



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

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

Addendum

**Information received from the Republic of Korea on follow-
up to the concluding observations***

[Date received: 23 July 2017]

* The present document is being issued without formal editing.



1. The Government of the Republic of Korea had a constructive dialogue with the Human Rights Committee (hereinafter ‘the Committee’) on the fourth periodic report on implementation of the International Covenant on Civil and Political Rights on 22 and 23 October 2015. The Committee adopted its concluding observations (CCPR/C/KOR/CO/4), which were made public on 3 December 2015.

2. In paragraph 59 of the concluding observations, the Committee requested the Republic of Korea to provide, within one year, relevant information on the implementation of the Committee’s recommendations made in paragraphs 15 (discrimination on the grounds of sexual orientation or gender identity), 45 (conscientious objection to military service), and 53 (right to peaceful assembly) of the concluding observations, pursuant to rule 71, paragraph 5 of the rules of procedure of the Committee. The Government of the Republic of Korea respectfully submits the requested information along with the Government’s opinion on the recommendations to the Committee.

Information on the Recommendations in Paragraph 15

Legal framework to protect LGBTI

3. The right to equality is stipulated in Article 11 of the Constitution of the Republic of Korea, and the *National Human Rights Commission Act* explicitly provides for sexual orientation and gender identity as grounds for prohibition of discrimination, and LGBTIs can receive relief from discriminatory acts in accordance with the relief procedures stipulated by the Act. In addition, if any act of violence or insult to such individuals constitutes the crimes, the offender is subject to criminal punishment, and compensation for damages can be obtained by filing civil litigation. However, there is no separate legislation that prohibits hate speech against a particular group of people.

Article 92-6 of the Military Criminal Act

4. In relation to Article 92-6 of the *Military Criminal Act*, on 28 July 2016, the Constitutional Court ruled in the decision on the constitutional complaint regarding Article 92-5 of the former *Military Criminal Act*, equivalent to the current Article 92-6, that “the provision aims to protect ‘sound military disciplines and life in the military community’ and punishes acts that infringe upon such interest of law. Thus, there is legitimate reason for such limitation in order to preserve the distinct nature of the military and combat capacity even if such punishment may result in discriminatory treatment against homosexual military servicemen,” and that the Article did not violate the Constitution.

5. As the decision of the Constitutional Court indicates, Article 92-6 of the *Military Criminal Act* cannot be regarded as a provision punishing homosexuals. Therefore, the Government has not established plans to amend or abolish the provision. At the time of the consideration of the national report in 2015, the lawmakers-initiated amendment bill of the *Military Criminal Act* to abolish the relevant provision had been tabled to the National Assembly but it was discarded due to the expiration of the 19th session of the National Assembly on 30 May 2016 and no such amendment bill has been proposed to the new session. Meanwhile, the Government strictly forbids discriminatory measures on the grounds of sexuality in the military through the Unit Management Directive.

Sex education

6. On February 2015, the Government developed and issued standardized sex education materials for kindergarten, primary and secondary school corresponding to the developmental stage of students after holding public hearings, gathering opinions from the education office, schools, relevant organizations, and experts, and conducting review by experts in primary and secondary education curricula. Since then the Government has revised and supplemented the contents of sex education, and conducted research with experts.

7. However, parents and concerned people have expressed opposition and concern about the inclusion of diverse sexuality in sex education in schools for minors whose sexual identity is yet to be determined.

8. In accordance with the basic spirit of education that public education should be centred on social and culturally agreed values, the Government does not include diverse forms of sexual orientation and gender identity in the primary and secondary school sex education. However, protection of human rights of and prohibition of discrimination against social minorities or the vulnerable including sexual minorities are taught in detail in related courses such as social studies and ethics.

Legal recognition of gender reassignment

9. The court exercises the authority to decide whether gender reassignment shall be legally recognized in the Republic of Korea. The Supreme Court's Guidelines on Handling Application for Permission of Gender Correction for Gender Reassignment, introduced in accordance with the Supreme Court's judgement in 2006, require that the applicant must (i) have received sex reassignment surgery; (ii) have the body of the opposite sex including external sexual organs; (iii) not have underage children; and (iv) not be in the state of matrimony in order for gender correction to be recognized. However, the guidelines are not legally binding regulations but reference materials for the judges when making a judgement. The decision regarding legal recognition of gender correction is made by the individual judge, who takes into consideration all the circumstances of each case.¹ The court plans to review the guidelines and the requirements should there be social consensus or discussion on the recognition of gender reassignment such as a change in the socially accepted notion of a person's gender.

Information on the Recommendations in Paragraph 45

10. The Government reaffirms its existing position that it will review the matter of introducing alternative services for conscientious objectors when there is positive change in the security situation on the Korean Peninsula and social consensus regarding the issue is formed. Meanwhile, the constitutional appeal claiming for the introduction of an alternative service system is still pending in the Constitutional Court.

11. The imprisoned conscientious objectors are currently serving their terms as sentenced by the court through fair and independent trials. Releasing them immediately will hinder the reliability and efficient functioning of the judicial system of the Republic of Korea and thus it cannot be considered. The position of the Government regarding their release, elimination of their criminal records and suitable compensation remain unchanged as provided in the follow-up measures of the Government as to the views of the Committee on individual communication (Communication No. CCPR/C/112/D/2179/2012) in 2015.

12. In accordance with the disclosure system of personal information of evaders of military service, which was introduced in July 2015, 547 out of a total of 600 evaders identified from July 2015 to December 2015 were provisionally determined to be subject to disclosure of personal information by the Public Deliberation Committee on Evasion of Military Duty under each regional office of Military Manpower.² As the Supreme Court maintains its judgement that the reasons for conscientious objectors to refuse military service do not conform to 'justifiable grounds' under the *Military Service Act*, conscientious objectors are also subject to the disclosure system as evaders of military service. Those subject to disclosure of personal information were notified thus and were given an opportunity to vindicate themselves by November 2016. A decision regarding those subject to disclosure of personal information will be finalized after reviewing and considering the vindication.

¹ There is a case where the permission for gender correction was granted for a transsexual who did not undergo sex reassignment surgery in 2013.

² Those provisionally subject to disclosure of personal information include 427 evaders of active duty service, 82 evaders of social service, 27 illegal stayers in foreign country, and 11 evaders of physical examination for conscription.

Information on the Recommendations in Paragraph 53

13. The Government fully guarantees the right to peaceful assembly of every individual pursuant to the Constitution and international human rights law. Anyone who wishes to hold an assembly or a demonstration only needs to report to the police in advance in accordance with the *Assembly and Demonstration Act*, and interference with a peaceful assembly or demonstration is subject to criminal sanctions. The current *Assembly and Demonstration Act* does not stipulate a general prohibition but delineates the specific reasons for prohibition of assembly, thereby preventing the possibility of the report system from being used in practice as a permit system.

14. The Government strictly interprets the reasons for notification of ban of assembly set forth in the *Assembly and Demonstration Act*. In fact, out of approximately 127,000 assemblies reported to the police in 2015, only 193 assemblies were issued a notice of ban, which is merely 0.15 percent. Moreover, assemblies are allowed on a 24-hour basis while demonstrations are only prohibited after midnight since the Constitutional Court's decision of constitutional unconformity regarding the stipulation prohibiting assemblies after sunset and before sunrise in September 2009 and the decision of limited unconstitutionality regarding the stipulation prohibiting demonstrations after sunset and before sunrise in March 2014. A reported assembly that changes into a demonstration after midnight may be subject to forcible dissolution but the police usually do not take such measures and take legal action against a person who has engaged in illegal actions including violence during such demonstration afterwards. The Government will pursue a follow-up legislative process limiting nightly assemblies or demonstrations related to the decisions of the Constitutional Court for it is necessary to maintain public safety and to guarantee the rights of others who do not take part in the assembly or demonstration.

15. Regarding the use of force by the police, the *Act on the Performance of Duties by Police Officers* along with the *Regulations Regarding Guidelines on Usage of Hazardous Police Equipment*, a Presidential Decree, both set out clear provisions regarding tools and equipment, and the police use such tools to the minimum extent in accordance with the legislation and judicial precedent. In particular, bus barricades and water cannons are only used in exceptional cases where public safety and order are significantly infringed upon. When placing a bus barricade, the police are required to first secure passageway for ordinary citizens and then install the barricade of cars progressively. Once the dangerous situation is resolved, the barricades are immediately removed so as for the police to minimize the installation of barricades. Water cannons are also required to be used abiding by the conditions set in judicial precedents such as necessity, urgency, and proportionality. Moreover, each police station repeatedly and regularly conducts human rights and safety education related to the use of force in assemblies and demonstrations to police officers.

16. The Government does not investigate or arrest anyone by applying the *Criminal Act* on the grounds of simply organizing or participating in demonstrations. Only those who had conducted illegal behaviour such as obstruction of traffic or an assault on police officers are investigated according to the relevant law.

17. Meanwhile, the Government revised the *Assembly and Demonstration Act* in January 2016 in order to prevent cases where one's exercise of the right to a peaceful assembly and demonstration was obstructed by other who abused the provision in the *Assembly and Demonstration Act*.³

18. The revised *Assembly and Demonstration Act* requires the notification of withdrawal of assembly at least 24 hours prior to the time of the assembly in the case where a reported assembly or demonstration is not to take place. The *Act* also requires the police chief to

³ *Assembly and Demonstration Act*, Article 8 (2) [Law No. 8733, effective before the revision by Law No. 13834 on 27 January 2016]

If two or more reports on assemblies and demonstrations have been submitted, which are proposed to take place concurrently in the same place and of which the objectives are in mutual conflict or mutually interfering with the notice of the ban of the assembly or demonstration on which a report has been received later, may be given by applying paragraph 1.

make efforts to have the reported assemblies or demonstrations be peacefully held without mutual interference by suggesting to split the space or time should there be an overlap of reports of assemblies and demonstrations, thereby guaranteeing the right to assembly more broadly.
