



SOUTH KOREA: 8-POINT HUMAN RIGHTS

AGENDA FOR PRESIDENTIAL CANDIDATES

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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Cover photo: Baek nam-gi was injured and eventually died as a result of the use of water cannons by the police during a large protest on 14 November 2015. One year later, protesters take it to the street as not a single police officer was held responsible for excessive use of force.
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Ahead of the presidential election in the Republic of Korea in 2017, Amnesty International calls on all presidential candidates to respect, protect, fulfil and promote human rights for all, and to publicly commit to meeting South Korea's international human rights obligations.

In the last few years, the Republic of Korea has witnessed a regressive trend in key human rights areas. In particular the rights to freedom of expression and freedom of peaceful assembly have been put under increasing stress by the government. Conscientious objectors, migrant workers, LGBTI communities and asylum seekers including individuals arriving from North Korea and others also experience denial or abuses their human rights. The millions of people demonstrating on the street prior to and even after the National Assembly's decision to impeach President Park Geun-hye illustrate the sense of urgency that many citizens feel regarding the need to stand for their rights.

One of the top items on the new president's agenda should be to reverse the deteriorating human rights situation in South Korea and address a number of important shortcomings in the enjoyment of human rights including those in the following eight-point agenda.

1. ENSURE FREEDOM OF PEACEFUL ASSEMBLY

While freedom of peaceful assembly is guaranteed in the Constitution of the Republic of Korea, other legislation including the Assembly and Demonstration Act (ADA) as well as police practice governing assemblies fall short of international human rights law and standards. A cumbersome notification process, the absence of a legal provision allowing spontaneous and urgent assemblies, the wide range of options for authorities to entirely ban certain assemblies or to impose far reaching restrictions, are all elements in the ADA that places undue burden on organizers. These elements, along with occasional excessive use of force during assemblies and lack of accountability for law enforcement officials, are in contradiction of the international human rights obligations of the government.

The case of Baek Nam-gi, a farmer-activist, illustrates not only a lack of accountability for the excessive use of force by law enforcement officials, but also the inadequacy of current laws, guidelines and practice in this respect. Baek Nam-gi was injured and eventually died as a result of the use of water cannons by the police during a large protest on 14 November 2015. More than a year later, the investigation of this case has been unduly delayed with no one formally indicted to date. Three individuals who participated in demonstrations on 10 March 2017 in support of impeached President Park Geun-hye died after being taken to the hospital from the protest site, further highlighting the need for review of policing practices and investigations into the deaths.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed his concerns after his visit in January 2016 to South Korea about "a series of inconsistencies and divergence from international human rights law standards of implementation of the law arising because:

1. The legal framework does not comply with international human rights law and standards in a number of key areas;
2. The legal framework provides excessive discretion to authorities; and
3. While exercising this discretion, authorities do not pay sufficient attention to the obligations to respect, protect and facilitate assembly and association rights."¹

Presidential candidates should pledge to:

- Ensure, as a matter of urgency, that law enforcement officials responsible for unnecessary or excessive use of force, including the use of the water cannon leading to Baek Nam-gi's death, as well

¹ Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, U.N. Doc. A/HRC/32/36/Add.2, 15 June 2016, para 90.

as their superior officer(s), are brought to justice without delay, and to initiate the revision of existing regulations for the use of water cannons in conformity with international human rights standards;

- Ensure the full enjoyment of the right to freedom of peaceful assembly and in particular, promote an expression in law of a clear presumption in favour of holding assemblies;
- Ensure that the overall approach in policing assemblies is to facilitate peaceful assemblies;
- Ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and all law enforcement officials are properly trained accordingly;
- Initiate a comprehensive revision of the ADA bringing it in line with the obligations of the Republic of Korea under international human rights law, including to specify the role of government authorities as facilitators of the right to peaceful assembly.

2. GUARANTEE FREEDOM OF EXPRESSION

Detentions and prosecutions under the National Security Law (NSL) have been persistently used as a form of censorship to intimidate and imprison people exercising their right to freedom of expression, including individuals accused of publishing and distributing material deemed to “benefit” North Korea. In the concluding observations of its 2015 review, the UN Human Rights Committee reminded the government that the International Covenant on Civil and Political Rights “does not permit restrictions on the expression of ideas merely because they coincide with those held by an enemy entity or may be considered to create empathy for that entity.”²

Among the cases of alleged NSL violations during the last four years were criminal prosecutions and the imprisonment of lawmaker Lee Seok-ki and six other members of the Unified Progressive Party (UPP). The Constitutional Court in December 2014 ruled to dissolve the UPP because the party had violated the country’s “basic democratic order.” This was a particularly alarming sign, as it was the first time a political party in South Korea had been disbanded since 1958.

Individuals arrested more recently for alleged violations of the NSL include members of the now-defunct Korean Alliance for an Independent Reunification and Democracy (CAIRD) and Lee Jin-young, owner of the online library “Labour Books”.

Presidential candidates should pledge to:

- Work towards abolishing or fundamentally amending the NSL so that South Korean law conforms to international human rights law and standards and ensure it is not used arbitrarily or to harass and restrict the rights to freedom of expression, opinion and association;
- Immediately and unconditionally release all individuals unjustly charged and sentenced to prison terms solely for the legitimate exercise of their rights to freedom of expression and association.

3. RECOGNIZE CONSCIENTIOUS OBJECTION

At the end of 2016, at least 400 conscientious objectors to military service remained in prison solely for exercising their right to freedom of thought, conscience and religion or belief. These detentions are considered to constitute a form of arbitrary detention under international law. South Korea is the country with

² Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, 3 December 2015.

the highest number of imprisoned conscientious objectors in the world, and one of the very few not to offer alternatives to military service. A verdict from the Constitutional Court on the legality of conscientious objections in cases brought between 2012 and 2015 is still pending.

Since the beginning of 2015 and until February 2017, district courts ruled in favour of 17 men refusing military duty, throwing out the charges against them. Appeals by the prosecution, however, resulted in the overturning of at least two of the acquittals.

Conscientious objectors are punished twice as they are often denied employment due to their criminal record. This problem is compounded in the present increasingly difficult economic climate for young job-seekers. Many government-linked organizations will not employ conscientious objectors if they have a criminal record, and major private companies generally require applicants to provide details of their military service during the recruitment process.

Presidential candidates should pledge to:

- Immediately and unconditionally release all individuals imprisoned solely for exercising their right to refuse to perform military service in absence of a genuinely civilian alternative and refrain from imprisoning conscientious objectors in the future;
- Have the criminal records cleared and provide adequate compensation for conscientious objectors who have been imprisoned for refusing military service by reason of their conscientiously held beliefs;
- Propose and sign into law national legislation, bringing South Korean law into line with international standards, by amending it to ensure that it provides for the recognition of conscientious objection and for a person to register his or her objection;
- Ensure that, if conscientious objectors are not entirely exempted from military service, they have the option to perform an appropriate alternative non-punitive service of a genuinely civilian character which is under civilian control and of a length comparable to that of military service.

4. PROTECT THE RIGHTS OF MIGRANT WORKERS

Amnesty International's research and other sources indicate that significant numbers of migrant workers continue to be at risk of human rights abuses. At least half of all migrant workers interviewed by the National Human Rights Commission of Korea (NHRCK) do not receive the minimum wage, were forced to work beyond their contracted hours and were subjected to verbal abuse.³ They also suffered from unreasonable limitations to their ability to change jobs, which is in turn a major reason for exploitation by their employers.

Many migrant workers, including those in the agricultural sector, are compelled to work in conditions to which they did not agree under the threat of some form of punishment (e.g. dismissal, non-renewal of their visa and threats of violence) and consequently are subjected to forced labour.⁴ Significant numbers of migrant agricultural workers have been trafficked for exploitation, including forced labour. While trafficking is a criminal offence in South Korea, the current definition is not consistent with international law.

Presidential candidates should pledge to:

- Adapt the law to allow greater flexibility in the time frame within which migrant workers have to secure new employment, and amend the current legislation to ensure that an application for a visa extension or a renewal is not restricted or refused on the basis that migrant workers have changed jobs;

³ NHRCK, Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries, October 2013, pp111, 186-187, 190 and 201,

http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁴ Amnesty International, *Bitter Harvest: Exploitation and forced labour of migrant agricultural workers in South Korea*, October 2014 (ASA 25/004/2014), <https://www.amnesty.org/en/documents/ASA25/004/2014/en/>

- Work towards repealing Article 63 of the Labour Standards Act and ensure that the rights which the Act protects, in particular in respect to work hours, daily breaks and weekly paid rest days, are extended to all workers, including migrant workers, irrespective of which sector they work in;
- Work towards ratification and ensure implementation of the four fundamental ILO Conventions: No. 29 on Forced or Compulsory Labour, No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on Right to Organise and Collective Bargaining, and No. 105 on Abolition of Forced Labour.

5. PROTECT ASYLUM-SEEKERS AND REFUGEES

Despite the government's decision in 2014 to allow Syrian asylum-seekers "humanitarian status" to work and reside in the Republic of Korea until the war ends in their country 28 men from Syria were detained in 2016 for months at Incheon International Airport. This raised concerns over the Republic of Korea's compliance with its obligations under international law towards refugees and asylum-seekers, including not to subject them to arbitrary detention under inhumane conditions.

In view of the current refugee crisis in Europe and large refugee populations in the Asia Pacific, there is a need for the Republic of Korea to move beyond only granting "humanitarian status" to asylum-seekers from Syria, and revisit its overall policy and practice in terms of recognizing refugees.

Presidential candidates should pledge to:

- Ensure that no asylum-seekers are arbitrarily detained and that detention is only used as a last resort, in cases where their detention is necessary and proportionate to a legitimate purpose;
- Ensure that all persons detained have the rights to access lawyers, medical care and to humane conditions of detention;
- Participate in a global system of responsibility-sharing, in particular to resettle all refugees who meet UNHCR's vulnerability criteria;
- Put in place policies and systems that ensure effective protection for refugees and asylum-seekers and enable them to meet their basic needs in a manner consistent with human rights and dignity.

6. PROMOTE HUMAN RIGHTS DIALOGUE WITH NORTH KOREA AND RESPECT THE RIGHTS OF NORTH KOREANS WHO HAVE ARRIVED IN SOUTH KOREA

The inter-Korean situation features a number of prominent human rights issues, such as separation of families, enforced disappearances, and the arrival of individuals from North Korea. The president of the Republic of Korea is in a unique position to raise these, as well as other human rights issues, with government authorities of North Korea.

The dialogue between the two Koreas in much of the past five years, however, has been mainly dominated by security issues. With the closure of the Kaesong Industrial Park, direct exchanges between people of the two Koreas have also come to a stop. The government of the Republic of Korea has not been able to make use of its unique situation and relationship with North Korea to raise human rights issues, including after the release of the Report of the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea in 2014.

At the same time, the detention in 2016 of 13 North Korean restaurant workers who had been working in Ningbo, China, further called into question the legality of the existing settlement support process for North Koreans arriving in South Korea. During this period of detention and investigation, which, as Amnesty International understands it, can last anywhere from one to six months, and the following period of 12 weeks at the *Hanawon* education centre for social adaptation, the individuals are denied access to family and legal counsel of their choosing. They are also prohibited from communicating otherwise with the outside world during this extended period, which is in contravention of, among others, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted in 1988, which states in Principle 15 that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.⁵

Presidential candidates should pledge to:

- Ensure that human rights become a regular and integral part of the government’s future dialogue with the authorities in North Korea;
- Initiate an overhaul of the resettlement support process for arrivals from North Korea, and ensure that individuals from North Korea are detained for the shortest possible period, and that their detention is in line with international law and standards, in particular by giving them prompt access to others outside the detention facilities, including legal counsel and civil society organizations of their choice during the entire length of their detention and during interrogations, and the ability to contact family and friends.

7. PROTECT RIGHTS OF LGBTI INDIVIDUALS

South Korea voted in 2011 and 2014 in favour of UN Human Rights Council resolutions calling for an end to violence and discrimination on the basis of sexual orientation and gender identity, and in 2016 in favour of the establishment of the new mandate of an independent expert to address this very issue. Despite supporting such international statements of intent, the government has been slow to respect and protect the equal rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people at home.

Civil society LGBTI groups in South Korea face discrimination including at the hands of authorities. In February 2015 the Beyond the Rainbow Foundation was refused incorporation, and in May the Seoul Metropolitan Police refused to grant a permit to the pride parade, which was only overturned by a court when the organizers filed a petition. On 8 October the same year, Cho Woo-suk, a board member of the public Korean Broadcasting System (KBS), called same-sex individuals “dirty leftists” and made statements that incited discrimination against LGBTI people at a panel discussion held at the Korea Press Centre.⁶

In its 2015 review of South Korea, the UN Human Rights Committee also mentioned the continuing, widespread violence and hate speech against LGBTI individuals.⁷

To date, there remains no meaningful and enforceable national anti-discrimination legislation that would extend human rights protection to LGBTI communities. On the other hand, the military criminal law of the country continues to prohibit and punish consensual sexual activity between people of the same sex in the military.⁸ In the country, where military service is compulsory of all men, gay men face enormous difficulties in fulfilling their military obligations free from violence, bullying or verbal abuse.

Presidential candidates should pledge to:

- Initiate a comprehensive Anti-Discrimination Act which extends protection to LGBTI communities;

⁵ U.N. Doc. A/RES/43/173, 9 December 1988. See also Principle 19, as well as Article 17(2)(d) of the Convention on Enforced Disappearance; Rules 43(3), 58, of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015); Human Rights Committee, General Comment No. 20 (Article 7), para. 11, U.N. Doc. HRI/GEN/1/Rev.1, 29 July 1994, at p. 30.

⁶ *Kyunghyang Shinmun*, “KBS Board member says that group of homosexuals are dirty leftists,” 8 October 2015.

⁷ Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/4, 3 December 2015.

⁸ Article 92 (6) of the Military Criminal Act

- Work towards repealing Article 92(6) of the Military Criminal Act;
- Protect all persons from hate speech and violence, regardless of ethnicity, gender, real or perceived sexual orientation or gender identities;
- Cooperate fully with the Independent Expert on Sexual Orientation and Gender Identity in his efforts to eliminate the unacceptable violence and discrimination against individuals on the basis of their sexual orientation and gender identity.

8. ABOLISH THE DEATH PENALTY

Amnesty International welcomes the fact that no executions have been carried out in the Republic of Korea since 1997. But death sentences continue to be imposed, and 61 people remained on death row at the end of 2016. The growing international consensus against the death penalty was demonstrated again in 2016, when the plenary session of the United Nations General Assembly (UNGA) with an overwhelming majority adopted its sixth resolution calling for a moratorium on executions as a first step towards full abolition of the death penalty.⁹

Lawmaker Yu In-tae submitted in 2015 the most recent bill to the National Assembly that would abolish the death penalty. Formerly a prisoner on death row himself, Yu had previously submitted the bill to the National Assembly. This is the seventh time that a bill to abolish the death penalty has been submitted. Although the draft legislation received the support of 172 out of 298 lawmakers, it was stalled in the Legislative and Judiciary Committee of the National Assembly and was not approved. No bill related to the death penalty has been submitted or discussed since.

Presidential candidates should pledge to:

- Commute without delay all death sentences to terms of imprisonment, and accelerate the procedures which would lead to the full abolition of the death penalty in law.
- Work towards ratification, without reservations, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

⁹ Moratorium on the use of the death penalty, U.N. Doc. A/RES/71/187, 19 December 2016. Of the UN's 193 member states, 117 voted in favour of the proposal; 40 states voted against it and 31 abstained at the vote.

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In the last few years, the Republic of Korea has witnessed a regressive trend in human rights. In particular, the government has failed to fully respect individuals' rights to freedom of expression and freedom of peaceful assembly. Conscientious objectors, migrant workers, LGBTI communities and asylum seekers including individuals arriving from North Korea have also experienced abuses of their human rights. One of the top items on the new president's agenda should be to reverse the deteriorating human rights situation in South Korea and address a number of important shortcomings including those in this agenda.

Ahead of the presidential election in the Republic of Korea in 2017, Amnesty International calls on all presidential candidates to respect, protect, fulfil and promote human rights for all, and to publicly commit to meeting South Korea's international human rights obligations.