

Joint NGO Submission Part 1.

(from '**Human Rights in Covid-19 pandemic**'
to '**Equality and Non-discrimination**')

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Submitted by

**South Korean NGOs Coalition (461 NGOs)
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Network, Korea Cyber Sexual Violence Response Center, Korean Women's Associations United, Korean Womenlink, Migrant Health Association in Korea WeFriends, Women Migrants Human Rights Center of Korea, Korean Disability Forum

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I. Background and Framework

1. This submission was jointly written by 461 NGOs in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 3rd cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2018.

A. Scope of international obligations and implementation

2. The government is a party to the seven core human rights treaties and has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). The government only says it is continuing to study or review the non-joining treaties, but there are no concrete results. The government has not ratified the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (2nd OP-ICCPR), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the Optional Protocol to Convention on the Rights of Persons with Disabilities (OP-CRPD), and 3rd Optional Protocol to the Convention on the Rights of the Child (3rd OP-CRC). Also, it still maintains reservations on Article 22 of the ICCPR. The government has ratified ILO core Conventions No. 29, 87, and 98, however, it still has not ratified No.105. As the normative status of the international human rights treaty continues to improve domestically, the number of rulings refereeing international human rights treaties at the court increased.¹ However, there is no committee or system to evaluate the implementation of the UN recommendations. Decisions on individual complaints by treaty bodies are not fully implemented because of the discrepancy between national legislation. **The government should present a specific implementation plan on ratifying the CED, CMW, 2nd OP-ICCPR, OP-ICESCR, OP-CAT, OP-CRPD, and 3rd OP-CRC, withdrawing reservations and implementing international human rights standards at administrative, judicial, and legislative branches.**

B. National Human Rights Institution

3. The National Human Rights Commission of Korea (NHRCK) received an A status from GANHRI-SCA on December 1, 2021.² However, NHRCK received the same recommendation for the third time regarding the selection of the commissioners. It is to establish a single independent selection committee in which civil society participates. Currently, the National Human Rights Commission Act has no basis for forcing the Presidential office, the National Assembly, and the Supreme Court to form a candidate recommendation committee involving civil society. Anyone can attend the plenary committee and the standing committee, but if personal information is dealt with, it will be held behind closed doors. However, even if it is not for the purpose of protecting personal information, The increasing number of closed meetings is a serious problem. Minutes of the meeting are now being released anonymously, it is necessary to disclose the real names of the Commissioners in preparing the minutes of the plenary committee and the standing committee. Disclosure of the positions of each National Human Rights Commission is an important basis for grasping their qualities. **The government and the National Assembly should expand the manpower and budget of the NHRCK and the independence of the NHRCK should be respected. To fulfill the recommendations of GANHRI-SCA, the government should revise the NHRCK Act to establish a single independent selection committee. The NHRCK should make efforts to increase public confidence in the process of counseling and handling complaints. Also, the government should try to**

¹ In the courts, the total number of rulings to which major international human rights treaties are applied is 3,185 cases. In the 1990s, there were only 12 cases, and the number of rulings increased to 705 cases in the 2000s, and in the 2010s, the number increased rapidly to 2,468 cases. However, there are an overwhelming number of cases related to the ICCPR: 3,124 cases, of which 3,065 cases are related to conscientious objection. Lee Hye-young, "Current status and tasks of the Court's application of international human rights treaties," Institute for Judicial Policy (2020), p.94-96.

² https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

increase transparency in the overall operation, including the disclosure of all meetings in principle.³

C. National Action Plan for the Promotion and Protection of Human Rights (NAP)

4. The government has established a comprehensive NAP on a five-year basis since 2007. However, it is evaluated that all processes from the establishment, implementation, and evaluation of NAPs that have been conducted so far have never been properly carried out. For example, in the case of the third NAP, which was implemented from 2018 to 2022, civil society participated in the establishment process, but most of the proposals of civil society were not reflected in the actual content. Even though civil society's proposals have not been reflected, the government should at least make an open and transparent evaluation of the third NAP that has already been implemented. Only then can the 4th NAP, which starts in 2023, be properly established based on this evaluation. Since the Ministry of Justice is in charge of NAP systematically, criticism has continued to be raised that other government ministries are passively participating. Accordingly, in December 2021, the government proposed the "Basic Human Rights Policy Act," which deals with human rights policies, including NAP, at the National Human Rights Policy Committee chaired by the Prime Minister. However, the law has not been passed by the National Assembly so far (June 2022). If the law is passed, the government is expected to actively participate in the process of establishing NAP. **The Framework Act on Human Rights Policy must pass the National Assembly before the fourth NAP is established so that the government can establish a practically implementable NAP. In addition, the National Human Rights Commission of Korea should be guaranteed to play an active role in the NAP establishment process. In particular, the NAP recommendation of the National Human Rights Commission should be able to be reflected in the 4th NAP.**

II. Implementation of International Human Rights Standards

A. Human Rights in Covid-19 Pandemic

5. Criminal and Punitive Approaches

Even in the public health crisis of COVID-19, restrictions on basic rights should be minimized in proportion to risks.⁴ However, the government's quarantine measures have changed human rights and quarantine to confrontation by focusing only on preventing spread of the coronavirus. The government adhered to a strict punishment policy that did not take into account the specific circumstances of violators of quarantine rules such as self-isolation or collective prohibition, and led to criminalization such as imprisonment, not just imposing

³ See ANNI(The Asian NGO Network on National Human Rights Institutions)2020 report for detailed criticism of the NHRCK. <https://www.forum-asia.org/?p=36231&nhri=1>

⁴ UN OHCHR, COVID-19 Guidance. <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>

administrative fines on them.⁵ This created discrimination and stigma towards those who are or who are likely to be infected. **The government should stop criminalization of diseases, such as unlimited restrictions on basic rights and prosecution of violators of simple quarantine measures and establish a quarantine policy that meets international human rights standards.**

6. Discrimination against Social Minorities and Health Inequities

Health inequities have been deepened because social minorities such as the disabled, migrant workers, and homeless people have not been considered. Mass infection has occurred in institutions where persons with disabilities live,⁶ and access rights or cares for medical facilities considering persons with disabilities were not provided.⁷ Measures for testing and treatment of street homeless people or of people living in inappropriate housing were insufficient.⁸ Homeless people were required to be quarantined or treated in group facilities even after infection, and discriminatory measures were taken to have PCR tests every time to receive food and other support.⁹ Due to the lack of public medical facilities available to homeless and migrant workers, medical access rights have been lowered in relation to not

⁵ Lee Tahney, Member of the National Assembly/ The Korean National Police Agency

(Unit: person)

Categories		Total	Quarantine violation	Prohibition of gatherings violation	Obstruction of contact tracing	Othe viloations
Total		5,734	1,463	3,877	251	143
Concluded	Indicted	3,605 (17 detained)	1,180 (9 detained)	2,230	137 (6 detained)	58 (2 detained)
	Not indicted, etc.	704	98	439	87	80
Under investigation		1,425	185	1,208	27	5

Total	Indicted						Not indicted
	Sub-total	Trials (with detention)	Trials (without detention)	Trial rate	Summary trial	Summmary trial rate	Sub-total
5,606	2,744	13	1,185	43.7%	1,546	56.3%	2,862

⁶ KBS News, “1 out of 2 persons with disabilities was tested positive in huge residential facilities accommodating more than 100 persons with disabilities”, 17 May 2022, (Korean)

<http://www.ikbn.news/news/article.html?no=141786>

⁷ Hankyoreh, “Persons with disabilities with fatality rates 4 times higher in the blind spot in PCR and care”, 4 March 2022, (Korean) <https://www.hani.co.kr/arti/society/health/1029527.html>

⁸ KBS News, “Those tested positive for COVID-19 anxious “Home care for those without homes?”, 9 December 2021, (Korean) <https://news.kbs.co.kr/news/view.do?ncd=5344834&ref=A>

⁹ National Human Rights Commission press release, “Forcing on migrant workers to have COVID-19 tests is discrimination against foreigners”, 22 March 2021 (Korean) <https://www.humanrights.go.kr/site/program/board/basicboard/view?currentpage=1&menuid=001004002001&pagesize=10&boardtypeid=24&boardid=7606412>

only COVID-19 treatment but also other diseases.¹⁰ Financial support did not cover migrant workers and homeless people.¹¹ Criticism from civil society eased this a little, but it did not fundamentally change the situation. In addition, undocumented migrants without alien registration cards and homeless people who can't identify themselves were excluded from the 5-mask purchase system implemented at the beginning of the pandemic,¹² and were not able to access the advance reservation system of the Korea Centers for Disease Control and Prevention for vaccinations. Immigrants were not given proper explanations in all areas, such as vaccine reservations, screening clinic management, and admission to life treatment centers, and each local government had different guidelines, which caused confusion. Gyeonggi-do, Seoul, Incheon, Gangwon-do, Jeollanam-do, and Gyeongsangbuk-do issued a discriminatory administrative order requiring only foreigners to have PCR tests, even in companies where Koreans and foreigners work together.¹³ **The Infectious Disease Control and Prevention Act should be revised to include the obligation to take protective measures for the vulnerable groups of social rights. In addition, manuals should be created and implemented to ensure the health rights of persons with disabilities from the risk of infection. The quarantine guidelines should be established in the direction of ensuring equal access to disaster support funds or tests and vaccinations and treatments for immigrants and homeless people. During the infectious disease crisis, it is necessary to introduce a temporary stay permit system for the health and life of undocumented migrant workers and secure public medical care to guarantee medical access. Also, it is necessary for the institutional/legal system that prohibits racial discrimination in a disaster situation such as pandemic.**

7. Restrictions on Treatment Rights of Critically Ill Patients

The government's policy, which supported all financial costs for COVID-19 at the beginning of the pandemic, was changed to that full support is only possible for up to 20 days and subsequently, the right to be cared for critically ill patients was threatened.¹⁴ Even though the health condition became serious or critical respiratory sequelae remains due to COVID-19, support was suspended or most patients were ordered the involuntary transfer to other hospitals after 20 days because of the low probability of transmission. As a result, individuals had to pay for treatment or be kicked out of the hospital even though they were being treated in an intensive care unit with an oxygen respirator. **The government should provide financial costs for the treatment and care without discrimination, including the sequela of COVID-19, and provide appropriate care based on health conditions rather than ordering transfer to other hospitals based on the possibility of transmission.**

¹⁰ National Human Rights Commission press release, "Recommendations relating to ensuring access rights to medical care of the homeless partially accepted by the Ministry of Health and Welfare", 27 May 2022 (Korean) www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7607986&menuid=001004002001

¹¹ Hankyoreh, "Human rights groups assisting migrants condemn "1.7 million out of 2 million migrants did not receive disaster support funds"" (Korean) https://www.hani.co.kr/arti/society/society_general/1009857.html

¹² Jae-Hyung Kim, "Mask dynamics between the Korean government and civil society in the COVID-19 era", IIAS, 2020. <https://www.iiias.asia/the-newsletter/article/mask-dynamics-between-korean-government-and-civil-society-covid-19-era>

¹³ Gyeonggi-do Announcement No. 2021-5268 [Administrative Order for Diagnosis of Foreign Employers and Foreign Workers to Block the Spread of COVID-19] (March 8, 2021)

¹⁴ Hankookilbo, "Families of critically ill COVID-19 patients demand "full support of medical fees"", 7 March 2022 (Korean) <https://www.hankookilbo.com/News/Read/A2022030712530000429?did=NA>; Financial News, "Press conference to urge medical fee support for critical COVID-19 illness" (Korean), 7 March 2022. <https://www.fnnews.com/news/202203071732333166>

8. COVID-19 and Infringement of Privacy Rights

The quarantine policies of the ROK responding to the COVID-19 pandemic are based on identifying contacts through tracking individuals' past movements. To this end, sensitive personal information such as credit cards and traffic card details, CCTV footage, mobile phone location information, and facility visit records are collected, and it is processed to automatically identify individual movements through epidemiological investigation support systems. However, the government collects not only the personal information of confirmed patients but also the personal information of persons suspected of contracting an infectious disease without the legal basis of the epidemiological investigation support system and provisions governing automated decision-making for individuals.¹⁵ In addition, the concept of a person suspected of contracting an infectious disease is too ambiguous, resulting in the excessive collection of personal information. In this regard, a constitutional complaint was filed against the trawling collection of personal information of people who existed around a specific base station in the area where infectious disease patients occurred.¹⁶ Also, those who violate self-isolation are required to wear a wristband (safe band) for location tracking without a proper legal basis. It is said that the consent of violators, but if they do not agree, they must enter the facility at their own expense, which forces them to consent. In addition, the government has mandated the collection of visit records to facilities including restaurants. This is an excessive control policy that violated proportionality, which has been implemented without legal grounds and can establish a regular monitoring system for the entire people. **The government should provide safeguards such as the Regular Review System, Privacy Impact Assessment, and Privacy by Design to ensure privacy rights in infectious disease situations and improve the current infectious disease-related legislation that infringes privacy rights.**

9. Freedom of Assembly in Covid-19 Pandemic

The government has imposed excessive restriction on the right to peaceful assembly since the outbreak of COVID-19. The central government held the position of banning assemblies regardless of the situation of COVID-19 and the local governments arbitrarily issued administrative orders banning assemblies without any time limits. For example, the government of Seoul issued an administrative order banning all assemblies in downtown such as Gwanghwamun square and Seoul station on Feb. 26, 2020. From Aug. 21, 2020 to July, 2021, assemblies of more than 9 people were completely banned except for about 40 days between October and November, when the level of Social Distancing was temporarily lowered to the level 1. Citing data from the National Police Agency, a task force of civic groups formed to monitor public power said 11.06% of assemblies were banned in Seoul last

¹⁵ Institute for Digital Rights (2021), Epidemic Intelligence Support System and Automated Processing of Personal Data in South Korea, 2021.10

<https://idr.jinbo.net/wordpress/wp-content/uploads/2021/11/Epidemic-Intelligence-Support-System-and-Automated-Processing-of-Personal-Data-in-South-Korea.pdf>

¹⁶ Korean Progressive Network Jinbonet (2020), COVID-19 and the Right to Privacy : an Analysis of South Korean Experiences, 2020.11.

https://act.jinbo.net/wp/wp-content/uploads/2020/12/Covid_19_and_the_right_to_Privacy_an_analysis_of_South_Korean_Experiences.pdf

¹⁷ Yonhap News Agency, “11 pct of assemblies banned in Seoul last year due to pandemic: activists”, (article posted Aug. 12, 2021 / searched May 22, 2022) <https://en.yna.co.kr/view/AEN20210812012000315>

year.¹⁷ The rate compares to 0.002% and 0.003% in 2018 and 2019, respectively.¹⁸ In the meantime, public transportation has never stopped, and many people have gathered for various events such as election campaigns and the opening of a new department store. Even though a causal relationship between rallies and COVID-19 has not been established, the excessive restriction of assemblies shows that the government took an easy way of restricting the basic right rather than providing ways to hold a peaceful and safe rally. **The government should take measures to ensure that assemblies and protests are held safely even in the midst of a pandemic, and when it is unavoidable to restrict or ban assemblies, time limits should be set. Most of all, Article 49 (1) (Preventive Measures against Infectious Diseases)¹⁹ of the Infection Disease Control and Prevention Act, which enables abuse of the ban on assembly, should be amended so that the restrictions on basic rights can be imposed only through clear grounds and appropriate procedures.**

B. Equality and Non-Discrimination

10. The Enactment of Comprehensive Anti-discrimination Act

15 years after the first attempt to legislate the bill in 2007, the comprehensive Anti-discrimination Act has not yet been enacted. Currently, four bills have been proposed in the National Assembly. In addition, a public petition, signed by 100,000 people, demanding the enactment of the bill has also been submitted to the National Assembly.²⁰ Nevertheless, the National Assembly continues to delay the legislative process on the bill. Despite the fact that the two activists fought a hunger strike for 46 days to urge the enactment, the National Assembly has not started any specific legislative process except for one public hearing.²¹ **The government should immediately enact a comprehensive Anti-discrimination Act that prohibits all forms of discrimination, including race, gender, sexual orientation, and gender identity, in clear language after reviewing the four currently proposed bills.**

11. SOGI Rights

LGBTI people in ROK face much discrimination due to discriminatory laws, systems, and practices and the absence of laws and systems to guarantee LGBTI rights. Article 92-6 of the Military Criminal Act is a provision punishing consensual same-sex acts in the military as a

¹⁷ Yonhap News Agency, “11 pct of assemblies banned in Seoul last year due to pandemic: activists”, (article posted Aug. 12, 2021 / searched May 22, 2022) <https://en.yna.co.kr/view/AEN20210812012000315>

¹⁸ Status for Assemblies in Seoul (2018~2020) (Source: Korean National Police Agency)

Year	Number of Reported Assemblies	Number of Banned assemblies
2018	29,592	1(0.003%)
2019	36,551	1(0.002%)
2020	34,944	3,865(11.06%)

¹⁹ Article 49 (Preventive Measures against Infectious Diseases)(1) In order to prevent infectious diseases, the Commissioner of the Korea Disease Control and Prevention Agency, Mayors/Do Governors, or heads of Sis/Guns/Gus shall take all or some of the following measures; and the Minister of Health and Welfare may take measures under subparagraph 2 to prevent infectious diseases: 1. Completely or partially holding up traffic in jurisdiction; 2. Restricting or prohibiting performances, assemblies, religious ceremonies, or any other large gathering of people;

²⁰ Human Rights Watch, “National Assembly of South Korea should act swiftly to enact anti-discrimination legislation”, 11 November 2021. <https://www.hrw.org/news/2021/11/11/national-assembly-south-korea-should-act-swiftly-enact-anti-discrimination>

²¹ Hankyoreh, “This is not the end”: S. Korean activist ends 46-day hunger strike for anti-discrimination act”, 27 May 2022. https://english.hani.co.kr/arti/english_edition/e_national/1044700.html

crime.²² In ROK, a conscription country, the provision has even more serious harm in that it applies to all young men going to the military.²³ In April 2022, the Supreme Court acquitted the two military officers charged under Article 92-6 for consensual sexual acts outside the barracks.²⁴ However, the entire provision violates international human rights standards and the Constitution. The unconstitutionality review case is pending at the Constitutional Court. In 2021, the Seoul Queer Culture Festival applied to the Seoul Metropolitan Government(“SMG”) to establish a legal corporation. However, the SMG refused it on the grounds that the festival participants engaged in “obscene acts.”²⁵ Furthermore, in legal proceedings, the SMG argued that “the purpose of the organization to guarantee the human rights of LGBTI people violates the Constitution.” In addition, according to the 2020 National Human Rights Commission's survey on transgender discrimination, 11.5% of respondents answered that they had received 'therapy or counseling for the purpose of “conversion”' from medical professionals, counselors, and religious professionals.²⁶ Hence, the practice of “conversion therapy” is very pervasive. Nevertheless, in May 2022, the presidential secretary for religious and multicultural affairs publicly remarked that “homosexuality can be cured.”²⁷

Same-sex couples in ROK do not have any legal rights guaranteed. If a same-sex couple registers for marriage, the family register authority will reject it on the grounds that the marriage is not permitted under the current law. In addition, de-facto couples of the opposite sex can receive the same benefits as legal marriages in social security, such as health insurance, pension, and housing policy, but same-sex couples do not. In 2021, a same-sex couple filed a lawsuit to have their dependent status recognized under the National Health Insurance Act, but the court rejected it.²⁸ Transgender people can apply for legal gender recognition according to Supreme Court regulations, not a law. However, the Supreme Court rules require strict requirements for legal recognition, such as sterilization, external genital surgery, being unmarried, and having no minor children.²⁹ **The government should abolish Article 92-6 of the Military Criminal Act which criminalizes consensual same-sex acts, prepare a system to guarantee the freedom of assembly and association of LGBTI individuals and groups, and ban “conversion therapy”. Also, the government should improve legal systems including the amendment of the Civil Law to prevent same-sex couples from being discriminated economically and socially. Regarding the rights of transgender persons, the government should abolish invasive requirements such as sterilization, physical surgery, and having no minor children in case of gender**

²² Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labour for not more than two years.

²³ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011.

<http://www.koreaherald.com/view.php?ud=20111215000521>

²⁴ The Guardian, “ South Korea’s highest court overturns military convictions of two gay soldiers”, 22 April 2022 <https://www.theguardian.com/world/2022/apr/22/south-koreas-highest-court-overturns-military-convictions-of-two-gay-soldiers>

²⁵ Yonhap News, “Seoul city rejects queer festival organizer's application to set up non-profit foundation”, 26 August 2021 <https://en.yna.co.kr/view/AEN20210826009700315>

²⁶ National Human Rights Commission of Korea, Study on the situation of Hate and discrimination to transgender people, 2020.

²⁷ Pink News, “South Korean official apologizes for vile anti-gay comments and somehow makes it even worse”, 13 May 2022

<https://www.pinknews.co.uk/2022/05/13/south-korea-gay-conversion-therapy-kim-seong-hoi/>

²⁸ Yonhap News, “Same sex couple loses suit against state health insurer over spousal coverage”, 07 January 2022 <https://en.yna.co.kr/view/AEN20220107006200315>

²⁹ Guidelines on the Clerical Processing of Cases of Transsexuals’ Application for Legal Sex Reassignment (Korean).

affirmation surgery. Lastly, the government should develop and implement public campaigns as well as public officials' training to raise sensitivity and respect for diversity of sexual orientation and gender identity.

12. Racism in the COVID-19 Situation

As of 2020, the number of migrant workers under the Employment Permit System (E-9 visa) in ROK is 236,950.³⁰ They work in the ROK for a maximum of 9 years and 8 months.³¹ However, they cannot accompany their family, so they have to live apart from their families for a long time. As a result, intimacy between family members is reduced or, in severe cases, the family becomes disbanded. Unmarried migrant workers have very limited opportunities to have romantic relationships or get married due to long working hours and a limited life span. On the other hand, certain groups of workers such as overseas Koreans or people with special employment permits are allowed to accompany their families. This is clearly a racist policy. The protest against the construction of a Muslim Mosque in Daegu in 2021 is a comprehensive example of racial discrimination in ROK. Daegu City Buk-gu District Office officially ordered to stop the construction of a Muslim Mosque just because there were complaints from local residents. The District Offices' such actions have been recognized against human rights by the National Human Rights Commission and illegal by the courts. Nevertheless, the District Office failed to amend the conflict and as of June 2022, the construction has not been resumed yet.³² **The government should enact a comprehensive Anti-discrimination Act that prohibits racial discrimination by accepting the continued recommendations of each UN Committee and conduct human rights education in all social areas.**

³⁰ 216,903 men, 20,047 women

³¹ In principle, they can live in Korea for 4 years and 10 months after entering the country, and if they are re-employed, they can work for another 4 years and 10 months.

³² New York Times, "How 'Multiculturalism became a Bad Word in South Korea", 1 March 2021

<https://www.nytimes.com/2022/03/01/world/asia/south-korea-diversity-muslims.html>

Korea Times. "Mosque construction triggers standoff in Daegu", 3 May 2022.

https://www.koreatimes.co.kr/www/nation/2022/05/177_328375.html