

Joint Civil Society Report

# Information to the Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Institutionalization on the basis of discrimination

- 6th Review of the Republic of Korea

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# Preface

## a. Background

1. Despite the Convention Against Torture's explicit prohibition of institutionalization based on any discrimination, including gender, disability, age, and nationality, various forms of institutionalization still occur in the Republic of Korea. The absence of deinstitutionalization policies and inadequate community support lead to severe human rights violations both during the admission process and within institutions.
2. In mental health institutions and psychiatric nursing facilities, severe human rights violations occur during both the admission process and within these institutions. In this regard, the Constitutional Court has ruled that protective hospitalization in mental health institutions is akin to detention. The role of the National Human Rights Commission of Korea in addressing these violations is extremely limited. Among group facilities for persons with disabilities, more than 50% of abuse incidents occur in residential institutions. Despite ongoing issues, the State party continues to neglect the problems. In 2022, the government announced measures to address human rights violations in residential facilities for persons with disabilities; however, the guidelines have yet to be established, leaving victims still subjected to violence. Serious lack of support for the victims with disabilities of gender-based violence results de facto institutionalisation of the victims, since they cannot leave shelters.
3. Similarly, over 70% of children protected in child welfare facilities are in child-rearing institutions, indicating a reliance on institutional care. Particularly severe is the case for children abandoned in baby boxes, with 96.6% being placed in institutional care. Within these institutional facilities, various child rights abuses, such as emotional, physical, and sexual abuse, exposure to inadequate caregiving environments, and the imposition of unreasonable living rules, have been documented. Despite serious abuses, such as forced admission to psychiatric hospitals and misuse of medication prescriptions for children exhibiting so-called 'problematic behaviors,' the State party has neither developed proper measures nor accurately assessed the situation.
4. The issue of indefinite detention of undocumented migrants also raises problems. Despite the Constitutional Court's ruling and the recommendations from the National Human Rights Commission of Korea, following the "hog-tied" torture incident, there have been no government-level discussions on alternatives to detention. Consequently, migrants still remain detained for overly long periods in immigration detention centers and at ports of entry without any alternatives.

5. The State party claims that it has proposed the ‘Deinstitutionalization Roadmap for Supporting Independent Living of Persons with Disabilities in the Community’, the plan for the ‘Roadmap for deinstitutionalization of children in care’, and the Amendment Bill of the Immigration Act as countermeasures to the issues; however, these measures do not effectively constitute a deinstitutionalization policy. The ‘Deinstitutionalization Roadmap for Supporting Independent Living of Persons with Disabilities in the Community’ excludes persons with psychosocial disabilities in mental health institutions and psychiatric nursing facilities. The initially proposed ‘Roadmap for deinstitutionalization of children in care’ was revised to the ‘Roadmap for transition to family-like living for children in care’, deliberately omitting the term ‘deinstitutionalization’. The proposed Amendment Bill of the Immigration Act sets the maximum detention period to 36 months, failing to address the fundamental problems regarding institutionalization.
6. The Convention and the Committee against Torture have emphasized the protection of individuals deprived of their liberty from torture and other cruel, inhumane, or degrading treatment or punishment. Thus, they have imposed special responsibilities and obligations on State parties to strengthen this protection and guarantee the rights of individuals, including the adoption of an Optional Protocol. By submitting this report, we hope the Committee will acknowledge the institution-centered approaches and policies of the Republic of Korea and provide the State party with appropriate recommendations. Furthermore, we urge the Republic of Korea to recognize that institutionalization based on disability, age, race, or immigration status constitutes discrimination, and sometimes torture and abuse. The Korean government should cease institutionalization policies and shift its focus to community-based support. We also call for the presentation of a comprehensive “Roadmap for Deinstitutionalization” for all types of institutions, incorporating specific plans and budgets within a reasonable timeframe.

#### **b. The Convention and institutionalization based on discrimination**

7. Institutionalization is a violation of the UN Convention Against Torture.
8. In most countries across the world, including the Republic of Korea, institutionalization based on any discrimination including gender, disability, age, and nationality has been a persistent practice, even though it violates international human rights law.
9. According to Article 14(1) of the UN Convention on the Rights of Persons with Disabilities (CRPD), “States Parties shall ensure that persons with disabilities, on an



equal basis with others: (a) Enjoy the right to liberty and security of person; (b) (...) and that the existence of a disability shall in no case justify a deprivation of liberty. Furthermore, Article 19 of the CRPD obliges State parties to recognize the equal right of all persons with disabilities to live in the community, with choices equal to others. State parties must take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that persons with disabilities are not obliged to live in a particular living arrangement, and instead, have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others.

10. The CRPD Committee, by authoritatively interpreting these provisions, has consistently upheld an absolute ban on institutionalization/forced placement on the basis of an actual or perceived impairment in its concluding observations,<sup>1</sup> general comments,<sup>2</sup> guidelines,<sup>3</sup> and views adopted concerning individual communications.<sup>4</sup>
11. In its Guidelines on Deinstitutionalization, Including in Emergencies, the CRPD Committee highlighted that institutionalization is a discriminatory practice against persons with disabilities, involving de facto denial of the legal capacity of persons with disabilities. It is a form of violence against persons with disabilities.<sup>5</sup>
12. Institutions where disability-specific detention takes place include, but are not limited to, social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, rehabilitation centers other than community-based centers, half-way homes, group homes, family-type homes for children, sheltered or protected living homes, forensic psychiatric settings, and transit homes.<sup>6</sup>
13. Based on the definition of torture set out in Article 1(1) of the UN Convention Against Torture, at least four elements must be present: (i) severe pain or suffering; (ii) intent;

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<sup>1</sup> See, e.g., CRPD/C/KOR/CO/1, paras. 26 & 38.

<sup>2</sup> CRPD Committee, General Comment No. 1 on Article 12: Equal recognition before the law, CRPD/C/GC/1 (2014), paras. 40, 41 & 46. CRPD Committee, General comment No. 5 on living independently and being included in the community CRPD/C/GC/5 (2017), paras. include 49, 51.

<sup>3</sup> CRPD Committee, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities A/72/55, Annex (2015), para. 8; CRPD Committee, Guidelines on deinstitutionalization, including in emergencies, CRPD/C/5 (2022), para. 7.

<sup>4</sup> See, e.g., CRPD Committee, [Marlon James Noble v. Australia](#), CRPD/C/16/D/7/2012 (2016) para. 8.7.

<sup>5</sup> CRPD Committee, Guidelines on deinstitutionalization, including in emergencies, CRPD/C/5 (2022) para. 6.

<sup>6</sup> *Ibid*, para. 15.

(iii) purpose; and (iv) public official involvement.<sup>7</sup> The definition of torture in the Convention Against Torture expressly proscribes acts of physical and mental suffering committed against persons for reasons of discrimination of any kind. The requirement of intent in Article 1 of the Convention Against Torture can be effectively implied where a person has been discriminated against on the basis of gender, disability, age, and nationality, etc. Purely negligent conduct lacks the intent required under Article 1, but may constitute ill-treatment if it leads to severe pain and suffering.<sup>8</sup>

14. Many of the acts of torture and ill-treatment committed against persons with disabilities in institutions are not recognised as such, according to Manfred Novak, former UN Special Rapporteur on Torture:

*Persons with disabilities are often segregated from society in institutions, including prisons, social care centres, orphanages and mental health institutions. They are deprived of their liberty for long periods of time including what may amount to a lifelong experience, either against their will or without their free and informed consent. Inside these institutions, persons with disabilities are frequently subjected to unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence [...]. The Special Rapporteur is concerned that in many cases such practices, when perpetrated against persons with disabilities, remain invisible or are being justified, and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment [...].<sup>9</sup>*

15. These invisible or falsely justified practices against persons in institutions that amount to torture or cruel, inhuman, or degrading treatment or punishment include forced sterilization; forced abortion; forced medication; physical, chemical, and mechanical restraint; detention in cells or cages or other forms of deprivation of liberty; electroconvulsive therapy; seclusion and isolation; physical and psychological violence; severe neglect; detention in degrading conditions; failure to provide for basic and emergency needs; trafficking, including forced labour; and intersecting forms of abuse, including sexual and gender-based violence.<sup>10</sup>

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<sup>7</sup> Manfred Nowak, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum. Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, A/HRC/13/39/Add.5 (5 February 2010) para. 30.

<sup>8</sup> *Ibid*, para. 49.

<sup>9</sup> *Ibid*, paras. 38 & 41.

<sup>10</sup> See, e.g., CRPD/C/ETH/CO/1, para. 34; CRPD/C/CHL/CO/1, para. 34; CRPD/C/SRB/CO/1, para. 28.

16. These practices often take place due to the maintenance of systems of institutionalization; the ongoing practice of some medical professionals that violate the right to informed consent; the failure to pursue national reform programs to ensure support and services that promote independence and inclusion in the community; legal barriers such as guardianship systems or access to justice barriers (premised on concepts such as 'soundness of mind'); widespread discrimination and biases concerning persons with disabilities; limited accountability frameworks; and ongoing national and international investments into coercive, medicalized systems that have a profound effect on people's lives.
17. Evidence shows that 'small group homes' are, in fact, mini institutions: Places of deprivation of liberty and hotbeds of torture and ill-treatment of persons with disabilities, including children, immigrants, and those with psychosocial disabilities.<sup>11</sup>
18. Evidence also shows that the efforts to improve institutional care do not change the fact that the fundamental rights of persons in institutions continue to be violated. For instance, a case shows that the institutional care model itself violates the right to freedom from torture and ill-treatment of persons with disabilities.<sup>12</sup>
19. Even when certain factors in small group homes are defended as relatively "more humane" and "less harsh," a finding of torture may depend not only on the specific characteristics of particular techniques or circumstances, but also on their cumulative and/or prolonged effect, including in conjunction with external stress factors or individual vulnerabilities.<sup>13</sup> Small group homes have recently been introduced and packaged as part of deinstitutionalization policies in many countries; however, in this regard, they should be understood as an extension or accumulation of the torturous environment that again denies or delays the right to live independently in the community of every person. This means that small group homes cannot be justified

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<sup>11</sup> See, e.g., Validity Foundation – Mental Disability Advocacy Centre & Network of Independent Experts – NIE, "Poor her, for having dreams. Monitoring report on Torture and Ill-treatment of Persons with Disabilities in Bulgarian Institutions, Including Small Group Homes" (2024), <https://validity.ngo/wp-content/uploads/2024/04/20240411-BG-Monitoring-Report-EN-1.pdf>

<sup>12</sup> *Ibid*; see also Nadezhda Toteva Deneva et al., "Deinstitutionalisation and Life in the Community in Bulgaria. A Three-Dimensional Illusion", Validity Foundation (2021), <https://validity.ngo/wp-content/uploads/2021/09/Deinstitutionalisation-and-Life-in-the-Community-in-Bulgaria-FINAL.pdf>.

<sup>13</sup> Nils Melzer, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/43/49 (20 March 2020) para. 68.

as more "humane" or "family-like" environments.<sup>14</sup> In sum, the expansion of small group homes and the transfer of persons with disabilities to them, driven by the government's so-called deinstitutionalization policy, is an accumulation of another form of torture-like institutionalization.

## A. Involuntary Hospitalization of Persons with Psychosocial Disabilities

### a. Human rights violations in psychiatric medical institutions and mental health nursing facilities<sup>15</sup>

20. Mental health institutions and psychiatric nursing facilities in South Korea operate in the form of confinement and detention, and the human rights violations during the admission process and within these institutions are severe. The Constitutional Court has stated that "protective hospitalization in mental health institutions restricts the physical freedom of psychiatric patients to a level comparable to detention."<sup>16</sup> Furthermore, General Comment No. 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") states that "States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection."<sup>17</sup> However, in practice, the Admission Review Committee, which decides on involuntary hospitalization of individuals with psychosocial disabilities, has been operated only nominally. Additionally, the decisions of the National Human Rights Commission regarding human rights violations in closed wards after involuntary hospitalization are merely recommendations, making it difficult to guarantee substantial rights protection.

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<sup>14</sup> "[R]ather than looking at each factor in isolation and asking which ones cross the "severity" threshold, it is more appropriate to speak of a "torturous environment", that is to say, a combination of circumstances and/or practices designed or of a nature, as a whole, to intentionally inflict pain or suffering of sufficient severity to achieve the desired torturous purpose. This reflects the reality that victims tend to experience and respond to torture holistically, and not as a series of isolated techniques and circumstances, each of which may or may not amount to torture." *Ibid*, para. 70.

<sup>15</sup> UN Committee on the Rights of Persons with Disabilities, Sept. 2022. The UN Committee reviewed Korea's implementation of the Convention on the Rights of Persons with Disabilities. The UN Committee on the Rights of Persons with Disabilities has consistently recommended the State party to repeal existing legal provisions that allow deprivation of liberty based on disabilities such as mental or intellectual disabilities.

<sup>16</sup> Constitutional Court, Decision No. 2014HunKa9 (29 September 2016).

<sup>17</sup> Committee Against Torture, General Comment No. 2 (2008).

21. A closed ward restricts access to and from the outside, significantly depriving individuals with psychosocial disabilities of their freedom. Therefore, even if the patient consents, the decision must be made with caution. However, in South Korea, admission to closed wards is easily carried out by family members, guardians or the government. During “protective” or involuntary hospitalization, individuals are admitted to closed wards where their right to visitation and communication is restricted under the pretext of treatment. Isolation and restraints are frequently imposed for reasons such as interpersonal conflicts within the hospital or non-compliance with medical staff. According to the National Human Rights Commission's report on human rights violations of individuals with mental disabilities, "illegal admission and discharge" accounts for 58.5% of human rights cases—the highest percentage. Since 2018, there has been a relative increase in complaints about "unjust isolation and restraint" and "verbal and physical abuse/cruel treatment".<sup>18</sup> Additionally, complaints regarding restrictions on the possession of mobile phones and the installation of CCTV within psychiatric wards have been on the rise.<sup>19</sup>
22. A mental health nursing facility is an establishment that admits individuals with mental illnesses and provides them with nursing services,<sup>20</sup> subject to the same admission and discharge procedures as psychiatric medical institutions under the Mental Health Welfare Act. However, unlike psychiatric medical institutions, mental health nursing facilities do not have resident psychiatrists and are essentially operated as long-term residential facilities.<sup>21</sup> Mental health nursing facilities are operated even more restrictively than psychiatric medical institutions, housing approximately 8,500 individuals with mental illnesses, 50% of whom are long-term residents (more than 10 years).<sup>22</sup> Many individuals with psychiatric patients remain in these facilities until they become elderly; as such, numerous mental health nursing facilities are converted into elder care facilities or operated alongside psychiatric medical institutions. Involuntary admissions to mental health nursing facilities account for an overwhelming 62.2%. Additionally, the living conditions are harsh: 62.7% of

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<sup>18</sup> National Human Rights Commission of Korea (2021); 2021 Mental Disability Human Rights Report, p. 53.

<sup>19</sup> National Human Rights Commission of Korea (2021); 2021 Mental Disability Human Rights Report, pp. 60-63.

<sup>20</sup> National Law Information Center, Article 3, Paragraph 6 of the Mental Health and Welfare Services Support Act.

<sup>21</sup> National Human Rights Commission of Korea, Human Rights Commission, "Clause on Involuntary Admission to Mental Health Facilities Should be Abolished" (18 August 2020).

<sup>22</sup> Ministry of Health and Welfare, Current Status of Length of Stay for Residents in Mental Health Care Facilities, National Statistical Porta (2022).l

residents live in accommodations with six or more people per room. Human rights violations are pervasive, including violence, abuse, or improper treatment (24.7%); forced isolation measures (21.7%); and use of restraints (12.4%).<sup>23</sup>

### **Case 1**

The hospital refused to discharge a patient, a person with psychosocial disability, so he thought he was subject to involuntary hospitalization; however, he had in fact been hospitalized under voluntary admission (“hospitalization with consent”). Additionally, the hospital further violated his human rights when, for allegedly stealing another patient's cigarettes, they transferred him to isolation and used restraints on him.<sup>24</sup>

### **Case 2**

The National Human Rights Commission received numerous complaints alleging restrictions on freedom of communication in the closed wards of Hospital A. Subsequently, after receiving specific reports regarding restrictions on the use of public telephones, they conducted an ex officio investigation. The investigation confirmed that Hospital A had indeed restricted patients' access to public telephones by disconnecting the phone lines.<sup>25</sup>

### **Case 3**

Mental health nursing Facility A is a large-scale facility that accommodates 170 residents, both male and female. Several cases of sexual violence between residents occurred within this facility. Numerous counseling records within the facility contain complaints of sexual harassment; yet, the facility staff did not

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<sup>23</sup> National Human Rights Commission of Korea (10 May 2018). 67.9% of residents in facilities for people with disabilities and 62.2% of residents in mental health care facilities experience high levels of privacy rights violations, exposing them to human rights abuses.

<sup>24</sup> National Human Rights Commission of Korea (8 February 2022). Coercive admission to mental health institutions without consent, including physical restraints and admission without confirming the patient's voluntary consent, constitutes a violation of human rights.

<sup>25</sup> National Human Rights Commission of Korea, (28 March 2023). Investigation into violations such as communication restrictions on inpatients at mental health institutions and procedural violations during admission and discharge processes.

actively engage in facilitating recovery for the victims. Consequently, the National Human Rights Commission conducted an investigation into these incidents.<sup>26</sup>

## **Questions**

- 1) Is there a concrete plan to establish an external independent entity aimed at preventing human rights abuses and illegal involuntary admissions within psychiatric institutions?
- 2) Has a plan been developed for conducting human rights assessments in mental health nursing facilities?
- 3) Have measures been prepared for independent living in the community after discharge from mental health nursing facilities?

## **Recommendations**

- 1) Abolish the system of involuntary hospitalization, including but not limited to hospitalization with consent and protective hospitalization.
- 2) Shut all closed wards in psychiatric institutions and convert them into open wards.
- 3) Close down all mental health nursing facilities in accordance with Article 22 of the Mental Health Welfare Act.

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<sup>26</sup> KBS News, "What's Happening in Mental Health Care Facilities?" (9 November 2023), <https://news.kbs.co.kr/news/pc/view/view.do?ncd=7814126>

**b. Absence of a roadmap for the deinstitutionalization of persons with psychosocial disabilities and local community services<sup>2728</sup>**

23. According to General Comment No. 3 of the CAT, "[t]he State party must enact legislation providing for the right of victims to obtain redress and receive compensation, including restitution and rehabilitation, to the fullest extent possible."<sup>29</sup> However, South Korea overlooks the seriousness of human rights violations in psychiatric institutions and mental health nursing facilities. The measures for establishing a roadmap for deinstitutionalization and building local community services for persons with psychosocial disabilities has never been planned. In its 2022 Guidelines on Deinstitutionalization, Including in Emergencies, the UN Committee on the Rights of Persons with Disabilities recognizes institutionalization as a form of violence against persons with disabilities and points out that subjecting individuals to forced medical intervention using psychotropic drugs violates Article 15 of the CRPD. It specifies that all forms of institutionalization should be abolished and all forms of detention—including those based on provisions not in compliance with Article 14 of the CRPD—should be prohibited. Furthermore, these guidelines demand the establishment of high-quality, specific deinstitutionalization plans, which should include concrete implementation plans detailing timelines, criteria, and allocation of human, technical, and financial resources.
24. In line with the international trend demanding the rights of persons with disabilities to deinstitutionalization and to live independently in the community, there has been a growing social movement for the deinstitutionalization of persons with disabilities in South Korea since the mid-2000s, led by disability rights organizations (“DPOs”).

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<sup>27</sup> In April 2019, the UN Human Rights Council, in its report submitted to the General Assembly, pointed out that sustained investment by member states in institutionalization policies and services is one of the serious obstacles hindering the effective realization of the rights of individuals with psychosocial disabilities. It recommended developing indicators for deinstitutionalization, noting that such systems reinforce a vicious cycle of stigma, discrimination, and social exclusion of individuals with psychosocial disabilities.

<sup>28</sup> In September 2022, the UN Committee on the Rights of Persons with Disabilities issued its final observations on the second and third periodic reports of South Korea. Expressing concerns related to Article 15 (Freedom from torture or cruel, inhuman, or degrading treatment or punishment) regarding ongoing instances of isolation and abuse, such as the use of physical/chemical/mechanical restraints, against individuals with psychosocial disabilities, the Committee recommended the repeal of all laws allowing forced hospitalization and institutionalization as well as the explicit prohibition of institutionalization through legislation. Additionally, concerning Article 19 of the CRPD (Living independently and being included in the community), the Committee recommended that South Korea, in compliance with the Convention, collaborate with disability organizations to develop independent living support roadmaps and allocate sufficient budgets and measures.

<sup>29</sup> Committee Against Torture, General Comment No. 3 (2012).



Since the 2010s, successful efforts at deinstitutionalization have been growing, leading to a series of processes being adopted into national policies. Within this context, in August 2021, the government announced the Deinstitutionalization Roadmap for Supporting Independent Living of Persons with Disabilities in the Community.

25. Although the government's official policy development of a deinstitutionalization roadmap was a positive step, the roadmap itself has fundamental limitations and issues as it completely excludes deinstitutionalization for individuals with psychosocial disabilities. In South Korea, psychiatric hospitals and mental health nursing facilities that accommodate individuals with psychosocial disabilities operate under the Mental Health Welfare Act, separate from facilities for persons with disabilities established under the Welfare of Persons with Disabilities Act. For the deinstitutionalization and community living of individuals with psychosocial disabilities, a community support system tailored to their individual needs—including various social services and advocacy—must be established; furthermore, involuntary admissions, placements, forced medication, isolation, and restraint must be prohibited. Above all, diverse forms of housing and residential services must be provided to enable individuals with psychosocial disabilities to live independently in the community after leaving institutions. A national roadmap that complies with the UN CRPD's deinstitutionalization guidelines needs to be promptly established, detailing specific schedules, strategies, and resource allocation for the deinstitutionalization.
26. Recently, the National Assembly amended Article 15 of the Act on the Welfare of Persons with Disabilities, excluding the application of the Act to persons with psychosocial disabilities. So far, persons with psychosocial disabilities have been a focus of healthcare services, but are not considered users of welfare services and rights centered services. Because of this, welfare services for them are minimal compared with those for other types of persons with disabilities. While the Ministry of Health and Welfare's Bureau of Policy for Persons With Disabilities handles welfare services for persons with other types of disabilities, the Ministry's Bureau of Mental Health Policy handles services for persons with psychosocial disabilities. The Bureau of Policy for Persons With Disabilities has a dedicated department responsible only for welfare services; however, the Bureau of Mental Health Policy has no separate department handling welfare services. Instead, a department working for healthcare handles welfare services all together.
27. As a result, budgets for services for persons with psychosocial disabilities are focused on healthcare services. In 2023, the total budget for mental health-related

expenditures amounts to KRW 4.432 billion (USD 32.150 million), with the largest allocations being directed towards the operation of national mental hospitals (KRW 1.273 billion won/USD 9.234 million) and mental health nursing facilities (KRW 997 billion/USD 7.232 million). However, the actual budget for mental health services in local communities, including mental health services and support for individuals, is only KRW 141 billion (USD 10.22 million), which is relatively small compared to the overall mental healthcare budget. While KRW 1.171 billion (USD 84.94 million) is allocated for mental health promotion programs, mental health welfare centers are primarily operated through delegated management at public health centers, limiting their ability to effectively serve as a community-based service. Although Article 15 of the Act on Welfare of Persons with Disabilities was amended—as policies for persons with psychosocial disabilities are not handled on an equal basis with the same delivery systems for other types of disabilities—persons with psychosocial disabilities have continued to be excluded from welfare services for persons with disabilities and community services. Therefore, it is necessary to actively establish welfare services and integrate delivery systems beyond scope of the revised Act.

**Case 1**

Out of 31 users in ‘ Facility A’, a mental health rehabilitation facility, 28 are registered persons with psychosocial disabilities. Due to the fact that mental health rehabilitation facilities are classified as “mental health promotion facilities”, Facility A is not eligible for certain budget assistance or support projects for persons with disabilities. ‘Facility A’ asked to participate in programs carried out by the public sector but was told that the facility cannot qualify for the programs because it is not a welfare facility for persons with disabilities.<sup>30</sup>

**Case 2**

A person with a psychosocial disability visited a disability welfare center to access services; however, the center said that its programs were only for persons with autism or physical and intellectual disabilities. There was no direct rejection from

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<sup>30</sup> Kang et al., “A Study on Law Amendments for the Recovery and Social Inclusion of People with Mental Illness and Mental Disabilities,” Ministry of Health and Welfare & Seoul National University (2021).

the center to use services, but the person with psychosocial disability was not able to access the center's services because his disability type was not considered.<sup>31</sup>

## Questions

- 1) What is the reason for excluding psychiatric medical institutions and mental health care facilities from the Deinstitutionalization Roadmap for Supporting Independent Living in Local Communities for People with Disabilities announced in 2021? Also, what is the timeline for developing a roadmap for deinstitutionalizing individuals with psychosocial disabilities?
- 2) How many community support systems are being developed to support the independent living of individuals with psychosocial disabilities after discharge?
- 3) What measures is the government taking to provide and establish community-based services based on WHO Quality Rights?

## Recommendations

- 1) Establish and announce promptly a concrete roadmap for the deinstitutionalization of individuals with psychosocial disabilities currently accommodated in psychiatric medical institutions and mental health care facilities and excluded from the Deinstitutionalization Roadmap for Supporting Independent Living in Local Communities for People with Disabilities, announced in 2021.
- 2) Expand welfare services available to individuals with psychosocial disabilities in the local community to ensure that, even in the situation of a mental health crisis, they can reside in the community rather than in hospitals.

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<sup>31</sup> Kang et al., "A Study on Law Amendments for the Recovery and Social Inclusion of People with Mental Illness and Mental Disabilities," Ministry of Health and Welfare & Seoul National University (2021).



*Photo: Patients in a psychiatric hospital were left on the floor of the closed ward. Due to the lack of beds, they slept on mattresses on the floor. Even during COVID-19, the facility did not practice social distancing: Multiple patients often were kept in a single room. Some patients could not find a place to sit and so just leaned against the corridor wall of the ward. Big boxes were left piled in the middle of the corridor.*



*Left Photo: The episode 'No One Knows - Secrets of Mental Hospitals' from the South Korean TV program 'Unanswered Questions' depicts a 27-year-old man exhibiting compulsive behaviors while confined in an isolation room at a mental hospital.<sup>32</sup>*

*Right Photo: This picture depicting the reality of psychiatric wards was drawn by Lee Jung-ha, the representative of the mental disability rights group 'Padoson'.<sup>33</sup>*

<sup>32</sup> Be Minor, "Human Rights Commission: 'Minimize Isolation and Restraint in Mental Hospitals, Enhance through Legislation,'" Recommendation to Ministry of Health and Welfare (27 October 2016), <https://www.beminor.com/news/articleView.html?idxno=10260>.

<sup>33</sup> Able News, "Inside Mental Hospitals, We Were Like Livestock and Targets" (19 August 2016), <https://www.ablenews.co.kr/news/articleView.html?idxno=66291>.



*Photo: patients were forced to clean the facility, including the wards and the corridors. Some patients further claim they were required to help manage facility operations, including distributing meals and sorting recycling.<sup>34</sup>*



*Photo: a staff member reportedly grabbed patients by the face and shoved them. Additional allegations in complaints detail frequent incidents in which staff subject patients to prolonged use of restraints without medical justification and repeatedly hit patients on the head.<sup>35</sup>*

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<sup>34</sup> SBS News, “Patient Cleaning Their Own Room?... Controversy over 'Human Rights Violations' in Mental Hospitals” (11 April 2022), [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1006709776](https://news.sbs.co.kr/news/endPage.do?news_id=N1006709776).

<sup>35</sup> Gyeongbuk Ilbo, “[Report Video] Controversy over Persistent Assaults on Patients at Pohang Mental Hospital,” (30 August 30, 2023), <https://www.kyongbuk.co.kr/news/articleView.html?idxno=2141021>; Gyeongbuk Ilbo, “Controversy over Persistent Assaults on Patients at Pohang Mental Hospital,” (30 August 30, 2023), <https://www.kyongbuk.co.kr/news/articleView.html?idxno=2141004>.

## B. Institutionalization of Persons with Disabilities

### a. Torture and Abuse in Residential Institutions for Persons with Disabilities

28. Among group facilities for persons with disabilities,<sup>36</sup> the highest incidence of abuse (55.9%) occurs in residential institutions ('institutions'). Institutions exhibit high rates of "multiple abuse".<sup>37</sup> Furthermore, long-term abuse cases lasting over a year accounted for 61.6%, with some cases continuing for over 10 years at a staggering 27.3%—a significantly higher rate compared to other types of group facilities.<sup>38</sup>
29. The persistence of abuse in these facilities stems from government neglect. Over three years (2018 to August 2021), out of 175 reported cases of abuse, governmental and local authorities only took administrative action in 81 cases (46.3%), most of which (76.5%) resulted in improvement orders. The remaining 94 cases (53.7%) were either dismissed or received minimal sanctions.
30. In 2022, the State party announced it would apply a "one strike and you're out" guideline in cases of human rights violations in institutions, replacing sequential administrative measures.<sup>39</sup> However, after two years, the guidelines are still not established; instead institutions still have a three-year grace period even after receiving a closure order. Moreover, remedial actions have often been limited to transferring abuse victims to another institution, perpetuating the risk of torture and abuse due to the inherent nature of institutions; isolation, hierarchical power distribution between staff-residents, etc.
31. In the face of this governmental neglect and repeated torture and abuse, people with disabilities are not separated from their perpetrators and are subjected to continued violence, neglect, abuse, and even death. Governments that know that acts of torture and abuse are being committed and still fail to take action are themselves the perpetrators of torture.<sup>40</sup> Swift and robust legal and institutional reform is urgently needed.

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<sup>36</sup> The term "group facilities for persons with disabilities (장애인 집단이용시설)" refers to residential institutions for people with disabilities, special schools, unregistered institutions, and other social welfare facilities.

<sup>37</sup> This term means the combination of more than two abuse types: physical, sexual, and emotional abuse, economic exploitation, or neglect.

<sup>38</sup> Ministry of Health and Welfare, Report on Disability Abuse (2022).

<sup>39</sup> Ministry of Health and Welfare, Roadmap to Deinstitutionalization and Community Independence for People with Disabilities (2022).

<sup>40</sup> CAT/C/GC/2: General Comment No. 2 (2007), para. 18.

### Case 1

In May 2021, it came to light that Seongrakwon, a 150-person residential institution for people with disabilities in Gyeongsan City, had been continuously torturing (even waterboarding) people with disabilities, including 17-year-old Child A. However, State party did not immediately separate the perpetrators from the victims or provide support for the victims. As a result, Child A continued to live in the institution and was subjected to further violence even after their case was disclosed.<sup>41</sup>

However, three years after the disclosure, the investigation into the Seongrakwon case remains unresolved.<sup>42</sup>



*Photo: Bruises on Child A, the victim of water torture at Seongrakwon in 2021*

### Case 2

In August 2020, news reports detailed human rights violations at Institution R.<sup>43</sup> The institution housed 142 people with various types of visual and developmental

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<sup>41</sup> The Indigo, "Seongrakwon', a residential institution for people with disabilities, laughs at Gyeongsan City's full investigation? Repeated abuse after 'water-torture incident!' (24 August 2021), <https://theindigo.co.kr/archives/23637>.

<sup>42</sup> Ablenews, "Haircuts to call for investigation of disability abuse institution in Gyeongsan City'", (23 November 2023), <https://www.ablenews.co.kr/news/articleView.html?idxno=208903>.

<sup>43</sup> Bemiyor, "'Yeoju Raphael's House', from corona mass infection to disability abuse", (24 March 2021.3), <https://www.bemiyor.com/news/articleView.html?idxno=21042>.



disabilities. The local government and Advocacy Agency for Persons with Disabilities conducted an on-site investigation in September 2020, but by November 2020, the only formal steps they had taken were to move the victims to another unit in the same institution. In February 2021, it was discovered that more people had been harmed; nevertheless, victims were not separated from their perpetrators until six months after lodging complaints against them.<sup>44</sup> Despite the fact that the institution has been under administrative sanctions for various violations since 2016—including corruption—the national government and local government only issued an improvement order and a recommendation to replace the director in 2020. The institution is still in operation.



*Photo: Marks of abuse on the bodies of Institution Residents. (Source: Rep. Jang Hye-young).*

<sup>44</sup> Bemiyor, "Another human rights violation at Yeosu-Seoul Raphael's House... Seoul City is 'neglecting'" (17 December 2021), <https://www.bemiyor.com/news/articleView.html?idxno=22531>.





*Photo: A device used at Institution R to restrain persons with whole-body paralysis for 64 times, three times a day, for more than 30 minutes. (Source: Representative Jang Hye-young)*

### **Case 3**

In 2021, news reports showed CCTV footage of the director of an institution in Chungbuk province assaulting Mr. B, a person with intellectual disabilities. The director was also accused of stealing KRW 80 million(USD 60,000) from Mr. B's disability benefits. In addition to assaulting Mr. B, the director was found to have engaged in life-threatening behavior, such as placing a towel over his face. The director sought to justify hitting and abusing Mr. B by saying that Mr. B had stuck his head out of bed. Mr. B—who weighed 36 kilograms (77 lbs.) when he was taken to the hospital—died five months later.<sup>45</sup>

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<sup>45</sup> SBS, “20 Minutes of Horror Revealed by CCTV...’Disability Abuse is a Habit’”, (19 April 2021), [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1006288142](https://news.sbs.co.kr/news/endPage.do?news_id=N1006288142).



*Photo: The director of an institution in Chungbuk Province kicks Mr. B, a person with disabilities, when he is lying in bed. (Source: SBS News)*



*Photo: Mr. B's condition at the time of transport to the hospital. (Source: SBS News)*

## **Question**

- 1) The institutionalization of people with disabilities in South Korea is not only prolonged, but also abuses continue to occur in these institutions. What is the status of punishment for perpetrators of abuse and emergency relief for victims of abuse in institutions?
- 2) The remedial measure of transferring abuse victims from one institution to another constitutes revictimization. Why does the State party continue to actively support institutionalization without having a policy or budget for community-based emergency relief measures for victims of abuse?

## **Recommendation**

1. Take active and effective measures to eradicate and prevent recurrence of torture and abuse in residential institutions—including a one-strike policy, immediate victim-perpetrator separation, prohibition of trans-institutionalization of victims, and severe penalties for perpetrators in institutions—recognizing the international norm that a State party becomes a perpetrator when it fails to punish and respond to perpetrators of torture and abuse. Furthermore, establish budgets and systems to ensure that victims of abuse in institutions—rather than transferred to another institution—are adequately rehabilitated, reimbursed, and redressed in the community.

## **b. Inadequate Community Supports and Expansion of Institutionalization: De Facto Involuntary Admissions<sup>46</sup>**

32. Given that institutionalization is an act of torture and the State party is obliged to immediately implement deinstitutionalization policies in accordance with UN human rights regulations,<sup>47</sup> the State party is not only neglecting the obligation, but also violating the spirit of the norm by expanding institutions.
33. In the ROK, there are 1,535 disability residential institutions that house 28,565 persons with disabilities.<sup>48</sup>The average residency period is 18.96 years.<sup>49</sup> And yet, according to the announcement of the State party in 2021,<sup>50</sup> the number of individuals targeted for deinstitutionalization support is only 600 by 2024. Additionally, the new Yoon Seok-yeol administration has indicated it may further prolong the process to realizing its deinstitutionalization policy.
34. Even worse, the State party is both allocating over KRW 3.5 billion (approximately USD 2.5 million) for two new institutions by 2024<sup>51</sup> and expanding investments in existing institutions, citing opposition to deinstitutionalization from some families of residents and a lack of support system in local communities.<sup>52</sup> While the State party focuses on maintaining and expanding institutionalization policies, cases of family

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<sup>46</sup> The Committee Against Torture also considered institutionalization of people with mental disabilities as a violation of the Convention, particularly noting instances of abuse and deaths frequently occurring in mental health facilities, as stated in the final opinion document of Russia's national report in 2012. Additionally, in 2021, it concluded that there was national responsibility for cases of abuse within institutions in Slovakia.

<sup>47</sup> UN Convention on the Rights of Persons with Disabilities, Article 19. "States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community."

<sup>48</sup> Ministry of Health and Welfare, List of Disability Welfare Facilities (2023).

<sup>49</sup> Ministry of Health and Welfare. Korea Disabled Persons Development Institute, Comprehensive Survey of Disability Residential Institutions (2020).

<sup>50</sup> Ministry of Health and Welfare, Roadmap for Supporting Independent Living in Local Communities for Deinstitutionalized Persons with Disabilities (2022).

<sup>51</sup> ROK Government, The 6th Comprehensive Policy Plan for People with Disabilities.

<sup>52</sup>The South Korean government allocated approximately 6.7 trillion KRW (approximately 4.8 billion USD) for the operation and support of institutions for persons with disabilities in 2024, which is an increase of 349.49 billion KRW (approximately 24.7 million USD) compared to 2023. This allocation is a clear violation of the UN CRPD Guidelines on Deinstitutionalization, Including in Emergencies, CRPD/C/5 (2022):

*"8. States parties should abolish all forms of institutionalization, end new placements in institutions and refrain from investing in institutions. Institutionalization must never be considered a form of protection of persons with disabilities, or a "choice".(...)*

*9. There is no justification to perpetuate institutionalization. States parties should not use lack of support and services in the community, poverty or stigmas to justify the ongoing maintenance of institutions, or delays to their closure."*

member suicides, or attempted suicide, after killing family member(s) with disabilities, primarily parents, continue due to the lack of community services.<sup>53</sup>

35. As long as community support systems remain limited while institutions exist or expand, individuals with disabilities will, in practice, be forced to be institutionalized. According to a 2018 survey by the National Human Rights Commission, 67.9% of institution residents answered that they entered involuntarily, and 72% said they could not choose to be discharged from the institution.<sup>54</sup>
36. Procedures and conditions for deinstitutionalization of persons with disabilities are becoming more complex and are often delegated to “experts” and legal guardians. For example, in Seoul, persons with disabilities in institutions must undergo an “independent capacities” assessment conducted by experts, including medical professionals—a clear violation of UN human rights norms.<sup>55</sup>

#### Case

The victims of institutionalization have established a civic group called “Deinstitutionalized Survivors Alliance,” urging the State party to follow the obligation of deinstitutionalization. Park Gyeong-in, the representative of the alliance, delivered the following letter to Mayor Oh Se-hoon of Seoul, expressing concerns about the setback in Seoul's deinstitutionalization policy.

*I was born in a single mothers' institution and lived in institutions until I was 23. I have endured a lot of abuse and violence. (...) It was very difficult for me to leave the institution because there was insufficient support for persons with learning disabilities in the community. (...)*

*It's been eight years since my deinstitutionalization. I've faced numerous difficulties, but there have been many good things too. If there's one thing that's changed about me, it's that I'm less conscious of people's stares. I*

<sup>53</sup> The Korea Herald, “24/7 support system needed for independence of disabled: experts” (5 February 2024), <https://www.koreaherald.com/view.php?ud=20240205000743>.

<sup>54</sup> National Human Rights Commission of Korea, “Survey on the Living Conditions of Persons with Severe Disabilities and Mental Disabilities in Facilities” (2018).

<sup>55</sup> UN CRPD Guidelines on Deinstitutionalization, Including in Emergencies (2022):

*37. All persons with disabilities have the right to live in the community, and it is discriminatory to decide that some people cannot live independently and should stay in institutions. (...) Assessment of capacities for independent living based on impairment is discriminatory and should shift to assessment of individualized requirements and barriers to independent living in the community.*



*used to care a lot about what people thought. I worried about what would happen if that person took advantage of me or if this person would leave me again. But now I have trustworthy friends, I've learned about my rights, and I have a stable job and good colleagues, so those worries have mostly vanished.*

*However, I heard that it's going to be even harder for people leaving institutions in the future. When I heard that, I felt extremely angry. I hoped that other people with disabilities wouldn't have to suffer like me and could leave institutions without difficulty. But the world seems to be going backwards. (...) I'm also angry that Seoul is using the excuse of the deaths of people with disabilities to oppose allowing people to leave institutions. Do not dare point fingers at us and say, "You died because you left the institution", while pretending you know nothing about the numerous deaths in institutions. As Seoul knows well, people with disabilities want independent living, not institutions.*

*Mayor Oh, instead of constantly saying that our society is not suitable for persons with disabilities, I hope our society will think about how different people can live together. No matter how harsh the world may be, I want to live and die together with people in society.*



*Photo: A rally of disability rights organizations calling for deinstitutionalization policy in*

*front of the Ministry of Health and Welfare. Source: Bemnor.com.*

## **Recommendations**

- 1) Acknowledge that institutionalization is torture and that institutionalization on the basis of disability, race, age, or immigration status constitutes discrimination. Immediately cease institutionalization policies and take the following measures for absolute prohibition:
  - Fundamentally shift policy direction from institution-centered to community-centered support for individuals such as persons with disabilities, children, and the elderly. Improve the Roadmap to Deinstitutionalization by including specific plans and budget allocations according to a rational timeline.
  - Simplify procedures and conditions for transitioning from all types of institutions to community living, ensuring that factors such as disability type, age, and immigration status are not barriers in this process.
- 2) Ensure effective rights to redress and fair and adequate compensation for survivors of institutional abuse, including full rehabilitation measures for full inclusion and participation in society.

### c. Torture/Abuse in Emergency Situations: COVID-19 Cohort Isolation Cases

37. During the COVID-19 pandemic, official statistics regarding the confirmed cases and treatment within entire institutions either do not exist or are rarely available to the public. In March 2022, the Ministry of Health and Welfare submitted a report to a member of the National Assembly stating that, cumulatively, there were 9,904 confirmed COVID-19 cases in residential institutions for persons with disabilities (excluding short-term care facilities and group homes), accounting for 35.6% of the residents. This figure surpasses the national cumulative infection rate of 25.9%. In large residential institutions for persons with disabilities (facilities with more than 100 residents), all institutions had confirmed COVID cases, and one in two residents were infected. And yet, the government only implemented policies that deprived residents of their freedom, such as preventive and post-exposure cohort isolation and bans on visits and outings.
38. An amended act of Infectious Disease Control and Prevention Act proposed in the National Assembly based on demands grounded in UN human rights norms by civil society organizations. However, the act faced opposition from institutions and was abandoned not even discussed once. In the State party, “preventive cohort isolation” remains the sole response measure for group residential institutions in the context of infectious disease outbreaks. Should such an outbreak recur, persons with disabilities would once again face severe threats to their safety and lives within these institutions.

#### Case 1

Shinawon—a residential institution for persons with disabilities located in Songpa-gu, Seoul—houses 117 individuals with developmental disabilities. Between December 2021 and January 2022, a total of 76 residents tested positive for COVID-19. Shinawon failed to properly isolate the infected individuals from those who were not infected and did not provide information about the COVID-19 pandemic or the status of infections within the institution to the residents. Furthermore, when disability organizations discovered the outbreak through unofficial channels and lodged complaints, Shinawon deceitfully prevented residents from making contact with the outside world.<sup>56</sup> The government claimed that “preventive cohort isolation” in residential institutions for

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<sup>56</sup> The staff at the institution deceived the residents by telling them, “You shouldn’t make phone calls because COVID-19 can be transmitted even through phone conversations.” <https://www.peoplepower21.org/welfarenow/1767744>



persons with disabilities would prevent the spread of infections within these facilities. However, the Shinawon case clearly demonstrated that, in the structural environment of such institutions, cohort isolation measures inevitably lead to mass infections.<sup>57</sup>

### **Case 2**

In 2023, a residential institution in Chungcheongbuk-do revealed ongoing abuse within its premises when visitations—which had been prohibited under the government's “preventive cohort isolation” measures—resumed. A woman in her 40s with disabilities reunited with her family after three years, only for her family to find she was covered in bruises and had a fractured kneecap. Upon reviewing CCTV footage, it was discovered that a staff member had been regularly pushing her down and repeatedly assaulting her.<sup>58</sup>

## **Recommendations**

- 1) Establish disaggregated statistics on the acts of torture and abuse within institutions and the resulting harm during emergencies, such as infectious diseases outbreaks. These statistics should be categorized by disability, gender, age, race, and migration status.
- 2) Abolish the “preventive cohort isolation” policy—which increases the risk of torture and abuse within institutions during emergencies—and ensure swift and effective access to safety measures for residents equivalent to those available to the general population living outside these institutions.

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<sup>57</sup> Korean Disability Forum, “Youtube video about the Shinawon case: “COVID-19 and Disability (1) Emergency Deinstitutionalisation” (23 December 2021.12), [https://www.youtube.com/watch?v=04SLJga3\\_ZQ](https://www.youtube.com/watch?v=04SLJga3_ZQ).

<sup>58</sup> MBC Chungbuk, “Persistent abuse in disability institutions uncovered as visitations resume” (10 April 2023) <https://www.youtube.com/watch?v=wfnMkKKFAL4>.

#### **d. Gender-based Violence Victims with disabilities**

39. The demand for counseling and facilities for victims of violence against women with disabilities is steadily increasing. 11.3% (n=2,960) of the users of sexual violence counseling centers and 56.2% (n=166) of the residents of support facilities nationwide are people with disabilities. In addition, 85.7% of the victims with disabilities who used women's violence support organizations have mental disabilities, 74.2% have developmental disabilities, 14.3% have physical disabilities, and 11.5% have mentally disabilities.<sup>59</sup>
40. First, victims of gender-based violence with disabilities face difficulties accessing appropriate shelters: There are only seven shelters for sexual assault victims with disabilities in the country.<sup>60</sup> Even after a woman enters the shelter, she faces additional problems. Women victims of violence with mental disabilities at shelters for victims of sexual violence with disabilities usually suffer from anxiety disorders and depressive disorders. Aggression, anger management disorders, psychotic symptoms, and personality disorders are also common. This leads to difficulties in communication, failure to keep appointments with facility staff or comply with facility rules, and challenges maintaining hygiene and self-care.<sup>61</sup>
41. For the above reasons, many women with disabilities leave shelters prematurely or expire after a long stay in shelters. After a woman leaves a shelter, if a woman with a disability's biological family refuses to allow her to return to living with them she has nowhere to go. Support for independent housing is very scarce. Due to this problem, local governments often send women with disabilities to long-term residential facilities. People who have been living in the community are criminalized and forced to live in institutions due to lack of support. This is contrary to deinstitutionalization and violates the Convention Against Torture.

#### **Recommendations**

- 1) Establish specific support systems and policies—including guaranteed independent housing and livelihood support—for women with disabilities who have experienced gender-based violence to ensure they can live independently in the community after leaving institutions, shelters, or homes.

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<sup>59</sup> Ministry of Gender Equality and Family, Report on the Operation of Support Programs for Victims of Sexual Violence (2021).

<sup>60</sup> Kyeonggi, "Incheon: Lack of shelters for the sexual violence victims with disabilities" (17 May 2022), <https://www.kyeonggi.com/article/20220517580207>.

<sup>61</sup> Korea Women's Human Rights Agency, Study on the Status of Mental Disorders in Women's Violence Victim Support Organizations and Ways to Strengthen Support for Victims (2021).

- 2) Develop appropriate plans to ensure the full integration and participation in the community of gender-based violence victims with disabilities, especially those in shelters.

## C. Institutionalization of Children

### a. Human Rights Violations in Child Welfare Facilities

42. In 2020, in the midst of a series of brutal child abuse cases,<sup>62</sup> child abuse occurred at a child welfare facility (residential facility) in Pohang, Gyeongbuk. Consequently, from July to December 2020, the government conducted a comprehensive fact-finding survey on child rights and operational conditions in 778 child welfare facilities nationwide that housed 13,094 children. These facilities included 246 child rearing facilities, 512 shared living homes, 12 therapeutic treatment centers, and 8 temporary care centers.
43. A total of 230 suspected cases of abuse were confirmed: 59.1% emotional abuse, 26.5% physical abuse, 13.0% overlapping physical and emotional abuse, and 1.3% sexual abuse. In particular, emotional abuse included not only verbal abuse and name-calling, but also being held in isolation or sent to another facility. The nature of these abuses indicate the limitations of the facility's physical conditions and lack of nurturing attitude of persons engaged in relevant work at child welfare facilities.
44. The study also found that the medical care and management of children in institutionalized care was poor. There were 20 (1.6%) cases where the child was diagnosed with ADHD and prescribed medication based solely on the explanation of a worker, meaning without direct examination of the child; indeed, 55 facilities did not keep a medication diary. On the other hand, ADHD was also diagnosed in 200 cases (1.6%) due to the child's "institutional maladjustment", indicating that group living facilities cannot be a proper nurturing environment for children who have been exposed to de facto social neglect due to abuse and family breakdown.
45. The National Human Rights Commission's 2021 on-site investigation of child welfare facilities also found "formalized child self-governance councils [and] unreasonable living rules (such as restrictions on going out, cell phone use, and limitations on playing and furniture arrangements)." During the pandemic, children living in institutions were often banned from leaving the facilities at all, but particularly for overnight stays, a restriction that made it more difficult for them to interact with their communities and families. The "confined routine" and "closed world" of institutionalized children are consistent with the concept of deprivation of liberty.
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<sup>62</sup> See, e.g., May 29th child abuse case in Changnyeong, Gyeongsangnam-do, South Korea; June 1st child abuse death case in Cheonan, Chungcheongnam-do, South Korea.

## **Case**

Child Abuse Case in Pohang City: Child welfare facility exposed children to long-term abuse, forcing five out of six children to undergo unnecessary psychiatric treatment and locking one child in a rooftop room (17 June 2020, The Hankookilbo News).<sup>63</sup>

## **Questions**

- 1) Whether the fact-finding surveys on human rights of child welfare facilities have been conducted on a regular basis after 2021.
- 2) Whether there will be human rights investigations into all other living arrangements where children live in addition to child welfare centers.
- 3) Whether the child care inspection system for children in institutional care is working to prevent child abuse and protect the home environment.
- 4) Whether the education and training for persons engaged in relevant work at child welfare facilities has been continuously reviewed and improved.

## **Recommendations**

- 1) The State party should establish a framework for both monitoring the human rights record of all types of facilities that house institutionalized children and overseeing any remedial actions necessary.
- 2) The State party should develop adequate conditions for capacity building—including improved treatment of persons engaged in relevant work at child welfare facilities—and strengthen essential education regarding children's rights.
- 3) The State party should expand infrastructure to ensure that the review of the care of children in institutional care is in line with the principles of family-based care (e.g., returning home, placement/transition to family-based care).

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<sup>63</sup> Hankookilbo, "10 year old child locked in solitary confinement... children from domestic violence, abuse again in shelter" (17 June 2020), <https://www.hankookilbo.com/News/Read/202006160899059525>.

## **b. Forced Admission to Psychiatric Hospitals and Misuse of Medication Prescriptions for Children in Institutions**

47. In South Korea, there are frequent cases of child abuse, including the involuntary admission of children with so-called “challenging behaviors” to psychiatric hospitals and the overuse of antipsychotic medication in order to control them in institutions.<sup>64</sup>

<sup>65</sup> Privately run social facilities for children often wield considerable local influence, and as a result, it is reported that these facilities can easily obtain prescriptions for medication from hospitals. However, there are no clear surveys regarding the problem, and no clear government response.

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<sup>64</sup> The term “facility” refers to any type of residential facility where children and adolescents live for residential purposes, including child welfare facilities, juvenile welfare facilities, and residential facilities for persons with disabilities.

<sup>65</sup> Yonhapnews, “The childcare director is sending me to a mental institution for having plastic surgery”(10 January 2024), <https://www.yna.co.kr/view/AKR20231220126751505?input=1195m>.

### **Case 1**

In 2016, a facility director tried to have Child C, a resident of a child rearing facility, involuntarily admitted to a psychiatric hospital for having a plastic surgery without permission and for her usual behavior; however, the hospital refused. The director of the facility also involuntarily admitted the child to a closed ward of a psychiatric hospital for about six months for r“challenging” behaviors such as running away and smoking.<sup>66</sup>

The National Human Rights Commission of Korea recommended that the chairman of the corporation of the facility be dismissed and that the local governor of the municipality where the facility is located strengthen management and supervision; however, the lack of follow-up measures—including failure to implement the recommendations—has raised concerns.<sup>67</sup>

### **Case 2**

The director of a group home facility—who managed the facility until 2022—committed child abuse against five minors and forced them to be admitted to a psychiatric hospital. The director's allegation of child abuse determined to be well-founded and referred to the prosecutor's office.<sup>68</sup>

### **Case 3**

A child who had been receiving ADHD treatment at a youth psychotherapy center in Busan was prescribed medically inappropriate antipsychotic drugs; based on this situation, the police and local governments received reports of child abuse and opened an investigation.<sup>69</sup>

## **Questions**

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<sup>66</sup> Newsis, “The childcare institution sent to psychiatric hospital for having a plastic surgery...” (19 July 2018), [https://www.newsis.com/view/?id=NISX20180719\\_0000368293&clD=10201&plD=10200](https://www.newsis.com/view/?id=NISX20180719_0000368293&clD=10201&plD=10200)

<sup>67</sup> Nocutnews, “Police, investigate forced admission to psychiatric hospital, all childcare children suspected of abuse” (4 October 2018), <https://www.nocutnews.co.kr/news/5040252>.

<sup>68</sup> Munhwaillbo, “Director of child welfare facility in his 60s sent to prosecution for allegedly abusing 5 minors, including verbally abusing and assaulting them” (21 March 2023), <https://www.munhwa.com/news/view.html?no=2023032101039910226004>.

<sup>69</sup> KNN, “Youth psychotherapy centers controversially over-prescribe medication” (8 May 8 2024), <https://news.knn.co.kr/news/article/156896>.

- 1) Whether a survey has been conducted on the issue of involuntary admission to psychiatric hospitals and misuse of medication (including medication management practices) among children in institutionalized settings.
- 2) Whether a comprehensive plan has been established to address the problem of involuntary admission to psychiatric hospitals and misuse of medication in violation of the bodily autonomy of children in welfare facilities.
- 3) Whether procedures are in place for children who are victims of involuntary hospitalization or inappropriate medication to report and seek redress.

### **Recommendations**

- 1) The State party should provide a specific plan to protect children in child welfare facilities from involuntary psychiatric hospitalization and inappropriate medication prescription in child-care facilities and provide meaningful oversight.
- 2) The State party should conduct regular monitoring of the use of medication and physical interventions such as psychiatric hospitalization for children in State custody and establish an effective management and supervision system.
- 3) The State party should establish an accessible, reliable, and safe reporting and counseling system for children.



### c. Deprivation of Liberty Runs Counter to “Deinstitutionalization”

48. Although the ROK has one of the lowest fertility rates in the world, with a total fertility rate of 0.72 in 2023, the number of child in State protective custody has consistently remained around 4,000<sup>70</sup> for the past five years. As of December 2022, 9,439 (72.7%) of the 12,981 children<sup>71</sup> in child welfare facilities lived in the child rearing facilities, and similarly, 381 of the 408 children in temporary protection were housed in institutionalized care. The “temporary protective measures”<sup>72</sup> implemented in March 2021, appears to have accelerated the placement of children in institutional care.<sup>73</sup> In addition to child welfare facilities, the number of children placed in youth shelters and residential facilities for persons with disabilities has continued to increase. In particular, from 2014 to 2018, 96.6% of children abandoned anonymously in “baby box” locations were placed in institutional care, while only 13.8% were moved from institutional care to protective measures of adoption and rearing a child at the family.<sup>74</sup>
49. Furthermore, eligibility for the government's support, provided through the Self-reliance Program for Children and Youth, requires youth to remain in the facility until the end of their time in State protective custody.

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<sup>70</sup> Statistics Korea (2023) reports on the number of children in the ROK, including the number of children subject to State protective custody according to the “cause of child subject to protection” and “returned home and handed over to relatives”. In 2018, the number was 4,538; in 2019, 4,612; in 2020, 5,053; in 2021, 4,521; and in 2022, 3,756.

<sup>71</sup> Combined capacity of children in child welfare facilities (n=10,312) and children in shared living homes (n=2,669) as of Dec. 31, 2022, according to the Ministry of Health and Welfare.

<sup>72</sup> If necessary before a Mayor/Do Governor or the head of a Si/Gun/Gu takes protective measures he or she may protect a child subject to protection by admitting him or her to a temporary child protection facility or an child victims' shelter, or require an appropriate foster home or a person who is deemed suitable to protect the child through a temporary entrustment.

<sup>73</sup> In 2021, 72.8% of children separated due to abuse reports were institutionalized, and 53.8% continued to live in institutions.

<sup>74</sup> The Board of Audit and Inspection of Korea, Audit reports-Survey on support to child subject to protection (2019).

### **Case**

“Child E”, after being subjected to a juvenile protection trial for violating residential facility rules in February 2020, was sent to a child protection and psychiatric treatment facility, known as “Disposal No. 6.”<sup>75</sup> In mid-February 2021, when Child E’s disposition period came to an end, it was decided that he would return to his family home instead of being sent to another facility, since it was merely two weeks before his 18th birthday. Therefore, Child E was not eligible for government support to independent living. Child E died on August 23, 2022.<sup>76</sup>

After the death of the aforementioned Child E, the law was amended to provide support for children who drop out of institutions<sup>77</sup>; however, children who have never lived in a child welfare facility or foster home are still excluded from support. Furthermore, for those who leave the facility at the age of 15, help for their transition to independence is available after they turn 18, resulting in a three-year gap in support. This prolongs a youth’s time in institutional care and hinders their return home, transition to family-based care, community integration and independence.

### **Case**

Many young people who are preparing for independence die every year, including by suicide before and after their care is terminated. This highlights the limitations of institutionalized care that both deprives children of their freedom and fails to realize their best interests. When children leaving care were asked if they had ever thought about wanting to die, 42.8% of children scheduled to leave care and 50% of children who have left care said they had.<sup>78</sup>

50. Meanwhile, the proportion of children with disabilities in institutional care increased significantly from 2016 (2.8%) to 2022 (4.8%, n=110 children with disabilities/2,290 children in care). As of December 2020, the number of children with disabilities being

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<sup>75</sup> The term refers to a juvenile court’s disposal based on Juvenile Act, Article 32 (1) 6.

<sup>76</sup> Sisain. “The deaths of two young men that everyone got wrong” (29 September 2022), <https://www.sisain.co.kr/news/articleView.html?idxno=48488>

<sup>77</sup> Children who left the institution before turning 18.

<sup>78</sup> Ministry of Health and Welfare, Survey of Independence Status and Needs of Children Aging Out of Care (2020).

cared for in child welfare facilities was 1,434 (about 10%) of the total 13,914 children in such facilities. As of the end of December 2020, 2,245 children with disabilities were reported to be living in 386 residences dedicated solely for persons with disabilities (in total 1,539 such residences): 774 children living in residences for persons with severe disabilities, 640 in residences for persons with intellectual disabilities, and 339 in residences for infants and toddlers with disabilities. This indicates a high proportion of children with disabilities in institutional care.<sup>79</sup>

51. The current government initially proposed, as a national task, the preparation of “a roadmap for deinstitutionalization of children in care”; however, the government has now changed the focus to “a roadmap for transition to family-like living for children in care”. As such, the government’s commitment to deinstitutionalization and prevention of institutionalization is highly questionable.

### **Questions**

- 1) Whether the State party has specific strategies to prevent children from being placed in institutionalized care.
- 2) Following the legislation of immediate separation of children from their homes in cases of child abuse, whether the State party has taken measures to prevent institutionalization in such cases.
- 3) Whether there is a consistent system of care for children with disabilities in institutions.
- 4) Whether the plan to create a roadmap for child care deinstitutionalization is progressing, and if so, the extent and manner of that progress.

### **Recommendations**

- 1) The State party should, in the roadmap for deinstitutionalization of child care, clearly state that institutionalization is a temporary, exceptional measure of last resort, and provide specific plans to prevent long-term care in institutions, including group homes. The State party should develop specific community-based, transitional living support measures to implement the deinstitutionalization policy, especially for children with disabilities.

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<sup>79</sup> National Human Rights Committee, Survey on the Human Rights Situation of Children with Disabilities in Residential Facilities for the Disabled, p. 47(December 2021).

- 2) The State party should shift its child care policy paradigm from institution-based to alternatives based on child's rights, and in accordance with Articles 12 and 13 of the CAT, include in the roadmap a process of reparation and compensation for harms afflicted by past institutionalization.
- 3) The State party should evaluate the effectiveness of current measures to immediately separate children from their homes in cases of reported abuse and develop concrete measures to facilitate the return of children in institutions to their families, transition to family care, and state-led adoption policies.
- 4) The State party should adopt clear regulations to ensure that children in residential facilities for persons with disabilities are eligible for the same benefits as children in protection under the Child Welfare Act.

#### **d. Inhumane Treatment, Including Forcing “Out-of-Home Youth” to be Institutionalized**

52. In 2020, the National Assembly Research Service estimated that 115,741 youth in elementary (grades four to six), middle, and high school had run away from home,<sup>80</sup> and additionally, the Ministry of Gender Equality and Family reported that, in 2022, 3.6 youth per 100 students in the same range as above had run away from home.<sup>81</sup> However, these statistics are based solely on a survey of in-school youth; the actual scale of runaway youth is likely much higher given that many do not attend school. Meanwhile, in response to a parliamentary inquiry, the Ministry said that, in 2021, according to the National Police Agency’s report on missing and runaway persons, the number of out-of-home youth was about 23,133; however, if inferred from the number of residents in youth shelters instead, there could be about 21,475 out-of-home youth.<sup>82</sup> As such, even the most basic data on the size and needs of out-of-home youth is not collected. The lack of statistics translates into a lack of policies for this population.
53. Unless they are placed in residential facilities such as child welfare centers or long-term youth shelters, out-of-home youth are excluded from the government’s protection and support system. In Korean society, most out-of-home youth are often fleeing from a crisis at home, such as child abuse or neglect,<sup>83</sup> and as such, residential facilities are usually the only option available to them. The current roadmap for child care deinstitutionalization focuses solely on children placed in residential facilities under supervision of the Ministry of Health and Welfare; thus, it completely fails to provide for out-of-home youth who do not reside in such institutions. Out-of-home youth—whether they are placed in a certain residential facility or not—are commonly fleeing from abuse, violence, or neglect at home; as such, they are in desperate need of care outside home. But most of them are excluded from the current discussion of deinstitutionalization.
54. Youths under the age 19 are excluded from emergency housing, housing subsidies, and housing support services. Out-of-home youth who neither want to return home nor be placed in a residential facility are forced to stay in motels, friends’ homes, and

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<sup>80</sup> National Assembly Research Service, *Beyond the Return to Home Framework*, p. 1 (2021). Estimated at 2.9% of the 3.991 million students enrolled in elementary (grades four to six), middle, and high school at the time, according to the Ministry of Women and Family Affairs’ 2020 Youth Statistics (2021).

<sup>81</sup> Ministry of Gender Equality and Family, *Youth Statistics 2023*, p. 33 (2023).

<sup>82</sup> Office of Yong Hye-in, 2022 National Survey data.

<sup>83</sup> Ministry of Gender Equality and Family, *Survey on the Living Conditions of Users of Support Organizations for Youth in Crisis* (2022). Conflict with other family members (69.5%), domestic violence (28%), poverty (4.9%) (multiple responses).

other places, and as such, 29.8% of them have experienced homelessness on the streets.<sup>84</sup> Experiences on the streets pose a serious threat to out-of-home youths' lives and dignity: They are at risk of sexual crimes and exploitation, and due to housing costs, they cannot afford adequate nutrition or to seek medical attention for illnesses.<sup>85</sup>

#### **Case<sup>86</sup>**

In August 2022, a man was arrested in Changwon, South Korea after he sexually assaulted a 14-year-old girl who was looking for a “helper.”<sup>87</sup>

In Uijeongbu, a man who approached a 13-year-old girl as a “helper”, lured her to a motel and sexually assaulted her was sentenced to five years in prison.

In another case, a man recruited a girl he met online on a “helper site” to commit car theft.

55. Given that most youth run away from home to escape situations from which they are unlikely to recover from by themselves—such as family crises, conflict, and violence—the government’s lack of protection for out-of-home youth is no different than institutionalized violence by the State (CRC/C/GC/13, para. 32). The South Korean government has a history of forcibly placing children and youth in institutions, subjecting them to violence or exploitation, and turning a blind eye. The current government continues to subject out-of-home youth to cruel, inhuman or degrading treatment by leaving them on the streets.

### **Questions**

- 1) Explain the manner and extent to which the State is addressing the situation of out-of-home youth, including whether the State party is in the process of developing any plans or policies to address it

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<sup>84</sup> Ministry of Gender Equality and Family, Survey on the Living Conditions of Users of Support Organizations for Youth in Crisis, p. 78 (2022).

<sup>85</sup> National Human Rights Committee, Survey on the Situation of Human Rights, including the Right to Housing for Out-of-home Youth, pp. 192, 207 (2023).

<sup>86</sup> Yonhap TV, “‘I’ll help you,’ ‘black helpers’ target runaways” (9 June 2023), <https://yonhapnewstv.co.kr/news/MYH20230609010000641>.

<sup>87</sup> “Helper” is a term widely used in South Korea to refer to individuals who offer goods and services such as money, food, shelter, alcohol or cigarettes to runaway youths, usually with a hidden purpose of exploiting their labor or sex, or involving them in criminal activity.

- 2) Explain the manner and extent to which the State is addressing the right to housing for out-of-home youth, including whether the State party is planning any legislation or plans to provide independent and government supported housing.

## **Recommendations**

- 1) The State party should develop legislation, systems, and infrastructure to ensure that out-of-home youth have the right to housing and are not excluded from the state's child protection and support systems.

### **Conclusion and Recommendations**

This report details the widespread institutionalization of child care in South Korea and various cases of abuse in institutions, highlighting in particular the State's failure to fulfill its obligations to prevent and combat all forms of discriminatory, inhuman or degrading treatment of children. The State party should adopt a comprehensive deinstitutionalization policy based on the rights of children and adolescents, and furthermore, make every effort to support their recovery in the process.

1. The State party should phase out institutionalization of children and adolescents.
2. The State party should ensure the right to a family environment and the right to housing for children in institutions, including developing concrete measures to facilitate the transition from institutionalized care to foster home care.
3. In developing the roadmap for deinstitutionalizing child care, the State party should ensure that institutional care is temporary and a last resort among alternative care options. including by providing specific plans to prevent long-term care in institutions, such as group homes.
4. The State party should increase policy and technical resources, funding, and staffing for community-based family restoration, housing support, and independent living support for children and youth.

## D. Institutionalization of Migrants

### a. Detention in Immigration Facilities

- **The ROK's immigration detention system lacks an objective review process and a maximum limit on detention time periods.**

56. The current Immigration Act permits indefinite detention under the provision that a person who receives a deportation order can be “protected” (detained) until “the time when the deportation is implemented”.<sup>88</sup> In addition, the deportation order leads to detention—without exception. Strict regulations are applied to foreigners detained in immigration detention centers: Foreigners can access only certain areas and are prohibited from moving in and out of a detention room freely. According to this rationale, the government's argument is that, although held in detention centers, these individuals are not “detained.” and thus, indefinite detention cannot constitute arbitrary detention. The Immigration Act's lack of a separate provision restricting detention of migrant children—including a maximum time period on child detention—means that babies and children tend to be indefinitely detained alongside their parents.

57. Nor does the current Immigration Act have safeguards, such as regular monitoring by an independent agency (e.g., the judiciary), and a maximum detention period does not exist. In March 2023, the Constitutional Court ruled that the ROK's immigration detention system is unconstitutional because it lacks protections against indefinite detention.<sup>89</sup> In response to the Constitutional Court's decision, in April 2024, the ROK government proposed amendments to the Immigration Act.<sup>90</sup> If adopted, the proposed amendments would run contrary to the purpose of the Constitutional

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<sup>88</sup> Immigration Act, Article 63 (Detention of Persons Subject to Deportation Orders, or Release from Detention) (1). If it is impossible to immediately repatriate a person subject to a deportation order out of the Republic of Korea as the person has no passport or no means of transportation is available, or for any other reason, the head of a Regional Immigration Service may detain the person in any detention facility until he or she can repatriate the person.

<sup>89</sup> 2020Hun-Ka1, 2021Hun-Ka10 (consolidated) Case on Detention of Deportees with No Upper Time Limit, <https://english.ccourt.go.kr/site/eng/ex/bbs/List.do?cbIdx=1143> .

On March 23, 2023, the Court, in a 6-3 opinion, held that Article 63, Section (1) of the Immigration Control Act did not conform to the Constitution. Article 63(1) allows a person under a deportation order to be detained while not setting an upper time limit of the detention. The Court explained that the provision violates both the rule against excessive restriction and the principle of due process of law, and thus, infringes on a detainee's right to physical liberty.

<sup>90</sup> Ministry of Justice Notice No. 2024-140, Proposed Legislation to Amend Part of the Immigration Act (11 April 2024), <https://opinion.lawmaking.go.kr/gcom/ogLmPp/77530?isOgYn=Y&opYn&>.



Court's decision by (1) establishing a maximum detention period of 36 months (2) while simultaneously permitting a person to be re-detained for an unlimited time period; and (3) creating an internal committee under the Ministry of Justice—rather than an objective judicial review process—to review the detention orders. Human rights civil society organizations and others submitted strong objections to the draft legislation to the government.

58. Potential for significant rights violations arise from the lack of procedures to assess the necessity of detention, including failing to account for the possible vulnerabilities of detained persons. Given the lack of exceptions to detention, all people—including persons with disabilities, pregnant women, parents with children, and migrant children—are detained. Long-term detention is applied even to people whom the Korean government is not able to deport, such as (1) stateless persons; (2) those who cannot be issued a passport; and (3) individuals who are on trial.<sup>91</sup>

**- Isolation rooms and physical restraints are used excessively in immigration detention centers.**

59. Officials working in immigration detention centers continue to use physical force against foreigners for the alleged purpose of maintaining order. But, in practice, officials use force as a de facto punishment, justifying their actions by relying on a statutory exception that “in emergency situations to prevent injuries to themselves or to others, isolation or using restriction tools are permissible”.<sup>92</sup>

60. After disclosing that officials had tortured a detainee in the Hwaseong Immigration Detention Center in 2021—the so-called “hog-tying” case<sup>93</sup>—the government revised the Ministry of Justice directive; however, the revised guidelines are themselves concerning, expanding the types of permissible restraints and still permitting officers to bind a detainee’s limbs.<sup>94</sup> Furthermore, the criteria, method, and process for the use of solitary confinement and restraints are detailed only in a confidential internal regulation document that has not been released to the public. As such, monitoring the application of these regulations is impossible.

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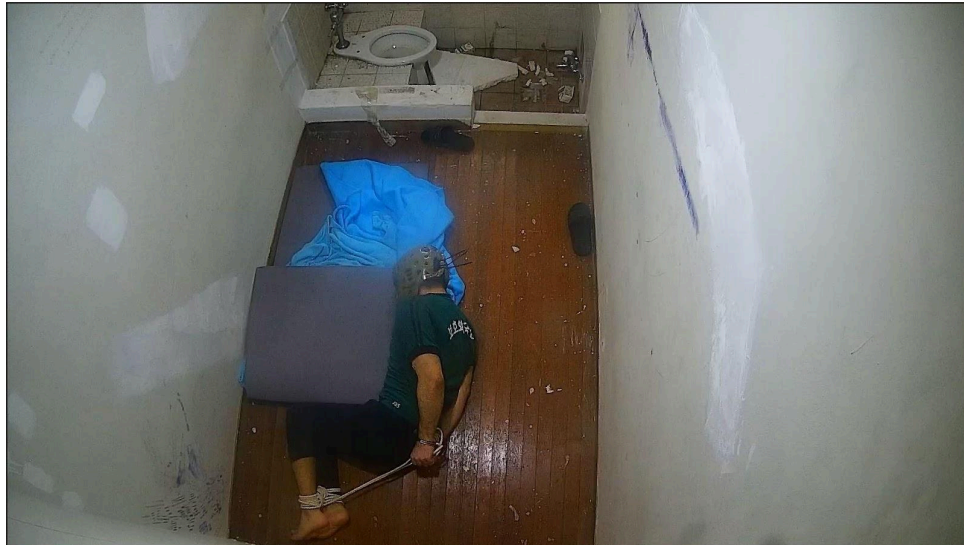
<sup>91</sup> Voice of America, “South Korean Activists Urge Better Treatment of Asylum-seekers,” (2 January 2022), <https://www.voanews.com/a/south-korean-activists-urge-better-treatment-of-asylum-seekers/6378557.html>.

<sup>92</sup> Immigration Act Article 56-4 (Exercise of Coercive Force).

<sup>93</sup> The Korea Times, “Migrant human rights groups denounce excessive use of force at immigration detention center” (29 September 2021), [https://www.koreatimes.co.kr/www/nation/2023/08/113\\_316207.html](https://www.koreatimes.co.kr/www/nation/2023/08/113_316207.html).

<sup>94</sup> Hankyoreh, “Civic groups condemn immigration detention center protective gear as ‘torture devices’” (22 June 2022), [https://english.hani.co.kr/arti/english\\_edition/e\\_national/1048108](https://english.hani.co.kr/arti/english_edition/e_national/1048108).





*Photo: CCTV image taken in the Hwaseong Immigration Detention Center in 2021 of AB being tortured in a “shrimp-tied”, a.k.a. “hog-tied”, stress position.*

### **- Immigration detention of children**

61. The current Immigration Act does not prohibit the detention of children. Instead, the only clause to address child detention is Article 56(3), which requires special protection for persons under the age of 19. Article 4 of the Immigration Detention Rules, a Ministry of Justice directive, stipulates that the director of the detention facility may permit a child under the age of 14 to live with the detained foreigner if the child is dependent on the detainee—even if the child is not subject to detention order. Therefore, in many cases, detaining a parent results in the detention of a child under the age of 14. The child is essentially forced to be detained with the parent because the parent has no other alternative for the child's care.<sup>98</sup>

62. Statistics show children are routinely detained with their parents every year. For example, 13 children under the age of three were held in immigration detention centers in 2022, 12 in 2021, and 16 in 2020.<sup>99</sup> The Immigration Detention Rules

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<sup>98</sup>Twenty-six children under 8 years of age have been detained at immigration detention units or centers throughout Korea from January 2013 to June 2015. Among them, a 3-year-old boy and a 2-year-old girl were detained for 30 days and 81 days respectively. Kim, Jongcheol, “Toward Elimination of Detaining Children of Migrants and Alternatives to Detention,” APIL & World Vision (May 2015).

<sup>99</sup> Statistics provided by the Ministry of Justice (June 2023).

make additional provisions for the education and care of detained children, but as recent studies have shown, these are not usually followed. Furthermore, even if provided, child-specific protections cannot adequately offset the negative impact of detention itself on children.

## **Case**

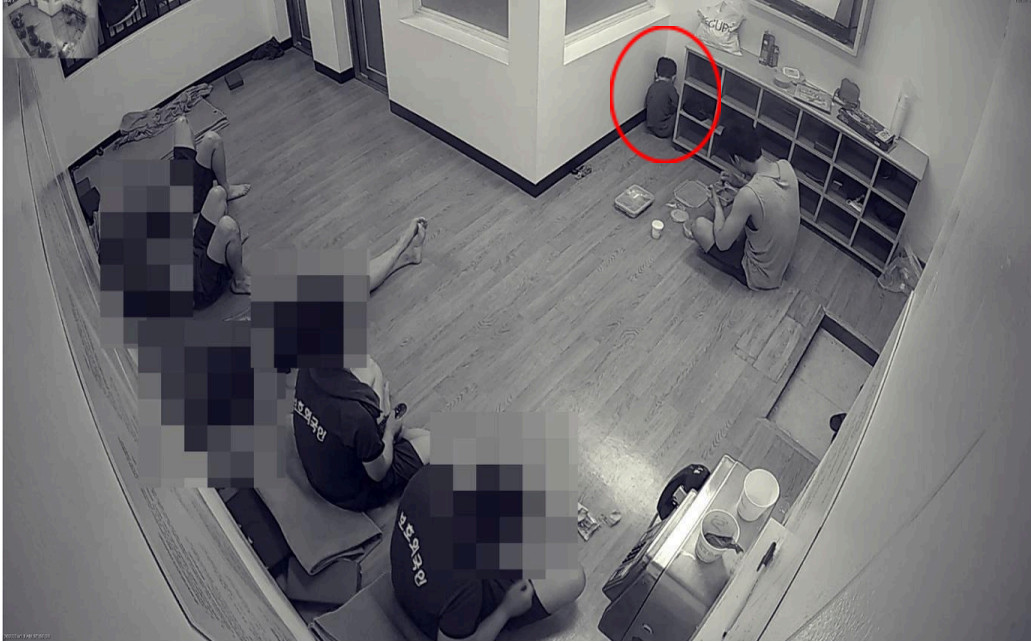
### **- Example of Child Detention**

In April 2023, a then 2-year-old, undocumented Mongolian child was detained with his father in an underground room at Suwon Immigration Detention Center.<sup>100</sup> While at the Suwon Immigration Detention Center, the child's father asked officials whether, rather than be detained, the child could stay with the child's mother or in a childcare institution. The government refused the request. On the third day of their detention, the father applied for temporary release from custody. The government denied his application.

Due to the poor conditions of detention, the child's health deteriorated rapidly. On the seventeenth day of detention, the father filed a complaint with the National Human Rights Commission. In response, government officials told the father that the family would be taken to the hospital to get treatment for the child. Thinking that they were transferring to the hospital, the father did not even pack their luggage. However, rather than taking the family for medical care, the government officials forcibly deported the child and his father without notice to Mongolia. After being repatriated, the child required medical treatment for the trauma-related condition caused by the circumstances of his detention and deportation.

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<sup>100</sup> The Korea Herald, "Minor party slams ministry for detaining Mongolian 3-year-old" (14 June 2023), <https://www.koreaherald.com/view.php?ud=20230614000691>.



*Photo: CCTV image of the Suwon Immigration Detention Center. The child(in the red circle) is hiding in the corner, refusing to eat.*

## Questions

- 1) Whether there are specific plans to implement (1) safeguards such as regular monitoring by an independent agency; and (2) a maximum detention period, and if so, the plan to implement and monitor the maximum detention period.
- 2) What steps have been taken to improve immigration detention facilities and whether alternatives to detention are in place.
- 3) Whether victims of torture in migrant detention centers have been criminally prosecuted and whether measures have been taken to compensate and rehabilitate the victim.
- 4) Whether (1)the detention of children under 18 years of age continues to be a permissible practice, including (2)whether the criteria for detaining a parent takes into account the fact that they have a dependent child under 18; (3) whether alternative arrangements are available for children whose parents are detained.

## Recommendations

- 1) The State party should revise the current Immigration Act to permit detention only in exceptional cases and as a last resort for the shortest possible period.
- 2) The State party should improve living conditions in immigration detention centers to meet international standards. Furthermore, the government should ensure these standards continue to be met by establishing regular, independent monitoring.
- 3) The State party should take the necessary measures to guarantee the right to a remedy for immigrants who were subjected to torture in immigration detention center, including (i) satisfaction, such as public apologies to victims and criminal prosecution of perpetrators; and (ii) guarantees of non-repetition.
- 4) The State party should prohibit the detention of children under 18 years of age in immigration detention centers. Furthermore, the State party should take steps to ensure that parents who are responsible for the care of children are not detained.

## **b. Detention of Asylum Seekers at Ports of Entry**

### **- Non-referral decisions on asylum claims.**

63. Unlike applying for asylum status after entering Korea, “when submitting an application . . . in [Korean] airports,” an asylum seeker will be subject to a pre-screening assessment known as a “referral assessment.” The Immigration Act provides that the government may refuse to refer an applicant to the asylum application process only in the exceptional case in which the pre-screening assessment proves their asylum claim is “incontestably groundless”; yet, in practice, the government has refused to refer more than half of applicants, effectively barring these individuals from the asylum process.<sup>101</sup> In 2019, the government allowed only 7.5% of airport asylum seekers to apply for asylum, and on average, over the last five years, only 36.2% of asylum seekers applicants were permitted to proceed to the standard asylum procedures.<sup>102</sup>
64. Since there is no separate procedure to appeal non-referral decisions, the only way that an asylum seeker can appeal a non-referral decision is to file a lawsuit in court. However, because there is no guidance on the process, it is difficult for asylum

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<sup>101</sup> Recent reports include that asylum seekers are receiving non-referral decisions for (1) “submitting false documents” on the basis that the person mentioned incorrect dates of events in an interview ; (2) “incontestably groundless” claims on the basis the person failed to state the facts of a insignificant specificity; and (3) “incontestably groundless” claims on the basis that the person is from a country with an ongoing civil war who failed to sufficiently disclose details about insignificant changes in the civil war.

<sup>102</sup> NANCEN, Report on the Rights of Refugees in South Korea (March 2024), <https://nancen.org/2396>.

seekers to file a lawsuit on their own unless they hire a lawyer. This is nearly impossible given the high cost of legal fees in ROK, and it is only done on a very rare basis by a small number of pro bono lawyers. Even if an asylum seeker does succeed in filing a lawsuit, the appeal process can be lengthy—months, at least, and sometimes more than a year. Regardless of the risks, some asylum seekers leave the country because they cannot endure the living conditions at the ports of entry.

### **Case**

#### **-Prolonged Port of Entry Detention**

In February 2020, an asylum seeker who arrived at Incheon Airport was denied asylum solely on the basis that he was passing through Korea as a “transit passenger.” The man had to spend the entire duration of his case against the Ministry of Justice at the airport: 423 days in total. After he won his case, he was allowed to enter the country.<sup>103</sup>

#### **- Inadequate meals and poor living conditions during airport detention.**

65. When asylum seekers receive a non-referral decision, the government does not provide housing in the airport for the duration of any appeal or until their deportation. Instead, foreigners must stay at a “departure waiting room.” During a legal case on a “non-referral decision,” the government detains people at the airport for at least three months, and sometimes, more than fourteen months. Although a high number of detained people are expected, the government has not allocated a budget to the departure waiting rooms for necessary items such as adequate meals and hygiene. For example, currently only two meals per day are served: airline inflight meals, only if available.
66. As a departure waiting room has no sleeping facilities, asylum seekers must sleep on a shared flat bench with blankets. The departure waiting room is small and can become overcrowded easily.

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<sup>103</sup> Korea Joongang Daily, “Asylum seeker finally sees the sun after 423 days in Terminal 1” (18 April 2021), <https://v.daum.net/v/20210418153603436>.





*Photo: Asylum seekers staying at a “departure waiting room” at the Incheon Airport.<sup>104</sup>*

**- Detention of children, pregnant women, and persons with disabilities in ports of entry and departure waiting rooms.**

67. Given that providing adequate meals and hygiene is impossible in the departure waiting rooms, children, pregnant women, and persons with disabilities who are detained at airports in Korea are categorically neglected.

68. Furthermore, departure waiting rooms are arranged only by sex; no extra facilities are available for children and families with children.<sup>105</sup> Therefore, children are detained together with adults who are not part of their family. During long-term detention, in addition to the risk of becoming malnourished and developing health conditions, children are deprived of the right to education.

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<sup>104</sup> CNN International Facebook, “Syrian refugees stuck in limbo at Seoul Airport” (1 June 2016), <https://www.facebook.com/cnninternational/videos/syrian-refugees-stuck-in-limbo-at-seoul-airport/10154179783609641/> .

<sup>105</sup> For example, in the State Party report and corresponding annex, the government disclosed that only one “family room lounge” was set up in the entire country (Incheon Airport). Sixth Periodic Report Submitted by the Republic of Korea Under Article 19 of the Convention Pursuant to the Simplified Reporting Procedure, Tbl. 15 CAT/C/KOR/6/Annex (12 July 2021).



## Case

### - Conditions at Port of Entry for Vulnerable Populations

From 2018 to 2019, an Angolan family with four children (a 9-year old, 7-year old twins, and 5-year-old) who sought asylum were forced to wait at the Incheon Airport for 287 days—the time necessary to successfully appeal an incorrect non-referral decision. During that time, the children had to stay in an area of the airport where lights were on 24 hours, 7 days a week. The children were not provided with a place to shower; instead, they showered in public restrooms. The government did not supply daily necessities to the children, such as meals. There was no possibility for schooling. Thus, this treatment gravely infringed on the rights to health, education, protection, and privacy of these four children.



*Photo: Asylum seeking family living in front of the flight gate No. 46 at the Incheon Airport while appealing a non-referral decision.<sup>106</sup>*

## Questions

- 1) Regarding the Committee's previous concluding observations (paras. 41-42), whether the State party is considering amending the Refugee Act to delete article 5 of its enforcement ordinance.

<sup>106</sup> The Hankyoreh, "Angolan family stuck in Incheon Airport for six months as they seek refugee status" (21 June 2019), [https://english.hani.co.kr/arti/english\\_edition/e\\_international/898849.html](https://english.hani.co.kr/arti/english_edition/e_international/898849.html).

- 2) Regarding the Committee's previous concluding observations (paras. 41-42), whether the State party plans to establish a separate, non-litigious appeals process for asylum seekers who receive a non-referral decision at a port of entry.
- 3) What efforts have been made to improve the physical environment in the departure waiting rooms at ports.
- 4) Whether there are plans to provide facilities outside of airports for asylum seekers who are determined to be inadmissible at the port of entry.

### **Recommendations**

- 1) The State party should stop abusing the refugee referral assessment procedure at ports of entry and end long-term detention of asylum seekers at airports. The State party should ensure the right to apply for refugee status for all applicants.
- 2) The State party should routinely monitor whether people detained at airports are being detained for the shortest period possible. The State party should ensure asylum seekers are treated in a humane manner.
- 3) The State party should arrange a separate living facility outside of airports for possible asylum seekers who will be detained for an extended time at airports.