

**A Submission from the National Human Rights Commission of Korea (NHRCK)
to the United Nations Human Rights Council (HRC)
as part of the Second Cycle of the Universal Periodic Review (UPR)**

I. Introduction

1. This submission is the contribution of the NHRCK, an “A” status institution, on the situation of human rights in the Republic of Korea (ROK) from 2008 to 2011, particularly in relation to the implementation of 33 recommendations put forward during the last UPR.

II. Follow-up to Recommendations from the First UPR

A. Regarding Recommendations Accepted by the Government

2. The Government checks the progress of implementation of accepted recommendations from the HRC and UN treaty bodies by incorporating them into the National Action Plan for the Promotion and Protection of Human Rights. However, there exists the need to set up a comprehensive and systematic implementing mechanism, including a process of selecting the order of priority among all the recommendations made by the UN Human Rights Mechanisms and regularly monitoring the progress made in their implementation. Furthermore, the Government should establish a channel for the NHRCK and civil society organizations to participate in the work of the National Human Rights Policy Council in relation to the implementation of recommendations from the UPR and treaty bodies.

3. The *Act on the Treatment of Foreigners* in Korea enacted in 2007 has contributed to the promotion of rights of foreigners in the ROK. While foreign workers are permitted to change their workplace a limited number of times under the ROK employment permit system, the NHRCK recommended to the Government in 2008 and December 2011 that it increase the number of approved reasons for which a foreign worker can change their workplace. Consequently, the Government partially accepted those recommendations to reform the relevant regulations in favor of migrant workers. In the future, the Government should develop a system to provide migrants with administrative services such as interpretation and counseling and should include their voices when formulating a migrant worker policy. The Government should also further develop its policy to prevent industrial accidents and ensure that migrant workers have access to remedies when they occur. Furthermore, the Government should follow the Human Rights Guidelines for Migrants which were suggested by the NHRCK in February 2012.

4. The *Support for Multicultural Families Act* was enacted in 2008 with the aim of supporting marriage migrants and their families. However, this act is not sufficient to protect the rights of all migrant women, such as single women and divorced women even whose ex-husband was mainly responsible for the divorce. The Government should also formulate policies on the prevention of discrimination against migrant women workers, violence against migrant women, the promotion of maternity protection, and the guarantee of the right to education and health of the child.

5. Even though the Constitutional Court ruled against the Government’s prohibition of night-time outdoor assemblies, relevant articles have not yet been amended. This requires prompt legislative reform. The Government should relax restrictions on possible venues for demonstrations and the registration system for demonstrations, and strictly manage the usage

of repression equipment in light of the NHRCK's recommendation on freedom of assembly and demonstration.

6. There are a wide variety of human rights education courses provided for the Prosecutor's office, the police, correctional institutions and the immigration office. However, the quality of these courses needs to be enhanced. Courses should focus on the standards of human rights and their implementation and introduce more effective methods to promote participation, sensitivity and interaction between participants. In this regard, enactment of an Act on Human Rights Education and establishment of a Human Rights Education Center is necessary.

7. In May 2010, the NHRCK initiated an *ex officio* investigation of torture by the police during interrogations and notified the Prosecutor's office of the results. Also, the NHRCK established a Reporting Center for Torture Injury. Complaints submitted to the NHRCK include allegations that law enforcement officials forced suspects to undergo overnight interrogation without sleep, or made them wait an excessive amount of time before questioning. Therefore, the Government should formulate torture prevention measures.

8. A legislative amendment was passed in December 2011 in order to prevent the abusive usage of resident registration numbers online, as some cases regarding misuse of the hacked resident registration number turned out to be problematic. However, the worrisome problem of invasion of privacy due to the resident registration number system still remains since the Government is planning to modify relevant provisions to introduce an electronic resident card which includes fingerprints and the resident registration number. The Government should abolish or improve the resident registration number system as recommended by the NHRCK. Furthermore, there is a need to change information-sharing systems between administrative bodies in order to prevent excessive collection, misuse, or abusive use of personal data.

9. The Government has laid a legal foundation for the protection of the rights of domestic violence victims by revising the relevant laws to establish regulations on on-site investigation of domestic violence and on education about the prevention of domestic violence. However, domestic violence or sexual assaults still tend to be considered to be a personal affair and are not openly discussed. Therefore, it is necessary to take measures to increase the reporting rate of those cases and to hire more female investigators. Regarding the issue of spousal rape, there were cases where this type of rape was recognized by inferior courts, but there is an emerging demand to legislatively clarify the criminal nature of spousal rape. In addition, while sexual crimes against children or juveniles are no longer considered offenses subject to complaint due to legislative reform, some sexual assaults against adult women such as rape without injury and harassment still remain offenses subject to complaint. This invites criticism that the regulation makes it hard to punish sexual offenders. The Government should consider repealing categorization of offenses subject to complaint while devising an innovative way to reflect the will of victims into the punishment process.

10. In 2011, the Government suggested alternative punishments while reforming an article to institutionalize the prohibition of corporal punishment against children. The NHRCK expressed its opinion in March 2011 that proposing alternatives is not desirable, in particular, in school regulations because non-physical penalty can still be detrimental to children's well-being. In addition, there exists the need to prepare solutions to child mistreatment involving neglect or psychological abuse. Furthermore, measures should be taken to improve the child abuse reporting rate, such as developing programs for the victim and offender, and guaranteeing the protection of the person bound in duty to notify the authorities against potential retaliation.

11. The Government passed legislation on gender-sensitive budget analysis and Gender Impact Assessment to outline gender-sensitive policy. However, specific action plans to realize gender mainstreaming still need to be developed while the ROK ranked 61st out of 109 nations in the Gender Empowerment Measure in 2009, female representation in the public sector and the ratio of female in specialized jobs remain low and income disparity between men and women is high. In addition, education and publicity activities should continue, in order to improve public awareness of gender mainstreaming.

12. The CEDAW Committee recommended that the ROK take adequate measures to prevent indirect as well as direct discrimination in light of Article 1 of CEDAW. In this regard, a law which prohibits indirect (as well as direct) discrimination needs to be enacted. The patriarchal family registration system (*Hojuje*) was abolished in 2005 and the *Act on Family Relation Registration, Etc.* entered into force in 2008, which made the family registration system to be individual-oriented rather than householder (mainly male)-centered. Those changes subsequently helped raise the status of women in the family. However, Article 781 of the *Civil Law* stipulates that the surname of a child basically follows that of his or her father's, with some exceptions where a child can choose his or her own. Based on this provision, the Government has not withdrawn its reservation to Article 16 paragraph 1(g) of CEDAW.

13. The NHRCK's recommendations to the Government to hire more professional staff to work on refugee issues and to prepare evaluation criteria and procedures for granting refugee status were accepted. Consequently, the Refugee Division was established in the Ministry of Justice. The Government needs to expand job training and language courses for refugees. Also, legislative reform needs to be undertaken in order to establish a refugee support system in accordance with the purpose of the *Refugee Law* that will enter into force in July 2013.

B. Regarding Recommendations Which were not Fully Accepted by the Government

14. A legislative amendment was proposed to reform Article 732 of the *Commercial Law*, however, was not passed. The article stipulates that "an insurance contract stating that the death of a person who is non compos mentis is an insurable contingency becomes null", which imposes restrictions on the ability of persons with disabilities to get life insurance. Since the provision was originally intended to protect people with mental disabilities from insurance crime, the Government should find a balance between the value of its purpose and the need of people with disabilities to purchase life insurance, and amend the relevant clause accordingly. Furthermore, the Government should withdraw its reservation to Article 25, paragraph (e) of CRPD and adopt the Optional Protocol to CRPD.

15. Abolition of the *National Security Act* (NSA) was seriously discussed at the 17th National Assembly from 2004 to 2007, but was not concluded. More recently, the prosecution of political offenses under the NSA has continued, and a debate over restrictions on freedom of expression and academic freedom is still underway. Taking into consideration the possibility of human rights violations due to the NSA, the Government should prepare measures including legislative amendments with the aim of preventing abusive application of the law and infringement of human rights.

16. The Government did not accept the NHRCK's recommendation on the amendment or abolishment of the *Security Observation Act*, which is a law that is considered to have a

possibility of wrongful or abusive application. Given that ‘risk of second conviction’ which is a statutory ground of observation order does not have a clear standard and the assessment of such risk is undertaken by a commission in the Executive Branch, there is the possibility of wrongful application of the Act. Thus, legislative reform and reasonable application are necessary.

17. To promote the human rights of individuals suspected or accused of a crime, an improvement to criminal procedures was achieved with the overall revision of the *Criminal Procedure Law* and passage of the *Act on Execution of the Sentence and Treatment of Prisoners* and the *Act on Treatment of the Juvenile in Custody*. Continuous efforts should be made to ensure the effective application of these laws. In addition, accession to the Optional Protocol to CAT is vital and an effective national mechanism to prevent torture or degrading treatment should be established.

18. The ROK is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED). The NHRCK recommended ratification of ICPAPED on January 14 2008, and calls on the Government to accede to ICPAPED and reform the law so as to embrace ICPAPED’s definition of “enforced disappearance”. In addition, the Government has not acceded to the ICRMW. Moreover, the reservation concerning Article 22 of ICCPR remains due to domestic law provisions that prohibit collective action by civil servants and restrict the range of public officials who are capable of joining a labor union. These provisions need to be reviewed.

19. The number of conscientious or religious objectors sentenced to imprisonment amounted to 4,185 between 2001 and 2010. This results from tension in the ROK between religious freedom and the national psyche which demands universal military service for males. Although the existing laws generally criminalize conscientious objection, the Government should introduce an alternative service program in order to solve the problems regarding mandatory military service.

20. The Government maintains a passive stance regarding abolition of the death penalty. However, the death penalty has not been carried out over 10 years, and the ROK is categorized as an ‘abolitionist in practice’ nation by Amnesty International. A change in attitude of the Government concerning the death penalty and genuine effort are required in order to totally abolish capital punishment or gradual decrease the number of statutory grounds of the penalty.

21. A legislative amendment to the *Criminal Law* has been pending before the National Assembly since October 2011 that would implement the Convention against Transnational Organized Crime and the Palermo Protocols, which the ROK signed in 2000 but has not ratified yet. Since there is a risk of migrant women becoming victims of sexual exploitation through various channels in our society, the Government should reinforce the initial immigration procedure and provide more inspections of workplace where migrant women are in danger of such exploitation.

22. The prohibition of discrimination based on sexual orientation made progress with judicial decisions that approved legal modification in gender of trans-genders and acknowledged a property claim made by a same sex partner. In addition, the relevant provision was revised to expand the crime of rape to include same sex victims under the age of nineteen. However, the Constitutional Court upheld Article 92 of the *Military Penal Code* which penalizes same-sex sexual activity in March 2011. The Government should modify relevant regulations to combat discrimination against sexual minorities and promote education and public awareness in order

to ensure the protection of the rights of sexual minorities.

23. Regarding the right to freedom of association stipulated in Article 22 of the ICCPR, the right to organize is not granted to some public servants, despite being in non-management positions. Moreover, police and military officers are never allowed to form or join labor unions. The Government should relax restrictions on the right of civil servants and teachers to organize a labor union, to collectively bargain, and to collectively act, as the Committee on Economic, Social and Cultural rights recommended in 2009.

III. Proposals

24. The 33 recommendations from the first UPR to the Government mainly deal with civil and political rights, and the protection of socially marginalized people and minority groups. The implementation of accepted recommendations by the Government in relation to the protection of socially vulnerable groups showed progress during the last four years, in particular regarding persons with disabilities, children and juveniles, and overseas Koreans. However, measures taken to protect other vulnerable groups such as migrant women are not sufficient yet. Furthermore, a complete and comprehensive policy of social integration for persons with disabilities is necessary and special protection of children and juveniles is essential. In addition, more efforts should be made to resolve issues of female workers, of whom a great portion are in low-paid and non-regular positions. Employment protection for women during pregnancy and after childbirth is also required.

25. Recommendations which were not fully accepted by the Government were made chiefly on civil and political rights. In particular, the Government did little to increase protection of freedom of expression; freedom of association; freedom of conscience and religion; or the right to privacy. The Government should establish measures including legislative amendment in order to prevent the violation of human rights related to the application of the NSA, and should formulate specific measures to prevent the occurrence of torture by police officers. Furthermore, the Government should shift its control-oriented policy practices on freedom of expression online toward the promotion of freedom. Also, the Government should adopt an alternative service system to replace obligatory military service in order to settle the issue of conscientious objectors.

26. The ROK should make its best effort to promote social, economic and cultural rights as well, even though they were not mentioned in the first UPR recommendations. Recently, issues related to the right to social security, right to organize, right to collective bargain, right to collective action, right to housing and right to education are emerging in the ROK. The Government should expand protection and support for low-income groups to solve the problem of weakening social integration due to intensifying income polarization. Furthermore, in cases of forced eviction in the name of development, adequate reform in laws and practices are needed to ensure appropriate and stable housing for evicted residents. With regard to the right to education, the gap in quality of education according to economic and geographical status needs to be decreased and elements of deteriorating human rights in schools should be removed.

27. The ROK should focus on emerging human rights issues too. The Government should make an effort to implement emerging international standards regarding business and human rights as Corporate Social Responsibility is recently becoming a bigger issue with the growing impact of businesses that accompanies globalization. In particular, the operation and management of the National Contact Point established pursuant to the OECD Guidelines for Multinational Enterprises should be reformed as needed.