

# Written Submission for the 42nd UPR Session

National Human Rights Commission of the Republic of Korea (NHRCK)

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## I. The Implementation of Previous UPR Recommendations

1. The Government announced in February 2018 that it will accept 121 and note 97 out of 218 recommendations from the 3<sup>rd</sup> UPR cycle. However, progress has not been made in implementing key recommendations. In particular, four equality legislation bills are still pending in the National Assembly although a large number of previous UPR recommendations were put forward on legislating comprehensive anti-discrimination law prohibiting discrimination based on sexual orientation, gender identity and other grounds.

2. The previous UPR recommendations also emphasized the abolition of death penalty and the accession to the *Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)*. However, the Government maintains its previous stance that abolishing capital punishment would require the consideration of many factors including public opinion and criminal justice. Nevertheless, the Government took a step forward with casting a vote in favor of a moratorium on the use of death penalty at the 75<sup>th</sup> UN General Assembly in November 2020, recognizing Korea's de facto abolitionist status and a steady increase in the number of countries supporting the moratorium on the death penalty.

3. During the 3<sup>rd</sup> UPR cycle, multiple recommendations were made for the Republic of Korea to sign international human rights treaties, and there has been some progress. The Government proposed to sign the *Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)* to the National Assembly in December 2021. The Ministry of Government Legislation is currently reviewing the draft proposal of August 2021 to sign the *International Convention for the Protection of All Persons from Enforced Disappearance*. In April 2021, the Government deposited the instrument of ratification to International Labor Organization (ILO) for three ILO conventions – *No. 87 Freedom of Association and Protection of the Right to Organize Convention*, *No. 98 Right to Organize and Collective Bargaining Convention*, and *No. 29 Forced Labor Convention*. These conventions came into effect in Korea in April 2022. The Government also notified the UN in December 2021 that it will withdraw the reservation to Article 25 (e) of the CRPD related to the access to health and life insurance by persons with disabilities. The Government is also considering the withdrawal of the reservation to Article 22 of the ICCPR on the freedom of association and assembly.

4. Some developments have been made in laws and policies in response to the UPR recommendations to improve the protection of civil and political rights and the rights of socially vulnerable groups. Alternative service for conscientious objectors has been introduced since January 2020, based on the enactment of the *Act on the Assignment and Performance of*

*Alternative Service*. In 2022, the Government is set to make a pre-announcement of legislation bill to ensure birth registration to all children born in the territory of the ROK regardless of the nationality of their parents. In addition, the Government amended three labor laws - the *Trade Union and Labor Relations Adjustment Act*, the *Act on the Establishment and Operation of Public Officials' Unions*, and the *Act on the Establishment and Operation of Teachers' Unions* - in the process of ratifying the ILO Convention on freedom of association. Consequently, the scope of public officials who can join labor unions has been extended to public officials in Class V or higher. The amendments have also allowed fire officers and retired public officials to enter unions.

5. On 1 July 2022, Human Rights Protector for Military was established within the National Human Rights Commission of Korea (NHRCK) in order to enhance the protection of human rights and the access to remedies for human rights violations in the military.<sup>1</sup>

## **II. Issues and Recommendations**

### **Equality and Non-discrimination**

6. The NHRCK proposed a draft of *Equality Act* to the National Assembly in June 2020 for prompt legislation, 14 years after its first recommendation to the then Prime Minister in 2006 calling for the enactment of anti-discrimination legislation.<sup>2</sup> Four anti-discrimination bills are currently pending at the National Assembly. The public hearing to discuss the bills was held on 25 May 2022. However, the legislation of the Act is kept delayed.

7. **Recommendation:** Initiate immediately the legislative process to enact the *Equality Act* prohibiting discrimination based on sexual orientation, gender identity and other grounds in all spheres of life.

### **Civil and Political Rights**

8. Although Korea has *de facto* abolished death penalty, the Government persistently views that the abolition of capital punishment would require the consideration of many factors and therefore it is difficult to establish a timeline for abolition.<sup>3</sup>

9. **Recommendation:** Consider abolishing the capital punishment and introducing alternatives to death penalty, and ratify the *Optional Protocol to the ICCPR* on the abolition of death penalty.

10. The NHRCK conducted on-site and ex-officio investigations on overcrowding<sup>4</sup> in correctional facilities and made recommendations<sup>5</sup> for improvement more than 10 times in the past. However, the overcrowding still persists. The NHRCK inquiry found that personal living space in correctional facilities is so small that inmates must be careful not to bump into each

other even in their sleep.

11. **Recommendation:** Take measures to reduce overcrowding in correctional facilities which is inhumane and degrading treatment.

12. The *State/Local Public Officials Act*, the *Political Parties Act*, and the *Public Official Election Act* prohibit public officials and teachers from engaging in political activities, including political expression, political party membership, and campaigning for election, on the basis that such activities might undermine political neutrality.<sup>6</sup>

13. **Recommendation:** Revise the Acts above and relevant laws, not to excessively restrict the political freedom of public officials and teachers.

### **Privacy and Information Rights**

14. Under Article 83(3) of the *Telecommunications Business Act*, courts and investigative agencies may request telecommunications business operators to provide communications data without a warrant, for the purpose of conducting trial or investigation. However, the scope and extent of request are too broad, and a proper system to control pre-and-post procedures does not exist. Procedures to notify users of the use of their personal information are not in place.<sup>7</sup>

15. **Recommendation:** Introduce control systems and procedures that prevent investigative agencies from arbitrarily using the information obtained from telecommunications business operators under Article 83(3) of the *Telecommunications Business Act*.

16. With the development of big data-based artificial intelligence (AI), human rights concerns are escalating, such as invasion of privacy and personal information, surveillance using AI-based technologies, and bias and discrimination resulted from decisions made by AI systems.<sup>8</sup>

17. **Recommendation:** Take measures to prevent big data-based AI systems from causing human rights violation and discrimination.

### **International Human Rights Treaties**

18. Korea has not acceded to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*; the *Convention for the Protection of All Persons from Enforced Disappearance*; and five Optional Protocols including those on the abolition of death penalty and the individual complaints under ICESCR.<sup>9</sup> The Government views it needs to carefully consider various factors including the consistency with domestic laws and potential social impacts before the accession.

19. **Recommendation:** Take necessary measures to accede to and ratify the international human rights treaties above and to withdraw reservations from the treaties.

20. The ratified international treaties have the same effect as domestic laws under the Constitution. However, recommendations from human rights treaty bodies are not fully implemented in the country. Particularly, the decisions of human rights treaty bodies on individual complaints are not often followed due to the absence of laws enabling the implementation of such decisions.

21. **Recommendation:** Take necessary measures to implement recommendations from international human rights treaty bodies, and legislate law to implement the decision of treaty bodies on individual complaints.

### **Rights of Persons with Disabilities**

22. Amendment was made to the *Act on the Promotion of the Transportation Convenience of Mobility Disadvantaged Persons* in January 2022, in order for transport business entities to purchase low-floor buses when replacing existing buses with new vehicles. However, intercity buses are excluded from this legal obligation. Public facilities, including restaurants and retail stores with a floor area of 50 square meters or more, shall be equipped with amenities for disabled people when they are newly built, expanded, or renovated from 1 May 2022. However, the existing facilities are an exception, which makes it hard for disabled people to access.<sup>10</sup>

23. **Recommendation:** Strengthen legislative measures and financial support to enhance the access of persons with disabilities to public transportation and public facilities.

24. The former *Mental Health Act* was fully amended to the *Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients* in May 2016, which introduced stricter requirements and procedures for involuntary hospitalization of mentally ill persons. However, the practice of hospitalization still persists.<sup>11</sup>

25. **Recommendation:** Minimize the involuntary hospitalization of mentally ill persons, and establish community-based mental health and treatment systems so that mental health patients can be treated within their communities as much as possible.

26. The *Road Map for Community-based De-facility Support Measures*, established by the Government in 2021, is considered impractical and ineffective due to the absence of laws enabling this plan. It also lacks strategies to tackle discrimination and prejudice against persons with mental disabilities.

27. **Recommendation:** Take legislative measures to effectively implement the *Road Map for Community-based De-facility Support Measures*, and incorporate strategies to improve public awareness on persons with mental disabilities into this road map.

### **Human Rights in the Military**

28. About 300 alternative service personnel (conscientious objectors) serve their duty in

correctional facilities as of June 2021, with the *Act on the Assignment and Performance of the Alternative Service* enforced since January 2020. The alternative service personnel are required to serve for 36 months, nearly double the service period in the military; to serve only in correctional facilities; and to stay in the correctional facilities even after work hours.<sup>12</sup>

29. **Recommendation:** Establish plans to improve the period, area and duty of alternative service to protect the rights of alternative service personnel.

30. With the proportion of women in the military increasing, the cases of sexual violence and harassment against female soldiers are being continuously reported. The incidents of sexual assault in the military, including recent violence against a female Air Force officer, illustrate that the military system to protect the victims of sexual violence does not function properly.

31. **Recommendation:** Review the prevention and protection mechanisms on sexual violence in the military, considering a sexual assault survivor's suicide recently, and take measures to prevent wrongdoings such as retaliating sexual violence reporters, concealing incidents or placating the victims.

32. The average number of annual death case in the military was 81 in 2016-2021. Suicide is the leading cause of death, accounting for 72% of all military deaths.<sup>13</sup>

33. **Recommendation:** Intensify the effort to prevent suicide in the military, paying attention to identifying the root causes of suicide and the ways to improve the current preventive strategy.

34. The Constitutional Court ruled that Article 92-6 (Indecency Act) of the *Military Criminal Act* was constitutional, three times in 2002, 2011, and 2016. Currently, four related cases – 3 cases in 2017 and 1 case in 2020 – are under the review of the Constitutional Court. The Government is willing to comply with the Court's decision.<sup>14</sup> Meanwhile, the Supreme Court overturned military convictions of two gay soldiers on 21 April 2022, reasoning that if same-sex sexual acts took place off base, while they were off duty and by mutual consent, the *Military Criminal Act* does not apply. It further provided that it is difficult for the acts between the soldiers to infringe directly and specifically on military discipline and healthy life in the military community.

35. **Recommendation:** Repeal Article 92-6 of the *Military Criminal Act* which violates rights to equality, sexual self-determination, and privacy of gay soldiers in the military.

## **Labor Rights**

36. The *Occupational Safety and Health Act* was enforced from January 2020 to prevent industrial accidents and create a safe working environment by expanding the responsibility of original contractors. However, serious industrial accidents occur repeatedly. The *Serious Accidents Punishment Act* entered into force from January 2022 to protect the lives and safety of workers and citizens from industrial accidents. However, it is not applicable to businesses with fewer than five employees and becomes effective from January 2024 for businesses with fewer

than 50 employees. According to 2020 statistics of the Ministry of Employment and Labor, about 63% of work-related deaths occurred at workplaces with fewer than five workers or 50 employees.<sup>15</sup>

37. **Recommendation:** Expand the scope of application of the *Serious Accidents Punishment Act* to safeguard the lives and safety of workers and citizens effectively, and enhance the effectiveness of the law through stricter law enforcement when industrial accidents occur.

38. The NHRCK recommended improving the working conditions for indefinite-term contractors employed in the central administrative agencies in December 2020, which was not accepted by the Government. With a concern for platform workers being often excluded from labor protection, the NHRCK issued its opinion on the bill of Protection and Support for Platform Workers in November 2021, stating that platform workers should be considered employees protected under labor laws.

39. **Recommendation:** Reduce the gaps in the working conditions of those in different types of employment, and guarantee the labor rights of people in new forms of work including platform workers.

## **Rights of Women**

40. On 11 April 2019, the Constitutional Court ruled that penalizing a pregnant woman and a doctor who conducted abortion is unconstitutional and therefore the relevant provision in the *Criminal Act* should be revised accordingly by 31 December 2020.<sup>16</sup> However, the criminal provision was not amended until the designated date, and thus it was repealed automatically. The lack of follow-up measures on legislation may undermine the right to health of women who have abortions.

41. **Recommendation:** Take necessary measures to provide the access to safe abortion, including insurance coverage of abortion and medication abortion, considering the Constitutional Court's decision above.

42. The 2015 *Korea-Japan 'Comfort Women' Agreement* has not received support from the public as well as the victims of Japan's military sexual slavery, despite the Government's effort to resolve the 'Comfort Women' issue. The international community also raised concerns that the agreement lacked seeking truth and redressing victims.<sup>17</sup>

43. **Recommendation:** Take active measures to ensure the rights to justice and remedies for the victims of Japan's military sexual slavery.

44. During the presidential campaign in 2021-2022, the Korean society witnessed the escalation of gender conflict, including hatred and violent expression against women, and controversy over the abolition of the Ministry of Gender Equality and Family. The politicization of gender equality exacerbates hatred against women and anti-feminist sentiments among young men, deepening gender conflict.<sup>18</sup>

45. **Recommendation:** Implement effective policies to eradicate hatred and discrimination against women and to tackle gender conflict.

### **Rights of Migrants**

46. The Constitutional Court ruled that Article 25(1) of the *Act on the Employment of Foreign Workers*<sup>19</sup> restricting the grounds for migrant workers to change workplaces is not in violation of the Constitution in December 2021. It is concerned that this decision may exacerbate foreign workers' dependency on employers and weaken their bargaining power.<sup>20</sup> On the other hand, detainees in immigration detention centers during deportation process are occasionally at risk of human rights abuses such as ill treatment and solitary confinement.<sup>21</sup>

47. **Recommendation:** Reduce excessive restrictions for migrant workers to change workplaces, and take necessary measures to prevent human rights violation against detainees in immigration detention facilities.

48. Korea ratified the *Convention Relating to the Status of Refugees* in 1992 and enforced the *Refugee Act* since 2013. Among 68,761 asylum-seekers from 1994 to April 2020, only 1,052 received refugee status, indicating very low acceptance rate of 1.5%.<sup>22</sup> Furthermore, there is no appeal process for those rejected refugee status.

49. **Recommendation:** Increase the fairness of refugee status determination to guarantee the rights of refugees set forth in the *Convention Relating to the Status of Refugees* and the *Refugee Act*, and establish the appeal and remedial procedures in an independent body for those rejected refugee status.

### **Rights of Children**

50. On 23 December 2021, the Constitutional Court ruled that Article 30(6) of the *Act on Special Cases Concerning the Punishment of Sexual Crimes*, which prescribes that a video recording of a statement made by a sexual crime victim under the age of 19 during an investigative interview process may be admitted as evidence, is unconstitutional, viewing that the current law violates the defendant's right to a fair trial.<sup>24</sup> It is concerned that victimization and further damage can be inflicted on the under-aged victim during testifying in court, and criminal reporting of sexual violence by juvenile victims can be reduced.

51. **Recommendation:** Take additional measures to prevent victimization of and further damage to under-aged sexual crime victims, in response to the Constitutional Court's decision above.

### **Business and Human Rights**

52. The Government has not developed any initiatives to integrate the *UN Guiding Principles in*

*Business and Human Rights* into business practices of private sector and to promote corporate human rights due diligence.<sup>25</sup> The Government announced it would adopt a system by 2030 under which companies with sales of KRW 2 trillion or more should disclose human rights management information. However, this strategic initiative lacks implementation plans.

53. **Recommendation:** Legislate laws to obligate the exercise of corporate human rights due diligence, and introduce a system for disclosure of human rights management information.

### **Climate Change and Human Rights**

54. Long-term and integrated plans and measures should be established to respond to climate change-induced disasters.<sup>26</sup> However, currently, the Korea Meteorological Administration is the only authority to monitor and predict climate change, assess the impacts of climate change, and prepare response plans. Responsibilities to respond to emergencies and disasters are scattered over multiple government departments and agencies.

55. **Recommendation:** Establish an integrated response system on climate risk and make action plans to protect the rights of people vulnerable to climate risk, including construction workers and farmers.