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Submitted by

South Korean NGOs Coalition (77 NGOs)
for the 3rd Cycle of the UPR on the Republic of Korea

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I. Background and Framework

1. This submission was jointly written by 77 NGOs in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 2nd cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2012, focusing on civil and political rights in the country.

A. Scope of international obligations and implementation

2. The Government has not ratified 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 Convention for the Protection of All Persons from Enforced Disappearance(CED), 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 reservation on Article 22 of the ICCPR. The Government has not ratified ILO core Conventions No. 29, 87, 98 and 105. Number of rulings refereeing to international human rights treaties at the court increased from 949 in 2000s to 1,959 in 2010s. However, most rulings are on the Refugee Convention or the ICCPR.¹ Decisions on the individual complaint by treaty bodies are not fully implemented under the excuse of discrepancy between national legislations. Also, there is no committee at the National Assembly to evaluation implementation of the UN recommendations. **The Government should present 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 Commission of Korea (Recommendation 14)

3. National Human Rights Commission of Korea (NHRCK) had its reaccreditation deferred three times in a row from 2014 to 2015, by the Sub-Committee on Accreditation of Global Alliance of National Human Rights Institutions (GANHRI-SCA, former ICC) for reasons including a lack of transparency and diversity in selecting its commissioners and lack of civil society engagement.² Although the NHRCK eventually maintained its A-status in May 2016, the GANHRI-SCA reiterated

¹ Supreme Court International Human Rights Law Society Members, Implementation of International Human Rights Law and the Court, 2013

² GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 9-13 May 2016, Pp.41-43,
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

its recommendation to make vacancy announcement and establish an independent body for the selection of commissioners after criticizing there is no consistent selection standards or process in the three appointing bodies of the President, the Supreme Court, and the National Assembly. Although a partial amendment to the National Human Rights Commission Act was made in January 2016, it does not stipulate the establishment of an independent selection and appointment committee, the development of transparent selection criteria, and the guarantee of full participation by and consultation with civil society. Moreover, the Guidelines regarding Principles and Procedures on Selection/Appointment of Commissioners of the NHRCK, which was prepared and recommended to the appointing bodies have no binding power. In fact, there have been a total of five commissioners (one standing commissioner and four non-standing commissioners) either newly appointed or reappointed since it received A-status in May 2016, however the recommendations by the GANHRI-SCA were not implemented except vacancy announcements made on the official website of the NHRCK, as no independent selection committee participated by civil society was established and selection criteria and process were not made public. In addition, as of March 2017, 8 out of 11 commissioners including the chairperson held a legal profession, which is far from guaranteeing diversity in the composition. **The Government should ensure the development of transparent procedures and criteria and establishment of an independent committee for selecting and appointing commissioners by amending the NHRCK Act in order to enhance the independency and effectiveness of the NHRCK. The Government should proactively accept the NHRCK's policy recommendations regarding human rights issues and integrate them in relevant government policies for effective implementation of the recommendations.**

C. Policy Measures – National Action Plan of Human Rights (Recommendation 15)

4. The Government announced that they included civil society members when forming the Evaluation Committee of the 2nd National Action Plan of Human Rights(NAP), however it is difficult to say so looking at the list that consists solely of academics, lawyers, researchers, and religious people. The 3rd NAP is scheduled to be implemented from 2017 to 2021 and the public hearing for its establishment was held on 30 September 2016, yet the draft of the NAP was not even disclosed at the hearing. It is already March 2017, a point in time when the 3rd NAP should have been implemented, but even its progress of establishment is unclear. An official of the Ministry of Justice said NAP work is on hold because the Minister of Justice needs to chair the working level consultation among Ministries that are supposed to be held after the public hearing from last year September but, currently, there is no Minister of Justice. Hence, it is uncertain when the 3rd NAP will be released or when the government ministries will reflect NAP in their work. **The Government should guarantee the participation of civil society organisations and disclose the entire process of NAP establishment in a transparent manner.**

II. Implementation of International Human Rights Obligations

A. Equality and non-discrimination

5. **Enactment of the Comprehensive Anti-Discrimination Act (Recommendations 21, 22, 23 and 24):** First proposed in 2007, the Anti-Discrimination Act has not been passed at the National Assembly despite three attempts. However, these proposers themselves retracted the draft bills after organized opposition from anti-LGBTIs and conservative Protestant organizations.³ The Government stated, “Legislative procedures have been delayed due to continuing social controversies surrounding aspects including grounds for the prohibition of discrimination” in the mid-term report of the 2nd cycle.⁴ However, it was the Government who caused a controversy at first, by excluding seven categories⁵ including sexual orientation from the Anti-Discrimination Bill in 2007.⁶ While the enactment of the law was thus being delayed, the Government neither disclosed its research for the legislation nor implemented public campaigns. Attempts to forge a cooperative relationship with civil society for the enactment were not made, either. **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 a clear language, through discussions with civil society and key stakeholders.**
6. **SOGI Rights (Recommendations 33, 34):** LGBTI persons in the ROK are subject to discrimination and stigmatization in both public and private spheres. According to the 2014 survey conducted by the NHRCK,⁷ 44.8% of the respondents experienced discrimination in employment due to their identity and 14.1% of lesbian, gay, and bisexual persons and 16.5% of transgender persons were found to have been fired or recommended for resignation because of their identity. Also, discrimination against LGBTIs and gender non-conforming youth is more serious.⁸ In the NHRCK survey on the hate speech in 2016, the respondents who experienced the most hate speech in both on-line and off-line were LGBTI persons. The Beyond the Rainbow Foundation, a LGBTI association, was denied its legal personality by the Ministry of Justice, ostensibly because the group works on a narrow human rights issue, which is sexual

3 Human Rights Monitor South Korea, “Comprehensive Anti-Discrimination Act Withdrawal: Korea human rights situation back tracks”, 5 May 2013. <http://www.humanrightskorea.org/2013/comprehensive-anti-discrimination-act-withdrawal-korea-human-rights-situation-back-tracks/>

4 Republic of Korea, Second universal periodic review mid-term progress update by the Republic of Korea on its implementation of recommendations made in October 2012, October 2012.

5 Seven deleted categories from 2007 Anti-Discrimination Bill: sexual orientation, military status, nationality, language, appearance, family type, ideology, criminal or detention record, and educational status.

6 Human Rights Watch, “South Korea: Anti-Discrimination Bill Excludes Many”, 6 November 2007. <https://www.hrw.org/news/2007/11/06/south-korea-anti-discrimination-bill-excludes-many>

7. National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

⁸ “54% of LGBTQ youth said they were harassed by their friends” National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

minorities, whereas the Ministry claimed that it can only register groups who work on broader “general human rights” themes.⁹ The Parade of the Seoul Queer Festival, a celebration of sexual minorities’ pride, was restricted by the opposition or the police ban in 2014, 2015, and 2016.¹⁰ The Ministry of Education has violated the right to information, health and education, which is a basic right of the youth, by excluding sexual minorities from the new sex education guidelines.¹¹

Article 92-6 of the Military Criminal Act¹² views consensual same-sex intimacy in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for such acts. In the ROK, where military service is mandatory (for a predetermined term) for most males, the clause constitutes a universal sodomy ban.¹³ Although the 2nd Universal Periodic Review in 2012¹⁴ and the Human Rights Committee in 2015¹⁵ have recommended the Government to abolish the clause, the Constitutional Court ruled that Article 92-5 of the former Military Criminal Act was constitutional on 28 July 28.¹⁶ **The Government should clearly and officially state that it does not tolerate any form of social stigmatization and discrimination, including violence against persons based on their sexual orientation or gender identity. It should repeal Article 92-6 of the Military Criminal Act, protect the freedom of assembly and association of LGBTI individuals and groups. It should also develop and carry out public campaigns and training to public officials to promote sensitivity and respect for diversity in respect of sexual orientation and gender identity.**

7. Racial Discrimination (Recommendation 30): Racial discrimination and hate speech against foreigners have been widespread both online and offline¹⁷ and some media

⁹ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2. at para. 49.

¹⁰ Human Rights Watch, Dispatches: No Parade, but Pride Preserves in South Korea, 1 June 2015

¹¹ Human Rights Watch, “South Korea Backslides on Sex Education”, 17 February, 2017

¹² 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 labour for not more than two years.

¹³ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011. <http://www.koreaherald.com/view.php?ud=20111215000521>

¹⁴ The United States’ recommendation: “to review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military.” UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea*, 12 December 2012, A/HRC/22/10, at para. 124.34.

¹⁵ “The Committee is concerned about: ... (b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to Article 92-6 of the Military Criminal Act... repeal Article 92-6 of the Military Criminal Act.” HRC, *UN Human Rights Committee: Concluding Observations: Republic of Korea* (CCPR/C/KOR/CO/4, para. 14).

¹⁶ Hankyoreh, Constitutional Court upholds military’s ban on sodomy, 8 August 2016. http://english.hani.co.kr/arti/english_edition/e_national/755208.html

¹⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, CERD/C/KOR/CO/15-16, para. 10

strengthens and proliferates negative recognition on other races in the country.¹⁸ The Christian Liberty Party¹⁹ spread slogan of anti-Islam and opposing the Anti-Discrimination Act during national assembly election campaign in 2016. Not took any measures by the Government, the election brochure of that party including incitement of a specific religion was distributed over the country, which rated 2.63% of all voters. However, the Government has not restricted or punished those actions, not having punishment regulation. **The Government should legislate the Act to stop racial discrimination and immediately provide anti-racial educational programs for all nationals.**

B. Right to life, liberty and security of the person

8. **Death Penalty (Recommendation 35):** In the ROK, the death penalty has not been carried out for the past 19 years since its last execution on 31 December 1997. However, the sentencing of the capital punishment continues. As of 31 December 2016, there are 61 death-row convicts and 4 more in the military. The Government has stated that it will review abolishing the death penalty taking public opinion and legal appraisal on the abolishment or execution of death penalty into consideration, yet it is not exerting any effort to actually abolish it. **The Government should raise public awareness about capital punishment being a punishment against the right to life through education and campaigns. In addition, the Government should join the declaration of moratorium on death penalty execution, stop the review of execution, and immediately abolish the death penalty. Furthermore, the sentences of all convicts on death row should be reduced to life sentences and the National Assembly should pass a special act on death penalty abolition and ratify the Second Optional Protocol to the ICCPR to eradicate capital punishment completely.**

9. **Prohibition of torture (Recommendations No. 3, 13, 16, 37):** Although CAT and Article 12(2) of the Constitution of the ROK²⁰ stipulate prohibition of torture, the national laws do not have a clear definition of torture or other cruel, inhuman or degrading treatment, and there are no penalty clauses based on the definition. According to the statistics from the country report submitted to the Committee Against Torture, the NHRCK received 8,207 petition related to human rights abuses including police brutality, violence, cruel treatment and the excessive use of force between 2012 and 2015, yet only 2 cases of them were reported to the police or requested to be investigated and the NHRCK made recommendations for 11 cases only. Also, the

¹⁸ 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. 60-62

¹⁹ Seoul Shinmum, Korean Islam says "Christian Liberty Party's materials maliciously defame Islam", 10 April 2016, <http://www.seoul.co.kr/news/newsView.php?id=20160410500132>

²⁰ Constitution of the Republic of Korea Article 12(2): No citizen shall be tortured or be compelled to testify against himself in criminal cases.

country report showed that prosecution rate is substantially low, considering only 20 people were prosecuted among thousands of reported cases related to torture including illegal arrest and imprisonment.²¹ **The Government should include a clear definition of torture, in line with the CAT, and penalty clause to domestic laws, and establish or consolidate relevant organizations and procedures to undertake investigations for torture or other cruel, inhuman or degrading treatment committed by national agencies. The Government should also immediately ratify the OP-CAT.**

C. Administration of justice and rule of law

10. Human Rights in the Military: Over the last five years, approximately 100 soldiers died every year in the military and 70% of those deaths are due to unidentified causes or suicide.²² When Private First Class Yoon of the 28th Division died in 2014 from abuse, there were strong demands for institutional improvement to prevent human rights violations in the military, including introducing military human rights officers('military ombudsman'). The Ministry of National Defense (MND) says it already has a hotline (Help Call) and other preventative measures in place.²³ However, civil society argues that the military's system does not protect the victims and penalize the assailant or responsible officers properly nor show meaningful improvement in reducing human rights violation cases.²⁴ The Framework Act on Military Status and Service enacted in 2015 stipulates that an officer for protection of soldier's human rights shall be assigned, yet as of February 2017, this has not been introduced. Cruel treatments and suicides slightly decreased but are still ongoing in the military.²⁵ **The Government should introduce independent 'military ombudsman' with unlimited access to related information and visitation without prior notice, through consultation with civil society and various stakeholders.**

D. Right to privacy, marriage and family life

²¹ Third to fifth periodic reports of State parties due in 2012: Republic of Korea, UN Doc. CAT/C/KOR/3-5, Annex Tables 23-26, 11 April 2016

²² Statistics Korea, Situation of death and accidents in the military (Year 2007~2016)
http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1701

²³ The Korea Times, Will military change itself this time?, 22 September 2014,
http://www.koreatimes.co.kr/www/news/nation/2016/11/180_165010.html

²⁴ South Korean NGOs Joint Action for Human Rights in the Military, Press Conference calling for the Amendment of Three Major Acts to Protect Human Rights In the Military, 1 December 2014,
<http://www.peoplepower21.org/Peace/1222541>

²⁵ In 2016 only, more than 80 soldiers died in the military, and 70% of them including suicide were because of abuse. Abuses cases are still existing even though they are not ended with suicide.
MBC News, Sexual abuse and put a fire on penis, abuse in the military still continues, 13 October 2016,
http://imnews.imbc.com/replay/2016/nwdesk/article/4138400_19842.html

11. Marital Rape and Domestic Violence (Recommendations 27, 39): The

‘Comprehensive Plan Against Domestic Violence’, enforced in 2013, views domestic violence as personal character, addiction such as alcohol addiction, psychological or domestic problems and focuses on policies to ‘maintain a normal family life’. Main reason of covering up domestic violence is a perspective that it is a private issue which does not require social intervention.²⁶ **The Government should take measures to change perspectives on domestic violence, aiming for raising awareness on gender equality and human rights.**

At the same time, indictment rate of domestic violence becomes lower. Because of a decision not to take measures and suspension of indictment under the condition of receiving counselling²⁷, domestic violence is not properly punished and victims are exposed to continued threats.²⁸ Also, the Government does not even categorize nor collect cases of spousal violence including marital rape into its criminal cases statistics. Even though divorce is filed due to domestic violence, the court orders couple counselling and allows right of access to a child, which threatens lift and safety of victims.²⁹ Moreover, the Government identifies assets of victims of domestic violence staying in shelter, and provides differential assistance. **The Government should amend the law which does not punish domestic violence perpetrator, with perspective to maintain family, and improve current support system which identifies victims of domestic violence with recipients of selective welfare.**

²⁶ Among victims of domestic violence, only 0.8% asked help to other people and among these cases, only 1.3% reported to the police. 68% was ‘No response to domestic violence’ which is the highest response, and 35.3% of no response replied the reason ‘because we are family’. Ministry of Gender Equality and Family, Situation of Domestic Violence, 2013.

²⁷ Indictment rate of domestic violence is 15% in 2013, and 13.3% in 2014 and 8.5% in 2015. According to ‘Guideline on suspension of indictment under the condition of receiving counselling’ by the Prosecutors’ Office, ‘possible habitual offender or second offender cases’ are also included. Accordingly, a serious case which requires criminal punishment receives suspension of indictment. Also, according to result of home protection cases in the last 3 years (2013-2015), 38.3% decision not to make measures and even if measures are taken, 31.4% is counselling and 16% is social service while measures to protect victims such as restraining order(1.61%) and limit to parental rights(0.02%) are minimal. UN Committee Against Torture, Consideration of reports submitted by States parties, Republic of Korea, 11 April 2016, CAT/C/KOR/3-5, The Office of Court Administration, Situation of Domestic Violence Cases, 2014-2016 Judicial Review

²⁸ On 4 June 2016, a perpetrator who had received counselling for five months under a home protection case abused and killed his wife a day after counselling. NocutNews, Habitual Domestic Violence victim was killed, one day after counselling with a police, 7 June 2016.

²⁹ [Case 1] A victim who had been abused by her husband for 14 years of marriage sought refuge in shelter and filed a divorce. However, the court ordered 10 times of couple counselling. The husband told the wife ‘if you come back home one night and stay with children, I will divorce you’ and she went back home. Unfortunately, that morning (4 May 2013), she was strangled to death by the husband. The Hankyoreh, Find a settlement with a husband who wanted to kill her... Wife was killed during a divorce suit, 22 May 2013

[Case 2] On 7 December 2015, a victim who was 4-month pregnant and 6-year old child were kidnapped and killed by ex-husband. He came to see them, using right of access to a child. Seoul Sinmun, Police could not prevent murder of Vietnamese Family, 14 December 2015

12. **The Resident Registration Number System:** While the Government told that it would accept the recommendation of the 1st UPR³⁰ which require the Government to review the resident registration system and limit the use of resident registration number(RRN) in order to protect privacy, RRN is still widely used in the public and private sectors. In January 2014, there were 105 million RRNs and financial information leaked from three credit card companies, which caused a serious damage to the public.³¹ The IMS health, a US company, bought 4.7 billion data of 44 million people including their RRNs and sensitive prescription data from pharmacies and hospitals nationwide and operates across the world.³² Although the processing of RRN may be enforced only if it is based on the Personal Information Protection Act since August 2014, exception laws are more than 1,000 and it even allows telecommunication companies to collect RRNs in order to verify user's identification for convenience of investigative agencies. The telecommunication companies and financial companies can verify personal identity through the Government designated 'identity verification institution' which is called I-PIN system as an alternative identification number, but this system is also based on the RRN. In December 2015, the Constitutional Court allowed the change of RRN to protect the public from the damage caused by the leakage of RRN. However, the Government does not allow to change first seven digits of RRN out of 13 digits which include birth and gender information.³³ **The Government should strictly restrict the use of RRN to essential cases for public service provision and prohibit the collection and use of it in the private sector. Furthermore, the numbering system should be changed to a serial number system that does not include personal information such as date of birth and sex.**

13. **Provision of warrantless communication data:** The investigative and intelligence agencies in the ROK can obtain subscriber's personal information such as name, ID, address, resident registration number, etc. from telecommunication companies without the court's warrant under Article 83 (3) of the Telecommunications Business Act. According to the Government statistics, of the total population of about 50 million, 10,577,079 subscribers' information was provided to those agencies in 2015 only. A vast amount of subscriber's information is being collected only by the arbitrary decision of those agencies without any external supervision on the procedure of

³⁰ Report of the Working Group on the Universal Periodic Review, Republic of Korea, 29 May 2008, A./HRC/8/40, p. 15

³¹ As of March 2017, the population of Korea is about 50 million and the economically active population is about 35 million.

³² IMS health purchased this information for about 2 billion KRW, and sold it to South Korean pharmaceutical companies for 7 billion KRW after processing those data through big data technique. See also http://khnews.kheraldm.com/view.php?ud=20150726000368&md=20150727003027_BL

³³ Sweeney, Latanya., Yoo, Ji Su, De-anonymizing South Korean Resident Registration Numbers Shared in Prescription Data, Technology Science, 29 September 2015, <http://techscience.org/a/2015092901/>

provision.³⁴ In November 2015, the UN Human Rights Committee recommended to the Government that "subscriber information should be provided only when there is a warrant.", but it has not been implemented yet. **The Government should amend relevant laws or abolish Article 83 (3) of the Telecommunications Business Act, for subscriber's information to be provided only when there is a warrant.**

14. DNA Collection: Since 2010, the police and prosecutors have been collecting DNA from the suspects, juvenile offenders, and those who have been arrested for 11 crimes such as sexual violence, and are building and operating a database. However, the object of DNA collection includes not only felonies, but also evictees, workers, and activists who were charged in protest to the Government or companies.³⁵ Although the operation of the national DNA database could infringe on human rights because it is likely that not only the parties involved but also their families would be the subject to investigation, the Constitutional Court ruled that the Act on Use and Protection of DNA Identification Information was constitutional in August 2014. **The Government should reconsider the operation of national DNA databases, or strictly review the possibility of recidivism when deciding the object of DNA collection, should not include juvenile offenders and suspects.**

15. Leakage of Information on Residents in Protected Facilities: The Government accepted the recommendation of the 2nd UPR to "strengthen information protection related to shelter for victims of domestic violence" and it minimized the collection of RRN in the Government database on such facilities. Nevertheless, the threat of personal information leakage continues, because the Government operates mandatory centralized system of personal information of victims and employees nationwide on the grounds of supporting victims of violence against women such as domestic violence, sexual violence, and prostitution. In 2014, the Ministry of Gender Equality and Family has revised the enforcement ordinances related to the support of victims of violence against women and specified the collection of RRN in the system. From May 2017, it will be possible to change the RRN of victims of violence against women, but newly issued RRN will still maintain the first 7 digits of 13 digits, indicating the date of birth and gender. **The Government should abolish the mandatory requirement collecting personal information of victims of sexual violence and domestic violence in the**

³⁴ In May 2015, 500 people have filed a constitutional suit with the help of a civic group and are awaiting a ruling. Oral Statement delivered by PSPD and MINBYUN-Lawyers for a Democratic Society at the 32nd Regular Session of the UN Human Rights Council, Interactive Dialogue with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 16 June 2016, http://www.peoplepower21.org/index.php?mid=English&page=2&document_srl=1427976&listStyle=list

³⁵ Joint Statement of 5 South Korean NGOs, The authorities' conducts to take DNA samples from those 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, 9 July 2013, <http://act.jinbo.net/wp/7631/>

central system, and establish a separate bill that takes into account the specificity of victims of violence. When changing the RRN of victims of violence against women, newly issued RRN should be a serial number system that does not include personal information such as date of birth and sex.

E. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

16. Right to Freedom of Peaceful Assembly (Recommendation 36): The Government has arbitrarily applied the Assembly and Demonstration Act(ADA), making it as a de facto registration system and violated rights of participants by abusing governmental power.³⁶ The statistics of the notice of ban issued by the police in Seoul between 2011 and 2016 shows that the police have banned 447 cases (42.2%) out of 1,059 cases for based on flow of traffic.³⁷ According to the article 12 of the ADA³⁸, the head of the police authority may ban or restrict an assembly or demonstration on a main road if it is deemed to be necessary for smooth flow of traffic. Furthermore, the article 11 of the ADA which prohibits any assembly and demonstration in certain areas seriously violates people's right to peaceful assembly and demonstration. On the day of the People's Rally in November 2015, a 69-year-old farmer was knocked to the ground by high-powered police water cannons. He had remained in a coma for 317 days and passed away on 25 September 2016. However, the Prosecutor's Office has not made much progress in terms of investigation until today(March 2017) and no one has been punished yet. The work of 'Advisory Committee on Assembly and Demonstration', run by the police, has been criticized for vagueness of its activity and the lopsided composition of the members.³⁹ **The Government should repeal the article 11, 12 of**

³⁶ Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and association who officially visited the Republic of Korea in January 2016, expressed his concern through his mission report that if notification is mandatory, particularly when they leave no room for spontaneous assemblies, notification regimes for assemblies may become de facto authorization requirements. He also expressed deep concern about indiscriminate use of water cannon and bas barricade by the police in assembly and protest.

A/HRC/32/36/Add.2, para.19,33, 37

³⁷ AP News, Most frequently used reason for notice of ban of assembly is traffic flow, 10 November 2016, <http://www.yonhapnews.co.kr/bulletin/2016/11/10/0200000000AKR20161110166600004.html>

³⁸ Article 12 of the ADA (Restriction on Assembly or Demonstration for Smooth Flow of Traffic): (1) The head of the competent police authority may ban an assembly or demonstration on a main road of a major city as determined by Presidential Decree, or may restrict it, specifying conditions for the maintenance of traffic order if it is deemed to be necessary for smooth flow of traffic. (2) If the organizer of an assembly or demonstration assigns moderators for the occasion of parading along the road, the ban as referred to in paragraph (1) shall not be ordered: Provided, that if such assembly or demonstration could cause obstruction to the smooth flow of traffic on the road concerned and other roads nearby, thus giving rise to serious inconvenience to traffic, the ban as referred to in paragraph (1) may be ordered.

³⁹ According to MP Park Nam-choon, 112 out of 217 members of Advisory Committee on Assembly and Demonstration run by the Seoul Police Agency were presidents or interested persons of organizations which

the ADA, guarantee notification regimes for assemblies in practice, and immediately stop excessive use of force including water cannon and gas barricade in peaceful assemblies.

17. **Freedom of Opinion and Expression (Recommendation 50, 51, 52):** According to Article 44-2 (Temporary Measures) of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., a person claiming to be a victim makes a request to delete a post, it is mandatory for providers of information and communications services to delete it, even though it is temporary. This measure blocks the reported post temporarily, up to 30 days, which can deprive the publisher of one's 'timeliness' of expression. The Government says the publisher have the right to file formal objections regarding this matter, yet this right is not guaranteed by law. The actual number of objection filed by the publishers is about 5 % of the total number of temporary measures,⁴⁰ and the remaining 95% is deleted by the service providers according to the requests.

Korea Communications Standards Commission (KCSC), an organization the Government insists on being private, has been confirmed as an administrative body by the court in terms of committee composition and budget securing.⁴¹ This means that KCSC can make deliberations at the request of the Government as a de facto administrative organization. **The Government should abolish 'temporary measure' or amend the law in a way to guarantee publishers with rights equal to those asserting to be victims and change the obligatory temporary measures to**

represent business, hospital or private educational institute, etc. Only 5% of the members were recommended by civil society groups.

[Table 1] Composition of the members of Advisory Committee on Assembly and Demonstration run by police stations in Seoul (as of June 2014)

Police stations running the committee	Total	Classification by recommendation			
		Lawyer, Tax account	Professor	Person recommended by civil groups	Representative of local residents
32 police stations(the National Agency) in Seoul	217	32	34	12	139
Component ratio (%)	100	14.7	15.7	5.6	64

[Table 2] Details of the representatives of local residents in Advisory Committee on Assembly and Demonstration

Total	CEO or executive of business	Director of hospital or Manager of pharmacy	Director of kindergarten or private educational institute	Etc.
39	86	15	11	27
Component ratio (%)	62	11	8	19

⁴⁰ Yoo Seung-hee, MP of the Democratic Party of Korea, Press Release, Around 1.43 million posts were deleted by temporary measure on the Internet, 10 September 2015

⁴¹ Seoul Administration Court, 2009Guhab35294, Sentence 11 February 2010 4

voluntary. Moreover, it should also abolish communications deliberation by KCSC since it is a de facto administrative body.

Defamation⁴² and insult⁴³ in the Criminal Act are representative clauses that violate freedom of expression in the country. Consumer reviews on products or criticism of politicians including the President and senior officials have received criminal punishment because of defamation and insult law. Due subjective feelings of being insulted, criticism regarding senior bureaucrats, politicians and other people in power have been punished as well. **The Government should abolish the defamation law in the Criminal Act and get rid of the insult law since even the court cannot provide a consistent standard for the latter.**

18. **Freedom of Expression for Public Officials:** Unlike the general citizen, public officials and teachers in elementary and secondary school are totally prohibited from expressing their political opinion and affiliating to a political party under the Political Parties Act, Public Official Election Act, State Public Official Act and Local Public Official Act and are subject to criminal sanctions. Moreover, the Public Official Election Act puts a comprehensive restriction on participating in election campaign by employees in public institutions and cooperatives⁴⁴, even though they are not public officials or teachers but civilians. The duty of political neutrality is imposed on public officials, teachers and employees in public institutions and cooperatives to maintain impartiality in public services. However, those who are subject to the laws are excessively prohibited from exercising their rights to freedom of expression in their daily lives outside of their duty. **The Government should revise the related laws so that freedom of expression for public officials who are not in senior executive or elected position, teachers, employees in public institutes and cooperatives are fully guaranteed.** ⁴⁵⁴⁶

⁴² Criminal Act Article 307 (Defamation): (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison 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 for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.

⁴³ Criminal Act Article 311 (Insult): A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

⁴⁴ Employees in Δstate and local government Δinstitutions at least 50/100 shares of which are owned by the Government, Δcooperatives established under the Agricultural Cooperatives Act, the Fisheries Cooperatives Act, the Forestry Cooperatives Act, the Tobacco Producers Cooperatives Act, and Δlocal public corporation or local industrial complex .

⁴⁵ With regard to the political activity by public officials and teachers, the UN special rapporteur pointed out that this prohibition based on a largely vague notion - ‘political activity’ - imposes broad constraints on the ability of these categories of individuals to express themselves on a wide range of issues under the guise of maintaining ‘political neutrality’. (A/HRC/32/36/Add.2)

19. **Freedom of Expression during Election:** According to Article 93(1) of the Public Official Election Act, offline freedom of expression is still constrained during election period.⁴⁷ Even during the 2016 General Election, individuals and civil groups who expressed opinions regarding candidates or political parties had to go through search and seizure and prosecution for violating the Public Official Election Law and the trials are still in progress.⁴⁸ Problems still exist with online freedom of expression as well during election period. Even though the Internet Identity Verification system was abolished by the Constitutional Court in 2012, the Internet Real Name system for the election period remains in place in accordance with Article 82-6 of the Public Official Election Act. This is a problem because personal information of the publisher is provided to investigation agencies without much restriction. **The Government should abolish Article 93(1) and Article 82-6 of the Public Official Election Act to guarantee freedom of expression during election period.**

20. **Conscientious Objection (Recommendation 53):** The ROK imprisons the most conscientious objectors out of any country in the world with some 600 currently in jail. However, the Government refuses to introduce an alternative service system on the grounds of tensions between two Koreas, jeopardizing social cohesion and the lack of public consensus on the matter. Furthermore, in accordance with the December 2015 revision to the Military Service Act, the personal information including the name, age and address of 237 military service evaders has been publicly released on the Military Manpower Administration's website of which more than 160 have been confirmed as conscientious objectors.⁴⁹ There has also been increasing support for the need for an alternative service system from inside the Government including 18 not guilty rulings were handed in lower court trials between 2015 and the time of writing in March 2017

⁴⁶ The Committee of Expert on Application of Conventions and Recommendations urged, in its report to the ILC 105th session, 2016, the Government to take immediate measures to ensure that elementary, primary and secondary school teachers enjoy protection against discrimination based on political opinion regarding activities outside the classroom and the school and unrelated to teaching, as provided for in the Convention, and are not subject to disciplinary measures for such reasons.

⁴⁷ Public Official Election Act Article 93(1): No one shall distribute, post, scatter, play, or run an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party (including the preparatory committee for formation of a political party, and the platform and policy of a political party; hereafter the same shall apply in this Article) or candidate (including a person who intends to be a candidate; hereafter the same shall apply in this Article) or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provisions of this Act, from 180 days before the election day (the time when the reason for holding the election becomes final, in case of a special election) to the election day: Provided, That the same shall not apply to acts falling under any of the following subparagraphs.

⁴⁸ Change 2016, We Condemn Repression of Legitimate Voter Actions, 16 June 2016,

http://www.peoplepower21.org/index.php?mid=English&page=2&document_srl=1429084&listStyle=list

⁴⁹ Ministry Manpower Administration, Public List of Military Service Evaders,

<http://open.mma.go.kr/caisGGGS/bygp/list.do>

and an appeals court not guilty ruling (Gwangju District Court Appellate Division, October 2016). In addition, the field of alternative service is already broad with around 80,000 carrying out alternative service in special research and social welfare positions including auxiliary police and fire fighters.⁵⁰ An alternative service system for conscientious objectors without military training could easily be created through the existing alternative service system. **The Government should immediately introduce alternative service for conscientious objectors and immediately repeal the system for publicly releasing the personal information of military service evaders.**

21. **National Security Act (Recommendations 54, 55, 56, 57):** The Government has arbitrary applied the National Security Act to silent dissents.⁵¹ In 2008, 46 people were arrested for violating the NSA, but the number had increased to 129 in 2013, and 70 people were detained and indicted charged under the Act. Detained, prosecuted and punished cases for violating Article 7 of the NSA even include cases having a formal meeting with Democratic People's Republic of Korea (DPRK) as a part of South and North Exchange and Cooperation with the approval from the government of the ROK⁵², retweeting the DPRK government's official twitter⁵³, singing the 'Revolution Comrade Song' (Supreme Court, 2014 Do 10978), selling books on socialism.⁵⁴ **The Government should immediately repeal the National Security Act, which is used to repress freedom of opinion and expression and freedom of assembly, and to silence political opponents.**

22. **Security Surveillance Act (Recommendation No. 58):** Security Surveillance System, a mandatory reporting system for those who are sentenced more than 3 years for violations of the NSA on their activities every 3 months, cannot but causes serious infringement on human rights for following grounds: 1) Minister of Justice, not the judiciary, makes a decision upon prosecutors' request, 2) it may be used to control freedom of opinion 3) those who served their time are subject to double jeopardy based on a vague criteria as high propensity to re-offend 4) period of surveillance can be renewed indefinitely starting from 2 years. 5) mandatory reporting regarding main activities involve privacy across broad subject, such as family and friend relations, occupation, property status of one's own and family, education, work experience,

⁵⁰ Ministry Manpower Administration Statistical Yearbook 2015

⁵¹ Statistics Korea, Current status of public security related cases by crime type-Violation of NSA, http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1745

⁵² Pressian, Prosecutors charged 3 executive members of Pomchonghakryon (The National Alliance of Youth and Students for National Reunification) for violation of NSA, 24 June 2009, <http://www.pressian.com/news/article.html?no=95549>

⁵³ CNN, South Korean 'joke' may lead to prison, 4 July 2012, <http://edition.cnn.com/2012/07/03/world/asia/south-korea-north-joke/>

⁵⁴ Yonhap News, Arrest warrant issued for representative of 'Book of Workers', electronic library, 4 January 2017, www.yonhapnews.co.kr/bulletin/2017/01/04/0200000000AKR20170104171500004.HTML

religion and membership of organizations.⁵⁵ **The Government should repeal the Security Surveillance Act.**

F. Rights to Just and Favourable Conditions of Work

23. Ratification of the ILO fundamental conventions and the Convention 189

(Recommendation 7): The Government still maintains that it is difficult to ratify the 4 ILO fundamental conventions (C87, C98, C29 and C105) and it has not taken any action to ratify the ILO convention 189 on domestic workers' rights. The Government proposed a 'Plan to introduce a system on use of domestic services and employment promotion for the workers in that sector' on 24 February 2015, and proposed a roadmap to legislate a special law to be enforced in 2016. However, none of these were implemented and domestic workers are still excluded from application of Labor Standard Act and other legal protection. **The Government should immediately ratify the ILO fundamental conventions and the Convention 189.**

24. Fundamental Labour Rights for All workers: The Constitution of the ROK guarantees 3 basic labour rights (Right to Organise, Right to Collective Bargain, Right to Strike) but labour laws put various restrictions in exercising these constitutional rights. As for the right to organise, according to the Trade Union and Labour Relation Adjustment Act(TULRAA), workers who do not have an employment relation exclusively with certain employer cannot form or join unions. Workers who are engaged in a 'special type of business' and misclassified as an 'independent contractors', of which the number is up to 2.5 million, are excluded from exercising this right and those who form a union and request a collective bargaining are subject to criminal punishment as these activities are not considered as 'trade union activity' but 'blackmailing'. Around 1.55 million workers are in 'triangular employment relation or indirect employment relation cannot negotiate with the employer who controls the working conditions of those workers. The 'real employers' can cancel the contract or force to close the business of the subcontractor when those workers request their working condition improvement, which result in mass-layoffs of the subcontracting workers and deprivation of the fundamental rights of those workers. **The Government should broaden the definition of 'worker' and 'employer' in Article 2 of the TRLAA so that no one is excluded in exercising the fundamental labour rights.**⁵⁶

As for the right to collective bargain and right to strike, the TULRAA define a justifiable strike in a narrow sense and it is almost impossible for workers to stage a legitimate strike in a way they can put substantial pressure on their employer. Most

⁵⁵ Security Surveillance Act Article 2, Article 4 Section 1, Article 7, Article 14, Article 18, etc.

⁵⁶ ILO Committee of Freedom of Association recommended the government, for times, to guarantee the fundamental labour rights of specially employed workers and subcontracted workers, however, the revision of related laws has not implemented (ILC CFA case No.2602 and No. 3047)

strikes regarded illegal and once a strike is declared illegal, those who call the strike or join the strike faces disciplinary measures including dismissal, criminal sanctions under article 314 of the Criminal Act (Obstruction of Business)⁵⁷ and damage lawsuit and provisional seizure of the asset. TULRAA considers any strike on the Government policy or legislation illegal, mass layoffs or factory relocation.⁵⁸ Article 42-2⁵⁹ defines 'Essential Business' where industrial actions are restricted in a broad sense⁶⁰ and this

⁵⁷ With regard to the problems with the application of the article 314 of the Criminal Act pointed out by the CFA, the Government responded that the case law has been changed and "there is no case where the court decided a passive rejection of providing labour is illegal strike". However, whether right to strike is really guaranteed in reality is another thing and in practice the police and the prosecutor always indict any striking workers at first.

⁵⁸With regard to the right to strike, the TULRAA defines 'industrial action' in the article 2-6. as 'actions or counter-actions which obstruct the normal operation of a business, such as strikes, sabotage, lock-outs, and other activities through which the parties to labour relations intend to accomplish their claims' and in the Article 3 reads "When an employer has suffered damages due to collective bargaining or industrial action under this Act, he shall not claim damages against a trade union or workers" and the Article 4 reads the industrial actions which are conducted to achieve the purpose of collective bargaining corresponds to the justifiable activities in the Article 20 of the Criminal Act.. However, the Article 37 reads "Any industrial action shall not be inconsistent with the Acts and subordinate statutes or other social order with respect to its purpose, method and procedure." and "No member of a trade union shall take part in any industrial action which is not led by the trade union" which restrict the exercise of right to strike. The court has ruled that "an industrial action by workers can be justified when it is conducted by those who can be a party in collective bargaining, on the purpose of building up a voluntary negotiation between labour and management on concrete issues for improvement of working conditions, after going through all the legal procedure such as decision by union member's vote in case that the employer rejects to negotiate on the issues and in harmonization with the employer's property right without using any violence, etc." According to this case law, any strike for protecting employment security against mass lay-offs and factory closure or against government police and revision of laws which affect working conditions cannot be justified and protected.

⁵⁹ Article 42-2 (Restrictions on Industrial Actions Affecting Essential Business)

(1)The term "essential business" in this Act means the business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public and which is prescribed by Presidential Decree, from among the essential public-service businesses provided for in Article 71 (2).

(2)The acts of stopping, discontinuing or impeding the justifiable maintenance and operation of the essential business shall be the prohibited industrial actions.

Article 71 (Scope, etc. of Public-Service Businesses)

(1)For purposes of this Act, the term "public-service businesses" refers to businesses falling under any of the following subparagraphs, all of which are closely related to daily life of the public at large or have enormous effect on the economy of a nation

1.Passenger transport business and airline business for regular routes;

2.Tap-water business, electricity business, gas business, petroleum refinery business and petroleum supply business;

3.Public sanitation business, medical service business and blood supply business;

4.Banking and mint business;

5.Broadcasting and telecommunications businesses.

⁶⁰ The ILO defines essential services as those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population". The business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public.

makes it almost impossible for workers in public sector to strike. **The Government should change the range of justifiable strike and essential services in TULRAA to bring it in line with the ILO principle of freedom of association and should stop the practice of criminalisation and damage lawsuit for trade union activities including strike.**

The elementary and secondary school teachers and public officials are not under the TULRAA but special laws the Act on the Establishment, Operation, etc., of Trade Unions for Teachers(AEOTUT) and the Act on the Establishment and Operation of Public Officials' Trade Unions (AEOPOTU). On 22 October 2013, The Minister of Employment and Labour notified that the Korean Teachers and Education Workers Union(KTU-established on 28 May 1989 and legalised on 1 July 1999)are not regarded as trade union under the AEOTUT anymore. The Minister returned the establishment report of the Korean Government Employees Union(KGEU) on 2 August, when the union submitted its 4th establishment report. The Ministry deny the legal status of the two unions because the bylaws of the unions allow union membership of dismissed workers. The court upheld the ministries measures and the two unions deprived their legal status. **The Government should revise the related laws to guarantee the 3 basic labour rights of teachers and public officials and it should recognise the KTU and KGEU immediately.**⁶¹

25. **Decent Work:** While the number of precarious workers exceeds 10 million, measures to protect those workers' rights are inadequate. The protection laws⁶² are abused to proliferate the precarious jobs without effective measure for correction of discriminatory treatment against those workers. The average monthly wage for non-regular workers is 49.2% of that of regular workers. The wage gap between top 10% and the bottom 10% has increased from 5.16 times in 2007 to 5.63 times in 2016. In terms of gender pay gap, as of March 2016, the average hourly wage of female workers is 65.5% of that of male workers, and the average hourly wage of female non-regular workers is no more than 43.2% of that of male regular workers.⁶³ The Government introduced the correction of discriminatory treatment system on 1 July 2007 to solve discrimination on wage and working conditions against non-regular workers. It tried to improve the system by introducing the punitive damage and the extension of coverage of correction order in September 2014. However, the effectiveness of these systems is minimal.⁶⁴ In private sector, labour dispatch is being abused in various industries such

⁶¹ The 37th report of ILO CFA on case No 1865 (March, 2014)

⁶² Act on the Protection etc., of Fixed Term and Part Time Workers and Act on the Protection etc., of Dispatched Workers

⁶³ Statistics Korea, Survey on Economically Active Population- Additional Survey, August, 2016

⁶⁴ According to the statistics of the National Labor Relations Commission, which is in charge of operation of the system, for the last 2 years (December, 2014-December, 2015) 359 cases have been filed and among them only

as automobile, steel, shipbuilding although this practise is illegal in manufacture sector and enterprises would not follow the court decision when it order to convert the workers illegally dispatched into regular status. In April 2013, the Government announced the “measure for improvement of employment security for non-regular workers in the public sector” with a commitment to convert non-regular (temporary) employment contracts for permanent and perennial work into open-ended contracts by 2015. However, the Government’s measures on the employment security in the public sector have targeted fixed-term workers who are directly employed in Government agencies or public institutions, and indirectly employed workers have been excluded. In fact, the number of fixed-term workers has decreased while the number of indirectly employed workers has increased. **The Government should introduce the principle that no precarious employment is allowed for permanent and perennial work and make an effort to convert precarious works into decent ones including regulated and limit the reason for use of precarious employment.**

26. **Responsible Business Conduct and Global Supply Chain:** Although chaebols (family-based conglomerates) has enough capacity to create decent jobs, they are main actors for proliferation of precarious jobs. 38.0% of the non-regular workers are working for top 10 chaebols and the number of workers in triangular employment relation (30.6%) is 4 times of that of fixed term or part time workers(7.4%) and large enterprises affiliated to chaebol groups are using much more in-house subcontracting. The conglomerates should sit at collective bargaining table for improving working conditions of workers in their subcontractors in good faith to take responsibility for the proliferation of precarious jobs, but they simply deny requests of collective bargaining by those workers. Instead, chaebols (in most cases they are transnationals) are directly engaged in union busting campaign in their supply chain, in collusion with union busting consulting firms. The ROK ranks top among OECD countries in industrial fatality and every year around 2,400 workers die from work related accident or disease. This is related to the outsourcing of risky and hazardous work for maximised profit. **The Government should introduce a National Action Plan for an effective implementation of the UN Guiding Principle on Business and Human Rights and should adopt a plan to hold chaebols responsible for decent wage and working conditions, fundamental labour rights, effective protection and adequate compensation for industrial accident.**

27. **Reform of the Korean National Contact Point(NCP):** Up to date, more than 20 cases have been submitted to the Korean National Contact Point(NCP) since its establishment in 2001. However, not a single case had the violations of the Guidelines confirmed and recommendations made accordingly. Most cases were rejected at the

43 cases (14.9%) were accepted and correction orders were delivered, and all the other cases were rejected, dismissed or withdrawn.

level of initial assessment to decide whether further investigation or mediation is necessary. In 2016, two cases passed the initial assessment and moved to mediation process for the first time. However, these were closed without any recommendation or remedy provided for reasons of the failure in reaching an agreement between the parties.⁶⁵ The Korean NCP is established under the Cross-Border Investment Division of the Ministry of Trade, Industry and Energy and its secretariat work is commissioned to the Korean Commercial Arbitration Board. While the Korean NCP describes itself as an “independent expert body” for reasons that its commissioners include three members from the private sector, it is hard to say the three experts accurately represent the civil society including workers as they are from public agencies which have close ties to the Government.⁶⁶ Moreover, stakeholders including trade unions and independent civil society groups are not allowed to be involved in the NCP member selection and mediation process. **It is imperative that the Government reform the Korean NCP’s structure to guarantee full engagement with civil society, including labour rights groups and trade unions in the composition and operation of the NCP, so that it can fulfil its mandates of promoting corporate responsibility for human rights and providing remedies for victims effectively in compliance with the OECD Guidelines.**

G. Right to social security and to an adequate standard of living, right to health, right to education

28. Social Security System and Eradication of Poverty (Recommendations 59, 60):

The Government states it has reorganized the National Basic Livelihood Security System into a customized benefit system for realistic level of security and criteria improvement of people under obligation to support. However, until the reorganization of customized benefit system, the Government reduced the number of recipients significantly even though there was no change in the poverty rate. The poverty rate from 2012 to 2014 barely changed, yet the number of recipients decreased by about 220,000, suggesting that the Government reinforced the review of beneficiaries arbitrarily.⁶⁷ After the Government reorganized the integrated National Basic

⁶⁵ Korean National Contact Point, Final Statement of the Korean NCP for the OECD Guidelines for Multinational Enterprises, 1) Hydix case and 2) Asahi Glass case
http://www.ncp.or.kr/servlet/kcab_encp/info/4000

⁶⁶ Status of Korea National Contact Point, http://www.ncp.or.kr/servlet/kcab_encp/info/2100. As of March 2017, the three private commissioners of the Korean NCP are from the Korean Institute for Industrial Economics and Trade, the Korean Standard Association, and Korea Trade-Investment Promotion Corporation.

⁶⁷ Trends related to the National Basic Living System

Year	2008	2009	2010	2011	2012	2013	2014	2015
Recipients (thousand persons)	1,530	1,569	1,550	1,469	1,394	1,351	1,329	1,646*
Take-up rate ⁶⁷ (%)	3.1	3.2	3.2	2.9	2.7	2.6	2.6	3.2
Absolute poverty rate (%)**	8.8	9.5	8.8	8.8	8.5	8.6	8.6	-

Livelihood Security System benefits into separate individual benefits (living allowance, medical benefits, housing benefits, and education benefits) starting July 2015, the total number of recipients for all benefits increased. Still, the beneficiary number for living allowance (basic cash benefit for the poor) is only 1.25 million as of December 2015, while there are about 4.39 million people living in the absolute poverty. According to the NHRCK research, the biggest obstacle to receiving the National Basic Livelihood Security benefit was the income and property of obligatory providers that was higher than the set criteria.⁶⁸ **The Government should abolish the obligatory provider system immediately.**

29. Medical Insurance (Recommendation 62): The ratio of public hospitals is around 10% which is far below the OECD average of 75%, and the Government has concentrated its efforts in enhancing severe disease coverage to reinforce the medical insurance system. Yet, the total coverage rate of the four major severe diseases (cancer, cardiac disorders, cerebrovascular diseases, and rare incurable diseases) in 2014 was 77.7% which is no different from 2012, and the cancer coverage rate was 72.6% which is a 1.5% fall from 2012. As shown by these numbers, strengthening coverage by approaching each disease is creating a health equity issue. Also, the rise of non-payment items stemming from private hospitals demonstrates the limitation in increasing actual coverage. **The Government should suggest practical measures - expansion of public hospitals, regulation of non-payment items, national treasury support increase for medical insurance, reinforcement of coverage and cap on medical expenses - to strengthen the publicness of health and mitigate the burden of medical bills.**

30. Right to Housing (Recommendation 61): The Government announced it would provide an average of 100,000 rental housing units per annum until 2017, but the average annual increase in the supply of long-term public rental housing for 8 years since 2007 was only 51,000 units.⁶⁹ The supply of long-term public rental housing is 5.5% of total housing, which is merely half of the OECD average of

Relative poverty rate (%)***	14.2	14.1	13.8	13.8	13.7	13.4	13.3	-
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Data : Statistical Yearbook of Health and Welfare, Ministry of Health and Welfare, 2016 / Statistical Yearbook of Poverty, Korea Institute for Health and Social Affairs, 2015 / data provided by Yong-ik Kim, Member of the National Assembly, based on the Ministry of Health and Welfare's report on 13 February, 2016

*Among the recipients in this category, 1,259,407 persons received living allowances.

**Based on the minimum cost of living announced by the Government, all households including single-person households, and disposable income.

***Based on all households including single-person households and disposable income.

⁶⁸ Survey on the Human Rights Situation of Poverty Groups Not Receiving Support and Living Below the Minimum Cost of Living, National Human Rights Commission of Korea, 2014, p.85.

⁶⁹ Ministry of Land, Infrastructure and Transport, Year 2007~2015, Statistics on Rental Housing

11.5%.⁷⁰ Additionally, the Government set a goal to reduce the increased liabilities of Korea Land and Housing Corporation (LH) resulting from public housing projects and is investing public resources, such as public housing sites and the National Housing and Urban Fund, into “New Stay,” a private rental housing project that cannot be an alternative for low-income housing due to its high rent. In 2017, the Ministry of Land, Infrastructure and Transport plans to provide only 9,000 national rental housing and permanent rental housing units for low-income households.⁷¹ **The Government should utilize the National Housing and Urban Fund to expand the existing long-term public rental housing and implement policies to guarantee renewal of housing rental period, adopt ceiling for rent increase rate and the like for stable housing of low-income households without homes.**

31. Right to Education (Recommendation 63): As of 2017, 85% of college students of the ROK are enrolled in private universities with an average annual tuition of 7.37 million KRW (7,370 USD), the third highest tertiary educational spending among OECD countries.⁷² Looking at the ratio of finance for higher education, the ratio of Government funding is 32%, not even close to the OECD average of 70%, and household spending is 44%, much higher than OECD’s 21%.⁷³ The Government has various systems such as Income Contingent Loan in place to solve this tuition issue, yet the fundamental problem remains unresolved because the high tuition fee fails to drop. Moreover, students with grade under a certain level cannot apply for national scholarships and Income Contingent Loan. Students from low-income bracket who need to work part-time to earn living expenses in addition to tuition fees fall into a vicious cycle of failing to qualify for the national scholarships because they have less study hours which results in relatively lower grades. **The Government should increase the amount of national scholarship fund and eliminate the educational inequality by abolishing grade-related qualification requirements for national scholarships and Income Contingent Loan. At the same time, it should also look for measures to lessen the burden of the tuition fee by reducing the amount of tuition and expanding financial support for higher education.**

32. Public Pension (Senior Security Policy) and Senior Care: The poverty rate of elderly Koreans is 49.6%, which is the highest among OECD members and drastically higher than the OECD average of 12.4%.⁷⁴ Yet the benefit amount of the national pension system is very low and the system still has a wide blind spot. The national pension nominal income replacement rate is 46% of the average income and is expected

⁷⁰ Ministry of Land, Infrastructure and Transport, Housing Manual, 2012

⁷¹ Ministry of Land, Infrastructure and Transport, House Providing Plan of 2017, 2016

⁷² Education at a Glance 2016, OECD Indicators, http://www.oecd-ilibrary.org/education/education-at-a-glance_19991487

⁷³ Ibid

⁷⁴ OECD Income Distribution Database, www.oecd.org/social/income-distribution-database

to get lower by 0.5% annually until it reaches 40% in 2028. As of 2011, the average amount of old-age pension benefit is only 15% of the average amount of income and the average monthly amount of receipt is about 320,000 KRW (320 USD), which is far below the minimum cost of living for one person (603,403 KRW (603 USD)). Furthermore, 49.4% of the total population between the age of 18 and 59 is still not insured under the system. **The Government should stop the decline in nominal income replacement rate to solve the low-pension-benefit problem of the national pension system and take more active measures in eliminating the blind spot in the system.**

33. Youth Employment Issue and Blind Spot in Employment Insurance: The rate of Korean youth not in employment, education or training (NEET) is 18.5%, which is higher than the OECD average of 15.4% (2012). The official unemployment rate is around 10%, which is not high. However, there is an interpretation that the actual unemployment rate is almost around 30% if the statistical error of most young job seekers being categorized as economically inactive population is corrected. On the other hand, the employment insurance system has an extensive blind spot, resulting in only 16.7% of unemployed workers receiving unemployment benefits and the young workers who are unemployed have difficulties satisfying the strict employment insurance qualifications due to frequent job changes and long-term unemployment. But the Government is only focused on aggravating existing job qualities such as implementing a wage peak system and expanding low-quality jobs like part-time positions in the name of increasing jobs for the youth. **The Government should create high-quality jobs in public and private sectors, mitigate requirements for employment insurance benefits, provide job-seeking allowance to the voluntarily unemployed, introduce unemployment assistance for unemployed workers with no record of being in the employment insurance system, and provide other measures to expand the employment safety net.**

H. Minorities (Persons with disabilities, migrants, refugees, asylum-seekers etc.)

34. Persons with Disabilities: The disability judgment and grading system according to the Act on Welfare of Persons with Disabilities in the ROK relies only on medical evaluation in the provision of services and therefore, it does not cover various needs of persons with disabilities or include persons with intellectual disabilities and persons with mental health problems. As a result, this system limits the number of persons covered by welfare services, such as pensions for persons with disabilities and personal assistant services, according to their disability level. The Government even maintained the substitute decision making system like the adult guardianship system. **The Government should abolish the disability rating system and revise the guardianship system to a supported decision making system.**

The number of residential institutions and residents in the ROK is steadily increasing, indicating that the Government's deinstitutionalization strategy is not effective. There are not enough measures to integrate people with disabilities into the community, and there is a lack of policies for integration within the community, such as subsidized services, income security, housing security, and health insurance. In particular, the Government provides welfare services based on the income of the family rather than the income of the person with disabilities, resulting in that the disabled are excluded from welfare services. **The Government should provide concrete policies to integrate people with disabilities into the community and eliminate the Obligatory Providers system.**

Although Article 732 of the Commercial Act has been amended, but still persons with disabilities can buy the insurance, only if the person has "the mental capacity". **The Government should remove Article 732 of the Commercial Act and withdraw reservations on Article 25 (e) of the Convention on the Rights of Persons with Disabilities.**

35. Protection of the rights of migrant workers (Recommendation 31, 32, 65, 69):

The Government restricts the number of workplace changes⁷⁵ so that many migrant workers are forced to work where they do not want, discriminated including unpaid wages.⁷⁶⁷⁷ The cases of workplace changes which the Government mentioned "the reason which is not attributable to a worker" is hardly applicable such as closure of workplace. **The Government should abolish restriction of the number of workplace changes.**

Female migrant workers frequently suffer from sexual harassment and sexual violence/ abuses by employers.⁷⁸ However, the Government merely instructs visiting counselling centers if violation happened. There was no supporting system for migrant women who are not married to Korean, because the Multi-Cultural Family Information Hot Line and Shelters for migrant victims of violence mainly focus on migrant women who marry Koreans. **The Government should include detailed information on sexual harassment and sexual violence/ abuses including reporting system and possible**

⁷⁵ Act on the Employment, Etc. of Foreign Workers Article 25 (Permission for Change of Business or Place of Business)

⁷⁶ Survey on migrant worker's human rights situations in Chungchung-nam-do, 2016. pp. 88-89. Migrant workers who want to change working places are 62.8%. The reasons are 'unpaid wage or allowance(29.2%)', 'Too hard work(26.4%)', 'inconvenience of dormitory or working places' facilities(15%).'

⁷⁷ 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

⁷⁸ Survey and Research on migrant worker's housing and sexual harassment and violence. 2013. Korea Support Center for Foreign Workers. 10.7% of female/women migrant workers experienced sexual harassment and violence. Categories of act/violence are 'rape(35.5%)', 'forced touching(35.5%)', 'pressuring drinking liquor or forced touching(29%)', 'obscene phone calls or displaying pornography(19.4%)', 'pressuring prostitution(12.9%)', and 'indecent exposure of the genitals or touching(9.7%)'. The survey represents the perpetrators are 'employer(88.9%) and 'manager(77.8%)'.

remedies with detailed cases in the compulsory education courses which the migrant workers enter the country. Furthermore, the Government should take measures to restrict workers' dormitory provided by an employer which is easily exposed to violence and provide safe housing standards, and guarantee right to stay of victims of violence.

The severe and inhumane crackdown on undocumented migrants has resulted in death or severe injuries. Currently police officers as well as immigrant officer's indiscriminately crackdown undocumented migrant workers at all time, with a new system to distinguish expired visa by mobile phone. **The Government should consider human rights of undocumented migrant workers while distinguish them and consider granting permit to stay to those migrants who have contributed to Korean society.**

36. **Undocumented Migrant Children (Recommendation 66):** Statistics of Ministry of Justice shows, as of February 2013, that the number of migrant children under the age of 19 who have fallen to the undocumented status due to the expiration of their legal stay has reached 6,000.⁷⁹ Considering the numbers not included in the statistics, it is estimated that there are more than 20,000 undocumented children. The internal guideline of the Ministry of Justice has suspended the deportation of undocumented migrant children enrolled in elementary, middle, and high schools until the completion of the high school courses,⁸⁰ but in a year more than 100 undocumented migrant children under the age of 20 are being detained after deportation orders.⁸¹ Article 19 and Article 75 of the Presidential Decree of the Elementary and Secondary Education Acts stipulate that enrolments of elementary, middle, and high school for undocumented migrant children are possible without the acquisition of legitimate residency status. However, these articles are only non-mandatory provisions, and Article 8 of the Basic Act on Education limits the beneficiaries of compulsory education only to the citizens and the admission to a school is up to the head of a school's discretion. The Ministry of Health and Welfare also vaccinates undocumented migrant children, but the information is difficult to access.

Some medical services are provided for undocumented migrants through "Medical Support Service for the underprivileged including foreign workers", but it is limited to the hospitalization and operation costs. The number of medical institutions which enforce this service is limited and the application process is complex, making the accessibility hard and unstable. Undocumented migrant children are strictly excluded

⁷⁹ Guarantee of rights of migrant children, moved by Saenuri Party, Jasmine B. Lee, Saenuri Party, reason of move, 18 December 2014

⁸⁰ Internal Guideline of The Ministry of Justice, 7 September 2010

⁸¹ Materials of disclosed information provided by the immigration office of Hwaseong, Cheongju, Yeosu, The Ministry of Justice (October 2015 ~ August 2016)

from Medical Insurance System. Even though Infant Care Act and the Child Welfare Act do not explicitly restrict the target of childcare support and child protection, the Government interprets migrant children as not being the target of law. Therefore, it is impossible to provide childcare support even if there are economic troubles, and protection measure cannot be provided when there is child abuse.⁸² **The Government should refrain from deportation and detention of undocumented migrant children on the basis of international standard such as the CRC. Also, the Government should take necessary measures to enact and amend relevant laws without delay so that the undocumented migrant children can enjoy practical rights related to education, health, childcare, and child protection.**

37. Immigration Detention: The current Immigration Control Act defines ‘detention’ (in Korean, the word ‘protection’ is used to describe ‘detention’) as “immigration control official’s enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation at immigration detention room or immigration detention centre”. While being detained, detainees are provided with a 6-square meter-room only, and kept under strict discipline such as limited exercise hours. Nevertheless, the Ministry of Justice repeatedly states that there is no such thing as ‘arbitrary detention’ because the immigration detention is for people subject to deportation who always may leave the ROK instead. Since the Immigration Control Act lacks a time limit provision in terms of the length of detention, indefinite detention of asylum-seekers and refugees is possible without a judicial review. Some refugees have been detained in the immigration detention centre for years while waiting for the result of refugee application. **The Government should recognise that arbitrary immigration detention violates the right to life, liberty and the security of detainees. It should have a time limit provision of the length of detention in the law to make immigration-related decisions quickly, and take all measures to guarantee the human rights of detainees.**

38. Human Trafficking (Recommendations 42, 43, 67): The definition of human trafficking under the revised Criminal Act is still too narrow to cover people who should be punished as human traffickers under the Palermo protocol.⁸³ Moreover, because law enforcement officers fail to identify victims of human trafficking, migrants who were trafficked for labour and sexual exploitation cannot receive a proper protection. They regularly receive compulsive deportation orders, for the execution of which the migrants are put into immigration detention. E-6 (Culture and Entertainment) visa which has produced human trafficking victims for more than 10 years still exists,

⁸² Hwang, Pilkyu, Introduction to the Framework Act on the Protection and Promotion of Rights of Migrant Children, National Assembly Human Rights Forum, 3 April 2014, pp. 43~44

⁸³ Advocates for Public Interest Law, Human Rights Crisis at Shin-Ahn Salt Pan and the Need to Legislate a Special Law for Addressing Human Trafficking, 2 September 2015, <http://www.apil.or.kr/1798>

and the migrant fishermen working are frequently victimized. Migrant fishermen on vessels pay high recruitment fees and security deposit to come to the ROK. They work up to 20 hours a day only to be paid 500~1,200 USD, and suffer from violence and discrimination. Despite such atrocious working condition, migrant fishermen cannot leave the vessels because their passports are taken by ship owners, their workplace relocation is restricted, and their payments are overdue. **The Government should legislate a special law on human trafficking, establish identification index for law enforcement officers to discover victims of human trafficking, and regularly provide relevant education to the officers. The Government should take measures to regulate overcharged recruitment fees through consultation with the government of migrants' country of origin, and supervise the labour condition of migrant fishing vessels regularly. It should strictly punish the ship owners who illegally confiscate the workers' passports.**

- 39. Refugees and asylum seekers (Recommendations 64, 68):** Even though the Government established the 'Immigration and Foreigner Service Center' in 2013 as a reception center for asylum seekers, only 100 asylum applicants and a few more have been accommodated annually. In several cases, refugees were rejected for naturalization due to irregular income even when they meet other criteria. Also, the disability registration is only available for citizens, as the Government does not let the recognized refugees with disabilities be registered as disabled persons for services. The family members of the recognized refugees have difficulties obtaining Korean visa, not to mention entering the country. Moreover, people with humanitarian status are excluded from the application of family reunification principle. Furthermore, only a small amount of budget was allocated to the living expenses for asylum seekers to cover all refugee applicants. Thus, only 373 out of 589 applicants received support in 2015.⁸⁴ As the situation of more than 30 Syrian asylum seekers who were under de facto detention in the deportation room of the Incheon airport for 8 months without proper supply of food and medical support suggests,⁸⁵ a majority of people who made refugee application at the airport have to wait in the deportation room under poor condition for a long time for the regular refugee status determination process. Refugee recognition rate is still very low in the country. In 2013, only 24 applicants (out of 1,574 applicants) were recognized as refugees setting aside the cases of family reunification, in 2014 only 74 were accepted as refugees (out of 2,896 applicants), and in 2015 only 62 were recognized (out of 5,711 applicants). **The Government should increase the budget for living expense support for refugee applicants in consideration of the massive number of asylum seekers. Also, the government should accept the naturalization of recognized refugees following the spirit of the Refugee Convention, and actively provide support for the entrance of recognized**

⁸⁴ NANCEN, Treatment on Refugees (as of 31 December 2015), <http://nancen.org/1520>

⁸⁵ CNN, Migrants in limbo at South Korean airport, 1 June 2016, <http://edition.cnn.com/videos/world/2016/06/01/south-korea-refugees-in-limbo-hancocks-pkg.cnn>

refugees' family to Korea. The Government should take legislative measures to prevent long-time de facto detention of refugee applicants in the airport under poor condition.

I. Women and Children

40. Rights of the Child (Recommendations 17, 18, 19): There is not enough child-rights related education and training offered by the Government. The child-rights education performed by the NHRCK and the Ministry of Education which is only a part of a comprehensive child policy, is not under any specific legal provision.⁸⁶ Thus, the contents are arbitrarily influenced by the local governments or educational institutions. According to the survey on awareness of child rights, less than 50 % responded that they have experiences receiving child-rights education.⁸⁷ For awareness raising reasons, child-rights education should be included in the regular education curriculum.⁸⁸ **The Government should revise relevant laws to specify child rights education toward both children and adults who are working with children. In addition, the Government should enact the Framework Act on Rights Education and provide a consistent and comprehensive guideline on the contents of education. In consideration of increasing number of incidents of online hate speech against marginalised groups including children, women, and sexual minorities, the Government should take measures to conduct child rights education, highlighting non-discrimination as a basic principle of human rights.**

41. Child-friendly Juvenile Jurisdiction System (Recommendation 45): The juvenile jurisdiction system of the ROK is not child-friendly, and the right of the child to be heard is limitedly recognized. The Civil Act provides an opportunity for children over 13 years of age during the adoption procedure to express their opinion on matters related to them.⁸⁹ However, there is no substantive law to guarantee the right to present

⁸⁶ Although the accountability of the government and local self-governing bodies that conduct education necessary for promoting child rights under the Convention on the Rights of the Child is stipulated in Art. 4(5) of the Child Welfare Act and Art. 8-2(1) of the Framework Act on Juveniles, it is not the specific normative basis. Art. 31 on the Education of Safety of Children under the Child Welfare Act only contains individual protection areas including prevention of sexual violence and child abuse, precaution and prevention of disappearance and abduction, prevention of drug abuse, safety measures against disaster, and traffic safety. This article does not specify comprehensive child rights education. Art. 8-2(1) of the Framework Act on Juveniles (Education and Publicity) stipulates rights education against juveniles (Every juvenile-related institution and juvenile organization shall take educational measures concerning the rights of juveniles for juveniles). However, this act is only effective for persons aged 9 to 24; thus, it does not include persons under the age of 18. Article 23-2(3) of the Infant Care Act specifies the contents of refresher education including human rights education on infants in order to improve the quality of infant care teachers, but there is no provision related child rights education.

⁸⁷ Survey on awareness of child rights Year 2014-2016

⁸⁸ UN Convention on the Rights of the Child, Concluding Observations: Republic of Korea, 2 February 2012, CRC/C/KOR/CO/3-4, paras. 23.,

⁸⁹ Civil Act Article 869(1), Act on Special Cases Concerning Adoption Article 12(4), Enforcement Rule of the Act on Special Cases Concerning Adoption Article 11(2), Supreme Court Rule on Enforcing Act on Special Cases Concerning Adoption Article 3, Family Litigation Act Article 45(8), Family Litigation Rules Article 62(1) and 62(3)

opinion of children who are placed in juvenile protection institutions. There are no clear guidelines regarding the systems for victim's advocates (an intermediary), the defence lawyers or public defenders for victimized children from abuse and/or sexual violence, leading to confusion and inconsistencies.⁹⁰ **The Government should amend the Civil Act, the Family Litigation Act, the Act on Special Cases concerning Adoption, and other related laws to eliminate age limits in order to guarantee the right to participation, right to be heard in accordance with Article 12 of the CRC.**

Under the Current Juvenile Act, children may be placed at the Juvenile Classification Review Board, which is a de facto detention facility. The decision to place children at the Juvenile Classification Review Board can be made when there is relevant notice/opinion of guardians, which is against the principle of respecting that child's view.⁹¹ Moreover, the judges of the Juvenile Court who can exercise discretion are not provided with adequate children-rights education, leading to the decisions without considering the best interests of the child.⁹² **The Government should amend Article 4 of the Juvenile Act, and set up the relevant guidelines for a child-friendly judicial system. In addition, the Government should allocate an appropriate budget, and obligate the Juvenile Court to undertake child-rights education and trainings.**

42. Universal Birth Registration (Recommendation 29): The current birth registration system in the ROK requires parents with Korean nationalities to report birth of their child.⁹³ The Act on the Registration, etc. of Family Relationships does not provide any monitoring mechanism to determine the parents' compliance with their birth registration obligations.⁹⁴ Also, the Government has refused to register births of children of foreign nationals. 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.⁹⁵ **The Government should have a clear understanding of the current state of unregistered children, and provide a system guarantees all children born within the jurisdiction of the Republic of Korea to be registered and provided birth certificates regardless of parent's nationality, race, religion, and socio-economic status.**

⁹⁰ Act on Special Cases Concerning the Punishment, etc. of Sexual Crime Article 27,

⁹¹ Juvenile Act Article 4(1)(3)

⁹² Juvenile Act Article 18(1)

⁹³ Act on the Registration, etc. of Family Relationships Article 46

⁹⁴ Act on the Registration, etc. of Family Relationships Article 46(4)

⁹⁵ Korea Joongang Daily, "Parents take extreme measures: Those with stateless children go as far as seeking adoption", 14 September 2015. <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3009149>

43. Child Protection from Violence (Recommendations 38, 40, 41): In the wake of a girl fleeing from abusive parents by climbing a gas pipe in 2015,⁹⁶ a total inspection of long-term absentee students at elementary and middle schools was carried out. The inspection disclosed a series of deaths of children at the hands of abusive parents⁹⁷, but preventive measures against child abuse announced by the Government was not detailed enough, nor followed by any practical compilation of the budget. Although there was an amendment of the Child Welfare Act in 2015 to prohibit physical and mental punishment by the protector of children⁹⁸, physical and psychological punishment has widely been regarded as part of the right to discipline, thus accepted by the society. **The Government should establish an appropriate child protection system to prevent child abuse and protect children from violence. Also, the Government should amend the current law, including Article 31 of the Enforcement Ordinance of the Elementary and Secondary Education Act, and Article 915(Right to Discipline) of the Civil Act to prohibit all forms of physical and humiliating punishment against children.**

44. Adoption: There are two kinds of adoptions under the current law, namely institutional adoption regulated by the Act on Special Cases concerning Adoption, and private adoption. The private adoption is adopting a child under the Civil Act by entering into an adoption agreement between individuals. Because a child adopted under the Civil Act does not amount to ‘the child in need of protection’ under the Child Welfare Act, the adoptive procedure is governed by a simple approval by the Family Court. 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 receive prerequisite training, nor subject to the follow-up management procedure. Thus, the rate of dissolution of adoption is far higher, and in 2016, there was a case of a couple with 10 criminal records who were approved by the Court to adopt a child, abused and murdered a privately adopted girl.⁹⁹ **The Government should take all necessary measures to cover, screen, and manage both institutional adoption and private adoption procedures. The Government also should prepare adequate follow-up management programme to guarantee the right to survival, protection, and development of all adopted children.**

45. Elimination of Discrimination against Women (Recommendations 22, 25, 26):
The Framework Act on Gender Equality (FAGE), a basic legislation on gender policy

⁹⁶ Korea JoongAng Daily, “Ye-rin deserves better”. 28 December 2015.

<http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3013282>

⁹⁷ The Korea Herald, “Korea tightens child protection policy”, 16 January 2016.

<http://www.koreaherald.com/view.php?ud=20150116000965>

⁹⁸ Child Welfare Act Article 5(2) Responsibility of Protectors, etc: All citizens shall respect the rights, interests and safety of children and rear them healthy.

⁹⁹ Korea JoongAng Daily, “Adopted girl dies from duct tape punishment”, 4 October 2016,

<http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3024455>

in the ROK, contains contents based on the biological duality of sex rather than ‘gender’ equality. The Ministry of Gender Equality and Family takes the position that the FAGE does not apply to sexual minorities.¹⁰⁰ In the ROK, discrimination against women is a serious social issue. According to the 2016 Gender Gap Report of the World Economic Forum, the ROK ranked 116th out of 144 countries on the gender equality scale.¹⁰¹ Indeed, a variety of misogynistic hate crimes have occurred, as the ‘Gangnam murder case in May, 2016’¹⁰² demonstrates. Women constitute 90.2 percent of victims of violent crimes in the country.¹⁰³ Fifty-one percent of homicide victims are women, which is the highest percentage among the G20 countries.¹⁰⁴ **The Government should add contents in relation to policies solving gender discrimination in the FAGE, and enact a comprehensive anti-discrimination legislation which addresses prohibited grounds of discrimination against various social minority groups.**

As of 2015, the proportion of female civil servants take up 33.7 percent and further those who are in the Grade 5 or higher positions account merely 11.6 percent.¹⁰⁵ On top of that, the proportion of female members of the National Assembly is only 17 percent as a result of the 20th General Election in 2016, which has increased from 15.7 percent in 2012, and yet, it is still lower than 22.6 percent that is the average ratio of the member states of the Inter-Parliamentary Union(IPU).¹⁰⁶ **The Government should take on the action to increase the number of female civil servants in a management position at central and local administrations, as it has stated in the policy of “More Women in Higher Position”, and to make 30 percent gender quota, which assure women to be present in the committees to nominate executives of public bodies, mandatory. Also, the Public Election Act should be revised to make gender political quotas mandatory in a way in which the zipper system to allocate women under every odd number in proportional representation(PR) lists as well as 30**

¹⁰⁰ For example, when some Christian communities filed complaints with the local government in August 2015, the Ministry ordered the Daejeon Metropolitan Government to delete the provisions on sexual minorities in its Framework Ordinance on Gender Equality on the grounds that the provisions were not compatible with the purpose of the legislation of the FAGE.

¹⁰¹ World Economic Forum (2016), The Global Gender Gap Report, (<http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=KOR>)

¹⁰² On May 17, 2016, a woman was brutally murdered by an unknown man inside a unisex toilet in a large commercial district (Gangnam) of Seoul. The perpetrator, aged in his 30s, stated during the police investigation that he killed the woman because women have always looked down on him. However, the police and authorities concluded that the case is not a misogynist crime but rather a random killing by a person with "mental illness", and announced a set of preventive measures, which includes the identification and isolation of people in the early stages of mental illness. Ignoring the fact that structural discrimination and violence against women are deeply rooted in society, the government has not only attempted to distort the nature of the incident, but also done so in a way that promotes hate and discrimination towards another group of social minorities, namely persons with psychosocial disabilities.

¹⁰³ Korean National Police Agency(2013), Statistics

¹⁰⁴ United Nations Offices on Drug and Crime (2008), Homicide statistics sex of homicide victims

¹⁰⁵ Statistics Korea, the Proportion of female public officers in local governments,

http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1762

¹⁰⁶ Statistics Korea, the Proportion of female members in National Assembly in member states of IPU and its ranking, http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1588

percent quotas for female candidates in single-member districts(SMD) elections in general elections should be implemented with enforcement measures.

46. **Single Mothers (Recommendation 28):** Discrimination against unmarried mothers continues in the ROK, and their survival is being threatened by their insecure work life balance. Sometimes, they get fired from their companies because they are pregnant as unmarried mothers. In addition, teenage unmarried mothers often end up failing to finish their studies. **The Government should conduct mandatory non-discrimination education to public officials regarding unmarried mothers' families for resolving social discrimination and prejudice against them and campaign for enhancing public awareness of unmarried mothers' families. Moreover, if unmarried mothers are unfairly dismissed by schools or companies, the Government should be able to apply legal sanctions. Also, there should be centres for those unmarried mothers provide support based on the mothers' life cycle stages.**

47. **Rights of women workers and sexual harassment in the workplace**

(Recommendation No. 48, 49): The gender wage gap in the ROK is a very serious issue. Assuming that the average monthly wage of male regular employees is 100, female regular employees receive 69.4 percent; male non-regular employees receive 49.2 percent, and female non-regular employees receive a mere 35.8 percent. In addition, 53.8 percent of women workers are in non-regular jobs.¹⁰⁷ The percentage of female workers in low-wage jobs is 37.8 percent, two times that of male workers in this category.¹⁰⁸ 58.3 percent of the reasons given for the wage discrepancy between men and women were merely because of their sex.¹⁰⁹

The Affirmative Action (AA) on improving women's employment contains a promise only that the Government releases the names of companies with more than 500 employees in which the proportion of female workers is lower than 70 percent of the average of other companies in the same industry. There is no employer reporting process on types of employment, wage gaps and occupational segregation by sex. The effectiveness of AA is therefore significantly low because of its cursory contents and assessment. The Government has increased low-quality part-time jobs for female workers to achieve an employment rate of 70 percent. Non-regular female workers are

¹⁰⁷ Kim, You-sun, Situation and Size of Non-Regular Workers, Issue Paper No. 4, Korea Labor & Society Institute, 2016 [http://klsi.org/sites/default/files/field/%5B2016-04%5D%20%EB%B9%84%EC%A0%95%EA%B7%9C%EC%A7%81%20%EA%B7%9C%EB%AA%A8%EC%99%80%20%EC%8B%A4%ED%83%9C\(%EA%B9%80%EC%9C%A0%EC%84%A0,2016%EB%85%843%EC%9B%94\).pdf](http://klsi.org/sites/default/files/field/%5B2016-04%5D%20%EB%B9%84%EC%A0%95%EA%B7%9C%EC%A7%81%20%EA%B7%9C%EB%AA%A8%EC%99%80%20%EC%8B%A4%ED%83%9C(%EA%B9%80%EC%9C%A0%EC%84%A0,2016%EB%85%843%EC%9B%94).pdf)

¹⁰⁸ Ministry of Health and Welfare (2017), Social Security Statistics in 2016 http://www.mohw.go.kr/front_new/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&CONT_SEQ=338608&page=1

¹⁰⁹ Kim, Nan-ju (2015), Gender Wage Gap and Its Implications, Research Paper, Korean Women's Development Institute

fundamentally excluded from the benefits of the maternity leave system intended for those giving birth or caring for children, and in 2016 only 8.5 percent of employees taking child care leave were men. **The Government should prepare fundamental measures to address the significant gender wage gap, to change wage structures in which women are paid less just because of their sex and to tackle the prejudices against women. An increase in the minimum wage, the adoption of punitive damages against employers who violate the minimum wage regulation, and enforcement of gender quotas are also needed. In addition, the government should limit the grounds on which non-regular workers can be used to reduce the number of non-regular workers.**

The Government has taken little action on the criminalization of sexual harassment in the workplace. When sexual harassment at work occurs, there is no provision that stipulates an employer's duties to investigate the case and to take measures to protect a victim immediately. Victims of sexual harassment who report the case often experience secondary victimization by perpetrators, employers, colleagues, or supervisors. **The Government should strengthen employers' responsibilities about sexual harassment cases; employers should take appropriate actions immediately, including providing paid leave and therapy for victims and segregating them from the perpetrators. In addition, the Government should make provisions which stipulate the contents of secondary damages and prepare measures to prevent them.**

J. Right to Development

48. **Official Development Assistance (ODA):** Civil society has called for introducing the environmental and social safeguard such as international financial organizations have and demanded its application to all development projects, and governmental management and supervision to prevent loan assistance from affecting the rights and environment of local residents of partner countries. The Government initiated the safeguard revision at the end of 2011 and finally disclosed it in 2016.¹¹⁰ The serious is the contents of the safeguard do not live up to international standards and are only applied to a few pilot projects while managing and supervising responsibilities are burdened on the partner countries.¹¹¹ Furthermore, the Government's management or supervision of safeguard implementation is absent altogether. The Government selected

¹¹⁰ EDCF Safeguard Policy,

<https://www.edcfkorea.go.kr/site/homepage/menu/viewMenu?menuid=005001006003> (2016)

¹¹¹ The South Korean government's management or supervision of safeguard implementation is absent altogether. The Government selected the Jalaur River Multipurpose Project (dam construction) in the Philippines as a first pilot project but this project now faces strong opposition from the indigenous people due to procedural legitimacy, human rights violation, and possibility of environmental destruction. The locals are raising issues because the measures for involuntary relocation are inadequate, the Free, Prior and Informed Consent (FPIC) process was violated and the dam construction site is at risk of earthquakes. However, the Government is not answering to these issues nor taking any action other than pushing forward with the project.

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