

# CONCERNS AND RECOMMENDATIONS ON THE REPUBLIC OF KOREA

## NGO SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

62<sup>nd</sup> Session, 18 September – 6 October 2017

### Submitted by

#### South Korean Human Rights Organizations Network (74 NGOs)

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## Introduction

- The South Korean Human Rights Organizations Network, composed of 74 human rights NGOs in the Republic of Korea (RoK), submits its report to the UN Committee on Economic, Social and Cultural Rights for its review on the Republic of Korea at the 62nd Session from 18 September – 6 October 2017. The Report is based on the List of Issues adopted by the Committee at the 60th Session from 27 February – 3 March 2017.
- We note with concern that since the review of the 3rd periodic report of the RoK in 2009, Korean society is becoming a unstable society with concentrated wealth and economic inequality in spite of its growing economic scale. Korea's high suicide rate (26.5 per 100,000 in 2015) which ranks first among OECD member states since 2003, the high elderly poverty rate (49.6%) that is four times the OECD average, and its ultra-low birth rate which is close to the lowest in the world are representative indicators demonstrating the serious anxiety the RoK faces. Meanwhile, the candlelight demonstrations that began in the second half of 2016 impeached the corrupt and undemocratic leader, the former President Park Geun-hye. President Moon Jae-in was elected in the presidential election of May 2017 and a new government was launched. The aspiration of people for democracy and expectation of the new administration is higher than ever before, however the current ESCR situation in Korea is not very encouraging.
- After the Asian financial crisis, Korea achieved labour flexibility and its concentration of economic power that evolved around *chaebols* (large conglomerates) strengthened. Lots of non-regular workers receive low pay and suffer from unstable employment (Issue 15 & 18). The wage gap of workers between large conglomerates and small and medium enterprises (SMEs) grew wider due to the vertical systematization and unfair transaction of large conglomerates and subcontracted SMEs, and the labour income share (LIS) continued to decline. The right of trade unions is not fully guaranteed (Issue 21). The welfare expenditure to GDP is still around half of the OECD average, and the poor social safety net is insufficient to resolve the economic concentration and the subsequent inequality in the labour market.
- The Constitutional Court and the judiciary of the RoK rarely recognize the normative effective of the Covenant (Issue 2). The Government is not ratifying the Optional Protocol to the Covenant (Issue 5) and core ILO conventions. A comprehensive anti-discrimination law has not been enacted (Issue 8). The transparency in the nomination process of the National Human Rights Commission of Korea (NHRCK) is not guaranteed and the NHRCK has remained silent on severe ESCR violations (Issue 2).
- Contrary to the Government's statement, the rights of LGBTI have hardly improved (Issue 11). The ESCR of asylum seekers and noncitizens are not being ensured (Issue 3 & 9).
- The real progress to guarantee ESCR for women, families, and children remains slow (Issue 10, 12, 17, 20, 24, 25 & 30). The situation concerning the right to social security has not improved. The number of persons receiving living and medical allowances fell steeply after 2009 (Issue 22 & 29). Despite having the highest elderly poverty rate, there have been no improvement to the blind spot of the national pension system, as well as the problem of the national pension's low income replacement rate (Issue 23). Those in housing poverty are on the rise, while the conservative government has cut back on policies to increase supply of public housing (Issue 26). The private education expenses rise due to a hierarchical social structure (Issue 31 & 32).
- South Korean Human Rights Organizations Network aims to inform the Committee's review and that the areas of concern highlighted here will be reflected in the Committee's concluding observations and recommendations to the Republic of Korea.

## General Information

**Issue 1** Please provide an assessment of the implementation of the second National Action Plan for the Protection and Promotion of Human Rights (2012-2016) and provide information on the main objectives of the third action plan (2017-2021), in particular with regard to economic, social and cultural rights. Please also provide information about the participation of and consultation with civil society in the evaluation of the previous plan and the drafting of the current plan. Please provide information on the National Human Rights Policy Council and its impact on the implementation of economic, social and cultural rights.

- The Government of the Republic of Korea (Government) announced that they included the civil society while organizing the committee to assess the implementation of the second National Action Plan for the Protection and Promotion of Human Rights (NAP). However, the list that consists of lawyers, scholars, researchers, and religious people contradicts this claim of civil society's participation. The draft of the third NAP was not even revealed at the public hearing in September 2016, which was for the preparation of the third plan. Although the third NAP should be in its implementation phase by now (August 2017), the NAP draft is yet to be disclosed. In January 2016, a template was uploaded to the website of the Human Rights Department of the Ministry of Justice to collect opinions/comments on the key objectives of the third NAP draft. However, no information was provided regarding the submission date and venue, or on the opinions/comments that were collected for consideration.

### Suggested Recommendations

- Guarantee the actual participation of civil society in drafting the current NAP and disclose the entire process.

**Issue 2** Please provide information on remedial procedures in place to address infringements on economic, social and cultural rights in the State party. Please also provide information on whether the mandate of the National Human Rights Commission of Korea covers all Covenant rights and whether individuals can file complaints on violations of economic, cultural and social rights with the Commission. Please provide data on cases related to these rights that have been investigated over the past five years.

### 1) Judicial Remedy

- The Government argues that judicial remedy includes constitutional adjudication or constitutional complaints by the Constitutional Court, administrative litigations, and judicial review of orders and laws and it addresses infringements on the rights protected under the Covenant. However, the Constitutional Court and the judiciary of the RoK rarely recognize the Covenant's normative effect<sup>1</sup> and therefore, people whose rights are violated under the Covenant are not able to get judicial remedies unless there are specific provisions to protect their rights under the national laws.
- Since the mandatory performance litigation against the administrative agencies are not allowed, the victims who are not provided with adequate social services or benefits can only file a suit to question the illegality of denial, which does not guarantee appropriate remedies. Also, since the temporary benefits are not allowed during a lawsuit which makes it hard for the victims to get timely and

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<sup>1</sup> Domestic Implementation of International Human Rights Law and the Court, Supreme Court International Human Rights Law Society, 2013.

effective remedies.

- In case of an infringement of the rights by administrative legislations, when a victim files an administrative litigation or a constitutional complaint, the Constitutional Court and the judiciary strictly interpret the requirement of the suit – the directness of infringement of rights<sup>2</sup> - and usually dismiss the lawsuit.
- Also, the Constitutional Court and the judiciary rarely admit the infringement of social rights by the Government because they recognize a broad discretion of the legislatures to determine the specific social rights to file a suit for.

### **Suggested Recommendations**

- (To the Constitutional Court and the judiciary) Recognize the normative effect of the Covenant and apply the same as the national laws.
- Introduce the temporary benefits for the victims who apply for judicial remedies of the infringement of the rights under the Covenant.
- Introduce the mandatory performance litigation against the administrative agencies who fail to provide adequate social services and benefits

### **2) National Human Rights Commission of Korea (“NHRCK”)**

- The National Human Rights Commission Act does not provide investigative and remedy procedures for ESCR violations except discriminatory acts. In the review of the 3rd periodic report of the RoK in 2009, the Committee recommended strengthening and expanding the mandates of the NHRCK to cover ESCR-related violations, but there has been no change up to date. Therefore, at present, there is no way to file complaints to the NHRCK on infringements on ESCR including violations on labor rights, right to health, right to education, etc.
- Due to the above mentioned legal limitations, Korean civil society has induced the NHRCK to intervene in ESCR violations even at a minimal level, by filing complaints on discriminatory acts or demanding urgent remedies. As unqualified people who have no experience or expertise of human rights become appointed as commissioners, the situation got worse. The Commission has dismissed a number of urgent remedy requests, most notably, the urgent remedy requests to stop the governor’s plan to close Jinju Public Medical Center<sup>3</sup> and to provide remedies for residents in Miryang who protested against high-voltage power transmission construction and therefore were suppressed were dismissed without any remedies.<sup>4</sup> In addition, the NHRCK has presented no recommendation regarding Yoosung Enterprise Ltd. (YPR)’s discrimination against independent union members for the last five years. One of the facts which resulted in the retreat of the NHRCK’s recommendations is that many of its meetings are held privately with the minutes not open to public and when they are publicized on demand under the Freedom of Information, many of the contents including names of the speakers are erased. Therefore, it is very difficult to raise public criticism on the commissioner’s decision to dismiss ESCR-related urgent remedy requests or petitions on discriminatory acts in favor of the Government and big corporations. After the Government of Moon Jae-in was launched in May 2017, the reform and enhancement of the NHRCK has been in serious discussion. Korean civil society also presented its suggestions including making the minutes to public with the names of the speakers

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<sup>2</sup> The lawsuit against the specific statute of legislations is allowed when a statute itself violates the rights of the victim without any specific enforcement.

<sup>3</sup> Jinju Public Medical Center was closed by local governor in May 2013, and 22 patients died after being forced to leave the hospital. Related news article : [http://english.khan.co.kr/khan\\_art\\_view.html?artid=201304192040587&code=710100](http://english.khan.co.kr/khan_art_view.html?artid=201304192040587&code=710100)

<sup>4</sup> Report of the Special Rapporteur on the situation of human rights defenders (23 December 2013) paras. 75-78. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/191/02/PDF/G1319102.pdf?OpenElement>

intact.

- The NHRCK's reaccreditation by the ICC-SCA was deferred three times in a row from 2014 to 2015 for the same reasons: the lack of transparency in the selection and appointment of commissioners and lack of engagement with civil society<sup>5</sup>. The GANHRI-SCA reiterated its recommendation to establish an independent selection body for its commissioners when it accredited the NHRCK A-status on May 3, 2016<sup>6</sup>. In the process of deferrals, the NHRCK Act was amended but there is yet to establish transparent and open selection process where civil society's participation is fully guaranteed.

### Suggested Recommendations

- Amend the NHRCK Act to allow the NHRCK to receive and provide remedies for ESCR violations.
- (To the NHRCK) Take proactive steps in addressing ESCR-related discriminatory acts and provide urgent remedies even before the amendment of the NHRCK Act. Enhance transparency in the operation of the NHRCK by making the minutes and names of speakers public.
- Establish a transparent and independent nomination committee for commissioners and guarantee civil society's participation fully to enhance the independence of the NHRCK.

**Issue 3** Please provide information regarding any decisions taken since the submission of the State party's report towards ensuring that non-citizens are guaranteed the economic, social and cultural rights in the Covenant and clarify the ways in which they can claim these rights. Please explain which of the Covenant rights are recognized as being "by nature, universally applicable to individuals" in the State party and whether the "right to a life worthy of human beings" (see E/C.12/KOR/4, para. 4) is equal to article 11 of the Covenant.

- According to the Constitution of the RoK, treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same effect as the domestic laws of the RoK,<sup>7</sup> and the status of noncitizens shall be guaranteed as prescribed by international law and treaties.<sup>8</sup> However, noncitizens' ESCR are not protected as such. The Constitutional Court's interpretation of the Constitution is that noncitizens' social rights are not protected by the Constitution.<sup>9</sup> This means that noncitizens are not allowed to bring claims before the Constitutional Court on grounds of violation of social rights.
- Noncitizens' social rights are also rarely recognized in legislation, too. Unless especially provided for, noncitizens are in principle excluded from social welfare benefits. Exclusion of noncitizens is most rigid in areas of public aid. Permanent residents are not eligible for National Basic Livelihood Security System regardless of length of residence. Marriage migrants are eligible, but only if the noncitizen or the Korean citizen spouse is pregnant with a minor Korean citizen, or the noncitizen is raising a minor Korean citizen, or sharing a home or living expenses with the Korean citizen parents of the Korean citizen spouse.<sup>10</sup> It is the position of the Government that the noncitizen child is not covered by the

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<sup>5</sup>ICC-SCA, Report and Recommendations of the Session of the Sub-Committee on Accreditation (16-20 March 2015), pp. 39-41. <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf>

<sup>6</sup>GANHRI-SCA, Report and Recommendations of the Session of the Sub-Committee on Accreditation (9-13 MAY 2016), pp. 40-41. <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

<sup>7</sup> Article 6 paragraph 1 of the Constitution

<sup>8</sup> Article 6 paragraph 2 of the Constitution

<sup>9</sup> Constitutional Court of the RoK, Aug 30 2007, 2004hun-ma670 decision

<sup>10</sup> Article 4 of the National Basic Living Security Act. The result is that actual number of family members is not reflected in the benefits, affecting other members of the family.

Child Welfare Act which provides for protection of abandoned or abused children.<sup>11</sup> Only limited categories of noncitizens are eligible for disabled registration, and all noncitizens are excluded from activity assistant services, which is an essential feature of welfare services for persons with disabilities.<sup>12</sup> In case of social insurance such as National Pension, Employment Insurance and Long-Term Care Insurance for Older Persons, noncitizens, especially migrant workers, even if they are eligible or joining is mandatory, are by statute excluded from some of the benefits, or, due to permitted term of residence being limited, it is impossible for them to fulfil payment conditions for insurance benefits requiring long-term contribution, consequently preventing them from benefitting from the social insurance scheme they are required to contribute to.

#### **Suggested Recommendations**

- Ensure noncitizens' access to the Constitutional Court with regard to claims based on ESCR violations.
- Ensure that noncitizen children are covered by the Child Welfare Act.
- Ensure that noncitizens with disabilities, especially permanent migrants such as marriage migrants, refugees and permanent residents have access to activity assistant services and other welfare services for persons with disabilities.

**Issue 4** Please provide information on the steps taken to prevent and combat corruption at all levels of public governance and in the corporate sector. Please also furnish data on the number of prosecutions and sentences passed against high-level officials accused of such conduct, as well as on cases in which the Act No. 10472 (2011) on the Protection of Public-interest Whistle-blowers has been applied.

- The Government stated that various actions were taken to prevent and eradicate corruption, however those measures executed by the Government fall far short of preventing corruption. The level of integrity in Korea assessed by international assessment organizations has dropped significantly. According to Transparency International's "Corruption Perceptions Index 2016", the average score of Korea was 53 which ranked the country in the 52nd place out of 176 countries,<sup>13</sup> the lowest rank recorded since 2008. Reporting for the public interest must be vitalized and the protection of whistle-blowers should be strengthened to prevent corruption. However, the scope of corruption is narrow and the level of protection for the whistle-blowers is unsatisfactory in the current Act on the Protection of Public-Interest Whistle-Blowers and Anti-Corruption Act.<sup>14</sup>
- The Government responded that the Anti-Corruption and Civil Rights Commission is responsible for anti-corruption related work. This Commission was first established as the Korea Independent Commission against Corruption under the president in 2001, when the Anti-Corruption Act was enacted. This commission was integrated with the Ombudsman of Korea and the Administrative Appeals Commission and reorganized as the current Anti-Corruption and Civil Rights Commission. The integration of the three irrelevant organizations diminished the status and meaning of the anti-

<sup>11</sup> Children not under the protection of their parents become public aid recipients (in this case livelihood benefits are paid to the orphanage or foster home). However, noncitizen children are not eligible for benefits under the National Basic Living Security Act, meaning that they receive no government support even if abandoned or abused by their parents.

<sup>12</sup> According to Article 32-2 Paragraph 1 on the Act on Welfare of Persons with Disabilities, all noncitizens except for marriage immigrants, permanent residents and expats are not eligible for disabled registration. Disabled registration is a prerequisite for benefits including carer (activity assistance) services under the Act on Activity Assistance Services for Persons with Disabilities. But even noncitizens eligible for disabled registration, per guideline promulgated by the Ministry for Health and Welfare, are excluded from carer services.

<sup>13</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

<sup>14</sup> Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission (Act No. 14609)

corruption body and diluted the clarity and expertise of the work. The UN Convention against Corruption (Article 6) specifies “the body or bodies shall be granted the necessary independence to enable the body or bodies to carry out its or their functions effectively and free from any undue influence,” however, that is not the case in Korea.

- The Government announced the Improper Solicitation and Graft Act (Anti-Graft Act) was enacted to regulate public officials from receiving improper solicitation as well as money and valuables. However, the Government recently announced to relax the Anti-Graft Act as a means to support small-sized businesses and SMEs due the minimum wage increase. This will relax the current limit for meals, gifts, and congratulatory/condolence payments and upset the social efforts made to eradicate corruption.

#### **Suggested Recommendations**

- Amend Act on the Protection of Public-Interest Whistle-Blowers to be all-inclusive including serious corporate crimes, deleting the current limitation of targets of whistleblowing.
- Set up an independent anti-corruption organization.
- Stop relaxing the Anti-Graft Act and seek to implement and stabilize the law.

**Issue 5** Please inform the Committee about the findings of the research on the status of domestic relief procedures for the rights in the Covenant mentioned in the State party’s report and the follow-up measures, if any, as well as explain whether a ratification of the Optional Protocol to the Covenant is being considered.

- The Government has not signed the Optional Protocol to the Covenant. The Committee has been recommending the Government to sign the Optional Protocol. However, the Government answered in its report that the Government is still in the process of evaluating the necessity and impact of the ratification. The Government informed that the government-funded research on the domestic relief procedures for the rights in the CESC was completed in 2014, but the result of the research is not disclosed to the public.

#### **Suggested Recommendations**

- Sign and ratify the Optional Protocol to the Covenant immediately.
- Provide comprehensive domestic relief procedures for the rights in the Covenant.
- Disclose the result of the government-funded research on the domestic relief procedures for rights in the Covenant completed in 2014 and any information on additional ongoing research projects.

**Issue 6** Please provide information on legislative, administrative or other measures taken to ensure that businesses respect economic, social and cultural rights and apply the principle of due diligence throughout their operations, including when acting abroad, in particular in the extractives sector and commercial operations involving the appropriation of land. Please provide information on any human rights impact assessments carried out by the State party in development assistance projects or required by the State Party from businesses operating abroad.

- The Government has not explicitly accepted the recommendations in the country visit report of the UN Working Group on Business and Human Rights which was presented to the UN Human Rights

Council in June 2017.<sup>15</sup> In particular, the Government has not presented its position on many important policies including due diligence, except insisting that the NCP is in operation to address overseas operations of Korean companies.

- However, it is highly questionable whether the Korean NCP has been fairly operated and contributed to the promotion of the OECD Guidelines as the government insisted, especially when the engagement of trade unions and civil society organizations is not guaranteed. Only two of more than 20 complaints submitted to the Korean NCP went into mediation process in 2016 which resulted in no agreement or solution while the rest of them were all dismissed at the initial assessment stage. The alleged private experts participating in the Korean NCP are from either public organizations registered under the Ministry of Trade, Industry and Energy or government-funded institutes. Moreover, there was no consultation with trade unions in appointing the so-called labour law expert to the Korean NCP in 2017. The newly appointed labour law expert is known of his pro-business opinions. The Korean NCP is the only NCP commissioning its secretariat role to a private organization, the Korean Commercial Arbitration Board. The Government is criticized for understanding the NCP as an arbitration mechanism not a grievance mechanism promoting the OECD Guidelines and facilitating access to remedy. The Korean NCP should be fully reformed, especially given that its peer review is scheduled in 2019.

#### **Suggested Recommendations**

- Accept the recommendations of UN Working Group on Business and Human Rights and establish implementation plans accordingly.
- Reform the NCP in a way to fully guarantee the engagement of multi-stakeholders before the 2019 peer review.

#### **Maximize its available resources – Article 2(2)**

**Issue 7** Please report on measures taken to adopt comprehensive anti-discrimination legislation that addresses discrimination in all spheres, including in the private sphere, prohibits direct, indirect and multiple discrimination, contains a comprehensive list of grounds for discrimination, including national origin, sexual orientation and gender identity, and provides for effective administrative and judicial remedies.

- The Government pledged to increase Korea's ODA to 0.3% of GNI by 2030, an average of DAC economies, through the Second Basic Plan for International Development Cooperation confirmed in November 2015. This was to be phased by raising the ODA/GNI ratio to 0.15% by 2016, 0.16% by 2017, and 0.20% by 2020. However, the ODA/GNI ratio of Korea lingered at 0.14% in 2016, the first year the plan was implemented.
- In the First Basic Plan for International Development Cooperation adopted in October 2010, the Government had announced its ODA/GNI target as 0.25% by 2015. However, the actual ODA/GNI ratio of 2015 was a mere 0.14%. This is only 0.02% higher than the 0.12% from 2010. It led the Government to lower its target of the first plan from 0.25% to 0.20%, while establishing the second plan. If the current trend continues, the target of 0.20% will be difficult to reach even in 2020 and 0.7% will be an intangible target for a significant period after 2030.
- In case of bilateral aid to the least developed countries (LDCs), the grant element increased from 86.4% in 2009 to 91.0% in 2013, which meets the 1978 recommendations of DAC. However, Korea

<sup>15</sup> Report of Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the RoK, UN Human Rights Council, 1 May 2017, A/HRC/35/32/Add.1

has one of the highest ratio of loans to LDCs among DAC members despite the DAC recommendation of free grants for LDCs. Rather than focusing on the improved grant element for Korea's bilateral aid, more attention should be paid to the changes in loans to LDCs. The ratio of loans to LDCs is close to 42% as of 2016.

#### **Suggested Recommendations**

- Expand ODA via multilateral aid and budget support to achieve ODA/GNI target of 0.20%.
- Lower the ratio of loans allocated to LCDs radically.

### **Non-discrimination – Article 3**

**Issue 8** Please provide information on whether the State party intends to adopt a general anti-discrimination law and, if so, what would be its basic features and the timeline for adoption.

- UN human rights institutions<sup>16171819</sup> and the UPR in second cycle<sup>20</sup> have recommended the Government to legislate a comprehensive anti-discrimination law so that rights in all of these conventions and covenants can be enjoyed without discrimination. 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 second cycle.<sup>21</sup> However, it was the Government who caused a controversy at first, by excluding seven categories<sup>22</sup> including sexual orientation from the Anti-Discrimination Bill in 2007.<sup>23</sup> 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.

#### **Suggested Recommendations**

- Adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general

<sup>16</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea, 17 December 2009, E/C.12/KOR/CO/3, at para. 9.

<sup>17</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations of the Committee on the Elimination of Discrimination against Women - Republic of Korea, 1 August 2011, CEDAW/C/KOR/CO/7, at para. 15.

<sup>18</sup> UN Committee on the Rights of the Child (CRC), Concluding observations: Republic of Korea, 2 February 2012, CRC/C/KOR/CO/3-4, at para. 29.

<sup>19</sup> UN Human Rights Committee (HRC), Concluding observations on the fourth periodic report of the Republic of Korea, 3 December 2015, CCPR/C/KOR/CO/4, at para. 12-13.

<sup>20</sup> 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. 124.24, 124.33. “124.24. Adopt the Anti-discrimination Act as a matter of priority while encompassing also grounds for discrimination on the basis of sexual orientation (Czech Republic); Include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation (Spain); 124.33. Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity (Argentina).”

<sup>21</sup> 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

<sup>22</sup> Seven deleted categories from 2007 Anti-Discrimination Bill: sexual orientation, military status, country of origin, language, family type and family status, criminal and detention record, and educational status

<sup>23</sup> 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>

comment No. 20 on non-discrimination in economic, social and cultural rights.

**Issue 9** Please provide statistical data on the number of refugees and asylum seekers in the State party, disaggregated by sex, age, country of origin and ethnicity, and on the granting or rejection of refugee and/or asylum status during the reporting period. Please also provide information on the average waiting time for the processing of an asylum request and the main provisions of the Refugee Act No. 11298 (2012) that are relevant to economic, social and cultural rights.

- Aggregate number of asylum seekers in Korea from 1994 to April 2017 is 25,510. The number of recognized refugees is 694, resulting in a recognition rate of only 3.9%. The number of refugees recognized on family unification grounds is 224, which is around one third of the total number of recognized refugees.<sup>24</sup>
- As of April 2017, 1,321 asylum seekers have been granted humanitarian status. Humanitarian status is granted when the immigration authority determines that the asylum seeker is not a refugee under the 1951 Convention but decides that the asylum seeker should nevertheless stay on humanitarian grounds. Granting humanitarian status is not mandatory and the decision lies with the discretion of the immigration authorities. Total number of humanitarian status holders is around two times higher than recognized refugees, partly due to the high threshold for refugee recognition. Economic, social and cultural rights granted to humanitarian status holders are the same as asylum seekers. The humanitarian status holder is allowed to work on a limited basis,<sup>25</sup> but is not granted family unification or any other rights necessary for establishing a life in Korea.<sup>26</sup>
- According to the Refugee Act, the Minister of Justice may provide living expenses, operate residential facilities and provide medical services support to asylum seekers. However, provision of support and services is not mandatory and depends on the discretion of the Government. Currently there is only one living facility (the “Immigration/Foreigner Support Center”) nationwide operated by the Ministry of Justice, and as of end of 2016 only 65 people were residing in the facility.<sup>27</sup>
- 769 asylum seekers received living expenses in 2016 and average term of support was 2.8 months.<sup>28</sup> Number of asylum seekers who benefitted from living expenses support is around 10% of total number of asylum seekers in 2016, being 7,542.<sup>29</sup> Amount of support provided,<sup>30</sup> as shown in below chart, much lower than minimum living expenses published by the Government.<sup>31</sup>

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<sup>24</sup> Response by Ministry of Justice to inquiries made by NanCen according to the Official Information Disclosure Act. <http://www.nancen.org/1622> last accessed on August 25, 2017.

<sup>25</sup> The humanitarian status holder is required to submit both employment contract and business registration of the prospective employer when applying for a work permit. However, most humanitarian status holders only find precarious work where level of protection of workers’ rights is low, and these businesses often prefer to employ noncitizen workers on a daily basis, making it difficult for the noncitizen to demand signing of a formal employment contract and a copy of the business registration before even having been granted work permission.

<sup>26</sup> Humanitarian status holders are not eligible for Self-employed Health Insurance. Employee Health Insurance is only accessible to regular workers, leaving humanitarian status holders without a regular job without access to health insurance. Humanitarian status holders cannot start their own business because they are barred from getting a business registration.

<sup>27</sup> 2017 Central Government Agencies’ Foreigner Policy Implementation Plan, p.406

<sup>28</sup> Ministry of Justice, 2016 Refugee Statistics

<sup>29</sup> Ministry of Justice, 2016 Refugee Statistics

<sup>30</sup> Ministry of Justice, Press Release ‘Increase of living expenses support for Asylum Seekers’ (released in December 2015)

<sup>31</sup> Promulgated by the Ministry of Health and Welfare (Gosi No. 2015-136)

[Table 1] Comparison between Living Expenses Support for Asylum Seekers and National Minimum Living Expenses (KRW, as of 2016)

	1 person family	2 person family	3 person family	4 person family	5 person family	6 person family
Living Expenses Support for Asylum Seekers	418,400	712,500	921,800	1,313,000	1,340,300	Same as for 5 person family
National Minimum Living Expenses	649,932	1,106,642	1,431,608	1,756,574	2,081,540	2,406,506

- Living expenses support is only provided for six months from the date of application, and employment is not permitted during that time regardless of whether the asylum seeker receives living expenses support or not. This results in a substantial number of asylum seekers being forced to work illegally or rely on charity if available.
- Asylum seekers are not eligible for Self-employed National Health Insurance. National Health Insurance as an employees is only accessible to regular workers. Asylum seekers with no health insurance have to rely on the “Foreign Workers Medical Support Project” implemented by the Ministry of Health and Welfare. However the Medical Support Project limits medical service by item and budget, and medical services are provided only by a limited number of hospitals.<sup>32</sup>
- Article 31 of the Refugee Act provides that recognized refugees shall enjoy the same level of social welfare as citizens. However refugees are excluded from disabled registration which is a prerequisite for enjoying benefits for persons with disabilities.

#### Suggested Recommendations

- Expand living expenses support and medical services for asylum seekers to match their actual needs.
- Diversify housing support for asylum seekers and make housing support accessible to asylum seekers on a nationwide basis.
- Ensure that all humanitarian status holders can enjoy all rights necessary for establishing a life in Korea, including but not limited to general work permit, eligibility for National Health Insurance, family unification, and access to education and business registration.

**Issue 10** Please provide up-to-date statistical data on the socioeconomic status of foreign women married to Korean nationals, covering in particular the scale of poverty, life expectancy, literacy rates and access to employment. Please provide information on the possibilities available to foreigners married to Korean nationals of acquiring permanent residence status or naturalization in the Republic of Korea.

- According to the 2015 Survey of Multicultural Families by the Ministry of Gender Equality and Family,<sup>33</sup> marriage migrants are more likely to be engaged in manual labour (29%) or service work (18.7%) while percentage of Korean nationals in those fields is 13.4% (manual labour) and 10.5% (service work). The percentage of regular workers (34.9%) among marriage migrants is lower than

<sup>32</sup> The Medical Support Project covers not only refugees and their children, but also migrant workers, their spouses and children, marriage migrants and their children and homeless who do not have medical insurance or are not covered by medical aid. Total budget has been steadily reduced from 4billion KRW in 2013 to 3billion KRW in 2016 and 2017.

<sup>33</sup> [http://www.mogef.go.kr/mp/pcd/mp\\_pcd\\_s001d.do?mid=plc503](http://www.mogef.go.kr/mp/pcd/mp_pcd_s001d.do?mid=plc503)

the Korean nationals (48.5%), while the percentage of temporary workers (28.6%) and daily workers (20.8%) among marriage migrants is much higher than the Korean nationals (temporary workers : 19.6%, daily workers : 6%). Working conditions of marriage migrants in the RoK are poorer than the Korean nationals, therefore marriage migrants identify economic difficulties (29.8%) as the most urging problems in living in the country and this is also a main cause of marriage problems.

- According to the Government and the Nationality Act, “a person of a good conduct” is required for the naturalization, but there is no clear definition of “a person of a good conduct”. As a result, a marriage migrant who pays a penalty violating the Immigration Control Act or pays a fine for a misdemeanor is often denied the naturalization due to failing of the requirement of “a person of a good conduct”. Also, marriage migrant who is victim of domestic violence can only maintain residency after divorcing his/her Korean spouse by proving that the Korean spouse was at fault for the divorce. As a strict burden of proof is imposed, the victim of emotional violence or financial abuse, not physical violence is likely to be denied the naturalization.

### **Suggested Recommendations**

- Support the employment training and education to improve socio-economic situation of marriage migrants and their families.
- Reduce burden of proof of domestic violence for marriage migrants to maintain residency or get the naturalization after divorcing their Korean spouses.
- Amend the Nationality Act to make the requirement of naturalization more transparent and predictable.

**Issue 11** Please provide information on legislative, administrative and other measures taken to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity.

- 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,<sup>34</sup> 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 LGBTI persons and gender non-conforming youth is worse.<sup>35</sup> 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. Even during the general election in April 2016, a protestant-backed political party which claimed to stop “the spread of homosexuality” earned 2.63 percent of total votes, which made it eligible for government subsidies.<sup>36</sup>
- Discrimination started from the Government. 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 minorities, whereas the Ministry claimed that

<sup>34</sup> National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

<sup>35</sup> “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.

<sup>36</sup> The Korea Herald, “Religion-affiliated parties want to ‘protect’ country from Islam, homosexuality”, 11 April 2016. <http://www.koreaherald.com/view.php?ud=20160411001013>

it can only register groups who work on broader “general human rights” themes.<sup>37</sup> The Parade of the Korea Queer Festival in Seoul, a celebration of sexual minorities’ pride, was restricted by the police in 2015.<sup>38</sup> 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.<sup>39</sup> Article 92-6 of the Military Criminal Act<sup>40</sup> 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 Republic of Korea, where military service is mandatory (for a predetermined term) for most males, the clause constitutes a universal sodomy ban.<sup>41</sup> The Government has not applied to non-married same-sex couples’ rights that are acknowledged for non-married different-sex couples by laws and legal precedents. Consequently, same-sex couples in the country have experienced discrimination in the enjoyment of economic, social and cultural rights including pensions, housing and National Health Insurance.

- Also, LGBTI persons are subjected to conversion therapy, which claims that “homosexuality” is “curable,” and transgender persons are forced to undergo irreversible surgeries for legal gender recognition or the determination of their exemption from mandatory military service. Intersex persons, especially infants, children and adolescents continue to face unnecessary medical interventions carried out without their free and fully informed consent.
- Despite this widespread discrimination against LGBTI persons, the Government failed to provide equal protection to LGBTI persons, which is guaranteed under the United Nations Charter, Universal Declaration of Human Rights, Human Rights Treaties that the Republic of Korea has ratified, and the Constitution of Korea.

#### **Suggested Recommendations**

- Provide all administrative, legislative, and judicial measures to prohibit discrimination on the basis of sexual orientation and gender identity at the central and local levels, including the establishment of a National Action Plan for LGBTI persons.
- Ensure that all rights protected under the Covenant are equally guaranteed for LGBT persons.

### **Equal Right of Men and Women - Article 3**

**Issue 12** While noting the enactment of the Gender Impact Analysis and Assessment Act in 2012, the Committee would like information on the results of the comprehensive gender-based review of all its existing legislation, as was requested in its previous concluding observations. Please also indicate what specific measures have been taken by the State party to increase the representation of women in political life and in decision-making positions in both the public and private sectors.

#### **1) Gender Impact Analysis and Assessment**

- The public officers responsible for gender impact analysis and assessment and for the gender responsive budget tend to prepare the relevant reports in a perfunctory manner. Furthermore, the

<sup>37</sup> 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.

<sup>38</sup> Human Rights Watch, Dispatches: No Parade, but Pride Preserves in South Korea, 1 June 2015

<sup>39</sup> Human Rights Watch, “South Korea Backslides on Sex Education”, 17 February, 2017

<sup>40</sup> 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.

<sup>41</sup> The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011.  
<http://www.koreaherald.com/view.php?ud=20111215000521>

analysis and assessment training provided annually to public officers merely focuses on teaching them how to prepare a report. Consequently, the results of analysis and assessment are not effectively linked to the further improvement of ministries' policies. The current sex-disaggregated statistics, which only include simple data like population and sex, are not being effectively used as a main reference point for gender impact analysis and assessment or for the establishment of government policy and projects from a gender perspective.

#### **Suggested Recommendations**

- Designate public officers exclusively responsible for gender equality policy in all ministries to effectively implement gender mainstreaming strategies. Prepare with concrete measures to enhance the gender awareness of public officers responsible for women's policies.

### **2) Representation of Women in Politics and Decision-Making**

- Although the percentage of female public officers at the managerial level has gradually increased, they still only make up 4% of all female public officers; in comparison, the ratio of male public officers at the managerial level to the total number of male public officers is 19%. While the Public Official Election Act stipulates that the list of Proportional Representation System (PRS) should have a 50% female gender quota, the lack of punitive provisions puts at risk the effective enforcement of this requirement. Meanwhile, the status of female leaders in local elections is much worse. No female leader has been elected in any of the 17 metropolitan governments across the country. Out of 225 local governments, only nine have elected female leaders, accounting for only 4%. The proportions of female members in the metropolitan and local assemblies are 14.3% and 25.3%, respectively.

#### **Suggested Recommendations**

- Develop practical measures to enhance women's representation in the public sector significantly.
- Revise the Public Official Election Act, the Political Fund Act and the Political Parties Act to make the legal provisions of electoral gender quotas mandatory with enforcement measures.

### **3) Gender Equality**

- Although the term 'gender equality' is often used in the text of various policy documents, the Government's narrow and misleading interpretation of 'gender' on the basis of the biological sex dichotomy overlooks unequal power relations and does not take into account substantive equality. Such perspectives on the part of previous two consecutive governments led to the downsizing of budgets related to the implementation of gender equality policies and for the empowerment of women's organization.

#### **Suggested Recommendations**

- Guarantee the genuine participation of women's organizations, particularly those representing the most marginalized and vulnerable groups of women and girls in the process of formulating and implementing gender equality policies. Support them with the inclusion of financial assistance.

### **Just and Favourable Conditions of Work – Article 7**

**Issue 15** Please provide information on the implementation of the Act No. 8074 (2006) on the Protection of Fixed-term and Part-time Workers in particular regarding pay and insurance coverage for the most vulnerable and disadvantaged groups. Please provide information on the working conditions for migrant workers, in particular in the agricultural sector.

### 1) Problem of Statistics of non-regular Workers

- Non-regular workers include fixed-term, and part-time and non-standard forms of employment (on-call, dispatch, outsourcing, and home-based). However, in statistics below, many workers are misclassified as regular worker inspite of the precariousness of their employment, such as the long-term temporary workers (daily workers in construction site) and in-house subcontracting workers, etc. The number of bogus self-employed workers are too small in the statistics as many of them are classified as business owner. So actual number of non-regular workers may increase.

[Table 2] Social Security Coverage<sup>42</sup>

	Average Monthly Wage (KRW)	Coverage of National Pension Scheme (%)	Coverage of National Health Insurance (%)	Coverage of Employment Insurance (%)
Waged Workers (19,627,000)	2,368,000	67.6	72.6	69.6
Regular Workers (13,183,000)	2,795,000	82.9	86.2	84.1
Non-Regular Workers (6,444,000)	1,494,000	36.3	44.8	42.8

### 2) Working Conditions of Migrant Workers in the Agricultural Sector

- The Government started to provide the Standard Employment Contract for migrant workers in the agricultural industry from 2015 and to conduct labour inspection for workplaces hiring migrant workers in the agricultural industry from 2016. According to the workplace inspection conducted from March to April 2017, however, a considerable number of agricultural employers turned out to violate the government's guidelines by forcing migrant workers to work longer than contracted hours, not paying or delaying payments, or paying less than minimum wages while deducting excessive fees for accommodations. It also revealed that migrant agricultural workers were provided with uninhabitable accommodations, deprived of their passports, exposed to sexual harassments and physical abuses by their employers. Nevertheless, no follow-up actions were taken by the Government to punish or prosecute the employers who violated labour laws or any other laws.
- Migrant workers in the agricultural industry are excluded from the legal protection as workers. For example, the provisions pertaining to work hours, recess, and holidays prescribed in the Labour Standards Act does not apply to workers in agriculture sector, and unincorporated agriculture businesses with less than five regular workers are excluded from the application of the Industrial Accident Compensation Act, which make many migrant agricultural workers not eligible for compensation benefits. In addition, a loophole in the Employment Permit System that allows agricultural employers without business registration to hire migrant workers hinders the workers from becoming employee subscribers of National Health Insurance. As a result, less than 20% of migrant agricultural workers is covered by the National Health Insurance, which is far less than 70% of insurance coverage rate among all workers under the Employment Permit System (EPS).

### Suggested Recommendations

- Strengthen requirements for employment permit issuance and strictly prosecute employers for

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<sup>42</sup> Statistics Korea, Survey on Economically Active Population – Additional Survey, August 2016.

violations of labour laws to improve working conditions of migrant agricultural workers.

- Amend the provisions in labour-related laws including Article 63 of the Labour Standard Act and the Industrial Accident Compensation Act which exclude agricultural workers from being protected.

**Issue 16** Please inform the Committee about the extent to which the minimum wage is respected in practice by employers in the public and private sectors. Please specify whether the minimum wage allows workers and their families to have a decent living in line with the Covenant.

- The minimum wage rate for the year 2018 is 7530 KRW per hour and is 1,570,000 KRW per month when it is converted based on 40 hour- work- week. This is still insufficient when it is compared to the actual living cost notified by the Minimum Wage Council (2016), which was 1,752,898 KRW in average for the household with one person, 3,638,000 KRW for the household with two wage earner and one child and 4,239,000 KRW for the household with two wage earner and two children.
- According to the Wage Survey report issued by the Minimum Wage Council (2016) the number of workers paid less than minimum wage and the percentage of it to the total number of waged workers are as follow;

[Table 3] The number and percentage of workers paid less than minimum wage<sup>43</sup> (unit=1,000 person, %)

	2011	2012	2013	2014	2015	2016
Number of waged workers (A)	17,734	17,734	18,240	18,776	19,312	19,627
Number of workers paid less than minimum wage(B)	1,899	1,699	2,086	2,270	2,222	2,664
percentage (B)/(A)	10.8	9.6	11.4	12.1	11.5	13.6

- In private sector, percentage of workers paid less than minimum wage is high in specific sectors such as convenient store or fast-food restaurant, movie and computer game industry, etc. As there is no information of minimum wage compliance in government sector, KCTU conducted a survey on the labour cost for precarious workers (with open-end contract and fixed-term contract) in the makeup of expenditure budget of local governments in 2015 and 2016. As a result out of 241 local governments surveyed, 112 (46.4%) violated the minimum wage law.

#### **Suggested Recommendations**

- Increase the number of labour inspectors to adequate level to guarantee the minimum wage compliance for all workers.
- Make sure that the objective of minimum wage system in line with the Covenant.
- Take steps to introduce the punitive damage compensation for repeated violation of minimum wage law.

**Issue 17** Please provide information on the steps taken to rectify the wage gap between women and men, which remains at 37 percent. Please also provide information about the impact of specific measures taken by

<sup>43</sup> Statistics Korea, Survey on Economically Active Population-Additional Survey, August, each year

the State party, such as the Certification System for Family-Friendly Businesses and government subsidies, to increase work-life balance through, for example, the development of childcare facilities in places of work.

- The fundamental reason for the gender wage gap in Korea is structural gender discrimination in the labour market. Women in Korea are likely to start their career in irregular/low-wage jobs, engaging in assistant roles, or employed in small- and medium-sized enterprises (SMEs). Further, female workers around the age of 40 are frequently challenged with the glass ceiling and lose out in their workplaces. Young female workers are often questioned about their personal plans for marriage, childbirth and childcare in job interviews. Although the principle of equal pay for equal work is specified in the Equal Employment Opportunity and Work Family Balance Assistance Act, it is often reported that the salary for the same work is differently specified by sex on a number of SME job postings. However, the Government has yet to take active steps to tackle such gender-discriminatory structures in the labour market.
- While the Government has focused on the creation of part-time jobs as a means of increasing the overall employment rate over the last nine years, and it has paid little attention to improving the substantial quality of jobs. The Government has actively promoted part-time jobs, arguing that they can serve as a good alternative to shorten working hours and achieving a balance between work and family life. In reality, however, women undertaking part-time work are suffering from poor working conditions, including extremely low wages, job insecurity and excessive workloads. In fact, the percentage of women in part-time jobs out of all female workers has increased from 12.5% in 2007 to 20.7% in 2016. As of August 2016, the average monthly wage of part-time workers is 740,000 KRW (the average monthly wage of female workers in irregular jobs is 1,230,000 KRW, while the minimum monthly wage in 2016 is 1,260,000 KRW). The Private-Public Committee for Work Family Balance mainly comprises people from the business sectors, and nobody from the labour sector is included in the Committee. Moreover, the Committee fails to drive companies to actually implement its Ten Suggestions for Workplace Innovation beyond initially adopting it.

#### **Suggested Recommendations**

- Take active steps to eliminate structural gender discrimination in the labour market and reduce the gender wage gap.
- Take active steps to improve the quality of women's jobs, including establishing practical measures to reduce poor quality part-time jobs. Guarantee the participation of civil society organizations representing female workers in the process of establishing and implementing labour policies.

**Issue 18** Please provide information on the scope of the informal economy and any changes made in this area during the reporting period. Please clarify what measures are in place to guarantee just and favourable conditions of work and access to social protection for workers in the informal economy. Please also provide more information on the content and impact of the Comprehensive Measures for Non-regular Workers and on the impact of the Guidelines on Job Security of Fixed-term Workers that is aimed at encouraging the conversion of non-regular workers engaged in jobs of a continuous and permanent nature to regular status. Please explain how the Supreme Court Ruling of 14 April 2011 (2007 Doo 1729 Judgment) has been implemented, including any legislative amendments.

#### **1) Fixed-term Workers**

- Guidelines on Job Security of Fixed-term Workers 2016 has fundamental limitation in that this is a

policy measure without any binding effect. In public sector, As it is found in public sector, the convert of fixed term contract into open-end contract doesn't guarantee improvement of working conditions and as a 'balloon effect', an increase of indirect employment are not prevented if there is no proper measure.<sup>44</sup> In that reason, the trade unions have continuously requested to make it principle in law to hire workers in regular and permanent basis for 'permanent and perennial works' and allow fixed term employment in case there is reasonable reason to do so as an exception. (ILO Recommendation No. 166)

## **2) Indirectly employed Workers**

- According to the Ministry of Employment of Labour<sup>45</sup>, 3,407 workplaces with 300 workers or more has notified the employment status of workers and out of 3,852,000 workers in those workplaces, 902,000(19%) are indirectly employed, engaged in contracting out, labour dispatch, subcontracting, outsourcing, etc. The rate is higher in larger workplaces, 25.5% in workplaces with 5,000 workers or more. It should be noted that among them, in-house subcontracting workers is calculated as regular worker in all data issued by the Statistics Korea. Indirectly employed workers are constantly under employment insecurity as their employment contracts are temporary and renewed every 1-2 years. Indirectly employed workers usually sign one-year employment contracts with subcontractors or labour dispatch agencies. In case a primary contractor terminates the contract with the agencies intending to incapacitate trade unions, the workers hired by the agencies automatically lose their jobs. Even if those workers are rehired by new subcontractors or labour dispatch agencies and able to continue their work with the same primary contractors, their service period is not recognized and in many cases union members are easily targeted and ineligible for the continuation of employment.

## **3) Bogus Self-Employed Worker in special forms of work**

- According to the Survey of the NHRCK, around 2,500,000 workers are classified as bogus self-employed and this include construction equipment operator, cargo truck driver, insurance seller, after-class lectures in school, home-based mail carrier, chauffeur service provider, caregivers, tour guide, and broadcasting writer, etc. They provide services without employment contract but in reality they are economically dependent to certain enterprise(s) and work under direct or indirect instruction and supervision. In almost all cases, the employment contract of those workers are unilaterally converted by their employers who wants to avoid the legal responsibility as employer. As those workers are not regarded as workers in labour laws, they are not able to enjoy any legal protection as workers.

## **4) Domestic Workers**

- Article 11 of the Labour Standards Act, which stipulates that the Act shall not apply to domestic workers, is not in line with the Convention Concerning Decent Work for Domestic Workers (ILO, 2011), which calls on each government to take measures to ensure the equal treatment of domestic workers

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<sup>44</sup> According to the Government's statistics, the number of non-regular workers in the public sector was remained at around 20% of the total number of workers engaging in the public sector since 2003, and decreased to 20.5% (360,000 persons) in 2012 and to 20.0% (360,225 persons) in 2013. This is the result of the Government's measure to convert fixed-term contracts into open-ended contracts, and around 10,000 were converted during this period. However, as the Government's measure targeted fixed-term workers who are directly employed and since the number of indirectly employed workers has increased from 64,822 in 2006 to 111,940 in 2013 and again to 115,301 in 2015, this shows that the Government's measure was not sufficiently effective to reduce the number of indirectly employed workers. In addition, the treatment of those who have been converted to workers with 'open-ended contracts' in terms of wage and social security have change little.

<sup>45</sup> The Result of public notification of employment status of workers in Businesses with 300 workers or more (2017)

and workers in general. On top of that, the main purpose of the Act on Improvement of Employment for Domestic Workers, recently proposed by the Ministry of Employment and Labour, is to vitalize the domestic service industry. According to the Act, the government shall designate a recruitment agency and issue domestic service vouchers. However, the Act does not fully guarantee the labour rights of domestic workers, as it defines the users of domestic services merely as customers without imposing upon them any of the duties of employers. Furthermore, the Act makes no legal provisions for holidays or rest for domestic workers.

#### **Suggested Recommendations**

- Make regular and permanent employment as principle, especially for the permanence and perennial works and permit any forms of precarious employment, fixed-term and indirect employment only in case there is a reasonable reason. To this end, abolish the Act on Fixed-term workers and Act on Dispatched workers and revise the Labour Standard Act.
- Revise the Labour Standard Act (Article 2), especially the definition of worker so that the bogus self-employed workers can enjoy all the legal protections.
- Amend the Labour Standard Act to ensure the domestic workers benefits from fair terms of employment and workers' rights. Take necessary measures to ensure that all legislation related to labour rights (The Employment Insurance Act, the Industrial Accident Compensation Insurance Act, the Minimum Wage Act, etc.) also applies to domestic workers.

**Issue 20** Please provide information on the steps taken to criminalize sexual harassment in the workplace and to punish perpetrators and ensure compensation to victims. Please provide data on cases in which sexual harassment has occurred, including the sanctions imposed and victims compensated.

- According to the existing legislation on sexual harassment in the workplace, its perpetrators are mostly only subject to administrative fees or fines. Victims of sexual harassment who report it often experience secondary victimization by the perpetrators, employers, colleagues or supervisors, such as bullying, dismissal and further sexual harassment. The Ministry of Employment and Labour have neglected their duties in terms of managing and overseeing workplaces in which sexual harassment cases have occurred. Labour inspectors investigating sexual harassment cases often do not consider the protection of the victim during the process, for example, they may conduct a face-to-face inquiry with both the perpetrator and victim present.
- The remedies recommended by the NHRCK are indemnity payments, personnel decisions, special human rights education, etc. However, in many cases indemnity payments are settled for very small amounts between two parties. The NHRCK has not taken measures to protect victims after their case has been closed.

#### **Suggested Recommendations**

- Amend the legislation related to sexual harassment, including tightening of punitive provisions and come up with comprehensive measures to protect victims.
- Assign labour inspectors exclusively responsible for sexual harassment cases within the Ministry of Labour and Employment, as well as provide them with appropriate training on gender equality.
- (To the NHRCK) Monitor perpetrator's implementation of recommendations and protection of victims in sexual harassment cases.

## Right to form and Join Trade Unions – Article 8

**Issue 21** Please clarify the requirements for the registration of trade unions. Please indicate the restrictions imposed on the enjoyment of trade union rights by public officials and whether the State party intends to lift the restrictions on teachers' right to join a trade union. Please provide information on the effects of the replacement of the "compulsory arbitration system" at essential public workplaces with "the essential business system" (see E/C.12/KOR/4, para. 75) and provide data on the number of strikes that have taken place at public workplaces before and after the amendment to the law.

### 1) Recertification of the KTU and Rejection of Establishment Report of the KGEU

- The Trade Union and Labour Relation Adjustment Act (TULRAA) states that non-workers may not be part of a union; dismissed workers in respect of whom the National Labour Relations Commission has made a review decision are also prohibited from trade union membership under other provisions of law. Such a provisions are stipulated in the Act on the Establishment, Operation Etc. of Trade Unions for Teachers (AEOTUT) and the Act on the Establishment, Operation Etc. for Public Officials' Trade Unions (AEOPTU). Based on the provisions, the Ministry of Employment and Labour decertified the Korean Teachers and Education Workers Union (KTU) in 2013 and approximately 60,000 teachers are denied their rights to freedom of association because of the inclusion of nine dismissed teachers. The registration for Korean Government Employees Union (KGEU) has been denied on the same ground. The Committee of Experts on Freedom of Association (CFA) of the ILO has since 1997 extensively reviewed the matter and repeatedly recommended that the Government should take the necessary measures to amend or repeal legal provisions that prohibit dismissed workers from being union members as being contrary to the principles of freedom of association.<sup>46</sup> These cases imply also the de facto authorisation procedure that underlies recognition of trade unions. This certification process, based solely on the issuance of a certificate by the Ministry of Employment and Labour, creates opportunities for arbitrary exercise of discretion by public officials.

### 2) Trade Union Rights of the 'Bogus Self Employed' and the indirectly employed Workers

- Certain categories of workers - including the self-employed, those whose remuneration is based on performance rather than an employment contract and those who are paid by clients rather than their employer - are considered to be engaged in 'special forms of work' or in 'disguised employment' relationships. Associations formed by these workers are not recognized as trade unions as defined by TULRAA. As such, any agreements made by these associations do not carry the binding force accorded to union collective bargaining agreements. Employers may refuse to adhere to these agreements. Similarly, employers have contested the recognition of the Korean Construction Workers Union for allegedly including in its membership 'independent contractors' and press criminal charges for the union activity. The CFA of the ILO recommended the Government to fully guarantee the fundamental labour rights 4 times but no measure have been taken.<sup>47</sup> The indirectly employed workers who are employed by an employer and work for another business owner<sup>48</sup> cannot enjoy

<sup>46</sup> Effect given to the recommendations of the committee and the Governing Body - Report No 382, June 2017 Case No 1865 (Korea, Republic of) - Complaint date: 14-DEC-95 (GB.330/INS/4) paras 33-96

<sup>47</sup> Report in which the committee requests to be kept informed of development - Report No 363, March 2012, Case No 2602 (Korea, Republic of) - Complaint date: 10-OCT-07

<sup>48</sup> Being provided labor under the subcontract or outsourcing contract with external enterprises (subcontracting company, outsourcing company, labor dispatch company, labor procurement provider, subsidiary, management in trust, etc) instead of hiring workers directly. In that case, the external enterprises who have the employment relations with the workers have no real authority to those workers but the real business owners (original contractor or building owner, etc) are influential

their rights as the 'real employers' avoid their responsibility as the 'employer'. The daily activities of trade union can easily be disrupted by the original employers when they leave the subcontracting workers out of the site. Working conditions (wage, employment, working hour) and trade union activity of the subcontracting workers (time-off for union activity, full time union officials) are guaranteed when the contractor/original company incorporates the costs in the contract but the original companies can easily avoid its legal responsibility as 'employers' because they do not have direct employment relations with those workers (incapacitation of the right to collective bargaining). The contractors can easily employ substitutes for strikers by contracting with another subcontractor and the right to strike of subcontracting workers is easily violated. The case of repairing workers for Samsung Electronic Services is well describing the situation of those workers.<sup>49</sup>

### **3) Limitation of exercise of right to bargain collectively through the forced bargaining channel unification and abusing the system for union busting**

- As for the right to collective bargaining, 'the forced bargaining channel unification system' which was introduced along with 'the union pluralism at enterprise level' (1 July 2011) invests the majority unions with full authority of negotiation, sign and strike and the minority unions are not able to exercise those rights, which is the core part of trade unions. Meanwhile, employers abuse this system and support the establishment of yellow unions and strategically discriminate unions in favor of yellow unions on the purpose of incapacitation of independent and democratic unions. In many cases, specialized labour relation consulting firms provided such a strategy and this violates freedom of association severely. The union busting campaign launched by Hyundai Motor Company<sup>50</sup> in its first tier supplier Yoosung Corporation and the similar case in VESK<sup>51</sup> are good examples of the abuse of the bargaining channel unification system.

### **4) Excessive restriction of Right to strike ('Obstruction of Business' Charge, Damage Lawsuit, Essential Public Business, etc)**

- The TULRAA defines justifiable strikes narrowly<sup>52</sup> which makes it almost impossible for workers to

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over the workers on all the matters of labor relation. However, these business owners are avoiding their legal responsibility as 'employer' stipulated in the TULRAA.

<sup>49</sup> Report in which the committee requests to be kept informed of development - Report No 381, March 2017, Case No 3047 (Korea, Republic of) - Complaint date: 05-DEC-13

<sup>50</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea A/HRC/35/32/Add.1, para 24.

<sup>51</sup> 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, paras. 62-69

<sup>52</sup> With 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 labor relations intend to accomplish their claims' and in 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 Article 4 reads the industrial actions which are conducted to achieve the purpose of collective bargaining corresponds to the justifiable activities in Article 20 of the Criminal Act. However, 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 labor and management on concrete issues for improvement of working conditions, after going through all the legal procedure such as decision by union members' 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.

lawfully strike in an effective way. Especially in contrast of the CFA's view,<sup>53</sup> any strike over the economic and social policies of the Government directly related to the workers livelihood or to find solutions for the managerial issues (layoffs, factory relocation, etc) are not justifiable objective of strikes.

- In public sector, even though Compulsory Arbitration System has been repealed the restrictive effect of the system is retained by broadening of definition of "Essential Business"<sup>54</sup> which should be maintained during the strike and introducing of Emergency Adjustment System and permitting employment of the substitute of the strikers. The Government can determine the range of "essential business" to be maintained during strike in advance under which trade union cannot participate in the procedure, and the level of maintenance of essential business is as excessively high as 70~100%. As a result, the function of right to strike to achieve the even bargaining capacity against the employer has been deprived and the period of the strike in public sector tends to be protracted due to its ineffectiveness.

[Table 4] Comparison of duration of strike Before & After introduction of "Maintenance of Essential Business System"

	2006	2009	2013	2016
Duration of Strike	4 days	9 days	23 days	74 days
Operation rate of passenger train (KTX) during strike	-	100%	70~100%	100%

- Regardless of the previous recommendation by the Committee, the practise of criminalisation of striking workers based on the Criminal Act Article 314 (Obstruction of Business) and civil lawsuit for the compensation of damage and provisions seizure of asset of union or individual workers still continue. In relation to the application of Criminal Act Article 314, even though the court has ruled that a simple collective refusal to labour service can be seen as constituting a crime of obstruction of business only in case such an action is carried out at a time period unforeseeable by the management, in light of surrounding circumstances and details, and caused serious or disastrous damage to the management's business operations to the extent that the management's free will concerning the continuance of its business can be acknowledged as suppressed and/or confused,<sup>55</sup> the practice has not changed that the government always declare any strike "illegal" before the strike start and the investigation agency (prosecutor) always indicts union leaders in case the employer file a complaint against them. In addition the standard according to the court ruling above mentioned is very broad and does not exclude the application of obstruction of business to peaceful strikes, according to the CFA of the ILO.<sup>56</sup>
- As of June, 2017 the total amount of the damage claims filed by employers or by the Government against trade unions affiliated with the KCTU in 24 workplaces is no less than 186,700,000,000 KRW (USD 165 million). The total amount of assets of trade union or individual union members seized

<sup>53</sup> Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2016), paras. 526-544

<sup>54</sup> Article 42-2 defines 'Essential Business' where industrial actions are restricted in broad sense (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 this makes it almost impossible for workers in public sector to strike. While the international labor standard defines the area where right to strike could be restricted in strict sense as 'service', the current law defines it as 'business'.

<sup>55</sup> Supreme Court *en banc* decision(2007do482 on March 17, 2011)

<sup>56</sup> Effect given to the recommendations of the committee and the Governing Body - Report No 382, June 2017 Case No 1865 (Korea, Republic of) - Complaint date: 14-DEC-95 (GB.330/INS/4) para 93

including bank account and wage is at least 18,000,000,000 KRW (USD 16 million). According to a research by the KCTU, the amount of damage claims has sharply increased since Oct 2003 (57,500,000,000 KRW or USD 50 million). The reason is that employers strategically use damage claims and provisional seizures as a means of trade union repression.

#### **Suggested Recommendations**

- Take necessary measures to recertificate the KTU and to facilitate the registration of the KGEU without delay.
- Take necessary measures to amend or repeal the provisions in the TULRAA, AEOTUT and AEOPTU prohibiting dismissed workers from being union members.
- Amend the Article 2 of the TULRAA, in terms of the definition of Worker and Employer so that the Bogus Self Employed workers can fully enjoy their 3 basic labour rights and the indirectly employed workers can negotiate with their real employer (the contractors) in effective way.
- Take necessary measures to revise related provisions of the laws to bring it in line with the principle of freedom of association, including the definition of justifiable strike and essential services, review the application of obstruction of business charge for union activity and cancel the hefty damage claims against the unions and individual workers.

#### **Right to Social Security – Article 9**

**Issue 22** Please provide information on the percentage of the population that has access to the National Basic Livelihood Security System and about the coverage of disadvantaged and marginalized individuals and groups. Please also provide information about the impact of the easing of the income criteria on access to the system.

- In July 2015, the Government introduced a stratified individual payment system for the recipients of benefit payment as well as a relative poverty line. However, the number of recipients of living allowance, which is a cash payment needed for the poor, is only 1,240,000 as of December 2015. This equals to a meager 2.39% of the total population and targets only about 16% of the population below the relative poverty line (50% of median income). Because the relative poverty standard was implemented using a low minimum cost of living and the criteria for recipient selection and payment were decided accordingly, the ratio of recipients and level of living allowance remain low despite revising the selection standard. Hence, the recipients experience difficulties in maintaining their livelihood. The standard to receive living allowance at the time of revision was 28% (30% at present), which is lower than before the restructuring (32% of median income).
- According to the recently announced Comprehensive Plan for National Basic Livelihood Security System, the Government acknowledged that the relative poverty rate rose 0.9% p to 14.7% in 2016, yet failed to present a roadmap to increase the living allowance payment despite the deteriorating indicator of income distribution. The payment of living allowance is currently limited to 30% of the median income and excludes the amount of real income and asset converted into income from the payment. Although the 2018 minimum wage was increased by 16.4%, the raise in living allowance, 1.16%, recorded the lowest hike since the introduction of the system. The Government should enhance the coverage to a level in which it is possible to “live a dignified life” in accordance with the government’s objective to guarantee the national minimum.
- Although the Government alleviated the criteria for obligatory support providers, there are still 930,000 persons in the blind spot of the National Basic Livelihood Security System for living

allowance and medical benefits<sup>57</sup>. The Government abolished the obligatory provider standard for education benefits in July 2015, and announced that it will do the same for housing benefits in October 2018. However, the living allowance, a cash payment, and medical benefits that provide access to medical services are what the poor truly need. The guideline for the two payments will be relaxed only if an elderly or a family member with severe disabilities is included in the household of the obligatory provider and the household is in the bottom 70% of the income bracket. This signifies that the Government is not considering the actual recipient, but the situation of the obligatory provider in the qualification process. What is worse is that this policy is planned to be implemented in 2022, painting a harsh reality for the poor without benefits who need to wait another five years when their survival is threatened now.

### **Suggested Recommendations**

- Raise the payment criteria for living allowance which is only 30% of median income and targets a mere 16% of the population below the relative poverty line. Also, suggest a roadmap to raise the living allowance payment (only 30% of median income)
- Disclose the decision process of the median income criteria with is the qualification standard for the National Basic Livelihood Security System.
- Abolish the criteria for obligatory support providers which prevent the poor from receiving the benefits of the National Basic Livelihood Security System due to the income and assets of family members who do not live together.

**Issue 23** Please provide information on how the 2014 amendment to the National Pension Act has affected the right of older persons to benefit fully from the national pension system, including the proportions of older persons who are fully and partially benefitting from the pension system.

- Although the amendment of the National Pension Act in June 2016 allows insured individuals to pay retrospective contributions for the period which they had lost the insured status, this only helps those in the income scale who are financially capable of a doing so. Moreover, the Basic Pension Scheme introduced in 2014 was designed to reduce the amount of benefit when a recipient had subscribed to the national pension for a long period of time. The Government has not yet responded about this disadvantage a long-term national pension subscriber is exposed to, even though this measure reduces the already low public pension amount.
- Korea's elderly poverty rate is 49.6%, the highest among OECD members, and it is drastically higher than the OECD average of 12.4%.<sup>58</sup> Yet, the benefit of the National Pension Scheme is very low and the system has a wide blind spot. The nominal income replacement rate of National Pension Scheme is 46% of the average income based on 40 years of subscription in 2016, and it is expected to decrease by 0.5% per annum to 40% in 2028. The monthly average of the old-age pension benefit is approximately KRW 340,000, which is 27% of the minimum monthly wage and about half of an individual's living allowance of the Basic Livelihood Security System (KRW 661,172 as of 2017). In addition, 49.4% of the total population between the age of 18 and 59 is still uninsured under the National Pension Scheme.

### **Suggested Recommendations**

<sup>57</sup> Ministry of Health and Welfare, Comprehensive Plan for National Basic Livelihood Security System (Aug 10 2017)

<sup>58</sup> OECD Income Distribution Database, [www.oecd.org/social/income-distribution-database](http://www.oecd.org/social/income-distribution-database)

- Stop the income replacement rate from falling further to solve the low pension benefits the National Pension Scheme.
- Take more active measures to remove the blind spot of the national pension system.
- Eliminate the policy that reduces the basic pension benefit for long-term national pension subscribers.

## **Protection of Family and Children – Article 10**

**Issue 24** Please provide information on registered and prosecuted cases of domestic violence, including marital rape, disaggregated by sex, age and ethnicity, and indicate the sanctions imposed on perpetrators and the remedies provided to victims. Please also provide information on the effectiveness of the measures taken to combat domestic violence, including the Comprehensive Measures to Prevent Domestic Violence adopted in June 2013.

### **1) Spousal Abuse**

- The main purpose of the Government's current policies on the elimination of domestic violence, including the Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence, is to maintain and restore family. Consequently, the judicial treatment and policy measures of domestic violence crimes have a tendency of ordering protective disposition rather than imposing criminal punishment, focusing on therapeutic counseling services provided to perpetrators. In 2013, the Government announced the Comprehensive Measures to Prevent Domestic Violence, which expand the suspension of indictment on condition of education or counseling and the protective order of taking education or counseling with domestic violence cases transferred as family protection cases. As a result, the prosecution rate for domestic violence cases have been decreased while a number of transfers as the family protection case has been skyrocketing since 2013 (Table 23, Replies of ROK to the LOIs).
- The Government's lackadaisical awareness and problematic judicial process of domestic violence crimes have been obviously revealed in its crime statistics. The Government's crime statistics does not even categorize cases in which the victim and the perpetrators are spouses. Therefore, there is no way to identify status of domestic violence committed by spouse including marital rape which is supposed to occupy highest rates in domestic violence. In addition, it cannot properly reflect distinctive aspects of gender-based violence crimes and current status of judicial process dealing with gender-based violence crimes including domestic violence as it does not provide any cross-analysis based on gender and other factors of victims and perpetrators such as age, disability, national origin and race.

### **Suggested Recommendations**

- Provide the crime statistics to analyze and identify specific status of violence against women including data such as crime occurrence and arrests, prosecution's dispositions against criminals and results of criminal penalty, characteristics of criminal acts, perpetrators and victims, based on gender and relationship between victims and perpetrators (e.g. spousal relationship should be independently categorized)

### **2) Child Abuse**

- The number of reported cases of child abuse in the RoK is sharply increasing from 6,403 in 2012 to 18,573 in 2016. More than 80% of child abuse cases are committed by their biological parents. However, there are not enough measures to investigate 'family affairs' which makes it difficult to

discover child abuse in early stage and prevent it. It was not until 2016 that legal grounds for home visits and police investigation were established for children who have not entered schools or have been absent for a long time. However, there are still no legal grounds for home visits for preschool children.

- After the enactment of the Act on Special Punishment of Child Abuse Crime in 2014, strong punishment in case of severe abuse and isolating a child from an abusive family member are emphasized. However, in case of a minor child abuse, education and family support service to prevent recurrence is more important. Unfortunately, family empowerment services (family support, connection to social welfare services and public resources, and etc.) only accounted for 2% (1,508 cases) out of total services (73,814 cases) provided for victims of child abuse.
- Recipient families of basic livelihood benefit make up 15.9% of total child abusers and 56% of multiple-time abuses, while they account for only 3% of the total population. It signifies that child abuse frequently occurs in low-income families and that child abuse and poverty are closely related. However, the Government is not taking sufficient measures to prevent child abuse and protect children in poverty. As of 2017, the amount of national budget for child abuse prevention and abused children protection is as small as below 0.1% of the current budget of the Ministry of Health and Welfare.

#### Suggested Recommendations

- Implement measures allowing home visits for preschool children who have not received the required immunizations to identify child abuse at home.
- Allocate enough budget for child abuse prevention and abused children protection to support families in crisis and to prevent unfair separation of children from home.

**Issue 25** In the light of the 2013 amendment to the Criminal Act which introduced the crime of trafficking in persons, please provide comparative data on the number of investigations, prosecutions and convictions relating to trafficking in the State party which would demonstrate the impact of this measure.

- The data provided in the Government's report<sup>59</sup> is not accurate. The Government's response includes statutes which do not provide for trafficking, and only includes data on indictments making it impossible to verify number of actual convictions. For example, the Act on the Aggravated Punishment, Etc. on Specific Crimes only provides for aggravated punishment of the crime of abduction of a child under 13, and not for punishment of trafficking. According to the Yearly Judiciary Statistics Book published by the Supreme Court, criminal cases involving conviction in the first instance count for violation of Chapter 31 (Abduction and Trafficking) of the Criminal Act were 74 in 2014 and 76 in 2015.<sup>60</sup> Since the crime of trafficking, introduced into the Criminal Act in 2013, constitutes only one part of Chapter 31, it can be presumed that the number of convictions for

<sup>59</sup> E/C.12/KOR/Q/4/Add.1, para 61

<sup>60</sup> [Table 5] statistics of first instance convictions of the crime of abduction and trafficking (Chapter 31 of the Criminal Act)

	Indictments	Judgments	Convictions	Imprisonment for life	Imprisonment	Probation	Fine	Suspension of Sentence	Not Guilty	Other
2014	90	82	74	-	34	39	1	1	3	4
2015	96	92	76	1	34	39	2	3	4	9

Supreme Court Yearly Judiciary Statistics Year 2014, 2015

trafficking is lower. According to the United States Trafficking in Persons Report, 33 were convicted under trafficking statutes.<sup>61</sup> These data differ greatly from the data provided by the Government.

- The Government's response<sup>62</sup> states that the trend does not show significant changes since the 2013 amendment to the Criminal Act. One reason for the low number of convictions for trafficking is that the core contents of 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organization Crime',<sup>63</sup> such as the definition of trafficking and that 'the consent of a victim shall be irrelevant' is not reflected in the amendment to the Criminal Act. As a result, law enforcement agencies are not sufficiently aware of the need to identify and protect victims. Furthermore, since there exist no measures to protect the victim, especially if noncitizen, reflecting the specific aspects of trafficking, victims are prevented from reporting the crime. Recently, according to reports, in May 2017 in the city of Busan, Thailand women who came to Korea as massagers were locked up and forced to work as sex workers. Although the case should have been investigated and prosecuted as a trafficking case, the police returned all the victims to their home country and investigated the agent, and the business owner for the crime of arranging prostitution. This case highlights that the 2013 amendment to the Criminal Act introducing the crime of trafficking has failed in punishing perpetrators of trafficking for the purpose of labour or sex exploitation and protecting the victims.

#### **Suggested Recommendations**

- Amend the Criminal Act to systematically reflect and comply with the Protocol to Prevent, Suppress and Punish Trafficking in Persons.
- Enact a special law on protection of trafficking victims to reflect the special aspects of protection of victims of transnational trafficking, including personal safety of the victim, social welfare services and legal support.
- Provide mandatory training for police, prosecution, and immigration authorities on the "Trafficking Victim Identification and Victim Protection Index" published and recommended by the NHRCK on July 20, 2016 and ensure that the Index is applied by above authorities in identifying and protecting victims.

#### **Right to an Adequate Standard of Living – Article 11**

**Issue 26** While noting the enactment of the Act on Support for Welfare and Self-reliance of the Homeless, the Committee would like information on the causes and extent of homelessness in the State party, as well as on the measures applied with a view to implementing the Act. Please also provide disaggregated data on the availability and the adequacy of housing and information on the impact of the Measure for Housing Support for Households Living in Insecure and Inadequate Housing.

- The Government simply provided a general response regarding the cause of homelessness, stating that it is complex, and did not furnish any specific details of the varied causes. According to the recent study ordered by the Ministry of Health and Welfare, the decisive cause of homelessness are economic factors such as debt, bad credit, bankruptcy, delinquent rent payment, and dismissal.<sup>64</sup>

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<sup>61</sup> U.S.Department of State, Trafficking in persons report, June 2017.

<https://www.state.gov/documents/organization/271339.pdf> Accessed 23 Aug 2017.

<sup>62</sup> para 61, E/C.12/KOR/Q/4/Add.1

<sup>63</sup> ratified by the National Assembly of the RoK on May 29, 2015

<sup>64</sup> Chung Won Oh, The contextness of homelessness and linking to mainstream social services, December 2014

The correlation between the cause of homelessness and policies for employment, housing and social welfare needs to be determined and reflected in the relevant measures.

- The Act on Support for Welfare and Self-reliance of the Homeless was enforced since June, 2012, however, the Government delayed the survey and comprehensive plan preparation, which were obligatory under the Act. The First Comprehensive Plan for the Homeless was announced in February 2016, three years and eight months after the enforcement of the Act; the survey was completed last April but the results are yet to be released. Furthermore, the comprehensive plan presented by the Government omitted a “financial plan” and “prospect on the social, economic, and demographic environment and changes related to the increase/decrease of the homeless” which are required items in the Act and limited the target to homeless people in the streets and facilities.
- The Government states the different types of facilities as housing options and mentions the assistance of public rental housing for the “homeless who are ready to be self-reliant.” However, this approach leaves the homeless who have not reached this stage in the blind spot of the available assistance and they end up circulating the different facilities, unable to escape the homeless status. The Government should change their measures to prioritize housing, vitalize the supply of public rental housing, expand the target and application channels of the housing assistance project for the housing-vulnerable group, and abolish the requirement of the self-support plan submittal.
- The housing supply rate of Korea exceeded 100% in 2008. However, in 2016, the proportion of rental housing households to total households was 43.2% and 51.1% in the metropolitan area. The Housing Lease Protection Act of Korea only guarantees the lease term for two years, which reduces the residential stability of rental households compared to self-owned households. The residential duration of self-owned households average 10.6 years, while jeonse (key money deposit rental) and monthly rental households with security deposits are merely 3.4 years and 3.5 years, respectively. There were social and legislative debates on limiting the rent increase rate in housing and giving tenants the right to request renewal of contract to solve the tenants’ housing instability problem, but these measures have not been implemented yet. The Government asserts that the number of households below the minimum housing standard is falling. However, 1,027,000 households are living below the minimum housing standard in a state of housing poverty as of 2016, which is an increase of over 35,000 households from 2014.<sup>65</sup>
- According to the recent report by the Seoul Institute,<sup>66</sup> the households living in non-dwelling housing increased over 6 folds from 12,000 in 2005 to 79,000 in 2015, just in Seoul. In particular, the number of households residing in non-lodging facilities, such as jjimjilbang (public saunas) and PC bang (internet cafés), and religious facilities saw a 14-fold increase—from 5,000 in 2005 to 70,000 in 2015. It is difficult to determine the exact number of households living in non-dwelling housing because they are excluded from the minimum housing standard and various welfare policies.

### **Suggested Recommendations**

- Prepare the new Homeless Comprehensive Plan including what is addressed in the Act on Support for Welfare and Self-reliance of the Homeless.
- Expand the number of supportive housing nationwide (which is now only 38) and provide housing and social services to protect the right of the homeless.
- Adopt policies that are being implemented in other countries to stabilize the private sector leasing market, such as (1) guaranteeing the renewal of housing rental period, (2) a ceiling for rent increase rates in contract renewals, and (3) establishing regional rent guidelines (a standard rent).

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<sup>65</sup> Ministry of Land, Infrastructure and Transportation, Housing Condition Survey, 2016

<sup>66</sup> Park Eun Chul, Affordable Rented Housing Strategies in Seoul, Seoul Institute (February 2017)

- Prepare practical measures to support the households living below the minimum housing standard and living in non-dwelling housing and expand the number of long-term public rental housing which is only a half of the OECD average.

**Issue 27** Please provide information on the steps taken to prevent forced evictions. Please provide statistical data on the number of forced evictions annually for the last five years and clarify whether, in case of evictions, affected residents are consulted prior to the decision being taken.

- The Government stated that forced evictions are prohibited unless full compensation is made for the consequent loss. However, this only provides a basis for eviction when the minimum legal compensation amount is settled. The compensation for loss under the current law does not guarantee actual housing and stable livelihood on par with the conditions prior to development. For those who refuse forced eviction, project operators complete the compensation process by depositing the legal compensation in court.
- The revision of the system ensures an opportunity of consultation through a dispute settlement committee established by the local governments, but the effectiveness of the perfunctory consultation is in question.
- The projected demolition date specified in the property management and disposal plan merely provides no more than three months of relocation time after the plan is approved. For commercial tenants, the compensation amount for business suspension was raised only once after the third ESCR review. However, this increase does not suffice as settlement measures that allow the maintenance of previous living standard, thus forced eviction continues to result in violence and conflict.
- Although the Government lists measures for tenants in their response, the standards do not apply to all tenants. There are more tenants who do not meet the requirement in the development area, and legal relocation measures are not secured in case of private development projects.
- The statistics report for forced eviction was called for in the third Concluding Observation and questioned in the fourth List of Issues, however the Government has not furnished any relevant statistics.

#### **Suggested Recommendations**

- Provide statistics related to forced eviction to establish comprehensive measures to evaluate the impact caused by development projects and prevent forced eviction.

**Issue 28** Please provide information on the impact of the installation of the water contamination warning system across the country for the detection of accidents involving drinking water and on the steps taken to ensure a balance between urban and rural areas with regard to the water supply rate and sanitation.

- The Government has been open situation of the water quality of major sites in detail through 'Water Environment Information System' online. However, even if a serious level of cyanobacteria occurs at the water source, due to the large dam which was constructed at the time of the Four Rivers project,<sup>67</sup> proper measures such as opening the water gate has not been taken. Citizens' concerns about drinking water have been growing but social controversy has been caused by the lack of fundamental measures to improve water quality in the water supply.

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<sup>67</sup> [http://english.hani.co.kr/arti/english\\_edition/e\\_national/598190.html](http://english.hani.co.kr/arti/english_edition/e_national/598190.html)

- In the case of the metropolitan area, it supplies stable drinking water through a wide area water source. However, in the case of the provinces, there has been a serious problem of cancelling the local waterworks system because of the complaints of residents who want regional development. In addition, increasing dependence on the wide area water source has undermined the diversity of the drinking water source and deteriorated the soundness. It will lead to a vulnerable structure in the era of climate change. In fact, in 2015 and 2017, supplying drinking water in the western part of Chungnam was in crisis. The Ministry of Environment and the local governments have a heavy responsibility for neglecting the management of local water sources.
- The Nakdong River basin is a drinking water source for 13 million people. However, due to the poor quality of water management and the aftermath of the Four Rivers project, there is a lot of controversy between the government and the civil society. Now, the Government is trying to build a new dam at the Jiri National Park.

#### **Suggested Recommendations**

- Evaluate the purpose and economic feasibility of 16 dams located in 4 big rivers and prepare measures such as demolishing dams to normalize the river flow.
- Provide active management measures for local water sources and actively restore closed water sources.

#### **Right to Physical and Mental Health – Article 12**

**Issue 29** Please inform the Committee about the impact of any measures taken to improve access to and the affordability of health care for the most disadvantaged and marginalized individuals and groups. Please provide information about the dynamics of public expenditure for health care since the consideration of the State party's previous report in 2008, as well as about the implementation of the Committee's recommendation concerning the plan to increase such expenditure.

- The Government stated that the 2015 Tailored Benefits Scheme increased the number of medical benefits recipients, yet this number decreased continuously from 2009 to 2014 from 1.84 million recipients in 2008. In 2015, there were only 1.53 million recipients, which is a fall from 2011 and a 2.9% of the total population.<sup>68</sup> While there was no significant change in the poverty rate, the number of medical benefits recipients fell because the conservative Government reinforced measures to determine the income of obligatory support providers and the number of non-recipients increased due to the income and asset of their obligatory provider. Still, the Government has no plans to abolish the obligatory support provider system for medical benefits. The medical inequality in Korean society is deteriorating, but the Government is not exerting sufficient efforts to provide medical security to the low-income class. The percentage of Korean households with catastrophic health expenditure (households that spend 40% or more of their disposable income for medical expenses) was 3.68% in 2010<sup>69</sup> and rose to 4.49% in 2014.<sup>70</sup> This is six times higher than the OECD average.
- The Government mentioned a strong policy focus to expand coverage of the four major severe diseases, however the coverage rate of the national health insurance has barely fluctuated, 63% in

<sup>68</sup> Ministry of Health and Welfare, Statistics of Medical Benefits  
[http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx\\_cd=1406](http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1406)

<sup>69</sup> OECD Health System Characteristics Survey 2012

<sup>70</sup> Ministry of Health and Welfare, Expanding of Coverage of National Health Care, Aug 9 2017

2011 and 63.4% in 2015. These figures show a significant difference with the OECD average, 80%. The reason for this stagnant coverage rate is the persistent increase in non-payment items in private hospitals that are not covered by the national health insurance. The percentage of public hospitals in Korea is approximately 10%, extremely low compared to the 75% OECD average, but the Government does not have any plans to improve this situation.<sup>71</sup>

- In addition, the Government must provide 20% of the estimated health insurance income from the national treasury in accordance with Article 108 of the National Health Insurance Act. Every year, however, the Government violates the law and only supported about 15%. And the law requires this payment for a temporary period, until the end of 2022. This demonstrates that the Government is not even following the legal standards of public spending for health services.

### **Suggested Recommendations**

- Abolish the obligatory support provider system for medical benefits to guarantee the medical security of the low-income families.
- Reduce the number of households with catastrophic health expenditures significantly.
- Increase the proportion of public hospitals.
- Allocate sufficient budget to support the national health insurance according to the law and change the temporary support to a permanent one.

**Issue 30** Please provide information on the impact of the dissemination of knowledge about contraception through sex education programmes in schools. Please indicate what steps have been taken to ensure access to sexual and reproductive health services by all sections of the population and to promote sexual and reproductive health education, in particular for adolescent girls and boys. Please also provide statistical data on the prevalence of teenage pregnancies.

- The Government's policy on sexual and reproductive health and rights (SRHR) mainly focuses on promoting childbirth, with a view to addressing the 'demographic crisis caused by the low birth rate.' Women are not guaranteed the right to choose the safest and most appropriate method for an abortion or to be supported by a quality medical service. The 'National Standard on Sexual Education', introduced by the Ministry of Education in 2015, has been harshly criticized for the following reasons: 1) it reinforces sex-role stereotypes and discriminatory gender norms; 2) it denies adolescents the right to sexual self-determination and teaches them sexual abstinence; and 3) and it excludes comprehensive contraceptive education. In such a context, civil society groups and human rights organizations have been continuously demanding the government to repeal the National Standard since 2015.

### **Suggested Recommendations**

- Decriminalize abortion by removing the punitive provisions of the Criminal Act that are imposed on women who undergo an abortion. Take necessary measures to deliver quality medical, social services for example, by providing appropriate information to women undergoing an abortion and providing the relevant training to medical service providers.
- Repeal the 'National Standard on Sexual Education' and provide quality sex education programs that

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<sup>71</sup> Rather, one public hospital(Jinju Public Medical Center) was closed by local governor in May 2013, and 22 patients died after being forced to leave the hospital. Related news article : [http://english.khan.co.kr/khan\\_art\\_view.html?artid=201304192040587&code=710100](http://english.khan.co.kr/khan_art_view.html?artid=201304192040587&code=710100)

encompass a broad range of SRHR issues in schools including methods of contraception and sexual diversity.

## Right to Education – Article 13 & 14

**Issue 31** While noting the efforts made by the State party to limit academic stress through, for example, imposing a cut-off time that lessons can be offered by “cram” schools, the Committee would like information on the actual impact of such efforts on students’ health.

- The Government announced that most municipal and provincial education offices restrict late-night classes in cram schools after 9:00-10:00 pm on weekdays, yet failed to provide the details of “the actual impact of cut-off on students’ health.” It is essential to limit private lessons to 10:00 pm in order to guarantee the students’ rights to health and sleep. However, only 5 out of 17 cities do so since each region is regulated by its own provincial law, and 8 of 17 cities even allow operation until midnight. Moreover, in some regions where private education is overheated, cram schools conduct classes late into the night or until daybreak, but are not monitored properly. Despite these circumstances, the Government has not prepared any concrete countermeasures, imputing its responsibility to local education offices.
- Considering the reality where many students suffer from non-stop studying without any holidays, a law should be implemented to close cram schools on public holidays, in addition to late-night operation ban, to ensure time for absolute rest and leisure and have real impact on students’ health. UN Committee of the Rights of the Child (CRC) has also pointed out that Korean private education infringes on the students’ right to a life of culture and leisure.

### Suggested Recommendations

- Prepare a nationwide restriction of late-night lessons after 10 pm.
- Conduct a study to compare the sleeping hours and mental and physical conditions of students in the regions where late-night classes are allowed until 10pm and 12am, and provide the results.
- Establish measures to ensure students’ leisure time, such as closing cram schools on public holidays.

**Issue 32** Please provide information about the impact of the Special Act on the Normalization of Public Education and Regulation of Advanced Education on reducing the financial burden of private education and on equality of access to education.

- According to a survey conducted by the Government, 91% and 90.1% of the teachers responded that the classroom atmosphere improved and the number of academic contests reduced, respectively, after the Act on the Normalization of Public Education was put in place. However, as of when the law was enacted in September 2014, the participation rate in private education has not changed in 2015 and 2016, and has even increased for high school students.

[Table 6] The participation rate (%) in private education<sup>72</sup>

	2013	2014	2015	2016
Average (Elementary, Middle and High School Students combined)	68.8	68.6	68.8	67.8
High School Students	49.2	49.5	50.2	52.4

- It is difficult to state that the enactment of the Act had any real impact seeing that the private education expenses for high school students rose sharply from KRW 236,000 in 2015 to KRW 262,000 in 2016.

[Table 7] The private education expenses (KRW)<sup>73</sup>

	2013	2014	2015	2016
Average (Elementary, Middle and High School Students combined)	239,000	242,000	244,000	256,000
High School Students	223,000	230,000	236,000	262,000

- This is because the Act only prohibits pre-studying in schools. Private education institutes including cram schools are free to sell pre-studying products. Therefore, students who want better grades can receive all the pre-studying lessons the private education institutes provide, depending on their families' economic situation. To reduce financial burden of private education and realize equal access to education, the Act on the Normalization of Public Education should be amended to ban pre-studying in private education institutes. Furthermore, public education should provide supplementary and intensive classes for students who fall behind and excel, respectively, in order to stop the economic polarization turning into a polarization in education.

#### Suggested Recommendations

- Amend the Act on the Normalization of Public Education to ban pre-studying to reduce private education expenses and realize the equal rights to education.
- Ensure the temporary period that allows pre-studying after school and on public holidays in schools is not extended.
- Amend the Act on the Establishment and Operation of Private Teaching Institute to curb expenditures of private classes to improve the education inequality.

## Right to Culture – Article 15

**Issue 33** Please identify the main challenges faced by the State party in its efforts to promote multiculturalism.

- The number of foreign residents in RoK exceeded 2 million in 2016, accounting for 4 percent of the

<sup>72</sup> Statistics Korea, Survey on Private Education Expenses  
[http://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT\\_1PE301&conn\\_path=I2](http://kosis.kr/statHtml/statHtml.do?orgId=101&tblId=DT_1PE301&conn_path=I2)

<sup>73</sup> Statistics Korea, Survey on Private Education Expenses

entire population. And from the survey of the Ministry of Gender Equality and Family in 2012, the Republic of Korea hit a record low of 36.2 percent of people in favor of multicultural families. The figure is particularly low compared to 73.8 percent in 18 European countries.<sup>74</sup>

- But there is no legal definition of racial discrimination and xenophobia in RoK. the Government has never defined what is racial discrimination and xenophobia. There is none case or person who is punished or fine due to racial discrimination or xenophobia. And there is no official statistics about racial discrimination and xenophobia,<sup>75</sup> there is no way to figure out the number and the way of racial discrimination occurred in RoK.

#### **Suggested Recommendations**

- Regulate and Collect data on racial discrimination and xenophobia in the Republic of Korea.

**Issue 34** In the light of the 2012 initiative by the Internet Newspaper Committee concerning self-regulation of Internet newspapers, please provide information on the progress made towards enhancing the credibility of Internet newspapers and on the powers of the public authorities in this context.

- The Internet Newspaper Committee has seen quantitative growth with concentrated support from the Government and Korea Press Foundation during the past ten years of conservative administrations of Lee Myung-bak and Park Geun-hye. However, its limits are clear. There are currently 6,090 online news media registered in Korea and the number is rising even now. The number of online news media committed to self-regulation is only 255, which does not include the majority with its overly restricting scope. The Internet Newspaper Committee was originally created as an affiliated organization of the Korea Internet Newspaper Association (publisher) for the self-regulation of the association members. Conservative people led the establishment of the committee—a case in point is the first chairperson of the committee who worked as the secretary of new media during the Park Geun-hye administration. These figures still form the board of directors and run the committee's office.
- At present, the Korea Internet Media Journalist Association and other organizations are preparing separate organizations of self-regulation. For the organizations to fulfil their roles, they should not limit the participating members to online newspapers but include one-person media and bloggers, and the contents for self-regulation should be expanded to web toons, web novels and web dramas (online cartoons, novels, and dramas).

#### **Suggested Recommendations**

- A more comprehensive organization should be formed for the self-regulation of the online media.

### **Additional Issues – Japanese Military Sexual Slavery (“Comfort Women”)**

- The Government announced 2015 Korea-Japan Agreement<sup>76</sup> on 'Comfort Women' issue with the Japanese government on December 28th, 2015. This shows that the limitation of cognition and absence of perspective of the Government on violence against women, which still exist in Korean society.

<sup>74</sup> [http://www.koreatimes.co.kr/www/news/issues/2016/11/182\\_219243.html](http://www.koreatimes.co.kr/www/news/issues/2016/11/182_219243.html)

<sup>75</sup> 2015, A/HRC/29/46/Add.1

<sup>76</sup> The Ministry of Foreign Affairs of Japan, “Announcement by the Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion”, 2015. 12. 28. URL: [http://www.mofa.go.jp/a\\_o/na/kr/page4e\\_000364.html](http://www.mofa.go.jp/a_o/na/kr/page4e_000364.html).

- The Committee already made comments on inadequate response of the Government to the crime of human trafficking of women and children for prostitution and sexual exploitation and on punishment issue of domestic violence offenders.<sup>77</sup> In terms of women's human rights violation issue, the crime of violence against women and children and the issue of Japanese Military Sexual Slavery crime are on the same line. When any governments address with the issue of violence against women regardless of times, the government should resolve the issue by taking measures to restore human rights of victims and to prevent recurrence of such crimes with victim-centered approach in accordance with the UN human rights principles.
- However, the Government, which should be an advocate for Japanese Military Sexual Slavery victims, rather degraded the issue of war crime and severe human rights violation into a means of dealings between countries by receiving consolatory payment of 1 billion yen in the name of the national interest from a political and diplomatic perspective. The government of Korea and Japan announced that the Japanese military sexual slavery issue was 'finally and irreversibly resolved' despite the fact that victims who have suffered for a long time were excluded in the consensus process, as well as international human rights principles and the demands of victims and advocacy groups were not reflected in the contents of the agreement at all.

#### **Suggested Recommendations**

- Disclose the process and the contents of 2015 Korea-Japan Agreement on 'Comfort Women' issue to the victims.
- Nullify 2015 Korea-Japan Agreement on 'Comfort Women' issue by accepting submitted position of the UN CEDAW<sup>78</sup> and UN High Commissioner for Human Rights<sup>79</sup> and recommendations made by the UN CAT.<sup>80</sup>
- Review the issue and propose resolution measures through active reflection of opinions and demands of victims and advocacy groups in accordance with the UN Human Rights principles.

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<sup>77</sup> Concluding Observations: Republic of Korea, CESCR, 19 November 2009, E/C.12/KOR/CO/3, para. 24, 25.

<sup>78</sup> Concluding Observations: Japan, CEDAW, 7 March 2016, CEDAW/C/JPN/CO/7-8, para. 28, 29.

<sup>79</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17200&LangID=E>

<sup>80</sup> Concluding Observations: Republic of Korea, CAT, 11 May 2017, CAT/C/SR.1538 and 1539, para. 47, 48.