

Joint NGO Submission Part 4.

(from ‘Freedom of Religion of Belief, Expression, Association and Peaceful Assembly and Right to Participate in Public and Political life’

to ‘Right to Social Security, to an Adequate Standard of Living, to Health, and to Education’)

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**South Korean NGOs Coalition (461 NGOs)
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F. Freedom of Religion or Belief, Expression, association, and Peaceful Assembly and Right to Participate in Public and Political Life

30. Freedom of Expression during the Election Period

Freedom of expression on the offline sphere during the election period is limited by articles 90 and 93(1) of the Public Official Election Act. During the 2016 General Election, individuals and civil society organizations who expressed opinions regarding candidates or political parties were searched, confiscated, and prosecuted for violating the Public Official Election Law, and they were convicted and imposed fines. Some of them were even sentenced to the five-year disqualification for running for elections. Problems also exist with freedom of expression in the online sphere during the election period. The Constitutional Court of Korea ruled unconstitutional of the Internet Identity Verification system in 2012 and

the Internet Real Name system during the election period in 2021. However, any online posting or article by a voter could be deleted, get blocked, or even be subjected to investigation when the National Election Commission (NEC) decides it as a violation of the Public Official Election Act. The National Election Commission demanded deletion of 86,639 online postings during the 2022 presidential election and 53,716 online postings during the 2020 general election respectively. **The government should abolish Article 90 (Prohibition of Installing, etc. of Facilities), Article 93 (Prohibition of Unlawful Distribution or Posting of Documents and Pictures)(1), Article 110 (Prohibition of Slander against Candidates), and Article 251 (Slanders against Candidates), while amending Article 108 (Prohibition of Publication of Results of Public Opinion Poll) of the Public Official Election Act¹ to minimize the large scope of public opinion polls to guarantee freedom of expression of the electorate during election periods.**

31. Conscientious Objection

The partial amendment to the Military service act and the Act on the assignment and performance of the alternative service were approved at the plenary session of the National Assembly on 27 December 2019. Accordingly, the alternative service has started as the Alternative Service Commission was established in June 2020. The ROK's alternative service prescribes 36 months of camp service at correctional facilities. Despite its historical significance, the alternative service in the ROK has many punitive characteristics. Firstly, whereas the length of the alternative service is 36 months, which is twice longer than the regular military service, the government failed to provide specific and reasonable grounds for this. Excessively long duration of the alternative service violates the freedom of conscience of the objectors, as it makes the service discriminatory and punitive. This has been repeatedly

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

recommended by the UN Human Rights Committee.² The ROK does not recognize active soldiers' right to refuse military service, only recognizing the objection before joining the military, or the objection to the reserve force after discharge. This violates soldiers' freedom of conscience, also the UN Commission on Human Rights Resolutions.³ The Alternative Service Commission which screens conscientious objectors belongs to the Military Manpower Administration under the Ministry of National Defense. It also violates several international covenants⁴ that regulates the civilian service which is independent from the military. **The government should reduce the length of the alternative service by less than**

² **UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, 3 December 2015, CCPR/C/AUT/CO/5, paras 33-34:** "33. The Committee notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds (arts. 18 and 26). 34. The State party is encouraged to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature."

Concluding Observations of the UN Human Rights Committee to the Russian Federation, 2003, CCPR/CO/79/RUS, para 17: "17. While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions. The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant."

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

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

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

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

³ UN Commission on Human Rights resolution 1998/77, E/CN.4/RES/1998/77 : "Aware that persons performing military service may develop conscientious objections."; The Council of Europe, 2001, Recommendation 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states: "the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service."

⁴ The United Nations Convention on the Rights of Freedom, Jeong Min-kyu and 99 others, South Korea, filed a petition 1642-1741/200: "A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature."

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

1.5 times the length of the military service. Also, the government should recognize the right to conscientious objection of active soldiers, place the Alternative Service Commission in the civilian sector, such as the Ministry of Public Administration and Security, the Ministry of Health, or the Prime Minister's Office, not under the Military Manpower Administration.

32. The National Security Act

The number of people accused of violating the National Security Act was steadily decreasing to 197 in 2013, 73 in 2015, 27 in 2017, and 15 in 2019, but increased by 57.7% to 41 in 2021.⁵ This is an increase in the number of offenders who violate the National Security Act due to a joint investigation by the National Intelligence Service (NIS) and the police, ahead of the transfer of anti-communist investigative function from the NIS to the police in 2024. There is a very high possibility that the number of people indicted for violating the National Security Law will increase in the future. Over the past five years, a businessman who was promoting facial recognition technology development projects with North Korea and a writer of a book related to 'Juche ideology' were arrested for violating the NIS. It also seized and searched the publisher that published the book named 'Memoirs of Kim Il-sung'. In 17 years since 2004, "National Security Act repeal bill" has been proposed to the National Assembly. **The government and the National Assembly should completely abolish the National Security Act, which suppresses freedom of thought and violates freedom of expression and freedom of association.**

33. The Security Surveillance Act

The 'Security Surveillance System' requires those sentenced to more than three years in prison for violating the National Security Act to report major activities and travel to the head of the competent police station every three months for a considerable period. Also, a person who is under security surveillance disposition shall report to the chief of the competent police station about place of register, residence (the place in which he/she actually resides), name, date of birth, gender, resident registration number, family, cohabitants, associates, occupation, monthly income, the financial status of the person subject to security surveillance, his family, educational, career background, Religion and membership in organizations, place of work, and contact telephone number within 7 days. If this is violated, it is subject to criminal punishment. It is a serious problem that the administration makes a decision on the request for security surveillance disposition, not the judiciary.⁶ This is an infringement of the 'right to trial by a judge' guaranteed by the Constitution of the Republic of Korea.⁷ In addition, based on the abstract standard that there is a risk of recidivism for a person who has completed his sentence, it is de facto a double punishment to put on security surveillance disposition. The period of security surveillance disposition is set for the first two years, but it is possible to renew indefinitely, and it is actually working like that. **The government should completely abolish the 'Security Surveillance System'.**

⁵ Status of handling of public security cases by crime type - Violation of the National Security Act (korean) [e-index.go.kr](https://www.index.go.kr)

⁶ The Security Surveillance Act Article 14 (Decision) (1) A decision on security surveillance disposition shall be made by the Minister of Justice through a resolution of the Board.

⁷ The Constitution of the Republic of Korea Article 27(1) All citizens shall have the right to be tried in conformity with the Act by judges qualified under the Constitution and the Act.

G. Right to Just and Favorable Conditions of Work

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

The Labor Standard Act states the principle and the minimum standard of working conditions that should be applicable for all workers. However, it contains an exception clause based on the size of workplaces. Article 11 of the Act limits the scope of application to “all business or workplace in which not less than five employees are regularly employed”. Even though Article 11(2) stipulates some provisions of this Act- such as ‘clear statement of terms and conditions of employment’, ‘recess and holiday’ may apply to a business or workplace in which not more than four employees are regularly employed by Presidential Decree, most of the key provisions - regarding restriction on dismissal, additional payment for overtime work, night work and holiday work, paid annual leave, and working hours- are still exempted. Currently, 3,684,000 persons which accounts for 17.8%⁸ of the whole working population are employed in a workplace with less than 5 regular employees. 61.86%⁹ of the total number of workplaces employ less than 5 employees. This means that the Labor Standards Act does not apply to more than 60% of workplaces in the country. The applicable scope of the Labor Standards Act is highly influential in establishing other labor related laws, policies, and local ordinances, as Article 11 of Labor Standard Acts may apply mutatis mutandis to these instruments. The exceptional clause based on the size or business causes employers’ irregularity to avoid their legal obligations by splitting their business into several entities with less than 5 employees. In March 2022, The Ministry of Employment and Labor conducted a targeted inspection with 114 alleged workplaces and uncovered that 52 were disguised workplaces with less than 5 employees.¹⁰ **The government should revise Article 11 of the Labor Standard Act so that the Act applies to all workplaces without exception and all workers can enjoy minimum labor standards.**¹¹

35. Fundamental Labor Rights for All Workers

In 2021, The government ratified the ILO Convention 87 on freedom of association and right to organize, and the ILO Convention 98 on protection of right to organize and right to bargain collectively and these are not being applied to Korea. However, various obstacles still exist in exercising the fundamental labor rights and many provisions of the Trade Union and Labor Relation Adjustment Act(TULRAA) conflict over the conventions. Most prominently, Article 2 of the TULRAA, which stipulates the definition of ‘employee’ covered by the Act, excludes numerous workers, even according to the Supreme Court case law that interpreted the scope of the provision broadly.¹² For example, this provision excludes dependent self-employed and platform workers who are assigned work through smartphone apps but classified as individual entrepreneurs from ‘employee’. ‘Employer’ is also narrowly defined by the TULRAA and this leads subcontracting workers not able to negotiate with the principal contractor who substantially controls their working conditions because they don’t have a direct employment relationship with the principal contractor, who is the ‘real

⁸ Analysis on Business with less than 5 employees by Provinces and Metropolitan Cities, KCTU Labor Research Institute, 2022

⁹ Survey on Workplaces and Employment Status, Ministry of Employment and Labor, 2021

¹⁰ Press Release- The Result of Labor Inspection on disguised ‘Enterprise with more than 5 employees’, Ministry of Employment of Labor, 2022

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

¹² Supreme Court Decision 2014Du12598, 12604 Decided June 15, 2018,

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

employer'. **The government should revise Article 2 of TULRAA so that all workers can enjoy the fundamental labor rights regardless of their type of contract.**

36. Decent Work

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

37. The Right to Know Occupational Health and Safety

The Industrial Technology Protection Act revised in August 2019, includes unjust provisions that undermine the workers' right to know. The Act prohibits disclosure of information on national core technology (Article 9-2), and severely punishes for disclosure or use of industrial technology information contrary to the purpose of acquisition (Article 14(8)). In January 2022, The National Advanced Strategic Industry Act¹³ expanded the scope of technologies subject to non-disclosure (Article 11, Paragraph 7), and further increased the level of punishment for disclosure contrary to the purpose of acquisition. (Articles 15 (8) 50 (4)).

Victims of Samsung Electronics' occupational disease have suffered for a long time because their right to know occupational health and safety has not been satisfied. It is because Samsung Electronics and the government have refused to disclose related data to prove occupational diseases, claiming it is a trade secret.¹⁴ Fortunately, in February 2018, as the court ruled that it was not a trade secret, some of the Samsung Electronics' work environment reports were disclosed. Since then, in similar cases, Samsung Electronics has started to oppose the disclosure of the work environment reports by claiming that it is a national core technology instead of a trade secret. The Administrative Appeals Commission accepted this claim by Samsung. Also, this national core technology claim of Samsung was reflected in the

¹³ Act on Special Measures for Strengthening and Protecting the Competitiveness of the National Advanced Strategy Industry

¹⁴ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on its mission to the Republic of Korea, section 56

Industrial Technology Protection Act. This led to criticism both by the civil society and the media that called the Act as the ‘law protects Samsung’. With the effect of the implementation of the Industrial Technology Protection Act, victims of occupational disease have received work environment reports that do not include key information¹⁵ as well as epidemiological investigation reports without important data in determining occupational disease.¹⁶ Various reports, which can inform our society of the danger of Samsung's semiconductor plant, are in danger of being legally concealed on the grounds that they are ‘information on national core technologies’. **The government should revise the Industrial Technology Protection Act and the National Advanced Strategic Industry Act to promote workers’ right to know occupational safety and health.**

38. Business and Human Rights

Although the government has generated separate sections for the Business and human rights in the third NAP (2018 to 2022), the Concluding Observation of the UN Committee on Economic, Social and Cultural Rights in 2017 was not reflected in the sections.¹⁷ Currently, there are no laws on business and human rights in Korea. Although the government has recommended companies to introduce ESG management by creating ESG indicators and public enterprises/institutions have introduced human rights impact assessment systems, these are not effective nor enforceable as there are no laws that mandate companies to conduct compulsory human rights and environmental due diligence in their supply chains. At least, the Framework Act on Human Rights Policy proposed by the government in December 2021 included provisions on Business and human rights, however, the Act has not passed until now. **The government should enact laws to make human rights environmental due diligence mandatory for Korean companies, starting with official development assistance (ODA) and government-funded overseas resource development projects, including the preparation of the Framework Act on Human Rights Policy. In addition, it is necessary to prepare comprehensive measures to respond to human rights violations and environmental destruction by Korean companies operating overseas.**

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

¹⁵ Yonhap News Agency, 19 April 2021 (Korean)

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

¹⁶ MBC, 21 Dec 2021 (Korean) https://imnews.imbc.com/replay/2021/nwdesk/article/6325946_34936.html

¹⁷ The main recommendations are as follows: “1) Establish a legal obligation to implement and inspect human rights practices and inspections in Korean companies and their supply chains; 2) Ensure that Korean companies take action against human rights violations arising from their domestic and foreign activities and ensure that victims can seek relief, 3) Linking public procurement, plaintiffs, and subsidies to companies with compliance with social rights 4) Enhancing the influence and transparency of the National Contact Point (NCP), and stakeholder participation and effectiveness”

ensure the participation of stakeholders, including labor and civil society, in its formation and operation so that it can effectively promote corporate human rights responsibility and provide practical relief to victims.

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

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

To improve the problems of the family obligation rules that come with a blind spot of National Basic Living Security Act, the government abolished education benefits in 2015 and housing benefits in 2018 and eased the family obligation rules for receiving living wages. The government accepted a recommendation of "implementing measures to facilitate access to health care and education services, particularly for the most vulnerable groups," as provided in the third cycle of the UPR. However, the government has not abolished the family obligation rules for receiving medical benefits, citing financial burden as the reason. Therefore, even if he/she meets a basis of selection of the recipients for the National Basic Livelihood Security Act of Korea, receiving medical benefits is not possible only because he/she has "his/her lineal relatives within the first degree of consanguinity, and his/her spouse" (hereinafter referred to as "person who has a legal duty to support") regardless of whether a person who has a legal duty to support supports him/her indeed. As of 2021, the number of recipients of medical benefits is 1,516,000. When calculating the take-up rate of medical benefits, the figure accounts for only 3% of the total population.¹⁸ **For this reason, the government should abolish the family obligation rules for all benefits to resolve the blind spots in poverty and guarantee the right to health without any discrimination.**

40. Health Insurance

Although the former administration pushed on with a project to expand public health insurance coverage as a state affair, the rate of public health insurance coverage was 65.3%, much lower than the OECD average of 80%.¹⁹ While changing from non-covered services to covered services showed that the government moved in the right direction, this strategy could not solve the balloon effect to come with new non-covered services, and the government could not use the allocated budget sufficiently compared to the original plan. **The government should expand public health insurance coverage with several policies prohibiting mixed treatment in health care, reorganizing the payment system, and introducing sickness benefits. Abolishing temporary and supplementary provisions in the current national subsidy system and increasing the national subsidy rate by more than 20% will also result in expanding public health insurance coverage.**

41. Public Hospital

The number of hospital beds per 1,000 people in ROK is 12.4, about three times higher than the OECD average number of 4.4. However, the rate of public hospital beds is only 9.7%, much lower than the OECD average of 71.6%. For the past two years of COVID 19-

¹⁸ Rate of medical benefits (Korean) http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1406

¹⁹ (Korean) https://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2763

pandemic, public hospitals, which provide only 10% of all hospital beds, have been in charge of 80% of COVID-19 patient care. And the lack of hospital beds leads to the deaths of patients while waiting for in-patient admission. As public hospitals are in full charge of COVID-19 patient care, the medical services in public hospitals cannot be provided to the various vulnerable groups such as the homeless, the people with HIV, and immigrants. Despite the lack of medical professionals and services, the government still takes a passive attitude toward building new public hospitals. **The government should build two or more public hospitals in about 30 vulnerable areas for medical services as there is no public hospital, and secure sufficient medical professionals to guarantee the right to health of local residents.**

42. Elderly Care / Preventing Elder Abuse

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

43. Poverty of the Elderly / Public Pension

The poverty rate of the elderly in ROK, about three times higher than the OECD average, ranks first among OECD members. In addition, the income replacement rate of the national pension in ROK is 31.2%, much lower than the OECD average of 51.8%.²¹ The monthly income amount of the national pension is expected to become much lower compared to the present amount because the income replacement rate of 50% in 2008 has decreased by 0.5% every year so it will record 40% in 2028. When a person wants to subscribe to the national pension service, the problem is that the national pension service has an extensive range of blind spots as it is also yet to be solved that the recipient of the national pension is limited by the forms of employment in the labor market, or a discriminatory structure based on professional positions. **The government should raise the income replacement rate of the national pension to the OECD average and take active steps to resolve the blind spots in the national pension service.**

²⁰ (Korean) https://www.kostat.go.kr/portal/korea/kor_nw/1/1/index.board?bmode=read&aSeq=403253

²¹ OECD, Pensions at a Glance 2021 <https://www.oecd.org/publications/oecd-pensions-at-a-glance-19991363.htm>