



**The Republic of Korea's Compliance with the International Covenant on
Civil and Political Rights: Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

The Anti-Death Penalty Asia Network

and

Transitional Justice Working Group

for the

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-governmental organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Anti-Death Penalty Asia Network: Founded in 2006, the Anti-Death Penalty Asia Network (ADPAN) is a regional network of organizations and individuals committed to working towards abolition of the death penalty in the Asia Pacific, with members from approximately 22 countries within the region. Our role is to create wider societal support for abolition of the death penalty in the Asia Pacific region through advocacy, education, and network building. ADPAN maintains that the death penalty violates the right to life; that it is the ultimate form of cruel, inhuman and degrading punishment; and that the death penalty should be entirely abolished internationally.

EXECUTIVE SUMMARY

1. Despite making significant progress since the last report, the Republic of Korea has neglected to take important steps to address ongoing issues surrounding the protection of the right to life under the Covenant, while also taking steps to actively undermine its current protections.

The Republic of Korea fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. The Republic of Korea’s death penalty practices are in violation of the right to life (arts. 2 and 6, List of Issues Prior to Reporting para. 10).

2. In its List of Issues Prior to Reporting, the Committee asked whether South Korea “plans to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, to abolish the death penalty *de jure*, and to commute all death sentences to terms of imprisonment.”¹
3. In its reply to the List of Issues Prior to Reporting, South Korea stated that “[t]he Government respects the purpose of the Second Optional Protocol that the State shall take all necessary measures to protect the lives of persons, and has not executed the death penalty since 1997, recognized as a *de facto* abolitionist state by the international community.”² The reply added: “However, as the death penalty is a significant issue related with the foundation of the punitive authority of the state, the Government plans to comprehensively review the public opinion about the death penalty, its function in terms of criminal justice, overseas trends, and related recommendations by international institutions.”³
4. During the country’s fourth Universal Periodic Review in March 2023, the government delegation observed “that the Government was participating in the ongoing discussions of the international community on the gradual reduction of the use of the death penalty.”⁴ Yet in June 2023, despite representations to this Committee, South Korea noted without explanation all 30 UPR recommendations to abolish the death penalty, to ratify the Second Optional Protocol, or to institute a formal moratorium on executions.⁵ On August 30, Justice Minister Han Dong-hoon ordered correctional facilities to carry out inspections of execution chambers to ensure they were properly maintained.⁶ Earlier that month, the Justice Minister “cautioned that

¹ Human Rights Committee, *List of issues prior to submission of the fifth periodic report of the Republic of Korea*, UN Doc. CCPR/C/KOR/QPR/5* (21 Aug. 2019), ¶ 10.

² Human Rights Committee, *Fifth periodic report submitted by the Republic of Korea under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, UN Doc. CCPR/C/KOR/5 (24 Aug. 2021), ¶ 87.

³ *Ibid.*

⁴ Human Rights Council, *Report of the Working group on the Universal Periodic Review: Republic of Korea*, UN Doc. A/HRC/53/11 (23 Mar. 2023), ¶ 122.

⁵ See Human Rights Council, *Report of the Working group on the Universal Periodic Review: Republic of Korea*, UN Doc. A/HRC/53/11 (23 Mar. 2023), ¶¶ 139.8-.18, .22, .25, .52-62; Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea, Addendum*, UN Doc. A/HRC/53/11/Add.1 (13 June 2023), ¶ 12(a).

⁶ *Justice Minister Orders Proper Maintenance of Execution Facilities*, Korea Bizwire, Aug. 30, 2023, <http://koreabizwire.com/justice-minister-orders-proper-maintenance-of-execution-facilities/257171>.

reinvigorating the [death] penalty might lead to diplomatic repercussions, specifically impacting relations with the European Union”⁷

5. South Korea’s Criminal Act authorizes the death penalty for murder, insurrection, treason, arson, human trafficking, and raping or killing another person after seizing a ship at sea.⁸ In July 2023, South Korea expanded applicability of the death penalty to include infanticide.⁹ Government statistics show that approximately 80% of people convicted of infanticide are teenagers or women in their 20s.¹⁰
6. South Korea has not carried out an execution since 1997,¹¹ and in 2020 and 2022 it voted in favor of the UN General Assembly resolution calling for a moratorium on the use of the death penalty.¹² Yet according to Amnesty International, one person was sentenced to death in South Korea in 2022,¹³ and sixty people were known to be under sentence of death as of the end of 2022.¹⁴ In July 2023, the Supreme Court overturned a death sentence and remanded the case to district court for further consideration.¹⁵
7. Earlier this year, some people speculated that as of November 2023, South Korea would be obligated to release Won Eon-sik, who was sentenced to death thirty years ago on 23 November 1993.¹⁶ According to this speculation, under Article 78 of the Criminal Act, thirty years after a person is sentenced to death, if that person has not been executed their term “expires” under a statute of limitations, or “prescriptive period,” for legal punishments.¹⁷ The Justice Ministry has insisted that the statute of limitations would not have run because Won was “on standby for execution” as part of the regular procedure for people under sentence of death.¹⁸ Lee Chang-hyun, Professor of Criminal law at Hankuk University of Foreign Studies, told reporters that

⁷ John Lee, *Terror in South Korea: Knife attacks spur death penalty discussions*, KoreaPro, Aug. 4, 2023, <https://koreapro.org/2023/08/terror-in-south-korea-knife-attacks-spur-death-penalty-discussions/>.

⁸ *Is it time for Korea to repeal the death penalty?* Korea JoongAng Daily, Aug. 6, 2022, <https://koreajoongangdaily.joins.com/2022/08/06/why/Korea-death-penalty-constitution/20220806070010230.html>.

⁹ *Parents in South Korea who kill newborns now face death penalty after law passed*, Straits Times, July 19, 2023, <https://www.straitstimes.com/asia/east-asia/south-korea-parents-who-kill-newborns-now-face-death-penalty-after-law-passed>.

¹⁰ *Ibid.*

¹¹ Parliamentarians for Global Action, *South Korea and the Death Penalty*, <https://www.pgaction.org/ilhr/adp/kor.html>.

¹² Amnesty International, *Death Sentences and Executions 2022* (2023), at 44, available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>; Human Rights Watch, *Joint Letter: South Korea’s Abolition of the Death Penalty*, Mar. 27, 2023, <https://www.hrw.org/news/2023/03/27/joint-letter-south-koreas-abolition-death-penalty>.

¹³ Amnesty International, *Death Sentences and Executions 2022* (2023), at 12, available at <https://www.amnesty.org/en/documents/act50/6548/2023/en/>.

¹⁴ *Id.* at 22.

¹⁵ Yoon Min-sik, *23 executions in 1997, followed by a hiatus that continues to this day*, Korea Herald, Aug. 30, 2023, <https://www.koreaherald.com/view.php?ud=20230830000676>.

¹⁶ Yoon Min-sik, *Would Korea’s legal ‘loophole’ lead to setting loose a mass murderer?* Korea Herald, Apr. 28, 2023, <https://www.koreaherald.com/view.php?ud=20230428000585>.

¹⁷ Yoon Min-sik, *Would Korea’s legal ‘loophole’ lead to setting loose a mass murderer?* Korea Herald, Apr. 28, 2023, <https://www.koreaherald.com/view.php?ud=20230428000585>; *In letters of contrition, Korea’s longest-serving death row inmate asks if his time is up*, Hankyoreh, Apr. 16, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1088019.html.

¹⁸ Yoon Min-sik, *Would Korea’s legal ‘loophole’ lead to setting loose a mass murderer?* Korea Herald, Apr. 28, 2023, <https://www.koreaherald.com/view.php?ud=20230428000585>.

the waiting period tolls the statute of limitations only if the Justice Ministry “carr[ies] on specific actions for the execution.”¹⁹

8. In response to this speculation, the Ministry of Justice proposed a bill to remove the statute of limitations, also called the “sunset clause,” for people under sentence of death.²⁰ In August 2023, lawmakers removed the sunset clause for death sentences.²¹ Also in that month, the Justice Ministry announced plans to introduce legislation authorizing a punishment of life imprisonment without parole, which some people perceive as a potential alternative to the death penalty.²²
9. According to a Gallup Korea poll of 1,000 adults in July 2022, 69% of respondents support retention of the death penalty,²³ down from approximately 80% support in 2018.²⁴ Research in South Korea confirms the results of research elsewhere rejecting deterrence as a justification for the practice.²⁵ Nonetheless, the Justice Ministry has asserted to the Constitutional Court that “[t]he death penalty prevents crime through the psychological effect it has on the general public.”²⁶ A 2018 poll by the National Human Rights Commission found that support for abolition of the death penalty increased from 20.3% to 67% when respondents were able to consider alternative punishments, such as life without parole.²⁷
10. South Korea’s Constitutional Court is currently considering a challenge to the constitutionality of the death penalty in a case filed in 2019.²⁸ It most recently upheld the constitutionality of the practice by a 5-4 vote in 2010.²⁹ In July 2023, the Court rejected the use of the death penalty as a de facto sentence of life imprisonment without parole, noting that Korean law does not authorize such a sentence.³⁰

¹⁹ Yoon Min-sik, *Would Korea’s legal ‘loophole’ lead to setting loose a mass murderer?* Korea Herald, Apr. 28, 2023, <https://www.koreaherald.com/view.php?ud=20230428000585>.

²⁰ Son Ji-hyoung, *Cabinet approves bill to remove sunset clause for death sentence*, June 5, 2023, <https://www.koreaherald.com/view.php?ud=20230605000586>.

²¹ Yoon Min-sik, *23 executions in 1997, followed by a hiatus that continues to this day*, Korea Herald, Aug. 30, 2023, <https://www.koreaherald.com/view.php?ud=20230830000676>; Email Communication, Aug. 28, 2023, on file with The Advocates for Human Rights.

²² *As Korea moves to institute life sentences without parole, experts voice doubts over efficacy*, Hankyoreh, Aug. 7, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1103343.html.

²³ Yoon Min-sik, *Would Korea’s legal ‘loophole’ lead to setting loose a mass murderer?* Korea Herald, Apr. 28, 2023, <https://www.koreaherald.com/view.php?ud=20230428000585>.

²⁴ Yoon Min-sik, *Death penalty revisited*, Korea Herald, July 19, 2022, <https://www.koreaherald.com/view.php?ud=20220719000602>.

²⁵ Yoon Min-sik, *Death penalty revisited*, Korea Herald, July 19, 2022, <https://www.koreaherald.com/view.php?ud=20220719000602>.

²⁶ *Is it time for Korea to repeal the death penalty?* Korea JoongAng Daily, Aug. 6, 2022, <https://koreajoongangdaily.joins.com/2022/08/06/why/Korea-death-penalty-constitution/20220806070010230.html>.

²⁷ *As Korea moves to institute life sentences without parole, experts voice doubts over efficacy*, Hankyoreh, Aug. 7, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1103343.html; Yoon Min-sik, *23 executions in 1997, followed by a hiatus that continues to this day*, Korea Herald, Aug. 30, 2023, <https://www.koreaherald.com/view.php?ud=20230830000676>.

²⁸ Yoon Min-sik, *23 executions in 1997, followed by a hiatus that continues to this day*, Korea Herald, Aug. 30, 2023, <https://www.koreaherald.com/view.php?ud=20230830000676>.

²⁹ Human Rights Watch, *Joint Letter: South Korea’s Abolition of the Death Penalty*, Mar. 27, 2023, <https://www.hrw.org/news/2023/03/27/joint-letter-south-koreas-abolition-death-penalty>.

³⁰ Yoon Min-sik, *Stabbing rampages push S. Korea to seek life sentence without parole*, Korea Herald, Aug. 4, 2023, <https://www.koreaherald.com/view.php?ud=20230804000491>.

II. The Republic of Korea's death penalty and extradition practices are in violation of the prohibition against torture and cruel, inhuman, or degrading treatment (Arts. 7,9, 10, 14, and 17, List of Issues Prior to Reporting para. 12).

11. The mental anguish arising from a lengthy incarceration while awaiting execution violates a person's right to be free from torture or cruel, inhuman, or degrading treatment or punishment.³¹ As discussed in paragraph 7 above, Won Eon-shik has spent nearly 30 years on death row.³² According to one news report, "[w]ith a red name tag always on his person, the prospect of death looms heavily over his everyday life."³³ In a letter to a law professor, he described the difference between being under sentence of death and being under a life sentence as "the difference between heaven and earth, life and death."³⁴
12. South Korea's extradition practices are in violation of its *non-refoulement* obligations. In 2019, South Korea returned two North Koreans to the Democratic People's Republic of Korea. According to Human Rights Watch, "[t]he South Korean navy reportedly apprehended the two men off South Korea's coast in November 2019. After five days, the authorities forcibly returned them to North Korea, claiming that they had killed 16 of their crewmates in North Korean waters."³⁵ As of 2022, South Korean authorities were investigating the return, but Human Rights Watch notes that the men may have "faced torture, forced labor, and possible execution" upon returning to North Korea, "a clear violation of their human rights."³⁶ In 2022, South Korean authorities repatriated a Korean-Chinese dual national to China, where he is facing an increased risk of being sentenced to death.³⁷ South Korea's Supreme Court had rejected an administrative challenge to his extradition.³⁸

III. Suggested recommendations for the Government of the Republic of Korea

13. The coauthors suggest the following recommendations for the Government of the Republic of Korea:
 - Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards.
 - Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
 - In the meantime, consistent with the government's position in support of the UN General Assembly resolution calling for a moratorium on the use of the death penalty, institute a formal moratorium on executions and commute the sentences of people currently under sentence of death to prison terms.

³¹ Nkem Adeleye, *The Death Row Phenomenon: A Prohibition Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment*, 58 San Diego L. Rev. 875, 877 (2021), <https://digital.sandiego.edu/sdlr/vol58/iss4/6>.

³² See also Shin Min-jung, *In letters of contrition, Korea's longest-serving death row inmate asks if his time is up*, Hankyoreh, Apr. 16, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1088019.html.

³³ Ibid.

³⁴ Ibid. (internal quotation marks omitted).

³⁵ Lina Yoon, *South Korea Investigates Forcible Return of Two North Koreans*, Human Rights Watch, July 22, 2022, <https://www.hrw.org/news/2022/07/22/south-korea-investigates-forcible-return-two-north-koreans>.

³⁶ Ibid.

³⁷ Kim Ki-Yoon, *The killer of a Chinese Public Security officer from 30 years ago who had laundered his identity repatriated*, Donga Ilbo, May 18, 2022, <https://www.donga.com/news/Society/article/all/20220518/113468246/1>.

³⁸ Ibid.

- On at least an annual basis, publish comprehensive data on people under sentence of death, disaggregated by age, age of any dependent children, sex, gender, nationality, ethnic group, disability, crime(s) of conviction, date of conviction, relationship to the victim and any codefendants, and date of execution (if applicable), to facilitate analysis of the demographics of women under sentence of death.
- In collaboration with civil society organizations opposed to the death penalty, launch a nationwide awareness-raising campaign aiming to shift public opinion with respect to the death penalty, focusing on international human rights standards, alternatives to the death penalty, and the penalty's lack of deterrent effect.
- Collaborate with the National Human Rights Commission and Gallup Korea to ensure that any future public opinion polling about the death penalty complies with best practices in death penalty polling regarding giving respondents the opportunity to consider alternative punishments and whether the death penalty is warranted under specific circumstances.
- Ensure that no person is under sentence of death for such a period that would subject the person to cruel, inhuman, or degrading treatment, and ensure that all persons under sentence of death receive regular and specialized psycho-social support services to address any mental anguish they experience as a result of their sentence.
- Consider withdrawing opposition to the constitutional challenge to the death penalty currently pending before the Constitutional Court, or at a minimum, cease suggesting to the Court that the death penalty specifically deters criminal behavior, more so than alternative punishments.
- Establish an explicit understanding between South Korea and the European Union that South Korea will continue its current moratorium on the use of the death penalty.
- Commission an independent investigation into allegations that South Korean authorities removed Mr. Woo Beom-seon and Mr. Kim Hyun-wook to the People's Democratic Republic of Korea in 2019 and Mr. Jin Yinsu to China in 2022, in violation of South Korea's *non-refoulement* obligations due to the risk that the deportees will be executed, and publish the results of that investigation within one year.