

Joint NGO Submission

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Submitted by

**South Korean NGOs Coalition (461 NGOs)
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I. Background and Framework

1. This submission was jointly written by 461 NGOs in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 3rd cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2018.

A. Scope of international obligations and implementation

2. The government is a party to the seven core human rights treaties and has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). The government only says it is continuing to study or review the non-joining treaties, but there are no concrete results. The government has not ratified the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (2nd OP-ICCPR), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the Optional Protocol to Convention on the Rights of Persons with Disabilities (OP-CRPD), and 3rd Optional Protocol to the Convention on the Rights of the Child (3rd OP-CRC). Also, it still maintains reservations on Article 22 of the ICCPR. The government has ratified ILO core Conventions No. 29, 87, and 98, however, it still has not ratified No.105. As the normative status of the international human rights treaty continues to improve domestically, the number of rulings refereeing international human rights treaties at the court increased.¹ However, there is no committee or system to evaluate the implementation of the UN recommendations. Decisions on individual complaints by treaty bodies are not fully implemented because of the discrepancy between national legislation. **The government should present a specific implementation plan on ratifying the CED, CMW, 2nd OP-ICCPR, OP-ICESCR, OP-CAT, OP-CRPD, and 3rd OP-CRC, withdrawing reservations and implementing international human rights standards at administrative, judicial, and legislative branches.**

B. National Human Rights Institution

3. The National Human Rights Commission of Korea (NHRCK) received an A status from GANHRI-SCA on December 1, 2021.² However, NHRCK received the same recommendation for the third time regarding the selection of the commissioners. It is to establish a single independent selection committee in which civil society participates. Currently, the National Human Rights Commission Act has no basis for forcing the Presidential office, the National Assembly, and the Supreme Court to form a candidate recommendation committee involving civil society. Anyone can attend the plenary committee and the standing committee, but if personal information is dealt with, it will be held behind closed doors. However, even if it is

¹ In the courts, the total number of rulings to which major international human rights treaties are applied is 3,185 cases. In the 1990s, there were only 12 cases, and the number of rulings increased to 705 cases in the 2000s, and in the 2010s, the number increased rapidly to 2,468 cases. However, there are an overwhelming number of cases related to the ICCPR: 3,124 cases, of which 3,065 cases are related to conscientious objection. Lee Hye-young, "Current status and tasks of the Court's application of international human rights treaties," Institute for Judicial Policy (2020), p.94-96.

² https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

not for the purpose of protecting personal information, the increasing number of closed meetings is a serious problem. Minutes of the meeting are now being released anonymously, it is necessary to disclose the real names of the Commissioners in preparing the minutes of the plenary committee and the standing committee. Disclosure of the positions of each National Human Rights Commission is an important basis for grasping their qualities. **The government and the National Assembly should expand the manpower and budget of the NHRCK and the independence of the NHRCK should be respected. To fulfill the recommendations of GANHRI-SCA, the government should revise the NHRCK Act to establish a single independent selection committee. The NHRCK should make efforts to increase public confidence in the process of counseling and handling complaints. Also, the government should try to increase transparency in the overall operation, including the disclosure of all meetings in principle.**³

C. National Action Plan for the Promotion and Protection of Human Rights (NAP)

4. The government has established a comprehensive NAP on a five-year basis since 2007. However, it is evaluated that all processes from the establishment, implementation, and evaluation of NAPs that have been conducted so far have never been properly carried out. For example, in the case of the third NAP, which was implemented from 2018 to 2022, civil society participated in the establishment process, but most of the proposals of civil society were not reflected in the actual content. Even though civil society's proposals have not been reflected, the government should at least make an open and transparent evaluation of the third NAP that has already been implemented. Only then can the 4th NAP, which starts in 2023, be properly established based on this evaluation. Since the Ministry of Justice is in charge of NAP systematically, criticism has continued to be raised that other government ministries are passively participating. Accordingly, in December 2021, the government proposed the "Basic Human Rights Policy Act," which deals with human rights policies, including NAP, at the National Human Rights Policy Committee chaired by the Prime Minister. However, the law has not been passed by the National Assembly so far (June 2022). If the law is passed, the government is expected to actively participate in the process of establishing NAP. **The Framework Act on Human Rights Policy must pass the National Assembly before the fourth NAP is established so that the government can establish a practically implementable NAP. In addition, the National Human Rights Commission of Korea should be guaranteed to play an active role in the NAP establishment process. In particular, the NAP recommendation of the National Human Rights Commission should be able to be reflected in the 4th NAP.**

³ See ANNI(The Asian NGO Network on National Human Rights Institutions)2020 report for detailed criticism of the NHRCK. <https://www.forum-asia.org/?p=36231&nhri=1>

II. Implementation of International Human Rights Standards

A. Human Rights in Covid-19 Pandemic

5. Criminal and Punitive Approaches

Even in the public health crisis of COVID-19, restrictions on basic rights should be minimized in proportion to risks.⁴ However, the government's quarantine measures have changed human rights and quarantine to confrontation by focusing only on preventing spread of the coronavirus. The government adhered to a strict punishment policy that did not take into account the specific circumstances of violators of quarantine rules such as self-isolation or collective prohibition, and led to criminalization such as imprisonment, not just imposing administrative fines on them.⁵ This created discrimination and stigma towards those who are or who are likely to be infected. **The government should stop criminalization of diseases, such as unlimited restrictions on basic rights and prosecution of violators of simple quarantine measures and establish a quarantine policy that meets international human rights standards.**

6. Discrimination against Social Minorities and Health Inequities

Health inequities have been deepened because social minorities such as the disabled, migrant workers, and homeless people have not been considered. Mass infection has occurred in institutions where persons with disabilities live,⁶ and access rights or cares for medical

⁴ UN OHCHR, COVID-19 Guidance. <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

⁵ Lee Tahney, Member of the National Assembly/ The Korean National Police Agency (Unit: person)

Categories		Total	Quarantine violation	Prohibition of gatherings violation	Obstruction of contact tracing	Other violations
Total		5,734	1,463	3,877	251	143
Concluded	Indicted	3,605 (17 detained)	1,180 (9 detained)	2,230	137 (6 detained)	58 (2 detained)
	Not indicted, etc.	704	98	439	87	80
Under investigation		1,425	185	1,208	27	5

Total	Indicted						Not indicted
	Sub-total	Trials (with detention)	Trials (without detention)	Trial rate	Summary trial	Summary trial rate	Sub-total
5,606	2,744	13	1,185	43.7%	1,546	56.3%	2,862

⁶ KBS News, "1 out of 2 persons with disabilities was tested positive in huge residential facilities accommodating more than 100 persons with disabilities", 17 May 2022, (Korean) <http://www.ikbn.news/news/article.html?no=141786>

facilities considering persons with disabilities were not provided.⁷ Measures for testing and treatment of street homeless people or of people living in inappropriate housing were insufficient.⁸ Homeless people were required to be quarantined or treated in group facilities even after infection, and discriminatory measures were taken to have PCR tests every time to receive food and other support.⁹ Due to the lack of public medical facilities available to homeless and migrant workers, medical access rights have been lowered in relation to not only COVID-19 treatment but also other diseases.¹⁰ Financial support did not cover migrant workers and homeless people.¹¹ Criticism from civil society eased this a little, but it did not fundamentally change the situation. In addition, undocumented migrants without alien registration cards and homeless people who can't identify themselves were excluded from the 5-mask purchase system implemented at the beginning of the pandemic,¹² and were not able to access the advance reservation system of the Korea Centers for Disease Control and Prevention for vaccinations. Immigrants were not given proper explanations in all areas, such as vaccine reservations, screening clinic management, and admission to life treatment centers, and each local government had different guidelines, which caused confusion. Gyeonggi-do, Seoul, Incheon, Gangwon-do, Jeollanam-do, and Gyeongsangbuk-do issued a discriminatory administrative order requiring only foreigners to have PCR tests, even in companies where Koreans and foreigners work together.¹³ **The Infectious Disease Control and Prevention Act should be revised to include the obligation to take protective measures for the vulnerable groups of social rights. In addition, manuals should be created and implemented to ensure the health rights of persons with disabilities from the risk of infection. The quarantine guidelines should be established in the direction of ensuring equal access to disaster support funds or tests and vaccinations and treatments for immigrants and homeless people. During the infectious disease crisis, it is necessary to introduce a temporary stay permit system for the health and life of undocumented migrant workers and secure public medical care to guarantee medical access. Also, it is necessary for the institutional/legal system that prohibits racial discrimination in a disaster situation such as pandemic.**

⁷ Hankyoreh, “Persons with disabilities with fatality rates 4 times higher in the blind spot in PCR and care”, 4 March 2022, (Korean) <https://www.hani.co.kr/arti/society/health/1029527.html>

⁸ KBS News, “Those tested positive for COVID-19 anxious “Home care for those without homes?””, 9 December 2021, (Korean) <https://news.kbs.co.kr/news/view.do?ncd=5344834&ref=A>

⁹ National Human Rights Commission press release, “Forcing on migrant workers to have COVID-19 tests is discrimination against foreigners”, 22 March 2021 (Korean) <https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=1&menuid=001004002001&pagesize=10&boardtypeid=24&boardid=7606412>

¹⁰ National Human Rights Commission press release, “Recommendations relating to ensuring access rights to medical care of the homeless partially accepted by the Ministry of Health and Welfare”, 27 May 2022 (Korean) www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7607986&menuid=001004002001

¹¹ Hankyoreh, “Human rights groups assisting migrants condemn “1.7 million out of 2 million migrants did not receive disaster support funds”” (Korean) https://www.hani.co.kr/arti/society/society_general/1009857.html

¹² Jae-Hyung Kim, “Mask dynamics between the Korean government and civil society in the COVID-19 era”, IIAS, 2020. <https://www.iias.asia/the-newsletter/article/mask-dynamics-between-korean-government-and-civil-society-covid-19-era>

¹³ Gyeonggi-do Announcement No. 2021-5268 「Administrative Order for Diagnosis of Foreign Employers and Foreign Workers to Block the Spread of COVID-19」 (March 8, 2021)

7. Restrictions on Treatment Rights of Critically Ill Patients

The government's policy, which supported all financial costs for COVID-19 at the beginning of the pandemic, was changed to that full support is only possible for up to 20 days and subsequently, the right to be cared for critically ill patients was threatened.¹⁴ Even though the health condition became serious or critical respiratory sequelae remains due to COVID-19, support was suspended or most patients were ordered the involuntary transfer to other hospitals after 20 days because of the low probability of transmission. As a result, individuals had to pay for treatment or be kicked out of the hospital even though they were being treated in an intensive care unit with an oxygen respirator. **The government should provide financial costs for the treatment and care without discrimination, including the sequela of COVID-19, and provide appropriate care based on health conditions rather than ordering transfer to other hospitals based on the possibility of transmission.**

8. COVID-19 and Infringement of Privacy Rights

The quarantine policies of the ROK responding to the COVID-19 pandemic are based on identifying contacts through tracking individuals' past movements. To this end, sensitive personal information such as credit cards and traffic card details, CCTV footage, mobile phone location information, and facility visit records are collected, and it is processed to automatically identify individual movements through epidemiological investigation support systems. However, the government collects not only the personal information of confirmed patients but also the personal information of persons suspected of contracting an infectious disease without the legal basis of the epidemiological investigation support system and provisions governing automated decision-making for individuals.¹⁵ In addition, the concept of a person suspected of contracting an infectious disease is too ambiguous, resulting in the excessive collection of personal information. In this regard, a constitutional complaint was filed against the trawling collection of personal information of people who existed around a specific base station in the area where infectious disease patients occurred.¹⁶ Also, those who violate self-isolation are required to wear a wristband (safe band) for location tracking without a proper legal basis. It is said that the consent of violators, but if they do not agree, they must enter the facility at their own expense, which forces them to consent. In addition, the government has mandated the collection of visit records to facilities including restaurants. This is an excessive control policy that violated proportionality, which has been implemented without legal grounds and can establish a regular monitoring system for the entire people. **The government should provide safeguards such as the Regular Review System, Privacy Impact Assessment, and Privacy by Design to ensure privacy rights in infectious disease situations and improve the current infectious disease-related legislation that infringes privacy rights.**

¹⁴ Hankookilbo, "Families of critically ill COVID-19 patients demand "full support of medical fees"", 7 March 2022 (Korean) <https://www.hankookilbo.com/News/Read/A2022030712530000429?did=NA>; Financial News, "Press conference to urge medical fee support for critical COVID-19 illness" (Korean), 7 March 2022. <https://www.fnnews.com/news/202203071732333166>

¹⁵ Institute for Digital Rights (2021), Epidemic Intelligence Support System and Automated Processing of Personal Data in South Korea, 2021.10 <https://idr.jinbo.net/wordpress/wp-content/uploads/2021/11/Epidemic-Intelligence-Support-System-and-Automated-Processing-of-Personal-Data-in-South-Korea.pdf>

¹⁶ Korean Progressive Network Jinbonet (2020), COVID-19 and the Right to Privacy : an Analysis of South Korean Experiences, 2020.11. https://act.jinbo.net/wp/wp-content/uploads/2020/12/Covid_19_and_the_right_to_Privacy_an_analysis_of_South_Korean_Experiences.pdf

9. Freedom of Assembly in Covid-19 Pandemic

The government has imposed excessive restriction on the right to peaceful assembly since the outbreak of COVID-19. The central government held the position of banning assemblies regardless of the situation of COVID-19 and the local governments arbitrarily issued administrative orders banning assemblies without any time limits. For example, the government of Seoul issued an administrative order banning all assemblies in downtown such as Gwanghwamun square and Seoul station on Feb. 26, 2020. From Aug. 21, 2020 to July, 2021, assemblies of more than 9 people were completely banned except for about 40 days between October and November, when the level of Social Distancing was temporarily lowered to the level 1. Citing data from the National Police Agency, a task force of civic groups formed to monitor public power said 11.06% of assemblies were banned in Seoul last year.¹⁷ The rate compares to 0.002% and 0.003% in 2018 and 2019, respectively.¹⁸ In the meantime, public transportation has never stopped, and many people have gathered for various events such as election campaigns and the opening of a new department store. Even though a causal relationship between rallies and COVID-19 has not been established, the excessive restriction of assemblies shows that the government took an easy way of restricting the basic right rather than providing ways to hold a peaceful and safe rally. **The government should take measures to ensure that assemblies and protests are held safely even in the midst of a pandemic, and when it is unavoidable to restrict or ban assemblies, time limits should be set. Most of all, Article 49 (1) (Preventive Measures against Infectious Diseases)¹⁹ of the Infection Disease Control and Prevention Act, which enables abuse of the ban on assembly, should be amended so that the restrictions on basic rights can be imposed only through clear grounds and appropriate procedures.**

B. Equality and Non-Discrimination

10. The Enactment of Comprehensive Anti-discrimination Act

15 years after the first attempt to legislate the bill in 2007, the comprehensive Anti-discrimination Act has not yet been enacted. Currently, four bills have been proposed in the National Assembly. In addition, a public petition, signed by 100,000 people, demanding the

¹⁷ Yonhap News Agency, “11 pct of assemblies banned in Seoul last year due to pandemic: activists”, (article posted Aug. 12, 2021 / searched May 22, 2022) <https://en.yna.co.kr/view/AEN20210812012000315>

¹⁸ Status for Assemblies in Seoul (2018~2020) (Source: Korean National Police Agency)

Year	Number of Reported Assemblies	Number of Banned assemblies
2018	29,592	1(0.003%)
2019	36,551	1(0.002%)
2020	34,944	3,865(11.06%)

¹⁹ Article 49 (Preventive Measures against Infectious Diseases)(1) In order to prevent infectious diseases, the Commissioner of the Korea Disease Control and Prevention Agency, Mayors/Do Governors, or heads of Sis/Guns/Gus shall take all or some of the following measures; and the Minister of Health and Welfare may take measures under subparagraph 2 to prevent infectious diseases: 1. Completely or partially holding up traffic in jurisdiction; 2. Restricting or prohibiting performances, assemblies, religious ceremonies, or any other large gathering of people;

enactment of the bill has also been submitted to the National Assembly.²⁰ Nevertheless, the National Assembly continues to delay the legislative process on the bill. Despite the fact that the two activists fought a hunger strike for 46 days to urge the enactment, the National Assembly has not started any specific legislative process except for one public hearing.²¹ **The government should immediately enact a comprehensive Anti-discrimination Act that prohibits all forms of discrimination, including race, gender, sexual orientation, and gender identity, in clear language after reviewing the four currently proposed bills.**

11. SOGI Rights

LGBTI people in ROK face much discrimination due to discriminatory laws, systems, and practices and the absence of laws and systems to guarantee LGBTI rights. Article 92-6 of the Military Criminal Act is a provision punishing consensual same-sex acts in the military as a crime.²² In ROK, a conscription country, the provision has even more serious harm in that it applies to all young men going to the military.²³ In April 2022, the Supreme Court acquitted the two military officers charged under Article 92-6 for consensual sexual acts outside the barracks.²⁴ However, the entire provision violates international human rights standards and the Constitution. The unconstitutionality review case is pending at the Constitutional Court. In 2021, the Seoul Queer Culture Festival applied to the Seoul Metropolitan Government ('SMG') to establish a legal corporation. However, the SMG refused it on the grounds that the festival participants engaged in "obscene acts."²⁵ Furthermore, in legal proceedings, the SMG argued that "the purpose of the organization to guarantee the human rights of LGBTI people violates the Constitution." In addition, according to the 2020 National Human Rights Commission's survey on transgender discrimination, 11.5% of respondents answered that they had received 'therapy or counseling for the purpose of "conversion"' from medical professionals, counselors, and religious professionals.²⁶ Hence, the practice of "conversion therapy" is very pervasive. Nevertheless, in May 2022, the presidential secretary for religious and multicultural affairs publicly remarked that "homosexuality can be cured."²⁷

Same-sex couples in ROK do not have any legal rights guaranteed. If a same-sex couple registers for marriage, the family register authority will reject it on the grounds that the marriage is not permitted under the current law. In addition, de-facto couples of the opposite

²⁰ Human Rights Watch, "National Assembly of South Korea should act swiftly to enact anti-discrimination legislation", 11 November 2021. <https://www.hrw.org/news/2021/11/11/national-assembly-south-korea-should-act-swiftly-enact-anti-discrimination>

²¹ Hankyoreh, "This is not the end": S. Korean activist ends 46-day hunger strike for anti-discrimination act", 27 May 2022. https://english.hani.co.kr/arti/english_edition/e_national/1044700.html

²² Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labor for not more than two years.

²³ The Korean Herald, "Gay conscientious objector gets Canada asylum", 15 December 2011. <http://www.koreaherald.com/view.php?ud=20111215000521>

²⁴ The Guardian, "South Korea's highest court overturns military convictions of two gay soldiers", 22 April 2022 <https://www.theguardian.com/world/2022/apr/22/south-koreas-highest-court-overturns-military-convictions-of-two-gay-soldiers>

²⁵ Yonhap News, "Seoul city rejects queer festival organizer's application to set up non-profit foundation", 26 August 2021 <https://en.yna.co.kr/view/AEN20210826009700315>

²⁶ National Human Rights Commission of Korea, Study on the situation of Hate and discrimination to transgender people, 2020.

²⁷ Pink News, "South Korean official apologizes for vile anti-gay comments and somehow makes it even worse", 13 May 2022

<https://www.pinknews.co.uk/2022/05/13/south-korea-gay-conversion-therapy-kim-seong-hoi/>

sex can receive the same benefits as legal marriages in social security, such as health insurance, pension, and housing policy, but same-sex couples do not. In 2021, a same-sex couple filed a lawsuit to have their dependent status recognized under the National Health Insurance Act, but the court rejected it.²⁸ Transgender people can apply for legal gender recognition according to Supreme Court regulations, not a law. However, the Supreme Court rules require strict requirements for legal recognition, such as sterilization, external genital surgery, being unmarried, and having no minor children.²⁹ **The government should abolish Article 92-6 of the Military Criminal Act which criminalizes consensual same-sex acts, prepare a system to guarantee the freedom of assembly and association of LGBTI individuals and groups, and ban “conversion therapy”. Also, the government should improve legal systems including the amendment of the Civil Law to prevent same-sex couples from being discriminated economically and socially. Regarding the rights of transgender persons, the government should abolish invasive requirements such as sterilization, physical surgery, and having no minor children in case of gender affirmation surgery. Lastly, the government should develop and implement public campaigns as well as public officials' training to raise sensitivity and respect for diversity of sexual orientation and gender identity.**

12. Racism in the COVID-19 Situation

As of 2020, the number of migrant workers under the Employment Permit System (E-9 visa) in ROK is 236,950.³⁰ They work in the ROK for a maximum of 9 years and 8 months.³¹ However, they cannot accompany their family, so they have to live apart from their families for a long time. As a result, intimacy between family members is reduced or, in severe cases, the family becomes disbanded. Unmarried migrant workers have very limited opportunities to have romantic relationships or get married due to long working hours and a limited life span. On the other hand, certain groups of workers such as overseas Koreans or people with special employment permits are allowed to accompany their families. This is clearly a racist policy. The protest against the construction of a Muslim Mosque in Daegu in 2021 is a comprehensive example of racial discrimination in ROK. Daegu City Buk-gu District Office officially ordered to stop the construction of a Muslim Mosque just because there were complaints from local residents. The District Offices' such actions have been recognized against human rights by the National Human Rights Commission and illegal by the courts. Nevertheless, the District Office failed to amend the conflict and as of June 2022, the construction has not been resumed yet.³² **The government should enact a comprehensive Anti-discrimination Act that prohibits racial discrimination by accepting the continued recommendations of each UN Committee and conduct human rights education in all social areas.**

²⁸ Yonhap News, “Same sex couple loses suit against state health insurer over spousal coverage”, 07 January 2022 <https://en.yna.co.kr/view/AEN20220107006200315>

²⁹ Guidelines on the Clerical Processing of Cases of Transsexuals' Application for Legal Sex Reassignment (Korean).

³⁰ 216,903 men, 20,047 women

³¹ In principle, they can live in Korea for 4 years and 10 months after entering the country, and if they are re-employed, they can work for another 4 years and 10 months.

³² New York Times, “How ‘Multiculturalism became a Bad Word in South Korea”, 1 March 2021

<https://www.nytimes.com/2022/03/01/world/asia/south-korea-diversity-muslims.html>

Korea Times. “Mosque construction triggers standoff in Daegu”, 3 May 2022.

https://www.koreatimes.co.kr/www/nation/2022/05/177_328375.html

C. Right to Life, Liberty, and Security of the Person

13. Death Penalty

In ROK, since the last execution was carried out on December 30, 1997, there has been no execution for more than 24 years and 6 months. The prosecutors keep seeking the death penalty, there has been no case of the death penalty confirmed by the Supreme Court from 2017 to the present. As of June 1, 2021, there are a total of 59 inmates on death row, 55³³ inmates are in correctional facilities of the Ministry of Justice and 4³⁴ inmates are in military correctional facilities. Five years ago, there were 61 inmates on death row, but two have died in the meantime. The government voted for the first time in favor of the "Death Execution Moratorium" resolution adopted at the Third Committee of the 75th United Nations General Assembly in November 2020. However, in January 2021, the government submitted to the Constitutional Court an opinion that the death penalty should be maintained, arguing that the existence of the death penalty is not a criterion for determining the human rights country and does not infringe on the essential content of life rights. The Constitutional Court is now reviewing the constitutionality the death penalty, the hearing date is set for July 14, 2021. Now, the Special Act on the abolition of the death penalty has been proposed to the National Assembly for the ninth time. **The government should declare a moratorium on executions and reduce all death row prisoners to life imprisonment. The National Assembly must pass the Special Act on the Abolition of the Death Penalty and ratify the Second Optional Protocol to the ICCPR for abolition of the death penalty.**

14. The Prohibition of Torture

The government has continuously received recommendations to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), but have not taken legislative and administrative measures to ratify. The National Human Rights Commission of Korea (NHRCK) performs similar activities, such as visiting investigations on facilities. But it is hard to say that NHRCK is fully performing the activities of National Preventive Mechanisms (NPMs) because of the insufficient financial, physical and human resources, the exclusion of some facilities, such as unapproved protection facilities, from the scope of investigation, and not guaranteeing the regular investigation.³⁵ **The government should ratify OPCAT.** Torture and other cruel, inhuman or degrading treatment ('torture and CIDT') are not completely regulated as crimes in legislation of the ROK.³⁶ The right to reparation of victims of torture and CIDT, because the statutes of limitations-both civil and criminal- are applied to the cases of torture and CIDT, and perpetrators of torture and CIDT and psychological support for the victims is not legally ensured.³⁷ **The government should**

³³ Details of decision on request for information disclosure for reception number 8905799, the Ministry of Justice, 16 March 2022

³⁴ Details of decision on request for information disclosure for reception number 89058, the Ministry of National Defense, 28 Feb 2022

³⁵ Article 2 2. of the National Human Rights Commission Of Korea Act defines "confinement or caring facility" as "(a) Prison, juvenile prison, detention center and its branch, protective custody office, medical treatment and custody facility, juvenile reformatory, and Juvenile Classification and Examination Center, (b) Detention cell and facility where a judicial police officer investigates, detains, and accommodates persons in order to perform his/her duties; Military correctional institution (including its branch office and detention facility for detainees pending trial); Foreigner detention center; Facility for caring for many persons (referring to a facility for protecting and accommodating many persons, which is prescribed by Presidential Decree)" and facilities that stipulates in the Presidential Decree are approved protection facilities.

³⁶ UN Committee against Torture (CAT), Concluding observations on the combined third to fifth periodic reports of the Republic of Korea, 30 May 2017, CAT/C/KOR/CO/3-5, para. 7-8.

³⁷ The Crime Victim Protection Act provides measures related to psychological damages. However, torture and

take legislative and administrative measures, such as the defining torture and cruel and inhumane humiliating treatment or punishment as crimes, excluding the application of statutes of limitations-both civil and criminal-, and implementing psychological support to victims of CIDT to ensure their rights to reparation. Torture and CIDTs in detention facilities persist. The overcrowding of correctional facilities has not been fundamentally relieved.^{38 39 40} Meanwhile, the minimum living space per inmate according to International Standards is not legally guaranteed. Recently, a lower court's judgment has been controversial because it stated that the minimum standard of living space per inmate is 1.4 m² for tort claims against the State.⁴¹ **The government should take legislative and administrative measures to relieve overcrowding and provide adequate reparation for the victims of overcrowding.** Meanwhile, the Administration and Treatment of Correctional Institution Inmates Act allows the uses of ankle protective equipment, protective beds, etc., which can cause torture and CIDT. The Act does not specifically regulate the time of use of the protective equipment and leaves it at the power of correctional officers.^{42 43} An inmate died 14 hours after wearing protective equipment at the Busan Detention Center in May 2020. The Act also sets the standard for solitary confinement 'within 30 days'⁴⁴, -which can be increased up to 45 days by the Act⁴⁵- and according to the NHRCK's investigation, more than 15 days of imprisonment are prevalent, accounting for about 41 to 60 percent of total disciplined persons.⁴⁶ According to NHRCK, there is a person who received a solitary confinement of 95 days.⁴⁷ **The government should**

CIDT are not fully crimes in the Republic of Korea, most of victims cannot receive the support from the Act.

³⁸ Korea Times, Rights watchdog urges swift resolution of prison overcrowding, 31 May 2022,

https://www.koreatimes.co.kr/www/nation/2022/06/281_330142.html

³⁹ The average acceptance rate between 2016 and 2020 reached 115.8%, and as of 30 April 2021, the average incarceration rate of 16 correctional institutions in large cities was 116.4%. In particular, 22 institutions had an incarceration rate of more than 120% of female inmates as of 7 May 2021. Since the standards of living space in a collective cell vary by a correctional facility, the above incarceration rates may be higher if the International Standards applied.

⁴⁰ Council of the Correction Reform in The Ministry of Justice, Press Release: The Reform Measures for Overcrowding in the Correction Facilities to be taken - The Announcement of the Second Recommendation of Council of the Correction Reform in The Ministry of Justice, (Korean) <https://www.corrections.go.kr/bbs/moj/437/548682/artclView.do>

⁴¹ The Law Times, the delay of judgment.. 'adequate living space in the correctional facilities per inmate', 24 February 2022, (Korean) <https://m.lawtimes.co.kr/Content/Article?serial=176670>

⁴² The Administration And Treatment Of Correctional Institution Inmates Act, Article 97 (Use of Protective Equipment) (1) Where an inmate falls under any of the following cases, any correctional officer may use protective equipment

⁴³ The Administration And Treatment Of Correctional Institution Inmates Act, Article 98 (Types of Protective Equipment and Requirements for Use) Protective Equipment) (1) The types of protective equipment shall be as follows: 1. Handcuffs; 2. Head protective equipment; 3. Ankle protective equipment; 4. Braces; 5. Protective chairs; 6. Protective beds; 7. Protective clothes; 8. Policeman's ropes.

⁴⁴ The Administration and Treatment of Correctional Institution Inmates Act, Article 108 14. Forfeiture of rights for up to 30 days

⁴⁵ The Administration and Treatment of Correctional Institution Inmates Act, Article 109 (2) If an inmate falls under any of the following cases, up to 1/2 of the period of disciplinary action prescribed in subparagraphs 2 through 14 of Article 108 may be increased.

⁴⁶ National Human Rights Commission of Korea, The Recommendations for the promotion of inmates' rights due to the Visiting Investigation of Correctional facilities in 2018, 18BANGMOON0001500, 16 January, 2019.

⁴⁷ National Human Rights Commission of Korea, The Public Announcement of Opinion on Fifth periodic report submitted by the Republic of Korea under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, 6 July 2020,

<https://www.humanrights.go.kr/site/inc/file/fileDownload?fileid=14732&filename=f3ae08fa8340ccbb776f039617f20b79.pdf>

take necessary legislative and administrative measures to ensure that solitary confinement remains an exceptional measure of last resort, applied for a duration that does not exceed 15 days.

15. Inhumane Treatment on Detained Persons in the Medical Treatment and Detention Center

The government requires persons, such as persons with physical and mental disability, persons addicted to drugs, persons who have a psychosexual disorder, to be detained for medical treatment and likeliness of recommitting crimes.⁴⁸ Most of the persons detained in the center are persons with physical and mental disability.⁴⁹ There is only one medical treatment and detention center in the ROK with 93.8% of wards are for 7-8 persons, therefore the issue of overcrowding has been criticized continuously.⁵⁰ Furthermore it is also criticized that the appropriate medical treatment has not been provided since the ratio of medical staff to detained persons has been more than 1:100.⁵¹ **The government should take legislative and administrative measures to resolve the problems of overcrowding and the shortage of medical staff in the medical treatment and detention center.** The Act on Medical Treatment And Custody allows long-term detention of persons up to 15 years. It is up to 21 years, including an extension period in cases of persons who committed the crimes of murder.⁵² As a result, 32.8% of persons are detained for more than 5 years, and there are many persons detained in the center for longer periods than their criminal sentences.⁵³ Recently, it has been revealed that a person with developmental disability was detained for about 11 years and 4 months for medical treatment.⁵⁴ It is also criticized that the Act allows the isolation and

⁴⁸ See the Act on Medical Treatment and Custody law.go.kr

⁴⁹ As of 2021, 851 out of 926 persons are persons with mental and physical disability(the Statistics Korea, Current status of inmates in a medical treatment and detention center,(Korean) https://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2813)

⁵⁰ The Kyunghyang Shinmun, 9 out of 10 wards in the medical treatment and detention center are for 7-8 persons "seriously overcrowded", 2017 (Korean) <https://www.khan.co.kr/national/court-law/article/201710160955011>

⁵¹ The Hankook Ilbo, "A doctor in the medical treatment and detention center said "Up to 200 patients to see... Can't remember the medicine, 2022 (Korean) <https://www.hankookilbo.com/News/Read/A2022061619030005603>

⁵² Act on Medical Treatment and Custody Article 16 (2) The period for which a person under medical treatment and custody shall be committed to a medical treatment and detention facility shall not exceed the following applicable periods: 1. Persons falling under Article 2 (1) 1 and 3: 15 years (3) If a person under medical treatment and custody after being sentenced to medical treatment and custody for committing a homicide defined in subparagraph 3-2 of Article 2 of the Act on Electronic Monitoring (hereinafter referred to as "homicide") is deemed likely to repeat such crime and require continuous medical treatment, the court may, upon the prosecutor's request based on the application filed by the head of the medical treatment and detention facility, decide to extend the period referred to in the subparagraphs of paragraph (2) by up to two years for an extension on up to three occasions.

⁵³ Shon Yei-Chull et al, A Study on the Adequacy of Detention Period in a Medical Treatment and Detention Center, The Task of Research Service of the Ministry of Justice in 2021, 2022, p. 20.

⁵⁴ The Kyunghyang Shinmun, The reason why he was detained for more than 11 years after receiving a sentence of one year and six months... Because he was a person with developmental disability, 2021, (Korean) <https://www.khan.co.kr/national/national-general/article/202101210600075>

physical restraints⁵⁵ and suspends voting rights of detained persons.⁵⁶ **The government should take legislative and administrative measures to prohibit long-term detentions in the medical treatment and detention center, especially those that fail to take into account the characteristics of disability- and to provide alternatives such as treatment in the society.**

D. Administration of Justice and the Rule of Law

16. Military Violence and Injustice

Annually, 83% of 19 to 20 years old ROK adult men have been classified as ‘draftable for active service’ since 2017.⁵⁷ About 220,000 men are enlisted every year for 18 to 36 months. Under such a condition, every year about 4,000 soldiers are discharged as ‘misfits’ due to psychological issues, which is about twice of those discharged for bodily injury, and the number is increasing.⁵⁸ It leads to severe issues of deprivation of the right to life (e.g. suicides, recording 83 in 2021 alone).⁵⁹ The truth of such violence and deaths is not fully investigated. In June 2022, the court declared that the Government has no accountability in the case of late Army Private Yoon, who died of a month-long hazing, raised by the bereaved family. While the military police at first distorted the cause of death, none of then-investigators and

⁵⁵ Act on Medical Treatment and Custody Article 25-3(Prohibition on Isolation and Other Restrictions) (1) The head of a medical treatment and detention facility shall not physically restrict any person under medical treatment and custody or candidate for medical treatment and custody (hereinafter referred to as "person under medical treatment and custody, etc."), such as isolating or binding him/her, unless he/she falls under any of the following circumstances: Provided, That direct physical restrictions, such as binding a person under medical treatment and custody, etc., shall be permitted only in cases falling under subparagraph 1: 1. Where the relevant person is highly likely to put himself/herself or other persons in danger and it is deemed significantly impracticable to avoid such danger with any method other than physical restriction; 2. Where the relevant person commits a serious unlawful act or disciplinary offense; 3. Where the relevant person commits any other serious act of disrupting order at the facility.

⁵⁶ Act on Medical Treatment and Custody Article 47 (Sentence of Medical Treatment and Custody and Suspension of Qualification) The qualifications in each of the following subparagraphs of a person under medical treatment and custody shall be suspended until the performance of medical treatment and custody terminates or such person is exempted from such performance: 2. Rights to vote and rights to be elected as provided for in public law

⁵⁷ According to the National Statistics Service (2022). <Statement of Conscription Examination Results>. (Korean) www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1718, the rate of examinees deemed suitable for active-service records 87% (304,500) in 2015, 81%(263,300) in 2019, and 81%(282,000) in 2020; The number of actual enlisted personnel record 249,477 in 2015, 224,062 in 2019, and 236,146 in 2020 according to the <Statement of Active Enlistment> (Korean)

www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2757

⁵⁸ According to Lawmakers Park Seongjun and Hwang Hui (2020)’s <2020 National Inspection Report>:

Year	2016	2017	2018	2019	2020	Sum
Incompatibility for Active Service (psychological conditions)	3,909	4,280	4,789	4,922	3,499	21,399
Year (2015-2020.9)	Enlisted	Noncom	Officer	Social*	Other*	Sum
Disable Discharge	9,930	424	235	2,055	68	12,712

*Not active-service personnel; from 2016 to September 2020.

⁵⁹ National Statistics Service (2022). <Statement of Death Accidents in the Military>.

www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1701. About 80% of deaths in the military are suicide cases.

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021
Suicide	79	67	57	54	52	56	62	42	83
Total Deaths	117	101	93	81	76	86	86	55	103

commanders were punished.⁶⁰ Many bereaved families of soldiers were still raising complaints concerning suspicious deaths in the military even in 2020's.⁶¹ Also, 39,436 were waiting for the decision of 'death in line with military duty' as of 2019 to acquire the legal status to apply for a review of the veteran rewarding system. Still, the cases of violence, the most critical causes for suicide, are not punished (50% are not indicted).⁶² The number of battery and mistreatment cases notably soared in 2020 amid the COVID-19 pandemic.⁶³ Nevertheless, the military justice system lacks independence. Military judges, prosecutors, public defense counsels are rotated from the same personnel pool, the military judicial officers who are subordinates of the military commanders just like military police officers. Meanwhile, as of July 2022, the Military Human Rights Protector is introduced, but the position is merely a concurrent office.⁶⁴ Thus, it has no autonomy in organization, budget, and personnel. Besides, it needs to have a military commander's prior approval to visit military bases,⁶⁵ which the Defense Minister can unilaterally halt after all.⁶⁶ The UN treaty bodies recommended guarantee of thorough investigation, punishment, and reparation as well as independence of a watchdog and military judicial officers for prevention of recurrence.⁶⁷ **The government**

⁶⁰ See <https://edition.cnn.com/2014/09/03/world/asia/south-korea-military-bullying/index.html>

⁶¹ Many cases of suspicious deaths in the military were unsolved. In 2018, a presidential commission was introduced till September 2023. It received 1,756 allegations and processed 601 of them. Still, 1,185 are pending (Presidential Truth Commission on Deaths in the Military (2021), Press Release on January 28.).

⁶² According to the publicized information (2021) no. 7699251 of the Defense Ministry, under the Official Information Disclosure Act, the results are as follows:

Year	Sum	Non-indict	Prison	Suspension	Fine	Acquit/ Dismiss
2017	1,240	65%	-	47	213	1
2018	983	66%	1	25	164	3
2019	893	58%	-	26	143	1
2020	1,010	50%	4	14	118	1

Major incidents are, inter alia, a four-star general and his wife's coercion of religion, maltreatment, confinement, and enslavement of resident valet-soldiers (See www.france24.com/en/20170802-korea-general-wife-treated-soldiers-like-slaves) in 2017, a suicide of a new private on furlough, affiliated to a unit which failed to watch a wooden boat from the Democratic People's Republic of Korea in 2019 (See www.koreatimes.co.kr/www/nation/2021/08/205_271973.html?RD), a seaman's suicide after bullying for having a long furlough for his sick father and absence of protection after reporting in 2021 (See en.yna.co.kr/view/AEN20210907005500315).

⁶³ According to the publicized information (2021) no. 7699243 of the Defense Ministry, under the Official Information Disclosure Act, the results are as follows:

Battery and Mistreatment	2017	2018	2019	2020	Sum
Criminal Cases	1,240	983	893	1,010	4,126
Disciplinary Cases	13,391	12,127	8,737	9,255	43,510

⁶⁴ Article 50-2 of the Human Rights Commission of Korea Act: The Standing Commissioner, appointed by the President, holds the Office for Protection of Soldier's Human Rights (the Officer) concurrently.

⁶⁵ Article 50-4 (2) of the Human Rights Commission of Korea Act: The Officer should notify the head of a unit, where it plans to visit, of the purpose, the date, and the venue beforehand (...)

⁶⁶ Article 50-4 (3) of the Human Rights Commission of Korea Act: The Minister of National Defense may demand suspension of on-site investigation by stating special circumstances for the difficulty of receiving on-site investigation under Paragraph (1) because the matter at question is one of the military, foreign, or North Korea affairs that may greatly impact the national safety or undermine the national emergency or mission operations (...)

⁶⁷ CCPR/C/KOR/CO/4/2015, para. 31: The State party should conduct full and impartial investigations into all allegations of abuse in the military and ensure that perpetrators of human rights violations are tried and punished. Merely suspending perpetrators of violent crimes from their duties or dismissing them from the army is not an adequate response. Complaints should be treated confidentially and victims and witnesses should be

should assure the Military Human Rights Protector independence and effective access to visitation and information, transfer military justice system to the civilian courts and police as well as change the affiliation of the military judicial officers to the Ministry of Justice in line with the international norms.⁶⁸ Ensure full investigation of violence and death cases, including psychological autopsy, and appropriately punish perpetrators and responsible officers, and provide adequate financial, medical, psychological and legal assistance to the victims and their families and guarantee the right to information under the international norms.⁶⁹

17. Gender Violence – Sexual Abuse

Recently, the South Korean military has shown poor gender sensitivity. Criminal sexual crimes by soldiers recorded 826, 979, 898, and 887, rising from 2016 to 2019.⁷⁰ However, about 50% of the assailants are not even brought before a court.⁷¹ Also, according to the Board of Audit and Inspection, from 2016 to February 2021, 53 percent of soldiers convicted of sex crimes in the Army were discharged without disciplinary action. Such impunity is the main obstacle that

protected against reprisals. CAT/C/KOR/CO/3-5, para. 36 (a) Reinforce measures to prohibit and eliminate violence and abuse, including sexual, physical and verbal abuse, in the military and ensure the prompt, impartial and thorough investigation of all allegations of abuse and deaths in the military in order to demonstrate zero tolerance for ill-treatment and torture of military personnel; (b) Establish the office of military ombudsman as an independent entity to monitor military units and conduct investigations into allegations of abuse and violence in the military; (c) Promptly investigate all cases of death in the military and establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed and make the results of such investigations public; (d) Ensure the independence of military judicial officers engaged in the promotion and protection of human rights(...) (g) Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with the Committee’s general comment No. 3 (2012) on the implementation of Article 14.

⁶⁸ See E/CN.4/2006/58 (2006), “DRAFT PRINCIPLES GOVERNING THE ADMINISTRATION OF JUSTICE THROUGH MILITARY TRIBUNALS”; CCPR/C/GC/32, inter alia, para. 19: (...) requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary (...) where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal; para. 22. The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military (...)

⁶⁹ UN General Assembly resolutions 40/34 and 60/147; UN ECOSOC resolution 1989/65.

⁷⁰ Ministry of National Defense (2021). Publicized Information no.7699333 under the Official Information Disclosure Act.

⁷¹ According to Lawmaker Kim Minki (2021)’s <Recent Five Years Statement of Military Sexual Crimes>, from 2017~2021, 1,874 sex crimes were committed by soldiers, 52.13% of which were not indicted. Only 4.86% were sentenced to actual imprisonment with labor. 70.97% of the crimes were indecent act by compulsion, 11.9% were digital sex crimes, 7.63% were rapes. The below table shows the results of punishment over the five years.

Ranks	Suspend Indict	Fine	Suspension	Actual Prison	Others
Field Officer	23	13 (1Gen*)	26 (2Gen*)	9 (1Gen*)	1
Company Grade	59	37	46	13	3
Noncom	226	110	135	21	5
Civilian Workers	12	4	8	0	0
Enlisted	657	177	241	48	0

(*Gen: General)

holds back the victims from reporting according to the Defense Ministry's 2019 Survey Report.⁷² Besides, the victims may be confronted with counter-accusation and be left alone. Particularly, assaulters often accuse the victims of false accusation, libel, and, in the case of the military, insult to superior, etc. In the meantime, three female soldiers committed suicide in 2021 alone.⁷³ Just like in the two previous deaths after sexual abuses in 2013 and 2017, these cases were concealed in the early stage.⁷⁴ The UN CEDAW recommended assurance of strict penalty and protection for the confidentiality of reporting.⁷⁵ Besides, the ROK has only about 8% of service-women in the armed forces, falling short of female toilets and sanitary goods,⁷⁶ and only 10% is allowed for female cadets in the national military academies for elite officers; in the case of the National Police Academy, 22% of new students in 2021 were females. **The government should protect victims from secondary victimization by official cooperation with civilian experts and centers under the Sexual Violence Prevention and Victims Protection Act. Implement stricter disciplinary actions to prevent reinstatement of sex offenders, ensure the confidentiality of victims and reporters.**

18. Gender Equality – LGBT+ Rights

The ROK LGBT service-members have to remain in silence.⁷⁷ In February 2020, the Army discharged a transgender soldier, who undertook sex reassignment surgery due to lack of male genitals. Numerous UN human rights experts heavily criticized this.⁷⁸ While a civilian court revoked the decision, the military still has no clear guidelines or rules for the open service of transgender. By the way, in 2017, the Army investigated and prosecuted about two dozens of gay soldiers who had consensual sexual relationships under the crime of indecent act,⁷⁹ four of whom were convicted. Only five were recently quashed by the Supreme Court for illegal investigation and breach of privacy.⁸⁰ However, the said law still exists, and the National Assembly is yet negative about enactment of Anti-Discrimination Act. In the meantime, in late 2018, the Navy investigated three soldiers for 'indecent act', using the same unlawful investigation tactics. In 2019, an army company leader suggested 'transition therapy' and

⁷² Only 32.7% answered that they have reported after experiencing and recognizing a sexual attack. 44% of those who did not report said it was because 'expect no actions will be taken after reporting'.

⁷³ Choe. 2021. "'The Only Exit': Where Soldiers Are Dying After Sexual Assaults". *The New York Times*. (Oct. 15). <https://www.nytimes.com/2021/10/15/world/asia/south-korea-military-sexual-assault-suicide.html>

⁷⁴ See <http://www.koreaherald.com/view.php?ud=20131212000830> for 2013 case; and See <https://news.yahoo.com/korea-rape-victim-navy-officer-commits-suicide-100827385.html> for 2017 case.

⁷⁵ See CEDAW/C/KOR/CO/8, para. 23: (...) (f) Ensure stricter punishment of perpetrators of sexual violence in ... the military, take steps against the reinstatement of perpetrators in their professional functions and provide for stricter confidentiality to facilitate reporting and counselling; ...

⁷⁶ NHRCK (2018). Complaint no. 17Jinjeong7969 Decided on 24 January 2018 [Human Rights Violation and Mistreatment Against a Female Officer].

⁷⁷ See edition.cnn.com/2019/07/10/asia/south-korea-military-lgbt-intl-hnk/index.html

⁷⁸ See AL KOR 4/2020. The Daejeon District Court revoked the decision of discharge by the Army Headquarters in October 2021, after the victim passed away in February 2021, acknowledging her gender as 'female', finding the application of male's physical standards invalid (Kim, T. (2021). "S Korean court: Discharge of late transgender soldier unjust". *AP News*. (Oct. 7). apnews.com/article/seoul-south-korea-fddf72e3c525e0ef9ea87612298e2ea2).

⁷⁹ Ahn, Y. (2022). "This article is more than 1 month old South Korea's highest court overturns military convictions of two gay soldiers". *The Guardian*. (Apr, 22). www.theguardian.com/world/2022/apr/22/south-koreas-highest-court-overturns-military-convictions-of-two-gay-soldiers.

⁸⁰ Article 92-6 (Indecent Act) of the Military Criminal Act : A person who commits anal intercourse with any person prescribed in Article 1 (1) through (3) or any other indecent act shall be punished by imprisonment with labor for not more than two years. <Amended by Act No. 11734, Apr. 5, 2013> [This Article Wholly Amended by Act No. 9820, Nov. 2, 2009]

intimidated a private by ‘outing’ to his family. Also, in 2018, two commanders who raped a lesbian officer in the Navy were acquitted by the High Military Court.⁸¹ **In line with the international norms, the government should include diversity and LGBT inclusion education and policies as a formal mandatory curriculum in all levels of regular military schools, referring to the World Programme for Human Rights Education, in governance with civilian experts, legislate policies for LGBT open service,⁸² and abolish article 92-6 (indecent act) of the Military Criminal Act as well as compensate for those who were convicted thereunder.**

19. Truth, Justice, and Reparation for the Past State Violence

The history of state-sponsored violence in the ROK persisted over decades from Japanese colonization, before and after the Korean War, and into the military dictatorship period. However, the truth of many cases of past state violence has not been revealed.⁸³ Security Sectors such as the National Intelligence Service, Defense Security Command (currently Defense Security Support Command), the National Police Agency do not reveal relevant documents and therefore, victims cannot get access to their own records. No one was punished or held responsible for the past state violence, and victims can only be compensated through individual lawsuits. Due to the application of the statute of limitations and extinctive prescriptions for serious human rights violation cases that happened decades ago, victims lose the lawsuits against the government. **In order to guarantee the rights of victims on truth, justice, reparation, guarantees of non-recurrence, the government should reform security sector and provide all relevant documents to the related organizations such as Truth and Reconciliation Commission without any condition. The government should enact a law to provide comprehensive and complete reparation to all victims and eliminate the application of the statute of limitations and extinctive prescriptions for serious human rights violation cases. Also, it should create legal and institutional mechanisms to guarantee non-recurrence such as abolishing the National Security Act and putting diplomatic efforts to uphold human rights of victims during the Japanese colonial period.**

⁸¹ The Korea Herald, “Two Navy officers acquitted of rape in High Military Court”, 21 Dec 2018, news.koreaherald.com/view.php?ud=20181120000687 (High Military Court);

Hankyoreh, “S. Korean Supreme Court’s inconsistent rulings in Navy sexual assault case draw ire”, 1 April 2022, english.hani.co.kr/arti/english_edition/e_national/1037221.html (Supreme Court)

⁸² See A/HRC/43/52, para. 37 (p) Design and implement a protocol for military service of LGBTQI individuals that recognizes their gender identities, enables military service, and protects from discrimination and violence (a report by the UN Special Rapporteur on the Right to Privacy, 2019)

⁸³ During the Japanese colonization (1910~1945), the Japanese military sexual slavery and forced labor mobilization created numerous victims and after the liberation, the Jeju April 3rd Massacre and civilian massacre during the Korean War continued. During the period of authoritarian rule, the government has abused the National Security Law to suppress human rights defenders, lead them to suspicious deaths, and ordinary citizens have been forged as North Korean spies. Illegal detention facilities, such as ‘Brothers Home’[1], created under a dictatorship, committed massive human rights abuses in cooperation with state power. Since democratization in 1987, persistent efforts by victims and civil society to restore their human rights and find the truth created a social momentum to seek truth and justice of past state violence. Above all, the Truth and Reconciliation Commission (TRC) was established in 2005 to comprehensively settle the past history, leaving many achievements through five years of its work. However, the TRC closed down in 2010, leaving behind countless unfinished tasks due to limited investigation periods and regime change. After that, due to the struggle between the victims and the civil society, the Framework Act on Settling the Past History for Truth and Reconciliation was amended in 2020, and as a result, the TRC was reopened. The investigation by the 2nd TRC is currently underway.

20. Japanese Military Sexual Slavery

Despite more than 30 years of movement for justice, Japanese military sexual slavery ("comfort women") victims yet again suffer from human rights violations and re-traumatization amid the Japanese government's denials, the Korean government's irresponsibility, and far-right historical denialists' attacks. Since late 2019, Korean historical denialists who are connected to Japanese historical denialists have held counter-protests to the Wednesday Demonstration to defame victims and threaten activists and participants.⁸⁴ The National Human Rights Commission of Korea issued an urgent relief decision in January 2022 recommending that the police take proactive measures regarding counter-protest groups to stop continuous violations of human rights. However, the government and police are abandoning its responsibilities under the Assembly and Demonstration Act to ensure rights to peaceful demonstration and taking no further action while the insults and defamations against victims continue.⁸⁵ The government's attempts to disband the Ministry of Gender Equality and Family that implements the "Act on Protection, Support And Commemorative Projects For Sexual Slavery Victims For The Japanese Imperial Army", also raise concerns on the government's role in support and commemoration of victims. In addition, the government aims to trade the historical truth with economic and security cooperation by reinstating the "2015 Korea- Japan 'comfort women' agreement" with the Japanese government.⁸⁶ The agreement announced on December 28, 2015, at the press conference of Korean and Japanese Foreign Ministers was heavily criticized by the victim-survivors and civil society for its lack of victim-centered approach. The Korean Constitutional Court ruled that the 2015 agreement is not a resolution to the issue⁸⁷ and

⁸⁴ Since late 2019, Korean historical denialists who are connected to Japanese historical denialists have been defaming victims and threatening activists and participants in counter-protests to the Wednesday Demonstrations. These denialists interfere with the Wednesday demonstration systematically by holding the counter-protest in the location surrounding the Wednesday Demonstration: they hold pickets that disclose victims' names who wished to remain anonymous; mock victims with a performance of a person wearing a mask made with victim's photo and mimicking her words and actions; deny Japanese military sexual slavery issue and Japanese government's responsibility; spread fake news against the activists and organizations working for the issue; run across the police line to initiate conflicts; broadcast participants on social media and insulting them with viewers; commit sexual and physical harassment; play sounds of women screaming and guns firing with loudspeakers in the direction of the Wednesday Demonstration. Amid denialists' misogynist insults and distortions of victims' testimonies, survivor Lee Ok-seon attended the Wednesday Demonstration despite difficulties due to her old age (March 24, 2021, 1484th Wednesday Demonstration, https://youtu.be/T4_OEdTVyCQ). She criticized the Japanese Government's denial of forced mobilization and said that receiving an apology is not just a monetary issue. Also see: Yonhap, "Sexual slavery victim, supporters sue right-wing activists for defamation," 16 March 2022, <https://en.yna.co.kr/view/AEN20220316008700315>

⁸⁵ Hankyoreh, "'Comfort women' protest obstructed by far right despite call for safeguarding," 20 January 2022, https://english.hani.co.kr/arti/english_edition/e_national/1028191.html

⁸⁶ Even before taking office, he sent a policy consultation delegation to Japan that included officials who played leading roles in the making of the 2015 Korea-Japan agreement. Yoon has actively expressed his intent to improve Korea-Japan relations and aims to reinstate the 2015 Korea-Japan agreement. Park Jin, Korean Minister of Foreign Affairs, said on April 20 even before he assumed office that the 2015 Korea-Japan agreement was an "official one." Japanese Chief Cabinet Secretary Matsuno responded by saying that the agreement reached a "final and irreversible" resolution.

⁸⁷ After the candlelight revolution of Korean citizens brought a new administration to office, the Korean Constitutional Court ruled on December 27, 2019, that the agreement between Foreign Ministers of South Korea and Japan announced on December 28, 2015, was "not a legally binding treaty but a mere political agreement in light of its procedures, form, and content." As such, the agreement cannot "dispose of individual rights of Japanese military 'comfort women' victims and the rights of diplomatic protection by the South Korean government have not been extinguished."

numerous United Nations bodies issued concerns on the agreement.⁸⁸ **The government should ensure peaceful Wednesday Demonstration according to the National Human Rights Commission's recommendation and the Assembly and Demonstration Act and take proactive measures against defamation and human rights violations of victims. The government should actively protect and support victims with a clear stance that hate speech, stigmatization, and discrimination against sexual slavery victims will not be tolerated. Further, the government should stop its attempts to reinstate the 2015 agreement, which was a political agreement that abandoned a victim-centered approach, and disclose the process and materials related to the agreement.**

E. Right to Privacy

21. Labor Surveillance and Infringement of Worker's Personal Information

The development of digital technology has enabled more private and comprehensive labor monitoring, but the government's supervision or legislation on unfair labor monitoring is lacking. According to the 2021 survey, the use of digital monitoring technology in the workplace is on the rise compared to 2013.⁸⁹ The rate of installing monitoring facilities without notice reached 20-30%, and only 40% of the respondents answered that their company has a privacy policy. The Act on the Promotion of Employee's Participation and Cooperation was rarely observed, with only 10% of companies consulted with trade unions or workers' representatives before installing monitoring facilities. **The supervision of the Personal Information Protection Commission and the Ministry of Employment and Labor should be strengthened to prevent illegal personal information processing and unjust labor monitoring. In addition, new legislation should be introduced that obligates prior agreement with trade unions or workers' representatives on the purpose, scope, and function of the monitoring mechanism when introducing facilities that can monitor workers or infringe personal information.**

22. DNA Collection

The Act on Use and Protection of DNA Identification Information was enacted to prevent recidivism of violent criminals such as sex crimes, but people who participated in human rights activities such as trade union activities or housing rights advocacy have also been subjected to DNA collection⁹⁰. In 2018, the Constitutional Court of Korea ruled that DNA collection was unconstitutional, pointing out that the law did not stipulate procedures for the DNA collection subjects' testifying opportunities or appeal against the issuance of a warrant.⁹¹ After the

⁸⁸ Concluding Observations issued by UN Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/7-8) and UN Committee Against Torture (CAT/C/KOR/CO/3-5), among many others, call for state parties to revise the 2015 agreement to provide full redress to victims that ensures their rights to truth, reparation and assurances of non-repetition. For a list of UN human rights bodies' recommendations on the Japanese military sexual slavery issue, see. Women's Active Museum on War and Peace, "Japan / Alternative Report on the Issue of Japanese Military Sexual Slavery Appendix No. 1. Compilation of Recommendations by the UN Human Rights Bodies," May 2014, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_CSS_JPN_17435_E.pdf

⁸⁹ Korean Progressive Network Jinbonet, Public Workers Solidarity Foundation (2021), Survey on the Status of Digital Labor Surveillance and Ways for Legislative and Policy Improvement, <https://act.jinbo.net/wp/44827/>

⁹⁰ The authorities' conducts to take DNA samples from Yongsan displaced persons and SSangyong workers and to establish and use a database containing said samples are constituted the serious violation of the constitutionally protected human rights, (Korean) <https://act.jinbo.net/wp/7631/>

⁹¹ The Constitutional Court Decision 2016Hun-Ma344, 2017Hun-Ma630 decided on 30 Aug 2018.

Court's decision, trade union members demanded the deletion of their DNA information collected unconstitutionally, but such requests were dismissed or rejected. Also requests for DNA collection of workers and activists continue to this day. **The government should either reconsider the operation of the national DNA database or strictly limit the requirements of the subject to minimize the restrictions of basic rights. The government also should stipulate a new provision to allow deletion of collected DNA information if there is no risk of recidivism.**

23. Artificial Intelligence and Fundamental Rights

Artificial Intelligence (AI) technology-using products and services have been introduced in various areas of society. In particular, AI technology has been introduced in areas that have a significant impact on fundamental rights such as education, credit ratings, social welfare, employment process, and crime prediction. With the enactment of the General Act on Public Administration in 2021, the administrative agencies can now take administrative measures through a fully automated system using AI technology. In addition, national institutions are developing a facial recognition system for the private companies' profit-making or for the purpose of immigration review, tracking confirmed patients of epidemic diseases, such as COVID-19, and crime prevention by providing or using a large amount of personal information, including biometrics, collected and held previously for public purpose.⁹² However, the introduction of AI into high-risk areas without safeguards for human rights, such as evaluation of explainability, impact assessment on privacy and human rights, and consideration of remedies and due process, may seriously infringe on people's safety and fundamental rights. **The government should establish laws and policies governing AI to protect the safety and fundamental rights of those affected by AI or automated decisions and consider a moratorium on the introduction of AI in areas that can seriously affect human rights until safeguards are in place.**

24. The Resident Registration Number (RRN) System

While the government has accepted the UPR's first round of recommendations to "reassess and limit the use of the resident registration number system in order to protect privacy rights," RRN continues to be widely used in the public and private sectors.⁹³ Since August 2014, a law has been enforced which allows processing of the RRN only when there is a legal basis to do so. Nonetheless, there are about 1,000 exceptions to such provision, including a law that obligates private telecommunication companies to collect RRN data to facilitate investigations. In addition, while converting RRN using a hash function, the Connecting Information (CI) generated by adding "shared secret information between personal identification agencies" is used as self-identification data in the private and public spheres, and also used for investigative purposes including identifying the suspects.⁹⁴ CI is generated on the basis of the RRN system and once issued, it cannot be changed unless one's RRN is changed. Even though there is no

⁹² Hankyoreh, S. Korean government provided 170M facial images obtained in immigration process to private AI developers, Oct 21, 2021, https://english.hani.co.kr/arti/english_edition/e_national/1016107.html
South Korea Is Giving Millions of Photos to Facial Recognition Researchers, Nov 16, 2021
<https://www.vice.com/en/article/xgdxqd/south-korea-is-selling-millions-of-photos-to-facial-recognition-researchers>

⁹³ Report of the Working Group on the Universal Periodic Review, Republic of Korea, 29 May 2008, A./HRC/8/40, p. 15

⁹⁴ This goes beyond its original purpose of being a means to identify whether the user is the same person in online and offline services as well as between different service platforms

legal basis for the generation and use of CI, it can identify and track certain individuals, just like the RRN, and acts as a key that connects different personal information. Therefore, its data leakage is highly risky. However, no adequate security measures are in place⁹⁵. **The government should restrict the use of RRN to strictly necessary cases for providing public services and should prohibit private usage. CI, which has no legal basis and violates the freedom of anonymous expression and privacy rights online, should be abolished. Furthermore, strict warrant requirements must be observed when an investigative agency tries to access the CI.**

25. Guarantee of Secrecy of Correspondence

Intelligence agencies and investigative bodies' illegal wiretapping, and infringements of secrecy of correspondence principles, including the Defense Security Command's short-wave wiretapping and the police's wiretapping of NGOs, have continuously occurred. This is because there is no human rights-based and judiciary control mechanism on wiretapping and communication investigations. In 2018, the Constitutional Court declared constitutional nonconformity of real-time location tracking and base station investigations by investigative agencies and the National Intelligence Service's packet surveillance methods. Following the decision, the National Assembly amended the Protection of Communication Secrets Act in March 2020. However, such changes did not properly reflect the spirit of the Constitutional Court's earlier ruling, as they failed to include any control system on the packet surveillance method, which the Constitutional Court had announced unconstitutional, or a means by which a person who had received a surveillance notification could access the relevant data and argue its legality. In addition, although communication data, collected to identify personal information mainly at the initial stages of an investigation, pertains to the secrecy of correspondence principle and privacy rights, collection of such data is not controlled by the court and can be obtained if deemed relevant to an investigation. As a result, over 5,000,000 cases of such communication data are collected by investigative agencies every year.⁹⁶ Therefore, in November 2015, the UN Human Rights Committee recommended the government to "provide subscriber data only where there is a warrant," but this recommendation is yet to be followed. The provision of location information and communication data from base stations is a grave infringement on privacy rights. **The government should amend the Protection of Communication Secrets Act in order to strictly limit the range of crimes subject to surveillance, implement such requirements as a last resort, strictly limit the range of crimes that the communication data can be provided, and strengthen the requirements for communication data provision. In addition, the government should amend relevant laws in order to ensure that subscriber information is provided only when there is a warrant present or abolish Article 83 (3) of the Telecommunications Business Act.**

⁹⁵ In September 2021, a civil society organization filed a constitutional complaint against such linked information, which is used as general-purpose identification information even though there is no legal basis and has no control over abuse.

⁹⁶ According to the announcement by the Ministry of Science and ICT, in 2020, 5,121,974 cases of communication data were provided to investigative agencies.(Korean) <https://www.msit.go.kr/bbs/view.do?sCode=user&mId=113&mPid=112&pageIndex=1&bbsSeqNo=94&nttSeqNo=3181207&searchOpt=ALL&searchTxt=%ED%86%B5%EC%8B%A0%EC%9E%90%EB%A3%8C>. In this regard, in May 2016, 500 citizens filed a constitutional complaint, but there has been no result.

F. Freedom of Religion or Belief, Expression, association, and Peaceful Assembly and Right to Participate in Public and Political Life

26. Freedom of Assembly

Article 11 of the Assembly and Demonstration Act prohibits gatherings within 100 meters of the presidential residence.⁹⁷ Until May 2022, both the presidential residence and presidential office were located together within the Blue House, so even though the above provision only covers the residence, it had the effect of prohibiting protests near the presidential office. However, as the 20th President Yoon Seok-yeol takes office from May 10, 2022, the presidential residence (at Hannam-dong, Seoul) and the presidential office (at Yongsan-dong, Seoul) are located in different places.⁹⁸ Nevertheless, the police interpreted Article 11 of the Assembly and Demonstration Act to include the presidential office and prohibited the march of LGBT people in front of the office on May 14, 2022. In response, the Seoul Administrative Court decided to suspend the execution of the notice of ban, which prohibited the march of LGBT people in front of the office, on the grounds that the presidential residence and the office are separate spaces under the law, and that an absolute ban on assemblies in front of the presidential office would infringe on freedom of assembly. The police expressed that it respects the court's decision, however, it continued to issue bans on other assemblies.⁹⁹ As more decisions were made that allow rallies in front of the presidential office, the police has changed their attitude slightly, but still permits gatherings in front of the presidential office only for small groups less than 500 people. **The government should not arbitrarily interpret Article 11 of the Assembly and Demonstration Act in a way of banning assemblies in front of the presidential office. In addition, necessary legislative and administrative measures, such as repealing Article 11 of the Assembly and Demonstration Act, should be taken so that peaceful assemblies can be held freely at state institutions such as the presidential office, the National Assembly, and the courts.**

27. Criminal Defamation and Insult Laws

Korean Criminal Law stipulates that crimes of defamation¹⁰⁰ and insult¹⁰¹ shall be punished up to imprisonment for stating facts or feelings (swear words) that may harm the social status

⁹⁷ The Assembly and Demonstration Act, Article 11 : No person shall hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences:

3. The Presidential residence and the official residences of the Speaker of the National Assembly, the Chief Justice of the Supreme Court, and the President of the Constitutional Court of Korea;

⁹⁸ Introduction to the Office of the President in Yongsan, Office of the 20th President, <https://eng.president.go.kr/sub/yongsan.php>

⁹⁹ The Korea Times, Police to continue banning rallies near presidential office, 13 May 2022 https://www.koreatimes.co.kr/www/nation/2022/05/113_329092.html

¹⁰⁰ Criminal Act, Article 307 (Defamation): (1) A person who defames another by publicly alleging facts shall be punished by imprisonment with or without labor for not more than two years or by a fine not exceeding five million won.

(2) A person who defames another by publicly alleging false facts shall be punished by imprisonment with labor for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.

¹⁰¹ Criminal Act, Article 311 (Insult): A person who publicly insults another shall be punished by imprisonment with or without labor for not more than one year or by a fine not exceeding two million won.

of others. This excessive criminal punishment system has often been abused by political and economic powerful such as public figures and corporations to suppress the voices of criticism and accusations against them. Furthermore, even telling a factual truth can also lead to punishment for defamation, which greatly stifles the voices of whistleblowers or victims including those participating in the MeToo movement. It is estimated that there are over 60,000 complaints and accusations of defamation and insults per year.¹⁰² In the third cycle of UPR recommendations, there were recommendations to abolish the criminal defamation law (132.107.108.), but it was not implemented. **The government should abolish the criminal punishment of defamation and insult that restrict freedom of expression and threaten citizens with criminal punishment to have it resolved by civil procedures.**

28. Regulation on the Blocking of Online Content

Article 44-2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., stipulates that, if someone claims that an online posting infringes their rights and requests to block it, the Internet operator shall take measures to block it.¹⁰³ This system seriously infringes on the freedom of expression and the right to know on the Internet by initially blocking online expressions with someone's claims only, while such expression should be protected under the presumption of legality. It is known that more than 450,000 Internet postings are blocked annually under this system,¹⁰⁴ and public figures and corporations are using the system as a means of controlling public opinion on the Internet by requesting to block large amounts of Internet postings that are critical of them.¹⁰⁵ There is also a 'communication deliberation' system in which the Korea Communications Standards Commission (KCSC), an administrative agency, can review 'illegal information' and 'harmful information' on the Internet and request information and communication service providers to

¹⁰² Daily Joongang, "More than 100 cases of accusations of insults a day", 28 Sep 2016 (Korean) <http://www.dailiang.co.kr/news/articleView.html?idxno=101113>

¹⁰³ The Act on Promotion of Information and Communications Network Utilization and Information Protection Article 44-2 (Request for Deletion of Information)

(1) Where information provided through an information and communications network purposely to be made public intrudes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who managed the information to delete the information or publish a rebuttable statement (hereinafter referred to as "deletion or rebuttal"), presenting explanatory materials supporting the alleged violation. (2) Upon receiving a request for deletion or rebuttal of the information under paragraph (1), a provider of information and communications services shall delete the information or take a temporary or any other necessary measure and shall notify the applicant and the publisher of the information immediately. In such cases, the provider of information and communications services shall make it known to users that he or she has taken necessary measures by posting a public notification on the relevant message board or in any other way.

(4) Notwithstanding a request for deletion of the information under paragraph (1), if it is impracticable to judge whether information violates any right or it is anticipated that there will probably be a dispute between interested parties, a provider of information and communications services may take a measure to block access to the information temporarily (hereinafter referred to as "temporary measures"). In such cases, the period for the temporary measure shall not exceed 30 days.

¹⁰⁴ Data from National Assembly member Shin Yong-hyeon's office (Source : Korea Communications Commission, 2017) (Korean) <http://www.mediaus.co.kr/news/articleView.html?idxno=104720>

¹⁰⁵ A Study on the 'Notice and Takedown' of Internet Portal Service (Jae Jin Lee, Lee Jeong-Ki) (kjcs, 2012, vol.56, no.3.) (Korean) <https://www.kci.go.kr/kciportal/ci/sereArticleSearch/ciSereArtiView.kci?sereArticleSearchBean.artiId=ART001672682>

block such information.¹⁰⁶ With this system, which functions as an administrative censorship of Internet information, more than 200,000 cases of information are blocked annually.¹⁰⁷ Communication deliberation is made not only on information with significant and obvious illegality but also on information that requires a high degree of legal judgment such as defamation and violation of the National Security Act, as well as on 'harmful' information. Such a method is at high risk of potential abuse for censoring the public's thoughts or controlling the public's political opinion. **The government should improve the above system, which broadly blocks only by the assertion of someone or a decision by an administrative agency before the judiciary's illegality decision, the information that should be protected under the freedom of expression except for information which result in grave and obvious damages such as sexual exploitation. Article 44-2 of the Information and Communications Network Act should be amended to guarantee the right of restoration of information publishers so that freedom of expression can be guaranteed in a balanced way. The communication review authority of the Korea Communications Standards Commission, an administrative agency, should be transferred to an independent organization, and it should be amended to request correction only in exceptional cases for information with significant, obvious, and urgent illegality.**

29. Freedom of Expression of Public Officers

Unlike ordinary citizens, public officials and teachers are completely prohibited from expressing political opinions and joining a political party under the Political Party Act, Public Official Election Act, National Public Officials Act, and Local Public Officials Act. They are even subject to criminal punishment if they violate this prohibiting rules of the Acts. In addition, the Public Official Election Act restricts participation of not only civil servants and teachers but also civilian workers in public institutions and cooperatives from election campaigns in a comprehensive range. The duty of political neutrality of public officials, teachers, public institutions, and co-operative employees aims to ensure political impartiality in performing public service duties, however, this results in excessive restrictions on political expression in all aspects of daily life, which is unrelated to work. **The government should**

¹⁰⁶ Act on the Establishment and Operation of Korea Communications Commission, Article 21 (Duties of the Korea Communications Standards Commission)

4. Deliberation on information prescribed by Presidential Decree as necessary for nurturing sound communications ethics, from among information disclosed to the public and distributed via telecommunication circuits, or requests for correction;

Enforcement Decree of The Act On The Establishment And Operation Of Korea Communications Commission, Article 8 (Information Subject to Deliberation by Standards Commission)

(1) "Information prescribed by Presidential Decree" in subparagraph 4 of Article 21 of the Act means information deemed necessary to be deliberated on, such as illegal information and information harmful to adolescents under Article 44-7 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, among information distributed through information and communications networks.

(2) Kinds of requests for corrective action under subparagraph 4 of Article 21 of the Act shall be as follows:

1. Deletion of the relevant information or blocking access thereto;
2. Suspension or termination of the use of the relevant information to users;
3. Fulfillment of the duty to label information harmful to juveniles or alterations of labeling methods, and other matters deemed necessary.

(3) Where an information and communications service provider or a person who manages and operates a bulletin board receives a request for corrective action under paragraphs (1) and (2), he/she shall immediately notify the Standards Commission of the results of corrective action taken.

¹⁰⁷ Korea Internet Transparency Report (<http://transparency.kr/>)

revise the relevant laws so that public officials, teachers, public institutions, and cooperative workers who are not high-ranking or elected officials are fully guaranteed the freedom of political expression.

30. Freedom of Expression during the Election Period

Freedom of expression on the offline sphere during the election period is limited by articles 90 and 93(1) of the Public Official Election Act. During the 2016 General Election, individuals and civil society organizations who expressed opinions regarding candidates or political parties were searched, confiscated, and prosecuted for violating the Public Official Election Law, and they were convicted and imposed fines. Some of them were even sentenced to the five-year disqualification for running for elections. Problems also exist with freedom of expression in the online sphere during the election period. The Constitutional Court of Korea ruled unconstitutional of the Internet Identity Verification system in 2012 and the Internet Real Name system during the election period in 2021. However, any online posting or article by a voter could be deleted, get blocked, or even be subjected to investigation when the National Election Commission (NEC) decides it as a violation of the Public Official Election Act. The National Election Commission demanded deletion of 86,639 online postings during the 2022 presidential election and 53,716 online postings during the 2020 general election respectively. **The government should abolish Article 90 (Prohibition of Installing, etc. of Facilities), Article 93 (Prohibition of Unlawful Distribution or Posting of Documents and Pictures)(1), Article 110 (Prohibition of Slander against Candidates), and Article 251 (Slanders against Candidates), while amending Article 108 (Prohibition of Publication of Results of Public Opinion Poll) of the Public Official Election Act¹⁰⁸ to minimize the large scope of public opinion polls to guarantee freedom of expression of the electorate during election periods.**

31. Conscientious Objection

The partial amendment to the Military service act and the Act on the assignment and performance of the alternative service were approved at the plenary session of the National Assembly on 27 December 2019. Accordingly, the alternative service has started as the Alternative Service Commission was established in June 2020. The ROK's alternative service prescribes 36 months of camp service at correctional facilities. Despite its historical significance, the alternative service in the ROK has many punitive characteristics. Firstly, whereas the length of the alternative service is 36 months, which is twice longer than the regular military service, the government failed to provide specific and reasonable grounds for this. Excessively long duration of the alternative service violates the freedom of conscience of the objectors, as it makes the service discriminatory and punitive. This has been repeatedly recommended by the UN Human Rights Committee.¹⁰⁹ The ROK does not recognize active

¹⁰⁸ Article 90, 93(1), 110, 251, 108 of the Public Official Election Act, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=56243&lang=ENG

¹⁰⁹ **UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, 3 December 2015, CCPR/C/AUT/CO/5, paras 33-34:** “33. The Committee notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds (arts. 18 and 26). 34. The State party is encouraged to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.”

Concluding Observations of the UN Human Rights Committee to the Russian Federation, 2003, CCPR/CO/79/RUS, para 17: “17. While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by

soldiers' right to refuse military service, only recognizing the objection before joining the military, or the objection to the reserve force after discharge. This violates soldiers' freedom of conscience, also the UN Commission on Human Rights Resolutions.¹¹⁰ The Alternative Service Commission which screens conscientious objectors belongs to the Military Manpower Administration under the Ministry of National Defense. It also violates several international covenants¹¹¹ that regulates the civilian service which is independent from the military. **The government should reduce the length of the alternative service by less than 1.5 times the length of the military service. Also, the government should recognize the right to conscientious objection of active soldiers, place the Alternative Service Commission in the civilian sector, such as the Ministry of Public Administration and Security, the Ministry of Health, or the Prime Minister's Office, not under the Military Manpower Administration.**

prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions. The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant.”

Concluding observations of the Human Rights Committee, GREECE, 2005, CCPR/CO/83/GRC, para 15 : “15. The Committee is concerned that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defense (art. 18). The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities.”

UN Human Rights Committee, Concluding Observations: Estonia, 15 April 2003, CCPR/CO/77/EST, para 15: “15. The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service. The State party is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the Covenant)”

Communication N° 666/1995, Foin v. France CCPR/C/67/D/666/1995 : “10.3. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the author's case, and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions. In the Committee's view, such an argument does not satisfy the requirement that the difference in treatment involved in the present case was based on reasonable and objective criteria.”

Conscientious objection to military service - Analytical report of the Office of the United Nations High Commissioner for Human Rights, 2017 : “64. Any longer duration in comparison to military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria.”

¹¹⁰ UN Commission on Human Rights resolution 1998/77, E/CN.4/RES/1998/77 : “Aware that persons performing military service may develop conscientious objections.”; The Council of Europe, 2001, Recommendation 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states: “the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service.”

¹¹¹ The United Nations Convention on the Rights of Freedom, Jeong Min-kyu and 99 others, South Korea, filed a petition 1642-1741/200: “A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature.”

VENICE COMMISSION, EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, 2011, OPINION ON THE DRAFT LAW ON AMENDMENTS AND ADDITIONS TO THE LAW ON ALTERNATIVE SERVICE OF ARMENIA: “ It has to be recalled that any form of control over alternative service should be of civilian nature and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service. In addition, the authorities should make sure that any byelaw, other regulation or practical application measure is fully in line with the principle of civilian control over alternative service”.

32. The National Security Act

The number of people accused of violating the National Security Act was steadily decreasing to 197 in 2013, 73 in 2015, 27 in 2017, and 15 in 2019, but increased by 57.7% to 41 in 2021.¹¹² This is an increase in the number of offenders who violate the National Security Act due to a joint investigation by the National Intelligence Service (NIS) and the police, ahead of the transfer of anti-communist investigative function from the NIS to the police in 2024. There is a very high possibility that the number of people indicted for violating the National Security Law will increase in the future. Over the past five years, a businessman who was promoting facial recognition technology development projects with North Korea and a writer of a book related to 'Juche ideology' were arrested for violating the NIS. It also seized and searched the publisher that published the book named 'Memoirs of Kim Il-sung'. In 17 years since 2004, "National Security Act repeal bill" has been proposed to the National Assembly. **The government and the National Assembly should completely abolish the National Security Act, which suppresses freedom of thought and violates freedom of expression and freedom of association.**

33. The Security Surveillance Act

The 'Security Surveillance System' requires those sentenced to more than three years in prison for violating the National Security Act to report major activities and travel to the head of the competent police station every three months for a considerable period. Also, a person who is under security surveillance disposition shall report to the chief of the competent police station about place of register, residence (the place in which he/she actually resides), name, date of birth, gender, resident registration number, family, cohabitants, associates, occupation, monthly income, the financial status of the person subject to security surveillance, his family, educational, career background, Religion and membership in organizations, place of work, and contact telephone number within 7 days. If this is violated, it is subject to criminal punishment. It is a serious problem that the administration makes a decision on the request for security surveillance disposition, not the judiciary.¹¹³ This is an infringement of the 'right to trial by a judge' guaranteed by the Constitution of the Republic of Korea.¹¹⁴ In addition, based on the abstract standard that there is a risk of recidivism for a person who has completed his sentence, it is de facto a double punishment to put on security surveillance disposition. The period of security surveillance disposition is set for the first two years, but it is possible to renew indefinitely, and it is actually working like that. **The government should completely abolish the 'Security Surveillance System'.**

G. Right to Just and Favorable Conditions of Work

34. Universal Application of the Labor Standards Act for All Workers without Exception

The Labor Standard Act states the principle and the minimum standard of working conditions that should be applicable for all workers. However, it contains an exception clause based on

¹¹² Status of handling of public security cases by crime type - Violation of the National Security Act (korean) e-index.go.kr

¹¹³ The Security Surveillance Act Article 14 (Decision) (1) A decision on security surveillance disposition shall be made by the Minister of Justice through a resolution of the Board.

¹¹⁴ The Constitution of the Republic of Korea Article 27(1) All citizens shall have the right to be tried in conformity with the Act by judges qualified under the Constitution and the Act.

the size of workplaces. Article 11 of the Act limits the scope of application to “all business or workplace in which not less than five employees are regularly employed”. Even though Article 11(2) stipulates some provisions of this Act- such as ‘clear statement of terms and conditions of employment’, ‘recess and holiday’ may apply to a business or workplace in which not more than four employees are regularly employed by Presidential Decree, most of the key provisions - regarding restriction on dismissal, additional payment for overtime work, night work and holiday work, paid annual leave, and working hours- are still exempted. Currently, 3,684,000 persons which accounts for 17.8%¹¹⁵ of the whole working population are employed in a workplace with less than 5 regular employees. 61.86%¹¹⁶ of the total number of workplaces employ less than 5 employees. This means that the Labor Standards Act does not apply to more than 60% of workplaces in the country. The applicable scope of the Labor Standards Act is highly influential in establishing other labor related laws, policies, and local ordinances, as Article 11 of Labor Standard Acts may apply mutatis mutandis to these instruments. The exceptional clause based on the size or business causes employers’ irregularity to avoid their legal obligations by splitting their business into several entities with less than 5 employees. In March 2022, The Ministry of Employment and Labor conducted a targeted inspection with 114 alleged workplaces and uncovered that 52 were disguised workplaces with less than 5 employees.¹¹⁷ **The government should revise Article 11 of the Labor Standard Act so that the Act applies to all workplaces without exception and all workers can enjoy minimum labor standards.**¹¹⁸

35. Fundamental Labor Rights for All Workers

In 2021, The government ratified the ILO Convention 87 on freedom of association and right to organize, and the ILO Convention 98 on protection of right to organize and right to bargain collectively and these are not being applied to Korea. However, various obstacles still exist in exercising the fundamental labor rights and many provisions of the Trade Union and Labor Relation Adjustment Act(TULRAA) conflict over the conventions. Most prominently, Article 2 of the TULRAA, which stipulates the definition of ‘employee’ covered by the Act, excludes numerous workers, even according to the Supreme Court case law that interpreted the scope of the provision broadly.¹¹⁹ For example, this provision excludes dependent self-employed and platform workers who are assigned work through smartphone apps but classified as individual entrepreneurs from ‘employee’. ‘Employer’ is also narrowly defined by the TULRAA and this leads subcontracting workers not able to negotiate with the principal contractor who substantially controls their working conditions because they don’t have a direct employment relationship with the principal contractor, who is the ‘real employer’. **The government should revise Article 2 of TULRAA so that all workers can enjoy the fundamental labor rights regardless of their type of contract.**

¹¹⁵ Analysis on Business with less than 5 employees by Provinces and Metropolitan Cities, KCTU Labor Research Institute, 2022

¹¹⁶ Survey on Workplaces and Employment Status, Ministry of Employment and Labor, 2021

¹¹⁷ Press Release- The Result of Labor Inspection on disguised ‘Enterprise with more than 5 employees’, Ministry of Employment of Labor, 2022

¹¹⁸ Korean Confederation of Trade Unions moved a bill to revise the article 11 of the Labor Standard Act, supported by 100,000 signatures through the legislative petition, in September 2020

¹¹⁹ Supreme Court Decision 2014Du12598, 12604 Decided June 15, 2018,

<https://eng.scourt.go.kr/eng/supreme/decisions/NewDecisionsView.work?seq=1194&mode=6&searchWord=>

36. Decent Work

During the last 5 years, the quality of employment has continuously deteriorated in ROK. According to the recent Economically Active Population Survey of 2021 and its additional investigation by type of work, the total number of waged workers as of August 2021 was 20,992,000 of which 12,927,000(61.65%) were regular workers and 8,066,000 (38.4%) were non-regular. The number of regular workers decreased by 94,000 compared to the previous year while the number of non-regular workers increased by 604,000. Since 2018, the proportion of regular workers has decreased continuously. Since 2017, the proportion of non-regular workers has increased and recorded the highest ever in 2021. Even worse, the precise number and proportion of non-regular workers would be much higher than the statistics show as the government's statistics misclassified certain groups of workers such as long-term temporary workers, in-house subcontracting workers and etc. into regular workers. Also, a large number of dependent contractors are misclassified into independent business owners by the government's statistics. This increased number of non-regular workers is caused by the government's employment policy that has focused mostly on increasing short-term employment in social services rather than creation of decent work without consideration of the quality of the jobs. The former administration's policy goals of preventing the abuse of non-regular employment and creation of an equal workplace in the <5- year Roadmap for Job Creation> announced in 2017, were not implemented at all. Measures to improve the employment quality are totally omitted in the newly launched administration's labor policy. **The government should revise the existing laws to make the employment of regular workers as a primitive rule, including 'hiring regular workers for regular continuous work' and 'restriction on the reasons for using non-regular workers', and enact legislation to curb the use of non-regular workers.**

37. The Right to Know Occupational Health and Safety

The Industrial Technology Protection Act revised in August 2019, includes unjust provisions that undermine the workers' right to know. The Act prohibits disclosure of information on national core technology (Article 9-2), and severely punishes for disclosure or use of industrial technology information contrary to the purpose of acquisition (Article 14(8)). In January 2022, The National Advanced Strategic Industry Act¹²⁰ expanded the scope of technologies subject to non-disclosure (Article 11, Paragraph 7), and further increased the level of punishment for disclosure contrary to the purpose of acquisition. (Articles 15 (8) 50 (4)).

Victims of Samsung Electronics' occupational disease have suffered for a long time because their right to know occupational health and safety has not been satisfied. It is because Samsung Electronics and the government have refused to disclose related data to prove occupational diseases, claiming it is a trade secret.¹²¹ Fortunately, in February 2018, as the court ruled that it was not a trade secret, some of the Samsung Electronics' work environment reports were disclosed. Since then, in similar cases, Samsung Electronics has started to oppose the disclosure of the work environment reports by claiming that it is a national core technology instead of a trade secret. The Administrative Appeals Commission accepted this claim by Samsung. Also, this national core technology claim of Samsung was reflected in the Industrial Technology Protection Act. This led to criticism both by the civil society and the media that called the Act

¹²⁰ Act on Special Measures for Strengthening and Protecting the Competitiveness of the National Advanced Strategy Industry

¹²¹ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on its mission to the Republic of Korea, section 56

as the ‘law protects Samsung’. With the effect of the implementation of the Industrial Technology Protection Act, victims of occupational disease have received work environment reports that do not include key information¹²² as well as epidemiological investigation reports without important data in determining occupational disease.¹²³ Various reports, which can inform our society of the danger of Samsung’s semiconductor plant, are in danger of being legally concealed on the grounds that they are ‘information on national core technologies’. **The government should revise the Industrial Technology Protection Act and the National Advanced Strategic Industry Act to promote workers’ right to know occupational safety and health.**

38. Business and Human Rights

Although the government has generated separate sections for the Business and human rights in the third NAP (2018 to 2022), the Concluding Observation of the UN Committee on Economic, Social and Cultural Rights in 2017 was not reflected in the sections.¹²⁴ Currently, there are no laws on business and human rights in Korea. Although the government has recommended companies to introduce ESG management by creating ESG indicators and public enterprises/institutions have introduced human rights impact assessment systems, these are not effective nor enforceable as there are no laws that mandate companies to conduct compulsory human rights and environmental due diligence in their supply chains. At least, the Framework Act on Human Rights Policy proposed by the government in December 2021 included provisions on Business and human rights, however, the Act has not passed until now. **The government should enact laws to make human rights environmental due diligence mandatory for Korean companies, starting with official development assistance (ODA) and government-funded overseas resource development projects, including the preparation of the Framework Act on Human Rights Policy. In addition, it is necessary to prepare comprehensive measures to respond to human rights violations and environmental destruction by Korean companies operating overseas.**

In 2001, the National Contact Point (NCP Korea) was established in accordance with the OECD Guidelines for Multinational Enterprises, but to this day, most complaints have not passed the first evaluation to determine whether arbitration is necessary and are being rejected. Even in 2020, the complaint about six Korean companies that cooperated with the Myanmar military was also rejected in the first evaluation, and the Korean companies continue to cooperate with the Myanmar military to this day. The NCP Korea, established in the Investment Policy Division of the Ministry of Trade, Industry and Energy, and the Korea Commercial Arbitration Board in charge of the secretariat, is classified as an “independent expert organization” because it has private members. However, as of June 2022, it is hard to say that these four civilian members represent labor and civil society. The election as well as arbitration procedures has not been transparently disclosed, and other stakeholders such as labor and civil society have not been able to participate in this process at all. **In line with the purpose of the**

¹²² Yonhap News Agency, 19 April 2021 (Korean)

<https://www.yna.co.kr/view/AKR20210419133300004?input=1179m>

¹²³ MBC, 21 Dec 2021 (Korean) https://imnews.imbc.com/replay/2021/nwdesk/article/6325946_34936.html

¹²⁴ The main recommendations are as follows: “1) Establish a legal obligation to implement and inspect human rights practices and inspections in Korean companies and their supply chains; 2) Ensure that Korean companies take action against human rights violations arising from their domestic and foreign activities and ensure that victims can seek relief, 3) Linking public procurement, plaintiffs, and subsidies to companies with compliance with social rights 4) Enhancing the influence and transparency of the National Contact Point (NCP), and stakeholder participation and effectiveness”

OECD Guidelines for Multinational Enterprises, the NCP Korea must ensure the participation of stakeholders, including labor and civil society, in its formation and operation so that it can effectively promote corporate human rights responsibility and provide practical relief to victims.

H. The Rights to Social Security, to an Adequate Standard of Living, to Health, and to Education

39. Abolishment of the Family Obligation Rules in the National Basic Living Security Act

To improve the problems of the family obligation rules that come with a blind spot of National Basic Living Security Act, the government abolished education benefits in 2015 and housing benefits in 2018 and eased the family obligation rules for receiving living wages. The government accepted a recommendation of "implementing measures to facilitate access to health care and education services, particularly for the most vulnerable groups," as provided in the third cycle of the UPR. However, the government has not abolished the family obligation rules for receiving medical benefits, citing financial burden as the reason. Therefore, even if he/she meets a basis of selection of the recipients for the National Basic Livelihood Security Act of Korea, receiving medical benefits is not possible only because he/she has "his/her lineal relatives within the first degree of consanguinity, and his/her spouse" (hereinafter referred to as "person who has a legal duty to support") regardless of whether a person who has a legal duty to support supports him/her indeed. As of 2021, the number of recipients of medical benefits is 1,516,000. When calculating the take-up rate of medical benefits, the figure accounts for only 3% of the total population.¹²⁵ **For this reason, the government should abolish the family obligation rules for all benefits to resolve the blind spots in poverty and guarantee the right to health without any discrimination.**

40. Health Insurance

Although the former administration pushed on with a project to expand public health insurance coverage as a state affair, the rate of public health insurance coverage was 65.3%, much lower than the OECD average of 80%.¹²⁶ While changing from non-covered services to covered services showed that the government moved in the right direction, this strategy could not solve the balloon effect to come with new non-covered services, and the government could not use the allocated budget sufficiently compared to the original plan. **The government should expand public health insurance coverage with several policies prohibiting mixed treatment in health care, reorganizing the payment system, and introducing sickness benefits. Abolishing temporary and supplementary provisions in the current national subsidy system and increasing the national subsidy rate by more than 20% will also result in expanding public health insurance coverage.**

¹²⁵ Rate of medical benefits (Korean) http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1406

¹²⁶ (Korean) https://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2763

41. Public Hospital

The number of hospital beds per 1,000 people in ROK is 12.4, about three times higher than the OECD average number of 4.4. However, the rate of public hospital beds is only 9.7%, much lower than the OECD average of 71.6%. For the past two years of COVID 19-pandemic, public hospitals, which provide only 10% of all hospital beds, have been in charge of 80% of COVID-19 patient care. And the lack of hospital beds leads to the deaths of patients while waiting for in-patient admission. As public hospitals are in full charge of COVID-19 patient care, the medical services in public hospitals cannot be provided to the various vulnerable groups such as the homeless, the people with HIV, and immigrants. Despite the lack of medical professionals and services, the government still takes a passive attitude toward building new public hospitals. **The government should build two or more public hospitals in about 30 vulnerable areas for medical services as there is no public hospital, and secure sufficient medical professionals to guarantee the right to health of local residents.**

42. Elderly Care / Preventing Elder Abuse

ROK is expected to become a super-aged society in which the ratio of the elderly population exceeds 20% in 2025, as the aging population progresses the fastest in the world.¹²⁷ The government accepted a recommendation to guarantee the rights of the elderly and improve the living conditions of the elderly, as provided in the third cycle of the UPR. However, the proportion of public facilities among elderly care facilities in Korea is less than 1%, and most of them are private facilities. As the private facilities are profit-oriented, it results in poor working conditions and low service quality. Although the Act on the Use Of Social Services and the Management Of Vouchers is enacted in 2021 to solve these problems, its effectiveness is reduced as the core provision of taking the elderly to the national or public institutions as the priority is deleted. Also, the number of reported elder abuse in 2020 increased by about 19.3% year-on-year after the COVID-19 pandemic started, but both the aged care budgets per one senior and per the number of reported elder abuse decreased. **The government should revise the Act on the Use of Social Services and the Management of Vouchers to take responsibility for elderly care so that the rights of the elderly are guaranteed, and secure a sufficient budget for the elderly population, considering the increased elderly abuse and social necessity.**

43. Poverty of the Elderly / Public Pension

The poverty rate of the elderly in ROK, about three times higher than the OECD average, ranks first among OECD members. In addition, the income replacement rate of the national pension in ROK is 31.2%, much lower than the OECD average of 51.8%.¹²⁸ The monthly income amount of the national pension is expected to become much lower compared to the present amount because the income replacement rate of 50% in 2008 has decreased by 0.5% every year so it will record 40% in 2028. When a person wants to subscribe to the national pension service, the problem is that the national pension service has an extensive range of blind spots as it is also yet to be solved that the recipient of the national pension is limited by the forms of employment in the labor market, or a discriminatory structure based on professional positions. **The government should raise the income replacement rate of the national pension to the**

¹²⁷ (Korean) https://www.kostat.go.kr/portal/korea/kor_nw/1/1/index.board?bmode=read&aSeq=403253

¹²⁸ OECD, Pensions at a Glance 2021 <https://www.oecd.org/publications/oecd-pensions-at-a-glance-19991363.htm>

OECD average and take active steps to resolve the blind spots in the national pension service.

44. Sickness Benefits

ROK is a country without sickness benefits that gives income support to employees unable to work due to illness or injury. If an employee does not receive proper treatment due to the risk of income loss, the disease is likely to worsen, and this can lead to huge social costs such as medical expenses, unemployment benefits due to job loss, and expenditure on public assistance. Therefore, sickness benefits should be introduced to guarantee people's right to health and reduce social costs. The government announced plans to consider the introduction of sickness benefits, having a relevant demonstration project in 2021. However, the demonstration project budget is only 10.99 billion won, and the guaranteed level and period are also insufficient. While most countries guarantee more than 60% of the previous income, Korea only guarantees 60% of the minimum wage. Also, the guarantee period is 90 to 120 days, much shorter than the minimum of 52 weeks that ILO suggested in "Sickness Benefits Convention (1969)."
Instead of starting a poor demonstration project, which makes it difficult to prove its effectiveness, the government should immediately introduce sickness benefits with a sufficient guarantee period and income amount so that anyone can be treated without the risk of income loss.

45. The Rights to Housing

The house price inflation has been kept by the increase in money supply and household loans since 2015. As a result, the increase rate of the rental cost in 2021 records 13.1%. Though low-income households have been facing an excessive housing cost burden, the government plans not to strengthen regulation in the housing market, but to deregulate property tax and transfer income tax for landlords. In the situation that long-term public rental housing, for which low-income households can afford to pay rent, accounts for 5.5% of the total housing, 2.3 million housing poor households are threatened with their health and safety in the poor residential environment. For example, several fires in Goshiwon¹²⁹ have occurred in succession. Seven people died at Jongno Goshiwon in November 2018 and two people died at Yeongdeungpo Goshiwon in April 2022. In 2018, another young tenant also died because a compulsory eviction order was carried out for the reconstruction area of Ahyeon-dong, Seoul. However, the government continues to lead deregulation on redevelopment and reconstruction. Even after an immigrant woman died in a vinyl greenhouse, the housing policy still excludes immigrant workers comprehensively. Also, although 120,000 youths run away from their parents' home and become homeless or endure inadequate housing, there is no national housing policy to address this serious issue. **The government should expand the supply of long-term public rental housing, for which housing vulnerable groups can also afford to pay rent and revise the Housing Lease Protection Act to strengthen the protection of tenants. The housing strategies to end homelessness that may result in reducing informal settlements and substandard houses, insufficient to meet minimum housing standards, should be introduced at the earliest possible date. The government should prepare preventive measures for a compulsory eviction order that follows the International Human Right**

¹²⁹ Goshiwon is one of the common types of informal settlements in the ROK, which consists of small cubicles less than 10 m², often without windows or a bathroom. It was used to accommodate students before, but it's used as accommodation for low-income people.

Law during urban redevelopment. Not only that, the housing policy should include migrant workers and youths as its target.

I. Minority

46. Disability

Despite legal and institutional improvements, disabled people in ROK are still suffering from everyday discrimination and exclusion as the budgets for its implementation are not guaranteed. In 2014, the United Nations Committee on the Rights of Persons with Disabilities recommended the government to establish deinstitutionalization plan and significantly increase support services in the community¹³⁰, but the number of disabled people living in institutions has hardly decreased from 31,406 in 2014 to 29,086 in 2020.¹³¹ In particular, persons with developmental disabilities experience difficulties living in the community; thus, the government enacted the "Act on Guarantee of Rights of and Support for Persons with Developmental Disabilities" in 2021¹³², but the type and amount of services are too narrow to actually support people with developmental disabilities and their family. As a result, many families still want their family members with developmental disabilities to enter the institutions. Furthermore, recently, there have been a series of tragic cases where parents kill their disabled child and commit suicide afterwards.¹³³ This reveals how scarce resources are in the community. In August 2021, the government prepared a roadmap for deinstitutionalization¹³⁴, but the roadmap does not meet international human rights standards¹³⁵ and even the budget in 2023 for deinstitutionalization is only 2.1 billion KRW (1.67 million USD). On the other hand, the budget for institutions is 622.4 billion KRW (500 million USD), which is about 300 times the budget for deinstitutionalization.¹³⁶ Mobility right is an essential part for the social inclusion of people with disabilities. However, the introduction rate of accessible buses in ROK is still only 27.8%.¹³⁷ Although the transport law has been revised, disabled people still do not enjoy the same rights as non-disabled citizens in moving because the budget for the right to movement of disabled people is not promised. The disabled people have been campaigning since last December with the slogan "Nothing about rights without budget",¹³⁸ but the newly launched government's Minister of Strategy and Finance ignored their demands. **The government should introduce laws and systems for disabled people which meet the international human rights standards such as deinstitutionalization, independent living**

¹³⁰ United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the Republic of Korea (CRPD/C/KOR/CO/1), 2014

¹³¹ Ministry of Health and Welfare, Yearly Statistics, 2022

¹³² Act On Guarantee Of Rights Of And Support For Persons With Developmental Disabilities, 2021 (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=53998&lang=ENG)

¹³³ The Korea Times, "Mother charged with killing disabled daughter", 6 June 2022 (<https://m.koreatimes.co.kr/pages/article.asp?newsIdx=329755>)

¹³⁴ Ministry of Health and Welfare, The Roadmap for supporting independent living of deinstitutionalized persons with disabilities in the community, 2021

¹³⁵ Korean Disability Forum, The first Deinstitutionalization Roadmap by the ROK government turned out to be a deceptive 'institution transform plan', 6 August 2021 (http://thekdf.org/human_rights/1411)

¹³⁶ Beminor, 12 May 2022 (Korean) (<https://www.beminor.com/news/articleView.html?idxno=23335>)

¹³⁷ Ministry of Land, Infrastructure, and Transport, Accessible Bus Operation Status, 2020 (Korean) (https://stat.molit.go.kr/portal/cate/statView.do?hRsId=354&hFormId=5250&hDivEng=&month_yn=N)

¹³⁸ Korea Times, 'We were never really welcome anywhere': People with disability fighting for rights in Korea, 5 April 2022 (https://www.koreatimes.co.kr/www/nation/2022/04/718_326758.html)

in the community (personal assistance, family protection, education, labor, cultural and leisure life, etc.), mobility rights, and emergency support and should secure adequate budget for the actual implementation of these laws and systems.

47. Right to Work of Persons with Disabilities

In 2018, 9,413 persons with disabilities were paid under the minimum wage in the ROK as a result of “vocational skill evaluations” according to the Minimum Wages Act. The average wage of workers with disabilities to whom the minimum wage does not apply was 370,000 won (appr. 284 USD) as of 2020, which is only 20% (1.79 million won, appr. 1,378 USD) of the minimum wage in 2020, and 11% (3.2 million won, appr. 2,460 USD) of the national average wage announced by Statistics Korea.¹³⁹ Most of those paid under the minimum wage are working in ‘sheltered workshops’¹⁴⁰ which separate persons with disabilities from the rest of the society and emphasize medical and rehabilitation approaches.¹⁴¹ Of the people with disabilities working at 619 sheltered workshops nationwide, only 2,702 were paid the minimum wage, and 7,371 below the minimum wage. This is contrary to the purpose of the minimum wage, which is 'stabilization of workers' lives' specified in the Korean Constitution and the Minimum Wage Act.

The Seoul Metropolitan government has implemented a project called ‘Rights-based Public Jobs of Persons with Severe Disabilities’ since July 2020, preferentially hiring persons with disabilities who have started to live independently in the community after moving out of the institutions or who have multiple disabilities. Many of these workers have been regarded to have the most severe disabilities and have never experienced wage labor before, but now they

¹³⁹ Data submitted by Yoon, Junbyeong to the Environment and Labor Committee at the National Audit in 2021. Welfare News. (Korean) [/http://www.welfarenews.net/news/articleView.html?idxno=79057](http://www.welfarenews.net/news/articleView.html?idxno=79057)
<Average Monthly Wage for All Workers with Disabilities and for Those Exempted from the Minimum Wage>

	2019	2020	As of August, 2021
National minimum wage	1,745,150	1,795,310	1,822,480
Average monthly wage for all workers with disabilities	1,971,000	1,922,000	TBD
Average monthly wage for workers with disabilities exempted from the minimum wage	380,169	371,790	363,441
Ratio of the average monthly wage of workers with disabilities exempted from the minimum wage to national minimum wage	21.8	20.7	19.9

¹⁴⁰ Sheltered workshops for people with disabilities are vocational rehabilitation facilities established based on the Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities which hire people with disabilities in a separate environment and can apply for exceptions to the minimum wage in the name of vocational training and rehabilitation.

¹⁴¹ From the Congressperson Kang, Eunmi’s office, 2021.

work to promote the UN CRPD to the public and realize it and are considered to have achieved positive outcomes through three major duties: cultural and artistic works, disability rights education, and disability rights advocacy. The quality of life of those with severe disabilities themselves as well as of their families improved significantly, and these activities are positively regarded as an innovative attempt. Even though only persons with disabilities can be employed in these jobs, these workers work in cooperation with support personnel and government officials of Seoul, in an integrated work environment. Until now, ‘Rights-based Public Jobs of Persons with Severe Disabilities’ has expanded in several regions nationwide; however, the workers should renew the contract each year, and support personnel are also at risk of unstable working conditions due to the limited budgets. **The government should eliminate the requirements in laws such as “work capacity” and/or “medical fitness to work” and ensure every working person, whether or not severely disabled, is entitled to the minimum wage. The government should gradually eliminate ‘sheltered workshops’ and secure ‘Rights-based Public Jobs of Persons with Severe Disabilities’ on a local level and ultimately expand them on a national level as stable and regular jobs with sufficient budgets. By doing so, equal labor opportunities for persons with severe disabilities as well as for their support personnel can be guaranteed. The government needs to recognize its responsibility to develop various duties for persons with severe disabilities that go beyond charity-based jobs and/or programs.**

48. Migrant Workers

The government limits the number of times and reasons migrant workers can change a workplace,¹⁴² and many migrant workers are forced to work at workplaces they do not want, despite discrimination such as non-payment of wages, verbal abuse, injury, etc...¹⁴³ The workplace change due to “reasons not attributable to foreign workers” is extremely limited, such as only in case of company closures and employer’s illegal actions which migrant worker should prove. On December 23, 2021, the Constitutional Court of Korea ruled that the article of the Act on Employment Permit System, which restricts migrant workers from changing their workplace, were not in violation of the Constitution. **The government should immediately abolish the restrictions on migrant workers’ workplace change.** The poor condition of dormitories for migrant workers continued to be a social problem. In 2020, a Cambodian worker died in a greenhouse which was provided as a dormitory.¹⁴⁴ Although the problem has been raised for years, the government has not taken any measures to improve the poor condition of dormitories. As a result, illegal temporary buildings such as greenhouse, containers, prefabricated panels, and temporary buildings within the workplace are still being provided as dormitories. In addition, due to the 'guidelines on collection of accommodation and food expenses' created by the Ministry of Labor in 2017, employers have been providing poor accommodations such as illegal temporary buildings and excessively deducting up to 20% of migrant workers’ monthly wages for accommodation and food expenses. **The government should ban the use of illegal temporary building dormitories and abolish the guidelines**

¹⁴² Act on Foreign Workers’ Employment, etc. Article 25 (Permission for Change of Business or Workplace)

¹⁴³ UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 20 April 2015, A/HRC/29/46/Add.1, paras. 69

¹⁴⁴ Korea Times, “Cambodian migrant worker found dead in greenhouse”, 24 December 2020

https://www.koreatimes.co.kr/www/nation/2020/12/281_301395.html

for the collection of accommodation and foods and should ensure migrant workers' right to live in humane and safe dormitories.

49. Immigration Detention

Foreigners who are subject to deportation for violating the Immigration Control Act enter into 'Immigration Detention Center' until they can be repatriated to their home countries. There is no limit on the period of detention in the Immigration detention center. Most of them return to their home countries after a short stay¹⁴⁵, but refugee applicants who have been persecuted in their home countries cannot be repatriated, therefore they are detained for a long period of time. According to data released by the Ministry of Justice in 2020, 46% of those detained for more than one year are refugee status applicants.¹⁴⁶ Each foreigner is given 1.84 square meters of space per person, visits are strictly managed, and only 30 minutes of exercise a day 5 times a week is given. In the case of Hwaseong immigration detention center, as of May 2022, only 2 doctors manage 195 foreigners.¹⁴⁷ It is practically operated like a prison. There is no external independent body that monitors legality of the decision to detain a person, the sanctions inside the detention center and the departure process. In September 2021, a CCTV footage was released in which the detention center staff tortured a refugee claimant who had been detained for a long time (a total of 11 months until he got released)¹⁴⁸. Recently the Ministry of Justice is being criticized for announcing an amendment to the Immigration Act to legalize the use of abusive equipment inside the detention center. In addition, no special consideration for minorities such as detaining HIV-infected foreigners in solitary rooms for more than 9 months and detaining minors remains problematic. **The government should set a limit on the period of protection for immigration detention, stop detaining minors and refrain from detaining vulnerable groups such as HIV-infected persons. The Ministry of Justice should withdraw the amendment to the Immigration Act, which increases the possibility of infringing the human rights of the detainees.**

50. Human Trafficking

Although the government joined the Palermo protocol in 2015 and revised the Criminal Law to implement it in 2013, the definition of human trafficking in the revised Criminal Law is still narrow, so those who fall under the Palermo Protocol's 'trafficking in persons' have not been prosecuted, let alone punished¹⁴⁹. Therefore, in April 2021, The Act on the Prevention of

¹⁴⁵ (As of June 30, 2021) Average protection period per person is about 33 days.

¹⁴⁶ Report on visits to the Hwaseong Immigration Detention Center, p8, Citizens' Gathering for Visiting Hwaseong Detention Center Majung

¹⁴⁷ 'Current status of center' Provided by Hwaseong Detention Center in May 2022.

¹⁴⁸ The Koreatimes, "Immigration detention center urged to address human rights violations" 15 Nov 2015 https://www.koreatimes.co.kr/www/nation/2021/12/281_318891.html

The Detention Center ordered unnecessarily tight restraints, so-called "hog-tying" against the victim while he was placed in solitary confinement. The Immigration Officers at the Center used handcuffs to trap the victim's wrists, and tied his ankles with rope. The Officers then restrained his hands behind his back and coupling the hand and feet restraints from the back. It left the victim's legs to the knees at a 90-degree angle to the rest of his body. These torturous acts lasted for hours. The ministry of Justice admitted that there was wrongful use of force and the National Human Rights Committee also found that there was a violation of human rights (21JINJEONG0451000).

¹⁴⁹ From the resource book "Is the Enactment of the Special Act on Trafficking in Persons Going Properly" Problems of bills proposed by the National Assembly and introduction of civil society bills, Kim Jong-cheol, p.34

" (...) (Article 290 of the Criminal Law) Since its establishment in 2013, as of December 31st 2020, there have been only five cases in which Article 289 of the Criminal Law has been applied."

Trafficking in Persons and Trafficking Victims Protection, etc.(hereinafter ‘Trafficking in Persons Act’)¹⁵⁰ was enacted, but it has been pointed out as a major problem that there is no provision of punishment for perpetrators in this law. The existing criminal law and related laws still apply to punish offenders and the existing laws have not adequately punished the trafficking in persons. In addition, investigative agencies and immigration officials are unable to identify victims of human trafficking, so victims are detained in foreigner detention centers instead of getting a protection, and later forcibly deported. The female workers who entered through the artist visa were victims of sexual exploitation and human trafficking, but the investigative authorities decided not to prosecute the perpetrators due to the lack of evidence, and in the end, the perpetrators were exonerated. Migrant fishermen working on Korean distant water fishing vessels and fishing vessels of 20 tons or more pay high recruitment fees and security deposits, in some cases work 20 hours a day and receive a low and discriminatory minimum wage (530,000 KRW for distant water fishing vessels and 1.72 million KRW for coastal fishing vessels)¹⁵¹ while suffering from violence and discrimination. Also, issues such as passport confiscation, restrictions on changing workplaces, and unpaid wages still remain¹⁵². **The government should revise the Trafficking in Persons Act to include provisions for punishing trafficking crimes so that the prosecution and punishment of the perpetrators can be effectively carried out. In accordance with the same Act, the Minister of Gender Equality and Family should develop and announce the identification indicators for human trafficking, as well as make it compulsory for relevant public officials of investigation agencies and immigration authorities to familiarize themselves with and use them and conduct regular training on them. In addition, in consultation with the government of the sending country, the relevant laws and regulations should be amended so that high recruitment fees are regulated, labor inspections of migrant fishermen are regularly conducted, rest breaks and reasonable working conditions are guaranteed, and ID confiscation practices are prohibited.**

51. Refugees and Asylum-seekers

Despite the ratification of the Refugee Convention, ROK shows a seriously low level of refugee recognition rate every year.¹⁵³ Over the past five years, the refugee recognition rate is only about 1% on average.¹⁵⁴ Refugee applicants are not provided with interpretation and translation at the stage of filing an application, and legal assistance guaranteed under the Refugee Act is not guaranteed during the refugee status determination process by the Ministry of Justice. The basic guidelines for refugee status determination are not disclosed to the public, and the number of refugee officials in charge of and responsible for refugee determination is insufficient, and there is no mechanism to guarantee the professionalism of refugee officials. Due to the delay in the determination process, refugee applicants must wait in an unstable

¹⁵⁰ December 2020 Representative Lee Su-jin proposed.

¹⁵¹ Refer to pages 13 and 14 of the decision of the National Human Rights Commission of Korea, 30 September 2021, “Necessary to improve the excessive transmission cost and wage discrimination of migrant seafarers” (Korean)

<https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7607282&menuid=001004002001>

¹⁵² KBS News, “I work 20 hours a day and get 600,000 won” ... The situation of migrant fishermen resurfaced, 9 June 2020 (Korean), <https://news.kbs.co.kr/news/view.do?ncd=4466333>

¹⁵³ In 2021, only 32 people were recognized for refugee status through refugee screening (7 excluding family reunion), 24 were recognized for refugee status during the appeal process, and 16 were recognized through litigation.

¹⁵⁴ 1.5% in 2017, 3% in 2018, 0.4% in 2019, 0.4% in 2020 and 1% in 2021

situation for a long time.¹⁵⁵ Meanwhile, the treatment of refugee applicants is poor. Although there are “a cost-of-living support system” and “Immigration Reception Center” as a residential facility, only 1.8% of the refugee applicants in 2021 could receive an average of 3.7 months of living expenses, and those who applied for refugee status more than once are banned to work while waiting for the result. So, most refugee applicants are exposed to the threat of survival. On the other hand, to resolve the problem of congested asylum cases, the government systematically ordered unauthorized screening (of the applications made from November 2014 to April 2017). As a result, cases of manipulation were discovered where falsely changing statements not made by refugee applicants and deliberate false translation.¹⁵⁶ **The government should increase the refugee recognition rate, ensure fair, transparent, and professional refugee status determination procedures, and improve the treatment of refugee applicants during the refugee determination period.**

52. Marriage Migrant Women

Marriage migrant women suffer from various types of discrimination which is a result of their doubly weak status as women and migrants. Especially, their stability to stay depends on their Korean spouse’s will to support. The visa for foreign spouses who married Koreans are designed to be affected by whether they are maintaining a family with their spouse, whether they are raising children of Korean nationality, or in case of divorce whether they can prove the divorce is due the spouse’s fault. The naturalization process is more difficult for women who don't have Korean spouses due to divorce or bereavement.¹⁵⁷ **In the process of granting the visa to stay and naturalization, the government should stop discriminating the marriage migrant woman by their marital status and by the nationality of their children.** Marriage brokerage firms have the biggest influence on the incoming of marriage migrant women into ROK through the trade marriages. Even though the Marriage Brokerage Act was enacted in 2007, the Act does not apply well in practice. Although the Act prohibits the recruitment of the (international marriage) candidate by fraudulent methods or deceit, it has been pointed out that the expression of the article is ambiguous, and it is insufficient to protect the victim and to punish the perpetrator. **The government should strictly regulate human trafficking in international marriage brokerage. The government should abolish the 'International Marriage Support System for Men' implemented by some local government areas which in fact supports trade marriage.**

53. Migrants’ Right to Health

In July 2019, the government revised the health insurance system for foreign nationals to strengthen health insurance coverage for migrants residing in ROK and to prevent moral

¹⁵⁵ In 2021, refugee applicants had to wait an average of 23.9 months to receive the first refugee screening results after applying for refugee status.

¹⁵⁶ The damage was officially revealed through the court in 2018, government-level inspections and disciplinary action were conducted in 2019, the National Human Rights Commission of Korea confirmed human rights violations in 2020, and the court judged the state's liability for compensation in 2021.

¹⁵⁷ In 2017, the National Human Rights Committee of Korea investigated whether there were difficulties in maintaining the status of residence during the process of divorce/separation while doing a survey on the status of residence for marriage migrants. A high rate of respondents said that their husbands and husbands’ families interfered with the extension of stay (19.6%), had difficulties in preparing documents necessary to extend the stay (17.4%), and were unable to extend their stay (10.9%). And many of them had difficulties maintaining their status of residence in the process of separation and divorce.

hazard.¹⁵⁸ Migrants who have stayed for more than 6 months are required to subscribe health insurance and pay the average fee for all health subscribers(including all national subscribers), which leads to severe discrimination due to excessive payments, disadvantages in staying status and restrictions on the extended recognition of beneficiary.¹⁵⁹ Due to the disadvantages of status of residence in case of payment delay, migrants who are unable to engage in economic activities due to illness or have a hard time making a living are being pushed into paying insurance fees by loan.¹⁶⁰ Since the COVID-19 pandemic, migrants who could not return to their home countries lost their eligibility for health insurance due to their visa status. But without knowing, migrants kept paying the insurance fees and were later notified with restrictions on their insurance benefits and take-back of insurance fees from the National Health Insurance Corporation. It shows that the revised health insurance made the migrants' right to health more vulnerable and the discrimination has been intensified.¹⁶¹ Due to the COVID-19 pandemic, the public medical institutions have been converted to COVID-19 medical institutions, which made it difficult to vaccinate migrant infants and toddlers.¹⁶² On the other hand, due to the absence or suspension of flights during the COVID-19, migrant detention centers were overcrowded, and personal hygiene and quarantine issues, along with mental health deterioration caused by delays in departure, emerged as an important health crisis. In particular, the recent increase in suicide cases of migrant workers proves that the working and living conditions of migrant workers has become severe as they suffer from COVID-19.¹⁶³ However, up to date, understanding of the actual situation, prevention and support system are

¹⁵⁸ Press Release of Ministry of Health and Welfare, "Improvement of the health insurance system for foreigners and overseas Koreans prevents moral hazard and increases equity between Koreans and foreigners!", 7 June 2018. (Korean)

https://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&page=1&CONT_SEQ=345054

¹⁵⁹ National Health Insurance Act, Article 109(Special Cases concerning Foreigners)

https://elaw.klri.re.kr/kor_service/lawView.do?hseq=59574&lang=ENG

Standards for applying health insurance for long-term overseas Koreans and foreigners(Korean).

<https://www.law.go.kr/LSW/conAdmruByLsPop.do?&lsiSeq=241215&jNo=0076&jBrNo=04&datClsCd=010102&dguBun=DEG&lnkText=%25EA%25B3%25A0%25EC%258B%259C&admRulPttinfSeq=14404>

¹⁶⁰i. After the revision, the criteria for eligibility changed from voluntary subscription to compulsory subscription. The qualification for insurance subscription were extended from three months to six months of staying in Korea except permanent residents (F-5), marriage immigrants (F-6), study abroad (D-2), and general training (D-4) that caused the medical service vacancy.

ii. Only spouses and minor children were recognized as dependents, and families living with parents or adult children were required to pay insurance premiums individually.

iii. The standard for calculating insurance premiums is also excessively charged as the average premium for all subscribers when income or property is identified except for permanent residents (F-5) and marriage immigrants (F-6).

The Kyunghyang Shinmun, "Unprotected body - 'Free-ride theory for immigrants' advocated by hate politics", 1 April 2022. (Korean)

https://m.khan.co.kr/national/national-general/article/202204010600015?utm_source=urlCopy&utm_medium=social_share#c2b

SBS NEWS, "I'd rather be deported" Tears of migrant workers", 14 November 2021.(Korean)

<https://n.news.naver.com/article/055/0000933393>

¹⁶¹ National Human Rights Commission of Korea. 2020. A study on the status of migrants' right to health and improvement of the health insurance system, (Korean)

<https://library.humanrights.go.kr/search/detail/CATTOT000000051073>

¹⁶² Hankyoreh. 20 January 2022. "Resumption of mandatory vaccinations for 'undocumented migrant children' who were not accessible due to COVID-19", (Korean) <https://www.hani.co.kr/arti/society/health/1028196.html>

¹⁶³ Press release of the MP Yoon Mi-hyang, "The number of suicides among migrant workers increases...human rights violations need to be addressed", 4 October 2021, (Korean)

<https://www.newspk.kr/news/articleView.html?idxno=341194>

insufficient. **In accordance with the recommendations of international human rights conventions,¹⁶⁴ the government should stop the discriminatory application of the National Health Insurance system and improve related systems for the healthy growth and development of migrant children in accordance with the principle of the best interest of the child of the Convention on the Rights of the Child.**

J. Women and Children

54. Rights of the Child

There is not enough child-rights education or training offered by the government. The child-rights education is generally conducted based on non-binding guidelines without proper legal ground. As a result, the operation of child-rights education varies depending on the budget allocation of local governments and public officials' degree of interest. Also, the quality of education cannot be guaranteed due to the educational institution's absence of management or supervision. There are compulsory education requirements for child-related workers on child abuse, domestic violence, and sexual harassment, however such education also deal with specific issues only. In addition, as there is no separate ministry dealing with the rights of the child, child-related statistics which are essential for planning and budgeting for the enhancement of rights of the child, are segmentally collected by relevant ministries. **The government should enact laws and prepare comprehensive guidelines to provide child-rights education in accordance with the Convention on the Rights of the Child and implement compulsory education for those who work directly or indirectly with children. Also, the government should collect child-related statistics in detail by age, gender, disability, socioeconomic background, migration background, and others.**

55. Child-friendly Child Justice System

The child justice system of the ROK is not child-friendly, and the right of the child to be heard is only limitedly recognized. Children under the age of 19 cannot file the lawsuit to the court without parents' or guardians' legal representation.¹⁶⁵ Despite the lack of evidence that raising

¹⁶⁴ i. The 3rd Universal Periodic Review(UPR) of Korea Recommendations 132. 125. 126. 127. (Egypt, Congo, Iran) on the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) to ensure that migrant workers are protected from all human rights violations, and in particular children to be provided with an adequate living subsidy, housing, medical services, and education.

ii. CERD/C/KOR/CO/17-19

32. The Committee recommends that the State party:

(a) Take measures to increase the health insurance coverage of migrants, ensure that all migrant children are covered by health insurance, including the children of persons not covered by national health insurance, and review the planned amendment of the national health insurance scheme in order to cover all migrants and at the same fees as Korean nationals;

(b) Review its social security policies to ensure that all persons living on its territory, irrespective of their national origin, receive basic social support;

iii. National Human Rights Commission of Korea. May 2020. "COVID-19 and the Human Rights of Migrants Guidance (7 April)", *COVID19 and International Human Rights Instruments*.

<https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=001004002001&boardtypeid=24&boardid=7605466>

¹⁶⁵ Article 55 on the Civil Procedure Act

(https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55220&lang=ENG), Article 8(2) of the Administrative Litigation Act (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=45101&lang=ENG), Article 40(2) of the Constitutional Court Act (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55845&lang=ENG).

the level of punishment would decrease the crime rate, the Ministry of Justice in 2022, announced that it would lower the criminal liability age to 12 to fulfill the presidential pledge of “response to violent juvenile crimes”. Moreover, the current Juvenile Act has a provision regarding juvenile “may be prone to commit acts” of crimes which imposes protective measures on unclear grounds, such as those who may “cause uneasy feeling for people around them by roaming in groups”.¹⁶⁶ Meanwhile, the Constitutional Court of Korea held that the provision of the Act on Special Cases concerning the admissibility of the statement of children victims of sexual abuse in investigation without the attendance of them at the court is unconstitutional in 2022, thus the infringement of right to be heard is highly expected. **The Government should guarantee the right of child to be heard and to access to justice, and secure sufficient resources to prevent secondary damage to victims of sexual violence and abuse. In addition, the government should abolish the “juvenile may be prone to commit acts” provision by amending the Juvenile Act and stop the attempt to lower the criminal age to implement a child-friendly child justice system.**

56. Universal Birth Registration

The current birth registration system in the ROK requires parents with Korean nationalities to report the birth of their child.¹⁶⁷ The government amended the Act on the Registration, etc. of Family Relationship to allow prosecutors or heads of local Governments to register a child’s birth.¹⁶⁸ However, the Act does not provide for any monitoring mechanisms to determine the parents’ compliance with their birth registration obligations. In this regard, the government proposed an Amendment Bill to mandate all healthcare providers to notify births to the government,¹⁶⁹ but there are concerns as the government has also tried to introduce the system allowing anonymous birth which violates the right of children to know their parents and be looked after by them. Also, there is no way for the children of foreign nationals to be registered. Parents may register through the embassies of their nationalities; however, refugees are often reluctant to approach to register their children’s births at embassies of the government which in many cases have persecuted them, leading to their refugee status. **The government should provide a universal birth registration system that guarantees all children born within the jurisdiction of the Republic of Korea to be officially registered regardless of parent’s nationality, race, religion, legal status, and origin.**

57. Adoption

ROK is one of the countries that have sent large numbers of children overseas,¹⁷⁰ but entrusted the international adoption to private institutions. The Committee on the Rights of the Child has made recommendations to the Korean government to consider ratifying the Hague Convention on International Adoption and enact a bill on international adoption, however the recommendations have not been implemented yet. In the cases of domestic adoption, private

¹⁶⁶ Article 4(1) of the Juvenile Act (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=51556&lang=ENG).

¹⁶⁷ Article 46 of the Act on the Registration, etc. of Family Relationships

(https://elaw.klri.re.kr/kor_service/lawView.do?hseq=56258&lang=ENG)

¹⁶⁸ Article 46(4) of the Act on the Registration, etc. of Family Relationships

(https://elaw.klri.re.kr/kor_service/lawView.do?hseq=56258&lang=ENG)

¹⁶⁹ The Amendment Bill of the Registration, etc. of Family Relationship, Bill No. 2114860, proposed on 4 March 2022, (Korean)

http://likms.assembly.go.kr/bill/billDetail.do?billId=ARC_I2N2C0K3K0U4T1R5P3T114K9N2C4H8

¹⁷⁰ 168,098 children have been sent for adoption from 1953 and 2020: ISS(International Social Service) IRC(International Research Center) Monthly Review No.257 December 2021

adoption exists which is adopting a child under the Civil Act by entering into an adoption agreement between individuals. The eligibility requirements under the Civil Act are less strict than those of institutional adoption. The adoptive parent following the private adoption procedure is not required to have prerequisite training, nor subject to the follow-up management procedure. It leads to the high rate of dissolution of adoption and abuse of adopted children. **The government should ratify the Hague Convention on International Adoption and enact the domestic laws to implement the Convention. The government also should take all necessary measures to monitor and manage both institutional and private adoption procedures, based on the principle of best interests of the child.**

58. Child Protection System

The number of reports of child abuse in Korea is increasing every year, the rate of repeated abuse in the past five years (2016-2020) is about 10%, and 201 children died from child abuse¹⁷¹. In January 2021, parents' disciplinary rights regulations were removed to prohibit corporal punishment at home,¹⁷² and criminal penalties for perpetrators of child abuse have been strengthened. The current child protection system of ROK, however mandates immediate separation of children from their families of origin with only two reports of child abuse which is contrary to the principle of children to be protected and looked after by parents. Also, if a child victim of abuse is placed in welfare facilities for people with disabilities or a protection facility for victims of sexual violence, the responsible ministry is changed resulting the child protection system being cut off. In the absence of a housing policies for children who run away due to family abuse and neglect, many homeless children who refuse to be accommodated in institutions are exposed to crimes, such as sexual exploitation or fraud.¹⁷³ **The government should establish a system for early detection of child abuse, regular management and supervision, and prevention of recurrence of child abuse, and secure resources for family-based childcare or alternative housing with support. In addition, a consistent child-rights based support system should be established by introducing deinstitutionalization policies¹⁷⁴ with comprehensive plans and prepare policies for youth housing rights in accordance with the housing priority principle.**

59. Political Rights of Children

According to Article 60 (1) 2 of the Public Official Election Act, the election campaigns of children and teenagers are prohibited in ROK. Also, since the "election campaign" in the Article includes all acts supporting or opposing a specific political party or a candidate, it infringes on the right to participate in public affairs, freedom of expression, association, and peaceful assembly of children. There have been cases where a child is being investigated by

¹⁷¹ The Statistics of Child Abuse & Neglect Korea 2018; The Statistics of Child Abuse & Neglect Korea 2020.

¹⁷² Article 915 of the Civil Act (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55222&lang=ENG)

¹⁷³ Only about 30,000 children use youth shelters among the 270,000 "Runaway youth" per year (as of 2018) estimated by the Ministry of Gender Equality and Family. (<https://korea.stripes.com/community-news/invisibility-homeless-youth>). In addition, sexual minorities experienced discrimination because of their Sexual Orientation and Gender Identity, and it is difficult for transgender teenagers to enter shelters divided by gender binary in accordance with the Ministry of Gender Equality and Family's guidelines (<https://www.bbc.com/korean/news-57620792>).

¹⁷⁴ According to the statistics provided by the Ministry of Health and Welfare, facility protection refers to measures to deploy child care facilities, temporary care facilities, disabled child facilities, and joint living families. As of 2020, 66% of child protection measures are provided by facility protection.

the police because of his participation in the election campaign.¹⁷⁵ In addition, children under the age of 16 are prohibited from joining political parties, and children under the age of 18 can join political parties only after submitting the consents of their legal representatives.¹⁷⁶ Though the legal age limit for election campaigns and party membership has been lowered, political activities in schools are mostly restricted by principals and school administrators in the name of “maintaining order” in schools and guaranteeing the right to study and the right of education. Furthermore, school rules banning political activities that existed before the lowering of the voting age, still remain in many schools.¹⁷⁷ **The government should abolish the laws limiting children from active participation in election campaigns and joining political party membership and guarantee the students’ civil and political rights which have been restricted by school rules. Furthermore, the government provides education to promote the children’s right to participate in public affairs.**

60. Rights of Children in Schools

Direct corporal punishments in schools are prohibited by the Student Human Rights Ordinance in some regions, the Enforcement Decree of the Elementary and Secondary Education Act, and the Child Welfare Act across the nation. However, as the relevant provisions of the Enforcement Decree of the Elementary and Secondary Education Act have been interpreted as only prohibiting direct punishment, indirect corporal punishments that force students to take painful actions or feel humiliated are still occurring. The government does not explicitly prohibit or apply sanctions against such indirect corporal punishments and disciplinary punishments. In addition, the dress codes that students should follow in schools are still dependent on the arbitrary decisions of the principals. Most of the middle and high schools enforce uniforms, and the schools regulate clothing and overcoats according to the season and period.¹⁷⁸ ¹⁷⁹ Though the rules infringe on students’ human rights,¹⁸⁰ the current legislation states that the school rules should be enforced according to the judgments and discretion of the principal. The government should monitor and actively intervene in schools’ violation of the rights of students by enacting and amending laws to guarantee students’ human rights.

¹⁷⁵ Hankyoreh, ‘Don’t laugh at the name of the law... 14 years old, the perfect age for politics’, 08 November 2020.(Korean) <https://www.hani.co.kr/arti/society/schooling/968976.html>

¹⁷⁶ Article 22(1) and Article 23(1) of the Political Parties Act
https://elaw.klri.re.kr/kor_service/lawView.do?hseq=49487&lang=ENG

¹⁷⁷ Ohmynews, ‘18-year-old high school student election campaign, shouldn’t it go against the will of the principal?’, 21 February 2022 (Korean)

http://m.ohmynews.com/NWS_Web/Mobile/amp.aspx?CNTN_CD=A0002812136

¹⁷⁸ Hankyoreh, ‘From head to toe, ‘the principal’s discretion’... Where are student rights?’, 18 January 2022.(Korean) <https://m.hani.co.kr/arti/society/schooling/1027734.html>

¹⁷⁹ For example, at a private middle school in Busan, long down coats that fall below knees are prohibited, and another public industry-specialized high school in the same area prohibits certain hairstyles, even hair claws and curling irons.

¹⁸⁰ According to a survey in 2022 by the Solidarity for the Candlelight Youth Human Rights Law Enactment, it was reported that 53 cases of human rights violations were collected from 38 schools in 13 metropolitan cities and provinces across the country. For instance, a person in a boarding high school in North Gyeongsang Province has filed a complaint with the National Human Rights Commission of Korea, claiming that the school rule violates the students’ freedom because it prohibits students from carrying cell phones in the dormitory and allows seizing other electronic devices for one month if they are used outside the designated area. There exist some school rules that infringe on the freedom of students’ privacy, ones that permit disclosing personal information including grades or inspecting personal belongings without the students’ consents and other rules that violate students’ freedom of speech on the ground that they are immature and some limitations of the freedom are needed for their education.

61. National Machineries for Gender Equality

President Yoon pledged to abolish the Ministry of Gender Equality and Family (MOGEF) during his presidential campaign, saying that there is no systemic gender discrimination in society, and therefore, the MOGEF is no longer necessary. Despite strong and consistent criticism from many CSOs, women's groups and citizens¹⁸¹ at national and international levels, he has not yet withdrawn his promise¹⁸². Meanwhile, the statistics show that women are still marginalized in public areas and experience various gender-based discrimination and violence in daily lives.¹⁸³ Based on the recognition of "such systemic gender inequalities", the government has its obligation to take the proactive lead to transform gender-discriminatory social structure and ensure that all laws/policies are applied equally to everyone, including by closely assessing the gendered impacts of laws/policies. The MOGEF, mandated to play such roles, however, operates with extremely inadequate budget (0.24% of the nation's annual budget)¹⁸⁴ and human resources (277 officials, 2021). **The government should immediately withdraw its pledge to abolish the MOGEF and take measures to strengthen the capacity of national machineries for gender equality, in line with the Beijing Platform for Action in 1995 and the 65th Agreed Conclusions of the Commission on the Status of Women in 2021, including by reinforcing the mandate and the role of the MOGEF and creating a department exclusively dedicated to gender equality policy in all ministries.**

62. Gender Wage Gap

Gender wage gap in ROK is the highest among the OECD countries (31.5%, 2020). Research has shown that discrimination based on gender, whereby a job done by a woman is perceived as worth less than a similar job done by a man, which cannot be explained by objective reasons, accounts for 66.5% of the factors of gender wage gap in ROK¹⁸⁵. The new president Yoon made 'Gender Wage Disclosure System' a pledge during his presidential campaign but there is a limitation as it relies on voluntary participation by companies. Gender wage gap is driven by multiple factors, including discrimination in recruitment; job allocation; promotion processes, types of employment and years of service. **The government should adopt a gender wage disclosure system in a comprehensive manner not only in public institutions but also in the private sector; and take active policy actions based on such information on wages with a view to addressing the gender wage gap.**

¹⁸¹ Various local, national and international CSOs, as well as individuals have so far released statements and signed petitions to express strong concerns about the president Yoon's position on women's rights and call on him to withdraw his pledge to abolish the MOGEF, including 1) the Joint statement of 116 global CSOs 3 April 2022, (Korean) <http://women21.or.kr/statement/19468>); 2) the joint statement of 643 Korean women's rights groups and CSOs 25 Mar 2022 (Korean) <http://women21.or.kr/statement/19436>); and 3) the petition signed by 10,791 Korean citizen as of 12 May 2022 (Korean) http://women21.or.kr/index.php?mid=statement&page=3&document_srl=19361)

¹⁸² Amid continuing controversy over the existence of the MOGEF, the president Yoon appointed the head of the MOGEF on May 17. Kim Hyun-sook, a new minister, said that she agrees with Yoon's position on the abolishment of the MOGEF, which brought much criticism from the public.

¹⁸³ According to the 2021 Global Gender Gap Report of the World Economic Forum, RoK ranked 102nd out of 156 countries on the gender equality scale. It also has the highest gender wage gap among the OECD countries at 31.5% (2020). The rate of women public officials at senior managerial levels is 10%, and women make up merely 5.2 % of boards in companies (MOGEF, 2021).

¹⁸⁴ BBC, "Why misogyny is at the heart of South Korea's presidential elections", 9 Mar 2022, <https://www.bbc.com/news/world-asia-60643446>

¹⁸⁵ Kim Nan-joo (2022), Presidential Committee on Ageing Society and Population Policy, (Korean) <http://www.betterfuture.go.kr/front/notificationSpace/columnDetail.do?articleId=178>

63. Gender Discrimination in Hiring Process

Gender discrimination in hiring is a prevalent and persistent issue in ROK. It is reported that companies often manipulate the scores of women applicants to exclude women in favor men in their hiring process or ask sexist questions to women candidates at job interviews¹⁸⁶. However, such companies are mostly acquitted or receive very light penalties. Since the recently revised law¹⁸⁷ includes the relief procedures regarding gender discrimination in workplace, the employees concerned now are able to request corrective measures. This is a step forward as compared to the past where the law only imposed penalties on employers, but it is still not a preventive but a reactive action in that an individual has to file a claim once discrimination has taken place. **The government should take proactive measures to prevent gender discrimination in hiring process, including by adopting a disclosure system of gender-segregated data on applicants in all phases of the hiring process.**

64. Emerging Forms of Cyber Sexual Violence

In the recent years, new forms of cyber sexual violence on online platforms have become highly prevalent in ROK. The online platform operators are earning massive profits by committing organized crimes of sexual exploitation on cyber space, and the number of victims and victimization scales are unimaginably large. However, they are mostly not punished or receive extremely mild punishments due to the absence of legislation.¹⁸⁸¹⁸⁹ The forms of cyber sexual violence without using exploitative materials are expanding widely: sexual abuse and stigmatization of victims of sexual violence, including by disseminating personal/fake information on and creating false SNS accounts of them, cyber-stalking, verbal sexual harassment on online chat rooms. However, most of them are not regulated by current law. Article 13¹⁹⁰ of the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes is the only legal provision which deals with online sexual harassment as a form of sexual violence, and there is a limitation in that it only covers the acts of sending victims materials (word, pictures, or video clips) that may cause a sense of sexual shame or aversion. **The government should take active measure to eliminate cyber sexual violence through online platforms, including revising legal provisions on sexual violence to deal with the online sexual exploitation platform operators. Also, the government should provide legal provisions to**

¹⁸⁶ CNN, “South Korea's glass ceiling: the women struggling to get hired by companies that only want men”, 2 Feb 2019, <https://edition.cnn.com/2019/01/31/asia/south-korea-hiring-discrimination-intl/index.html>

¹⁸⁷ The Equal Employment Opportunity and Work-Family Balance Assistance Act (https://elaw.klri.re.kr/kor_service/lawView.do?hseq=57051&lang=ENG)

¹⁸⁸ The Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes. (Article 14, para. 3) deals with the acts of circulating sexual exploitation materials for the purpose of profit-making against a victim's will; and the Act on the Protection of Children and Youth Against Sex Offenses (Article 11, para. 2) criminalizes the acts of selling child or youth sexual exploitation materials for commercial purposes. However, the acts of operating online platforms where sexual exploitation materials are being circulated and sold are not punishable by such laws.

¹⁸⁹ For instance, as there were no suitable criminal charges which can be applied to the infamous cyber sexual crime perpetrators in ROK, including 1) Yang Jin-ho (center of a so-called “Webhard Cartel”); 2) Son Jung-woo (host of the “Welcome To Video”, the world's biggest child sexual exploitative website); and 3) Cho Ju-bin and Moon Hyung-wook (main perpetrators of the “Telegram Nth Room” case), they were not appropriately punished.

¹⁹⁰ Article 13 (Obscene Acts by Using Means of Communication) A person who sends another person any words, sounds, writings, pictures, images, video clips or other things that may cause a sense of sexual shame or aversion by telephone, mail, computer, or other means of communication, with intent to arouse or satisfy his/her own or the other person's sexual urges, shall be punished by imprisonment for not more than two years or by a fine not exceeding twenty million won.

deal with online sexual harassment as a form of sexual violence, with a view to prosecuting perpetrators and bringing them to justice, as well as treating victims as those of sexual violence and providing appropriate support to them.

65. Decriminalizing Women in Prostitution

The Act on the Punishment of Arrangement of Commercial Sex Acts defines prostitution as a form of violence against women and stipulates assistance for those in prostitution to recover and exit the sex trade. Yet, the law continues to penalize them for participating in prostitution. Most women are not regarded as victims of prostitution because the investigative authorities interpret the immunity clause for the victims in an excessively narrow manner.¹⁹¹ However, the government has yet to make an effort to amend the relevant legislation. Despite the 2019 legislation of the Framework Act on Prevention of Violence against Women, which also declared prostitution as a form of violence against women, prostituted women continue to make up the most significant number of those penalized based on the anti-prostitution law rather than sex buyers and intermediaries. According to the statistics published by the National Police Agency in 2020, the number of those arrested for prostitution was 339, consisting of 254 prostituted women and only 63 sex buyers (22 unknown).¹⁹² **The government should reaffirm its view on prostitution as a form of exploitation and violence against women and amend the penalty clause to fully decriminalize those in the sex trade while deterring procurement and demand.**

66. Pregnant Women outside Marriage

In ROK, many women who get pregnant outside marriage face conflicts with their family members, and housing and financial difficulties. According to the statistics, approximately 80% of all unwed mothers suffer from postpartum depression due to such hardships.¹⁹³ In 2019, the Constitutional Court ruled that the punishment of abortion under the Criminal Act was unconstitutional, however the relevant laws have not been amended yet. While the provision of a support system for pregnant women is particularly necessary for single mothers, the government has failed to provide sufficient support for non-marital pregnancy or childbirths. As the children's birth registration and social support are provided on the premise of marriage relationships of their parents in ROK, women who get pregnant outside marriage experience systematic and legal difficulties. Children born to unwed parents, especially children from unwed fathers and children born outside marriage, face difficulties in birth registration and the community of unwed parents are excluded from a social support system which largely relies on family support. The unwed parents are even excluded from support for single-parent families. **The government should provide practical services for mothers expecting children, including supports for abortion, information on child rearing and housing, and medical support. The government also should improve its birth registration system to allow children born to unwed parents to be registered without difficulties. Additionally,**

¹⁹¹ CEDAW recommended that the state prohibit penalizing prostituted women and specifically mentioned in its 49th report that the Republic of Korea "review its prostitution policy and relevant legislation, including the Criminal Code, with a view to decriminalizing women's involvement in prostitution and ensuring that women involved in the sex trade are not punished." (CEDAW/C/KOR/Q/7)

¹⁹² The Statistics on crimes and following arrests:

https://kosis.kr/statHtml/statHtml.do?orgId=132&tblId=DT_13204_2011_211 (Korean)

¹⁹³ Korea Institute for Health and Social Affairs, Childbirth and Child-Rearing in Unwed Mothers' Families and Policy Implications, 2019. p113

the government should revise the law to ensure a comprehensive social support system covering health care, social welfare and housing for the community of unwed parents.

K. Official Development Assistance (ODA) / International Development Cooperation and Human Rights

The government announced that it would accept the third UPR recommendation, 'human rights based approach (HRBA) in development projects', but there is no vision and strategy for realizing the HRBA throughout international development cooperation projects. Although the government confirmed that it would strengthen the 'consideration of gender and human rights in project planning' in the 3rd Basic Plan for International Development Cooperation (2021-2025) and also KOICA, a governmental agency dedicated to providing grant aid programs, has promoted the implementation of the HRBA, human rights issues including environmental destruction, involuntary migration, and violations of the indigenous people's human rights has occurred frequently in large-scale development projects such as concessional loans. **The government should introduce a project implementation system based on human rights-based approach and implement the human rights assessment system to prevent human rights violations by expanding these to all concessional loans and grant aid.** Meanwhile, The Economic Development Cooperation Fund (EDCF) of the Korea Exim bank (Export-Import Bank of Korea), which provides concessional loans, and KOICA require partner countries to set up windows for receiving complaints from local residents in accordance with the 'Safeguard'. However, if the partner country ignores or fails to resolve the complaints from the locals such as objections, grievances or violations of safeguards, a feasible mechanism to supplement or resolve them does not exist. **The government should establish a system, which allows residents affected by international development cooperation projects to raise objections directly to aid agencies, and an accountability mechanism that covers the entire process of investigation, deliberation, and problem resolution.**

L. Climate Crisis and Human Rights

In 2020, ROK declared '2050 carbon neutral' and enacted the 'Framework Act on Carbon-neutral Green Growth' in 2021. The law stipulates that the country will achieve carbon neutrality by 2050 and reduce national greenhouse gas (GHG) emissions by more than 35% compared to 2018. This GHG reduction goal of the government has been criticized by various stakeholders from youth to farmers as it is not enough to prevent the global average temperature from rising by 1.5 degrees.¹⁹⁴¹⁹⁵ The government continues to build coal power plants at home

¹⁹⁴ In October 2021 and February 2022, civil society organizations such as Korea Climate Crisis Emergency Action Network and Youth 4 Climate Action filed a constitutional complaint stating that 'Carbon-neutral Green Growth Framework Act' violates the Constitution.

Youth 4 Climate Action, Press Release, 16 Feb. 2022 (Korean)

<https://youth4climateaction.org/climate-litigation/?q=YToxOntzOjEyOiJrZXI3b3JkX3R5cGUiO3M6MzoiYWxsIjt9&bmode=view&idx=10566006&t=board>

Korea Climate Crisis Emergency Action Network, Press Release, 12 Oct. 2021 (Korean)

<http://climate-strike.kr/4022/>

¹⁹⁵ In December 2020, 41 citizens, including farmers, fishermen, delivery workers, construction workers, residents of areas with rising sea levels, and patients of climate depression, filed a complaint with the National Human Rights Commission of Korea for human rights violations caused by the climate crisis. It states that the right to life, health, the freedom of work, and to pursue happiness have been infringed because the government did not establish concrete climate policies (mitigation or adaptation) for the goals suggested by the Paris Agreement.

Green Korea United, Press Release, 22 Dec. 2020 (Korean)

and abroad and is pushing forward with the construction of new airports in Gadeok Island in Busan, Saemangeum in Jeollabuk-do etc. All these projects emit large amounts of GHG, thus accelerating the climate crisis. The building process of ‘2050 Carbon Neutral Scenario’, established by the government in 2021, was not democratic nor transparent. The participation of workers, farmers and other climate crisis frontline people was not guaranteed. The government has not established a proper “just transition” plan that secures workers’ right to work in the process of industrial transformation. 11 group companies in Korea which account for 64% of the country's total GHG emissions are substantially responsible for the climate crisis.¹⁹⁶ However, the newly launched government is making moves to ease the private companies’ responsibility for GHG emissions. In addition, the government is planning to promote the construction of nuclear power plants that could threaten people's right to life and health rather than expanding renewable energy. **The government should establish a new GHG reduction goal that meets the 1.5 degree target in accordance with climate justice. The government must stop the ongoing constructions of domestic and foreign coal power plants as well as building plans for new airports. A switching policy from nuclear to renewable energy should be established. A “just transition” policy for the frontline communities should be developed in the industrial transformation process and a climate policy must guarantee the basic rights of citizens affected by the climate crisis.**

<https://www.greenkorea.org/activity/weather-change/climatechangeaction-climate-change/86044/>

¹⁹⁶ Hankyoreh, “Top 10 groups emit 36% of national greenhouse gas... 64% including KEPCO”, 26 Oct 2021 (Korean) <https://www.hani.co.kr/arti/society/environment/1016677.html>