

Joint NGO Submission on Economic, Social and Cultural Rights

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Submitted by

**South Korean NGOs Coalition (77 NGOs)
for the 3rd Cycle of the UPR on the Republic of Korea**

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I. Background and Framework

1. This submission was jointly written by 77 NGOs in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 2nd cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2012, focusing on economic, social and cultural rights.

II. Implementation of International Human Rights Obligations

A. Rights to Just and Favourable Conditions of Work

2. Ratification of the ILO fundamental conventions and the Convention 189

(Recommendation 7): The Government still maintains that it is difficult to ratify the 4 ILO fundamental conventions (C87, C98, C29 and C105) and it has not taken any action to ratify the ILO convention 189 on domestic workers' rights. The Government proposed a 'Plan to introduce a system on use of domestic services and employment promotion for the workers in that sector' on 24 February 2015, and proposed a roadmap to legislate a special law to be enforced in 2016. However, none of these were implemented and domestic workers are still excluded from application of Labor Standard Act and other legal protection. **The Government should immediately ratify the ILO fundamental conventions and the Convention 189.**

- 3. Fundamental Labour Rights for All workers:** The Constitution of the ROK guarantees 3 basic labour rights (Right to Organise, Right to Collective Bargain, Right to Strike) but labour laws put various restrictions in exercising these constitutional rights. As for the right to organise, according to the Trade Union and Labour Relation Adjustment Act(TULRAA), workers who do not have an employment relation exclusively with certain employer cannot form or join unions. Workers who are engaged in a 'special type of business' and misclassified as an 'independent contractors', of which the number is up to 2.5 million, are excluded from exercising this right and those who form a union and request a collective bargaining are subject to criminal punishment as these activities are not considered as 'trade union activity' but 'blackmailing'. Around 1.55 million workers are in 'triangular employment relation or indirect employment relation cannot negotiate with the employer who controls the working conditions of those workers. The 'real employers' can cancel the contract or force to close the business of the subcontractor when those workers request their working condition improvement, which result in mass-layoffs of the subcontracting workers and deprivation of the fundamental rights of those workers. **The Government**

should broaden the definition of ‘worker’ and ‘employer’ in Article 2 of the TRLAA so that no one is excluded in exercising the fundamental labour rights.¹

As for the right to collective bargain and right to strike, the TULRAA define a justifiable strike in a narrow sense and it is almost impossible for workers to stage a legitimate strike in a way they can put substantial pressure on their employer. Most strikes regarded illegal and once a strike is declared illegal, those who call the strike or join the strike faces disciplinary measures including dismissal, criminal sanctions under article 314 of the Criminal Act (Obstruction of Business)² and damage lawsuit and provisional seizure of the asset. TULRAA considers any strike on the Government policy or legislation illegal, mass layoffs or factory relocation.³ Article 42-2⁴ defines

¹ ILO Committee of Freedom of Association recommended the government, for times, to guarantee the fundamental labour rights of specially employed workers and subcontracted workers, however, the revision of related laws has not implemented (ILC CFA case No.2602 and No. 3047)

² With regard to the problems with the application of the article 314 of the Criminal Act pointed out by the CFA, the Government responded that the case law has been changed and “there is no case where the court decided a passive rejection of providing labour is illegal strike”. However, whether right to strike is really guaranteed in reality is another thing and in practice the police and the prosecutor always indict any striking workers at first.

³With regard to the right to strike, the TULRAA defines ‘industrial action’ in the article 2-6. as ‘actions or counter-actions which obstruct the normal operation of a business, such as strikes, sabotage, lock-outs, and other activities through which the parties to labour relations intend to accomplish their claims’ and in the Article 3 reads “When an employer has suffered damages due to collective bargaining or industrial action under this Act, he shall not claim damages against a trade union or workers” and the Article 4 reads the industrial actions which are conducted to achieve the purpose of collective bargaining corresponds to the justifiable activities in the Article 20 of the Criminal Act.. However, the Article 37 reads “Any industrial action shall not be inconsistent with the Acts and subordinate statutes or other social order with respect to its purpose, method and procedure.” and “No member of a trade union shall take part in any industrial action which is not led by the trade union” which restrict the exercise of right to strike. The court has ruled that “an industrial action by workers can be justified when it is conducted by those who can be a party in collective bargaining, on the purpose of building up a voluntary negotiation between labour and management on concrete issues for improvement of working conditions, after going through all the legal procedure such as decision by union member’s vote in case that the employer rejects to negotiate on the issues and in harmonization with the employer’s property right without using any violence, etc.” According to this case law, any strike for protecting employment security against mass lay-offs and factory closure or against government police and revision of laws which affect working conditions cannot be justified and protected.

⁴ Article 42-2 (Restrictions on Industrial Actions Affecting Essential Business)

(1)The term "essential business" in this Act means the business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public and which is prescribed by Presidential Decree, from among the essential public-service businesses provided for in Article 71 (2).

(2)The acts of stopping, discontinuing or impeding the justifiable maintenance and operation of the essential business shall be the prohibited industrial actions.

Article 71 (Scope, etc. of Public-Service Businesses)

(1)For purposes of this Act, the term "public-service businesses" refers to businesses falling under any of the following subparagraphs, all of which are closely related to daily life of the public at large or have enormous effect on the economy of a nation

‘Essential Business’ where industrial actions are restricted in a broad sense⁵ and this makes it almost impossible for workers in public sector to strike. **The Government should change the range of justifiable strike and essential services in TULRAA to bring it in line with the ILO principle of freedom of association and should stop the practice of criminalisation and damage lawsuit for trade union activities including strike.**

The elementary and secondary school teachers and public officials are not under the TULRAA but special laws the Act on the Establishment, Operation, etc., of Trade Unions for Teachers(AEOTUT) and the Act on the Establishment and Operation of Public Officials’ Trade Unions (AEOPOTU). On 22 October 2013, The Minister of Employment and Labour notified that the Korean Teachers and Education Workers Union(KTU-established on 28 May 1989 and legalised on 1 July 1999)are not regarded as trade union under the AEOTUT anymore. The Minister returned the establishment report of the Korean Government Employees Union(KGEU) on 2 August, when the union submitted its 4th establishment report. The Ministry deny the legal status of the two unions because the bylaws of the unions allow union membership of dismissed workers. The court upheld the ministries measures and the two unions deprived their legal status. **The Government should revise the related laws to guarantee the 3 basic labour rights of teachers and public officials and it should recognise the KTU and KGEU immediately.**⁶

4. **Decent Work:** While the number of precarious workers exceeds 10 million, measures to protect those workers’ rights are inadequate. The protection laws⁷ are abused to proliferate the precarious jobs without effective measure for correction of discriminatory treatment against those workers. The average monthly wage for non-regular workers is 49.2% of that of regular workers. The wage gap between top 10% and the bottom 10% has increased from 5.16 times in 2007 to 5.63 times in 2016. In terms of gender pay gap, as of March 2016, the average hourly wage of female workers is 65.5% of that of male workers, and the average hourly wage of female non-regular

1.Passenger transport business and airline business for regular routes;

2.Tap-water business, electricity business, gas business, petroleum refinery business and petroleum supply business;

3.Public sanitation business, medical service business and blood supply business;

4.Banking and mint business;

5.Broadcasting and telecommunications businesses.

⁵ The ILO defines essential services as those “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”. The business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public.

⁶ The 37th report of ILO CFA on case No 1865 (March, 2014)

⁷ Act on the Protection etc, of Fixed Term and Part Time Workers and Act on the Protection etc, of Dispatched Workers

workers is no more than 43.2% of that of male regular workers.⁸ The Government introduced the correction of discriminatory treatment system on 1 July 2007 to solve discrimination on wage and working conditions against non-regular workers. It tried to improve the system by introducing the punitive damage and the extension of coverage of correction order in September 2014. However, the effectiveness of these systems is minimal.⁹ In private sector, labour dispatch is being abused in various industries such as automobile, steel, shipbuilding although this practise is illegal in manufacture sector and enterprises would not follow the court decision when it order to convert the workers illegally dispatched into regular status. In April 2013, the Government announced the “measure for improvement of employment security for non-regular workers in the public sector” with a commitment to convert non-regular (temporary) employment contracts for permanent and perennial work into open-ended contracts by 2015. However, the Government’s measures on the employment security in the public sector have targeted fixed-term workers who are directly employed in Government agencies or public institutions, and indirectly employed workers have been excluded. In fact, the number of fixed-term workers has decreased while the number of indirectly employed workers has increased. **The Government should introduce the principle that no precarious employment is allowed for permanent and perennial work and make an effort to convert precarious works into decent ones including regulated and limit the reason for use of precarious employment.**

5. **Responsible Business Conduct and Global Supply Chain:** Although chaebols (family-based conglomerates) has enough capacity to create decent jobs, they are main actors for proliferation of precarious jobs. 38.0% of the non-regular workers are working for top 10 chaebols and the number of workers in triangular employment relation (30.6%) is 4 times of that of fixed term or part time workers(7.4%) and large enterprises affiliated to chaebol groups are using much more in-house subcontracting. The conglomerates should sit at collective bargaining table for improving working conditions of workers in their subcontractors in good faith to take responsibility for the proliferation of precarious jobs, but they simply deny requests of collective bargaining by those workers. Instead, chaebols (in most cases they are transnationals) are directly engaged in union busting campaign in their supply chain, in collusion with union busting consulting firms. The ROK ranks top among OECD countries in industrial fatality and every year around 2,400 workers die from work related accident or disease. This is related to the outsourcing of risky and hazardous work for maximised profit. **The Government should introduce a National Action Plan for an effective implementation of the UN Guiding Principle on Business and Human Rights and**

⁸ Statistics Korea, Survey on Economically Active Population- Additional Survey, August, 2016

⁹According to the statistics of the National Labor Relations Commission, which is in charge of operation of the system, for the last 2 years (December, 2014-December, 2015) 359 cases have been filed and among them only 43 cases (14.9%) were accepted and correction orders were delivered, and all the other cases were rejected, dismissed or withdrawn.

should adopt a plan to hold chaebols responsible for decent wage and working conditions, fundamental labour rights, effective protection and adequate compensation for industrial accident.

6. **Reform of the Korean National Contact Point(NCP):** Up to date, more than 20 cases have been submitted to the Korean National Contact Point(NCP) since its establishment in 2001. However, not a single case had the violations of the Guidelines confirmed and recommendations made accordingly. Most cases were rejected at the level of initial assessment to decide whether further investigation or mediation is necessary. In 2016, two cases passed the initial assessment and moved to mediation process for the first time. However, these were closed without any recommendation or remedy provided for reasons of the failure in reaching an agreement between the parties.¹⁰ The Korean NCP is established under the Cross-Border Investment Division of the Ministry of Trade, Industry and Energy and its secretariat work is commissioned to the Korean Commercial Arbitration Board. While the Korean NCP describes itself as an “independent expert body” for reasons that its commissioners include three members from the private sector, it is hard to say the three experts accurately represent the civil society including workers as they are from public agencies which have close ties to the Government.¹¹ Moreover, stakeholders including trade unions and independent civil society groups are not allowed to be involved in the NCP member selection and mediation process. **It is imperative that the Government reform the Korean NCP’s structure to guarantee full engagement with civil society, including labour rights groups and trade unions in the composition and operation of the NCP, so that it can fulfil its mandates of promoting corporate responsibility for human rights and providing remedies for victims effectively in compliance with the OECD Guidelines.**

B. Right to social security and to an adequate standard of living, right to health, right to education

7. **Social Security System and Eradication of Poverty (Recommendations 59, 60):** The Government states it has reorganized the National Basic Livelihood Security System into a customized benefit system for realistic level of security and criteria improvement of people under obligation to support. However, until the reorganization of customized benefit system, the Government reduced the number of recipients significantly even though there was no change in the poverty rate. The poverty rate from 2012 to 2014

¹⁰ Korean National Contact Point, Final Statement of the Korean NCP for the OECD Guidelines for Multinational Enterprises, 1) Hydix case and 2) Asahi Glass case
http://www.ncp.or.kr/servlet/kcab_encp/info/4000

¹¹ Status of Korea National Contact Point, http://www.ncp.or.kr/servlet/kcab_encp/info/2100. As of March 2017, the three private commissioners of the Korean NCP are from the Korean Institute for Industrial Economics and Trade, the Korean Standard Association, and Korea Trade-Investment Promotion Corporation.

barely changed, yet the number of recipients decreased by about 220,000, suggesting that the Government reinforced the review of beneficiaries arbitrarily.¹² After the Government reorganized the integrated National Basic Livelihood Security System benefits into separate individual benefits (living allowance, medical benefits, housing benefits, and education benefits) starting July 2015, the total number of recipients for all benefits increased. Still, the beneficiary number for living allowance (basic cash benefit for the poor) is only 1.25 million as of December 2015, while there are about 4.39 million people living in the absolute poverty. According to the NHRCK research, the biggest obstacle to receiving the National Basic Livelihood Security benefit was the income and property of obligatory providers that was higher than the set criteria.¹³ **The Government should abolish the obligatory provider system immediately.**

8. Medical Insurance (Recommendation 62): The ratio of public hospitals is around 10% which is far below the OECD average of 75%, and the Government has concentrated its efforts in enhancing severe disease coverage to reinforce the medical insurance system. Yet, the total coverage rate of the four major severe diseases (cancer, cardiac disorders, cerebrovascular diseases, and rare incurable diseases) in 2014 was 77.7% which is no different from 2012, and the cancer coverage rate was 72.6% which is a 1.5% fall from 2012. As shown by these numbers, strengthening coverage by approaching each disease is creating a health equity issue. Also, the rise of non-payment items stemming from private hospitals demonstrates the limitation in increasing actual coverage. **The Government should suggest practical measures - expansion of public hospitals, regulation of non-payment items, national treasury support increase for medical insurance, reinforcement of coverage and cap on medical expenses - to strengthen the publicness of health and mitigate the burden of medical bills.**

¹² Trends related to the National Basic Living System

Year	2008	2009	2010	2011	2012	2013	2014	2015
Recipients (thousand persons)	1,530	1,569	1,550	1,469	1,394	1,351	1,329	1,646*
Take-up rate ¹² (%)	3.1	3.2	3.2	2.9	2.7	2.6	2.6	3.2
Absolute poverty rate (%)**	8.8	9.5	8.8	8.8	8.5	8.6	8.6	-
Relative poverty rate (%)***	14.2	14.1	13.8	13.8	13.7	13.4	13.3	-

Data : Statistical Yearbook of Health and Welfare, Ministry of Health and Welfare, 2016 / Statistical Yearbook of Poverty, Korea Institute for Health and Social Affairs, 2015 / data provided by Yong-ik Kim, Member of the National Assembly, based on the Ministry of Health and Welfare's report on 13 February, 2016

*Among the recipients in this category, 1,259,407 persons received living allowances.

**Based on the minimum cost of living announced by the Government, all households including single-person households, and disposable income.

***Based on all households including single-person households and disposable income.

¹³ Survey on the Human Rights Situation of Poverty Groups Not Receiving Support and Living Below the Minimum Cost of Living, National Human Rights Commission of Korea, 2014, p.85.

9. Right to Housing (Recommendation 61): The Government announced it would provide an average of 100,000 rental housing units per annum until 2017, but the average annual increase in the supply of long-term public rental housing for 8 years since 2007 was only 51,000 units.¹⁴ The supply of long-term public rental housing is 5.5% of total housing, which is merely half of the OECD average of 11.5%.¹⁵ Additionally, the Government set a goal to reduce the increased liabilities of Korea Land and Housing Corporation (LH) resulting from public housing projects and is investing public resources, such as public housing sites and the National Housing and Urban Fund, into “New Stay,” a private rental housing project that cannot be an alternative for low-income housing due to its high rent. In 2017, the Ministry of Land, Infrastructure and Transport plans to provide only 9,000 national rental housing and permanent rental housing units for low-income households.¹⁶ **The Government should utilize the National Housing and Urban Fund to expand the existing long-term public rental housing and implement policies to guarantee renewal of housing rental period, adopt ceiling for rent increase rate and the like for stable housing of low-income households without homes.**

10. Right to Education (Recommendation 63): As of 2017, 85% of college students of the ROK are enrolled in private universities with an average annual tuition of 7.37 million KRW (7,370 USD), the third highest tertiary educational spending among OECD countries.¹⁷ Looking at the ratio of finance for higher education, the ratio of Government funding is 32%, not even close to the OECD average of 70%, and household spending is 44%, much higher than OECD’s 21%.¹⁸ The Government has various systems such as Income Contingent Loan in place to solve this tuition issue, yet the fundamental problem remains unresolved because the high tuition fee fails to drop. Moreover, students with grade under a certain level cannot apply for national scholarships and Income Contingent Loan. Students from low-income bracket who need to work part-time to earn living expenses in addition to tuition fees fall into a vicious cycle of failing to qualify for the national scholarships because they have less study hours which results in relatively lower grades. **The Government should increase the amount of national scholarship fund and eliminate the educational inequality by abolishing grade-related qualification requirements for national scholarships and Income Contingent Loan. At the same time, it should also look for measures to lessen the burden of the tuition fee by reducing the amount of tuition and expanding financial support for higher education.**

¹⁴ Ministry of Land, Infrastructure and Transport, Year 2007~2015, Statistics on Rental Housing

¹⁵ Ministry of Land, Infrastructure and Transport, Housing Manual, 2012

¹⁶ Ministry of Land, Infrastructure and Transport, House Providing Plan of 2017, 2016

¹⁷ Education at a Glance 2016, OECD Indicators, http://www.oecd-ilibrary.org/education/education-at-a-glance_19991487

¹⁸ Ibid

11. Public Pension (Senior Security Policy) and Senior Care: The poverty rate of elderly Koreans is 49.6%, which is the highest among OECD members and drastically higher than the OECD average of 12.4%.¹⁹ Yet the benefit amount of the national pension system is very low and the system still has a wide blind spot. The national pension nominal income replacement rate is 46% of the average income and is expected to get lower by 0.5% annually until it reaches 40% in 2028. As of 2011, the average amount of old-age pension benefit is only 15% of the average amount of income and the average monthly amount of receipt is about 320,000 KRW (320 USD), which is far below the minimum cost of living for one person (603,403 KRW (603 USD)). Furthermore, 49.4% of the total population between the age of 18 and 59 is still not insured under the system. **The Government should stop the decline in nominal income replacement rate to solve the low-pension-benefit problem of the national pension system and take more active measures in eliminating the blind spot in the system.**

12. Youth Employment Issue and Blind Spot in Employment Insurance: The rate of Korean youth not in employment, education or training (NEET) is 18.5%, which is higher than the OECD average of 15.4% (2012). The official unemployment rate is around 10%, which is not high. However, there is an interpretation that the actual unemployment rate is almost around 30% if the statistical error of most young job seekers being categorized as economically inactive population is corrected. On the other hand, the employment insurance system has an extensive blind spot, resulting in only 16.7% of unemployed workers receiving unemployment benefits and the young workers who are unemployed have difficulties satisfying the strict employment insurance qualifications due to frequent job changes and long-term unemployment. But the Government is only focused on aggravating existing job qualities such as implementing a wage peak system and expanding low-quality jobs like part-time positions in the name of increasing jobs for the youth. **The Government should create high-quality jobs in public and private sectors, mitigate requirements for employment insurance benefits, provide job-seeking allowance to the voluntarily unemployed, introduce unemployment assistance for unemployed workers with no record of being in the employment insurance system, and provide other measures to expand the employment safety net.**

/END/

¹⁹ OECD Income Distribution Database, www.oecd.org/social/income-distribution-database