the principal State mechanism for the promotion and protection of human rights. As a national human rights institution in the sense of the Paris Principles of the UN,<sup>17</sup> its mandate is to protect human rights by developing human rights policies, issuing recommendations, investigating discriminations and human rights violations, providing access to remedies, promoting human

<sup>14</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Report of the Mission to the Republic of Korea – Addendum, UN Docs. A/HRC/25/55/Add.1, 23 December 2013, para. 15 [hereinafter: UN SR on Human Rights Defenders, A/HRC/25/55/Add.1].

<sup>15</sup> ROK, Constitution of 17 July 1948, last amended on 20 October 1987, articles 10–39.

<sup>16</sup> Ibid., article 6(1).

<sup>17</sup> Principles relating to the Status of National Institutions (The Paris Principles), General Assembly Resolution 48/134, 20 December 1993.

rights education and monitoring the implementation of international human rights treaties.<sup>18</sup> Established in 2001, the NHRCK greatly contributed to the process of democratisation of the country. 192 people work for the institution.

However, in the last years the organisation has sparked increasing criticism over its efficiency and independency. In a paper written in June 2014 by 86 South Korean Non-Governmental Organisations (NGOs) for the attention of the International Coordinating Committee, in charge of accrediting national human rights institutions and observing their compliance with the Paris Principles, several issues were highlighted.<sup>19</sup> The major issues concerned the weakening of the Commission's independence, the appointment of controversial commissioners due to a lack of established procedures, tepid reactions in cases of alleged violations, and the lack of transparency in the NHRCK's operations. These concerns have been growing since the reduction of the Commission's human resources by 21% in 2009, and the appointment of a controversial chairperson, perceived as an attempt by the Government to weaken the institution. Upon the decision of the chairperson to carry out its meetings behind closed doors and after his second appointment amid vivid protests, 63 members and commissioners resigned at the end of 2010, in the biggest crisis since the creation of the institution. The chairperson was nevertheless reappointed and the NHRCK is said to have since lost the confidence of CSOs.<sup>20</sup> According to NGOs<sup>21</sup>, the passivity of the NHRCK was well highlighted by the absence of any public statements on the restriction of freedom of assembly or expression as well as on the excessive use of force against citizens marching to commemorate the Sewol ferry's 300 deaths in April 2014.

At the periodic reaccreditation session of March 2014, the International Coordinating Committee decided to defer its decision to a later session, noting that some of the recommendations issued in 2008 had not been implemented, notably the need for a transparent appointment procedure, the diversity requirement and the importance of ensuring functional immunity and independence in a context where parties can be seeking to influence the NHRCK's operations and decisions.<sup>22</sup>

### Civil society organisations

CSOs in South Korea are active and strong, and cover a large spectrum of human rights.<sup>23</sup> Their development stems largely from the fight for democracy of the 1970s and 1980s, which culminated in the so-called "*June Democracy Movement*" in 1987, and from the subsequent process of democratisation. Their existence can therefore not be separated from historical developments of the country of the last five decades.

During the authoritarian period, civil society had little space to expand, and the rapid economic

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<sup>18</sup> See official website of the National Human Rights Commission of the Republic of Korea (NHRCK): <http://humanrights.go.kr>.

<sup>19</sup> The NHRCK-Watch, *The Opinions of Korean NGOs on the NHRCK to the ICC-SCA*, 30 June 2014 [hereinafter: The NHRCK-Watch, 2014].

<sup>20</sup> See Minbyun, *Trends in the suppression of human rights defenders in the Republic of Korea, 2014* [hereinafter: Minbyun, 2014]; and The NHRCK-Watch, 2014.

<sup>21</sup> The NHRCK-Watch, 2014.

<sup>22</sup> International Coordination Committee, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva, March 2014, pp. 14–16.

<sup>23</sup> For more information on this topic, see Andrew Yeo, 2013.

developments and changing lifestyle under President Park led to a weakening of civil and political rights. He ordered the crackdown on civil society movements and developed the security apparatus and the bureaucracy to strengthen the control over the population. From this repressive climate, several civil society groups were brought to life in an underground struggle for civil and political rights, which manifested in large demonstrations at the end of the 1970s. However, repression continued brutally under the regime of General Chun Doo-Hwan, and only softened a couple of years before he stepped down in 1987. This change in attitude at the political level allowed civil society groups to reform and organise in alliances. Over time, they started covering a wider range of issues. As they grew rapidly in numbers, from around 2,193 in 2000 to more than 10,000 in 2012, they also fragmented more in various networks and issues.

## 2. FREEDOM OF EXPRESSION

At the international level, the right to freedom of expression is recognised under article 19 Universal Declaration of Human Rights (UDHR), and guaranteed by article 19 ICCPR. Domestically, the freedom of speech, press, assembly and association,<sup>24</sup> as well as the freedom of conscience and religion<sup>25</sup> are enshrined in the Constitution. Article 21(2) states that *“Licensing or censorship of speech and the press, and licensing of assembly and association may not be recognised.”*

However, the legislative framework also contains provisions limiting the freedom of expression or opinion. Some elements have proven very problematic. Such is the case with article 21(4) of the Constitution on defamation, as well as article 37(2), which allows for restrictions of freedoms and rights of citizens *“when necessary for national security, the maintenance of law and order or for public welfare.”* These provisions restricting the freedom of expression are moreover specified in the Act on Promotion of Information and Communication Network Utilisation and Information Protection (the *“Network Act”*),<sup>26</sup> the Assembly and Demonstration Act,<sup>27</sup> the Criminal Act’s chapter 33,<sup>28</sup> the Framework Act on Telecommunications,<sup>29</sup> the Juvenile Protection Act<sup>30</sup> as well as the NSA. In the last years, the Korean authorities have been criticised for making increasing use of these legal provisions to curtail freedom of expression. According to the UN Special Rapporteur (SR) on the Promotion and Protection of the Right to Freedom of Opinion and Expression, a reason for the diminishing space for freedom of expression is the *“increasing number of prosecutions and harassment of individuals who express views which are not in agreement with the position of the Government [...] and of many laws, which do not meet international human rights standards.”*<sup>31</sup>

<sup>24</sup> ROK, Constitution, article 21(1).

<sup>25</sup> Ibid., articles 19 and 20.

<sup>26</sup> ROK, Act on Promotion of Information and Communications Network Utilisation and Information Protection No. 6360 of 16 January 2001, last amended by Act No. 12681 of 28 May 2014 [hereinafter: ROK, Network Act].

<sup>27</sup> ROK, Assembly and Demonstration Act of 31 December 1962, last amended by Act No. 8733 of 21 December 2007.

<sup>28</sup> ROK, Criminal Act of 18 September 1953, last amended on 5 April 2013.

<sup>29</sup> ROK, Framework Act on Telecommunications of 30 December 1983, last amended on 16 January 2001.

<sup>30</sup> ROK, Juvenile Protection Act of 7 March 1997, last amended by Act No. 11229 of 26 January 2012.

<sup>31</sup> UN SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Report of the Mission to the Republic of Korea – Addendum, UN Docs. A/HRC/17/27/Add.2, 21 March 2011, paras. 19–20.

Reporters Without Borders has thus gradually downgraded South Korea in its World Press Freedom Index from rank 42 in 2010 to 57 (“noticeable problems”) in 2014.<sup>32</sup> In 2012, journalists launched a series of strikes against the authorities’ interference and restrictions of their freedom of expression for the first time since democracy rules in the country.<sup>33</sup>

### **Restrictions to the freedom of expression: the argument of national security**

The Republic of Korea’s concerns about national security are easily understandable. The country is subjected to threats from the North on a regular basis, and as recently as 14 August, when the North fired five short-range rockets off its east coast.<sup>34</sup> In view of these threats, the South Korean Government passed the NSA, which came into force on 1 December 1948, with “the purpose of [...] to secure the security of the State and the subsistence of nationals, by regulating any anticipated activities compromising the safety of the State.”<sup>35</sup>

However, the NSA is said to be used by the Government to restrict freedoms of expression and association, and has long been criticised by international and national experts for its unclear phrasing that allows for a broad interpretation.

Its article 7, in particular, allows the Government to limit the expression of ideas that praise or incite the activities of “anti-state” individuals or groups.<sup>36</sup> It also admits prison sentences up to seven years for expressing sympathy for North Korea. The Asian Human Rights Commission (AHRC) noted concern about the extensive use of NSA provisions — especially article 7 — due to their ambiguous phrasing leaving space for an arbitrary application.<sup>37</sup> Amnesty International (AI) reported that over the last years numerous persons had been charged, detained or questioned under that article, adding that the NSA has been increasingly and arbitrarily used to silence dissent and arbitrarily prosecute individuals exercising their rights to freedom of expression and association, as well as to tightly control online debate on the DPRK.<sup>38</sup> AI reports that in 2012, 112 individuals were imprisoned under the NSA, a figure that went up to 129 in 2013. 87% of the prosecutions under the NSA relate to alleged violations of article 7.<sup>39</sup>

The UN Human Rights Committee (HR Committee) has equally expressed concerns about the restriction of the right to freedom of expression by the application of the NSA since its first examination of the country in 1999. In 2006, at the second reporting session of the ROK under the ICCPR, the HR Committee renewed its worries, stating 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 sympathy for that entity.” The HR Committee observed that

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<sup>32</sup> Reporters Without Borders, World Press Freedom Index 2014, February 2014.

<sup>33</sup> Freedom House, South Korea: Freedom of the Press 2013, available at: [www.freedomhouse.org/report/freedom-press/2013/south-korea#VEYe9\\_msWBo](http://www.freedomhouse.org/report/freedom-press/2013/south-korea#VEYe9_msWBo).

<sup>34</sup> Choe Sang-Hun, North Korea Claims Rockets Were Unrelated to Pope’s Trip, The New York Times, 15 August 2014.

<sup>35</sup> ROK, NSA, article 1(1).

<sup>36</sup> United States Department of State (USDS), Country Report on Human Rights Practices for 2013 – the Republic of Korea, 2013 [hereinafter: USDS, ROK, 2013].

<sup>37</sup> Asian Human Rights Commission (AHRC), South Korea: Rising attacks on rights of defenders under the National Security Act, 10 February 2012 [hereinafter: AHRC, 2012].

<sup>38</sup> Amnesty International (AI), Amnesty International Report 2013, 2013, p. 150 [hereinafter: AI, Report, 2013].

<sup>39</sup> AI, Open letter to President Park Geun-Hye, 24 February 2014 [hereinafter: AI, Open letter, 2014].



the limitations of the freedom of expression were in violation of the requirements of article 19(3) ICCPR. During the second UPR, four recommendations on the NSA were issued but received a defensive response by the Government.<sup>40</sup> The delegation affirmed that the application of the law was limited only to cases of clear threat of actual harm to the existence and security of the State or the democratic fundamental order, sweeping away the allegation that the NSA could violate the right to freedom of expression, assembly or association.<sup>41</sup>

### Restrictions to the freedom of expression: the crime of defamation

Another problematic issue is the broad definition and criminalisation of defamation, which seriously threatens the freedom of expression and freedom of the press. Article 21(4) of the Constitution states that *“Neither speech nor the press shall violate the honour or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honour or rights of other persons, claims may be made for the damage resulting therefrom.”*<sup>42</sup> As it was noted by the UN SR on the Situation of Human Rights Defenders (UN SR on Human Rights Defenders), *“according to this, defamation is a criminal offence, which carries heavy fines and prison sentences.”*<sup>43</sup> Indeed, the Criminal Act’s chapter 33 provides for a sentence of imprisonment of up to five years if a person alleged *“false facts”* (article 307), and for a sentence of imprisonment of not more than two years or by a fine not exceeding five million won for *“publicly alleging facts”* (chapter 38).

The use of criminal prosecutions by the Korean authorities has severely curtailed freedom of expression in the Republic. In 2012, according to a media report, more than 13,000 defamation complaints were filed and 3,223 persons were convicted, with most of those who were found guilty fined and 24 sentenced to prison.<sup>44</sup> These very high figures give an idea of the large use made of the provision of defamation. The SR on Human Rights Defenders therefore echoed the SR on Freedom of Opinion and Expression in calling for the removal of defamation as an offence in the Criminal Act, adding that this was conducive to behaviours of self-censorship on the part of human rights defenders.<sup>45</sup>

It has to be noted that whistle-blowers are legally protected by the Act on Protection of Public Interest Whistle-blowers since 2011.<sup>46</sup> However, individuals who recently denounced corruption cases were sanctioned harshly under other legal provisions. In February 2013, for example, Mr. Roh Hoe-chan, Parliamentarian, lost his seat in the National Assembly after being convicted by the Supreme Court under the Protection and Communications Secrets Act of 1993 because of his

<sup>40</sup> UN Universal Periodic Review (UPR), Report of the Working Group on the Universal Periodic Review: Republic of Korea, UN Docs. A/HRC/22/10, 12 December 2012, recommendations 54–57 [hereinafter: UPR, A/HRC/22/10].

<sup>41</sup> UPR, Report of the Working Group on the Universal Periodic Review: Republic of Korea – Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Docs. A/HRC/22/10/Add.1, 16 January 2013, para. 31 [hereinafter: UPR, A/HRC/22/10/Add.1].

<sup>42</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, para. 18.

<sup>43</sup> Ibid., para. 20.

<sup>44</sup> USDS, ROK, 2013.

<sup>45</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, para. 21.

<sup>46</sup> ROK, Act on Protection of Public Interest Whistle-blowers No. 10472 of 29 March 2011.

accurate denunciations of bribes from Samsung.<sup>47</sup> Despite the fact he served the public interest by bringing to the light Samsung's bribery scandal, he did not benefit of the protection of the Whistle-blower Act.

At the second UPR, however, the Korean delegation fully supported the recommendation to ensure that laws on freedom of expression and freedom of the press are applied in conformity with international standards.<sup>48</sup>

### Freedom of expression in the online world

Freedom of expression online is a very important right in South Korea, noted as *"one of the most wired countries in the world"* by Freedom House, with an estimated 84 per cent of users in the population.<sup>49</sup> Freedom House gives it a general rating of *'free'* but for Internet freedom as well as press freedom it labels South Korea as only *"partly free"*.<sup>50</sup>

With the increasing presence of the Internet in the lives of Koreans, restrictions have been placed in the legal framework. This is for example the case for the crime of defamation, which was also extended to the online world, with the introduction of article 70 in the Network Act in 2001, concerning specifically defamation on the Internet, and thus stipulating that a person who defames another by disclosing a fact to the public via the Internet is punishable by imprisonment, whether the facts alleged are true or not.<sup>51</sup>

This article 70 became controversial not only because it even sanctions the publication of true facts, which can potentially serve public interest, but also because it is directly contradicting another provision of the Criminal Act, its article 310, which mentions that *"If the facts alleged [...] are true and solely for the public interest, the act shall not be punishable."* This confusion was often denounced by CSOs, and the UN SR on Human Rights Defenders noted with concern that defamation suits were still filed, even in cases where statements were true and in the public interest.<sup>52</sup>

Not surprisingly, in the online world as well, national security is an argument to restrict freedom of expression. Further to strengthening the legal framework specifically related to the Internet, a censoring body was established in 2008, harshly limiting the freedom of online expression. In 2013, in fact, 23,000 webpages were deleted and 63,000<sup>53</sup> others blocked by censors of the Korea Communications Standards Commission (KCSC),<sup>54</sup> an entity regulating the Internet, and criticised for the unclearly defined standards it applies to exert censorship on defamation and anything else that threatens national security.<sup>55</sup> The KCSC restricts not only State-owned websites from the

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<sup>47</sup> Freedom House, Freedom on the Net 2013, South Korea, 2013 [hereinafter: Freedom House, 2013].

<sup>48</sup> UPR, A/HRC/22/10/Add.1, para. 26.

<sup>49</sup> International Telecommunications Union, available at: [www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx](http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx).

<sup>50</sup> Freedom House, South Korea: Profile, available at: [www.freedomhouse.org/country/south-korea#.Ux8FqU4PG8](http://www.freedomhouse.org/country/south-korea#.Ux8FqU4PG8).

<sup>51</sup> According to article 70 of the Network Act, if the facts are true, imprisonment can go up to 3 years and the fine to up to 20 million won. If they are false, the prison sentence can be of a max of 7 years, and the fine to a max of 50 million won. By 29 November 2014, a modification of the Network Act will enter into force, foreseeing an increase in the fine to up to 30 million won if the alleged facts are true. See [http://koreanlii.or.kr/w/images/d/df/DPAAct2014\\_ext.pdf](http://koreanlii.or.kr/w/images/d/df/DPAAct2014_ext.pdf).

<sup>52</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, para. 24.

<sup>53</sup> These figures increased dramatically since 2008, where 4731 webpages were blocked and 6442 deleted.

<sup>54</sup> The Economist, Why South Korea is really an Internet dinosaur, 10 February 2014 [hereinafter: The Economist, 2014].

<sup>55</sup> Chico Harlan, In South Korea, a shrinking space for speech, Washington Post, 22 December 2011.

North, such as the State newspaper or news agency, but also censors webpages of alleged North Korean “*sympathisers*”.<sup>56</sup> While the KCSC does actually not block webpages itself but issues requests, it however has the power to issue administrative orders, the non-compliance of which results in sanctions under the Criminal Act. Content providers hence usually conform to the requests of the Commission.<sup>57</sup> A major concern is that authors of censored content are not pre-notified of KCSC’s decision, and only receive the order. Thus they cannot defend their right to publish. Also, since no independent way to appeal exists, but only the possibility for the authors to challenge the Commission directly, the KSCS is given space to make politically motivated judgements lacking legal grounds. As a result, authors practice self-censorship, especially with regard to publications on the DPRK.<sup>58</sup>

The problem is that the numerous prosecutions have had a serious chilling effect on normal Internet users that merely seek to express their opinion on North Korean issues. A very emblematic one is the case of Mr. Park Jeong-Geun, sentenced to a suspended 10 months prison term for re-tweeting messages coming from a banned website of North Korea. Although judges acknowledged the fact he was using parody, he was nevertheless convicted for “*supporting and joining forces with an anti-state entity*.”<sup>59</sup>

In order for the censoring process to be carried out more independently from the authorities, the NHRCK recommended the transfer of the KCSC’s powers to an autonomous civic institution, which could be more impartial and balanced in its actions. Although the NHRCK advised to keep the KCSC as a supervising entity in that new potential model, it thought that this institution could be avoiding “*archaic methods for monitoring online content*”<sup>60</sup> that infringe upon the freedom of expression. This recommendation has yet to be followed, and so far the authorities still use their regulatory arm to block contents on the Internet under claims of defamation. The Korean authorities showed a willingness to look into that issue at the second UPR, when stating that the recommendation “*take further actions to ensure freedom of expression on the Internet, including opinions which are different from the positions of the Government*” enjoyed their full support.<sup>61</sup>

### **Denial of entry in the country as a restriction of freedom of expression**

The authorities have also been said to abuse their right to deny access to the ROK to critics or human rights advocates. The environmental organisation Greenpeace for example, which established a new office in the country in July 2011, has since seen six of its members working on nuclear issues refused entry without explanations. Greenpeace sued the Korean Ministry of Justice in December 2012 for violating their right to freedom of expression and association over

<sup>56</sup> The Economist, 2014.

<sup>57</sup> NHRCK, For the Sake of Human Rights, 1 May 2012, p. 140 [hereinafter: NHRCK, For the Sake of Human Rights, 2012].

<sup>58</sup> Freedom House, 2013.

<sup>59</sup> AI, Report, 2013.

<sup>60</sup> NHRCK, For the Sake of Human Rights, 2012, p. 141.

<sup>61</sup> UPR, A/HRC/22/10/Add.1, para. 26.

*“attempts to prevent anti-nuclear criticism”*<sup>62</sup>, which was concluded by a settlement in June 2013. The environmental group agreed to drop the charges with an understanding that positive measures would be adopted.<sup>63</sup>

The interviews with local human rights actors in Seoul have confirmed that restrictions to the freedom of expression are one of the key human rights concerns in the country and some even stated that the environment has gotten more restrictive lately. The current legal framework and the arbitrary application of the laws seriously impede the exchange of opinions and the work of the press, crucial in a democratic society. International and national actors have called for the abolishment or serious reform of the legal framework, notably the NSA. However, these calls are neither supported by current politics, nor by the Supreme Court<sup>64</sup> and the continuing security threats emanating from the North give little hope for a prompt and meaningful reform.

### 3. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

#### Freedom of religion

The Constitution and other laws and policies protect the freedoms of thought, conscience and religion, rights also enshrined in article 18 ICCPR and article 18 UDHR. Article 20 of the Constitution states that *“All citizens enjoy the freedom of religion. No state religion may be recognised, and church and state are to be separated.”*

Various religions co-exist peacefully in the ROK, such as Christianity, Buddhism, and Confucianism. South Korea has no majority religious group, and 46% of the population is not affiliated to any religion. There is no State religion, and the authorities do not subsidise any. Christianity is the biggest religious group, amounting to 30% of the population. The country is also known to have low levels of social hostilities toward or among religious groups.<sup>65</sup>

Detainees in prisons are also provided with freedom of religion under article 20 of the Constitution. Since 3 July 2003, and upon a recommendation of the NHRCK, all detainees have been granted freedom of religion. The NHRCK had found that the prohibition of religious gatherings by some minorities, such as the Jehovah’s Witnesses, was a violation of their right to equality.<sup>66</sup>

In practice, the Government of South Korea is therefore considered to generally respect religious freedom.<sup>67</sup>

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<sup>62</sup> AI, Report, 2013.

<sup>63</sup> Greenpeace, Greenpeace Directors re-enter Korea as denial of entry ends, Press release, 2 July 2013.

<sup>64</sup> See AI, The National Security Law: Curtailing freedom of expression and association in the name of security in the Republic of Korea, 2012, p. 15 [hereinafter: AI, The National Security Law, 2012].

<sup>65</sup> Pew Research Centre, Religious Hostilities Reach Six-Year High, January 2014, pp.64 and 68.

<sup>66</sup> UN Human Rights Committee (HR Committee), Third periodic report: Republic of Korea, UN Docs. CCPR/C/KOR/2005/321, 21 February 2005.

<sup>67</sup> USDS, International Religious Freedom Report for 2013, 2013.

## Freedom of conscience: the case of the conscientious objectors

Despite the fact that freedom of conscience is protected by the international and domestic legal framework, South Koreans cannot invoke it to avoid conscription. Military service is compulsory, the Constitution stating that *“All citizens shall have the duty of national defence under the conditions as described by Act.”*<sup>68</sup>

Individuals who receive the notice of draft for military service but refuse to be drafted on account of religious belief and conscience are arrested and charged under article 88 of the Military Service Act.<sup>69</sup> This article provides that *“Persons who have received a notice of enlistment or a notice of call (including a notice of enlistment through recruitment) in the active service, and who fail to enlist in the army or to comply with the call, even after the expiration of the following report period from the date of enlistment or call, without any justifiable reason, shall be punished by imprisonment for not more than three years [...]”*<sup>70</sup> Under this article, around 700 conscientious objectors are imprisoned every year.<sup>71</sup>

The Judiciary strictly enforces this law. In July 2004, the Supreme Court of Korea assessed in an emblematic judgment that conscientious objectors must serve in the army or be imprisoned. The Constitutional Court came to the same conclusion in a judgment of August 2004, when it stated that *“[...] the right to request alternative service arrangement cannot be deduced from the freedom of conscience”* and in a separate ruling delivered in August 2011, where it rejected a challenge to article 88 made on grounds of incompatibility with the right to freedom of conscience. The Constitutional Court thus ruled that the application of criminal punishment to conscientious objectors did not infringe on the freedom of conscience guaranteed in the Constitution, and refused to recognise their right to decline military service.

The Supreme Court, however, has occasionally expressed a less radical view, opening the door to the development of alternatives to conscription. In January 2005 for example, the Court stated that *“under the current law system, it would be desirable to introduce an alternative service to replace the mandatory military service, rather than forcing those who, like the defendant, have a strong determination to maintain a religious or conscientious decision in spite of the prison sentences to perform the military service.”*<sup>72</sup> Also, a debate had been opened by the authorities on the possible introduction of alternative service for objectors of conscience, which is reportedly put on hold since December 2008.<sup>73</sup>

At the international level, the HR Committee wrote four Views in the last decade, following the submission of individual communications from Korea. The Committee, referring to article 18 ICCPR, increasingly strongly affirmed over the years that the obligation to carry lethal weapons and use them to kill other human beings collides with the freedom of conscience and religion.

<sup>68</sup> ROK, Constitution, article 39.

<sup>69</sup> ROK, Military Service Act of 6 August 1949, last amended by Act No. 11042 of 15 September 2011.

<sup>70</sup> ROK, Military Service Act, article 88 (1), *“Evasion of Enlistment”*.

<sup>71</sup> AI, Open letter, 2014.

<sup>72</sup> ROK, Supreme Court, Sung-Hwan Lim v. the Republic of Korea, 13 January 2005.

<sup>73</sup> AI, Submission to the UPR, July 2012, pp. 1 and 3.

The *Yoon and Choi v. the Republic of Korea*<sup>74</sup> communication concerned two Jehovah's Witnesses who had been sentenced to 18 months of jail for refusing to serve in the army, a decision subsequently upheld by the Supreme Court. The Government had argued that the military service system was directly linked to issues of national security, the ROK facing the specific circumstances of being the neighbour of a hostile DPRK. It further said that allowing exceptions to military service duty might prevent social unification, as this might foster a sense of unequal treatment for the individuals accepting to serve. Civil alternatives to service might also constitute a dangerous option, it alleged, since a large number of individuals might prefer it to military service. Although showing an understanding for the difficult geopolitical situation of the country, in its Views of 3 November 2006, the HR Committee rejected all arguments, citing examples of other countries, and concluded that Korea had violated article 18 ICCPR.

Again on 23 March 2010, in *Jung et al. v. the Republic of Korea*<sup>75</sup> — which contained eleven similar individual communications — the HR Committee ruled that the Government of Korea had violated the ICCPR, and exactly a year later it took the same decision in *Jeong et al. v. the Republic of Korea*.<sup>76</sup>

In the latest Communication related to conscientious objectors,<sup>77</sup> 388 Jehovah's Witnesses had been sentenced to 18 months of jail for refusing compulsory military service. In this View, the HR Committee concluded that Korea had the obligation under article 18 ICCPR to grant alternative service to conscientious objectors, contending that conscientious objectors only amounted to a figure of around 2% of those enlisted every year, a figure too low to influence Korea's capacity to defend itself, as was argued by the Korean Government. The HR Committee added that *"the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs."*

The HR Committee thus requested Korea to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. It also stated that the State would be obliged to avoid such violations in the future, through for example the adoption of legislative measures guaranteeing the right to conscientious objection.

In this View, the Committee showed a stronger language than in the past, reflecting a considerable evolution in its case law on the right to conscientious objection to military conscription, and some impatience toward the lack of enforcement of its decisions in the ROK.

At the second UPR, CSOs also raised their concerns about the obligation of military service, calling for the development of civil alternatives to conscription, and solutions that would avoid life criminal records for the objectors. Numerous States issued recommendations, among which to adapt existing national legislation to allow for civil service, abolish prison terms for objectors,

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<sup>74</sup> HR Committee, Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea, Communications Nos. 1321/2004 and 1322/2004, UN Docs. CCPR/C/88/D/1321-1322/2004, Views of 3 November 2006.

<sup>75</sup> HR Committee, Eu-Min Jung et al. v. the Republic of Korea, Communications Nos. 1593 to 1603/2007, UN Docs. CCPR/C/98/D/1593-1603/2007, Views of 23 March 2010.

<sup>76</sup> HR Committee, Min-Kyu Jeong et al. v. the Republic of Korea, Communications No. 1642-1741/2007, UN Docs. CCPR/C/101/D/1642-1741/2007, Views of 24 March 2011.

<sup>77</sup> HR Committee, Jong-Nam Kim et al. v. the Republic of Korea, Communication No. 1786/2008, UN Docs. CCPR/C/106/D/1786/2008, Views of 25 October 2012.

and free the ones currently imprisoned.<sup>78</sup> The ROK replied it would examine the issue while taking into consideration the future changes in the security situation and formation of public consensus, thus showing rather weak commitment to change the status quo. The delegation further repeated the same arguments presented to the Committee, such as the difficult situation of a country neighbouring the DPRK, the procurement of military resources under a conscription system, the lack of burden sharing of military duties and the lack of public consensus.<sup>79</sup>

Despite growing concerns and protests at the national and the international levels, the Judiciary and the successive Governments have not shown much willingness to change this situation, and the objection to military service remains criminalised.

#### 4. FREEDOM OF ASSEMBLY AND ASSOCIATION AS WELL AS THE RIGHT TO FORM A UNION

South Korea faces numerous criticisms for its frequent curtailing of the freedoms of assembly and association. Certain particularly repressive clauses of the domestic legal framework seem to be recurrently used to prevent gatherings, in connection with heavy fines or criminal proceedings. Furthermore, force has been used violently and disproportionately in a number of cases, together with intimidations, harassment, and other strategies. Other issues included preventing strikers from accessing food and medicines, or failing to protect them against violent attacks by private security companies. Impunity seems to prevail in most cases, and often law enforcement officials wear no nametags, making the identification of individual perpetrators very challenging. Heavy restrictions are placed on unions in the country, as several types of professionals and laid-off workers are banned from belonging to one. The authorities also put barriers to the registration of some unions. Moreover, they claim massive damages in cases of strikes, or seize property, and criminal sanctions such as imprisonment are applied for leaders legitimately exercising their activity.

At the international level, the rights to freedom of peaceful assembly and association are recognised under article 20 UDHR, articles 21 and 22 ICCPR as well as article 8 ICESCR. They are also enshrined in different other treaties and regional conventions.<sup>80</sup>

At the domestic level, these rights are also protected. In December 2010, in a response of the Government to an urgent appeal issued by the UN, the authorities stated that *“the Republic of Korea’s legal system guarantees the right of peaceful assembly and demonstration. Any restrictions on the exercise of the right are applied under strict requirements in accordance with the law.”*<sup>81</sup>

The right to peaceful assembly is guaranteed by article 21 of the Constitution, which states that *“(1) All citizens enjoy the freedom of [...] assembly and association. (2) Licensing or censorship [...] of assembly and association may not be recognised.”* Further, article 33(1) guarantees that

<sup>78</sup> UPR, A/HRC/22/10.

<sup>79</sup> UPR, A/HRC/22/10/Add.1, para. 30.

<sup>80</sup> CEDAW, article 7; International Labour Organisation (ILO), Convention on Freedom of Association and Protection of the Right to Organise, No. 87, adopted on 9 July 1948, entered into force on 4 Jul 1950.

<sup>81</sup> UN SR on Human Rights Defenders, Joint Allegation Letter to the Republic of Korea, UN Docs. A/HRC/16/44/Add.1, 28 February 2011, para. 2008 [hereinafter: UN SR on Human Rights Defenders, A/HRC/16/44/Add.1].

*“to enhance working conditions, workers have the right to independent association, collective bargaining, and collective action.”*

### **The freedom of association: restrictions on labour unions and collective action**

The ROK has been a member of the ILO since 1991 and is a party to 28 of its conventions, among which four of the core eight ones. The country, however, has not yet ratified two of its fundamental texts relating to freedom of association and collective bargaining, i.e. the Conventions No. 87 (1948) on Freedom of Association and Protection of the Right to Organise and No. 98 (1951) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.<sup>82</sup> Furthermore, as mentioned above, the authorities have not yet repealed the reservation made to article 22 ICCPR on freedom of association and the right to join trade unions, and this despite repeated calls by civil society and international organisations. During the second UPR, the authorities repeated their commitment to maintain the reservation, but added that they planned to *“consider withdrawing it by taking into account developments of domestic legislations and institutions on the right to form a trade union.”*<sup>83</sup>

In the ROK, the legal framework allows for the existence of trade unions and collective bargaining. It however places several heavy restrictions and clauses that limit the leeway of the unions and severely curtail the right to strike. The trade unions are regulated by the Trade Union and Labour Relations Adjustment Act (Trade Union Act), whose article 5 states that *“workers are free to organise a trade union or to join it.”*<sup>84</sup> Its amendment in July 2010 allowed the inclusion of the right to multiple labour unions in one workplace, which was seen as an improvement.

The Constitution, although it provides for freedom of assembly, restricts collective action and specific categories of workers under article 33, paragraphs (2) and (3), which state *“(2) Only those public officials who are designated by law, have the right to association, collective bargaining, and collective action. (3) The right to collective action of workers employed by important defence industries may be either restricted or denied under the conditions as prescribed by law.”* Also, article 5 of the Trade Union Act stipulates that public servants or teachers are subject to other enactments.

Moreover, the Act also prevents laid-off workers from remaining members of a union.<sup>85</sup> The International Trade Union Confederation (ITUC) reports the case of the Korea Teacher Union, which was de-registered by the authorities in October 2013 because it had allowed dismissed and retired workers as members.<sup>86</sup> Concerns were therefore expressed that trade unions’ establishment procedure was misused by the authorities.

Further than limiting the access of workers to unions, the legal framework, and in particular article 314 of the Criminal Act on obstruction of business, have been widely used to criminalise

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<sup>82</sup> ILO, Profile of the Republic of Korea, available at: <http://www.ilo.org/asia/countries/korea/lang--en/index.htm>.

<sup>83</sup> UN UPR, National Report: Republic of Korea, UN Docs. A/HRC/WG.6/14/KOR/1, 13 August 2012 [hereinafter: UPR, A/HRC/WG.6/14/KOR/1].

<sup>84</sup> ROK, Trade Union and Labour Relations Adjustment Act of 13 March 1997, last amended by Act No. 10339 of 4 June 2010, article 5.

<sup>85</sup> International Trade Union Confederation (ITUC), Survey of violations of trade union rights – Republic of Korea, updated in 2013, <http://survey.ituc-csi.org/Korea-44-Republic-of.html?lang=en#tabs-2>.

<sup>86</sup> Ibid.



strikes and demonstrations by union workers, and claim exorbitant damages through specialised consulting firms, heavily affecting trade unionists.<sup>87</sup>

Prosecutions under article 314, together with onerous claims for damages as well as seizure of property have been repeatedly denounced by the ILO,<sup>88</sup> which issued recommendations to ROK to avoid using this article to impose criminal punishment on trade union members. The UN Committee on Economic, Social and Cultural Rights (ICESCR Committee) also voiced its worry, stating that it is *“greatly concerned about the frequent prosecution of workers with regard to labour management relations and the excessive use of force demonstrated against striking workers, mainly on the grounds of article 314 [...]. The Committee reiterates its concern that trade union rights are not adequately guaranteed in the State party (article 8).”*<sup>89</sup>

An emblematic case in that regard is the one of Ssangyong Motor. In the framework of massive layoffs of 1,100 employees at Ssangyong in 2009, union workers went on a 77-day long strike and filed suits against the company to oppose the decision. Consequently, Ssangyong sued the unions for *“obstruction of business”* in May 2013, a claim that was upheld by a court in November. The Court ruled that these trade unions were to pay millions of dollars in compensation to the police and to the company for damages caused during the strike. Furthermore, Mr. Kim Jungwoo, former trade union leader of the Ssangyong branch of the Korean Metal Workers’ Union, was arrested in June 2013 while trying to prevent law enforcement officials from dismantling a protest calling for the reinstatement of the workers laid off by Ssangyong Motor, and sentenced to 10 months for *“special interference with a Government official in the execution of his duties.”* Although he was released from prison on 1 April 2014,<sup>90</sup> AI pointed out the fact that numerous other trade union leaders have been jailed or bailed as a result of legitimate activities.

For these reasons, the UN SR on Human Rights Defenders concluded that the right to strike in the country seems unduly restricted, calling the Government to remedy this shortcoming.<sup>91</sup>

## Freedom of assembly

The Assembly and Demonstration Act guarantees the right of peaceful assembly and demonstration, and states that *“those who obstruct the exercise of the right shall be subject to criminal liability.”*<sup>92</sup> The NHRCK has also continued to make efforts to expand freedoms of assembly and demonstration through recommendations to the authorities, comments to draft amendments and public opinions.<sup>93</sup>

The ROK made a reservation to article 22 ICCPR on the right to freedom of association. Despite the legal guarantees mentioned above, the right to assembly is also subject to a number of

<sup>87</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, paras. 49 and 69–74.

<sup>88</sup> AI, Urgent Action – Demand release of trade union leader, 14 March 2014.

<sup>89</sup> ICESCR Committee, A/C.12/KOR/CO/3, para. 20.

<sup>90</sup> IndustriALL Global Union, Korean union leader Kim Jungwoo is free, 7 April 2014, <http://www.industriall-union.org/korean-union-leader-kim-jungwoo-is-free>.

<sup>91</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, paras. 49 and 107 (j).

<sup>92</sup> ROK, Assembly and Demonstration Act, article 22.

<sup>93</sup> NHRCK, For the Sake of Human Rights, 2012, p. 51.

restrictions in the Korean legal framework, sometimes contradicting other domestic provisions. Several legal texts are particularly used to curtail freedom of assembly and association.

The Assembly and Demonstration Act, for example, contains provisions that regulate and limit the organisation of peaceful gatherings with heavy penalties for defaulters, which have been long condemned by the NHRCK.<sup>94</sup> Its articles 6, 8, 10 and 12 have been largely used to put a limit to the right to assembly and association.

Article 6(1) requires any person wishing to hold an outdoor assembly or demonstration to submit a detailed report of the planned event to the local police station. The Government explained in a letter to the UN that *“the purpose of this reporting system is to avoid multiple assemblies and demonstrations at the same place, to facilitate a smooth flow of traffic, to protect the privacy of the citizens, to prevent threat against important facilities (such as diplomatic offices and residences), and so forth.”*<sup>95</sup> However, it was reported by CSOs that this system is easily used by the authorities to prohibit gatherings, and some even reported that an average of 50% of the requests to demonstrate were denied. Hence, also the UN SR on Human Rights Defenders raised concerns *“with regard to a de facto authorisation system that contravenes the constitutional provision (article 21 of the Constitution) that prohibits licencing of assemblies and prior approval.”*<sup>96</sup>

Further, article 8 provides that the police may ban the assembly or demonstration if they consider the event to constitute a threat to public peace and order, while article 12 establishes that a demonstration can be banned or restricted if it disturbs traffic order (referred to as *“obstruction of traffic”*). A violation of the prohibition is then punishable by a maximum two years’ imprisonment or a fine of a maximum of two million won.<sup>97</sup>

The candlelight protests in the past were mostly held at night under the guise of a cultural celebration or festivities, to circumvent article 10 of the Assembly and Demonstration Act prohibiting demonstrations after sunset and before sunrise. In the aftermath of the candlelight demonstration of 2008, triggered by the Government’s decision to lift the ban on American beef import that had been imposed in 2003 in the context of the mad cow disease, charges were pressed against 1,258 civilians. Many of these charges were under article 10.<sup>98</sup> In September 2009, however, the Constitutional Court ruled over the case of a man charged for organising the rally of the candlelight demonstration, holding that article 10 violated the spirit of the Constitution with regard to the freedoms of assembly and association. As a result article 10 became void, and all the cases related to it were dismissed. Yet, Parliamentarians from the ruling party as well as former police officers proposed new amendments to the Act in order to re-establish restrictions on the right to assembly during the night.<sup>99</sup> On 27 March 2014, the Constitutional Court ruled that the ban

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<sup>94</sup> See past Annual Reports of the NHRCK.

<sup>95</sup> UN SR on Human Rights Defenders, A/HRC/16/44/Add.1, para. 2004.

<sup>96</sup> ROK, Assembly and Demonstration Act, article 22.

<sup>97</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, para. 40.

<sup>98</sup> AI, Amnesty International Report 2010, 2010 [hereinafter: AI, Report, 2010].

<sup>99</sup> Minbyun, 2014.

of night-time rallies is only partly unconstitutional, setting midnight as the threshold to prohibit demonstrations, and hence restricting the freedom to assembly and association again.<sup>100</sup>

Together with the Assembly and Demonstration Act, also the Criminal Act has been applied to curtail the freedom of assembly.<sup>101</sup> Several of its articles are often used by the authorities in a repressive way. Since police cannot issue arrest warrants easily for acts that fall under statutory punishment, such as unauthorised and banned assemblies, law enforcement officials circumvent this issue by applying the Criminal Act's article 185 on "*General obstruction of traffic*" to make arrests. The NGO Minbyun states that 88% of the persons brought to trial were charged under article 185.<sup>102</sup> Prison sentences for a violation of article 185 can go up to 10 years, and the fine to 15 million won. This heavy sentence is of course a strong deterrent for a lot of people to exert their rights.

Additionally, the right to peaceful assembly has been limited by the frequent use against protesters of article 314 of the Criminal Act, called "*obstruction of business.*" The UN SR on Human Rights Defenders has reported that "*exorbitant damage claims*" have been imposed in civil suits under article 314.<sup>103</sup> Compensation suits and fines seem to be applied in a large number of cases as a mere restraining tool, with the clear objective to curb social actions. Their amount often reaches several billions of won, and is at times accompanied by property seizure, which creates great fear among the defendants.<sup>104</sup>

Furthermore, the police have been frequently using physical means to restrict demonstrations by blocking access to sites, for example by closing bridges or curtailing areas with police buses, thus preventing demonstrators to access or exit a place freely.<sup>105</sup> Law enforcement officials have also committed acts of intimidation, sometimes in conjunction with physical or verbal abuses (see below excessive use of force). Moreover, demonstrators are being controlled and intimidated, as it happened in Myriang in a case concerning the construction of an electric tower. During a protest, officials forced villagers to remove masks they were wearing for anonymity, took photographs of them and recorded information about them, a collection of evidence in contravention of Korean law, and clearly aiming at intimidating the villagers. Some CSOs reported that in recent rallies they had organised, around half of the police officials were not wearing nametags at all, or had them hidden under their jackets. These measures have been criticised as being employed to create an environment of fear during demonstrations and deterring persons to exercise this right.

## 5. FREEDOM FROM TORTURE AND ILL-TREATMENT

The prohibition of torture and other forms of cruel, inhuman and degrading treatment and punishment (ill-treatment) is enshrined in numerous human rights treaties (e.g. article 7 ICCPR)

<sup>100</sup> The Korea Times, Ban on night protests, 28 March 2014, available at: [http://www.koreatimes.co.kr/www/news/opinion/2014/03/202\\_154264.html](http://www.koreatimes.co.kr/www/news/opinion/2014/03/202_154264.html).

<sup>101</sup> AHRC, 2012.

<sup>102</sup> Minbyun, 2014. Minbyun cites other Acts used by the authorities to arrest and otherwise limit the freedom of assembly, such as the Minor Offences Act, or the Outdoor Advertisements [...] Control Act.

<sup>103</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, paras. 78–80.

<sup>104</sup> Minbyun, 2014.

<sup>105</sup> NHRCK, NHRCK Says Dispersing Protesters while Surrounding them on All Sides is a Violation of Human Rights, Press release, 23 August 2013

and considered customary international law. While torture as defined in article 1 CAT requires a specific purpose and intention to inflict severe pain or suffering, ill-treatment can also be inflicted by very poor conditions of detention or excessive use of force during demonstrations. The latter is reportedly a great concern in the ROK, as documented by human rights actors. The situation in detention is more difficult to assess due to the opacity of places of detention and little public accessible information on the issue in the ROK. South Korea has ratified the CAT in 1995 and is obliged to submit a State report under the every four years (article 19 (1)). However, it has submitted its last report in 2006 making it thus an issue sparsely documented in the UN system.

Article 12(2) of the Constitution and article 125 of the Criminal Act prohibit torture and “*violence and cruel acts*”. However, there is no definition of torture in Korean legal texts, and the maximum sentence of five years is not commensurate to the gravity of the crime in accordance with article 4 CAT.<sup>106</sup>

Nevertheless it can be held that over the last decade the ROK achieved significant progress in the protection of persons in detention, first by the establishment of the NHRCK with the mandate to inspect places of detention, receive and investigate complaints, and provide remedies; and then with the establishment of civilian monitoring bodies and the revision of the Criminal Procedure Act<sup>107</sup> to enable judges to examine individuals before arrest and reinforce the protection during interrogations.<sup>108</sup> The NHRCK reported that “*torture against persons in detention by investigative agencies and other national bodies has remarkably been reduced*” from 2007 to 2009.<sup>109</sup>

Despite significant improvement, instances of torture and ill-treatment can still occur in South Korea. Regarding the acts of police and other law-enforcement agencies, the history of torture and ill-treatment in the ROK is closely connected to the security situation in the country and the application of the special security laws mentioned in earlier sections. International human rights mechanisms have acknowledged the security problems and tense situation in the Korean Peninsula, nevertheless emphasising the absoluteness of the prohibition of torture and ill-treatment that allows for no justification even in exceptional circumstances.<sup>110</sup>

Prisons are characterised by an authoritarian and repressive penitentiary regime, with often serious consequences for the personal integrity of the detainees. However, instances of torture and ill-treatment have not only taken place in police stations and prisons. The NHRCK stated in its 2012 Annual Report that “*habitual and various kinds of violence happening in school, at home, in the military and in welfare facilities as well as sexual violence against women have emerged as serious social problems.*”<sup>111</sup>

### Excessive use of force

One of the key concerns regarding ill-treatment in the ROK highlighted by numerous NGOs and by the UN SR on Freedom of Opinion and Expression is the excessive use of force by law enforcement

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<sup>106</sup> CAT Committee, CAT/C/KOR/CO/2, para. 4; UPR, Working Group report 2012, paras. 52, 124.13 et al.

<sup>107</sup> ROK, Criminal Procedure Act of 23 September 1954, as amended by Act No. 9765 of 9 June 2009.

<sup>108</sup> CAT Committee, CAT/C/KOR/CO/2, para. 3.

<sup>109</sup> NHRCK, UPR submission to the UN Human Rights Council, 2007, para. 8.

<sup>110</sup> See e.g. CAT Committee, CAT/C/32/Add.1, paras. 53-54; ICCPR 1999.

<sup>111</sup> NHRCK, Annual Report 2012, p. 14.

officials during peaceful protests, and the widespread impunity for such acts.<sup>112</sup> During the second UPR and in response to the recommendation on the establishment of mechanisms preventing security forces from using force in an excessive or unjustified manner, especially against peaceful protesters<sup>113</sup>, the Government replied that this was unnecessary, as monitoring was sufficiently carried out by the National Assembly, courts, prosecutors, the NHRCK, Police Commission, CSOs and the media.<sup>114</sup> The authorities thus brushed away concerns that excessive force could be used in South Korea.

There are several cases that illustrate the problem of excessive use of force by police officials during demonstrations, such as the candlelight demonstration of 2008 regarding the lifting of the US beef import ban and the Yongsan incident, during which six people including a police officer died in the course of a raid to evict tenants from a building in January 2009. The authorities repeatedly blamed the victims for the incident, also accusing them not to be actual tenants in the building. Excessive force was also employed by law enforcement officials in the Ssangyong Motor sit-in protest in 2009, during which some strikers were seriously injured by Taser stun gun and liquefied tear gas dropped by the police from helicopters on the plant or by water cannons. Furthermore, strikers were prevented from accessing food, water, medical treatment and other basic needs.<sup>115</sup> The Parliamentary inspection, promised by President Park during her electoral campaign, still has to be carried out.<sup>116</sup>

After the massive candlelight protest in 2008, the NHRCK received more than a hundred complaints about police violations of human rights, which prompted it to launch an official investigation. The NHRCK concluded that excessive force had been used against demonstrators, including the ones retreating, onlookers, some photographing the event as well as children or women. The NHRCK also noted that some police officers deliberately hid their nametags with black tape to not be identified in connection with excessive use of force, which made it difficult to carry out thorough investigations.<sup>117</sup> Despite the evidence brought forward by the independent investigation, no police officers were prosecuted for excessive use of force.<sup>118</sup>

The residents of Gangjeong, on Jeju Island, have opposed since 2009 the construction of a naval base, which would apparently destroy the seashore. Despite numerous peaceful protests since April 2011, as well as hundreds of arrests, the construction started in October 2012. Since then, AI reports that at least six demonstrators were hospitalised after the police tried to remove them forcibly at night.<sup>119</sup> The UN Special Procedures mandate-holders shared their concern with the Government in a joint allegation letter over *“harassment, intimidation and ill-treatment and detention by the police.”*<sup>120</sup>

<sup>112</sup> UN SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Report of the Mission to the Republic of Korea – Addendum, UN Docs. A/HRC/17/27/Add.2, 21 March 2011, para. 58.

<sup>113</sup> UPR, A/HRC/22/10, recommendation 36.

<sup>114</sup> UPR, A/HRC/22/10/Add.1, para. 27.

<sup>115</sup> AI, South Korea: Call for unimpeded access to food, water and necessary medical treatment for Ssangyong striking workers, Public Statement, 31 July 2009.

<sup>116</sup> AI, Republic of Korea: Demand release of trade union leader, Urgent Action No. ASA 25/002/2014, 14 March 2014.

<sup>117</sup> NHRCK, For the Sake of Human Rights, 2012, p.47.

<sup>118</sup> AI, Report, 2010.

<sup>119</sup> AI, Report, 2013, p. 151.

<sup>120</sup> UN Human Rights Council, Communication Report of Special Procedures, UN Docs. A/HRC/21/49, 7 September 2012, p. 53 (see Republic of Korea, Case No. KOR 2/2012, 30 May 2012).

A particularly worrisome trend reported by some NGOs is the increasing use of violence and verbal abuse by law enforcement officials against women, who seem to be more frequently arrested and harassed by the police than in the past.

The excessive use of force does not only concern State officials. CSOs have been reporting situations during which protestors were severely aggressed by private security companies, who were hired to protect the premises. It was reported that in several instances police officers were present, but did not intervene to protect actively the demonstrators against violence, thus violating their positive obligation to protect from ill-treatment committed by non-state actors. However, as it was stated by the UN SR on Freedom of Assembly, *“the right to peaceful assembly covers not only the right to hold and to participate in a peaceful assembly, but also the right to be protected from undue interference. [...] States have a positive obligation to actively protect peaceful assemblies.”*<sup>121</sup>

Not only from Jeju but also from Miryang, where local communities have been opposing the construction of a power-transmission tower for the last eight years, the SR on Human Rights Defenders has been receiving numerous testimonies of acts of intimidation, physical violence, sexual assault and harassment against the protestors. These acts have been reportedly perpetrated by employees of the private security company Korean Electric Power Corporation (KEPCO).<sup>122</sup> CSOs related that employees of KEPCO committed severe violence, such as *“beating a member of the city council and hitting the genital area of a Buddhist nun.”*<sup>123</sup> Furthermore, two local residents of Myriang killed themselves in a protest, hence showing their growing despair, helplessness and lack of support in a case that has been lasting for almost a decade without an agreement or sufficient consultations. Residents filed five petitions to the NHRCK between November 2013 and April 2014. However, most of them were either dismissed or postponed.<sup>124</sup> The case is still on-going.

The CSOs met in Seoul emphasised the urgency of the problem of excessive use of force during demonstrations and the lack of a Government response. They strongly regretted the lack of attention by the media on these emblematic cases.

### Interrogations

Torture occurs in very rare instances during interrogations in South Korea. This has, however, not always been the case. In fact, AI stated that, as a consequence of the application of the NSA, thousands were tortured between 1948 and 1990.<sup>125</sup>

The ROK was examined by international human rights monitoring mechanisms for the first time in 1996 by the UN Committee against Torture (CAT Committee),<sup>126</sup> and subsequently in 1999 by the HR Committee.<sup>127</sup> Deep concerns were expressed at that time on the fact that *“many political*

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<sup>121</sup> UN SR on the Rights to Freedom of Peaceful Assembly and of Association, Thematic Report, UN Docs. A/HRC/20/27, 21 May 2012, para. 33.

<sup>122</sup> UN SR on Human Rights Defenders, A/HRC/25/55/Add.1, paras. 75–78.

<sup>123</sup> The NHRCK-Watch, 2014, p. 21.

<sup>124</sup> Ibid., p. 22.

<sup>125</sup> AI, The National Security Law, 2012, p. 14.

<sup>126</sup> CAT Committee, Initial reports of States parties due 1996: Republic of Korea – Addendum, UN Docs. CAT/C/32/Add.1, 30 May 1996 [hereinafter: CAT Committee, CAT/C/32/Add.1].

<sup>127</sup> HR Committee, Concluding observations of the Human Rights Committee: Republic of Korea, UN Docs. CCPR/C/79/Add. 114, 1 November 1999 [hereinafter: HR Committee, CCPR/C/79/Add. 114].

*suspects still go through the “torture procedure” during interrogation, in an attempt to extract confessions from them*” and that the method of sleep deprivation is used routinely to extract confession, in some cases amounting to torture.<sup>128</sup> This was said to be facilitated by a legal system allowing for long periods of detention before being charged (up to a 50 days in police premises for interrogation purpose and up to 10 days before court approval), the lack of procedural safeguards and “*widespread reliance*” of investigators and courts on confessions. Moreover “*the establishment of special rules of detention, interrogation and substantive liability*” have been said to contribute to the risk of torture.<sup>129</sup> International mechanisms, furthermore, criticised the lacking criminalisation of torture, as well as the failure to carry out prompt and impartial investigations, prosecute perpetrators and ensure preventive monitoring of places of detention.

While the situation greatly improved over the last years,<sup>130</sup> isolated allegations of torture or other forms of ill-treatment in places of detention nevertheless persisted, facilitated by a continued arbitrary application of the NSA, a lacking definition of torture, and the impunity for torturers, as well as deficient safeguards, such as the absence of access to a lawyer during interrogation.<sup>131</sup> The NHRCK reported credible acts of torture in police stations in 2009 and 2010, including severe beatings to extract a confession.<sup>132</sup> In August 2011, AI reported that five men accused of espionage for the DPRK were allegedly verbally abused and threatened, while one was physically tortured to extract confessions.<sup>133</sup> A recent case of alleged abuse by the National Intelligence Service (NIS) during the interrogation of a witness demonstrates that the problem remains, in particular in sensitive cases such as espionage.<sup>134</sup>

There has also been criticism about the conditions in police stations, where accused may be held for up to 30 days. The permanent CCTV supervision over the cells does not give detainees any privacy, and even the toilets are in sight of guards, which detainees experience as very humiliating.

## Prisons

Already in 2006 the CAT Committee expressed its concern about the high number of suicides in detention facilities, noting the failure to investigate into the link between the number of deaths and the prevalence of violence, torture and other forms of ill-treatment.<sup>135</sup>

The ROK officially detains 47,969 persons in prisons (as of 31 July 2013), with 98 prisoners per 100,000 (ranking low on place 152 worldwide, together with Austria).<sup>136</sup> Reportedly, the prison regime in South Korea remains highly repressive and restricts the fundamental freedoms of

<sup>128</sup> CAT Committee, CAT/C/32/Add.1, para 13.

<sup>129</sup> See HR Committee, CCPR/C/79/Add. 114, para. 8.

<sup>130</sup> See USDS, ROK Country Report on Human Rights Practices for 2011, 2012, 2013, where the USDS states that ROK did not provide any credible reports on torture and ill-treatment over the last three years.

<sup>131</sup> HR Committee, Concluding Observations of the Human Rights Committee: Republic of Korea, UN Docs. CCPR/C/KOR/CO/3, 28 November 2006, para. 13 [hereinafter: HR Committee, CCPR/C/KOR/CO/3]; CAT, Conclusions and recommendations: Republic of Korea, UN Docs. CAT/C/KOR/CO/2, 25 July 2006, paras. 7 et seq [hereinafter: CAT Committee, CAT/C/KOR/CO/2].

<sup>132</sup> NHRCK, For the Sake of Human Rights, 2012, p. 54 et seq.

<sup>133</sup> AI, The National Security Law, 2012, pp. 28–29.

<sup>134</sup> UN SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression; SR on Human Rights Defenders; and SR on the Independence of Judges and Lawyers, Joint Allegation Letter, UN Docs. JAL G/SO 214, 3 July 2013.

<sup>135</sup> CAT Committee, CAT/C/KOR/CO/2, para. 14.

<sup>136</sup> See International Centre for Prison Studies, Highest to Lowest – Prison Population Rate, available at: [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All).

detainees. Prisoners have no right to wear their own clothing, and their correspondence is said to be undergoing censorship. Furthermore, concerns were expressed about the treatment of detainees during transfer, when they are bound with ropes and handcuffs and often exposed to the public, causing them serious humiliation.<sup>137</sup> Overall the Ministry of Justice reported 48 allegations of violence and abusive language by prison officials as of July 2013. The restrictive and authoritarian penitentiary regime has been said to lead to great frustration among the detainees and an increased inter-prisoner violence, on which guards usually turn a blind eye.

The removal of the voting right of the prisoners, a sanction long seen as disproportionate, has been judged as unconstitutional by the Constitutional Court in 2014, a decision much welcomed by CSOs.

There is reportedly a lack of personnel in prisons, in particular of medical staff, and a too low budget for healthcare, resulting in inadequate medical treatment. Detainees only receive medical assistance outside the prison if their state is “critical”. This decision is, however, made by the prison guards and not by the detainees themselves. When a situation becomes critical, directors of facilities need to sign a letter of external medical request. They are usually reluctant to do so since the costs are charged on the prison’s budget, and thus only act at a very late stage. The difficult access to a medical treatment has been highlighted by several stakeholders as a key concern.

Another important issue in the prison system is the use of punishment. In 2006, the HR Committee regretted “the continued practice of certain forms of disciplinary punishment, in particular, the use of manacles, chains, and face masks, and the continuation of disciplinary punishment through the “stacking” of 30-day periods of isolation without any apparent time limit.”<sup>138</sup> Also the NHRCK has criticised the “abuse of protective equipment and punishment”, recommending clearer rules and supervision as well as the right to defence of the victims.<sup>139</sup> The prison staff can draw on numerous measures of restraint, ranging from different forms of handcuffs, shackles and helmets, to straitjackets, restraint chairs and stretchers. These measures can be employed simultaneously and up to seven days.

While prison authorities are only allowed to use measures of restraint in case of escape or risk of harm to others or self-harm, the guards make this decision together with a “punishment committee” with little oversight. In theory, half of the committee’s members should be from outside the prison system, which was said to be rarely followed in practice. Also, regulations in that area are vague and leave space for abuse. Measures of restraint are thus reportedly overused and abused for the punishment of detainees. The use of restraints does not require prior approval and must only be documented after the application. Moreover, it is not supervised by a judge, and a large degree of arbitrariness seems to prevail.

Although prisoners can file a complaint to the authorities or the NHRCK, they are reportedly hesitant to do so. Reasons invoked are the fear of reprisals and the lack of trust in the implementation

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<sup>137</sup> NHRCK, *For the Sake of Human Rights*, 2012, pp. 92–93.

<sup>138</sup> HR Committee, CCPR/C/KOR/CO/3, para. 13.

<sup>139</sup> NHRCK, *Annual Report 2012*, April 2013, pp. 120–130 [hereinafter: NHRCK, *Annual Report 2012*].



of the NHRCK's recommendations, which are not binding. Appeals can be filed at the Ministry of Justice, but since this mechanism is not independent, detainees often fear to be relocated to another even more repressive facility as a punishment, and refrain from taking action. This was said to be aggravated by the lack of access to legal counsel: detainees often have no more than 10 to 15 minutes with their lawyer.

Furthermore, LGBT people are said to be at risk of discrimination in detention. Civil society representatives have reported the case of a transgender person refusing to cut her hair, who was subsequently placed in isolation for 20 days. In 2011, a transgender person harmed herself after the continuous refusal of the authorities to provide female cosmetic products. There seems to be a general lack of understanding for LGBT persons and no adequate policies or specific regime on how to deal with this vulnerable group. In consequence, LGBT persons are often held in solitary confinement without being able to take part in the general prison activities. Moreover, when they share cells, they are frequently held with individuals of their original gender, not their chosen one, which endangers them and is a disrespect of their identity.

### Military centres

The treatment and conditions of detention in military facilities are strictly confidential. Allegedly, there have been continuous human rights violations out of public sight or scrutiny. The NHRCK, which does not generally carry out monitoring of military facilities, has reported cruel and degrading punishment of trainees at an Army Centre in 2005, and opened an ex-officio investigation on 7 August 2014 into four base camps where significant abuses occurred, on *"inappropriate irrationalities in army such as violence and cruel acts."*<sup>140</sup> The human rights violations were said to be *"caused by a rigid barracks culture, the common perception that there is little room for human dignity in military camps, and a lack of apparatus for controlling malpractices perpetrated within camps due to the need for military security."*<sup>141</sup> In 2011, the NHRCK, following an on-site investigation in a military prison, expressed concern about *"widespread culture of tolerating abuse and brutality."*<sup>142</sup>

In the past, South Korea was very much in the spotlight due to ill-treatment and hazing in the military leading to deaths and serious injuries.<sup>143</sup> During the first half of 2013, there were 45 reported cases of suicides among military personnel generally attributed to abusive practices (72 in 2012).<sup>144</sup> In 2012, in response to the *"firearm accidents in the Marine Corps, suicides in the military, sexual harassment, those who fail to adapt to the military environment, and other issues that unfold in the military"*, the NHRCK formed a *"Policy Planning Group to Improve Human Rights Conditions in the Military"* and made numerous recommendations to improve the protection of human rights in the Army.<sup>145</sup>

<sup>140</sup> NHRCK, NHRCK decided to conduct an ex-officio investigation on violent and cruel acts in army and management system of soldier in concern, Press release, 14 August 2014.

<sup>141</sup> NHRCK, For the Sake of Human Rights, 2012, pp. 104–105.

<sup>142</sup> NHRCK, Annual Report 2011, June 2012, p. 84.

<sup>143</sup> See e.g. Choe Sang-Hun, Outrage Builds in South Korea in Deadly Abuse of a Soldier, The New York Times, 6 August 2014; CAT Committee, CAT/C/KOR/CO/2, para. 15.

<sup>144</sup> See USDS, Human Rights Report 2013, p. 2.

<sup>145</sup> NHRCK, Annual Report 2012, p. 48.

Recently, the AHRC<sup>146</sup> reported the torture to death of Mr. Yoon, a conscript bullied and sexually harassed for a month in a military camp, allegedly with the acquiescence of the military hierarchy. Sexual minorities are said to be even more at risk of sexual abuse and violence due to their sexuality. Discriminations against LGBT people is said to be rampant in the Army, where consensual anal sex is still a criminal offence according to article 92(6) of the Military Criminal Act, despite a revision of the law in 2013. The AHRC highlighted the fact that conscripts are reluctant to make use of internal complaints mechanisms. Reasons invoked are a mistrust in their efficiency, the risk to be subsequently isolated within the camps or labelled as a traitor, and even fear of disciplinary punishment. Officers are said to be hesitant to report abuses of colleagues due to the fear of not being promoted anymore, or having their unit sanctioned. Silence therefore remains the rule and in practice no independent mechanisms investigates incidents in the military.

### Juvenile, social and health care settings

In its submission to the first UPR, the NHRCK stated that *“instances of torture in detention facilities including prisons are reported to be decreased greatly; however human rights in protective facilities for the mentally-ill, the disabled, the older and children need to be urgently improved. Human rights violations, in particular in unregistered facilities, are reported to be serious; therefore, effective supervisory measures are needed. Additionally, policies for smaller and more personal facilities and the inclusions of said people in their communities are needed.”*<sup>147</sup>

While the Government has affirmed to have banned all forms of corporal punishment in 2011 and strengthened the protection of children through a Child Welfare Act in 2012,<sup>148</sup> ill-treatment in child care facilities and corporal punishment of children in schools reportedly continue.<sup>149</sup> In 2012, the UN Committee on the Rights of the Child (CRC Committee) reiterated its concerns about *“the continued prevalence of corporal punishment in the domestic, school and alternative care context”*, urging the Government to expressly prohibit such practice in all settings, carry out public education campaigns and establish adequate complaints mechanisms.<sup>150</sup>

CSOs have moreover reported frequent abuse of persons with disabilities in residential institutions, psychiatric hospitals and sanatoriums, including severe beatings and excessive provision of drugs.<sup>151</sup>

A key problem and cause for the continuing ill-treatment in social and health care facilities was said to be the lack of independent monitoring and complaints mechanisms.

### Arrest and detention of migrants

CSOs have reported that the treatment in migrant detention facilities (*“foreigner protection facility”*) is harsh, with frequent verbal and physical abuse. The material conditions are supposedly bad,

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<sup>146</sup> AHRC, South Korea: Military camps or government run torture centres?, 28 August 2014.

<sup>147</sup> NHRCK, UPR submission to the HRC, 2007, para. 9.

<sup>148</sup> UPR, A/HRC/22/10, para. 62.

<sup>149</sup> See Global Initiative to End All Corporal Punishment of Children, Briefing on the Republic of Korea for the Committee on the Rights of Persons with Disabilities, Pre-Sessional Working Group 1st session – April 2014.

<sup>150</sup> UN Committee on the Rights of the Child (CRC Committee), Concluding observations: Republic of Korea, UN Docs. CRC/C/KOR/CO/3-4, 2 February 2012, paras. 42 and 43.

<sup>151</sup> See The Korean DPO and NGO Coalition for UN CRPD Parallel Report, Submission for the LoIs on the Initial Report by the Republic of Korea, 2014, p. 27 et seq.

with overcrowded cells, poor sanitation and no adequate health assistance.<sup>152</sup> As a consequence, several persons have died and many became seriously ill over the past years.

A very specific issue is the treatment of North Korean defectors, who can be held for up to 6 months upon arrival in South Korea and interrogated by the NIS at the Joint Interrogation Centre in order to make sure that they are not spies. There is apparently no public information about how many are detained for such purposes, and most NGOs are very cautious to address the issue for political reasons. While this is officially a procedure to assess the eligibility for legal protection, it is in fact said to be a “*spy screening*” and a criminal investigation without any procedural guarantees. The immigrants are held without an arrest warrant, without notification to family members or any other legal safeguards. The treatment in these centres is strictly confidential and there is no independent monitoring of these facilities. Thus very little is known about the treatment of the detainees. However, they are allegedly held in solitary confinement, subjected to heavy psychological pressure and verbal abuse, a treatment most defectors accept as normal or even necessary to identify the “*real spies*”. Once accepted, the North Koreans are transferred to Hanawon, a facility opened in 1999 and providing integration and socialisation programmes. There seems to be no information about the whereabouts of individuals rejected by the screening at the Joint Interrogation Centre, not even about their number.

### Right to non-refoulement

The prohibition of torture and ill-treatment includes the prohibition to “*expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*” (article 3 CAT). In the past, South Korea had been criticised for deporting irregular migrants without ensuring that they will not risk to be submitted to torture and ill-treatment upon return.<sup>153</sup> In 2012, the Government adopted a new Refugee Act,<sup>154</sup> which the UNHCR described as a “*significant step in the development of the country’s asylum system.*”<sup>155</sup> Nevertheless, it was recommended to the Government to “*continue the ongoing efforts in improving the quality and procedural fairness of the asylum determination process, particularly by providing adequate human and financial resources, ensuring quality interpretation and recording of interviews.*”<sup>156</sup>

CSOs remain critical of the asylum system, denouncing in particular the limited number of successful grants of asylum (reportedly less than 10%), the lack of procedural guarantees and the inadequacy of the interpretation services. Asylum seekers who arrive at the airport can be submitted to speedy “*airport procedure*”, with a summary judgment and no right to appeal, which constitutes a worrisome situation. Refugees and asylum seekers also face numerous challenges

<sup>152</sup> See also Global Detention Project, South Korea: Detention Profile, June 2009, available at: [www.globaldetentionproject.com](http://www.globaldetentionproject.com).

<sup>153</sup> See AI, Report 2013; UN SR on Freedom of Religion or Belief; UN SR on the Independence of Judges and Lawyers; and SR on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Joint Allegation Letter, UN Docs. KOR 1/2012, 17 April 2012; UPR, Summary of stakeholders’ Information: Republic of Korea, A/HRC/WG.6/14/KOR/3, 19 July 2012, para. 85 [hereinafter: UPR, A/HRC/WG.6/14/KOR/3].

<sup>154</sup> ROK, Refugee Act No. 11298 of 10 February 2012, enforced on 1 July 2013.

<sup>155</sup> See UPR, Compilation of UN information: Republic of Korea, Un Docs. A/HRC/WG.6/14/KOR/2, 13 August 2012, para. 55 [hereinafter: UPR, A/HRC/WG.6/14/KOR/2]; see also CERC Committee, Concluding observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, UN Docs. CERD/C/KOR/CO/15-16, 23 October 2012, para. 4 [hereinafter: CERC Committee, CERD/C/KOR/CO/15-16].

<sup>156</sup> UPR, A/HRC/WG.6/14/KOR/2, para. 56.

during their application for protection. Upon their appeal of a negative decision from the Ministry of Justice, their file is reviewed by a committee. However, the applicants are not heard, as this committee does not meet the individuals in appeal before taking their decision. The procedure is criticised for not guaranteeing protection from refoulement. A positive aspect highlighted by certain organisations is that refugees have the right to work during the entire judicial procedure. Also, a better access to legal aid is provided by an increase in lawyers working pro bono through the Bar Association.

The lack of proper birth registration for children of refugees and asylum seekers has long been denounced by CSOs and UN experts. Also, women, who constitute around 30% of all migrant workers, are particularly vulnerable to sexual harassment or exploitation, as well as to other forms of violence.<sup>157</sup>

Another area of great concern is the fact that South Korea restricts the entry and stay of people with HIV/AIDS and is one of the few countries forcing HIV-positive foreigners to leave its borders.<sup>158</sup> Many migrant workers are obliged to do an HIV test and may — if the result is positive — be deported from the country. Human Rights Watch (HRW) reports that there is no information and no indication that the Government ensures that the deported persons would not be exposed to ill-treatment as a result of their removal.<sup>159</sup>

### Prevention of torture

A key issue with regards to torture and ill-treatment appears to be the need for regular and systemic monitoring of all places of detention. There is too little information on torture or other forms of ill-treatment in places of custody accessible to the public. Thus, the NHRKC as well as other national and international actors recommended the immediate ratification of the OPCAT and the establishment of an independent National Preventive Mechanism in charge of monitoring the situation of torture and ill-treatment and making recommendations for prevention.<sup>160</sup> In its responses to the recommendations made in the UPR of 2012, the delegation agreed to consider the ratification of the OPCAT and a reform of the Criminal Act to improve the criminalisation of torture and to bring it in line with articles 1 and 4 CAT. As a result of this legal shortcoming, a large impunity for such acts still prevails, since no perpetrators can be sanctioned for torture. Moreover, the delegation supported the recommendation to *“Further strengthen measures against torture and ill-treatment, investigate all allegations of torture by the police and prosecute the perpetrators.”*<sup>161</sup> As it had been highlighted by some States, South Korea needs to ensure the prompt independent investigation of all cases of torture.

At the second UPR, authorities also announced that education on human rights has been increased for prosecutors, law enforcement officials, correctional officers as well as immigration officers. An extra emphasis has been added in sensitive areas, such as women, sexual abuse against children, as well as immigration raids.<sup>162</sup>

<sup>157</sup> UPR, Summary of stakeholders' information: Republic of Korea, UN Docs. A/HRC/WG.6/2/KOR/2, 9 April 2008, para. 34.

<sup>158</sup> See HRW, *Returned to Risk: Deportation of HIV-Positive Migrants*, September 2009, p. 13 et seq.

<sup>159</sup> *Ibid.*, p. 14.

<sup>160</sup> See UPR, A/HRC/WG.6/14/KOR/3, para. 1; UPR, A/HRC/22/10, recommendations 1 and 3.

<sup>161</sup> See UPR, A/HRC/22/10, para. 124.37 and UPR, A/HRC/22/10/Add. 1, para. 23.

<sup>162</sup> UPR, A/HRC/WG.6/14/KOR/1, para. 70.

## 6. DEATH PENALTY

The ROK has not ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty and is not planning to in a near future. It has however not carried out executions since December 1997 and former president Kim Dae-Jung enacted a moratorium in 1998. The country is therefore considered abolitionist in practice. However, individuals continue to be sentenced to death, and there are around 60 prisoners on death row.

During the first UPR, numerous delegations had raised their concern about the fact Korea had not yet abolished death penalty, although it has suspended it since 1998.<sup>163</sup> In its national report of 2012, the Government explained that a thorough revision of the legal framework would be necessary in order to abolish the capital punishment and replace it by a life sentence.

Furthermore, the Constitutional Court upheld the legality of the capital punishment in February 2010, on the grounds that it did not infringe upon the right to dignity and value as human beings (article 10 of the Constitution).<sup>164</sup> Three bills calling for the abolition of the capital punishment lapsed following the end of the National Assembly's term.<sup>165</sup>

During the second UPR, the authorities expressed that the Government would continue to examine carefully the need to abolish the death penalty, taking into consideration factors, such as public opinion, legal perception and social realities, as well as the function of the death penalty in criminal policy.<sup>166</sup>

Serious concerns therefore continue to be expressed by civil society and international experts, and this especially since the debate over the use of capital punishment is frequently reopened in the society, most recently in the aftermath of the Sewol ferry accident on 16 April 2014.<sup>167</sup>

## 7. THE RIGHT TO NON-DISCRIMINATION AND RIGHTS OF MIGRANTS

### Lack of an Anti-Discrimination Bill

In 2004, the UN Secretary General published a report on racial and other discriminations,<sup>168</sup> in which he mentioned the imminent passing of a Discrimination Prohibition Bill in the Republic of Korea, drafted by the NHRCK. That Act, once promulgated, would explicitly prohibit racial discrimination, hate crimes and intolerance. Unfortunately it was never passed. In 2007, a draft of the Anti-Discrimination Bill initially included sexual orientation as a discriminatory ground to be prohibited. Shortly after, this new discriminatory ground was excluded by the Government. Several

<sup>163</sup> UPR, Report of the Working Group on the Universal Periodic Review: Republic of Korea, UN Docs. A/HRC/8/40, 29 May 2008, recommendations 20 and 27.

<sup>164</sup> ROK, Constitutional Court, No. ruling 2008hun-ga22, February 2010.

<sup>165</sup> AI, Annual Report 2013, p. 151.

<sup>166</sup> UPR, A/HRC/22/10, para. 106; UPR, A/HRC/22/10/Add.1, para. 18.

<sup>167</sup> Associated Press, South Korean ferry captain could face death penalty for abandoning ship as hundreds of passengers drowned, National Post, 15 May 2014.

<sup>168</sup> UN Secretary-General, Report on the Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, UN Docs. A/59/375, 21 September 2004, para. 41.

recommendations were made at the first UPR of 2008. The second UPR saw again numerous recommendations on the necessity of a broad Anti-Discrimination Bill encompassing a specific prohibition on discrimination based on sexual orientation.<sup>169</sup> This last point was more carefully answered by the delegation, which replied it would only consider including sexual orientation in the research and review process for the enactment of an anti-discrimination bill.<sup>170</sup> A special sub-committee composed by State officials, academics, legal experts and CSOs was set up in 2010 to discuss in depth the text of the Bill. A year later, two draft bills were proposed by Parliamentarians of the Democratic Party and submitted at the National Assembly. They, however, expired with the closing of the 18th session in May 2012.<sup>171</sup>

Ten years after the UN report, although around 90 different pieces of legislation concerning anti-discrimination exist,<sup>172</sup> no comprehensive anti-discrimination bill has been adopted by the National Assembly. The slow progress in this area and past failure to bring reform proposals through Parliament is mostly attributed to the lobbying activities of powerful religious groups opposing the inclusion of a specific ground of discrimination concerning sexual orientation. The current political context still does not appear to be very favourable to the enactment of a comprehensive bill, and perspectives in this area are rather limited for the time being.

### Migrant workers

The ROK has not ratified the UN ICRMW. In the country, migrants, and especially undocumented migrants, are frequently exposed to abuse and discrimination, despite improvements in the legal framework.

According to the authorities, migrant workers who come to South Korea under the 2003 Employment Permit System (EPS), are entitled to the same protection as Koreans. In theory, they cannot be discriminated against. However, migrant workers — and a fortiori undocumented ones — are very vulnerable to discrimination, exploitation, and lower or unpaid wages in the country.<sup>173</sup> With a revision of the EPS, amended in October 2009 to offer more protection, transfer applications based on unfair treatment, withholding wages, and other reasons beyond the responsibility of migrant workers should be accepted without restriction.<sup>174</sup> However, only migrant workers with no previous change of employer have been able to renew their visas. This element pressures the migrants to stay in workplaces even if they are abused and not to file complaints.<sup>175</sup>

With a very restrictive system of permits and visas, a large number of migrants remain undocumented, with no possibilities for them and their families to access services. Hundreds have been arrested and deported since the beginning of a crackdown started in September 2011. The raids of immigration officials have been reported to be often very brutal, and led to the death or

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<sup>169</sup> UPR, A/HRC/22/10, recommendation 24 et seq.

<sup>170</sup> UPR, A/HRC/22/10/Add.1, para. 21.

<sup>171</sup> UPR, A/HRC/WG.6/14/KOR/1, para. 45.

<sup>172</sup> UPR, A/HRC/22/10, para. 12.

<sup>173</sup> CERC Committee, CERD/C/KOR/CO/15-16, para. 11.

<sup>174</sup> UPR, A/HRC/WG.6/14/KOR/1, para. 66.

<sup>175</sup> AI, Open letter, 2014.

injury of several individuals who were trying to escape. According to some interlocutors, they have even worsened over the last years, and the due process is said to be only partly granted: no orders are provided for arrests in urgent cases, but only an arrest notification. In an urgent appeal sent to the Government, UN experts thus stated that there exists a pattern of excessive use of force against and arbitrary arrest of irregular migrants by immigration officials.<sup>176</sup> Also, the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD Committee) as well as several NGOs have reported that labour inspections carried out in workplaces have the unofficial aim to identify undocumented migrants, rather than monitoring conditions of work.<sup>177</sup>

The Migrant Trade Union (MTU), founded in 2005, has been subjected to numerous administrative impediments from the side of the authorities, and saw the arrest of five of its leaders over the last years. These events prompted AI to state that the Government was attempting to stop the MTU from conducting legitimate activities through the Korean Immigration Service. Furthermore, undocumented migrants are banned from joining a union such as the MTU, and can thus not see their rights guaranteed. The refusal of registering to the MTU was, however, declared unconstitutional by a High Court in Seoul. Following the subsequent appeal by the Government of this decision, the case is to date pending before the Supreme Court. Since 2007, the MTU's legal status is on hold.

### North Korean defectors

North Korean defectors<sup>178</sup> are in a particularly vulnerable situation in South Korea due to the history of the Peninsula. The ROK has been very actively assisting defectors from the North, and civil society has also been committed to help their reintegration. Upon arrival, the defectors are screened by the NIS for a month or two, in order to assess if they are spies, or if they possess any intelligence. Once the screening is over, they stay for three months at Hanawon, a centre that aims to provide them with tools to adapt and settle in their new life. The centre also includes a clinic. In Hanawon, several integration programmes are carried out by the authorities and different NGOs. Once they have completed them, they are granted resident permit in the ROK, and are provided with accommodation and support from counsellors. Since 2012, a second orientation centre, called Hanawon 2, has opened. It has a capacity of 5000 defectors a year.<sup>179</sup>

Beside State programmes, a lot of CSOs are very active in helping the integration of defectors. The Database Center for North Korean Human Rights (NKDB)<sup>180</sup>, for example, offers psychological counselling and resettlement support to refugees and prisoners of war who have escaped the DPRK. These services are provided through the NKDB's Resettlement Assistance Headquarters (RAH) once a month. Within the RAH, counselling sessions targeting post-traumatic stress disorder and other psychological issues are offered, and clients can follow group or individual sessions.

<sup>176</sup> UNSR on Human Rights Defenders, A/HRC/16/44/Add.1, para. 1983.

<sup>177</sup> Minbyun, Gonggam and others, NGO Report under ICERD, July 2012, para. 96.

<sup>178</sup> For a more detailed analysis of the situation of defectors in the ROK, see International Crisis Group, 2011.

<sup>179</sup> Korea Institute for National Unification (KINU), White Paper on Human Rights in North Korea, July 2013, p. 504, [hereinafter: KINU, White Paper, 2013].

<sup>180</sup> Interview with NKDB. See for more information its website [www.nkdb.org](http://www.nkdb.org).

Other programmes are provided to help an early social adaptation and to alleviate issues that refugees might encounter. Defectors can also receive further support, such as financial assistance, employment guidance, medical care or regional adaptation education.<sup>181</sup>

However, a number of interlocutors have described the integration of defectors in the ROK as often very difficult. As confirmed by the International Crisis Group<sup>182</sup>, the category of defectors fleeing the DPRK has changed, from senior officials, educated and privileged individuals some decades ago, to poorer sectors of the population, many women with dependent children and people without education, who have endured terrible suffering through starvation and other violations, including during their journey to reach the ROK. These vulnerable and traumatised refugees come mostly with very bad physical and mental health, which needed to be addressed in the integration programmes. Hence, the Government has made changes to its approach, and reoriented programmes to offer a more practical methodology, with an increased involvement of NGOs and religious groups.

Despite initiatives from the State, especially since the Lee Myung-Bak Government, which had increased subsidies for industries hiring defectors, unemployment is still touching a large percentage of them.<sup>183</sup> The main issues highlighted are: the difficulty to adapt to the competitiveness of a capitalistic economy after having lived in a country in which the State decides for everything, including employment; cultural barriers; the lack of connections in a society where university networks, family friendships and regional links are deemed important; discrimination and prejudice within the population; as well as insufficient skills such as English and computer abilities.<sup>184</sup>

It was mentioned in interviews that the psychological support is too low — and certainly insufficient — compared to the financial support granted by the State. However, the defectors' low self-awareness of their own psychological issues and thus their limited use of counselling was also mentioned.

Refugee youth face a particularly challenging situation in school, where the situation is highly competitive and the education system very different from the DPRK. What they have learned in the DPRK is thus said to be of little use in the ROK. Childhood malnutrition, from which many suffered in the DPRK and during their long journey to the ROK, has also an impact on their cognitive development and their prospects for education. Furthermore, private tutorial, a very important part of the education in the ROK, is not a concept understood by the parent defectors, who have a hard time providing it.<sup>185</sup> While some NGOs<sup>186</sup> provide support to them, many encounter academic difficulties forcing them to drop out every year, or not achieve a very long curriculum.

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<sup>181</sup> International Crisis Group, 2011, p. 23.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid. p. 15.

<sup>184</sup> Ibid., p. 4.

<sup>185</sup> Ibid., p. 13.

<sup>186</sup> See for example the programmes of Citizens' Alliance for North Korean Human Rights (NKHR): Leadership Programme, Do Dream Programme, Winter School or scholarships. See NKHR, Activity Report 2013, 2013, pp. 14–20.



The situation of defectors is thus a very difficult one, despite the support provided by the State and civil society. The lack of interest and understanding from South Koreans of the plight lived by people from the DPRK make them even more vulnerable to isolation and low self-esteem. Nevertheless, some individuals successfully integrated in South Korea and many of them are also now involved in different programmes to help newly arrived defectors.

## Conclusion

Despite a striking economic development, improvements of the human rights situation in the country as well as a strong civil society, the ROK still faces several serious human rights challenges, mostly due to the difficult security situation with the DPRK. Freedom of expression is very restricted on national security grounds. Legal tools such as the crime of defamation are extensively used and often result in self-censorship in expression. Restrictions are also applied to the freedom of assembly and association, and unions have seen their work obstructed by the State in legal or operative ways. Excessive force has also been used in several instances against demonstrators, mostly without accountability of those responsible.

The ROK's military conscription, which is based on vague grounds of national security, still violates the rights of conscientious objectors. The ROK has also not abolished the death penalty yet, although there is a moratorium on its application.

Since the country has not yet ratified the OPCAT, there is no systematic and preventive oversight mechanism monitoring the conditions of detention in the penitentiary system, said to be rather repressive, or in other places where detainees are at risk of abuses, such as military or migrant detention centres. The country would surely benefit from the advice and the analysis of bodies such as a National Preventive Mechanism. It is to be hoped that the authorities will open the door to the creation of such oversight mechanism.

The authorities have generally showed a good willingness in international settings to take up recommendations about human rights guarantees and improve the situation in the country. It can therefore be expected that they will take equally seriously these above-mentioned shortcomings and offer solutions to them.





**CIVIL AND POLITICAL RIGHTS IN THE  
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA**



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## EXECUTIVE SUMMARY

This study presents an overview of the situation of civil and political rights in the Democratic People's Republic of Korea (DPRK) building on the invaluable work of civil society organisations (CSOs) and international actors who have been widely publishing on the issue over the last years, and in particular on the findings of the UN Commission of Inquiry (COI), which thoroughly documented patterns of systematic, widespread and gross human rights violations amounting to crimes against humanity in the DPRK.

The DPRK has ratified some core international human rights treaties, among which the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR), and provides for a national legal framework offering protection for the most basic human rights.

However, the legal framework is not in line with international human rights law. The guarantees against arbitrary detention are insufficient and there are literally no procedural safeguards or fair trial guarantees provided for so-called political criminals. These, at highest risk of abuse, find themselves at complete mercy of State officials. Torture and ill-treatment are not criminalised and their practice is instead widespread and systematic, and perpetrated as part of a precise State policy. Moreover, the death penalty is legally used even for small crimes and its application is regulated by vague norms and procedures.

The most blatant violation of civil rights is the existence of political prison camps, marked by arbitrary detention and punishment, in a penitentiary regime allowing torture, cruel treatment, inhuman conditions of detention, forced labour and summary executions.

For ordinary crimes, legal guarantees are all too often not applied in practice and there is no independent and impartial Judiciary. The consequences have been widespread arbitrary detention and the systemic use of torture in total impunity. Enforced disappearances and incommunicado detention are common practice of the system.

Sexual and gender-based violence appear to be common in places of detention, taking the form of rape and sexual exploitation as well as forced abortions and infanticides against women forcibly repatriated from China, leading to serious injuries, trauma and frequent deaths. The infliction of deliberate starvation, which has led to countless deaths over the last decades, is another feature of the totalitarian regime.

While there are no reliable statistics on executions, the use of the death penalty is acknowledged by the State. The unclear legal framework and the lack of transparency in places of detention, however, pave the way to an arbitrary and unaccounted application.

While political rights such as the freedom of speech, press, assembly and association exist on paper, they are heavily restricted in practice. The national media are entirely controlled by the regime and serve to disseminate State propaganda. The access to foreign media or the Internet is heavily restricted and strictly punished. Criticism of the regime is made impossible and heavily persecuted.

The same goes for the exercise of freedom of religion, which is in practice completely hindered by the prohibition to establish religious groups and to exercise religious beliefs. Instead, citizens are forced to follow the State's Juche ideology.

There are literally no CSOs in the DPRK, and the State retains total and strict control over its citizens by the maintenance of a harsh security apparatus and a broad web of informants. The freedom of movement and residence of the citizens is fully controlled by the State and applied discriminately on the population, unable to decide where to live and work. Internal travel is restricted by a rigorous travel permit system. Foreign travel is only possible for the political elite and illegal border crossings are heavily punished.

## Democratic People's Republic of Korea

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The totalitarian regime retains full control over its citizens making any opposition impossible. However, the widespread human rights violations of the State against its citizens have gained greater attention on the international level over the last year thanks to the comprehensive report of the COI and the work of CSOs. The increasing international pressure appears to slowly push the DPRK into more cooperation. Inside the country, growing economic activity and exchange with China and a growing informal access to information is leading to a gradual increase of awareness of the outside world among North Koreans. While predictions are difficult and the situation highly volatile, hopes lie on changes from within the DPRK jointly with an opening towards the world.







## Introduction

The Korean Peninsula, annexed by Japan in 1910, remained under Japanese control until the end of World War II, when the United States took over the southern part and the Soviet troops took the northern one. In 1948, Kim Il-Sung became the first communist leader of the new DPRK and, two years later, invaded the South in a war that resulted in the split of the Korean Peninsula in two hostile countries. Kim Il-Sung remained in power until his death in 1994, and created a powerful cult of personality around himself. Kim Jong-Il replaced him as Supreme Leader of the totalitarian State, before Kim Jong-Un, his grandson, took over in December 2011, thus perpetuating the cult dedicated to the Kim family.

Since its creation, the DPRK features a tradition of denying its citizens basic human rights and freedoms. The hope of the international community for a positive change with the assumption of power of Kim Jong-Un after his father's death in 2011 turned out to be unfounded. The Government's continued totalitarian rule has so far prevented any real improvement of the human rights situation. The UN General Assembly and the Human Rights Council (HRC) have throughout the years expressed grave concern about the systematic, widespread and grave violations of civil, political, economic, social and cultural rights in the DPRK in annual resolutions. The Government of the DPRK routinely denied the accusations, rejected the resolutions and kept refusing access to the country to external monitors.

The HRC therefore established a Commission of Inquiry in April 2013 to investigate whether the human rights abuses in the DPRK amount to crimes against humanity and assess who should in that case be held accountable. The DPRK itself, other States concerned, NGOs and individuals were invited to submit their reports and statements and the COI received submissions by numerous parties with information and documentation on the situation of human rights in the DPRK. However, the Government of the DPRK declined to cooperate with the Commission and denied it access to the country. The Commission furthermore conducted public hearings (80 testimonies were recorded) and confidential interviews (over 240) with victims and witnesses. The COI also reviewed satellite images, videos, photographs and internal documents brought out of the DPRK. The patterns of human rights violations and crimes against humanity documented by the Commission were therefore based on first-hand testimonies from witnesses, corroborated by other information.

The COI found that the patterns of human rights violations give grounds to conclude that crimes against humanity have been and continue to be committed in the DPRK, and should be subjected to criminal investigation by a competent national or international organ of justice. The COI found that these crimes against humanity entail persecution on political, religious, racial and gender grounds, extermination, murder, enslavement, torture, rape, forced abortions and other sexual violence, the forcible transfer of populations, enforced disappearance and the inhumane act of knowingly causing prolonged starvation.<sup>187</sup>

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<sup>187</sup> UN Commission of Inquiry (COI), Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, UN Docs. A/HRC/25/CRP.1, 7 February 2014, paras. 1033–1155 [hereinafter: COI, A/HRC/25/CRP.1].

Major researchers have demonstrated through striking and thorough analysis the span of human rights violations in the DPRK, in most cases thanks to the support of defectors. In that regard, the COI's report, released in February 2014, also constituted an incredible and irrevocable assessment of atrocity crimes still perpetrated in the DPRK. The Commission repeated the calls already made by CSOs based in Seoul on the urgent need for change and justice. We thus very much referred to these different human rights sources, and recommend readers interested in learning more about specific sections to turn to these studies and reports mentioned in the bibliography.

Following the publication of the COI's report, the HRC issued a strongly-worded resolution in March 2014, in which it stated that it *"[...] condemns in the strongest terms the long-standing and ongoing systematic, widespread and gross human rights violations and other human rights abuses committed in the Democratic People's Republic of Korea, and expresses its grave concern at the detailed findings made by the commission of inquiry in its report"*<sup>188</sup>In the same resolution, the Office of the High Commissioner for Human Rights was foreseen to establish a field-based structure in the ROK to strengthen the monitoring of the human rights situation in the DPRK.<sup>189</sup>

In blatant denial of the evidence published by the COI, the DPRK at the second UPR repeated that the rights and freedoms stipulated in the Constitution and the laws of the DPRK, such as freedom of religion, movement and travel, expression, were fully observed and that political prison camps did not exist.

This second chapter presents an overview of the human rights' situation in the DPRK. It builds on the invaluable work of CSOs and international actors who have been publishing on the issue over the last years.

After a glance at the international and domestic legal framework of human rights protection applicable in the DPRK, the report looks at the violations of selected civil and political rights, each of which is analysed in different sections. The report concludes with an outlook into the future and the possible scenarios following the publication of the COI report, examining on the one side the increasing international pressure for change on the Government, and on the other side the evolving response of the regime towards calls issued from the growing awareness that such gross and widespread human rights violations can no longer be tolerated and remain unaccounted for.

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<sup>188</sup> UN Human Rights Council (HRC), Resolution 25/25 on the situation of human rights in the Democratic People's Republic of Korea, UN Docs. A/HRC/25/L.17, 26 March 2014 [hereinafter: HRC, A/HRC/25/L.17].

<sup>189</sup> Security Council Report, Monthly Forecast, August 2014, p. 24.

## 1. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

The DPRK is a State Party to four core international human rights treaties. The ICCPR<sup>190</sup> and the ICESCR were accessed in 1981, and were thus the first human rights international instruments applicable in the DPRK. They were followed by the ratification of the UN Convention on the Right of the Child (CRC) in 1990 and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>191</sup> in 2001. More recently, in July 2013, the DPRK also signed, but not yet ratified, the UN Convention on the Rights of Persons with Disabilities (CRPD). However, as the country is not party to the first Optional Protocol to the ICCPR nor the CEDAW or the ICESCR, no inter-State complaints, individual communications or confidential inquiry systems, as established under these protocols, are applicable to the DPRK.

Notwithstanding its ratification of core UN human rights treaties, the DPRK has repeatedly failed to cooperate with UN bodies. Since 2009, the DPRK has not submitted any periodic State reports in the context of the above mentioned treaties.<sup>192</sup> Moreover, it has categorically rejected all resolutions adopted by the UN HRC and the UN General Assembly<sup>193</sup> as well as the majority of the recommendations received during the two cycles of Universal Period Review (UPR), which it underwent in 2009 and in 2014.<sup>194</sup> As the DPRK regime never recognised either the mandate of the UN Special Rapporteur on the Situation of Human Rights in the DPRK or that of the UN COI, it refused any kind of cooperation and barred the access to the country.

At the domestic level, the Constitution<sup>195</sup> was adopted in 1948, building on the constitutional model of the former Soviet Union.<sup>196</sup> Since then it was revised in 1972, 1998 and in 2009, when for the first time a human rights protection clause was introduced in the constitutional text (article 8). Constitutional changes became more frequent with the coming to power of Kim Jong-Un in 2011, who has been revising the DPRK Constitution almost on an annual basis. The last known change dates back to April 2013.<sup>197</sup>

The Constitution enshrines a broad range of fundamental rights, including the freedoms of expression and information, religion, assembly, association and movement as well as to a certain extent the right to liberty and security.<sup>198</sup> However, these constitutional provisions are in sharp

<sup>190</sup> In 1997 the North Korean Government sought withdrawal from the ICCPR. The request was refused by UN Secretary General and the status of "State Party" restored, as the Covenant has no withdrawal provision and withdrawal is not possible unless all States Parties agree.

<sup>191</sup> The Democratic People's Republic of Korea (DPRK) made the following reservations in respect to the CEDAW: "The Government of the Democratic People's Republic of Korea does not consider itself bound by the provisions of paragraph (f) of article 2, paragraph 2 of article 9 and paragraph 1 of article 29 of [the Convention]."

<sup>192</sup> COI, A/HRC/25/CRP.1, para. 9.

<sup>193</sup> See also Korea Institute for the National Unification (KINU), UN Human Rights Mechanisms and Improvement of Human Rights Conditions in North Korea, 2013, p. 73 et seq.

<sup>194</sup> In the first UPR cycle all the recommendations were rejected; in the second cycle UPR cycle the DPRK Government accepted 113 recommendations out of the 268 made. Furthermore, it must be noted that the among the accepted recommendations concern issues related to the fulfilment of economic, social and cultural rights and the protection of women's and children's rights and never issues relating to the findings of the COI.

<sup>195</sup> DPRK, Constitution, last amended in April 2013, as reported by KINU, White Paper on Human Rights in North Korea, 2014 [hereinafter: KINU, White Paper, 2014].

<sup>196</sup> Dae-Kyu Yoon, The Constitution of North Korea: Its Changes and Implications, in Fordham International Law Journal, Vol. 27, No. 4, 2003, p. 1299 et seq.

<sup>197</sup> According to KINU, the constitutional revisions date April 2010, April 2012 and April 2013. See KINU, White Paper, 2014, p. 86.

<sup>198</sup> See DPRK, Constitution, Chapter 5 "Basic Rights and Responsibilities of Citizens".

contrast with the reality. The discrepancy between law and practice is so big as to suggest that the Constitution plays only a little, if not negligible, role in the actual protection of rights and freedoms of the citizens.

Apart from the Constitution, human rights provisions are also included in several ordinary laws, such as the Criminal Code,<sup>199</sup> the Criminal Procedure Code,<sup>200</sup> the Law on Constitution of Court,<sup>201</sup> the Immigration Law,<sup>202</sup> or the Gender Equality Law.<sup>203</sup> Furthermore, recently the DPRK has adopted a number of laws and regulations to enact international human rights treaties. They range from the protection of vulnerable persons<sup>204</sup> to health and cultural rights.<sup>205</sup>

Nevertheless, the access to justice remains deplorable. Besides the process of legal revision, no signs of commitment to enforce the existing rights and freedoms can be detected from the authorities, thus making the recent practice of streamlining domestic human rights law look rather like a propaganda tool to improve the regime's image in the eyes of the international community. One of the most telling indicators of the DPRK's human rights situation is the total absence of independent CSOs.

## 2. RIGHT TO LIBERTY AND SECURITY - RIGHT TO FAIR TRIAL

A variety of places of detention exists in the DPRK. The Ministry of People's Security (MPS) runs the ordinary prison system. Prisons for perpetrators of misdemeanours (*jip-kyul-so*) are essentially holding centres or "collection places"<sup>206</sup> of the MPS and the State Security Department (SSD).<sup>207</sup> These places of detention have no legal basis. Perpetrators of not serious crimes are sent to re-education facilities or "labour training camps" (*ro-dong-dan-ryeon-dae*).<sup>208</sup> Another type of short-term forced labour detention camps exists: the labour reform centres (*kyo-yang-so*), which amount to more than 200 according to CSOs.<sup>209</sup> The long-term prison labour camps (*kyo-hwa-so*) are known for forcing detainees to much harder forms of labour. The worst detention facilities are the infamous political prison camps (*kwan-li-so*),<sup>210</sup> whose existence was for the first time publicly acknowledged by an official on 7 September 2014,<sup>211</sup> and which are under the National Defence

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<sup>199</sup> DPRK, Criminal Code, last amended on 14 May 2012, as reported by KINU, White Paper, 2014.

<sup>200</sup> DPRK, Criminal Procedure Code, last amended on 14 May 2012, as reported by KINU, White Paper, 2014.

<sup>201</sup> DPRK, Law on Constitution of Court of 28 April 2009, last amended in May 2012, as reported by KINU, White Paper, 2014.

<sup>202</sup> DPRK, Immigration Law of 1996, last amended in April 2012, as reported by KINU, White Paper, 2014.

<sup>203</sup> DPRK, Gender Equality Law of 30 July 1946. For a more detailed list of domestic Human Right Laws see KINU, White Paper, 2014, p. 83 et seq.

<sup>204</sup> See for example DPRK, Law on the Protection of Persons with Disabilities of 18 June 2003, last amended in 2013; DPRK, Law on the Protection of Elderly Persons of 26 April 2007; DPRK, Law for the Protection of Women's Rights of 22 November 2010, and DPRK, Law for the Protection of Children's Rights of 22 November 2010.

<sup>205</sup> See DPRK, Mineral and Hot Springs Law of January 2013.

<sup>206</sup> Citizens' Alliance for North Korean Human Rights (NKHR), The Battered Wheel of the Revolution: Briefing Report on the Situation of Violence against North Korean Women, NKHR Briefing Report No.6, Life & Human Rights Books, 2011, p. 50 [hereinafter: NKHR, Briefing Report No. 6, 2011].

<sup>207</sup> David Hawk, The Hidden Gulag: The Lives and Voices of 'Those Who Are Sent to the Mountains', Committee for Human Rights in North Korea, second edition, 2012 [hereinafter: Hawk, 2012].

<sup>208</sup> COI, A/HRC/25/CRP.1, para. 817.

<sup>209</sup> UN Universal Periodic Review (UPR), Summary of stakeholders' information: Democratic People's Republic of Korea, UN Docs. A/HRC/WG.6/19/PRK/3, 23 January 2014, para.26 [hereinafter: UPR, A/HRC/WG.6/19/PRK/3].

<sup>210</sup> NKHR, Briefing Report No. 6, 2011, pp. 50–51.

<sup>211</sup> Associated Press, North Korea Admits to Labour Camps, The New York Times, 7 October 2014 [hereinafter: Associated Press, October 2014].

Commission (NDC) and the SSD (*see below for specific information on the situation in political prison camps*). Political prison camps have been in continuous existence since the 1950s, and they are places where prisoners have lost their rights as citizens.<sup>212</sup> Deprivation of liberty also takes place in interrogation facilities under the police or the SSD, such as *ku-ryu-jang* or *ka-mok*,<sup>213</sup> as well as in a large number of informal secret places across the country and in the border areas.

The right to liberty and security,<sup>214</sup> a concept spelled out in article 9 ICCPR and belonging to customary international law, establishes that there should not be any deprivation of liberty without a legal basis allowing it. The ICCPR also stipulates that the arrest and detention of someone should not be arbitrary, implying that it must be necessary and reasonable, as opposed to inappropriate, unjust or lacking a due process of law.<sup>215</sup> The protection of individuals from arbitrariness and unlawful detention is further guaranteed by the right to fair trial and other procedural safeguards enshrined in article 14 ICCPR, such as the right to be considered innocent until proved guilty or the right to challenge the lawfulness of the detention before a court. This right to habeas corpus constitutes a fundamental principle to the right to liberty and security, and is a safeguard that cannot be derogated from in any circumstances, even in a war situation or a state of emergency.<sup>216</sup> The right to a fair trial and the right to a due process of law are thus inter-linked to the right to liberty and security.

At the domestic level, the legal framework possesses a large number of provisions protecting both the right to liberty and security and the right to a fair trial. As for the right to liberty and security, article 79 of the Constitution states that *"Citizens cannot be detained or arrested and their homes cannot be searched without legal grounds"*. Similarly, the Criminal Procedure Code envisages that *"Citizens shall not be arrested or detained for reasons not prescribed in the laws or legal procedures"* (article 176) and establishes the right for the suspect's family to be notified within 48 hours of the arrest the reasons for it and the place where the person is detained (article 182).<sup>217</sup> Furthermore, regarding violations to lawful detention, the 2012 Criminal Code provides that *"if the agent conducted illegal arrests, detention, or arraignment, or if he conducted illegal search of a person or his home, he would be subject to one year of labour training penalty"*(article 241).<sup>218</sup> Also the right to a fair trial is specified by a large set of domestic rules formally aiming at guaranteeing the due process of law. The Constitution provides that *"the court shall be independent in conducting judicial proceedings and shall carry out judicial activities according to law"* (article 166) and that *"judicial proceedings shall be open to the public and the accused shall be guaranteed the right of defence"* (article 164).<sup>219</sup> The Criminal Code enshrines the right to legal

<sup>212</sup> COI, A/HRC/25/CRP.1, para. 733.

<sup>213</sup> United States Department of State (USDS), Country Reports on Human Rights Practices for 2013: The Democratic People's Republic of Korea, 2013 [hereinafter: USDS, DPRK, 2013].

<sup>214</sup> International Covenant on Civil and Political Rights (ICCPR), article 9.

<sup>215</sup> See also UN Human Rights Committee (HR Committee), A.W. Mukong v. Cameroon, Communication No. 458/1991, UN Docs. C/HR/C/51/D/458/1991, Views of 21 July 1994.

<sup>216</sup> Tiphonie Crittin, The Right to Liberty and Security, in All Human Rights for All - Vienna Manual of Human Rights, Intersentia, 2012, pp. 361–366.

<sup>217</sup> KINU, White Paper, 2014, pp. 133 and 134.

<sup>218</sup> *Ibid.*, p. 134.

<sup>219</sup> *Ibid.*, pp. 209 and 233.

assistance (articles 106, 58, 63), which is also extended to children by article 50 of the Children's Rights Protection Act of 2010,<sup>220</sup> and the right to appeal (article 356).<sup>221</sup>

However, the domestic legal framework also entails numerous problematic articles that are in violation to international standards, or lack important provisions to guarantee a due process of law. Worrisome legal flaws include, for example, the fact there is no appeal allowed for judgments issued on charges of border crossing. A particular issue concerning the North Korean legal framework is the separation of political crimes from ordinary crimes. Political crimes, such as espionage, are investigated by the SSD, which supervises the entire pre-trial period.<sup>222</sup> The trials are carried out either by courts or by the SSD itself, but in any case there is no formal trial procedure. The proceedings are held behind closed doors, and the decisions on the duration of the detention or the association of relatives to it do not seem to follow any established guidelines, but rather left to the arbitrariness of the SSD. Individuals tried for political crimes further have their rights to fair trial violated once they are sent to the political prison camps, where they are held in secret detention in atrocious conditions. Consequently, the safeguards established for ordinary crimes do not exist for political crimes. Political crimes suspects are therefore at a particular risk of arbitrary treatment, and left without protection.

Even more concerning is the fact that, according to the testimonies of numerous defectors, the existing provisions supposed to uphold the right to liberty and security are very often not followed in the DPRK, leaving the alleged criminals without any guarantees to have a fair trial, and in arbitrary detention. Moreover, detainees in short-term prisons are commonly imprisoned without criminal conviction by a court of law. David Hawk expresses that *"on the basis of available testimony, it cannot be determined why some prisoners are given a trial while others are not. This too appears to be arbitrary, and apparently at the discretion of local police authorities"*.<sup>223</sup> Thus, even though most detainees in the ordinary prison system are convicted to a defined prison term by a court, it is often the judicial process itself that lacks the most basic guarantees of a fair trial, in violation of both domestic and international legal provisions.

Despite the fact that the Criminal Procedure Code guarantees remedy and reparation for victims who report cases of abuses to the Prosecutor, the Korean Workers' Party (KWP), the Ministry of Justice and the National Inspection Committee, these complaints mechanisms are in practice ineffective. Indeed, there has only been one case where a perpetrator was brought to justice and no case where victims received reparation.<sup>224</sup> Hence, an absolute impunity prevails, and no oversight mechanism and independent Judiciary exist to remedy this situation. The country also denies access to international oversight mechanisms: the UN SR on the Human Rights Situation in the DPRK, as well as the COI and the International Committee of the Red Cross (ICRC) have not been allowed to access places of detention inside the country independently.<sup>225</sup>

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<sup>220</sup> Ibid., p. 223.

<sup>221</sup> Ibid., p. 227.

<sup>222</sup> See DPRK, Criminal Procedure Code, articles 46 and 48, as reported by KINU, White Paper, 2014, p. 222.

<sup>223</sup> Hawk, 2012, p. 122.

<sup>224</sup> COI, A/HRC/25/CRP.1, para. 709.

<sup>225</sup> USDS, DPRK, 2013.



This disrespect of the legal order is also due to the fact that the judicial institutions completely lack independence and impartiality, and instead work to sustain the regime and its ideology. Formally, the COI explains, judges in the DPRK are appointed by and accountable to the Supreme People's Assembly (SPA) and provincial people's assemblies. In reality, judges seem to be selected by and under the orders of the Supreme Leader and the KWP.<sup>226</sup> Also, lawyers hardly defend their clients during trials and sometimes even push them to confess. The Bar Association of the ROK stated that only 5% of former detainees interviewed believed their lawyer was of any help.<sup>227</sup> Oftentimes, the accused does not get the chance to meet the attorney before the trial. Moreover, privacy during interviews with legal counsel is not often granted, appeals regularly result in worsened sentences, and illegal punishment can be given during the pre-trial phase. It must also be noted that discrimination prevails in the justice system, in violation to the right to equality before the courts and tribunals.<sup>228</sup> A factor taken into account for sentencing is thus the *songbun* background of the perpetrator,<sup>229</sup> i.e. his or her status in the class system established by the regime, which categorises individuals into three loyalty categories: friendly, neutral or hostile. To add to this prevalent arbitrariness, delays in the procedure are not respected and trials can last at times as little as twenty minutes.<sup>230</sup> Usually, they remain closed to the public and no witnesses are called to testify.

In addition, in more than half of the cases, relatives are not notified within 48 hours of the reasons of the arrest.<sup>231</sup> Defectors reported to the COI that people often simply disappear, and none around them knows anything about their whereabouts. Although bribes and personal contacts can help obtaining information about the detainees, often officials refuse to give any details about the victim, held in secret and incommunicado detention in a political prison camp, or even executed. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) declared that *"under no circumstances, including states of war or public emergency, can any State interests be invoked to justify or legitimise secret centres or places of detention [...]"*.<sup>232</sup> Furthermore, secret detention, which constitutes already a violation of article 9 ICCPR, can also amount to torture or ill-treatment for the victims as well as for their relatives, and is in breach to the right to be treated with humanity (article 10 ICCPR).<sup>233</sup> According to the COI, enforced disappearances are a deliberate feature of the system, sending warning to the population that anyone who does not demonstrate absolute obedience can purely disappear.<sup>234</sup>

The arbitrary detention of political opponents is a widespread practice and often even extends to their relatives. Detention under guilt by association is a particularly unique punishment imposed on persons carrying no individual responsibility, in blatant violation of the right to liberty and

<sup>226</sup> COI, A/HRC/25/CRP.1, para. 124.

<sup>227</sup> Ibid., para. 798.

<sup>228</sup> ICCPR, article 14(2).

<sup>229</sup> COI, A/HRC/25/CRP.1, para. 719.

<sup>230</sup> NKHR, Survival under Torture, Briefing Report on the Situation of Torture in the DPRK, NKHR Briefing Report No. 2, 2009. p. 32 [hereinafter: NKHR, Briefing Report No. 2, 2009].

<sup>231</sup> COI, A/HRC/25/CRP.1, para. 697.

<sup>232</sup> UN Working Group on Enforced or Involuntary Disappearances (WGEID), Report, UN Docs. E/CN.4/1997/34, 13 December 1996. doc. E/CN.4/1997/34, para. 23.

<sup>233</sup> HRC, Joint Study on Secret Detention in the Context of Countering Terrorism, UN Docs. A/HRC/13/42, 19 February 2010, paras. 8–56.

<sup>234</sup> COI, A/HRC/25/CRP.1, para. 699.

security. Although it is said to be less used than in the past, thousands of people are still believed to be held under guilt by association in political prison camps. The majority of them reportedly do not know the reasons for their imprisonment and have never been officially charged.<sup>235</sup>

In conclusion, contrary to its international legal engagements, the most fundamental principle of due process of law are routinely violated by the regime. The judicial system does not fulfil the basic requirements of independence and impartiality, and in the absence of legal and institutional safeguards during the proceedings, a large array of other connected rights are violated.

### **Denial of the right to liberty and security in the political prison camps<sup>236</sup>**

The denial of the right to liberty and security and other human rights violations are particularly blatant in political prison camps. Political prison camps (*kwan-li-so*) are the final destination of those suspected of being politically, ideologically or economically subversive to the system. *Kwan-li-so* are operated by the Ministry of State Security and the SSD. The Government has recently started acknowledging the existence of these camps,<sup>237</sup> even though they are well-known and dreaded by ordinary citizens for being often places of no return, as victims imprisoned there have nearly no chance to ever be released. At the second UN UPR, the delegation immediately rejected in block all of the 25 recommendation linked to the political prison camps, because they *"seriously distorted the reality of and slandered the country driven by sinister political motivation."*<sup>238</sup> Four political prison camps are known to exist; smaller ones might exist in unknown locations. The COI has referred to satellite images of these camps and to testimonies of former detainees and guards who were able to recognise certain places in these images, such as the places where executions, torture and forced labour took place. The UN Commission also confirmed the fact that *"the camp authorities have received orders to kill all prisoners in case of an armed conflict or revolution so as to destroy the primary evidence of the camps' existence"*,<sup>239</sup> an extremely worrying policy that shows the intent of the regime to escape accountability for the horrid conditions imposed on the prisoners. Since no outsider has ever been granted access to these camps, estimations of the number of detainees vary. The estimates of the Korea Institute for National Unification (KINU) are between 80.000 and 120.000.<sup>240</sup> The Database Centre on North Korean Human Rights (NKDB) estimates that in 2013, between 130,500 and 131,000 were held in the political prison camps.<sup>241</sup>

The arbitrary, extra-legal nature of the *kwan-li-so* constitutes a violation of the right to liberty and security, and the fact that detainees are held incommunicado and are effectually victims of enforced disappearances amounts to torture or ill-treatment for the detainees as well as their families.<sup>242</sup> The very existence of *kwan-li-so* is violating several provisions of the ICCPR.

<sup>235</sup> UN SR on the Situation of Human Rights in the DPRK, Report, UN Docs. A/HRC/22/57, 1 February 2013, paras. 37–38 [hereinafter: UN SR on the Situation of Human Rights in the DPRK, A/HRC/22/57].

<sup>236</sup> For more information on the political prison camps, see COI, A/HRC/25/CRP.1, paras. 693–845.

<sup>237</sup> Associated Press, October 2014.

<sup>238</sup> UPR, Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea – Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, UN Docs. A/HRC/27/10/Add.1, 12 September 2014, para. 3 [hereinafter: UPR, A/HRC/27/10/Add.1].

<sup>239</sup> COI, A/HRC/25/CRP.1, para. 732.

<sup>240</sup> KINU, White Paper, 2013, p. 148.

<sup>241</sup> USDS, DPRK, 2013.

<sup>242</sup> Hawk, 2012, p. 32.

NKDB estimates, based on testimonies by exiled North Koreans, that the majority of detainees are held in arbitrary detention due to political crimes. The second largest group of prisoners is mainly composed by those held because of guilt by association, and in a smaller number by perpetrators of economic, administrative and ordinary crimes.<sup>243</sup> The principle of collective responsibility or guilt by association causes various generations of entire families to be detained in the camps.<sup>244</sup> Reports from defectors and NGOs also indicate that many children are born in political prison camps and grow up there without any contact with the outside world.

The detainees in political prison camps are held secretly and the rule of law is suspended to the degree that camp officials can individually decide over life and death of the prisoners. Summary executions and individual executions take place without any judicial process. Punishment for violation of camp rules furthermore include severe physical abuse.<sup>245</sup> Children largely undergo the same treatment as adults. Sexual violence against female detainees, as well as forced abortions are recurrent. Detainees are systematically malnourished and death by starvation is common.<sup>246</sup> They frequently also succumb to infectious diseases or diseases caused by the abysmal sanitary and hygienic conditions and lack of health care.<sup>247</sup> Work conditions are often life-threatening and the work quota assigned to prisoners often lethal, due to their poor health condition and malnutrition. Child detainees are recruited to forced labour from the age of five.<sup>248</sup> The COI estimates that since the establishment of the prison camps in the 1950s, hundreds of thousands of people have died in them.<sup>249</sup>

The very existence of these political prison camps is therefore a permanent and massive breach to the right to liberty and security, and numerous other civil and political rights such as the due process of law. The arbitrary detention as well as the numerous acts of torture, sexual violence and other abuses performed over the victims detained there are in complete violation to their dignity, right to life and right not to be tortured. The secrecy surrounding this sophisticated system has been turning hundreds of thousands of political prisoners held in incommunicado detention into disappeared persons over the last decades. The professionalism that seems to qualify their organisation shows that these facilities, in complete violation of the rule of law, are a system organised to purge the regime from any dissents.

### 3. FREEDOM FROM TORTURE AND ILL-TREATMENT AND CONDITIONS OF DETENTION

The DPRK is not part to the UN Convention against Torture (CAT), but is obliged under the ICCPR to respect the prohibition of torture and ill-treatment (article 7 ICCPR) and the right of detainees to be treated with humanity and dignity (article 10 ICCPR). The DPRK is also a State party to the CRC

<sup>243</sup> Yeo-Sang Yoon, Ja-Eun Lee, Sun-Young Han, *Political Prison Camps in North Korea Today*, Sang-Hun Kim and Database Center for North Korean Human Rights, 2011, p. 128.

<sup>244</sup> Hawk, 2012, p. 29.

<sup>245</sup> See Chapter 2 on torture and ill-treatment.

<sup>246</sup> COI, A/HRC/25/CRP.1, para. 770.

<sup>247</sup> *Ibid.*, para. 774.

<sup>248</sup> *Ibid.*, para. 779.

<sup>249</sup> *Ibid.*, para. 781.

and the CRPD, which specifically prohibit torture of children (article 37) and persons with disabilities (article 15). Furthermore due to the gravity of torture, its prohibition is also part of customary international law, thus applying to any States, signatory or not to conventions prohibiting torture and other forms of ill-treatment, and considered a peremptory norm (*jus cogens*) from which no derogations are permitted.<sup>250</sup>

In the domestic legal framework, torture is prohibited in the Criminal Procedure Code, but not defined.<sup>251</sup> It is also not expressly criminalised, although article 242 of the Criminal Code punishes any illegal interrogations by 5-10 years of correctional labour, while illegal arrest, detention, arraignment or searches are sanctioned by one year of labour training penalty.<sup>252</sup> Rape is criminalised under article 279 and 280 of the Criminal Code.<sup>253</sup>

The Government holds that prosecutors in the country help in preventing the occurrence of torture and other inhuman treatment and punishment claiming that they “conduct regular surveillance of the institutions of investigation, preliminary examination and reformation and take necessary legal measures in case any violation of human rights is found or complaints are lodged by the examinees, defence counsel and others.”<sup>254</sup> The Government also claims that law enforcement and other officials are regularly given training on the prevention of torture, on the illegality of forced confessions or illegally induced statements.<sup>255</sup>

In reality, the practice of torture and ill-treatment has been repeatedly assessed by CSOs and UN bodies alike as being widespread and systematic, and no rule of law in the DPRK seems to be protecting citizens against torture and ill-treatment.<sup>256</sup> The patterns of torture and the extent to which such acts are performed point to a coordinated, centralised and systemic use. The use of torture seems to represent, in the majority of the cases, a State policy and the perpetrators enjoy total impunity for such acts.

Torture is said to be practiced in all detention centres, and is particularly severe in political prison camps. Defectors have reported that they were tortured by police or border patrol guards upon arrest, during interrogations, in labour training camps, correctional centres, political prison camps and other secret or temporary detention places.<sup>257</sup> Interrogation facilities are sometimes specifically prepared and equipped to facilitate various torture methods. Even though instructions to torture do not appear to come from the highest level, senior officers seemingly instruct juniors in how and who to torture.<sup>258</sup> Detainees are regularly subjected to beatings and sometimes more systematic

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<sup>250</sup> See Article 53 of the Vienna Convention on the Law of Treaties (1969).

<sup>251</sup> See UPR, National Report: Democratic People's Republic of Korea, UN Docs. A/HRC/WG.6/6/PRK/1, 27 August 2009, para. 36 [hereinafter: UPR, A/HRC/WG.6/6/PRK/1], which states as follows

<sup>252</sup> KINU, White Paper, 2014, p. 134.

<sup>253</sup> *Ibid.*, p. 274.

<sup>254</sup> UPR, A/HRC/WG.6/6/PRK/1, para. 37.

<sup>255</sup> *Ibid.*, para. 37.

<sup>256</sup> KINU, White Paper, 2013, p. 131.

<sup>257</sup> For more detailed accounts of human rights violations in each sort of detention facilities in the DPRK, see Hawk, 2012.

<sup>258</sup> COI, A/HRC/25/CRP.1, para. 707.

acts of torture for infractions of prison camp regulations and during interrogations.<sup>259</sup> The fact that the majority of detainees are held in secret and incommunicado detention, without any contacts to the outside world — let alone monitoring mechanisms — and no access to safeguards makes them particularly vulnerable to torture and other abuses.

There seems to be multiple purposes for which torture is applied, mainly punishment, intimidation, humiliation, the extraction of bribes and confessions, and the gathering of information. However, the overarching aim of these acts appears to be to maintain the regime in place by keeping citizens in a state of submission, discouraging any disloyalty and keeping law enforcement officials in a permanent state of vigilance.<sup>260</sup>

The most common methods of torture include inter alia: the “*kneeling torture*” where the detainee remains motionless kneeling for longer periods of time; sitting motionless for a long time, up until a week; food deprivation and starvation;<sup>261</sup> “*pigeon torture*” where the detainee’s hands are tied behind his/her back and he/she cannot either stand or sit; beatings with hands, feet, clubs, metallic pipes, wooden sticks and any other instruments on any part of the body including the eyes; sleep deprivation; burning; or being left in freezing cold temperatures.<sup>262</sup> These acts are most of the time perpetrated cumulatively and have led in many cases to death.<sup>263</sup>

The right of detainees to be treated with humanity and with respect for the inherent dignity of the human person entails obligations from the part of the State, which bears the responsibility over them while in detention. Detainees therefore have a right to an adequate prison regime that does not lead to inhuman or degrading treatment.<sup>264</sup> In the DPRK, besides the acts of violence they are victims of, detainees are held in conditions that on their own amount to cruel, inhuman or degrading treatment, and violates the right to be treated with dignity. Indeed, the starvation, terrible hygienic conditions, cold temperatures, overcrowding, limited or totally absent medical care as well as forced labour for very long periods of time in hard circumstances amount to inhuman treatment at the least, and can even meet the threshold of torture. The forced labour also constitutes a breach to the non-derogable right not to be held in slavery.<sup>265</sup> As a result of these extremely harsh conditions of detention, the death rate is reportedly very high in these camps.<sup>266</sup>

Cruel and degrading acts are also ordered as a form of punishment, such as washing excrements spread over the floor and in toilets with bare hands,<sup>267</sup> or “*pumping*”, a method that involves jumping and squatting repeatedly while naked in order to extract hidden element from cavities,<sup>268</sup>

<sup>259</sup> Hawk, 2012, p. 161.

<sup>260</sup> *Ibid.*, p. 148.

<sup>261</sup> See COI, A/HRC/25/CRP.1, para. 52, where the COI states that “*The State has also used deliberate starvation as a means of control and punishment in detention facilities. This has resulted in the deaths of many political and ordinary prisoners.*”

<sup>262</sup> Database Centre on North Korean Human Rights (NKDB), North Korean Human Rights Case Report: Victims’ Voices, Vol. 2, 2013, p. 34 [hereinafter: NKDB, Case Report: Victims’ Voices, Vol. 2, 2013].

<sup>263</sup> KINU, White Paper, 2013, p. 141.

<sup>264</sup> Moritz Birk, Human Rights of Detainees, in All Human Rights for All - Vienna Manual of Human Rights, Intersentia, 2012, pp. 477–483.

<sup>265</sup> The prohibition of slavery is enshrined in ICCPR, article 8, and is also customary international law.

<sup>266</sup> Human Rights Watch (HRW), World Report 2014, p. 362 [hereinafter: HRW, 2014].

<sup>267</sup> NKDB, Case Report: Victims’ Voices, Vol. 2, 2013, pp. 81–82.

<sup>268</sup> Hawk, 2012, p. 90.

which has become prevalent since the years 2000.<sup>269</sup> Starvation is also used as a punishment. It is not considered to be only due to difficult economic conditions of the DPRK, but rather a system of oppression used to keep the regime in place.<sup>270</sup> This collective and inhuman punishment also applies to children, who are held in the same terrible conditions of detention than the adults, in violation to their specific basic rights.

The COI assessed that *“since this severe suffering is inflicted on the prisoners to intimidate and punish them on political grounds, the Commission considers that the threshold of torture may be reached on the ground of their deliberate starvation alone”*<sup>271</sup>, adding that *“the inhumane conditions in the camps are a result of a deliberate State policy.”*<sup>272</sup> The Commission concluded that the large prevalence of inhumane conditions of life in detention, including the deliberate starvation of the detainees as a policy, the anxiety, as well as the physical suffering derived from these conditions amount to acts of torture, and constitute a crime against humanity.

### Sexual and gender-based violence

According to defectors' testimonies, sexual and gender-based violence amounting to torture and ill-treatment is very prevalent in the DPRK. They include rapes by guards and other law enforcement officials; coerced sexual acts in exchange of favours; sexual exploitation<sup>273</sup> and harassment;<sup>274</sup> vaginal searches;<sup>275</sup> stripping naked in front of others; as well as forced abortions and infanticides perpetrated against women forcibly repatriated from China.<sup>276</sup>

Violence and other abuses on female defectors refouled to the DPRK seem particularly widespread and severe. Repatriated women are first sent to the National Security Agency and the People's Safety Agency for interrogation. Then they are handed to a detention centre (*jip-kyul-so*) and imprisoned in a labour re-education facility (*ro-dong-dan-ryeon-dae*), a long-term prison labour camp (*kyo-hwa-so*), or a political prison camp (*kwan-li-so*).<sup>277</sup> At every step, they are vulnerable to sexual violence. Pregnant women are often forced to abort. David Hawk reports numerous testimonies of women who were forcibly injected a liquid to induce an abortion, and gave birth to often premature babies who were then most of the time immediately killed in front of their eyes by suffocation in vinyl bags, newspaper sheets or by stabbing.<sup>278</sup> These horrendous acts are very often perpetrated in terrible hygienic conditions, without even tissues or water, exposing the women to infections and other diseases, in addition to the psychological trauma. The abortion

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<sup>269</sup> NKHR, Briefing Report No. 2, 2009, p. 20.

<sup>270</sup> For a detailed analysis of the obligations of the DPRK regarding the right to food, the violations thereof, the historical analysis of starvation in the country and the current implications under international criminal law, see COI, A/HRC/25/CRP.1, paras. 493–692 and paras. 1115–1137.

<sup>271</sup> COI, A/HRC/25/CRP.1, para. 1053.

<sup>272</sup> *Ibid.*, para. 1073.

<sup>273</sup> NKHR, Briefing Report No. 2, 2009, p. 30.

<sup>274</sup> It is also important to mention that sexual harassment is not criminalised, but only vaguely and narrowly addressed in the Criminal Code. It is not defined nor prohibited under the DPRK Law for the Protection of Women's Right. For a complete analysis of this topic, see NKHR, Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK, NKHR Briefing Report No. 7, Life and Human Rights Books, 2013, pp. 21–22 [hereinafter: NKHR, Briefing Report No. 7, 2013].

<sup>275</sup> NKHR, Flowers, Guns and Women on Bikes: Briefing Report on the Situation of Women's Rights in the DPRK, NKHR Briefing Report No. 4, Life and Human Rights Books, 2009, p. 23.

<sup>276</sup> KINU, White Paper, 2014, p. 173–176.

<sup>277</sup> NKHR, Briefing Report No.6, 2011, pp. 50–51.

<sup>278</sup> Hawk, 2012, p. 122 et seq.

process seems to be often carried out in conjunction with verbal abuses and physical violence. Some testimonies refer to male prisoners ordered to jump on a pregnant woman desperately refusing an abortion, who subsequently died.<sup>279</sup> Forced abortions, infanticides and other forms of violence against women repatriated happen mostly at police detention and interrogation facilities (*ku-ryu-jang*) along the Chinese border, or at “collection places” (*jip-kyul-so*).<sup>280</sup>

Upon the recommendations by States at the second UPR to bring an end to the practice of forced abortion,<sup>281</sup> and to refrain from punishing those who return or are involuntary returned to the DPRK from abroad,<sup>282</sup> the authorities replied that these issues “do not exist in the DPRK at all”.<sup>283</sup> But as per the assessment of the UN Commission, “[...] the frequent incidences of rape form part of the overall pattern of crimes against humanity. Like in the political prison camps, cases of rape are a direct consequence of the impunity and unchecked power that prison guards and other officials enjoy. The forced abortions to which pregnant inmates have been subjected constitute a form of sexual violence of a gravity that meets the threshold required for crimes against humanity.”<sup>284</sup>

#### 4. RIGHT TO LIFE

The right to life is enshrined in the Universal Declaration of Human Rights (UDHR, article 3) and in the ICCPR (article 6). International human rights law does not currently prohibit the use of the death penalty as a punishment for crimes but seeks to limit its use. To this extent, article 6(2) ICCPR sets out the conditions under which countries that have not abolished the death penalty may apply it. It established that a sentence of death may be imposed only: a) as a punishment for the most serious crimes; b) pursuant to a final judgement rendered by a competent court; c) in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. The ICCPR also provides for limitations on the executions of the death penalty. Article 6(4) enshrined the rights to seek pardon or commutation or the sentence and article 6(5) prohibits imposing death penalty on pregnant women. Having acceded to the ICCPR in 1981, the DPRK is bound to respect the limitations provided for by article 6. However, the State has not ratified the Second Optional Protocol to the Covenant of 1989, urging States to abolish the capital punishment and allowing for reservations only for the most serious crimes of military nature committed during wartime.<sup>285</sup>

In the two UPR that the DPRK underwent (2009 and 2014), the States respectively issued 10 and 16 recommendations concerning death penalty, including on adopting a moratorium on executions

<sup>279</sup> Ibid., p. 154.

<sup>280</sup> Ibid., p. IX.

<sup>281</sup> UPR, Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea, UN Docs. A/HRC/27/10, 2 July 2014, recommendation 124.108 [hereinafter: UPR, A/HRC/27/10].

<sup>282</sup> Ibid., recommendation 124.124.

<sup>283</sup> UPR, A/HRC/27/10/Add.1, para. 7.

<sup>284</sup> COI, A/HRC/25/CRP.1, para. 1077.

<sup>285</sup> The DPRK and the ROK have never signed a peace agreement and are therefore still at war.

and on refraining from the practice of arbitrary, public and secret executions. However, in neither the first nor the second cycle were the recommendations on death penalty accepted.<sup>286</sup>

The DPRK is one of the few countries in the world that not only retains the death penalty in its national law but also carries out executions. The Constitution does not grant the right to life nor contains any element concerning death penalty. Relevant provisions on this issue are included in the Criminal Code and its Annex. The Criminal Code, last amended in 2012, lists the crimes subjected to capital punishment under articles 60, 61, 63, 64, 68, 208, and 278.<sup>287</sup> The list has been amended several times in the recent years. With a first reform, carried out in February 1987, the DPRK reduced the number of crimes punishable by death from 33 to 5;<sup>288</sup> regrettably though, the DPRK took again a backward step with the amendments introduced in 2007, in 2009,<sup>289</sup> and in 2012,<sup>290</sup> when it decided to broaden again the field of applicability of capital punishment. The most significant amendment was passed in 2007, when the Standing Committee of the Supreme People's Assembly adopted a decree (hereinafter Annex) aiming to complement the Criminal Code.<sup>291</sup> The Annex introduced 23 new ordinary crimes, 16 of which subjected to death penalty. As a result, capital punishment can be imposed also in case of economic crimes, such as plundering of State property (article 2), currency counterfeiting (article 5), smuggling or selling precious metals on the black market (article 6), illegal business (article 18), or other ordinary crimes such as flight from prisons (article 14).<sup>292</sup> With the inclusion of the subsequent reforms of 2009 and 2012, overall there are today 23 crimes that carry the death penalty.

In addition the authorities of the DPRK have occasionally resorted to proclamations and instructions in order to impose the death penalty, notwithstanding the rule confining capital punishment only to crimes provided for by the Criminal Code (article 6). For instance, in 2009 the MPS issued a proclamation on behalf of the Government that prohibits various types of illegal trading in foreign currency. This proclamation imposes severe punishments, including the death penalty.<sup>293</sup> Despite the legal amendments made over the last years and the complex domestic provisions allowing the death penalty in a variety of instances, the Government did not mention any of the legal amendments in its UPR reports, which simply state that *"death penalty is imposed*

<sup>286</sup> For the first cycle, all 10 recommendations (Nos. 14–23) did not enjoy the support of the DPRK (see UPR, Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea, UN Docs. A/HRC/13/13, 4 January 2010, para. 91 [hereinafter: UPR, A/HRC/13/13]; for the second cycle: 2 were rejected (Nos. 124.91 concerning the disclosure of data on the use of the death penalty and 124.93 on the practice of arbitrary, public and private executions) and 14 (Nos. 124.78-124.90 and 124.92) have been noted, meaning that *"the circumstances or environment of the country do not allow taking action on these recommendations, however, continued efforts will be made to look into the possibility of their implementation in the future"* (see UPR, A/HRC/27/10/Add.1).

<sup>287</sup> The offences under the DPRK Criminal Code are: conspiracy to overturn the State (article 60); terrorism (article 61); crime of clandestine destruction (Article 65); treason against the People (article 68); smuggling/selling narcotics (article 208); premeditated murder (article 266). See KINU, White Paper, 2014, p. 102.

<sup>288</sup> UN SR on the Situation of Human Rights in the DPRK, A/HRC/22/57, para. 89.

<sup>289</sup> In 2009 the DPRK revised its Criminal Code allowing capital punishment also on crime of clandestine destruction (article 64). See KINU, White Paper, 2014, p. 101.

<sup>290</sup> In May 2012 the DPRK revised again its Criminal Code allowing capital punishment on crimes involving smuggling and selling of large amounts of narcotics (Article 208). See KINU, White Paper, 2014, p. 101.

<sup>291</sup> DPRK, Standing Committee of Supreme People's Assembly, Decree No. 2483, 19 December 2007.

<sup>292</sup> For a complete list of the crimes punished with death penalty under the Annex to the DPRK Criminal Code see KINU, White Paper, 2014, p. 103.

<sup>293</sup> DPRK, Proclamation by the Ministry of People's Security of 28 December 2009. On the topic, see also KINU, White Paper, 2013, p. 84; International Federation for Human Rights (FIDH), The death penalty in North Korea, in the machinery of a totalitarian State, 2012, p. 19, which reports that *"The scope of crimes punishable by the death sentence has further increased following the announcement in September 2012 of two public decrees called "circulation of forex punishable by execution" (by the Department of People's Security) and "execution by gun squad for divulging classified information via cell phone" (by the State Security Department, SSD)"*.



only for five categories of extremely serious penal offences [...]”;<sup>294</sup> or in an even more reticent manner “In the DPRK death penalty is applied to extremely restricted cases [...]”.<sup>295</sup>

The DPRK domestic legal framework has been criticised not only for imposing the death penalty for political and ordinary crimes but also for the way in which those crimes are defined. The relevant provisions describe the conducts sanctioned by capital punishment in a very broad and vague manner, undermining legal certainty and opening the doors to arbitrariness. A telling example can be found in article 23 of the Annex to the Criminal Code, which is particularly all-encompassing: “In cases where multiple acts of crime committed by one perpetrator are particularly grave, or where there is no possibility of rehabilitation, the punishment shall be life-term reform through labour or the death penalty.”

The above-described national legal framework is in clear violation of international law. The ICCPR, in fact, admits death penalty only for the “most serious crimes” (e.g. violent crimes), and not for political, economic, moral or drug-related crimes, as it is the case in the DPRK. In 2012, the UN SR on the Situation of Human Rights in the DPRK also expressed deep concern about the national provisions on death penalty, which either do not conform to international standards or contain terms that are not defined or are vague, giving room for misinterpretation and abuse by the State.<sup>296</sup>

The Criminal Procedure Law and the Sentence and Decisions Enforcement Law provide for the procedure concerning the imposition of the death penalty. The Criminal Procedure Law states that capital punishment can be carried out only after the finalisation of the judgment and that executions shall be approved by the Presidium of the SPA (article 419 Criminal Procedure Law).<sup>297</sup> Executions are carried out by firing squads shooting multiple times, or exceptionally, by hanging the victim (article 32 of the DPRK Sentence and Decisions Enforcement Law). Testimonies of defectors, however, show that these procedures are not always respected, especially in prison camps.

There are no exact figures on the number of executions that have been taking place in recent years, as the DPRK does not provide any statistics. Although in 2001 the authorities affirmed that only 13 executions were carried out between 1998 and 2001,<sup>298</sup> estimates are that several hundred persons have been executed in the last decades. The NKDB itself has recorded 1559 executions in the 1990s, and 910 cases in the 2000s.<sup>299</sup> Executions seem to have taken place also in 2013. In its 2013 report, AI included North Korea among the 22 countries to have carried executions, which were believed to amount to at least 70.<sup>300</sup>

<sup>294</sup> UPR, A/HRC/WG.6/6/PRK/1, paras. 33–35.

<sup>295</sup> UPR, National Report: Democratic People's Republic of Korea, UN Docs. A/HRC/WG.6/19/PRK/1, 30 January 2014, paras. 30–34.

<sup>296</sup> UN Secretary-General, Note, Situation of Human Rights in the Democratic People's Republic of Korea, UN Docs. A/67/370, 13 September 2012, para. 28.

<sup>297</sup> KINU, White Paper, 2014, p. 108.

<sup>298</sup> HR Committee, Second periodic report of the Democratic People's Republic of Korea, UN Docs. CCPR/C/SR.1944, 23 October 2001, para. 24 [hereinafter: HR Committee, CCPR/C/SR.1944; COI, A/HRC/25/CRP.1, para. 829.

<sup>299</sup> FIDH, The death penalty in North Korea: in the machinery of a totalitarian State, 2012, p. 22.

<sup>300</sup> Amnesty International (AI), Death sentences and executions 2013, 2014, p. 25.

The DPRK still carries out public executions, as confirmed by the North Korean delegation itself during the first UPR in December 2009.<sup>301</sup> Public executions are said to be an integral part of the State's terror strategy, serving as a deterrent against any further disobedience and aiming to generate fear in the general population. They take place in public venues, such as central squares, stadiums, parks or local markets, where citizens, including children and relatives of the detainee, are often obliged to attend and watch.<sup>302</sup> Sometimes executions are broadcasted through loud speakers or the media. Data collected by KINU show that the number of public executions, though lower than in the "*Arduous March*" period in the 1990s, has significantly increased since 2007. KINU recorded the following episodes among the defectors: 68 in 2007, 107 in 2008, 137 in 2009, 86 in 2010, 109 in 2011, 18 in 2012 and 9 in 2013 (provisory number). In addition, KINU's data indicate that from 2011 crimes related to narcotics are among the most frequent grounds for public executions. The practice of public execution is fully incompatible with the right to human dignity, as stated also by the HR Committee.<sup>303</sup> Furthermore, forced attendance, especially of children and family members, can in itself amount to cruel and inhuman treatment and leave long-lasting traumas.

As previously mentioned, unlawful executions also take place on a regular basis within penitentiary institutions, where death penalty is often imposed as punishment for breaking prison rules, disobedience or attempts to escape. Witnesses testified that public, summary and secret executions are carried out inside both ordinary and political prison camps.<sup>304</sup> In case of public executions, usually applied for attempted escape from the facility, all detainees are normally obliged to attend and watch.<sup>305</sup> Often, decisions to execute are not issued by a competent judicial authority, but rather taken by SSD officials without any trial. Political prisoners who do not have any contact with the outside world are particularly exposed to secret executions. Credible evidence received from the COI showed that summary secret executions happen in political prison camps and in interrogation facilities.<sup>306</sup> Secret executions reportedly occur on charges of politically sensitive crimes, pregnancy through sexual relations with SSD officials, frequent attempted escapes, and complaints about prison conditions or disobedience to orders.<sup>307</sup>

One of the most prominent recent victims of a summary execution, Mr. Jang Song-Thaek, uncle of Kim Jong-Un, was executed in December 2013 under conditions that exemplify the disregard for any due process and judicial safeguards in the DPRK justice system. The death sentence was

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<sup>301</sup> UPR, A/HRC/13/13, para. 88, which states that "*Regarding public executions, in some very exceptional cases, there are public executions for those criminals who committed very brutal violent crimes. These requests are often made by the families and relatives of the victims. In DPRK, death penalty is applied in very strictly limited crimes*". The admission seems however to have been contradicted by a statement, which the DPRK issued in the context of the second UPR cycle in order to justify the rejection of recommendation No. 124.93. The statement is as follows "*[...] Moreover, some recommendations like 124.93 [...] are either untrue or based on distortion and fabrications of the true picture of the DPRK for the purpose of impairing its image; therefore, it rejects these recommendations.*" See UPR, A/HRC/27/10/Add.1, para. 8.

<sup>302</sup> See NKDB, North Korean Human Rights Case Report, Victims' Voices, Vol. 1, 2013, pp. 140–158.

<sup>303</sup> For a detailed list of testimonies concerning public executions, see also KINU, White Paper, 2014, p. 112 et seq.

<sup>304</sup> KINU, White Paper, 2014, p. 126–127; COI, A/HRC/25/CRP.1, paras. 834–835 and Yeo-Sang Toon, Ja-Eun Lee, Sun-Young Han, Political Prison Camps in North Korea Today, NKDB, 2007, pp. 453 et seq [hereinafter: Yeo-Sang Toon et al., 2007].

<sup>305</sup> Yeo-Sang Toon et al., 2007, p. 469 et seq.

<sup>306</sup> COI, A/HRC/25/CRP.1, para. 835.

<sup>307</sup> Yeo-Sang Toon et al., 2007, p. 472 et seq.; and COI, A/HRC/25/CRP.1, para. 835.

executed only three days after Mr. Jang's arrest and immediately after the special military court of the SSD handed down its judgment. He was accused of the crime of conspiracy to overturn the State (article 60 Criminal Code), which he would have attempted by ideologically aligning himself with enemies in order to overturn the people's power of the DPRK. In this case, it seems clear that the procedural guarantees of the ICCPR, such as the right to a fair trial, the right to seek pardon or commutation of the sentence (article 6(4)) and right to have any sentence reviewed by a second instance court (article 14(5)), were totally disregarded. Together with Mr. Jang Song-Thaek, a whole group of high-ranking officials of the KWP and MPS Security were reportedly victims of purges and executed.<sup>308</sup>

In 2013 there have also been reports of numerous executions that occurred in the course of a crackdown on "*anti-socialist materials*", on charges of distribution of pornographic material and foreign films.<sup>309</sup>

Further to these executions, the State is said to be responsible for mass starvation, another form of deprivation of life. The COI found evidence of "*systematic, widespread and grave violations of the right to food*" due to laws and policies issued by the centralised regime, which have been killing hundreds of thousands of North Koreans. Deliberate starvation is also said to be used as a punishment and as a means of control in detention facilities, where political as well as ordinary prisoners have died consequently.<sup>310</sup>

In conclusion, the authorities impose the death penalty through laws totally contravening the guarantees under international law and carry out extra-judicial and summary executions of political opponents on a frequent basis in breach of multiple internationally recognised human rights such as the right to life, human dignity, liberty and security as well as fair trial. They also manipulate the access to food to keep control over the people or punish individuals to the extent that hundreds of thousands have reportedly died or are suffering physical damages due to deliberate starvation.

## 5. FREEDOM OF EXPRESSION AND INFORMATION

The right to hold opinions, to express them freely in any form, including through the media, on the internet, in the arts, during demonstrations and other public gatherings is essential for our quality of life as human beings, as well for the healthy development of a society, and is "*a pre-condition for the enjoyment of most other human rights*."<sup>311</sup> This importance is reflected in international law, which recognises the right to freedom of expression in article 19 UDHR, as well as in article 19 ICCPR. In the domestic legal framework of the DPRK, freedom of expression is contained in article 67 of the Constitution, which states: "*Citizens shall have freedom of speech, press, assembly, demonstration, and association. The state shall guarantee conditions for the free activities of democratic political parties and social organisations.*"

<sup>308</sup> COI, A/HRC/25/CRP.1, para. 832.

<sup>309</sup> Ibid., para. 832.

<sup>310</sup> Ibid., para. 681.

<sup>311</sup> Manfred Nowak, Freedom of Expression, Assembly and Association, in *All Human Rights for All – Vienna Manual of Human Rights*, Intersentia, 2012, p. 380.

However, despite this constitutional provision, several other laws drastically restrict the freedom of speech and the press in the country, such as the Publication Law, entered into force in 1975 and last revised in 1999. Freedom House ranks the DPRK at the bottom of 197 countries regarding freedom of expression in 2014.<sup>312</sup>

No laws protect the freedom of the press, besides article 67 of the Constitution.<sup>313</sup> Further to the deficient legal framework, it must be observed that freedom of expression and freedom of the press are per nature incompatible with the organisation of the DPRK, where any critical expression is severely sanctioned under the Administrative Penalty Law<sup>314</sup> or the Criminal Code.

The media in the DPRK are entirely controlled by the State, and have the unique purpose of praising the regime and the *Juche* ideology. Newspapers, radios and other TV channels thus have no freedom to express other opinions and viewpoints than those of the Government. Censorship is widely applied, and the expression of anything that could be interpreted as criticism of the Government continues to be an offense for which citizens are subjected to investigation and punishment.<sup>315</sup> The official media serve propaganda rather than information purposes, and, despite the existence of numerous newspapers, their content is similar. The Propaganda Department of the Central Committee issues all messages to be broadcasted nation-wide via the propaganda units in all workplaces, schools, public places and others.<sup>316</sup> Each household must have speakers for a fixed line broadcasting system, one of the main information and propaganda system. A similar system is in place in all trains of the DPRK. Thus, in practice, absolutely no public criticism is allowed.

All forms of artistic expression are only permitted if they serve a propaganda purpose, i.e. if their function is glorifying the Kim family and their vision of a socialist North Korea. Reading, listening to or watching foreign media is strictly prohibited and transgressions severely punished. The Criminal Code prohibits the conduct of receiving information from outside the DPRK, including non-political information with the crimes of possessing or bringing in corrupt decadent culture (article 183) and of decadent behaviours (article 184). Moreover, "*the introduction, use, or circulation of depraved culture*" can also fall within the scope of the Administrative Penalty Law (Article 152).<sup>317</sup> According to KINU's findings, a violation of those provisions can lead to the detention in labour training camps.<sup>318</sup>

Access to the Internet is extremely restricted and only the top elite can use the domestic web, and foreign websites are entirely prohibited. Internet access is thus limited to high-ranking officials and few other elite groups. A type of intranet is reportedly available to a slightly larger group of users,

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<sup>312</sup> Freedom House, Press Freedom Rankings 2014, available at: <http://freedomhouse.org/report/freedom-press-2014/press-freedom-rankings#.VBxT8RaUEts> [hereinafter: Freedom House, 2014].

<sup>313</sup> NKDB, North Korean Human Rights Case Report, Victims' Voices, Vol. 1, 2013, p. 158.

<sup>314</sup> Administrative Penalty Law of the DPRK of 14 July 2004, last amended on 16 October 2011.

<sup>315</sup> HRW, 2014, p. 362.

<sup>316</sup> COI, A/HRC/25/CRP.1, para. 188.

<sup>317</sup> KINU, White Paper, 2014, p. 356.

<sup>318</sup> *Ibid.*, p. 356 et seq.

including elite schools, research institutions, universities, factories and a few individuals.<sup>319</sup> Also, people cannot possess computers without permission.<sup>320</sup>

The access to foreign broadcasts is also exclusively permitted to the elite close to the regime. Nevertheless, many NGOs report that foreign DVDs, USB sticks, memory cards and other devices continue to be smuggled into the country, serving as a source of information for citizens, although their owners potentially face heavy punishment up to the death penalty if discovered.<sup>321</sup> TV sets are routinely modified before sale so as to block off the reception of foreign TV channels. The purchase of radios is permitted to the ordinary North Korean citizens, but the devices must be fixed so as to emit exclusively governmental channels. However, these radios can be modified in order to tune into foreign broadcasts. Tape recorders are apparently also sometimes “upgraded” by citizens in order to function as radios. Short-wave radio broadcasts emitted from stations in the ROK are therefore accessible to those with some technical knowledge and serve as a source of information on what is happening outside and inside the DPRK.<sup>322</sup> Corruption and the access to remittances from defectors have so far helped law enforcement officials turn a blind eye on the circulation of information. However, the UN SR on the Situation of Human Rights in the DPRK reported the existence of special squads raiding homes to search for illegal materials from other countries, and an official encouragement of neighbours to report on such materials and their use. In many cases, when the individuals can afford it, bribery can avoid them arrest or attenuate sanctions.

In recent years, the use of mobile communication devices has been officially permitted in parts of the DPRK. According to the mobile telephone operator Orascom, by June 2014 about 2,4 million North Koreans had subscribed to mobile phone services at Koryolink, the DPRK's only operator, owned at majority by Orascom.<sup>323</sup> The authorities try to exert a tight control over users especially since many people try to call South Korea using Chinese-made mobile phones. Monitoring and surveillance by security agents and mobile device detectors have been increased since Kim Jong-Un came to power,<sup>324</sup> in an attempt to deter dissenting opinions and reinforce the ideology, and Freedom House mentions that “*Nearly all forms of private communication are monitored by a huge network of informers.*”<sup>325</sup>

Since the State has the monopoly over all media outlets, and since access to and reading of illegally obtained — foreign — material can have severe consequence, there is no freedom of information in the DPRK. Also, considering that the monitoring of individuals' private, professional and social lives is total and pervasive, and that any deviation from the prescribed path, e.g. by expressing dissenting opinions or undertaking any type of activity that could question the regime, is severely punished, there is no freedom of expression granted by the regime.

<sup>319</sup> USDS, DPRK, 2013.

<sup>320</sup> UN SR on the Situation of Human Rights in the DPRK, Report, UN Docs. A/HRC/13/47, 17 February 2010, para. 35.

<sup>321</sup> UPR, A/HRC/WG.6/19/PRK/3, para. 43.

<sup>322</sup> COI, A/HRC/25/CRP.1, para. 202.

<sup>323</sup> Martyn Williams, Koryolink subscriptions hit 2,4 million, 8 September 2014, available at <https://www.northkoreatech.org/2014/09/08/koryolink-subscriptions-hit-2-4-million/>.

<sup>324</sup> KINU, White Paper 2014, p. 352.

<sup>325</sup> Freedom House, 2014.

However, despite the crackdown of the authorities on individuals possessing communication and information devices, North Koreans, especially those living in border areas, gradually obtain more foreign information as a result of the increased number of devices imported or used in the DPRK to access foreign media. The obstacles to forming individual opinions in the DPRK are currently challenged by information trickling into the country via technological devices, and a more educated and empowered generation might find difficulties adhering to the *Juche* propaganda, or accepting the current arbitrariness of the authorities. As stated by Sokeel Park from LiNK, “with access to foreign media, a new generation was able to consider the ideology that was being presented to them by the Government and see the contrast between what they saw in the outside world and their own life, and what they were taught to expect about life and the outside world.”<sup>326</sup> It is probable that the worldview, self-image and outlook on life and on politics of many North Korean citizens is thereby increasingly altered and should inevitably lead to a change of society.

## 6. FREEDOM OF RELIGION

At the international legal level, freedom of religion is enshrined in article 18 ICCPR. The Constitution of the DPRK guarantees religious freedom in its article 68: “Citizens shall have freedom of religion. This right shall be guaranteed by permitting the construction of religious buildings and the holding of religious ceremonies. Religion shall not be used in bringing in outside forces or in harming the State and social order.”

In its 2009 report to the UPR, the Government contended that State and religion are separate and that all religions are equal. It also stated that religious practitioners are free to have a religious life and to perform ceremonies according to their own religious rules at family worship centres and other facilities. In this same report, the Government also mentioned the existence of religious organisations, such as the Korea Christian Federation, Korea Buddhists’ Federation, Korea Roman Catholic Association, Korea Cheondogyo Society and Korea Religionists’ Society.<sup>327</sup> It pointed out that several churches and temples have been restored or newly built<sup>328</sup> and that religious education is available about Christianity, Buddhism, and Cheondogyo. At Kim Il-Sung University, a Department of Religion was established according to the Government.<sup>329</sup>

In Pyongyang, however, there are reportedly only four Christian churches, which are State controlled.<sup>330</sup> KINU states that there are an estimated 60 Buddhist temples but most are regarded as cultural relics, although religious activity is permitted in some, and the press reported on several occasions that religious ceremonies take place in them.<sup>331</sup> Hence, despite these appearances of religious freedom and tolerance, the reality is completely different. In an extensive survey of the

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<sup>326</sup> Sokeel Park, (Director of Research and Strategy at Liberty in North Korea (LiNK)), North Korea’s Change Generation, You Tube Video, 17 July 2014, available at: [https://www.youtube.com/watch?v=l0xnvq9r\\_d8](https://www.youtube.com/watch?v=l0xnvq9r_d8).

<sup>327</sup> UPR, A/HRC/WG.6/6/PRK/1, para. 45.

<sup>328</sup> Ibid.

<sup>329</sup> HR Committee, Second periodic report of the Democratic People’s Republic of Korea on its implementation of the International Covenant on Civil and Political Rights, UN Docs. CCPR/C/PRK/2000/2, 4 May 2000, para. 116.

<sup>330</sup> USDS, DPRK, 2013.

<sup>331</sup> KINU, White Paper, 2014, p. 316.

NKDB of more than 8000 defectors, 99,7% of the interviewees stated that there is no freedom of religion in the DPRK.<sup>332</sup> In practice, access to religion has been criminalised since the instalment of the *Juche* ideology in the 1950s, as Kim Il-Sung consolidated his power by eliminating political opponents or suppressing any expression of Christianity or the Chondoist religion.<sup>333</sup>

The Kim Family's interpretation of Marxism has clearly led to the identification of religious followers as enemies of the socialist project of North Korea. Statements by Kim Il-Sung such as *"we cannot take religious people to the socialist society"* and *"religious people should die to cure their habit"*<sup>334</sup> show the deep opposition of the regime to any religious activities. Religious people are clearly a challenge to the homogenising force of *Juche* and the monolithic State ideology.

The *Juche* is a crucial ideological underpinning of the Government, and the cult of personality of the late Kim Il-Sung and Kim Jong-Il extends now to Kim Jong-Un, revered as a deity. Refusal on religious or other grounds to accept the leader as the supreme authority is regarded as opposition to national interests. Some scholars claim that the *Juche* ideology and reverence for the Kim family resembles a civil religion and that the Ten Principles of *Juche* *"contain elements that indicated the religious nature of the State ideology"*, such as: *"Accept the Great Leader Comrade Kim Il-Sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed. Accepting the Great Leader Comrade Kim Il-Sung's thought as one's own belief and taking his instructions as one's creed is the most crucial element requested for one to become an endlessly loyal Juche communist warrior."*<sup>335</sup> Furthermore, every household must have a portrait of Kim Il-Sung, one of Kim Jong-Il and one of both together on display. Citizens are expected to bow to these portraits and *"desecration"* is severely punished<sup>336</sup> which can be interpreted as a forced worship in a cult.

The authorities have therefore long seen religion as a threat to the regime's survival, and labelled believers a *"hostile class"*.<sup>337</sup> Christianity, moreover, has been pictured as a tool of imperialism from the West.<sup>338</sup> According to statistics of the KWP in 1950, the figure of religious believers at that time stood at almost 24 %. In 2002, in its report to the HR Committee, the DPRK set the figure at 0.016 percent of the population.<sup>339</sup> Various sources, however, claim that there are between 200,000 and 400,000 secret Christians in the DPRK.<sup>340</sup> These figures suggest that religious practitioners have been forced underground, as their activities have entrained persecution.

Indeed, most exiled North Koreans state to have never witnesses a ceremony nor any other type of religious activity,<sup>341</sup> and only 0,7% of the defectors surveyed by NKDB stated they had been

<sup>332</sup> Yeo-Sang Yoon, Jae-Ho Jung, Hyunmin An, White paper on religious freedoms in North Korea, Database Center for North Korean Human Rights, 2013, p. 114 [hereinafter: Yeo-Sang Yoon et al., 2013].

<sup>333</sup> COI, A/HRC/25/CRP.1, para. 743.

<sup>334</sup> Ibid., para. 253.

<sup>335</sup> Ibid. para. 241.

<sup>336</sup> Ibid., para. 191.

<sup>337</sup> KINU, White Paper, 2014, p. 316.

<sup>338</sup> Ibid., p. 315.

<sup>339</sup> COI, A/HRC/25/CRP.1, para. 1159.

<sup>340</sup> Ibid., para. 246.

<sup>341</sup> KINU, White Paper, 2013, p. 267.

allowed to visit a religious facility,<sup>342</sup> confirming that religious activities such as praying and worshipping are not performed publicly. According to the US Department of State (USDS), the four religious places in Pyongyang seem instead to serve mostly external propaganda purposes.<sup>343</sup> Witnesses interviewed by the COI have indicated that places of worship are a means of window-dressing and cannot be actively used by devotees. Defectors testified that *"one would certainly be persecuted for practicing religion at a personal level."*<sup>344</sup>

Heavy punishment expects individuals possessing religious items and engaging in propagation of religion, religious activities, or contacts with religious persons.<sup>345</sup> Several foreigners have been tried on charges of proselytising, although some were later released.<sup>346</sup>

There are hundreds of other individuals persecuted for their faith in the DPRK. Victims of religious persecutions were, first and foremost, the Christian community, and later also Buddhists and Cheondogyo followers. In 2014, Open Doors, for the 12<sup>th</sup> consecutive year in its ranking of countries persecuting Christians, classified DPRK as the country with the highest degree of persecution in the world.<sup>347</sup> According to the Unified Human Rights database of NKDB, 1034 cases of religious persecutions had been reported by 31 July 2013, among which 517 concerning religious activities.<sup>348</sup>

In its large survey of religious freedom in the DPRK, NKDB details the punishment given to individuals engaging in activities related to religion. While 60% of the people were detained, 12,9% saw their freedom of movement restricted. Others were executed, disappeared, or sustained bodily harm.<sup>349</sup> Those detained were sent to prisons, labour training camps, and, for the majority,<sup>350</sup> to political prison camps, which constitutes the most severe level of punishment for detainees.

Women interviewed by Citizens' Alliance for North Korean Human Rights (NKHR) reported that in cases of refoulement of North Koreans from China back to the DPRK,<sup>351</sup> the investigators in detention centres receive documents by the Chinese authorities. These papers also comprise information about potential contacts of the person with Christian churches. Considered a high crime, as they report, individuals, both men and women, who had contact with *"South Korean religion"* are systematically tortured.<sup>352</sup> Defectors also reported to NKDB that when investigators discover that persons interrogated are Christians, they often execute them secretly to prevent propagation of Christianity in political prison camps.<sup>353</sup>

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<sup>342</sup> Yeo-Sang Yoon et al., 2013, p. 119.

<sup>343</sup> USDS, Report on DPRK, 2013. KINU, White Paper, 2014, p. 330.

<sup>344</sup> KINU, White Paper, 2014, p. 330.

<sup>345</sup> Yeo-Sang Yoon et al., 2013, p. 147.

<sup>346</sup> Choe Sang-Hun, American gets 6 years in North Korea prison, International New York Times, 15 September 2014.

<sup>347</sup> Open Doors, North Korea: World Watch List Rank, available at: [www.opendoorsuk.org/persecution/worldwatch/north\\_korea.php](http://www.opendoorsuk.org/persecution/worldwatch/north_korea.php).

<sup>348</sup> NKDB, Case Report: Victims' Voices, Vol. 2, 2013, p. 298.

<sup>349</sup> Yeo-Sang Yoon et al., 2013, p. 175.

<sup>350</sup> 57,7%, or 4365 respondents, according to NKDB.

<sup>351</sup> Leaving the DPRK is a crime under article 221 of the DPRK Criminal Code. See Chapter 7 on Freedom of Movement below.

<sup>352</sup> NKHR, Briefing Report No. 7, 2013, p. 44.

<sup>353</sup> NKDB, Case Report: Victims' Voices, Vol. 2, 2013, p. 285.



Despite the huge risks associated to religious activities, over the last years North Koreans living closer to the Chinese border have been increasingly able to access religious content from abroad,<sup>354</sup> and a certain number have started engaging in limited clandestine religious practices.<sup>355</sup> However, due to the inherent threat posed by religion to the totalitarian regime, repression and curtailing of freedom of religion can be expected to remain the norm in the DPRK, despite repeated calls by CSOs and UN bodies. A forceful indoctrination and a strong repression of religious activities therefore make freedom of religion in the DPRK an empty shell.

## 7. FREEDOM OF ASSEMBLY AND ASSOCIATION

State party to the ICCPR, the DPRK is obliged to respect the rights to freedom of peaceful assembly, association, including the right to form and join a trade union.<sup>356</sup> The North Korean Constitution stipulates in its article 67 that citizens have the freedom of “[...] assembly, demonstration, and association. The state shall guarantee conditions for the free activities of democratic political parties and social organisations.”

Regarding the right to assembly, the national report to the UPR mentions that *“Citizens have freedoms of assembly and demonstration under the Constitution. The organisers of the assemblies or demonstrations are required to send notification to the local people’s committees and people’s security organs three days in advance, in which the purpose, date, time, venue, organiser and scope of the event are to be specified.”*<sup>357</sup>

In practice, though, citizens are not free but forced to assemble, be it for worshipping the great leaders and *Juche*, for performing in mass games or on any other official occasions. However, they are not allowed to assemble outside of the official frame, and unlawful assembly can result in a punishment of five years of correctional labour.<sup>358</sup> Despite the severity of this penalty, the emergence of a market economy mostly at the border with China has seen a new sort of assemblies and networks, in which citizens perform trades and other businesses, totally independently from the regime.

With regard to the right to form or join an association, the authorities stated also at the UPR in 2009 that *“The State provides conditions for free activities of democratic political parties and social organisations. In case a democratic social organisation is to be formed, an application should be sent to the Cabinet thirty days in advance, which specifies the purpose of the organisation, the number of its members, organisational structure, date of inauguration, and the name of the leader, accompanied by a copy of the statute.”*<sup>359</sup>

<sup>354</sup> Freedom House, Freedom in the World 2014, North Korea, [http://www.freedomhouse.org/report/freedom-world/2014/north-korea-0#\\_VB-6sphaUETt](http://www.freedomhouse.org/report/freedom-world/2014/north-korea-0#_VB-6sphaUETt).

<sup>355</sup> Yeo-Sang Yoon et al., 2013, pp. 175 and 186.

<sup>356</sup> ICCPR, articles 21 and 22.

<sup>357</sup> UPR, A/HRC/WG.6/6/PRK/1, para. 43.

<sup>358</sup> USDS, DPRK, 2013.

<sup>359</sup> UPR, A/HRC/WG.6/6/PRK/1, para. 44.

Membership in mass organisations is compulsory from primary school age until death,<sup>360</sup> and is based on several articles of the Criminal Code, such as article 209, which states that *“any person who refused to comply with instructions of state agency or agencies and caused collective disturbance shall be subject to criminal penalties even if an anti-state act was not intended.”*<sup>361</sup> Several organisations exist, such as the Christians' League or the Unified Culture and Arts League. Despite what their names might suggest, all unions, associations and organisations in the DPRK are satellites of the KWP or the Government,<sup>362</sup> and not independent organisations of like-minded people. No independent CSOs or political parties have so far surfaced in the DPRK.<sup>363</sup>

Associations are mainly carriers of the *Juche* ideology and important monitoring tools of citizens' lives and behaviours. The Women's League, for example, is supposedly protecting women's rights. However, in reality it was widely reported that the League does not intervene to protect or improve the situation of women in the country, but serves the purposes of enforcing the ideological education and monitoring those women who are not already under the scrutiny of other organisations, like for example unemployed women, or the ones working at the market. It appears compulsory to belong to the League as a woman.<sup>364</sup>

At times, individuals seem to get privileges when they are active in some associations. For example, one of the biggest associations, the Youth League, reportedly also enlists members into labour units. The participation in the units enhances chances to obtain a place at university, membership in the KWP.<sup>365</sup> Those who obtain this privilege might then also become officials of the associations controlled by the Party.<sup>366</sup> On the other hand, non-participation in associations and their activities can have detrimental effects on one's social and professional standing and career.

A single labour organisation is reported to exist in the country, the General Federation of Trade Union of Korea. In its final observations to the DPRK in 2003, the ICESCR Committee<sup>367</sup> expressed grave concern that this unique labour union is also controlled by the KWP. This naturally implies that the workers' right to organise is subordinated to the State security apparatus, and it is de facto meaningless. In addition, the ICESCR Committee pointed out that North Korean citizens' right to freedom of demonstration is not being ensured. According to defectors interviewed by KINU, no protest of any size has ever been organised in the streets.<sup>368</sup> Since all social gatherings and in fact private and social life as such are comprehensively controlled and directed by the State or the Party, the constitutional guaranteed rights to assembly and association are also completely violated in the DPRK.

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<sup>360</sup> COI, A/HRC/25/CRP.1, para. 183.

<sup>361</sup> KINU, White Paper, 2014, p. 364.

<sup>362</sup> *Ibid.*, p. 361.

<sup>363</sup> AI, Amnesty International Report 2013, 2013, p. 150.

<sup>364</sup> NKHR, Briefing Report No. 7, 2013, p. 25.

<sup>365</sup> COI, A/HRC/25/CRP.1, para. 183.

<sup>366</sup> *Ibid.*

<sup>367</sup> ICESCR Committee, Concluding Observations E/C.12/1/Add.95, 12 December 2003, para. 16.

<sup>368</sup> KINU, White Paper 2014, p. 366.

## 8. FREEDOM OF MOVEMENT AND RESIDENCE

The right to freedom of movement and residence is enshrined in the UDHR (article 13) and in the ICCPR (article 12). Article 12 ICCPR entails the right to move about and choose a residence within a country, the freedom to leave any country including one's own, as well as the right not to be arbitrarily deprived of the right to enter one's own country. Restrictions on this right are only permitted when they are provided by law, consistent with the other rights protected by the Covenant, and necessary to protect national security, public order, public health or morals or the rights and freedoms of others (article 12(3)). As with other fundamental rights, any limitation of the right to freedom of movement must be governed by the principle of necessity and must not amount to an annulment of the right.

The UN HR Committee had clarified that *"the right to move freely relates to the whole territory of a State [...], persons are entitled to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place."*<sup>369</sup> The HR Committee further noted that *"[...] the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory."*<sup>370</sup>

At the national level, the right to freedom of movement is constitutionally guaranteed under article 75, which states as follows: *"Citizens shall have freedom of residence and travel."* During the two UPR, recommendations were made also in the field of the liberty of movement. They include inter alia the recommendations to decriminalise unauthorised travels both within and outside the country, and to end the punishment of those expelled and returned.

In practice though, the right to freedom of movement, residence and travel is severely restricted both within and outside the country. These restrictions are due to alleged national security concerns,<sup>371</sup> which however do not seem to be in line with international standards and with the principles of necessity and proportionality.

The liberty of movement within the territory of the DPRK is limited on the one side by the State practice to assign its citizens a place of residence and employment, and on the other side by the requirement of travel certificates. Moreover, the provisions regulating housing transactions contribute even further to restrain the freedom of movement of North Koreans.

First, the constitutionally guaranteed right to freedom of movement and residence is undermined by the State's practice to assign citizens to their places of employment and residence.<sup>372</sup> In spite of the fact that article 70 of the Constitution enshrines the right for citizens to choose their job

<sup>369</sup> HR Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), UN Docs. CCPR/C/21/Rev.1/Add.9, 2 November 1999.

<sup>370</sup> Ibid.

<sup>371</sup> See HR Committee, CCPR/C/SR.1944, para. 35, where DPRK stated that the permit system was necessary *"to guarantee national security and thwart the activities of spies and saboteurs"*.

<sup>372</sup> See KINU, White Paper, 2013, p. 428 et seq.

according to their desire and capability, it is in reality the KWP who determines all citizens' place of residence and employment. This practice maximises State control over citizens and is exercised with a clear discriminatory intent, that of the *songbun* social classification system. Elite and people affiliated with the KWP are concentrated in Pyongyang, while citizens of low *songbun* are typically moved to remote provinces and assigned the hardest jobs, such as mining and farming.<sup>373</sup> Also, relocations are under the direct control of the State. Furthermore, there is evidence that forced relocations do not depend only on the behaviour of the persons directly concerned but also — by virtue of the guilt by association policy — on the conduct of their family members.<sup>374</sup> The measure seems to be an instrument used by the Government to perpetuate the discriminatory system of classification based on *songbun* and to dispel any political opposition.

Second, the travel permit system is another way through which the Government curtails the freedom of movement within the country. According to this system, North Koreans wishing to travel must obtain a certificate under the Regulation of Travel (article 6).<sup>375</sup> Also in this case the social classification deriving from the *songbun* status plays a major role, thus making the freedom of travel subjected to a double standard. While Pyongyang residents can travel across the country without permits, residents in the provinces are not able to travel without the required authorisation — neither to the capital nor to another province. Moreover, travels to the capital or to border regions are further restricted and require special approval. This seems to indicate that the alleged security concerns stem rather from the Government's fear that in these places citizens might be able to access dissident information more easily or, in border areas, that defection might take place.

The travel permit procedure is in theory free of charge. For ordinary citizens, the procedure to get a travel permit can last from 2 to 3 days for travels to non-restricted areas, and from 7 to 15 days for restricted areas.<sup>376</sup> The approval of a permit depends on the individual's record of his/her behaviour. Upon arrival, travellers must report to the Neighbourhood Watch and register with the local department of MPS.<sup>377</sup>

Those who travel without the required permit are punished with fines or deprivation of liberty, i.e. in a holding centre or in a labour training camp.<sup>378</sup> As provided for by the Security Control Act *"The People's Security Agency shall exercise control over violations regarding rules for traveling and walking the streets"* (article 30) and is mandated to punish violators with *"[...] warnings, fines and penalties such as unpaid labour"* (article 194).<sup>379</sup>

Due to economic difficulties, the travel permit system has become less effective in recent years. As both KINU and the COI reported, inspections are less strict and bribery has become a widespread practice during the permits procedure as well as at checkpoints, where citizens pay cash their way through.<sup>380</sup>

<sup>373</sup> COI, A/HRC/25/CRP.1, para. 361; KINU, White Paper, 2014, p. 439.

<sup>374</sup> COI, A/HRC/25/CRP.1, para. 363.

<sup>375</sup> Ibid., para. 373.

<sup>376</sup> KINU, White Paper, 2014, p. 295.

<sup>377</sup> COI, A/HRC/25/CRP.1, para. 376; KINU, White Paper, 2014, p. 295.

<sup>378</sup> KINU, White Paper, 2014, p. 292; COI, A/HRC/25/CRP.1, para. 375.

<sup>379</sup> DPRK, Security Control Act of 28 December 1992, as amended on 26 July 2005.

<sup>380</sup> KINU, White Paper, 2014, p. 296.

Lastly, the provisions on dwellings also significantly contribute to restrict the freedom of movement and residence of North Koreans. Under the DPRK Law on Dwellings,<sup>381</sup> no privately owned real-estate property is allowed, and for the people residing in one of the dwelling places owned by the State, it is illegal to *“move into the unit without the use permit; exchange units for profit or other improper purpose; sell or buy State-owned units or lease or broker the units for profit.”*<sup>382</sup> A violation of this rule constitutes a crime and it is punished with labour training camps up to a year, or in serious cases up to three years of correctional labour penalty.<sup>383</sup> In practice, however, housing transactions can and do quite frequently take place through bribery and corruption of officials.<sup>384</sup>

All the above-described measures adopted by the DPRK constitute a flagrant violation of international law. As also noted by the COI, the policy of State-assigned residence and forced relocations adopted by the DPRK entails a clear violation of the right to freedom of residence as well as the principle of non-discrimination on social and political grounds. By the same token, the general requirement of a permit when travelling outside one's home province or to the capital also breaches article 12 ICCPR.<sup>385</sup> National security grounds, in fact, could be considered a proportionate interference in case of travel's restrictions to specific areas, such as those in the immediate vicinity of the DMZ, but cannot justify a blanket prohibition to travel without permit to all places others than one's province. It follows that the travel permit requirement as provided by DPRK law amounts to a disproportionate restriction of the right to free movement.

### Freedom to leave their own country

The restrictions of the freedom of movement in the DPRK extend to the enjoyment of citizens' freedom to leave their own country, i.e. the freedom to travel abroad and the freedom to emigrate.

The Immigration Law allows travels abroad only to those who have passports or travel permits for border areas.<sup>386</sup> Permission to undertake a journey abroad is, however, granted very selectively and only to those whose ideological integrity has been proven beyond any doubt. Applicants wanting to visit their relatives in China<sup>388</sup> or wanting to engage in short-term work opportunities and small-scale trade with China may sometimes be granted permission to leave the country.<sup>389</sup> However, the procedure of acquiring a passport is lengthy and costly.<sup>390</sup>

Leaving the country illegally can have serious consequences for the persons who left or attempted to leave and for their relatives staying in the DPRK. The conduct of illegal border exit/entry represents an offence under article 221 of the Criminal Code, as revised in 2012, subject to

<sup>381</sup> DPRK, Law on Dwellings of 21 January 2009, as amended in August 2009 and in October 2011.

<sup>382</sup> KINU, White Paper, 2014, p. 306.

<sup>383</sup> DPRK, Criminal Code, article 146, as reported by KINU, White Paper, 2014, p. 306.

<sup>384</sup> COI, A/HRC/25/CRP.1, para. 360.

<sup>385</sup> *Ibid.*, para. 379.

<sup>386</sup> *Ibid.*, para. 381.

<sup>387</sup> KINU, White Paper, 2014, p. 303.

<sup>388</sup> According to KINU, passports for the purpose of visiting relatives in China have become available for individuals (not families) over the age of 45 with reliable records. See KINU, White Paper, 2014, p. 304.

<sup>389</sup> USDS, DPRK, 2013, p. 13.

<sup>390</sup> KINU, White Paper, 2014, p. 306.

a maximum of one year of labour training, or, in grave cases, up to five years of correctional labour.<sup>391</sup> The acts of entering or exiting the country, however, are often charged under more serious crimes, such as “*Treason against Fatherland*” (article 63) or one of the “*anti-state*” or “*anti-people*” crimes, thus making a harsher punishment applicable: five years of unlimited term correctional labour or life-term correctional labour or capital punishment. Moreover, defection does not affect escapees only but also their relatives, who under the guilty by association concept may be forcibly relocated or banished to remote areas in the provinces.<sup>392</sup>

Persons arrested abroad and repatriated to the DPRK are handed over to officials of the SSD, and detained in interrogation detention centres of the SSD or MPS. After interrogation, the SSD decides on the allegations and consequently on the type of detention — political or ordinary — they will be condemned to. By law, the ordinary illegal border-crosser looking for work and food in China faces labour training or correctional labour. Conversely, a person suspected of having had contacts with ROK intelligence and/or with Christian missionaries might face correctional labour and even capital punishment.<sup>393</sup>

The consequences of defection go beyond the penalties envisaged by the law. If caught while illegally crossing the border or in case of forced repatriation from the country of refuge, escapees undergo all sort of abuses, including torture, inhuman and degrading treatments during interrogations<sup>394</sup> or detention in political camps and in holding centres and, for women, sexual violence, invasive searches, and forced abortion and infanticide (see also chapter 2 on torture and ill-treatment). In addition, according to former officials’ testimonies, an early directive from the 1990s empowers border guards to shoot to kill anyone attempting to cross the border. The directive is still enforced.<sup>395</sup>

Notwithstanding the severe consequences of defection, people continue to flee. The number of citizens who have illegally fled the country is not clear, as many of them continue to live abroad undocumented and irregularly. Reports say that the number reached a peak in 1998–1999<sup>396</sup> and then started to decrease since 2000 and again in 2009,<sup>397</sup> when the SSD enacted a new package of emergency measures against defections.<sup>398</sup> These measures includes upgraded border control surveillance, as for example the application of barbed wire fences, cameras, and landmines, as well as stricter and more frequent travel permit checks and inspections.

The majority of exiled North Koreans are now women, which is explained by the fact that women due to motherhood can escape State-assigned work and workplace more easily than men, who

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<sup>391</sup> See KINU, White Paper, 2014, p. 564. The exact conduct prohibited under the Criminal Code is “*going and coming across the border*” and not simply illegal crossing.

<sup>392</sup> KINU, White Paper, 2014, p. 582 et seq.; NKDB, North Korean Defectors in China: Forced Repatriation and Human Rights Violations, 2014, p. 197 et seq [hereinafter: NKDB, North Korean Defectors in China, 2014].

<sup>393</sup> COI, A/HRC/25/CRP.1, para. 408 et seq.; KINU, White Paper, 2014, p. 564; NKDB, North Korean Defectors in China, 2014, p. 42.

<sup>394</sup> COI, A/HRC/25/CRP.1, para. 411–414.

<sup>395</sup> *Ibid.*, para. 402.

<sup>396</sup> USDS, The Status of North Korean Asylum Seekers and the US Government Policy toward them, March 2005.

<sup>397</sup> KINU, White Paper, 2014, p. 544.

<sup>398</sup> KINU, White Paper, 2014, p. 545. See also COI, A/HRC/25/CRP.1, para. 397–404.

are regularly required to check in with their State-assigned workplace.<sup>399</sup> Women, however, face a greater risk. For instance, when entering China, due to the debts contracted to obtaining the visa and to covering travel expenses (circa 500 USD), women are often victims of forced marriages or end up trapped into human trafficking networks or prostitution.<sup>400</sup> Their irregular status leaves them with no legal protection when confronted to sexual and economic exploitation. In response to the 2010 UPR Working Group report, the DPRK has implicitly acknowledged the problem of human trafficking between the DPRK and China.<sup>401</sup>

The reasons for exiting the DPRK irregularly continue to be partly political, partly due to socio-economic deprivations deriving from the *songbun* social class system. In some cases, people escape persecution on religious grounds (see chapter 5). However, if during the 90s illegal crossing was mainly due to the harsh economic crisis, today the situation has changed. A 2012 survey of the Korean Bar Association has shown that the main reasons for defections are not anymore of an economical nature but rather of a political one.<sup>402</sup>

In conclusion, the above described measures constitute a gross violation of the freedom to leave one's own country guaranteed under article 12(2) of the ICCPR. In this regard, the Commission spoke about "*a de facto total travel ban on ordinary citizens*", which is enforced "*through extreme violence and harsh punishment*".<sup>403</sup> The COI's criticism targeted in particular the policy to shoot to kill in order to prevent unauthorised border crossings as well as the sexual violence or other humiliating treatments inflicted on women repatriated. In the first case, the Commission deemed the policy "*grossly disproportionate and irreconcilable with article 6 of the ICCPR, which only allows the use of lethal force by state agents in self-defence or defence of others to protect life against immediate threats*".<sup>404</sup> In the second case, the Commission argued that the invasive searches on genital parts carried out on women, and sometimes on men, are fully unjustified and amount to rape, as defined under international criminal law.<sup>405</sup> Freedom of movement and of residence are therefore rights that are systematically violated by the regime in its strategy of complete control over all citizens.

## Forced return and refoulement to the DPRK

In spite of the predominantly political reasons for defection, China — which is a party to the 1951 UN Refugee Convention and to its 1967 Protocol on the Status of Refugees as well as to the CAT — systematically arrests and carries out forced repatriations of North Korean citizens who do not have the required documentation. The Chinese Government, in fact, considers North Korean escapees as irregular migrants and not as refugees, and negates that they are at risk to be subjected to torture or ill-treatment when repatriated.<sup>406</sup> This return policy was strongly criticised

<sup>399</sup> COI, A/HRC/25/CRP.1, para. 377; UN SR on Violence Against Women, its Causes and Consequences, Report — Addendum: Communications to and from Governments, UN Docs. A/HRC/4/34/Add.1, 19 March 2007, para. 127 [hereinafter: UN SR on Violence Against Women, A/HRC/4/34/Add.1].

<sup>400</sup> KINU, White Paper, 2014, p. 555; NKDB, North Korean Defectors in China, 2014, p. 135 et seq.

<sup>401</sup> NKHR, Life & Human Rights in North Korea, 2011, p. 13.

<sup>402</sup> COI, A/HRC/25/CRP.1, para. 390; Korean Bar Association, White Paper on Human Rights in North Korea, 2012, p. 54 and 51–513.

<sup>403</sup> *Ibid.*, para. 403 and 380.

<sup>404</sup> *Ibid.*, para. 403.

<sup>405</sup> *Ibid.*, para. 420.

<sup>406</sup> NKDB, North Korean Defectors in China, 2014, p. 31 et seq.; COI, A/HRC/25/CRP.1, para. 435–454.

by the UN SR on the Situation of Human Rights in the DPRK jointly with other independent experts, who already in 2005 highlighted that, when returned back to the DPRK, North Korean citizens face “*cruel, inhuman and degrading conditions, ill-treatment and torture as well as, in extreme cases, summary execution*”.<sup>407</sup> Regrettably, though China has never abandoned its return policy. On the contrary, since Kim Jong-Un’s rise to power China has strengthened border control measures against North Korean defectors, brokers and human rights activists.<sup>408</sup> There is also evidence that China prevents North Korean to get in contact with foreign embassies and consulates to seek protection and file an asylum application.<sup>409</sup> China is not the only country to carry out returns to the DPRK. In 2013, for example, Laos repatriated via China a group of nine North Koreans (aged between 15 and 23), whose fate is since unknown.<sup>410</sup>

The repatriation of North Koreans to the DPRK clearly contravenes the principle of non-refoulement, established by article 33(1) of the Refugee Convention and article 3 CAT. This principle is also included in article 7 ICCPR and constitutes a principle of customary international law. As previously explained, North Koreans flee on the one side for political or religious reasons, and on the other side for socio-economic reasons. International law protects both categories. In fact, also those who flee due to their low *songbun* social class are entitled to international protection, as they could qualify as refugee “*sur place*”.<sup>411</sup>

## 9. OUTLOOK

The final report of the COI sheds light on an unimaginable situation, and on a level of human rights violations so serious and widespread that it amounts to crimes against humanity in many cases. The Commission’s chair, Judge Michael Kirby, rightly stated upon its publication that “*now, we cannot say we do not know about DPRK. Now we all know and there is no excuse*”.<sup>412</sup> He was echoed by US Secretary of State John Kerry who, commenting on the ongoing situation of widespread violations in September 2014, said: “*we cannot accept it. Silence would be greatest abuse of all*”.<sup>413</sup> It has indeed been displayed, clearly, in all its horror.

In spite of the regime’s irrational and inconsequent behaviour, at times showing good will to cooperate, at times carrying out overtly hostile actions, the North Korean Government does not seem hermetically insensitive to the increasing pressure of the international community. Indeed, scrutiny seems to have mounted over time, and the creation of the Commission materialised the growing incomprehension towards the existence of such a regime.

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<sup>407</sup> UN SR on Violence Against Women, A/HRC/4/34/Add.1, para. 129.

<sup>408</sup> NKDB, North Korean Defectors in China, 2014, p. 40.

<sup>409</sup> COI, A/HRC/25/CRP.1, para. 437.

<sup>410</sup> Paula Hancocks and KJ Kwon, Defectors agonizingly close to freedom sent back to North Korean nightmare, CNN, 4 October 2013.

<sup>411</sup> COI, A/HRC/25/CRP.1, para. 447. For more information on the status of “*refugee sur place*”, see UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992, paras. 94–96.

<sup>412</sup> Hon. Michael Kirby AC CMG, UN Commission of Inquiry on Human Rights Violations in the Democratic People’s Republic of Korea - Ten Lessons, 2014, p. 21. [hereinafter: Michael Kirby, Ten Lessons].

<sup>413</sup> Somini Sengupta, Kerry Pushes for Human Rights Accountability in North Korea, The New York Times, 23 September 2014.



When Resolution 25/25<sup>414</sup> was adopted in March 2014 after the publication of the UN report, none of the 47 States Members of the HRC denied that the dire human rights situation had to be addressed. A majority (30) voted in favour of it, and those who did not cited reservations about country-specific mandates, and expressed preference for other mechanisms, in particular the UPR, but did not contest the validity of addressing this situation.

The report has set the necessary evidentiary basis for the International Community to approach the situation of the DPRK from the angle of international criminal law and human rights, rather than solely from the political and security dimension perspective as it was the case in past decades. It has created better awareness of the dangers to international peace and security deriving from the instability resulting from grave, prolonged and widespread human rights violations in the DPRK.<sup>415</sup> Human rights have therefore now entered the equation as well, and it is to be hoped that the nuclear issue will no longer be seen as the only issue to address multilaterally. The fact that calls for accountability are growing worldwide, and that many long-lasting autocratic regimes disappeared in the last years shows that gross human rights violations such as crimes against humanity are no longer tolerated.

The totalitarian regime of the DPRK seems to have also perceived this impatience and the international criticism. Against that background, the authorities have started a “*charm offensive*” over the last months. There seems to be recognition on the side of the regime that, as a matter of survival, reforms, even small ones, should be achieved. It has therefore accepted 113 recommendations issued from the second UPR, such as, for the first time, allowing foreign donors free and unimpeded access to all populations in need.<sup>416</sup>

Moreover, the authorities made several diplomatic gestures over the last months, showing some apparent goodwill to improve contacts with the world. The regime thus sent to the UN General Assembly a delegation comprising its Minister of Foreign Affairs, the highest official to come to the General Assembly in 15 years. At about the same time, a Secretary of the Central Committee of the Korea Workers' Party paid a rare visit to Europe, during which he met with officials in Germany, Belgium, Switzerland and Italy.<sup>417</sup> Another diplomatic outreach was made by the DPRK when a delegation of three very close aides to Kim Jong-Un, among which the Vice Chairman of the National Defence Commission, made a surprise visit to Seoul on 4 October 2014 to resume high-level talks between the two sides.<sup>418</sup> This follows the organisation of family reunions in February 2014, the first time in three years, after arduous negotiations.

Parallel to these diplomatic efforts, the State controlled DPRK Association for Human Rights Studies published a report of more than 90 pages in September 2014 via the official Korean

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<sup>414</sup> HRC, A/HRC/25/L.17.

<sup>415</sup> Michael Kirby, *Ten Lessons*, p. 27.

<sup>416</sup> See UPR, A/HRC/27/10, recommendation 124.46: “*Work closely with humanitarian agencies to ensure their free and unimpeded access to all populations in need and that humanitarian aid is distributed transparently and reaches the most vulnerable citizens (New Zealand)*”.

<sup>417</sup> Jee-Hye Yoo, Sarah Kim, North addresses its human rights, *Korea Joongang Daily*, 15 September 2014.

<sup>418</sup> Sang-Hun Choe, South and North Korea Agree to New Talks, *The New York Times*, 4 October 2014.

Central News Agency,<sup>419</sup> the purpose of which is the rebuttal of the COI's report.<sup>420</sup> This constituted a very surprising step that had no precedent, although the report states mostly legal texts and does not offer an objective overview of the human rights situation in the country. These various actions over the last months however give the impression that the regime is concerned about the growing international outcry, especially since the publication of the COI's report.

Hence, the UN SR on the Situation of Human Rights in the DPRK expressed his hope that the UN report, for the reason it has been endorsed by the highest organ for human rights of the International Community and since it comprehensively documents and describes the atrocities and crimes committed by the State against its own people, will have a deterrent effect on the Government of the DPRK and might possibly be even an incentive to commence reforms.<sup>421</sup> This although some analysts expressed low beliefs about this prospect,<sup>422</sup> since the implementation of these recommendations would require a complete overhaul of the totalitarian system currently in place.

This hope for reforms is also tempered by the fact that inside the country, controls seem to have tightened over the last months, with a stronger crackdown on individuals watching foreign media materials, jointly with increased controls of the borders. The execution of Mr. Jang Song-Thaek, second most powerful official in the regime, is another example of efforts to consolidate Kim's power without any dissenting voices. The various launches of missiles in disputed waters as well as many aggressive statements further demonstrate the need to keep propaganda alive inside the country. It therefore seems that Kim Jong-Un, through a larger use of the same old techniques of his father and grand-father before him, attempts to consolidate his power and keep foreign influence out rather than conceive in-depth reforms.

The COI has concluded that the human rights violations committed in the DPRK amount to crimes against humanity, which have been taking place since decades and still continue to occur. The perpetrators can count on impunity because these violations are systematic in the sense that they are means and result of State policies. The main perpetrators, as documented by the COI, are officials of the SSD, the MPS, the Korean People's Army, the KWP, the Office of the Public Prosecutor and the Judiciary. These institutions and officials are subordinate to the National Defence Commission and the Supreme Leader of the DPRK.<sup>423</sup>

The Commission's report has stirred a renewed debate on how the international community should respond to the fact that institutions and officials of the DPRK continue to commit serious and systematic human rights violations on a massive scale, and that these violations are planned and orchestrated by the State as policies and pillars of the North Korean political system as such.

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<sup>419</sup> Korean Central News Agency, Association for Human Rights Studies Spokesman on Report on Human Rights Performance in DPRK, 13 September 2014.

<sup>420</sup> In the framework of this report, the Embassy of the DPRK in Vienna repeatedly contacted the team in charge of it while it was still in South Korea, on 24 March 2014, and although it had not informed the Embassy or any officials from the DPRK about this work, in order to "meet urgently to give [the team] materials on the human rights situation in the DPRK". That meeting never happened as the Embassy did not reply to a request made upon return from the ROK, but showed an interest from the part of the authorities in a report on the country's human rights situation.

<sup>421</sup> UN SR on the Situation of Human Rights in the DPRK, Report, UN Docs. A/HRC/26/43, 13 June 2014, para. 23.

<sup>422</sup> Sue Mi Terry, A Korea Whole and Free – Why Unifying the Peninsula Won't Be So Bad After All, Council on Foreign Relations, July/August 2014 Issue.

<sup>423</sup> UN SR on the Situation of Human Rights in the DPRK, A/HRC/22/57.

The pervasive internal monitoring of citizens, the almost complete lack of any rule of law, and the all-encompassing system of control and punishment are means to terrorise the population and pre-empt dissent. The report contains, in the view of Judge Kirby, enough evidence to make the perpetrators accountable and prosecute them. Since the DPRK is not willing to prosecute the perpetrators, but, on the contrary, orchestrates their crimes as part of the State policies, there is no reason to believe that national judicial organs will fulfil their obligation to bring perpetrators to justice. The UN SR on the Situation of Human Rights in the DPRK has noted in a similar vein, when presenting his most recent report to the HRC in June 2014, that the international community, through the UN, must make the Government accountable for failing to protect its population against crimes against humanity and for massive violations of international law.

A possibility to provide justice by ensuring accountability of those responsible for crimes against humanity is a referral to the International Criminal Court (ICC). The UN Security Council has a key role in that regard. The Council was briefed by the COI in April 2014, in the absence of China and Russia. On this occasion, six of the eleven present members explicitly called for a referral of the situation in the DPRK to the ICC, while the other five stated that the Council should consider the matter and the possible referral to the Court. Although considered by many CSOs as well as the COI as one of two suitable options,<sup>424</sup> a referral to the ICC by the UN Security Council is unlikely. China would certainly oppose it, even if — as analysts report — China's support to the DPRK might be weakening. The visit of Chinese President Xi Jinping to South Korea at the end of June, before having been to Pyongyang or having invited Kim Jong-Un to Beijing was seen as a sign of detachment,<sup>425</sup> as was the fact that China did not oppose the last HRC Resolution on the DPRK. These events might be representative of tiredness towards the DPRK, but it is unlikely that China would ever accept a referral to the ICC. Also, China considered the report of the COI as "*unfounded accusations*", with recommendations "*divorced from reality*"<sup>426</sup>, thus not showing much openness to bring perpetrators to justice.

The Commission alternatively proposed the establishment of an ad hoc tribunal for the DPRK by the Security Council, which would also be challenging to establish but could constitute an adequate form of justice if all conditions are met to make it fully impartial and efficient. Other scenarios, such as a hybrid court, a special international prosecutor's office for the DPRK, or a truth and reconciliation mechanism, were considered as unsuitable by the UN Commission.

Irrespective of the signals sent by the regime at the national or the international level, as well as the standing of the international community towards the regime and its citizens, change seems to be happening at the individual level in the country, and beyond the control of the State.<sup>427</sup> Citizens increasingly take risks in order to access foreign information; have at their disposal more electronic devices containing news or programmes from abroad, such as USB sticks, memory cards and

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<sup>424</sup> COI, A/HRC/25/CRP.1, para. 1201

<sup>425</sup> Jane Perlez, Chinese President's Visit to South Korea Is Seen as Way to Weaken U.S. Alliances, The New York Times, 2 July 2014.

<sup>426</sup> James Rein, Will N Korea abuses lead to war crimes court?, Al Jazeera, 18 March 2014.

<sup>427</sup> See also the very interesting presentation of Sokeel Park (Director of research and strategy at Liberty in North Korea (LiNK)), Why Change in North Korea is Inevitable, You Tube Video, 23 September 2014, available from: <https://www.youtube.com/watch?v=W3LuZH4-et0>.

computers; engage in informal business, especially in the border areas; and receive money from relatives in Seoul. It is imaginable that an empowered and new generation of North Koreans will find it increasingly difficult to accept the regime's propaganda, the restrictions and the permanent climate of control, insecurity and arbitrariness in their daily life. The increased access to information and the growing economic power of a part of the population through remittances and business implies that sooner or later the regime will need to adapt and reform the system from the inside, for example by granting gradually more freedoms. If the State resists these calls for changes and further increases the crackdown, as it seems to be the case under Kim Jong-Un, this might backfire when the population will have reached a threshold where it no longer accepts the current status quo.

Changes have started, even if still at a limited grassroots level. In order to further promote change from within, some stakeholders recommend to support the economic development and strengthening of the access to information of the North Korean society as a complementary strategy to upholding international pressure.

Whatever the form the future will give to the DPRK's political landscape, accountability will likely play an important role for the population in the process of recovery. For such purpose the continuous monitoring and documentation of human rights abuses committed in the DPRK are of crucial relevance.

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