

**NATIONAL HUMAN RIGHTS COMMISSION OF KOREA  
(NHRCK)**

# **WRITTEN SUBMISSION**

**for the UN Human Rights Committee's Consideration of the 5th Periodic Report of  
the Republic of Korea on the Implementation of the International Covenant on  
Civil and Political Rights**

**12 September 2023**



**National Human Rights Commission of Korea**

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**I. INTRODUCTION**

1. The National Human Rights Commission of Korea (“NHRCK”) was established on 25 November 2001 under the *National Human Rights Commission Act*, enacted on 24 May 2001, as an independent national human rights institution of Korea to promote and protect human rights at the national level.

2. The NHRCK submits this report to the United Nations Human Rights Committee (“Committee”) prior to deliberation on the 5th periodic report, submitted by the Government of the Republic of Korea, on the implementation of the *International Covenant on Civil and Political Rights* (“ICCPR”). Having monitored the domestic implementation of the ICCPR, the NHRCK presents issues and views that the Committee may need to look into in its consideration of the 5th periodic report of Korea. This report describes the current status and challenges concerning the list of issues (LoIPR) posed by the Committee and suggests recommendations for the Committee’s consideration.

**II. THE NHRCK’S VIEWS ON ISSUES**

**Issue 1. Implementation of the Covenant: NAP and Individual Complaints**

3. The Government stated in its 5th periodic report that, in order to implement the Committee’s 4th Concluding Observations, it established a number of relevant policy tasks in the *3rd National Action Plan for the Promotion and Protection of Human Rights (NAP, 2018-2022)* and carried them out. The 3rd NAP expired in 2022, and subsequently the year of 2023 is the time to assess the implementation of the 3rd NAP and proceed with a next NAP. Bearing this in mind, in July 2022, the NHRCK recommended the President to formulate the 4th NAP and suggested 100 key priorities to be included therein. However, the development of the 4th NAP by the Government has been delayed to date.

4. The lack of domestic legal basis to enforce the decisions of UN human rights treaty bodies affirming human rights violations in individual complaints<sup>1</sup> makes it difficult to ensure that effective remedies are provided for victims of human rights violations.

5. **Proposed recommendation:** The State party should establish and implement the 4th NAP, without delay, based on the key priorities recommended by the NHRCK in July 2022.<sup>2</sup>

6. **Proposed recommendation:** The State party should take active measures to implement the recommendations of UN human rights treaty bodies at the domestic level and develop mechanisms to ensure the implementation of their decisions under individual communications procedures.<sup>3</sup>

## **Issue 2. Implementation of the Covenant: Human Rights Legal Frameworks**

### **A. Legal and Institutional Frameworks for Human Rights**

7. In 2021, the NHRCK and the Ministry of Justice jointly prepared a legislative bill titled the *Framework Act on Human Rights Policy* to lay the legal foundation of human rights policies and enforce them systematically at the national and local level. This bill sets forth the country's overall human rights systems including the formulation of the NAP, municipal obligations for human rights, the domestic implementation of recommendations offered by international human rights bodies, corporate respect for human rights, and public education on human rights. The bill was proposed to the National Assembly in December 2021, yet it is still pending.

8. There have been controversies over the attempt to abolish local human rights ordinances in several provinces. In 2022, groups of local residents began local legislative procedures, which are still in progress, demanding the nullification of the *Chungcheongnam-do Provincial Ordinance on Human Rights*, the *Chungcheongnam-do Provincial Ordinance on Student Human Rights*, and the *Seoul Metropolitan Ordinance on Student Human Rights*, respectively. Their motivation for seeking to repeal these ordinances is based on the fact that the ordinances contain provisions on non-discrimination against sexual minorities.<sup>4</sup> In the NHRCK's view, the abolition of human rights ordinances may not only hinder the institutionalization of human rights framework at the local level but also pose a risk of regressing the human rights protection system for local residents. Thus, the NHRCK expressed objections against such repeal to the local councils and the local governments.<sup>5</sup> In the meantime, the Association of Human Rights Committees of Local Governance urged the National Assembly to promptly pass the *Framework Act on Human Rights Policy* so as to enable local governments to implement human rights policy in a stable manner.<sup>6</sup>

9. The NHRCK has made efforts continuously toward legislating a comprehensive anti-discrimination act since it recommended the enactment of it to the Prime Minister in 2006.<sup>7</sup> In particular, in June 2020, the NHRCK proposed a model draft of the *Equality and Anti-discrimination Act* to the National Assembly, requesting the immediate legislation thereof.<sup>8</sup> On the government side, the Ministry of Justice proposed the anti-discrimination bill to the 17th National Assembly in 2007, but the bill was struck down due to the expiration of the National Assembly session.<sup>9</sup> Since then, the Government has not taken a clear stance on anti-discrimination legislation. As of law, four anti-discrimination bills proposed by lawmakers are pending in the 21st National Assembly. In May 2022, the Legislation and Judiciary Committee of the National Assembly held a public hearing, for the first time, on the pending bills of anti-discrimination legislation. However, the ruling party did not participate in the hearing, and the legislation of the anti-discrimination act has not yet made further progress.

10. **Proposed recommendation:** The State party should strengthen its national human rights protection system through the prompt legislation of the comprehensive anti-discrimination act and the *Framework Act on Human Rights Policy*. In addition, the State party should put a stop to the movement to abolish local human rights ordinances based on discriminatory perceptions and draw up plans to strengthen local human rights policy and mechanisms.

## **B. Application of International Human Rights Treaties in Court**

11. Under Article 6 (1)<sup>10</sup> of the Constitution of the Republic of Korea, the international human rights treaties ratified by Korea have the same effect as the domestic laws of the country. Although cases requiring the application of international human rights treaties are not often raised in national courts, the invocation of international human rights treaties has grown gradually over the past 30 years.<sup>11</sup> Yet it is consistently pointed out that the judiciary is generally unfamiliar with international human rights treaties and has a lack of awareness of the normativity of such treaties.<sup>12</sup>

12. **Proposed recommendation:** The State party should increase research on the application of international human rights treaties in national courts; develop and disseminate relevant working materials and guidelines; and expand education on such application within the judiciary.

## **Issue 3. National Human Rights Institution**

13. The Government said in its 5th periodic report that the *National Human Rights Commission Act* was amended in February 2016 in order to solicit nominations and advice for candidates for the NHRCK commissioners from various social groups; establish specific qualification criteria for NHRCK commissioners; and exempt the NHRCK commissioners

from liability for comments made in the course of their duties. However, the Committee's recommendation in the 4th Concluding Observations (2015) – i.e., “to establish an independent committee to nominate candidates (of the NHRCK)” – has not yet been fulfilled.

14. When the NHRCK was re-accredited with A status by the Global Alliance of National Human Rights Institutions (GANHRI) Sub-committee on Accreditation (SCA) in October 2021, the GANHRI SCA recommended the NHRCK to “advocate the establishment of a single independent selection committee in the *National Human Rights Commission Act* or other administrative guidelines.<sup>13</sup>” In the similar vein, an amendment to the *National Human Rights Commission Act* to install the independent candidate nomination committee was proposed by a lawmaker and is currently pending in the National Assembly. The NHRCK also considers proposing the amendment to the *National Human Rights Commission Act* to establish a new provision on the formation of the independent candidate nomination committee.<sup>14</sup> Under the *National Human Rights Commission Act*, the authorities to nominate and appoint the NHRCK commissioners consist of various players: the President, the National Assembly, and the Supreme Court. Thus, the consensus and cooperation of the three bodies above are required for the set-up of the independent nomination committee for the NHRCK commissioners.

15. Additionally, the GANHRI SCA recommended the NHRCK that it should strive to have the *National Human Rights Commission Act* amended to enhance its independence vis-à-vis the *National Finance Act*.<sup>15</sup>

16. **Proposed recommendation:** In order to ensure transparency and participation in the process of selection and appointment of the NHRCK commissioners, the State party should establish a provision for the nomination committee for candidates of the NHRCK commissioners in the *National Human Rights Commission Act*. The State party should also strengthen the human resources of the NHRCK and promote legal amendments necessary for the NHRCK to gain financial independence.<sup>16</sup>

#### **Issue 4. Business and Human Rights**

17. The Government set out a chapter on “businesses and human rights” in the 3<sup>rd</sup> NAP (2018-2022) to undertake policy tasks that enhance corporate responsibility to respect human rights and prevent the human right abuses against local workers while operating business abroad. However, the implementation of these policy tasks and the institutionalization of human rights due diligence still remain insufficient.

18. In order to prevent corporate violations of human rights and ensure effective remedies for damage caused by businesses, it is necessary to legislate the human rights due diligence of business entities which includes the identification of negative impacts of corporate activities

on human rights and the environment; the prevention of such negative impacts; and the operation of complaint procedures and monitoring mechanisms. The Government needs to take active action in this regard, considering that human rights due diligence in private companies' supply chains has been legislated and carried out in other countries such as France, Germany, and the EU.

19. It is also necessary to strengthen the judicial and non-judicial mechanisms for addressing corporate human rights violations so that local victims of human rights abuses by Korean business enterprises operating abroad can obtain appropriate remedies for their damage. Furthermore, the Korean National Contact Point for OECD needs to be engaged more actively in resolving disputes over multinational enterprises' human rights violations.<sup>17</sup>

20. **Proposed recommendation:** The State party should endeavor to enact the *Act on Human Rights and Environmental Due Diligence in Supply Chains* to obligate public organizations, public enterprises, and private companies to carry out such due diligence in their supply chains.<sup>18</sup> The State party should also reinforce remedial measures for victims of human rights violations by overseas corporate activities so that they can access immediate and effective remedies.<sup>19</sup>

## **Issue 5. Non-discrimination**

21. The 3rd NAP (2018-2022) included a policy task of “pushing for the legislation of a framework act to minimize legislative gaps in prohibiting discrimination and provide effective remedies for discrimination” as a basic planned task. However, the Government has not yet pushed ahead with the enactment of the anti-discrimination act. In the 4th cycle of Universal Periodic Review (UPR) for the Republic of Korea in January 2023, a number of UN member States recommended Korea to adopt comprehensive anti-discrimination legislation. However, the Government did not accept this recommendation on the grounds that it is difficult to implement it immediately.

22. Meanwhile, the *National Human Rights Commission Act*, the enabling law of the NHRCK, defines the act of discrimination as a violation of the right to equality and gives the NHRCK authority to investigate discrimination and recommend remedies. The NHRCK investigates more than 2,000 discrimination complaints annually.

23. There are individual statutes governing discrimination based on disability, gender identity, age or employment type in Korea.<sup>20</sup> However, the absence of comprehensive anti-discrimination legislation makes it difficult to protect a variety of victims of discrimination and deal with cases of discriminatory harassment. Recognizing this problem, the NHRCK proposed a draft of the *Equality and Anti-discrimination Act* to the National Assembly in

June 2020, calling for prompt legislation.<sup>21</sup> To date, four anti-discrimination bills have been proposed to the 21st National Assembly, but the legislation is not progressing.<sup>22</sup>

24. The Korea Communications Commission has administrative sanctions in place in order to prevent the spread of discriminatory perception of races and national origins via mass media. Nonetheless, the NHRCK survey of 2016 found that hate speech and discriminatory language on online media has reached serious levels, and that women, sexual minorities, persons with disabilities and migrants are the main targets of hate speech.<sup>23</sup> Moreover, it is to note that hate speech by some politicians tends to be intensified during election period. It is necessary to impose effective sanctions thereon, given that hate speech by politicians makes more direct harmful effects on its targets; is rapidly reproduced; and bring significant negative impacts on society.

25. With a deepening conflict over the construction of an Islamic mosque in a local community in Daegu, it is concerning that some residents and groups of people continue acts of demeaning Islamic culture and provoking hatred against Muslims.<sup>24</sup>

26. According to the *Fact-finding Survey of North Korean Defectors' Perception of Human Rights* carried out by the NHRCK in 2016, 45.4 percent of the respondents answered that they had experienced discrimination in South Korea primarily because of their North Korean origin, followed by their academic background, non-regular employment status, age, and economic status.

27. Anti-discrimination legislation may contribute to improving the quality of life of the socially disadvantaged and realizing the dignity and equality of all members of society in ways of affirming diverse matters of discrimination in Korean society, providing effective remedies, and rectifying discriminatory practices and systems. In this light, the enactment of anti-discrimination legislation should be perceived as a pressing issue in Korean society.

28. **Proposed recommendation:** The State party should enact comprehensive anti-discrimination legislation, without delay, that includes gender identity, sexual orientation, etc. as prohibited grounds of discrimination. To this end, the Government should formulate its policy direction and specific plans towards the enactment of anti-discrimination legislation, announce them to the public, and widely publicize them through promotional materials and mass media.

29. **Proposed recommendation:** The State party should provide follow-up information on the implementation of recommendation above, at its earliest convenience, to the Committee.

## **Issue 6. Sexual Orientation and Gender Identity**

### **A. Sexual Minorities in the Military**

30. In the 5th periodic report, the Government mentioned that it has taken a wide range of measures to eliminate discrimination and violence against LGBTQI soldiers in the military under the *Unit Management Directive*, and it has provided human rights education for military personnel that covers the rights of sexual minorities. On the contrary, there was an incident in 2020 where an army officer on active duty was forcibly discharged from military service after undergoing sex reassignment surgery (“SRS”) while on leave. Concerning this issue, the NHRCK made an interim relief decision to request the military to delay the discharge review board.<sup>25</sup> After that, it recommended the Army Chief of Staff and the Minister of National Defense to revoke the disposition to discharge the concerned soldier and improve the system to properly treat soldiers who have SRS while in service.<sup>26</sup> However, they did not accept the NHRCK’s recommendation. The Government has not yet adopted specific measures to improve systems for service and protection of soldiers who have SRS while on active duty.

31. The Constitutional Court rendered decisions on three occasions in 2002, 2011, and 2016, respectively that Article 92-6 (Indecent Act)<sup>27</sup> of the *Military Criminal Act* which penalizes same-sex sexual acts in the military was constitutional. With regard to court’s ruling, the NHRCK submitted its opinion to the court that this provision infringes upon homosexual soldiers’ right to equality, their right to sexual self-determination, and their right to privacy. Meanwhile, the Supreme Court held in April 2022 that this provision shall not be applicable to the cases where it is difficult to deem that same-sex sexual acts between soldiers constitute a direct and specific violation of the healthy life and morale of the military community, thereby imposing a restriction on the application of Article 92-6. Taking the view of the Supreme Court’s decision, the NHRCK recommended the Ministry of National Defense to add a proviso that “where sexual acts are done by mutual consent in private space, such acts shall not be subject to disciplinary action for molestation” to the *Enforcement Regulations of the Ordinance on Disciplinary Action against Servicepersons* during the amendment process in August 2020. However, the NHRCK’s recommendation was not accepted by the Ministry.

32. **Proposed recommendation:** The State party should revamp relevant laws and systems to prevent the recurrence of cases where soldiers who have SRS while in service are discharged from the military.<sup>28</sup>

33. **Proposed recommendation:** The State party should abolish Article 92-6 of the *Military Criminal Act* that infringes upon the right to equality, the right to sexual self-determination, and the right to privacy of military servicepersons, and take measures to pardon or reinstate those who were convicted pursuant to the said provision.<sup>29</sup>

## B. Legal Gender Recognition

34. In Korea, the gender recognition of transgender individuals is confirmed by court decisions. In such cases, judges render their decisions following the Supreme Court's *Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People*.<sup>30</sup> These Guidelines were revised several times to ease the requirements for legal gender recognition. In reality, however, SRS and physical changes still serve as important criteria for judgement.<sup>31</sup> As a result, transgender people who wish to legally change their gender are forced to undergo irreversible surgery such as SRS (i.e., genital reconstruction surgery), irrespective of their own wishes. In May 2023, the NHRCK recommended the Supreme Court to revise these Guidelines in line with international human rights norms. It also recommended the National Assembly to legislate a special law establishing the requirements and procedures for recognizing the gender status of transgender people.<sup>32</sup>

35. **Proposed recommendation:** The State party should improve the procedures and requirements for legal gender recognition of sexual minorities to be in line with international human rights norms.

## C. Human Right Policies for Sexual Minorities

36. Although many sexual minorities face discrimination and hatred in Korea, the government currently does not have a specific human rights policy for sexual minorities. Considering that statistical information usually forms the basis for the development of government policies, the NHRCK, in March 2022, recommended five government ministries to add survey index items relevant to sexual minorities to their national statistics surveys. However, those ministries including Statistics Korea did not accept this recommendation.

37. In July 2012, the NHRCK presented a recommendation to the Prime Minister and provincial superintendents of education that they should formulate a comprehensive policy to create a human rights-friendly school culture, including measures to prevent discrimination in schools and pursue education respecting differences and diversity.<sup>33</sup> In addition, the Committee in its 4<sup>th</sup> Concluding Observations recommended Korea to “develop sex education programs that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities.”<sup>34</sup> However, the *Guidelines for Sex Education in Schools* of the Ministry of Education do not contain any content related to sexual minorities.

38. **Proposed recommendation:** The State party should develop and add survey index items pertaining to sexual minorities in the nationally approved statistics surveys and formulate human rights policies for sexual minorities, based on the outcomes of statistics surveys. It

should also carry out comprehensive sexuality education<sup>35</sup> so that diverse gender identities can be reflected in school education.

## **Issue 7. Gender Equality**

39. The proportion of female lawmakers in the 21st National Assembly of the Republic of Korea stands at 19 percent, ranking 121st out of 190 countries according to the Inter-Parliamentary Union, which is less than the global average of 25.6 percent for the proportion of women in parliament as of 2021.<sup>36</sup> While the Government implemented the *Plan to Enhance Women Representation in the Public Sector (2018-2022)*, it achieved all the targets in 12 areas in a 2019 progress review thereof. However, the thresholds for accomplishing the targets are so low that it is difficult to conclude that the Government has practicably established a foundation to elevate gender equality.<sup>37</sup>

40. In order to expand women's participation in politics, the NHRCK recommended the National Assembly and the political parties, in March 2022, to amend the *Political Parties Act* and the *Public Official Election Act* to introduce a compulsory electoral gender quota system when nominating candidates for national and local legislators so that a particular gender cannot exceed 60 percent of the candidates. However, the National Assembly and the parties did not accept the recommendation.

41. **Proposed recommendation:** In order to enhance women's participation and gender-balanced representation in politics, the State party should adopt measures to preclude the ratio of a particular gender in the candidates for national legislators, local legislators and the heads of local governments from exceeding six-tenths of nominated candidates.<sup>38</sup> The State party should also make it clear that political parties have responsibility to guarantee the right to equal participation of women and men in politics through elections, and it should lay down applicable provisions to enable the parties to do so.<sup>39</sup>

## **Issue 8. Violence against Women**

42. With the spread of the #MeToo movement in 2018, the Government announced and implemented sector-specific measures to eradicate sexual violence in the public sector, the workplace, and the fields of culture, arts and sports. In such measures, the Government specified the legal definition of 'victimization' in order to prevent the victimization of sexual violence victims. However, the problem of victim-blaming surrounding the "false accusation of sexual violence" and the social demand for victimhood or "victim-like" attitude have not yet been resolved. There is a growing concern that such allegations are being misused as a

means of suppressing victims.<sup>40</sup> In addition, the issue of lenient punishment for sexual violence has been constantly pointed out in society.<sup>41</sup>

43. In December 2021, the Constitutional Court held that Article 30 (6) of the *Act on Special Cases Concerning the Punishment of Sexual Crimes*, which prescribes that video-recorded statements made by a sexual violence victim under the age of 19 may be admitted as evidence, is unconstitutional on the grounds that the provision violates the defendant's right to a fair trial. This decision has raised concerns that underage victims of sexual violence may suffer victimization while testifying in court, and that the reports of sexual violence by juvenile victims may be reduced.

44. In April 2019, the Constitutional Court ruled the abortion provisions of the *Criminal Act*, which criminalize women who have abortions and medical personnel who perform abortions, to be unconstitutional, thereby decriminalizing abortion. Thus, voluntary pregnancy termination is not penalized now. However, follow-up legislative measures necessary for safe voluntary pregnancy termination have not been taken to date, putting women's right to health at risk.<sup>42</sup> In the meantime, women have long demanded the introduction of abortion pills, but the Government has not adopted such measures on the reason of legislative vacuum.

45. **Proposed recommendation:** In order to guarantee women safe pregnancy termination and the right to health, the State party should take necessary steps without delay, including providing health insurance coverage of surgical abortion and granting access to abortion pills.<sup>43</sup>

## **Issue 9. Counter-terrorism Measures**

46. The *Act on Counter-terrorism for the Protection of Citizens and Public Security* defines a "terrorist suspect" but does not specifically stipulate how an individual is determined as a terrorist suspect.<sup>44</sup> In addition, under Article 9 of the Act, anti-terrorism authorities may collect a wide range of information on an individual regarded as a terrorist suspect, such as immigration records, financial transactions, use of communications, personal information, location information, etc. Besides, broader wiretapping has also become possible<sup>45</sup> since the grounds for wiretapping under the *Protection of Communications Secrets Act* were extended to include the "cases necessary for counter-terrorism." For these reasons, concerns have been raised that the rights of citizens may be arbitrarily or excessively restricted while the counter-terrorism authorities conduct surveillance activities.

47. **Proposed recommendation:** The State party needs to establish specific applicable provisions regarding the procedure for determining a terrorist suspect under the *Act on Counter-terrorism for the Protection of Citizens and Public Security*.<sup>46</sup>

## **Issue 10. Death Penalty**

48. As the Government voted in favor of *the moratorium on the use of death penalty* for the first time at the 75th UN General Assembly in November 2020, it was expected to pave the way for the abolition of death penalty. However, in January 2021, the Ministry of Justice submitted to the Constitutional Court an opinion on a constitutional petition against death penalty, stating that the punishment was constitutional. That confirmed accordingly the Government had no intention to abolish capital punishment. Likewise, the Government has not accepted the recommendations on the abolishment of death penalty, made by a number of UN member States during the 4<sup>th</sup> cycle of Universal Period Review.

49. Korea has not executed a death sentence since 1997 and is classified as a *de facto* abolitionist country. As of July 2023, 59 death row inmates are detained.<sup>47</sup> Whereas the main arguments in favor of death penalty are the effect of deterrence and prevention of crimes, no such effect has been verified at home or abroad. However, the Government insists that the maintenance or abolition of death penalty is a grave issue related to the fundamentals of the State's penal power, which requires a comprehensive review of public opinion, capital punishment's function as criminal policy, and others.

50. **Proposed recommendation:** The State party needs to give due consideration to the legal abolition of the death penalty by reflecting the Constitution and international human rights norms, as well as recommendations and concerns from the international community.<sup>48</sup>

## **Issue 11. Suicides**

51. The suicide rate in Korea, especially among the elderly, is considerably high, compared to other countries.<sup>49</sup> Considering this, it is imperative to boost suicide prevention systems and policies continuously, but there are currently mere 12 metropolitan suicide prevention centers and 42 municipal centers dedicated to suicide prevention in the field. Instead, mental health welfare centers are additionally implementing suicide prevention projects,<sup>50</sup> and many limitations exist for delivering such projects in terms of organizational structure, human resources, working conditions, budget, etc.

52. With the amendment of the *Act on the Prevention of Suicide and the Creation of Culture of Respect for Life* in February 2022, the preemptive management of high-risk suicide groups has been reinforced. However, local suicide prevention centers employ an average of only 3-4 people, providing insufficient conditions for proper preemptive management.

53. The average number of annual death cases in the military was 81 in 2016-2021, with suicide accounting for 72 percent of the total, with an annual average of 58 cases.<sup>51</sup> Suicides

by military officers on junior leadership positions tend to outnumber suicides by soldiers of other ranks.<sup>52</sup> Considering such a high rate of suicides in the military, efforts to prevent suicides need to continue robustly while noting the Ministry of National Defense and the military have contributed to creating a culture that respects life in the armed forces by increasing the number of counselors, expanding military mental health centers, and operating suicide prevention programs.

54. **Proposed recommendation:** In order to address the high suicide rate among the elderly, the State party should adopt effective suicide prevention measures through social discussion bodies, considering the overall status of the elderly, such as poverty, health and care, long-term care, and palliative care.<sup>53</sup> In addition, the State party should reinforce policies and systems for expanding mental health services and accessibility to youth groups with a view to preventing youth suicides.<sup>54</sup>

55. **Proposed recommendation:** The State party should intensify its efforts to prevent suicides in the military, including identifying the fundamental and structural causes of suicides and running effective prevention programs accordingly.<sup>55</sup>

## **Issue 12. Torture and Ill-treatment**

56. According to the 5th periodic report, the Government takes the stance that all forms of torture are punishable under existing laws such as Article 124 (Unlawful Arrest and Confinement) and Article 125 (Violence and Cruel Act) of the *Criminal Act*; and Article 4-2 (Aggravated Punishment of Arrest, Confinement, etc.) of the *Act on the Aggravated Punishment of Specific Crimes*. However, since many cases of State violence and torture in Korean history have only come to light long after the incidents, it is difficult to apply the general criminal procedures for punishment and damage compensation as described above to such cases, particularly due to obstacles like statutes of limitations and burden of proof.

57. In 2005, the NHRCK expressed an opinion calling for a special law to remove or exclude statutes of limitations for State crimes against human rights.<sup>56</sup> In a similar vein, several legislative bills were submitted to the National Assembly to abolish statutes of limitations for State violence, waive the extinctive prescription in compensation claims by a victim, and provide compensation and support for victims. Nonetheless, very few have led to legislation.

58. In 2006, the NHRCK presented its opinion to the Government calling for the ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, but no changes have been made thus far.

59. **Proposed recommendation:** The State party should ratify the OPCAT.<sup>57</sup>

### **Issue 13. Violence in the Military**

60. The number of complaints filed with the NHRCK concerning human rights violations in the military is steadily increasing.<sup>58</sup> Meanwhile, in 2021, master sergeants in the Air Force and the Navy, both victims of sexual violence, committed suicides after suffering from victimization. In response, a joint civilian-government-military committee was formed, and it adopted 21 recommendations including measures to prevent sexual violence and protect victims in September 2021. Nevertheless, the suicide death of a sexually assaulted Naval senior master sergeant occurred in 2023, which indicates that the Military Sexual Misconduct Prevention and Response Center may lack expertise and the victimization still persists in the military.<sup>59</sup>

61. In 2022, significant changes were made to the military human rights protection system: the creation of independent *military human rights protector* and the reduction of military judicial institutions. Human rights violations such as violence, ill treatment and sexual violence, as well as subsequent gun accidents, deaths and suicides, have not ceased to occur in the military. Social concerns for human rights abuses have been raised constantly, and voices for stronger external control and surveillance on the military have grown.

62. Consequently, the *National Human Rights Commission of Korea Act* was amended to install a military human rights protector within the NHRCK, who is responsible for investigating human rights violations and discrimination in the military, taking corrective measures and making policy recommendations if necessary, starting from July 2022.

63. Previously, the military judiciary institutions were in charge of conducting investigations and trials for crimes involving military personnel. Since July 2022, with the amendment of the *Military Court Act*, civilian judicial institutions have come to govern investigations and trials of particular cases: sexual violence crimes, crimes involving deaths, crimes that have caused deaths during military service, and crimes committed before enlistment. In addition, the Military High Court was abolished, and thus appeals of military cases are transferred to civilian courts. However, concerns have been raised that the purpose of such amendment of the *Military Court Act* might be lost as the military police is still responsible for investigating the crime of victimization, which is practically an extension of sex crime, under the *Military Investigation Guidelines* jointly developed by the Ministry of National Defense and the Korean National Police Agency.

64. **Proposed recommendation:** The State party should enhance the system and procedures for conducting transparent and fair investigations of human rights violations and sexual violence within the military. It should also make efforts to reinforce the human rights protection system and expand a culture that respects human rights in the military.

## **Issue 14. Migrant Workers and Human Trafficking**

### **A. Prevention of Human Trafficking**

65. The *Act on Prevention of Human Trafficking and Protection of Victims* came into force in January 2023. The Act was enacted in recognition that it is difficult to identify and protect victims in an early stage due to the narrow definition of human trafficking in the *Criminal Act* and scattered provisions pertaining to human trafficking in several separate laws. Therefore, this newly enacted law is considered promising in that it expands the definition of human trafficking and the scope of protection for victims.<sup>60</sup> However, since its penal provisions are confined to the existing laws, such as the *Criminal Act*, concerns exist as to possible gaps in punishing some human trafficking cases and protecting the victims in such cases.

66. The *Act on Prevention of Human Trafficking* stipulates emergency and protective measures, as well as support for victims in employment, schooling, legal counseling, medical access, livelihood, return to home countries, etc. With the enforcement of the Act, systematic monitoring is required for effective identification of and support for human trafficking victims. In addition, as the Act is to be implemented by several ministries, including the Ministry of Gender Equality and Family, the Ministry of Justice, the Ministry of Employment and Labor, the Ministry of Oceans and Fisheries, the Ministry of Health and Welfare, the Supreme Prosecutors' Office, and the National Police Agency, it is necessary to set up a nationwide hotline dedicated to supporting human trafficking victims and put in place mechanisms for data-sharing among the ministries. Also, a detailed manual is required not to miss the procedure to identify human trafficking victims during criminal investigations, and police officers should receive training on such manual.<sup>61</sup>

67. **Proposed recommendation:** The State party should supplement the punishment provisions of the *Act on Prevention of Human Trafficking* to avoid gaps in punishing human trafficking. The State party should also strengthen relevant systems to ensure that the identification, protection and support of human trafficking victims including labor and sexual exploitation are effectively implemented.<sup>62</sup>

### **B. Restrictions on Migrant Workers Changing Workplaces**

68. The Constitutional Court ruled Article 25 (1)<sup>63</sup> of the *Act on the Employment of Foreign Workers*, which restricts grounds for changing workplaces by migrant workers, to be constitutional in December 2021. Concerns have been raised that such decision may increase migrant workers' dependency on employers and subsequently weaken their bargaining power in employment contracts.

69. Meanwhile, there have been repeated incidents of migrant workers dying or risking their health and safety due to poor housing conditions.<sup>64</sup> In December 2020, the government announced measures to improve housing facilities for migrant workers in the agriculture and fisheries sectors. Those measures include inspecting housing facilities on site by the government and allowing migrant workers to change workplaces if they live in substandard housing. However, the living conditions of migrant workers still remain a concern.<sup>65</sup>

70. **Proposed recommendation:** The State party should scrap the restriction on changing workplaces by migrant workers under the Employment Permit System.<sup>66</sup> It should also strengthen measures to provide a safe and healthy living environment for migrant workers.<sup>67</sup>

### **Issue 15. Involuntary Hospitalization in Psychiatric Institutions**

71. In 2016, the Government announced that it would reinforce the human rights protection of involuntarily admitted mental patients by fully amending the *Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients* to mandate stricter requirements for admission to mental health hospitals and introduce a system to review the legitimacy of admission. However, unlike the United States and Europe where judicial or quasi-judicial institutions review the legitimacy of admission, the admission review in Korea lies in a medical collegial body, *Admission Legitimacy Review Committee*, chaired by a medical professional, lacking in independence and neutrality as an examination agency. Moreover, a mere one percent of patients are discharged from medical facilities as a result of admission review since screenings are mainly conducted in writing rather than face-to-face.<sup>68</sup>

72. Some countries appoint procedural assistants to support mental patients' decision-making and represent their interests in the course of involuntary admission to mental health facilities. In contrast, Korea has not adopted such mechanism, and thus cases occur where mental patients with limited mental capacity are involuntarily admitted to mental health institutions and are not even informed of their rights. In response, in April 2022, the NHRCK made a recommendation to the Government to introduce the procedural assistant system, but it is yet to be implemented.<sup>69</sup>

73. With the amendment of the *Mental Health and Welfare Act*, the requirements for admission to mental health facilities have become stricter: that is, involuntary admission is permitted solely in cases where a mental patient is at risk of harming himself/herself or another person. Nonetheless, hospitalization-oriented treatment practices still persist in Korea. Thus, the NHRCK recommended the Government to establish a community-based mental health system through the *2021 Human Rights Report for Persons with Mental Disabilities*. The Government, however, has difficulties in implementing the recommendations, with the budget for community mental health standing merely at half of

the WHO recommendation of 5 percent of the total national health budget (2.7 percent as of 2021).

74. **Proposed recommendation:** The State party should consolidate the *Admission Legitimacy Review Committee (a body installed in national mental hospitals, etc.)* and the *Mental Health Deliberation Committee (a body under local governments)* into a single independent review agency with quasi-judicial status; introduce a procedural assistant system to support decision-making by mental patients in involuntary admission and represent their interests<sup>70</sup>; abolish the system of involuntary hospitalization by legal guardians under Article 43<sup>71</sup> of *Mental Health and Welfare Act*, and unify all involuntary hospitalization systems into one with the same requirements and procedures; and establish community-based mental health, welfare, and recovery systems so that mental patients can receive treatment and recover within their communities as much as possible.<sup>72</sup>

## **Issue 16. Prison Conditions**

75. Although the NHRCK conducted on-site and *ex officio* investigations on overcrowding in correctional facilities and made recommendations for improvement approximately ten times, the overcrowding remains a long-standing problem that has not yet been resolved. In particular, the NHRCK viewed that it is in itself inhumane treatment constituting an excessive use of State penal power if the accommodation area per inmate<sup>73</sup> is seriously small as to interfere with inmates' basic human needs. Thus, the NHRCK recommended the Minister of Justice, in December 2021, to promptly formulate improvement measures.<sup>74</sup>

76. Meanwhile, based on the findings of on-site investigations of correctional facilities in 2018, the NHRCK concluded that it was necessary to improve human rights protection in interrogation and disciplinary procedures in correctional institutions. It subsequently recommended the Minister of Justice in January 2019 to develop improvement measures to promote human rights for inmates.<sup>75</sup> The Ministry of Justice, however, did not adopt some of the recommendations. Those include wearing an identification card by the Correctional Rapid Patrol Team (CRPT); establishing criteria for selecting CRPT members; minimizing the use of protective devices on inmates; and putting upper limit on the disciplinary segregation period (15 days)<sup>76</sup> and restrictions on consecutive impositions, etc.<sup>77</sup>

77. The NHRCK conducted on-site investigations of the medical treatment situation in ten correctional facilities across the country in November 2021. It found a significant shortage of medical staff and several cases with inmates' right to health compromised due to the overall environment of correctional institutions. In July 2022, the NHRCK made recommendations accordingly that the Minister of Justice should increase the number of medical doctors in correctional facilities; improve medical treatment for mentally ill inmates; legalize the optimal temperature of inmates' wards to protect their right to health; improve ward facilities

to supply warm water in extreme cold weather; and increase inmates' outdoor exercise time to meet international standards.<sup>78</sup> It also recommended the Minister of Planning and Finance to allocate sufficient medical budgets for correctional facilities including budgets for increasing medical staff, with the aim to ensure inmates' right to access medical care, right to health, and right to an adequate standard of living.<sup>79</sup>

78. **Proposed recommendation:** The State party should endeavor to improve detention conditions by addressing overcrowding; improving the protection of human rights of inmates during interrogation and disciplinary procedures; increasing medical human resources and relevant budgets in correctional institutions; and enhancing the detention environment to ensure inmates' right to health.

### **Issue 17. Right to Counsel**

79. Article 243-2 (1) of the *Criminal Procedure Act*,<sup>80</sup> newly established in 2007, basically guarantees defense counsel's participation in the interrogation of a suspect whereas it restricts his/her participation only when there is good cause.<sup>81</sup> However, the specifics of "good cause" sufficient to restrict the participation of counsel are not set forth in the *Regulations on Cooperation between Prosecutors and Judicial Police Officers and General Interrogation Rules (Presidential Decree No. 31089)*, entrusted by the *Criminal Procedure Act*. Instead, lower regulations, such as the *Public Prosecutors' Office Rules (the Ministry of Justice Ordinance)* and the *Police Interrogation Rules (the Ministry of the Interior and Safety Ordinance)*, and the *Operational Guidelines on Participation of Counsel in Interrogations and Investigations (the established rules of the Supreme Prosecutors' Office)*, prescribe broader grounds for restricting the participation of counsel, such as destruction of evidence, hindrance of interrogations, leakage of investigative confidential information, as well as inducing specific responses or reversal of statements, recording interrogations with video, audio or electronic devices, etc.<sup>82</sup>

80. North Korean defectors who enter into the Republic of Korea are admitted to the North Korean Defector Protection Center immediately upon arrival for up to 90 days.<sup>83</sup> Some NGOs point out that such admission amounts to *de facto* detention. They are of the view that the right to counsel for defectors at the North Korean Defector Protection Center must be completely observed, based on Constitutional Court precedents<sup>84</sup> that affirmed the right to counsel even in the case of administrative detention.

81. **Proposed recommendation:** The State party should stipulate the specific grounds for restricting the participation of defense counsel in relevant laws, such as the *Criminal Procedure Act*, in order to ensure that the right to counsel is practically observed in the interrogation of a suspect and is not arbitrarily or excessively restricted.<sup>85</sup>

## **Issue 18. Immigration Detention**

### **A. Improving Immigration Detention Conditions**

82. In immigration detention facilities, the possession of mobile phones is prohibited, and these phones are required to be stored in separately managed lockers upon the admission of detainees.<sup>86</sup> According to the findings of the NHRCK's on-site investigation, detainees in immigration detention can use public phones, but their use is considerably inconvenient.<sup>87</sup> Detainees can also use computers with internet access, but there is a need to expand facilities and the hours of usage for their practical use.<sup>88</sup> Restricting the use of mobile phones and the Internet by detainees in immigration detention facilities limits various rights guaranteed by the Constitution, such as the right to privacy, privacy of correspondence, general freedom of action, freedom of expression, and the right to pursue happiness. Therefore, it is desirable for the Government, if necessary, to limit these rights to the minimum extent in accordance with the relevant laws.

83. Rule 23 (1) of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* provides, "every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." However, in immigration detention facilities in Korea, outdoor exercise is limited to no more than 30 minutes, five times a week. The NHRCK has recommended an increase in exercise time, noting that provided outdoor exercise falls short of the above rule.

84. **Proposed recommendation:** The State party should permit the use of mobile phones in immigration detention facilities in principle. If deemed necessary to restrict mobile phone usage, the State party should ensure that detained foreigners can access mobile phones at specific times and places.<sup>89</sup> The State party should also adopt measures to provide practical access to the internet by detainees in immigration detention in respect for their right to correspondence with the outside world.<sup>90</sup> Furthermore, the State party should guarantee at least one hour of outdoor exercise time for detained foreigners every day and explore alternatives to ensure exercise time in situations of infectious disease.<sup>91</sup>

### **B. Shortening the Detention for Foreigners and Restricting Child Detention**

85. The Government stated that it has established a procedure to more carefully assess the necessity to extend periods of detention. Nonetheless, over the course of a year from June 2020 to June 2021, the Long-term Immigration Detention Review Committee met only once, with one person being granted temporary release from detention and four persons being dismissed.

86. In March 2023, the Constitutional Court held that Article 63 (1) of the *Immigration Act*, which allows for long-term immigration detention without an upper limit, is unconstitutional. Accordingly, the NHRCK urged the Ministry of Justice and the National Assembly to take appropriate measures in compliance with the intent of the Constitutional Court's decision and the deadline for legislative improvements.<sup>92</sup>

87. The Government wrote in its 5th periodic report that it restricts the detention of children under the age of 14 and minimizes the detention of children under the age of 18, with special care being provided. Even if special care is provided, it is difficult to offset the negative effects of detention on children.<sup>93</sup> Immigration detention of children under the age of 18 should be prohibited in principle, observing the *Convention on the Rights of the Child* and international human rights standards.

88. **Proposed recommendation:** The State party should conduct regular interviews with long-term detainees in immigration detention at designated times and locations to support them to resolve grievances, such as wage arrears. The State party should consider temporary release from immigration detention and other similar measures in cases where departure is difficult due to reasons such as refugee screening or trial proceedings. Furthermore, the State party should legislate the prohibition of the placement of children in immigration detention and take measures to ensure that immigration control officials put the best interests of children first in their activities and decisions with respect to children.

### **C. Operation of Waiting Rooms at Airports and Ports of Entry and Departure**

89. The Government stated in the State party report that it does not operate immigration detention facilities at airports and ports of entry and departure, and that it only provides waiting facilities for foreigners who are denied entry and must depart, or who are waiting for a decision from refugee status determination procedures. However, refugee status applicants involved in litigation often have to stay at the port of entry and departure for an extended period of time until their lawsuit is concluded, being in situations similar to detention.<sup>94</sup> Moreover, external access and contact are controlled in some departure waiting rooms such as those at Incheon International Airport Terminal 2, which prevents such applicants from freely leaving the waiting room and restricts their interactions with outsiders, except for meetings with lawyers.

90. **Proposed recommendation:** The State party should recognize that the waiting at the departure waiting rooms at airports and ports of entry and departure operates as *de facto* detention and improve the treatment of foreigners in departure waiting rooms in compliance with international human rights norms and standards.<sup>95</sup>

## **Issue 20. Monitoring of Private Communication**

91. In 2018, the Constitutional Court held that some provisions of the *Protection of Communications Secrets Act* were unconstitutional, including those pertaining to the provision of real-time location tracking data and the interception of internet lines (deep packet inspection). Subsequent to this ruling, the relevant laws were amended. However, it is difficult to deem that the Committee's previous Concluding Observations (i.e., paragraph 43) have been fully implemented.

92. In this regard, the NHRCK expressed its opinion to the National Assembly and the Minister of Justice in July 2019 on the *Proposed Bill of Partial Amendment of the Protection of Communications Secrets Act* submitted by the Government in March 2019. Therein the NHRCK addressed that, in monitoring private communication, it is necessary to require specific criminal allegation or relevance to the case in question; place limits on targeted crimes and individuals; and strengthen supplementary requirements, for the reasons that *the provision of location tracking data* can form a detailed profile of an individual through the collection of location information; and *the provision of communication confirmation data of a base station* may infringe on the rights of a wide range of people. However, the Act was amended without observing the NHRCK's opinion and entered into force in December 2019.

93. In July 2022, the Constitutional Court ruled that the failure to establish *ex post* notification procedures for the provision/acquisition of communications data under Article 83 (3) of the *Telecommunications Business Act*<sup>96</sup> was in breach of due process and the Constitution. The Court ordered that the Article 83 (3) of the Act be amended by 31 December 2023.

94. As such, it is difficult to deem that all surveillance for public interest purposes follows the ICCPR. Especially in a situation where concerns have been continuously raised regarding potential infringements of personal information by State agencies, the system of providing subscriber information by communications services to authorities can be abused unless sufficient *ex ante* control procedures such as court authorization are in place. Therefore, it is necessary to strengthen the legal protection of basic rights including the right to privacy and self-determination of personal information.

95. **Proposed recommendation:** The State party should promptly amend Article 83 (3) of the *Telecommunications Business Act* to provide for *ex ante* control measures, such as requests by warrant, as well as *ex post* notification procedures for the provision of communications data.<sup>97</sup>

## **Issue 21. Conscientious Objection**

96. In June 2018, the Constitutional Court ruled that Article 5 of the *Military Service Act*, which did not provide for an alternative service system, was unconstitutional. As a consequence, the *Act on the Assignment to and Performance of Alternative Service* was enacted for conscientious objectors and came into effect in January 2020. However, the current alternative service system sets the service period at 36 months which is excessively long,<sup>98</sup> compared to active duty service.<sup>99</sup> The areas of alternative service are also limited to correctional facilities such as prisons and detention centers.

97. A number of alternative service members filed complaints with the NHRCK, alleging human rights violations in the current alternative service system. With regard to the complaints, the NHRCK concluded that the Ministry of Defense's failure to adjust the service period for alternative service personnel, despite the shortening of the service period for personnel in active duty service, constituted a violation of the right to equality by discriminating against alternative service personnel performing the same military duties under the Constitution.<sup>100</sup> The NHRCK also deemed it difficult to recognize the rationality of limiting the scope of alternative service to the correctional facilities, and therefore it viewed that the Government should consider areas with high levels of service difficulty and social needs, such as social welfare, firefighting, medical care, disaster prevention, and relief. Therefore, the NHRCK recommended to the Minister of National Defense and the Minister of Justice, in April 2023, to shorten the service period for alternative service personnel by up to six months and introduce various alternative service areas other than correctional facilities.

98. During the 4<sup>th</sup> cycle of Universal Period Review in January 2023, a number of UN member States addressed problems with the scope and period of the current alternative service system and recommended that Korea should implement a non-punitive, non-discriminatory, and civilian-led alternative service system.<sup>101</sup> However, the Government expressed at the 53rd session of the UN Human Rights Council in July 2023 that it would not adopt the recommendation.

99. **Proposed recommendation:** The State party should diversify the areas of alternative service for conscientious objectors and shorten the service period of alternative service personnel, considering equity with that of active duty soldiers.<sup>102</sup>

## **Issue 22. Freedom of Expression**

100. Social criticism has been raised about defamation lawsuits filed by perpetrators against victims of sexual violence who have disclosed their experiences of sexual abuses to others, out of concern that such lawsuits will re-victimize or silence the victims. There is an ongoing call for the decriminalization of defamation and the establishment of alternatives, given that

the defamation law is sometimes misused to restrict the freedom of expression of socially vulnerable groups beyond its intended purpose, and that defamation by revealing the truth has been decriminalized or *de facto* nullified in most countries.

101. The Constitutional Court has received a total of 11 applications for constitutional review and constitutional petition against Article 7 (1), (3), and (5) of the *National Security Act*. The Court has combined them and is currently reviewing them. In September 2022, the NHRCK submitted its opinion on these cases to the Constitutional Court, stating that Article 7 (1), (3), and (5) of the *National Security Act* violate the freedom of expression, thought and conscience in breach of the principle of clarity and proportionality and the ICCPR.<sup>103</sup>

102. **Proposed recommendation:** The State party should abolish Article 7 of the *National Security Act*.<sup>104</sup>

### **Issue 23. Freedom of Association**

103. There has been a continuous occurrence of cases where vulnerable groups of workers such as workers in special types of employment, platform workers and subcontracted workers are being restricted from exercising their labor rights including trade union membership and activities, due to collective dismissals resulting from the termination of work (service) contracts and the refusal of principal contractors to engage in collective bargaining.

104. It is noted that amendments to the *Industrial Accident Compensation Insurance Act* (2008), the *Occupational Safety and Health Act* (2019), and the *Employment Insurance Act* (2021) have extended legal protection of labor rights for workers in special types of employment and platform workers. However, the controversy over whether they are considered workers under the *Trade Union and Labor Relations Adjustment Act* has not been resolved, and their labor rights are hence being restricted.

105. Korea ratified the *International Labor Organization (ILO) Fundamental Conventions No. 87* and *No. 98* in April 2021 and is thus obligated to implement them in the country.<sup>105</sup> However, in November 2022, the Government issued a return-to-work order concerning a strike by the Cargo Truckers Solidarity Division under the Korean Public Service and Transport Workers' Union (KPTU), affiliated with the umbrella Korean Confederation of Trade Unions (KCTU). Concerning the return-to-work order, the Director-General of the ILO conveyed his position to the Government, in December 2022, that the ILO supervisory body considered that the return-to-work order in the transport services and similar sectors restricted the freedom of association of workers and that no criminal sanctions should be imposed against workers engaged in peaceful strikes.<sup>106</sup>

106. The *ILO Fundamental Conventions No. 87 and No. 98* and the *ILO Committee on Freedom of Association* view a worker, a broader concept than an employee, as the subject of the right to organize. As technology advances, the way labor is provided is also becoming more diverse. In light of this reality, it is necessary to revise the concept of worker under the *Trade Union and Labor Relations Adjustment Act* to protect the labor rights of diverse workers.

107. Requiring workers to pay large sums of damages for their trade union activities by employers can cause serious economic hardship to workers and hinder the exercise of labor rights, including the right to organize. Therefore, institutional improvement and legislative protection are needed to address this issue.

108. **Proposed recommendation:** The State party should amend relevant laws in accordance with the *ILO Fundamental Conventions No. 87 and No. 98* so that workers including workers in special types of employment, platform workers and subcontracted workers can be fully protected in exercising their labor rights such as the right to organize and the right to collective bargaining.<sup>107</sup>

## **Issue 24. Right to Political Participation**

109. While the United States and several OECD member countries generally allow public officials to engage in political activities, Korea restricts even the political expression of public officials in their private capacity as a citizen and unrelated to their official duties. Relevant laws, such as the *State Public Officials Act*, the *Local Public Officials Act*, and the *Public Official Election Act*, do not clearly distinguish whether public officials and teachers use their position and authority as public officials or exercise their political rights as citizens in their personal and social spheres of life. Instead, they prohibit the political freedom of public officials altogether on the basis of a vague concern that it could undermine their political neutrality.<sup>108</sup>

110. The NHRCK, in February 2019, issued its opinion and recommendation to the National Assembly and the Government,<sup>109</sup> calling for legislative improvement to guarantee the political freedom of public officials and teachers.<sup>110</sup> The NHRCK reasoned that the laws, which completely restrict the political freedom of public officials and teachers, were in breach of the principle of clarity and proportionality; failed to reflect the shift of State's function toward 'functional power control' in democratic countries; and failed to recognize the changing role of public officials as internal watchdogs beyond their role as conductors. However, the Government did not adopt the recommendation, citing the need for social consensus. The National Assembly has not taken any specific legislative action, either.

111. **Proposed recommendation:** The State party should amend the *State Public Officials Act*, the *Public Official Election Act* and other laws to ensure that public officials and teachers, as citizens, are able to enjoy the political freedom guaranteed by Article 25 of the ICCPR.<sup>111</sup>

## **Issue 25. Peaceful Assembly**

112. In April 2020, the Constitutional Court held that the direct firing of water cannons by the police at the demonstrator, the late farmer Baek Nam-ki, to disperse demonstration in 2015 infringed upon his right to life and freedom of assembly, constituting the violation of the Constitution. Following the death of Mr. Baek, the NHRCK expressed its opinion to the National Assembly during the process of revising the *Act on the Performance of Duties by Police Officers* that it is desirable to include, in the amended Act, the prohibition of direct firing of water cannon and mixing harmful substances; a duty to pay attention to the elderly; and a duty to train water cannon operators.<sup>112</sup> However, those were not included in the amendment.

113. In some cities, Queer Culture Festivals that have completed the registration for a rally have been repeatedly hindered from being held due to local governments' refusal to grant permission to use the roads. In particular, in Daegu in June 2023, the police and the local government physically clashed over the use of roads for the Queer Culture Festival due to their different positions on the event, which caused controversy.

114. The Special Rapporteur on Freedom of Peaceful Assembly and of Association and the Special Rapporteur on the Rights of Persons with Disabilities jointly sent a letter to the Government in April 2023, expressing their concerns about the excessive use of force by the police during a subway rally by advocacy groups for people with disabilities who called for non-discrimination. The letter outlined concerns about the violation of the right to peaceful assembly and demonstration, the excessive use of force without sufficient legal basis, unjust lawsuits against disability rights activists, and a lack of genuine consultation with the disability advocacy groups.

115. In December 2022, the Constitutional Court ruled that Article 11 of the *Assembly and Demonstration Act*, which bans assemblies near the presidential residence, is unconstitutional for violating the principle of proportionality. Meanwhile, Article 12 of the said Act stipulates that assemblies can be banned or restricted on certain roads for the maintenance of traffic order. The National Police Agency is pushing for an amendment to the *Enforcement Decree of the Assembly and Demonstration Act* to insert Itaewon Road and others which pass in front of the presidential office in the list of restricted roads. Such move raises a concern that the police could arbitrarily restrict assemblies and demonstrations near the presidential office on the grounds of traffic flow under that provision.

116. **Proposed recommendation:** The State party should ensure that everyone can enjoy the right to peaceful assembly without discrimination. It should also amend relevant laws to make the use of police force and equipment such as water cannons comply with the ICCPR.<sup>113</sup>

## **Issue 26. Migrants, Refugees and Asylum Seekers**

117. The Government has been reviewing the *Refugee Act* for amendment since January 2019. The NHRCK has expressed its opinion on the proposed amendment thereof on three occasions.<sup>114</sup> The Ministry of Justice explained that the purpose of the amendment is to improve the efficiency of refugee status recognition screening, but the amendment in plan contains some provisions that may undermine the procedural rights of refugee applicants by reason of efficiency. In particular, provisions such as the *deemed withdrawal of refugee applications* and the *eligibility review of refugee appeals* may diminish the procedural rights that should be guaranteed for refugee applicants, raising concerns about the erosion of the purpose and principles of the *Convention Relating to the Status of Refugees*.

118. According to the NHRCK's 2022 *Public Opinion Survey on Human Rights*, 36.2 percent of the respondents replied that the human rights of migrants are respected in our society, but 54.1 percent of the respondents<sup>115</sup> answered that our society shows a hateful or discriminatory attitude toward migrants. The survey results illustrate that one out of two people perceive that our society discriminates against migrants. Hence, more proactive stance and actions by the Government are needed to tackle the prejudices and discrimination against migrants.

119. Recently, xenophobia has emerged as a social concern as residents opposing the construction of an Islamic mosque in their community have engaged in collective actions that degrade Islamic culture and express or incite hostility against Muslims. The NHRCK expressed its opinion to the relevant head of municipal government in September 2021 that it would be desirable to take measures to ensure the resumption of the construction of the mosque, which has been suspended, and recommended that necessary actions be taken against placards and postings which contain expressions of hatred and harassment against Muslims.<sup>116</sup> However, the conflict in the community surrounding the construction of the mosque continues to this day.

120. **Proposed recommendation:** In amending the *Refugee Act*, the State party should withdraw provisions that may curtail the procedural rights of refugee applicants by reason of efficiency in the refugee determination procedures. The State party should also expand policies to address discriminatory perception and behaviors against migrants and actively consider the enactment of a comprehensive anti-discrimination act.

## **Issue 27. Birth Registration**

121. In May 2019, the Government announced that, in order to ensure that all children are registered and protected by the State, it would introduce a birth notification system under which all births at medical institutions should be reported to State agencies and strengthen the system for identifying and protecting children at risk. Accordingly, the *Act on Registration of Family Relations* has been amended to enforce the birth notification system from July 2024. Besides, the Government announced in February 2021 that it would expedite the introduction of a birth registration system for foreign children, and a legislative bill of the *Foreign Child Birth Registration Act* is currently being considered.

122. The legislative bill of *Foreign Child Birth Registration Act*, which is currently under review, stipulates that applications for birth registration, the issuance of birth certificates, applications for the correction of information contained therein, etc. may be delegated to the heads of local immigration offices and the heads of administrative bodies. However, local immigration offices, which are responsible for managing the entry and departure, and the stay of foreigners, are virtually inaccessible to undocumented migrants. Even if there are separate reception desks at the local administrative bodies, the fact that local immigration offices have the same authority is bound to cause anxiety and fear among undocumented migrants.

123. Meanwhile, the personal information of children collected through birth registration should be used solely for the purpose of child protection.<sup>117</sup> The legislative bill also exempts public officials from the obligation to notify under the *Immigration Act* and blocks immigration control officials from accessing information related to birth registration. However, as the mere involvement of local immigration offices in the birth registration process can be a barrier for migrant parents in undocumented status, the Government needs to make it clear that applying for the birth registration of a foreign child to a public agency does not result in any disadvantage. In particular, it needs to consider stipulating a declarative provision for duty bearers, such as “the child birth registration information should not be used for other purposes including the immigration offender enforcement,” so that public officials and all other persons involved in the birth registration of foreign children follow this norm.

124. **Proposed recommendation:** The State party should, in introducing the birth registration system for foreign children, establish a procedure for application that is accessible and usable by all foreign children and their guardians. In addition, it should make sure that the information obtained from the birth registration is used only for the protection of foreign children.<sup>118</sup>

## Endnote

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<sup>1</sup> The Republic of Korea accepted the individual communications procedures under five UN human rights treaty bodies: the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, and the Committee on the Rights of Persons with Disabilities.

<sup>2</sup> NHRCK, Recommendation for the formulation of the 4th NAP (July 2022).

<sup>3</sup> NHRCK, The NHRCK written submission on the 4th cycle of Universal Periodic Review for the Republic of Korea (July 2022); NHRCK, Recommendation for the implementation of individual complaints procedures under the United Nations human rights treaties (December 2003).

<sup>4</sup> For the same reason, the *Chungcheongnam-do Provincial Ordinance on Human Rights* was rescinded once in 2018. On the other hand, a constitutional petition was filed with the Constitutional Court by several teachers, students, and parents who claimed that the *Seoul Metropolitan Ordinance on Student Human Rights* prohibiting hate speech based on gender identity, religion, sexual orientation and other grounds infringes upon the freedom of expression. The Constitutional Court ruled against in December 2019 that the relevant provisions in the *Seoul Ordinance* were in conformity with the Constitution.

<sup>5</sup> NHRCK, Opinion on the petition for the repeal of the *Chungcheongnam-do Provincial Ordinance on Human Rights* (May 2023); NHRCK, Statement of the NHRCK Chairperson on the movement to abolish municipal human rights ordinances (September 2022).

<sup>6</sup> Statement of the Association of Human Rights Committees of Local Governance (18 October 2022).

<sup>7</sup> NHRCK, Recommendation for the enactment of anti-discrimination act (July 2006).

<sup>8</sup> NHRCK, Opinion on the enactment of the Equality and Anti-discrimination Act (July 2020).

<sup>9</sup> The bill was the first to be proposed by the Government (Ministry of Justice). The anti-discrimination bill proposed by the Ministry of Justice at that time did not include several grounds of discrimination including sexual orientation, compared to the *National Human Rights Commission Act*.

<sup>10</sup> Article 6 (1) of the *Constitution of the Republic of Korea*: Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as domestic laws.

<sup>11</sup> Judicial Policy Research Institute, *Applying International Human Rights Treaties by Korean Courts: Normative Status and Interpretive Challenges* (March 2020), p. xiv.

<sup>12</sup> *Ibid.*

<sup>13</sup> Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation (GANHRI SCA), *Report and Recommendations of Sub-Committee on Accreditation* (18-29 October 2021).

<sup>14</sup> The Plenary Committee of the NHRCK decided, on 22 February 2022, to submit the amendment bill of the *National Human Rights Commission Act* to establish provisions for the independent nomination committee for human rights commissioners.

<sup>15</sup> Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation (GANHRI SCA), *Report and Recommendations of Sub-Committee on Accreditation* (18-29 October 2021).

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<sup>16</sup> The Committee on the Rights of Child recommended the following to the Republic of Korea, in 2022, in its Concluding Observations from the consideration of 2<sup>nd</sup> and 3<sup>rd</sup> State party report.

68. The Committee recommends that the State party:

(b) Implement the recommendations of the GANHRI Sub-Committee on Accreditation (SCA) to establish a single independent selection committee and to ensure its financial autonomy, and strengthen its human resources, in order to ensure that the National Human Rights Commission functions effectively and independently and discharges its mandate in full compliance with the Paris Principles.

<sup>17</sup> The Korean OECD National Contact Point (NCP) has a role to settle disputes involving multinational enterprises by implementing the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* and cooperating with other NCPs in foreign countries. In March 2018, the NHRCK recommended the Minister of Trade, Industry and Energy to improve the Korean NCP system in efforts to prevent multinational enterprises from violating human rights and enhance the effectiveness of remedies for victims of such violations (NHRCK, Recommendation for the improvement of the Korean OECD NCP system, February 2018). Afterward, the Korean NCP has made changes including appointing private members. However, the ratio of government commissioners to private ones in the Korean NCP is still overwhelmingly high. Furthermore, the Korean NCP needs to be more active in resolving disputes, considering that the NCP has received the increased number of complaints but there were few cases resulting in tangible outcomes.

<sup>18</sup> NHRCK, Recommendation for the development of the NAP for business and human rights (July 2016).

<sup>19</sup> NHRCK, Recommendation for the improvement of the Korean OECD NCP system (February 2018).

<sup>20</sup> In Korea, the Constitution prohibits discrimination in all aspects, and there are individual laws to regulate discrimination in specific arenas, such as the *Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion*, the *Act on the Prohibition of Discrimination against Persons with Disabilities, Remedies against Infringement of Their Rights*, and the *Equal Employment Opportunity and Work-Family Balance Assistance Act*, etc. On the other hand, the *National Human Rights Commission Act* provides that the act of discrimination on one of 19 grounds including sexual orientation is subject to the investigation of the NHRCK.

<sup>21</sup> NHRCK, Opinion on the enactment of the Equality and Anti-discrimination Act (July 2020).

<sup>22</sup> Four anti-discrimination bills, banning direct and indirect discrimination and harassment based on the twenty-three prohibited grounds of discrimination including race, sexual orientation, religion and political opinion, are currently pending in the 21st National Assembly. The 21st National Assembly session is scheduled to expire at the end of May 2024. If the bills do not pass through the National Assembly by this time, they will be repealed automatically.

<sup>23</sup> NHRCK, *Research on the Status of Hate Speech and Relevant Regulations* (2016).

<sup>24</sup> International Muslim students studying at Kyungpook National University in Buk-gu, Daegu purchased a plot of land near the university and obtained a mosque construction permit from the Buk municipal office in Daegu in September 2020. The construction began in December 2020. However, some local residents opposed to the construction of the mosque in the vicinity of their residential area. As a consequence, the Buk municipal office imposed an administrative disposition to halt the construction in February 2021. Thus, the builders filed a complaint with the NHRCK against the Buk

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municipal office. With regard to the complaint, the NHRCK, in September 2022, presented opinion to and recommended the head of Buk municipal office to take actions to resume the construction and remove outdoor postings containing hate speech and derogatory expressions against Muslims. In the meantime, the builders filed a lawsuit against the Buk municipal office concerning the administrative disposition, and the Supreme Court rendered the final decision in September 2022 that the disposition to suspend the construction was illegal. Nonetheless, the construction is not yet complete due to the opposition of some residents.

<sup>25</sup> NHRCK, Interim relief decision on the referral of an army non-commissioned officer who underwent sex reassignment surgery while in service to the discharge review board (Case No. 20Gingeup0000200, February 2020).

<sup>26</sup> NHRCK, Decision on an unfair discharge of a service member who had sex reassignment surgery while in service (Case No. 20Jinjeong0056500, December 2020).

In this case, the NHRCK viewed that the disposition of the military to discharge the soldier who underwent sex reassignment surgery while in service violated the principle of legality, having no grounds in the relevant laws and regulations to impose such dispositions, and concluded that such disposition violated the right to the pursuit of happiness and the freedom of occupation of the sexual minority service member.

<sup>27</sup> Article 92-6 (Indecent Act) of the *Military Criminal Act*: A person who commits anal intercourse with any person (such as a serviceperson or a civilian military employee) prescribed in Article 1 (1) through (3) or any other indecent act shall be punished by imprisonment for not more than two years.

<sup>28</sup> NHRCK, Decision on an unfair discharge of a service member who had sex reassignment surgery while in service (Case No. 20Jinjeong0056500, December 2020).

<sup>29</sup> NHRCK, Opinion on a constitutional petition against Article 92-6 of the *Military Criminal Act* (June 2022).

<sup>30</sup> The Supreme Court, *Established Rules No. 550 on Family Relations Registration*.

<sup>31</sup> Article 6 of the *Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People* provides that the sex reassignment surgery and the sterilization surgery are one of the requirements for gender change. The Guidelines prescribe that these requirements are ‘items to be noted’ for a judgment on a legal sex change permit. However, many judges practically regard them as ‘criteria for a judgment.’

<sup>32</sup> NHRCK, Decision on human rights violation under the *Guidelines for the Handling of Petition for Legal Sex Change Permit of Transgender People* (Case No. 21Jinjeong0835800, February 2023).

<sup>33</sup> NHRCK, Recommendation for the establishment of a comprehensive policy to create a human rights friendly school culture.

<sup>34</sup> Human Rights Committee, Concluding observations of the 4th periodic report of the Republic of Korea, Paragraph 15 (December 2015).

<sup>35</sup> According to the UNESCO’s *International Technical Guidance on Sexuality Education*, “comprehensive sexuality education” is a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality, and it aims to equip children and young people with knowledge, skills, attitudes and values that will empower them to realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and understand and ensure the protection of their rights throughout their lives.

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<sup>36</sup> NHRCK, *Research on Ways to Enhance Gender-balanced Political Representation* (2020).

<sup>37</sup> See *Table: Current Status of Sectoral Implementation of the Plan to Increase Women Representation in Public Sector, 2019* in the 5th periodic report of the Republic of Korea at page 28.

\* The targets to be achieved in 2022: the proportions of female public officials in the upper 4th grade or higher, female officers in public organizations, female professors in public universities, and women in managerial positions in local public enterprises shall reach at least 25 percent, 23 percent, 19 percent, and 10 percent, respectively.

<sup>38</sup> NHRCK, Policy recommendation for gender-balanced political representation (March 2020).

<sup>39</sup> *Ibid.*

<sup>40</sup> According to *Analysis II of Prosecution Statistics on Violence against Women: With a Focus on Digital Sexual Violence Crimes and False Allegations of Sexual Violence* released by the Korea Women's Development Institute in 2000, the conviction rate for cases where sexual violence suspects accused victims of making a false allegation of sexual violence is 5.9 percent, which is less than the rate for other crimes, whereas the ratio of the 'no charges' for non-indictment (54.5 percent) is more than twice as high as that in other crimes. Such fact raises a concern that false allegations of sexual violence are being misused to silence victims.

<sup>41</sup> A media outlet carried out a complete enumeration survey of written judgements on digital sex crimes delivered by nationwide courts from April to August 2022. The findings of the survey show that, in cases of possession, distribution, and display of sexual exploitation materials, illegal filming, and distribution of obscene materials, only 20 prison sentences including imprisonment and imprisonment without prison labor (7.3 percent) were pronounced, compared to 169 suspended sentences (61.5 percent), 80 monetary penalties (29.1 percent), and 6 deferred sentences (2.2 percent), indicating that the courts tend to show leniency toward perpetrators based on the defendant's remorse. (Kyunghyang Shinmun, *Sex Offenders' Big Talk, "The Judiciary Is on My Side", Is Not Empty Talk*, 19 September 2022)

<sup>42</sup> In particular, abortions other than ones performed under Article 14 (Limited Permission for Induced Abortion – Pregnancy Resulting from Rape, Etc.,) of the *Mother and Child Health Act* are not subject to national health insurance service. This leads to a decrease in the accessibility of medical institutions and abortion-related information for women seeking abortions, thereby making an impediment to safe pregnancy termination.

<sup>43</sup> NHRCK, The NHRCK written submission on the 4th cycle of Universal Periodic Review for the Republic of Korea (July 2022).

<sup>44</sup> Article 2 (Definitions) of the *Act on Counter-terrorism for the Protection of Citizens and Public Security*:

The terms used in this Act are defined as follows:

3. The term "terrorist suspect" means a member of a terrorist group, a person who has propagated a terrorist group, raised or contributed funds for terrorism, or engaged in other activities of preparing, conspiring, propagandizing, or instigating terrorism, or a person who has a good ground to be suspected of having performed such activities.

<sup>45</sup> Previously, under the *Protection of Communications Secrets Act*, wiretapping was allowed only when national security was expected to be put in grave danger.

<sup>46</sup> NHRCK, Opinion on the amendment of the *Act on Counter-terrorism for the Protection of Citizens and Public Security* (October 2003).

<sup>47</sup> 55 death row inmates according to Ministry of Justice statistics and 4 according to military statistics (confirmed by the Ministry of Justice in July 2023).

<sup>48</sup> NHRCK, Opinion on the abolition of the death penalty (April 2005); Recommendation to sign the *Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty* (September 2018); and Opinion in favor of the abolition of the death penalty submitted to the Constitutional Court concerning a constitutional petition against the death penalty (Case No. 2019Hun-Ba59, February 2021).

<sup>49</sup> According to the 2018-2021 Annual Report on Causes of Death by Statistics Korea, suicide was the leading cause of death for people in their 10s, 20s, and 30s, the second leading cause of death for people in their 40s and 50s, and the leading cause of death except for diseases in all age groups over 10 years of age in 2018-2021. According to OECD health statistics, suicide deaths in Korea were 24.6 per 100,000 population as of 2019, which was not only the highest among the OECD member countries, but also more than double the OECD average of 11.0. According to the 2021 death statistics by the World Health Organization (WHO), the suicide rate for people in their 30s, 40s, 60s, and 70s or older in Korea was the highest among the OECD member countries, and the suicide rate for the elderly was overwhelmingly high. Per 100,000 population, 74.6 men and 23.5 women in their 70s, and 133.4 men and 35.5 women in their 80s or older take their own lives.

<sup>50</sup> Ministry of Health and Welfare, *2023 Suicide Prevention Projects Guide* (April 2023).

<sup>51</sup> Status of deaths in the military per year (Source: e-country index)

(Unit: case, percent)

	2016	2017	2018	2019	2020	2021	Average
<b>Total deaths in the military (A)</b>	81	76	86	86	55	103	81
<b>Suicides in the military (B)</b>	54	52	56	62	42	83	58
<b>Suicide rate (B/A)</b>	66.7	68.4	65.1	72.1	76.4	80.6	71.7

<sup>52</sup> The ratio of suicides by officers on leadership positions out of the total suicides in the armed forces increased from 56.4 percent in 2019 to 64.2 percent in 2020 and 70 percent in 2021. In particular, the number of suicides by officers on junior leadership positions within 1-3 years following their commission was high, accounting for approximately 60 percent of the total suicides by military officers as of 2018 (Source: Ministry of National Defense).

According to the result of an *ex officio* investigation conducted by the NHRCK in 2019, junior officers, mostly in their mid-20s, are in a dual position where they take responsibility for commanding soldiers and take orders from and obey their superiors, putting themselves in very stressful conditions. The causes of their suicides were typically categorized as heavy workload, stress, verbal abuse or assault by seniors or superiors, etc. (NHRCK, Recommendation for the improvement of system to prevent junior officers from committing suicide, Case No. 19Jikkwon004300, July 2020).

<sup>53</sup> NHRCK, Recommendation for the improvement of mental health system for suicide prevention among the elderly (December 2019).

<sup>54</sup> NHRCK, Recommendation for the improvement of system for expanding mental health services and improving youth accessibility (December 2022).

<sup>55</sup> NHRCK, The NHRCK written submission on the 4th cycle of Universal Periodic Review for the Republic of Korea (July 2022).

<sup>56</sup> NHRCK, Opinion on the *Special Bill on Statutes of Limitations for Inhumane State Crimes, etc.* (November 2005).

<sup>57</sup> NHRCK, Opinion on the ratification of the *Optional Protocol to the Convention Against Torture* (April 2006).

<sup>58</sup> NHRCK, Status of complaints received and resolved by the NHRCK concerning human rights violations in the military

(Unit: case)

	Received	Resolved	Accepted
<b>2016</b>	223	214	25
<b>2017</b>	520	236	27
<b>2018</b>	265	163	27
<b>2019</b>	528	436	22
<b>2020</b>	464	503	72
<b>2021</b>	432	368	39
<b>2022</b>	702	713	39
<b>2023 (as of 31 July)</b>	470	599	70

<sup>59</sup> Meanwhile, a female sergeant in her early 20s, who was sexually abused by an Air Force non-commissioned officer, was indicted for housebreaking into the residence of another subordinate sergeant during a military police investigation, and was eventually suspended of indictment. In response, the Military Human Rights Center (a human rights organization) filed a constitutional complaint in June 2023 claiming, “The victim of sexual abuse was forcefully taken to an isolated residence of another subordinate sergeant by the perpetrator, but was accused of breaking and entering.” Prior to this, the NHRCK concluded in relation to this case that the Air Force’s indictment of the sexually abused victim as a suspect through an unreasonable separate investigation was clearly the act of victimization against the victim in itself. Thus, it made recommendation to the Ministry of National Defense and the military to conduct victimization prevention training and consider dropping the charge from the separate case in December 2022 (NHRCK, Decision on the victimization against the victim of sexual violence in Air Force, Case No. 22Jinjeong0646800, December 2022).

<sup>60</sup> Article 2 (definition) of the *Act on Prevention of Human Trafficking and Protection of Victims*:

The terms used in this Act are defined as follows:

1. The term "human trafficking, etc." means committing any of following acts for the purpose of any commercial sex act, sexual or labor exploitation, organ removal, or other forms of exploitation to recruit, transport, transfer, harbor, hand over, or receive persons: Provided, That where children or youth defined in subparagraph 1 of Article 2 of the Act on the Protection of Children and Youth against Sex Offenses (hereinafter referred to as “children or youth”) or persons with disabilities under Article 2 of the Act on Welfare of Persons with Disabilities (hereinafter referred to as “persons with disabilities”) are recruited, transported, transferred, harbored, handed over, or received, any of the following acts shall not be required:

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- (a) Assaulting, threatening, coercing, arresting, confining, capturing, enticing, or trading a person;
  - (b) Using deceptive means or force against a person, or taking advantage of the vulnerability and desperation of a person;
  - (c) Offering, or promising to offer, money and valuables or property gains to a person who protects and supervises persons due to business or employment relations or other forms of relations.

<sup>61</sup> NHRCK, Decision on the case concerning coercive investigation of victims of human trafficking and prostitution (Case No. 20Jinjeong0219400, February 2021)

<sup>62</sup> NHRCK, Opinion on the Bill on *Prevention of Human Trafficking and Exploitation, Protection of Victims, etc.* (February 2021); Recommendation for the use of indicators for identifying and protecting human trafficking victims (June 2016); Decision on the case concerning coercive investigation of victims of human trafficking and prostitution (Case No. 20Jinjeong0219400, February 2021).

<sup>63</sup> Article 25 (Permission for Change of Business or Place of Business) of the *Act on the Employment of Foreign Workers*:

(1) Where any of the following events occur, a foreign worker (excluding a foreign worker under Article 12 (1)) may file an application for transfer to another business or place of business with the head of an employment security office, as prescribed by the Ordinance of the Ministry of Employment and Labor:

1. If his/her employer intends to terminate the labor contract during the contract period, or intends to refuse renewal of the labor contract after its expiration, on a justifiable ground;

2. Where the Minister of Employment and Labor gives public notice, as it is deemed under a social norm that the foreign worker is unable to continue to work in the business or place of business for a reason not attributable to the worker, such as a temporary shutdown, business closure, employment permit revocation under Article 19 (1), restrictions on employment of foreign workers under Article 20 (1), provision of a dormitory in violation of Article 22-2, or the employer's violation of employment terms and conditions or unfair treatment;

3. Where any other cause or event prescribed by the Presidential Decree occurs.

<sup>64</sup> Those incidents include a case where a migrant worker died in March 2023 after living in a tiny room in the corner of a pig farm and being exposed to harmful substances while working long hours; a case where a migrant worker who lived in a plastic greenhouse died in the cold of minus 20 degrees Celsius in December 2020; and a case where a number of migrant workers living in plastic greenhouse on farmland were displaced due to heavy rain in August 2020.

<sup>65</sup> According to a 2021 research report by the Ministry of Employment and Labor on the living environment of foreign workers under the Employment Permit System, more than 70% of migrant workers are provided with temporary buildings such as containers, prefabricated panels, and facilities in plastic greenhouses installed in farmland. Regarding the way of offering accommodation and meals to migrant workers, 77.4% of employers deducted the expenses of accommodation and meals of migrant workers from their wages. In order to protect the rights to life and housing of migrant workers, the NHRCK recommended in September 2022 to the Minister of Employment and Labor to explore support measures including the installment of public dormitories for migrant workers; conduct a thorough investigation of the living environment provided to migrant workers; and establish reasonable standards for accommodation and meal costs.

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<sup>66</sup> NHRCK, Recommendation for the *2nd Human Rights Guidelines on Migration* (September 2019).

<sup>67</sup> NHRCK, Decision on the violation of the rights to health and housing of migration workers in agriculture and fisheries due to poor housing conditions (Case No. 21Jinjeong0000400, July 2022).

<sup>68</sup> NHRCK, *Human Rights Report for People with Mental Disabilities* (2021).

<sup>69</sup> NHRCK, Decision on a human rights violation case caused by the failure to provide an application for discharge review and a procedural assistant (Case No. 21Jinjeong0992700, April 2022).

Responding to this NHRCK recommendation, the Ministry of Health and Welfare informed the NHRCK, in January 2023, that it would review whether the procedural assistant system could be legally institutionalized, based on the results of a procedural assistance pilot project that had been implemented since 2018.

<sup>70</sup> NHRCK, *Human Rights Report for People with Mental Disabilities* (2021) and related recommendation to the Prime Minister and the Minister of Health and Welfare (February 2021); and Policy recommendation for the provision of procedural assistants for patients admitted to mental health hospitals (April 2022).

<sup>71</sup> Article 43 (Hospitalization by Legal Guardians) of the *Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients*:

(1) Upon receipt of an application from two or more legal guardians of a mentally ill person (referring to two or more persons with priority according to the order of priority under Article 39 (2), if there is a dispute among legal guardians on hospitalization or admission or one person, if there is only one legal guardian), the head of a mental medical institution or a mental health sanatorium may hospitalize or admit the mentally ill person, only where a psychiatrist diagnoses that the mentally ill person needs hospitalization or admission. When the head of a mental medical institution or a mental health sanatorium hospitalizes or admits a person in such cases, he or she shall require the legal guardian to submit a written application for hospitalization or admission and a document certifying the authority of the legal guardian in the forms prescribed by Ordinance of the Ministry of Health and Welfare.

<sup>72</sup> NHRCK, *Human Rights Report for People with Mental Disabilities* (2021) and related recommendation to the Prime Minister and the Minister of Health and Welfare (February 2021)

<sup>73</sup> Overseas cases of the minimum standard living space per inmate are as follows: In the case of individual cells or rooms, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* recommend, “All accommodation shall meet all requirements of health,” while the International Committee of Red Cross suggests 5.40m<sup>2</sup>, the European Committee Against Torture 7m<sup>2</sup>, the United States 5.57m<sup>2</sup> (federal facilities), Germany 6-7m<sup>2</sup>, and Japan 10m<sup>2</sup>, respectively. In the case of Korea, Article 14 of the *Act on Execution of Sentences and Treatment of Inmates* stipulates that inmates shall be placed in individual cells. However, in reality, shared cells are commonly used due to lack of space, excessively large number of inmates, State financial reasons, etc. For shared cells, the minimum accommodation area per inmate prescribed by the *Basic Rules for Legal Facilities* (Directive No. 848, Ministry of Justice, 29 December 2011) of the Ministry of Justice is 2.58m<sup>2</sup>.

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<sup>74</sup> NHRCK, Decision on human rights violation cases caused by overcrowding in correctional institutions (three other cases combined with Case No. 21Jinjeong0032900, November 2021).

The investigation findings of this case revealed that all the complainants had lived in an overcrowded ward exceeding its full capacity for a certain period of time during confinement. Among them was a complainant who had lived in a ward with a size of approximately 1.4 m<sup>2</sup> per inmate for roughly 15 days. Another complainant had lived in an overcrowded ward for around 120 days out of the total 224 days of confinement.

<sup>75</sup> NHRCK, Recommendation for the improvement of inmates' human rights based on on-site investigations of correctional facilities in 2018 (January 2019).

<sup>76</sup> In accordance with Article 108 and Article 109 of the *Act on Execution of Sentences and Treatment of Inmates*, solitary confinement (disciplinary segregation) during disciplinary proceedings shall be allowed for up to 30 days, and 45 days if imposition of disciplinary action is aggravated. Meanwhile, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) prohibit solitary confinement exceeding 15 consecutive days.

The NHRCK's on-site investigations of correctional facilities in 2018 confirmed cases where the actual period of solitary confinement (disciplinary segregation), including the confinement for interrogations and consecutive disciplinary action, had exceeded 30 or 45 days, as well as one case where an inmate had been housed in disciplinary segregation for 95 days.

<sup>77</sup> Specifically, the Ministry of Justice replied that it would not implement some recommendations by the NHRCK based on the following grounds: As for the wearing of an identification card by members of the Correctional Rapid Patrol Team, the ministry claimed that members of the team are threatened, petitioned, charged or accused by inmates in reality; limitations exist in terms of free deliberation and the appointment of external members for the establishment of disciplinary committees and relevant regulations; and concerning the NHRCK recommendations on restricting the disciplinary action period and consecutive impositions, the consecutive execution of disciplinary segregation itself cannot be seen as excessive, and it is difficult to take other measures in the case of continuous rule violations, such as disturbances during the disciplinary segregation.

<sup>78</sup> NHRCK, Recommendation for the improvement of inmates' human rights based on on-site investigations of correctional facilities in 2021 (July 2022).

<sup>79</sup> *Ibid.*

<sup>80</sup> Article 243-2 (Counsel's Participation) of the *Criminal Procedure Act*:

(1) Upon receiving an application from a criminal suspect, his/her counsel, legal representative, spouse, lineal relative, or sibling, a prosecutor or a senior judicial police officer shall allow the counsel to have an interview with the suspect or shall allow the counsel to participate in the interrogation of the suspect, unless there is good cause.

<sup>81</sup> Concerning the "good cause," the Supreme Court viewed that it refers to cases where it is objectively obvious that a counsel may interfere with interrogations or leak investigative confidential information.

<sup>82</sup> NHRCK, Recommendation for the formulation of the 4th NAP (July 2022).

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<sup>83</sup> Article 12-3 (Period of Examination and Provisional Protective Measures) of the *Enforcement Decree of the North Korean Defectors Protection and Settlement Support Act*:

The period of examination and provisional protective measures under Article 7 (3) of the Act shall not exceed 90 days from the date when the relevant applicant for protection enters into the Republic of Korea (referring to the date of applying for protection, if such applicant applies for protection after the date of his or her entry into the Republic of Korea): Provided, That in extenuating circumstances, such as the increase in the number of the residents escaping from North Korea who enter into the Republic of Korea, such period may be extended within the extent of 30 days only once, after deliberation by the Council.

<sup>84</sup> In a constitutional complaint case on the rejection of a counsel's application for a meeting with a refugee accommodated at the repatriation waiting room in Incheon International Airport (Case No. 2014Hun-Ma346, 31 May 2018), the Constitutional Court ruled that the "detention" stipulated under Article 12 (4) of the *Constitution* includes the detention imposed under judicial procedures as well as the detention enforced under administrative procedures, and the right to counsel prescribed by the Article 12 (4) shall also apply to those who are put under administrative detention.

<sup>85</sup> NHRCK, Recommendation for the formulation of the 4th NAP (July 2022).

<sup>86</sup> However, upon request to an officer in charge, migrants in immigration detention may be allowed to use their mobile phones for strictly only limited purposes and methods under the supervision of the staff, such as checking contact information stored on their mobile phones in the storage room.

<sup>87</sup> In order to use public phones, migrants in immigration detention are required to purchase a public phone card at the detention center's canteen. They often find it very inconvenient since the call rates of public phone cards are more expensive than those of mobile phones and the contact information is usually stored on their personal mobile phones.

<sup>88</sup> The Hwaseong, Cheongju, and Yeosu Immigration Detention Centers each implement rules for the operation of PC rooms with internet access for detainees. In general, the internet is available for access for less than 30 minutes once a week, but many detainees responded that they could actually use the internet for around 20 minutes, taking into account the time spent travelling to and from the computer room, booting up the computer, setting the language, etc.

<sup>89</sup> NHRCK, Policy recommendation based on on-site investigations of immigration detention facilities in 2021 (April 2022).

<sup>90</sup> NHRCK, Recommendation for improvement based on on-site investigations of immigration detention facilities in 2017 (December 2017); and Opinion based on on-site investigations of immigration detention facilities in 2015 (April 2016).

<sup>91</sup> NHRCK, Recommendation for ways to improve human rights of migrants in immigration detention facilities (November 2011); and Decision on the case of human rights violations caused by poor treatment of migrants in immigration detention (Case No. 21Jinjeong0506700, May 2022).

<sup>92</sup> NHRCK, Welcoming statement by its Chairperson on the Constitutional Court's decision of unconstitutionality of Article 63 (1) of the *Immigration Act* (23 March 2023).

<sup>93</sup> According to *the Fact-Finding Survey on Children Deprived of Liberty in Korea (2020)* conducted by Korean working group on children deprived of liberty, joined by International Child Rights Center, Children Welfare Action Group Seum, Youth Human Rights Solidarity Jigeum, and nonprofit organization Duru, children in immigration detention were not provided with interpreters; they were never interviewed by dedicated public officials; and they had to endure problems with education, exercise, and meals because there were no means to address them.

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<sup>94</sup> When foreigners who have applied for refugee status at airports or ports of entry and departure receive a non-referral decision on their refugee status recognition screening, they are denied entry. Currently, there is no administrative appeal process against the non-referral decision. If they disagree with the non-referral decision, they have to resort to legal action. Foreigners who are denied entry are not allowed to enter the country even if they are in the process of litigation, and thus are forced to reside in departure waiting rooms at the airports and the ports of entry and departure.

<sup>95</sup> NHRCK, Recommendation for improving the refugee status application system at ports of entry and departure and the operation of departure waiting rooms (August 2016).

<sup>96</sup> Article 83 (3) (Protection of Confidentiality of Communications) of the *Telecommunications Business Act*

A telecommunications business operator may comply with a request for the perusal or provision of any of the following data (hereinafter, “provision of communications data”) from a court, a prosecutor, the head of an investigative agency (including the head of a military investigative agency, the Commissioner of the National Tax Service, and the Commissioner of a Regional Tax Office; hereinafter the same shall apply) or the head of an intelligence and investigation agency, for the purpose of conducting a trial or an investigation (including the investigation of a violation committed by means of a telephone, the Internet, etc. among the offenses prescribed in Article 10 (1), (3), and (4) of the Punishment of Tax Offenses Act), executing a sentence, or collecting information aimed at preventing any harm to the guarantee of national security:

1. Names of users;
2. Resident registration numbers of users;
3. Addresses of users;
4. Phone numbers of users;
5. User identification word (referring to the identification codes of users used to identify the rightful users of computer systems or communications networks); and
6. Dates on which users subscribe or terminate their subscriptions.

<sup>97</sup> NHRCK, Opinion on the proposed partial amendment of the *Protection of Communications Secrets Act* (July 2019).

<sup>98</sup> In its 5th periodic report, the Government stated that the reason for setting the service period for alternative service personnel for conscientious objection at 36 months was to ensure equity with other alternative service workers (34-36 months) such as industrial technical personnel and public health doctors. However, unlike other alternative service workers such as industrial technical personnel and public health doctors who commute to and from work, alternative service personnel for conscientious objection work in a residential setting, without commuting, at correctional facilities for 36 months, making it difficult to directly compare the two groups.

<sup>99</sup> The period of active duty service under Article 18 (Active Duty Service) of the *Military Service Act* is 24 months for the Army, 26 months for the Navy, and 27 months for the Air Force. Currently, the period of active duty service is adjusted in accordance with Article 19 (Adjustment of Period of Active Duty Service) of the *Military Service Act* to 18 months for the Army, 20 months for the Navy, and 21 months for the Air Force.

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<sup>100</sup> Regarding the duration of alternative service, the NHRCK stated in 2018 and 2019 in its ‘opinion on the proposed partial amendment of the *Military Service Act* and the *Bill on the Assignment to and Performance of Alternative Service* in relation to the introduction of the alternative service system’ that it is desirable to set the period of alternative service at no more than 1.5 times the period of active duty service. In April 2023, the NHRCK advised the Minister of National Defense to adjust (shorten) the current service period of 36 months for alternative service personnel within a range of six months. The NHRCK viewed that it is possible to shorten the alternative service period without amending the *Military Service Act* because Article 19 of the Act allows the Minister of National Defense to adjust the service period within the specified scope; based on this provision, the Ministry of National Defense indeed adjusted the service period of active duty soldiers to 18 months for the Army, 20 months for the Navy, and 21 months for the Air Force, to be applied beginning with personnel slated for discharge from military service after December 2021; and Article 19 of the *Act on Assignment to and Performance of Alternative Service* also provides that the Minister of National Defense may adjust the service period of alternative service personnel within a range of six months when adjusting the service period of active duty soldiers.

<sup>101</sup> The Alternative Service Commission, composed of legal experts such as judges, grade 4 public officials or higher, psychiatrists, and human rights activists, under the Military Manpower Administration conducts the screening of individuals eligible for assignment to alternative service for conscientious objection. In the meantime, civil society organizations advocate for the complete privatization of the screening entity.

<sup>102</sup> NHRCK, Opinion on the proposed partial amendment of the *Military Service Act* and the *Bill on the Assignment to and Performance of Alternative Service* in relation to the introduction of alternative service system (November 2018 and March 2019); and Recommendation for improvement of alternative service system for conscientious objectors (37 cases combined, Case No. 21Jinjeong0536400, April 2023).

<sup>103</sup> The NHRCK viewed that Article 7 of the *National Security Act* violates the principle of clarity due to its multiplicity, vagueness, and broad scope of application; violates the principle of proportionality by punishing acts without assessing the substantial and realistic risks to the existence or security of the State or the free and democratic order, caused by such acts; and is inconsistent with treaties such as the ICCPR to which Korea is a party. The NHRCK thus concluded that the Article 7 is in violation of the Constitution.

<sup>104</sup> NHRCK, Opinion on cases including the unconstitutional complaint against Article 7 of the *National Security Act* (August 2022); and Recommendation for the abolition of the *National Security Act* (August 2004).

<sup>105</sup> In April 2021, Korea ratified the *ILO Fundamental Conventions: Forced Labor Convention (No. 29)*, *Freedom of Association and Protection of the Right to Organize Convention (No. 87)*, and *Right to Organize and Collective Bargaining Convention (No. 98)*. Under the Article 6 (1) of the Constitution, these conventions have the same effect as domestic laws.

<sup>106</sup> The Hankyoreh, *The ILO Letter Specifies Violation of Freedom of Association, unlike the Government’s Devaluation* (6 December 2022).

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<sup>107</sup> NHRCK, Opinion on the *Bill on the Protection and Support of Platform Workers* (November 2021); Recommendation and opinion on the improvement of unfair labor practice systems (May 2022); and Opinion on the proposed partial amendment of the *Trade Union and Labor Relations Adjustment Act* (December 2022).

<sup>108</sup> The court upheld the guilty verdict against teachers' union members for violating their political neutrality by participating in a declaration on the state of affairs calling for a fact-finding investigation into the Sewol Ferry disaster in 2020 which resulted in many deaths including students, the punishment of those responsible, and the resignation of the regime.

<sup>109</sup> Minister of Personnel Management, Minister of Interior and Safety, Minister of Education, and Chairperson of the National Election Commission.

<sup>110</sup> NHRCK, Recommendation for guaranteeing political freedom for public officials and teachers (February 2019).

<sup>111</sup> *Ibid.*

<sup>112</sup> NHRCK, Opinion on the proposed partial amendment of the *Act on the Performance of Duties by Police Officers* (December 2016).

<sup>113</sup> *Ibid.*

<sup>114</sup> NHRCK, Opinion on the pre-announcement of the proposed partial amendment of the *Refugee Act* (February 2019); Opinion on the proposed partial amendment of the *Refugee Act* (August 2020); Opinion on the pre-announcement for the proposed partial amendment of the *Refugee Act* (January 2021); and Submission of opinion on the proposed partial amendment of the *Refugee Act* to the Legislation and Judiciary Committee of the National Assembly (January 2022)

<sup>115</sup> According to the survey, a total of 54.1 percent of respondents answered that they “strongly agree” or “slightly agree.”

<sup>116</sup> NHRCK, Decision on an unjust construction halt notice for a mosque (Case No. 21Jinjeong0426300, September 2021).

<sup>117</sup> The Committee on the Rights of the Child and the Committee on the Protection of Rights of All Migrant Workers provided in the Joint General Comment No. 3 (2017), “The Committees urge due diligence regarding safeguards in the development and implementation of data systems, and in the sharing of data between authorities and/or countries. State parties should implement a “firewall” and prohibit the sharing and use for immigration enforcement of the personal data collected for other purposes, such as protection, remedy, civil registration and access to services. This is necessary to uphold data protection principles and protect the rights of the child, as stipulated in the Convention on the Rights of the Child.” (CRC/C/GC/22, para. 17).

<sup>118</sup> NHRCK, Recommendation for the improvement in the birth registration system (November 2017); and Recommendation for the *2nd Human Rights Guidelines on Migration* (September 2019).