

Joint NGO Submission

The 14th Session of the Universal Periodic Review (UPR) Republic of Korea

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Submitted by

The Korean NGO Coalition for the 2nd Cycle of the UPR on the Republic of Korea

The 53 Korean NGOs participating in the preparation of the submission are as follows:

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I. BACKGROUND AND FRAMEWORK

1. This submission was jointly written by 53 NGOs based in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 1st cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2008.

A. Scope of international obligations and implementation (Recommendation No. 1, 2¹)

2. The ROK Government made reservations on the Article 22 of the International Covenant on Civil and Political Rights, Article 25 of the International Convention on the Rights of Persons with Disabilities, and Article 21 of the Convention on the Rights of the Child (CRC). In addition, the Government has yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture (OP-CAT), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Hague Adoption Convention, and the core ILO conventions related to freedom of association and collective bargaining, and elimination of forced and compulsory labour. As for the implementation of the international treaties of which the ROK has ratified, there have been less than ten cases where human rights treaties or other international human rights norms have been cited in the decisions of the Constitutional Court or other court rulings, in all of which the norms referred to are used as supplementary grounds, at best, for such decisions and rulings. **The Government should ratify the treaties of which it is not a state party and withdraw all of the reservations.**
3. The Government has failed to actively disseminate the observations made by treaty bodies other than posting the results of individual complaints in the Official Gazette.² Furthermore, the Government has not actively engaged in disseminating the recommendations from the 1st cycle of the UPR and has held only one panel discussion with civil society. At this panel discussion, the Government mistranslated a considerable number of the UPR recommendations when presenting them to civil society representatives.³

B. National Human Rights Commission of Korea

4. In 2009, the Government downsized the National Human Rights Commission of Korea (NHRCK) by 21%⁴ and appointed a chairperson lacking experience and expertise in the field of human rights. Since then, the Commission has deferred its decisions on several serious human rights violation cases, where timely interventions by the Commission were crucial. This series of events has threatened the independence of the Commission and led to the simultaneous resignation of two standing commissioners, and seventy advisors and

¹ Number of these recommendations are from the 1st cycle of the UPR.

² Official Gazette of the Republic of Korea, <http://gwanbo.korea.go.kr/main.gz>

³ The Ministry of Foreign Affairs and Trade is responsible for translating and distributing the translated copy of the recommendations from the 1st UPR session of the ROK. For instance, Slovenia's recommendation "to remove any current prohibition from employment in Government or public organizations [due to refusal of active military duty]" was translated as "to enhance the practice of prohibition from employment in Government or public organizations," while the preceding part of the same recommendation—"to decriminalize refusal of active military service"—was entirely omitted. Also, the translation of Italy's recommendation "to urgently amend relevant legislation to expressly prohibit corporal punishment in schools and at home" omitted the part about corporal punishment at home.

⁴ The Government shut down local offices of the NHRCK and reduced 208 employers to 164.

experts in 2010.⁵

C. Policy Measures - National Action Plan (NAP)

5. The Government excluded NGOs from participating in the implementation and evaluation process of the 1st NAP (2007-2011) and during the recent process of creating the 2nd NAP (2012-2015). The Government held a public hearing without adequate notification to the NGOs. As for the 1st NAP, no specific implementation took place regarding the National Security Act, the Security Surveillance Act, the Assembly and Demonstration Act, the death penalty, and alternative military service.

II. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Equality and non-discrimination

6. **Enactment of comprehensive anti-discrimination legislation (Recommendation No. 23):** Although the Ministry of Justice maintains that it has been working on enacting anti-discrimination legislation since 2007, there has been no visible progress. The Ministry launched a “Special Committee for Anti-Discrimination Legislation” in 2010, but there has been no progress even after the special committee was dissolved at the end of 2010. The Prohibiting and Protecting against Gender Discrimination Act was repealed in 2005 and article 92(5) of the Military Criminal Code, which penalizes male homosexuals in the military, still exists. **The Government must enact a comprehensive legislation which addresses all prohibited grounds of discrimination in concrete terms, through consultation with civil society and key stakeholders.**

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

7. **Death Penalty (Recommendation No. 20, 27):** The Government, while maintaining a moratorium on the use of the death penalty, has not made any concrete effort to abolish the death penalty. Instead, it uses results of public opinion polls⁶ for not abolishing the death penalty. The polls are usually conducted right after a serial killing or child sexual abuse cases has been aired in the media. **The Government should conduct a national campaign against and abolish the death penalty.**
8. **Prohibition of Corporal Punishment in Schools and at Home (Recommendation No. 29):** In 2011, the Government amended the Enforcement Decree of the Elementary and Secondary Education Act⁷ (Enforcement Decree) to prohibit ‘inflicting pain upon students by using tools and/or parts of the body.’ However, even without using tools or parts of the body, corporal punishment is still possible including in the use of group punishment. The Seoul Student Rights Ordinance is the minimum legal basis of protecting the rights of students, and each local government has already legislated or is

⁵ *The Korea Herald*, “Rights commission in massive breakaway”, 15 November 2010
<<http://www.koreaherald.com/national/Detail.jsp?newsMLId=20101115000818>>.

⁶ *The Kyunghyang Shinmun*, “Why we are surveying on death penalty now?”, 23 February 2009
<http://news.khan.co.kr/kh_news/khan_art_view.html?artid=200902232327075&code=990101>

⁷ Enforcement Decree of the Elementary and Secondary Education Act clause (8), Article 31: Where the head of a school provides guidance referred to in the main sentence of Article 18 (1) of the Act, it shall be conducted by methods such as discipline, and admonition which do not inflict physical pain on a student’s body using punishing tools and body parts, pursuant to school regulations.

now legislating its own Student Rights Ordinance in line with the principles stipulated in the CRC. However, on 27 February 2011, the elementary and secondary school regulations clause of the Enforcement Decree was amended and the Seoul Student Rights Ordinance, which is subordinate to the Enforcement Decree, became unavailing. Also, the number of suspected cases of domestic child abuse increases each year⁸, but only 5.1 % of the reported child abuse cases develop into criminal cases by the actual accusation.⁹ In addition, no child-sensitive procedures were introduced to child-related criminal procedures. **The Government should amend laws to ban all forms of corporal punishment at home and schools, conduct human rights campaigns on the prevention of child abuse and adopt child-sensitive procedures in child-related criminal procedures. The relevant laws need to be amended to ensure the implementation of the Student Rights Ordinances, one of the goals of which is to ban corporal punishment and guarantee the freedom of expression and assembly of students.**

9. **Civilian landmine victims:** It is estimated that over 1,000 civilians have been killed or injured by landmine accidents since the outbreak of the Korean War in 1950. Up until today, people still fall victim to landmines every year.¹⁰ Unfortunately, no official statistics or investigation has been made regarding this matter. **The cases of the landmine victims should be investigated and the legislation, which covers the victims' living expenses, the costs of medical care, and compensation, should be enacted.**

10. **Compensation and diplomatic effort regarding the Japanese Military Sexual Slavery:** From 1932 to the end of the Second World War, the Japanese government mobilized around 200,000 Asian women and forced them to serve as sexual slaves for the Japanese military. However, the Japanese government has been refusing to give an official apology and pay compensation for their past atrocities. The ROK Government has not put much diplomatic effort into resolving this issue either, and recently, the Constitutional Court of the ROK ruled that such lack of effort by the Government is unconstitutional. Nevertheless, the Government is still not putting any diplomatic pressure on the Japanese government to fulfil their legal responsibilities, despite the fact that many elderly survivors of Japanese Military Sexual Slavery have already passed away and the surviving women may soon pass away. Moreover, the Government has not yet specified the dispute resolution procedures, abstractly provided in the Korea-Japan treaty.¹¹ **The Government should make a clear request to the Japanese government**

⁸ Ministry of Health and Welfare, 2010 National status report on child abuse, p.204. 2007:7,083 cases, 2008: 7,219 cases, 2009: 7,354 cases, 2010: 7,406 cases

⁹ *Ibid.*, p.29

¹⁰ The total area with planted mines in Korean peninsula is 112.58Km², and 90.7Km² of that area, which accounts for more than 80% of the total, has no specific data as to the exact location and amount of mines. It is estimated that approximately 1,083 million mines are planted in the DMZ, and 75 thousand mines in Mt. Umyeon and 30 other rear areas. According to the official announcement by the Ministry of National Defence in 2010, it will take about 489 years to completely eradicate mines in unconfirmed areas. There were 3 injuries in 2008, 1 death in 2009, 3 death and injuries and 4 cases of mine detection in 2010. In 2011, the Peace Sharing Association conducted a survey on the landmine civilian victims of the whole Gangwon Province and found out there have been 228 victims of death or injury. Moreover, it is estimated that more than 1000 civilians have been victimized since the armistice.

¹¹ The Japanese government argues that the comfort women's (military sexual slavery) compensation issue was resolved in the 1965 Korea-Japan treaty. But the existence of comfort women had not surfaced at the time and it was not even mentioned while signing the treaty. While disclosing the treaty document in 2005, the ROK Government also made a statement that the inhumane and unlawful act such as sex slave issue in the Japanese military was not resolved by the treaty. Hence the Japanese government still has legal responsibility for it. Despite such differing stances between the two states, the Korean government has not taken any diplomatic measures to resolve the issue. Consequently, in 2006, the military sexual slavery survivors accused the Government of their irresponsibility by requesting a constitutional adjudication. On 30 August 2011,

for proper legal compensation to the victims of Japanese Military Sexual Slaves and make a settlement on the dispute resolution procedure promptly.

C. Administration of justice and the rule of law

11. **Human rights training for military personnel (Recommendation No.11):** The amount of human rights training provided to military personnel is entirely insufficient¹², and on the rare occasions that training does take place, it is often led by commanding officers, rather than by human right training specialists. **The Government should provide effective human rights training to all military personnel in accordance with the World Programme for Human Rights Education.**
12. **Prohibition of torture (Recommendation No. 6, 10, 11, 12):** Currently, domestic law lacks measures that define torture in line with Article 1 of the Convention Against Torture (CAT) or provide punishment for all acts of torture. It merely criminalizes “acts of violence or cruel treatment” and “unlawful arrest or detention in circumstances of abuse of authority”¹³ in its Criminal Code. As a result, instances of violence and cruel treatment perpetrated by the police or the prosecutor’s office continue to take place.¹⁴ **The Government should adopt a comprehensive definition of torture as defined in the CAT and regularly undertake investigations to prevent torture and cruel, degrading and inhumane treatment, while providing human rights training to law enforcement officers.**
13. **Prohibition of arbitrary detention in the military (Recommendation No. 22, 26):** Since the military court operates under the Ministry of Defence and not the Supreme Court of Justice, military personnel and civilian workers in the military are not guaranteed their right to fair trial. The military court adjudicators, who are appointed by the Minister of Defence, are military officers and not legal professionals. But they hold authority to influence military court decisions, which infringes the independence of the military court. Furthermore, according to the Military Personnel Management Act, a military officer who is not a judge may detain one’s subordinates in a military prison for maximum 15 days.¹⁵ **The Government should abolish the military court during**

the Constitutional Court ruled the Government’s not performing the treaty’s article is unconstitutional, which specifies that ‘should there be disputes between the two states as to interpretation and enforcement of the treaty, it should be resolved through diplomatic means’. If that fails, it should be passed onto the arbitration committee. Accordingly, the ROK Government’s suggestion on having a bilateral meeting was turned down by the Japanese government, which remains steadfast in its position. After the judgment of the Constitutional Court, 6 more survivors have passed away as of March 2012, and the majority of the survivors are in their 80s or 90s. Nonetheless, the ROK Government is still not performing any arbitration proceedings, nor is it requesting a legal compensation to the Japanese government with more definite means and expression.

¹² According to the Ministry of Defence, of the 600,000 military personnel nationwide, the number of military personnel who received human rights training was only 160 in 2008, 257 in 2009, and 308 in 2010.

¹³ Criminal Code Article 124, para 1: “A person holding a position in the court, prosecution, or police who commits an unlawful arrest or detention in circumstances of abuse of authority shall be subject to a sentence of no more than seven years and a suspension of the authority to arrest or detain for no more than ten years.” acts of violence or cruel treatment.”

Criminal Code Article 125: “A person holding a position in the court, prosecution, or police who commits acts of violence or other forms of cruel treatment in the process of arrest or detention shall be subject to a sentence of no more than five years and a suspension of the authority to arrest or detain for no more than ten years.”

Act on the Aggravated Punishment, etc. of Specific Crimes Article 4(2): “A person in violation of articles 124 and 125 of the Criminal Code who has injured or murdered another person may be subject to aggravated punishment.”

¹⁴ According to the statistics from the National Human Rights Commission of Korea, between January 2001 and June 2011, the Commission received 9,538 police-related complaints, and 28.9% (2,758) of those complaints are related to human rights abuses including police brutality, violence, cruel treatment and the excessive use of force.

¹⁵ Military Personnel Management Act Article 58, para. 1.: “The Minister of Defense and the head officer of each military

peacetime and require that lawsuits involving military personnel and civilian workers in the military take place in regular civilian courts. The Government should also revise the Military Personnel Management Act to require a warrant issued by a judge for a detention.

14. **Abolition of the measure requiring sexual crimes to be investigated only upon complaint from victims (Recommendation No. 19):** Under the current legal system, sexual crimes whose victims are non-disabled adults may only be investigated upon complaint from the victims. As a result, victims of sexual crimes are often subject to threats and other forms of pressure from perpetrators to waive or drop the charges or negotiate a settlement instead. Moreover, when victims were filing complaints or being investigated, law enforcement officers even encourage them to make a settlement, which puts them under extra pressure to give up the charges. The pending Revised Criminal Code also fails to abolish the relevant measure. **The Government should establish a concrete and systematic plan to abolish such requirement for all sexual crimes.**

D. Right to privacy, marriage and family life

15. **Punishment of marital rape and domestic violence (Recommendation No. 14, 32):** In 2010, marital rape accounted for 10.4% of sexual abuse cases.¹⁶ Although rape crime¹⁷ exists under the Article 297 of the Criminal Code, according to which female spouses can also be victims of rape crime, the punishment of such crime is not easily realized in the practice of the judicial procedure.¹⁸ **The Government should amend the Act on Special Cases Concerning the Punishment, etc. of Crimes of Domestic Violence in order to better protect marital rape victims and punish the offenders.**¹⁹
16. **Reconsideration on the resident registration system and the limitations of the use of registration numbers outside the public sector (Recommendation No. 13):** The Government is still maintaining the resident registration system which involves taking fingerprints from the holders. The Government is even planning to introduce a chip equipped electronic resident registration card system, which may contain a lot of personal information. In February 2012, the Government amended the Act that limits the collection of residential number on the Internet. However, the Internet Personal Identification Number (i-pin), an alternative system to resident registration number for personal identification online, still requires a residential number, and there is no restriction on collecting residential numbers outside the Internet. **The Government should reconsider the resident registration system itself, including the electronic resident registration card system, and abolish the legislation that directly and**

unit or organization have discretion to punish their inferiors or servicepersons under their supervision.”

Military Personnel Management Act Article 59, para. 2: “The officer with discretion to punish may impose a sentence after the legality reviews by the disciplinary committee and the military judge in charge of human rights protection. However, in cases of overseas stints or other critical situations stipulated in presidential orders, if it is unfeasible to access a military judge in charge of human rights protection, the procedure may be bypassed.”

¹⁶ Ministry of Gender Equality and Family, ‘National study on domestic violence’, 2010

¹⁷ Person that rapes her or his spouse by violence or threat will be imprisoned for a limited term under the Article 297 of Criminal Law.

¹⁸ The ROK Government suggests that marital rape is punishable under Criminal Law, but there have only been 2 cases so far, one of which only acknowledged the indecent act by compulsion, not the rape crime.

¹⁹ To be specific, the definition of “domestic violence” should contain “sexual damage” and include “Article 297 (rape), 298 (indecent act by compulsion), 299 (quasi-rape, quasi-indecent act by compulsion), 300 (person who has attempted a crime)” should be included in the clause of “the crime of domestic violence”, so marital rape is provided for in the law.

indirectly requires the residential number before accessing an online service, so that private enterprises' collection, storage, and the use of residential numbers can be strictly regulated or prohibited.

17. **Collection of DNA information:** The legislation which enables the collection of suspect's DNA, who is under arrest for 11 crimes including child sexual violence, murder, and rape, is now in force and it has provisions that allow extensive search and report of collected DNA²⁰. **The use of collected DNA should be strictly limited and the relevant legislation should be made.**
18. **Information leak of victims residing in shelters:** Personal information of victims of sexual violence, domestic violence, and sex trafficking that reside in shelters is collected and piled in an online social welfare information system. The information is stored for 5 years after the victims leave the shelters. The Government is not complying with the personal information protection principle, which is the most basic principle in supporting violence victims, by compelling the use of the social welfare information system whose security has not been approved. Since the current online management number contains the facility number, it is possible for the victims to be put under other dangerous situations²¹ for their whereabouts are easily exposable with these numbers. **The Government should amend the Social Service Act that requires the upload personal information of victims of sexual violence, domestic violence and sex trafficking on the Internet. Also, the Government should legislate a special law to ensure the needs of female victims of violence are taken into consideration.**

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

19. **Conscientious objectors (Recommendation No. 17, 24):** The UN recommended the ROK Government several times to provide alternatives to military service, and the Government has repeatedly insisted that it is working on such measures – but without any visible progress.²² In fact, the Government has only just conducted surveys on the issue without raising awareness on alternative military service. Only because the survey results show that a number of people refuse to adopt alternative military service, the Government has said that it has no intention to introduce alternative military service.²³ In 2011, revising the Military Service Law regarding conscientious objectors had been proposed at the National Assembly but there has been no discussion since then, and it was abrogated due to the expiration of term. It is not fair to delay promoting and

²⁰ Act on the use and protection of DNA identification information Article 11(1): The person in charge of DNA identification information can search the DNA identification information or report the result when applicable to any of the following cases:

1. In case of adding new DNA identification information to database
2. As per the request of prosecutor or police for criminal investigations or for identifying a person killed
3. In case of the court (including military commission. The same as follows) examining the facts at criminal trials
4. When the information is needed for comparison among databases

²¹ For instance, there was a case that male perpetrator of domestic violence or incest could find personal information about the victims through public institutions in order to locate the victims

²² According to the Military Manpower Administration, more than 7,000 people refused to go to the military from 2001 to 2011. Currently, around 800 people are in prison as conscience objectors.

²³ The Military Manpower Administration conducted a survey to collect public opinions on alternative military service. On 24 December 2008, the result was 68.15% against while 28.96% for, and the Government said that it will reexamine the plan completely. In December 2011, Military Manpower Administration conducted another survey (against: 54.1%, for: 43.5%), but said that it has no intention to introduce alternative military service as there were more people who are against it.

protecting human rights only because the majority does not agree. **The Government should immediately introduce alternative military service that complies with international standards and take steps to raise awareness on this issue.**

20. **Freedom of association and peaceful assembly (Recommendation No. 9):** In 2009, the Constitutional Court ruled night time assembly constitutional but night time demonstration is still prohibited.²⁴ In principle, the Assembly and Demonstration Act stipulates that assemblies and demonstrations only need to be reported but in practice, it is being used as de facto permit system and the police can make arbitrary decisions on granting assemblies and demonstrations.²⁵ Also, members of the police who use violence against demonstrators are not being properly punished.²⁶ **The Government should revise the Assembly and Demonstration Act to guarantee freedom of association and peaceful assembly. In addition, the Government should forbid existing practice of permitting assemblies beforehand and ensure the conduct of police forces is in accordance with the international human rights standards, as well as investigate and punish law enforcement officers who overuse their force.**

21. **Freedom of expression of civil servants:** Under the present administration, the freedom of political expression of civil servants has been severely restricted. In 2009, the Government took disciplinary action and brought criminal charges against the Korean Teachers and Educational Workers Union which expressed its opinion on political issues.²⁷ In the same year, the Government also harassed the Korean Government Employees' Union, the Korean Democratic Government Employees' Union, and the Court Government Employees' Union when they expressed its views on political issues, made an advertisement critical to the Government, and participated in assemblies sponsored by the opposition party. Freedom of expression of civil servants is guaranteed by the Constitution²⁸, and the Joint ILO and UNESCO Recommendation by the Committee of Experts on the Application of Recommendations Concerning Teaching Personnel.²⁹ **Freedom of expression of civil servants should not be restricted due to public sector employee's responsibility to remain politically neutral. The Government should immediately amend related legislations including the National**

²⁴ The Assembly and Demonstration Act Article 10 (outdoor assemblies and demonstration banned hours): No one may hold any outdoor assembly or stage any demonstration either before sunrise or after sunset.

²⁵ The number of assemblies and demonstrations compared with the number of prohibition notices

Year	2007	2008	2009	2010
the number of assemblies and demonstrations	96,142	123,495	155,030	195,131
the number of prohibition notices	368	299	900	957
Percentage (%)	0.38	0.24	0.58	0.49

²⁶ During the candlelight vigils in 2008, 'Minbyun-Lawyers for a Democratic Society' reported 19 cases to punish police officers regarding violence committed by law enforcement officers. Unfortunately, the prosecutors' office dropped or dismissed all the charges and no police officers were punished. On the contrary, 1,184 participants of candlelight vigils were prosecuted.

²⁷ *The Hankyoreh*, "Teachers' union fights wrongful penalties issued against 89 members", 1 August 2009, <http://www.hani.co.kr/arti/english_edition/e_national/368978.html>

²⁸ Constitution Article 37, clause 2: Every citizen's freedom and right can be limited by law if necessary for national security, maintaining order, and public welfare but even when this happens, the fundamental elements of freedom and right cannot be violated.

²⁹ Joint ILO and UNESCO Recommendation by the Committee of Experts on the Application of Recommendations Concerning Teaching Personnel Article 80: Teachers must enjoy all the civil rights that other citizens enjoy and are eligible to run for an election. Also, teachers' character developments, education services, participation in social or public life should be encouraged for the whole society.

Public Service Law, the Political Fund Law, the Political Party Law, and the Teacher's Union Law that include articles which ban political activities of civil servants.

22. **Right to participate in political and public life:** On 27 February 2012, the Public Official Election Act was amended 'to allow election campaigns on the Internet and social networking service at all times (except the election day)'. However, penalty clause on slandering other candidates still remains and can be arbitrarily abused. **The Article 93, clause 1 of the Public Official Election Act³⁰ should be abolished and regulations on offline election campaigns should be eased. In addition, punishing the slandering other candidates under the election law³¹ should be abolished since there is no clear definition between slandering and justifiable criticism.**
23. **Freedom of expression on the Internet:** The Korea Communications Standards Commission (KCSC) determines what information on the Internet is illegal, harmful to minors, and unsound and then takes measures to delete or correct it.³² Almost all the information that was screened by the KCSC is being deleted from the Internet.³³ **The KCSC, however, is not an independent administrative organization and is screening the information without clear standards and takes measures to delete content before a judicial body makes decisions. This gravely violates the freedom of expression on the Internet. The KCSC should not have authorities to screen online content.**
24. **National Security Act (Recommendation No. 4, 24, 33):** Since 2008, the number of people who were persecuted for violating the National Security Act has greatly increased. However, the rate of the prosecution rate is much lower than that of being charged for violating the Act, which indicates that the National Security Act is being abused.³⁴ **The Government should launch domestic campaigns to promote the abolishment of the National Security Act, implement human rights trainings on law enforcement officers, and abolish the National Security Act.**

F. Right to work and to just and favourable conditions of work and right to protection from corporate human rights abuse

³⁰ The Public Official Election Act Article 93(1): No one shall distribute, post, scatter, play or run an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party or candidate or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provisions of this Act, from 180 days before the election day to the election day. .

³¹ The Public Official Election Act Article 110: No one shall punish, for an election campaign, any false information about the birthplace, status, occupation, career, property, personality, or activity of a candidate, his spouse, lineal ascendants or descendants, or siblings, or about an organisation to which such persons belong, or slander privacy by openly pointing out facts. This shall not apply where such information is true and is for the benefit of the general public.

³² On 23 February 2012 the Constitutional Court ruled that laws on the function of the KCSC do not violate the principle of clearness, principle of ban on comprehensive entrustment legislation, principle of law reservation, and principle of ban on excess. However, the NHRCK and Mr. Frank La Rue, the UN Special Rapporteur on the freedom of opinion and expression, recommended the KCSC to relinquish its functions to an independent organization free from political and commercial interests.

³³ The number of request from the KCSC such as deleting Internet articles, blocking websites is increasing: 15,004 cases in 2008, 17,636 in 2009, 41,103 in 2010, 53,485 in 2011. When the KCSC send above request to the Internet providers, 99.9% of them followed the KCSC's request in 2009 while 98% in 2010. .

³⁴ In 2008, 46 cases were charged for violating the National Security Act, but the number increased to 57 in 2009, 94 in 2010 and 41 cases until July 2011. As for prosecution rate, 27 cases were prosecuted in 2008(58.6%), 35 in 2009(61.4%), and 43 in 2010(45.7%). This shows that while charges are increasing, prosecution rate is dropping.

25. **Social security for non-regular employees:** Although existing laws stipulate that non-regular employees should join social insurance mandatorily, low wage and unstable nature of non-regular employment make it difficult for them to bear the cost associated with joining a social insurance. In 2011, only 32.2% of non-regular employees³⁵ were participating in the national pension (employer-provided), 37.3% in the national health insurance (employer-provided), and 35.8% in the unemployment insurance, all of which are substantially lower than the participation rates of regular employees.³⁶ In a social security system based on social insurance, such a lack of access to social insurance for non-regular employees implies that the group is exposed to various risks associated with health problems, unemployment, and aging. **The Government should subsidize the social insurance fees for low-wage, non-regular employees to increase their social insurance participation and should expand the scope of social services universally applied to all employees, regardless of their payment of social insurance fees.**
26. **Occupational injury insurance:** Under the Industrial Accident Compensation Insurance Act, an employee who suffered damage from accident relating to the work must establish the medical causal relationship between the accident or damage and the work in order to receive compensation. However, in case of occupational illnesses, it is virtually impossible for an employee, who is not a medical expert, to prove the causality. Since the standard is very difficult to meet, only 52.1% of workplace illnesses are recognized as consequences of industrial accidents, eligible for compensation.³⁷ **The Government should revise the relevant laws to require the insurer, not the employee, to establish the medical causal relationship between the work and the accident or damage.**
27. **Need for National Contact Point reform:** The National Contact Point (NCP), operated under the OECD Guidelines for Multinational Enterprises, has failed to prevent or remedy human rights violations perpetrated by Korean corporations operating abroad.³⁸ In the ROK, the Working Group on the Foreign Investment has functioned as the NCP. However, the Working Group primarily consists of high-level government officials while civil society organizations are excluded. Since the establishment of the NCP, recommendations have been given only once and there has even been a case in which no action was taken for three years after a complaint was filed. **The Government should establish a neutral and independent NCP in which civil society can participate and should regulate the NCP in accordance with the revised OECD Guidelines, such as stipulating a deadline for acting on each complaint that is filed.**

³⁵ Non-regular employees make up to 49.4% of the total employees in Korea. This is the fourth highest among all OECD countries.

³⁶ In 2011, 97.3% of regular employees were participating in the national pension service (employer-provided), 98.6% in the national health insurance (employer-provided), and 82.8% in the employment insurance. (Kim, Yu-Sun. *The Scale and the Reality of Irregular Employment: Findings of the Statistics Bureau of Korea from the Additional Survey on Population Economy*, Aug. 2011, Korea Labor and Society Research Institute: Seoul, Korea)

³⁷ Since the causality of neuro-cardiovascular diseases and occupation-related cancers is especially difficult to establish, recognition rates for these diseases are substantially low, 15.6% and 18% respectively in 2009. For instance, estimated number of 42 employees at Samsung semiconductor factories have developed blood cancers (leukemia or lymphoma), 13 of whom have died of the disease as of 2010. This particular issue was first raised in 2007, yet Samsung has failed to recognize any of these victims of work-related disease as a case of workplace injury.

³⁸ Multiple instances of human rights abuses on Korean-flagged deep sea fishing vessels operating in the New Zealand waters have been reported, yet the ROK government has made little effort to properly address the issue: the Southeast Asian employees on the ship were physically and sexually abused and also were not paid their wages. Also, the Korea Minting and Security Printing Corporation (KOMSCO), a public corporation, runs a cotton pulp factory in Uzbekistan which produces cotton using child forced labor. The cotton pulp is used for the printing of banknotes and check.

G. Right to social security and to adequate standard of living

28. The welfare system in the ROK has improved and established a basic frame of social security services. However, it remains selective, since welfare benefits aimed at marginalized groups include low-income households, rather than a universal welfare benefits for every member of the society. The social welfare budget of the Government is only 7.5% of the GDP, which is unsatisfactory level compared to the OECD countries' average (20.6%). Because of the current economic crisis, including the increase of non-regular workers, the working poor has increased and social and economic inequality has worsened. **The Government should strengthen efforts to provide proper wages to all workers and regularise non-regular jobs. Also, the Government should expand the social security budget up to 15% of the GDP, secure support for the elderly, disabled persons and children, and expand public services on education, medical, and housing system.**
29. **Public assistance:** The number of National Basic Livelihood security system recipients has stayed at 3% of the total population in the last 10 years, while the number of the poor has increased. The reason is that more than a million people who are in need of benefits are not entitled to receive public assistance due to strict qualification standards.³⁹ Also, their wages do not even reach minimum standards of living. **The strict standards for the recipients should be moderated and the Government should increase the minimum wage to a level of at least more than 40% of incomes earned by workers in urban areas.**
30. **National Health Insurance:** In 2008, the National Health Insurance coverage is only 62.2 % which is lower than other OECD countries' average (90%). **The National Health Insurance should include all medical expenses, and there should be a limit on medical expense that individuals need to pay to ease one's burden. Also, public hospitals should be more than 30% of total hospitals.**
31. **National pension scheme (social security for the elderly):** About 45% of the aging population suffers from poverty, which is three times more than OECD countries' average (13%) and suicide rate among aging population is one of the highest in the world which is 78 out of one hundred thousand people. If one joins national pension scheme for 40 years, he/she can receive 40% of average income. However, non-regular workers who are reluctant to join social insurance are expected to receive only 15~16% of their wage. The basic old-age pension was introduced in owing to secure the wage of the elderly who are excluded from the national pension scheme, but it is not enough to provide enough security since the qualification for the pension is restrictive and the amount of the pension is low. **The Government should provide measures to cover more applicants and extend the period in which the national pension scheme can apply. Moreover, the basic old-age pension should increase from 5% to 10% of their average wage in the national pension scheme and include all the elderly who are over 65 years old.**
32. **Unemployment insurance (expansion of employment security net):** Unemployment insurance was designed for all paid workers, but according to the Korean Statistical

³⁹ Even if he/she is not in touch with a person who has a legal duty to provide support, if duty provider is still alive, he/she is not entitle to receive public assistance.

Information Service, the insured persons are only 58.9% of all paid workers. Even the insured persons who are unemployed have difficulties in being beneficiaries of the unemployment insurance because criteria are very strict. Only 11% can get unemployment benefit among those who lose their jobs. Furthermore, unemployed young people and small shopkeepers who closed down their shops are excluded from the insurance benefits because they were not paid workers. **The Government should take measures to ease criteria to expand the range of recipients and to extend the period of benefits. Also, the jobseeker's allowance should be guaranteed to unemployed young people and unemployed small shopkeepers who seek for a job and to participate in a vocational training.**

33. **Right to education and to participate in the cultural life of the community:**

University tuition fees in the ROK are placed the second highest in the world (5,315PPP), followed by the United States (6,312PPP). Korean students and their parents spend around 30~40% of annual income for the university tuition fees. 72.3% of candidates for graduation are in debt and 84% of the debt is for their tuition fee. More than 30,000 students have bad credit because they cannot pay back their student loan. Even though tuition fees are unaffordable, the college entrance rate is the highest in the world (83%) because the wage gap depending on educational background is very high. The higher educational budget is only 0.6% of total the GDP, which is half of the OECD countries' average (1.1%). To ease the burden of students and their parents to the level of the OECD countries' average (10% of annual income), **the Government should expand the higher educational budget to the level of OECD countries' average and increase the number of public universities.**

H. Migrant, refugees and asylum-seekers

34. **Rights of migrant women and measures against human trafficking and sex trafficking (Recommendation No. 8, 15, 21, 32):** When a foreign woman immigrates to the ROK for international marriage, her legal status is dependent upon the Korean spouse's certification of her identity. The spouse reference system has reinforced the inequality that exists between the Korean husband and migrant wife. Also, many migrant women are being recruited into Korea's sex industry through fraud, coercion and various other means, yet very few traffickers are prosecuted or punished. In particular, the migrant women who enter the ROK on the E-6 "Entertainment Visa" are sent to bars and clubs that are frequented by foreigners and are subjected to prostitution or other forms of sexual exploitation by pimps.⁴⁰ The existing law and the proposed revision of the

⁴⁰ According to My Sister's Place, an NGO that works with victims of sex trafficking, in cases in which the E-6 visa entertainers from the Philippines formally brought charges against the traffickers for forcing them into prostitution (about fifteen such cases exist), the charges were dropped because the testimonies of the victims were deemed to be "insufficient evidence" to establish the crime. Moreover, under the current law, only the owner of the trafficking bar or club is charged with a crime ("pandering sex trafficking") and is subjected to a relatively light penalty of fine. The victims of human trafficking are seen as "prostitutes," and authorities rarely take action or even attempt to *investigate* cases involving suspected traffickers. As a result, traffickers are able to contact family members of the victim, directly or indirectly, and most of trafficking victims either give up their cases or return to their countries of origin for their own personal safety, due to the pressures and threats by the traffickers. The combination of such factors makes it more infeasible to prosecute and punish traffickers. What may be seen as a passive attitude on the part of the trafficking victims stems from the lack of effective protection for the victims in Korean legal system: because there is no independent law that stipulates the protection and assistance for the human trafficking victims, the victims cannot but struggle to get by, as their status of residence does not allow them to work and thus they have no way of making a living while their cases are pending. Above all, even when recognized as a victim of human trafficking, after a long, drawn-out process of investigation and litigation, the victim is deported from the ROK as soon as her case is complete, regardless of reasons.

Criminal Code are insufficient for regulating the practice of human trafficking in reality,⁴¹ and they pardon the act from constituting human trafficking as long as the “consent” of the human trafficking victim exists. **Therefore, with regard to the pending Revised Criminal Code, the Government should enact a comprehensive definition of human trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons. Also, the Government should prioritize protecting trafficking victims during the investigation or trial process and the privacy of the trafficking victim should be protected through legal means. The victims should be provided legal status which should stay effective even after the completion of the litigation, in order to prevent the repatriation of the victims to their countries of origin where they could face retaliation and other dangers. Also, the Government should at least provide the minimum welfare benefits and medical care to the trafficking victims as well as the right to work. In order to address a more fundamental problem, the role and structure of the E-6 visa should be subjected to scrutiny, and E-6 broker agencies should be monitored and regulated more rigorously. Furthermore, the Government should abolish the spouse reference system, establish effective social safety nets for migrant women who are victims of sex trafficking, domestic violence and sexual violence and provide them legal status of residence and access to social services.**

35. **Birth registration of migrant children:** Since there is no birth registration system in place for children of foreign nationality in the ROK, the children of undocumented migrant workers and refugees cannot be registered.⁴² **The Government should revise relevant laws to enable the birth registration of all children regardless of their parents’ nationality, status of residence, and other legal or social status.**
36. **Children of undocumented migrants (Recommendation No. 7, 15):** Access to medical services of undocumented migrant children in Korea, estimated to be about 17,000,⁴³ is only partially protected. They can be supported regarding inpatient care and outpatient surgical care but cannot be supported regarding general office visits, vaccinations, or routine medical examinations. Moreover, undocumented migrant children can only access such services at 77 medical facilities nationwide. Furthermore, the Immigration Control Act, which regulates crackdowns, detentions and deportations of undocumented migrants, does not differentiate between adults and children, or contain child-sensitive measures for humanitarian purposes. **The Government should enact the Migrant Children Rights Protection Act which was suggested in 2010. It**

⁴¹ The police maintains that the confiscation of a passport does not constitute “coercion” in and of itself; also, it maintains a passive stance that the police is unable to punish the traffickers unless there is direct evidence that sex trafficking actually took place, which prevents the implication of traffickers in most of these cases.

⁴² Under the current law, only Korean nationals may be registered on the Family Registry System, which records the information about new or changed family relations resulting from birth, death, marriage, divorce, etc. Foreign nationals may “report” births, but the reporting documentations are merely filed away and not registered on any official registry; when a foreign national reports a birth, a “Certificate of Receipt for Report of Birth” is issued, which lists the name, birth year and date, gender, and nationality of the child and the name and address of the person who reported the birth, as well as the report receipt number and date. Although it is optional to list the alien registration number in the certificate, the person reporting the birth is often required to write down his or her alien registration number and the public official handling the birth report is obligated to report the person if the person making the report is an irregular immigrant, making it infeasible for such immigrants to participate in the system. Furthermore, only few local government agencies are aware of the fact that foreigners may report births.

⁴³ The figure is from the 2010 Survey on the Educational Rights of Immigrant Children (National Human Rights Commission of Korea), calculated by multiplying the number of foreign children in Korea by 15.2%, which is the estimated percentage of irregular immigrants according to the Ministry of Justice.

should also revise the Immigration Control Act to ensure that the children who are found out to be undocumented migrants and are ordered to be deported are permitted to complete their education for the semester or the school year, in order to protect the children's right to primary and secondary education.

37. **Refugees and asylum-seekers (Recommendation No. 30):** Since the Ministry of Justice and the Korean courts often reject asylum applications based on the grounds irrelevant to the definition of refugee according to the 1951 Refugee Convention, Korea's refugee recognition rate has been substantially low.⁴⁴ The newly passed Refugee Act, which is set to be enforced from beginning of July 2013, still retains many problems from the refugee related provisions in the Immigration Control Act.⁴⁵ In addition, asylum-seekers often lack access to information and support regarding applying for asylum.⁴⁶ **The Government should provide adequate mandatory training for immigration officers and law enforcement officers in order to ensure that they properly identify asylum-seekers. Refugee application documents should also be available in languages other than Korean and English. Finally, the Government should provide basic living support or grant the right to work to asylum-seekers.**⁴⁷

38. **Detention of migrants:** Since the Immigration Control Act does not limit the duration of detention, the indefinite detention of asylum-seekers and refugees is possible even without periodic judicial review.⁴⁸ Even minors are subject to prolonged detention without adequate protection and support for child welfare. Persons deemed "inadmissible" to the ROK territory, some of whom are asylum-seekers, are detained in transit zones⁴⁹ for an unspecified, unforeseeable length of time under inhuman conditions. **The Government should end arbitrary, prolonged immigration detention, especially for asylum-seekers and refugees. The immigrants in detention should be provided with adequate access to information on the asylum application procedures, and alternatives to detention for asylum applicants should be**

⁴⁴ While the worldwide refugee recognition rate, according to the 2009 UNHCR data, is 38%, Korea's refugee recognition rate is only 6.68%: as of January 2012, the number of people who have applied for refugee status in Korea since 2001 was 4,011 total, 268 of whom were recognized as refugees.

⁴⁵ For instance, immigration officers may deny asylum applicants the access to the refugee status determination (RSD) procedure at discretion if the application is made at airport.

⁴⁶ Even when the asylum-seekers actively seek out information on the asylum application process, they are routinely deprived of adequate access to the information, and on occasion, have even been treated as objects of arrest and deportation by law enforcement officers.

⁴⁷ Since the revision of the immigration law in 2010, asylum-seekers whose refugee status determination procedures have not been completed within a year after submitting their asylum applications may apply for work permits; however, when an asylum-seeker applies for a work permit, he or she is required to submit an employment contract in advance. Because employers are not willing to sign an employment contract with someone who has not obtained a work permit yet, the number of asylum-seekers who have been able to obtain work permits has been few. Under such circumstances, some asylum-seekers have even been caught and detained by the immigration officials for working. Even under the newly passed Refugee Act (effective starting in July 2013), neither work permits nor basic living subsidies are guaranteed for asylum-seekers.

⁴⁸ In one case, an Iranian refugee was detained in an immigration detention center for three years. In another case, even after the decision was made by the administrative court that the rejection of his refugee application was illegal, a refugee has been and is currently being detained in an immigration detention center because the release of the detainee is at the discretion of the chief of the detention center.

⁴⁹ In one case, an asylum-seeker was detained inside an airport transit room for months even when he explicitly expressed his intention to seek asylum in Korea. Even after he made his intention clear, no additional interview was conducted regarding his refugee claims; after two months and seventeen days, he was eventually removed from Korea to be deported to his country of origin, although he was de facto stateless. As a result, he was subjected to six more months of detention at a detention center in Bangkok, Thailand, which happened to be the transit before his country of origin. The asylum-seeker was eventually resettled in New Zealand by the UNHCR.

established. The basic living conditions in transit zones should be improved to meet humanitarian standards, and access to legal and social assistance should be made available.

39. **Stateless persons:** The Government should institute effective and accessible procedures that identify stateless person in order to fulfil its obligations under the Convention relating to the Status of Stateless Persons.⁵⁰

I. Women and Children

40. **Birth registration and protection of adopted children:** In the ROK, the number of actual domestic adoptions is always higher than the official figure.⁵¹ “Secret” adoptions, which cause the discrepancy, are made possible by ROK’s inadequate birth registration system, which takes place at the local administrative office, and not at the hospital. In a secret adoption, the child is registered as the biological child of the adopting parents, instead of as an adopted child born to an unwed mother. As a result, the adoption is not recorded, leaving open the possibility of child-selling. **The Government should ensure and verify that the birth registration accurately indicates the biological parents of the child by modifying the existing system to require a birth certificate issued by the hospital or the attending physician or midwife. Also, the Government should work in partnership with civil society, especially in deciding how the Korea Central Adoption Resources Agency (KCARE) should be organized and operated.**
41. **Support for unwed mothers:** Each year, about 90% of international adoptees and 85% of domestic adoptees are born of unwed mothers⁵². Unwed mothers are often forced to relinquish their children due to social stigma and financial difficulties resulting from the prejudice. **The Government should provide adequate support to unwed mothers so that the support is socially and financially incentivized as the best form of childcare. Both the Single-Parent Family Welfare Act and the National Basic Livelihood Security Act should be amended in a way to provide universal single-parent benefits to unmarried mothers such as a basic living subsidy for all unmarried mothers until the child reaches a certain age, regardless of the mother’s employment status or wage level and whether or not the unmarried mother has a person with a legal duty to support her.**
42. **Rights of women workers:** The difference in the proportion of non-regular employees between women and men has gradually been increasing.⁵³ Moreover, the wage

⁵⁰ For instance, according to the Chinese nationality law, Chinese nationals are required to waive their Chinese nationality before they register for international marriage with a Korean spouse. They frequently become stateless when their marriages are found to be falsified, since the Korean government then cancels their acquired Korean nationality.

⁵¹ The Korea Women’s Development Institute estimated that 3,014 adopted children were domestically adopted in “secret” adoptions in 2007, a year in which there were 1,388 officially recorded domestic adoptions, which marks a difference of 117%.

⁵² Ministry of Health and Welfare

⁵³ The percentage of non-regular employees among female employees has gradually decreased from 70.9% in August 2001 to 61.0% in March 2011 (recently in August 2011, it showed a slight increase to 61.8%). For male employees, the percentage has also decreased from the peak of 47.4% in March 2007 to 39.7% in March 2010 (since then, the percentage has kept around 40%). In March 2007, there were 150,000 (20.1%) more female non-regular employees than male non-regular employees; however, by August 2011, the gap had widened to 590,000 (21.6%). (Kim, Yu-Sun. *The Scale and the Reality of Irregular Employment: Findings of the Statistics Bureau of Korea from the Additional Survey on Population Economy*, Aug. 2011, Korea Labor and Society Research Institute: Seoul, Korea.

discrepancy between women and men by types of employment is also widening.⁵⁴ Women are generally concentrated in low-wage, poorly-conditioned jobs in small-to-mid-sized workplaces.⁵⁵ The employment rate of women in general is also very low,⁵⁶ and the maternity leave system for giving birth or caring for children is also very under-used.⁵⁷ On a related note, few men take advantage of the parental leave system.⁵⁸ **The Government should address the gender discrepancy problem of wage and increase the proportion of regular employment for women in the labour force. Also, the Labour Standards Act should be revised to eliminate the measure which excludes a worker who is hired for domestic works from the definition of employee. The Government should take active steps to protect women's right to work during pregnancy and child-rearing periods and encourage men to take up parental leave.**

⁵⁴ Compared to the average wage level of male regular employees in 2003, the wage level of female regular employees dropped from 68.9% in 2003 to 64.4% in 2011, and that of female non-regular employees dropped from 41.5% in 2003 to 40.5% in 2011. (Kim, Yu-Sun. "The Scale and the Reality of Irregular Employment: Findings of the Statistics Bureau of Korea from the Additional Survey on Population Economy" (Aug. 2011), Korea Labor and Society Research Institute: Seoul, Korea.

⁵⁵ 39.1% of female employees, 42.7% of non-regular employees and 52.1% of small business employees (5 or fewer employees) are classified as "low-wage." In 2009, 66.0% of female employees and 52.4% of male employees were employed in workplaces with 29 or fewer employees. On the other hand, 15.4% of female employees and 27.2% of male employees were employed in workplaces with 100 or more employees. (Eun, Su-mi. "Women and Labor" (2011), *Labor Rights Education Course Packet*, Korean Women Workers Association.

⁵⁶ As of 2009, the employment rate of women aged 25-29 is 65.6%, higher than that of any other age brackets and higher than the OECD average for the same age bracket. However, the employment rate of women aged 30-34 drops sharply to 50.1% (the OECD average for the age bracket is 63.4%), then rises to 64.2% for women aged 45-49, and drops again gradually for higher age brackets, showing a typical M-shaped curve.

⁵⁷ According to a 2011 Korea Women's Development Institute survey of 1,000 female employees, 20.1% of non-regular female employees used paid maternity leave for giving birth and about 10% used maternity leave for caring for children.

⁵⁸ According to the 2011 data from the Ministry of Employment and Labor, the percentage of the employees using maternity leave for caring for children after having used maternity leave for giving birth was 55% in 2010, showing a steady increase; however, only 2% of those using maternity leave for caring for children were male.