

NHRCK Written Contribution

For the 28th UPR Working Group Session for the review of the human rights situation in the ROK

Implementation in general

1. The ROK is one of the highly supportive States that has been very cooperative with HRC and UPR process: it had been a member of HRC from 2008 through 2013 and has also taken the current membership until 2018, and served as the President of HRC for the 10th cycle in 2016.
2. Nevertheless, the ROK Government (Government) has not shown fully sufficient efforts to implement the UPR recommendations (Recommendations) such as accession to the human rights treaties (Treaties), withdrawal of its reservations to some Treaties and relevant institutional improvements. As seen in the Thematic List of Recommendations (Annex), in spite of the Government's numerous policy efforts to implement the Recommendations, some of them did not have a significantly practical effect. In particular, with regard to necessary cooperation with civil society organizations and the NHRCK, which was stressed in Recommendation 124.15, the adopted mechanism was limited in that it simply concerned a one-off process of opinion collection, rather than a permanent monitoring system to cover the overall implementation progress of the Recommendations.
3. It is a positive development that the Government incorporated the Recommendations from the 2nd cycle to revise the 2nd (2012-2016) National Action Plan on Human Rights (NAP). However, the NAP itself has not been fully implemented and, despite the NHRCK's recommendation for the establishment of the 3rd NAP (2017-2021), the Government has just held one session of public hearing which was partly open to the public and has not established the 3rd NAP yet. Furthermore, as the authority responsible for the UPR and the NAP is the Ministry of Justice, which is just one of the government ministries, it has some limitations in playing a pivotal role in the work of promoting the UPR process and implementing the NAP.
4. In the meantime, the NHRCK Act was revised in February 2016 to insert new provisions on the immunities and qualifications of Commission members and strengthen the selection process of Commission members by providing for the guarantee of transparency and diversity in the process. These revisions meant progress towards NHRCK's independence.
5. **Recommendation:** Ensure that the Recommendations be always incorporated into the NAP and that the Prime Minister's Office or other corresponding state body play as a control tower for more effective implementation of the UPR and the NAP. Make institutional improvements to substantially enhance the Government's cooperation with the NHRCK and civil society organizations

including the establishment of a permanent and periodic channel guaranteeing their participation in the monitoring process of the Recommendations and the NAP.

6. **Recommendation:** It is imperative that the NHRCK should be promoted to a constitution-based body at a future time of constitutional amendment in order to strengthen the NHRCK's independence and cement the current national regime for the promotion and protection of human rights.

Accession to and the implementation of the Treaties

7. The ROK has yet to accede to seven¹ out of eighteen Treaties and their optional protocols (OPs). With regard to the Treaties and the OPs which remain unratified, the Government has just said that it is 'reviewing' or 'studying' the possibility but no specific progress has been found in this regard. For some of the Treaties to which the Government has acceded, it has put some reservations.²

8. The Human Rights Committee (CCPR), in its Concluding Observations of November 2015 on the ROK's fourth periodic report, highlighted the severity of the racial discrimination and stressed the priority implementation in the areas of discrimination based on sexual orientation, conscientious objection and the right to peaceful assemblies. The NHRCK also expressed its view that the Government needs to take positive actions for the implementation of the CCPR's recommendations in November 2016.

9. **Recommendation:** Make substantial efforts to accede to the unratified Treaties and OPs and to withdraw several reservations, and start the procedure for the withdrawal of reservations at the earliest possible time in relation to the reservations whose relevant national legal or institutional arrangements have been improved.

10. **Recommendation:** In order to implement the CCPR's recommendations of 2015, adopt a comprehensive anti-discrimination law which prohibits all the grounds of discrimination forbidden in the international human rights instruments and introduce alternatives to military service for the conscientious objectors.³ Mindful that its recent efforts to guarantee the right to peaceful assemblies are highly thought of, continue these efforts in future years, and try further to improve the current reporting system of assembly which may be operated as a *de facto* prior reporting.

Low fertility rate, population aging and human rights for the older people

11. The indicators such as suicide and poverty rates reveal that older people's situations are ever worsening. In spite of the Basic Pension scheme for older people, the benefit is not enough to cover their living costs. This forces them to stay in low-paying and non-regular labour market.⁴ Meanwhile, the ROK has been experiencing the lowest low fertility rate for sixteen consecutive years since 2001.⁵ Although it is not a cause but a consequence of other structural problems, the tendency is that, as illustrated in the controversial 'ROK Fertility Map' of the Ministry of the Interior, low fertility is considered as individuals' responsibilities instead of being viewed in the dimension of social structure.⁶ In the ROK, women, once their career is interrupted, find it very hard to get

reemployed or end up in low-paying non-regular jobs. Moreover, the balance of work and family is particularly difficult, largely due to the lack of decent State-run or other public day care facilities and the low use of paternity leaves, and the conditions surrounding younger people's employment continue to be deteriorated, which are the most likely reasons why younger people delay their marriage and childbirth as far as possible or even give up starting a family.⁷

12. The Government, in accordance with the Act On Low Fertility and Population Aging which was legislated in 2004, sets up the Basic Plan on Low Fertility and Population Aging every five years, and the 3rd Plan (2016-2020) is currently in progress. Although the ongoing Plan has introduced a more positive vision of 'Active Ageing' beyond the previous one of 'preparation' for an aging society, it is still focused on the issue of the reduction in economically active population which resulted from the link between population aging and low fertility; and is not sufficient in addressing human rights of individual older persons⁸.

13. **Recommendation:** In order to tackle low fertility, adopt a comprehensive approach taking social and structural shortcomings into accounts together, which may include securing decent jobs for younger people, resolving their housing problems, helping women recover from career breaks and expanding alternative childcare facilities such as state-run or other public day-care centres.

14. **Recommendation:** Full realization of human rights and improvement of quality of life for older people can be secured not by economic perspectives but by rights-based approaches. As the poverty and suicide among older people are particularly problematic, the Government needs to take more active responses.

Women, children and persons with disabilities

15. Women's under-representation in the labour market is a serious problem indeed⁹, but what is more serious is that the quality of women's jobs is much lower than that of men's. The difference in the proportions of non-regular work between men and women had gradually decreased since 2011 until it grew again to the level of 2012 in the first half of 2016.¹⁰ This gap becomes particularly large around the age of 30 when many women are forced to have their career interrupted largely due to their childcare responsibilities.¹¹ Women's career breaks combined with 'glass ceiling' is one of the key reasons for which the ROK ranks in the first place every year among the Organisation for Economic Co-operation and Development (OECD) members in terms of wage gap between men and women.¹²

16. According to the survey results released by the Ministry of Gender Equality and Family on 1 March, 2017, among the rape criminals who, after being convicted of sex crimes against children or adolescents, had their personal information made public, 32.3% were put on probation in 2015. Although this probation rate, after hitting the peak of 42.0% in 2012, has continuously declined, one in every three criminals who were convicted of rape against children is still set free on suspended sentences.¹³

17. A growing number of online sex crimes, including sexual harassment or violence through Social Network Services and other online platforms, have been reported throughout the world in recent years and the ROK is not an exception. The Government needs to take actions to address these

problems. Furthermore, statistical data show that there is an increase in the cases of sexual harassment by students at school.¹⁴ The expenditures of children's private education are on the rise,¹⁵ and the call for the guarantee of children's right to play is voiced while the problems of child abuse¹⁶ and indirect corporal punishment at school¹⁷ are also raised.

18. Largely thanks to the formulation of the Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of their Rights in 2007 and the NHRCK's consistent efforts to rectify the discrimination against persons with disabilities, the ROK has witnessed a visible progress towards enhancing human rights of persons with disabilities over the last several years. Legal and institutional improvements have also been made in regard of persons with mental disabilities: for instance, a relevant law was recently revised on a full scale.¹⁸ However, it is still doubtful whether the involuntary hospitalization rate, which was as high as 70% in 2014, will mark a significant decline sooner or later,¹⁹ and reports are often made about the people who, thinking of the facilities for persons with disabilities as 'noxious' ones, are opposed to the establishment of such facilities in their neighbourhood.²⁰

19. **Recommendation:** The Government has made many policy efforts to increase employment rates of women and younger people, but those efforts have shown little effect for the last three years. Make a thorough review on existing policy measures, and take active measures to ensure that statutory hours of work be observed, working time be reduced and decent jobs be retained and increased.

20. **Recommendation:** Draw up drastic measures to step up sanctions on perpetrators of sex crimes against children or minors, and take comprehensive actions at national level to tackle the alarming growth of online sexual violence and sexual violence among students at school.

21. **Recommendation:** It is appreciated that the Government has made efforts to improve legal and institutional arrangements for promoting human rights of persons with disabilities. However, it is concerned that there is still much room for improvement in public awareness about them and that many persons with mental disabilities are, largely involuntarily, hospitalized simply for medical treatment, instead of being provided with community care. Shift policy focus and take active measures to help persons with disabilities return to social life and promote their deinstitutionalization.

Labour issues

22. The proportion of workers who are paid less than minimum wage was 11.5% of total wage earners in end-2015.²¹ Moreover, although the number of workers in special types of employment (economically dependent workers, EDWs) who need similar level of protection as ordinary workers continues to grow and the number of EDW occupations also keeps growing, the legislation to protect them has not been fully introduced yet, leaving these workers outside legal protection.²²

23. Major trade unions like the Korean Government Employees' Union and the Korean Teachers and Education Workers Union, have not been recognized as lawful. Furthermore, although the Supreme Court and the Constitutional Court have shown significant changes in their positions about the cases where workers were indicted on charges of interference with business due to their

participation in strikes^{2 3}, these changes alone do not regulate the prosecution itself or prevent employers from making complaints on industrial actions but simply means that it is less likely that strikers may be found guilty. Indeed, it is reported that the situations concerning the civil proceedings initiated by employers over industrial actions remain unchanged.

24. **Recommendation:** It is concerned that the proportion of workers paid less than minimum wage still exceeds 10%. Address the social conflicts resulting from the expansion in indirect employment and non-regular work, and make efforts to guarantee three basic labour rights particularly for EDWs and those who are hired by the Government and local governments, and to promote the rights of vulnerable working people like EDWs and dispatched workers by extending the coverage of the Industrial Accident Compensation Insurance, for example.

Protection of minorities and elimination of discrimination

25. Recently, hate speeches, particularly against women and foreigners, have gained a growing attention as a social issue, and disadvantaged groups, such as women, sexual minorities, persons with disabilities and migrants, are highly fearful of the hate speeches against themselves.^{2 4} Although the Government revealed its position to accept Recommendation 124.30 which raised this issue, it has failed to make sufficient efforts to make legal or institutional improvements for handling hate speeches, including the legislation of a comprehensive anti-discrimination law.

26. It is encouraging that a significant progress has been made in the Government's policy measures to protect migrants, including the legislation of the Refugee Act and the implementation of a range of multicultural policy actions. Still, most of these actions are focused on registered foreigners, notably including migrant workers who come to the ROK under the Employment Permit System (EPS) and marriage migrants, leaving unregistered migrants and their children in very vulnerable conditions. In addition, the EPS restricts employees' freedom of changing their work places; and female marriage migrants are highly dependent on their spouses. Meanwhile, it is reported that female migrantsholding E-6 visas (arts and entertainment) are highly likely to be exposed to sexual exploitation. Moreover, there are some cases where a foreigner who, after it was decided that his/her application for refugee status recognition would not be forwarded to the deliberation process, filed a suit in defiance of the decision, had to stay for long in poor conditions of the waiting room for departing foreigners while the proceedings were in progress.^{2 5}

27. **Recommendation:** Map out policy actions to mitigate hate speeches against socially disadvantaged groups. Reinforce existing humanitarian protections for the foreigners staying in the country, including unregistered migrants, and guarantee fundamental human rights of refugees, asylum seekers and refugee status applicants. In particular, the Government should provide strong protection to foreign children, whether registered or unregistered, in accordance with the principle of 'the best interests of the child', and needs to have a clear understanding about the situations of female marriage migrants and E-6 visa holders who are exposed to the risk of sexual trafficking and improve the relevant legal and institutional framework.

Human rights in the armed forces

28. Several government bodies, including the Ministry of National Defence, have made various efforts to improve human rights conditions in the armed forces for the past years, but human rights infringements still take place in the armed forces, as seen in the death of a soldier who suffered sexual assaults and abusive treatment in 2014. After the NHRCK's recommendation of 2014, the Framework Act on Military Status and Service was formulated in December 2015.^{2 6} However, reports are still made about the cases of linguistic violence, abusive treatment, infringements on the rights to health and health care and infringements on the right to life (including suicide) in the armed forces. As in March 2017, the bill on the establishment of a Military Ombudsman within the NHRCK is pending before the National Assembly.

29. **Recommendation:** Despite a considerable progress in human rights conditions in the armed forces, human rights infringements are frequently committed against the soldiers who find it difficult to adapt themselves to military life. It is necessary to establish a Military Ombudsman within the NHRCK at the earliest possible time, as a fundamental protection of human rights in the armed forces.

Business and human rights

30. In 2016, the NHRCK recommended the Government to establish a separate NAP on the Business and Human Rights, in addition to the general NAP. In the meantime, the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, in its report of the official visit to the ROK published on 1 June 2016, observed that the Government should ensure that human rights due diligence in the UN Guiding Principles on Business and Human Rights is reflected in the investment activities by the National Pension and the execution of the Economic Development Cooperation Fund by the Export-Import Bank of Korea. It also proposed that an advisory group consisting of various stakeholders should be formed within the OECD National Contact Point (NCP) in the ROK.

31. **Recommendation:** Establish a separate NAP on Business and Human Rights and take actions to strengthen the role of the NCP.

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- a. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-CESCR);
- b. Second Optional Protocol to the International Covenant on Civil and Political Rights (OP2-ICCPR) aiming at the abolition of the death penalty;
- c. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT);
- d. Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3-CRC);

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- e. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW);
 - f. International Convention for the Protection of All Persons from Enforced Disappearance (CPED); and
 - g. Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)

² The Government has not withdrawn the reservations that it has made to Article 22 (freedom of association) of ICCPR; Article 16 (1) (g) (right to choose a family name) of CEDAW; and Article 21 (a) (adoption authorization system) and Article 40 (2) (b) (v) (the guarantee of the right to a review by a higher authority or body) of CRC; and Article 25 (e) (subscription to life insurance) of CRPD. Although some progress has been made in improving the national legal and institutional arrangements which were in conflict with Article 16 (1) (g) (right to choose a family name) of the CEDAW and Article 21 (a) (adoption authorization system) of the CRC, consequently lowering the barrier to the withdrawal of the reservations concerned, the Government has not embarked on the procedure for the withdrawal of the reservations.

³ For more information on the comprehensive anti-discrimination law, see Recommendation 124.23 of the Theme B31 of the Annex. For more information on human rights of conscientious objectors, see Recommendation 124.45 of the Theme D42.

⁴ The average effective age of labour market exit in Korea was 72.9 years in 2014, which is the highest among the OECD nations and 7-8 years older than the OECD average (OECD, *Pension at a Glance 2015*, pp.161-162). According to the '2016 Statistics on the Aged' by the Statistics Korea, an average person aged 65 or over will remain healthy for 9.1 years out of 20.9 years which is his or her residual life expectancy, which points to poor healthy conditions among the aged people who are expected to suffer illnesses for almost half of their residual life expectancy. The relative poverty rate of people aged 66 or over in Korea recorded 49.6% as in 2013, which was the highest among the OECD member states (4.4 times of the OECD average of 10.6% and more than double of the rate of 24.1% in Israel which ranked the 2nd), while the relative poverty rate of the entire population in Korea was 14.6%, which was not much different from the OECD average of the same year (11.9%). This indicates that the pace of povertization grows much faster with age in Korea. And the proportion of public pension beneficiaries among the people aged 65 or older is growing but was a mere 42.3% as in 2015. Among the people of 55-79 years of age, the total amount of public and private pension combined per month averaged about KRW 510,000. In particular, the beneficiaries of monthly KRW 1 million or more in pension (e.g. the beneficiaries of the Government Employee Pension) accounted for only 12.5%, whereas the beneficiaries of less than KRW 500,000 took up 75.2% of all pension beneficiaries and even the beneficiaries of less than KRW 250,000 recorded a high proportion of 49.5% (Statistics Korea, 2016 Statistics on the Aged). Accordingly, most of the pension beneficiaries find it difficult to escape from absolute poverty unless they have an additional source of income or financial support, such as earned income, family's financial support or the benefit under the National Basic Livelihood Security scheme. In the meantime, the Basic Pension scheme which, starting from July 2014, provides a monthly benefit of about KRW 200,000 to 70% of the people aged 65 or over is of no significance to the older persons at the lowest poverty level because, in accordance with the subsidiarity principle of the Basic Pension scheme, the pension amount available to these people is offset by the amount of the NBLS benefit offered to them. While the suicide rate of total population in 2015 was 26.5 per every 100,000 persons, which was approximately twice the OECD average (12.1 persons, as in 2014), the suicide rate of people aged 65 years or older was much higher at 58.6 persons and the corresponding rate for sub-groups of aged people grew at a faster pace with age (37.1 persons among those of 65-69 years; 54.9 among those of 70-74; 72.5 among those of 75-79; and 83.7 among those of 80 or older). It was reported that the biggest cause of suicide among aged people was poverty, followed by family discord and loneliness (Statistics Korea, 2015 Population Census; and OECD Health Data 2015). To sum up, the faster growth in suicide rates

among those aged 70 years or older than the rates among those who are in the initial stage of old age (that is, those aged 65-69) is a clear indication that older people's life is getting harder over time 'to the extent that they are neither able nor willing to lead a life'.

⁵ The ROK entered the age of the lowest low fertility (below 1.3 in total fertility rate) in 2001 and experienced a fertility shock of 1.08 (fertility rate of 1.08) in 2005. The fertility rate has since increased slightly, but still remains as low as 1.17 in 2016.

⁶ The Ministry of the Interior opened a new website (<http://birth.korea.go.kr>) and disclosed 'the ROK fertility map' in December 2016, for the purpose of increasing fertility rate. This map takes the form of a colourful graph which ranks different local governments according to the number of women at childbearing age and the fertility rate in the corresponding regions. Faced with the growing public criticism that the map is based on a sexist idea which regards women as a means of childbearing, the Ministry closed the web page, and only 'the information note: under construction of the page' can be found now on the website.

⁷ Although men and women have almost the same employment rate of around 59% or women have a little higher rate in the age group of 20-29 years, the gender gap in employment rate grows dramatically starting from the age of 30 years, which can be explained by women's career breaks due to their childbirth or child-rearing. Men's employment rate in their 30s records more or less 90%, which is a rapid rise from the rate in their 20s; whereas women's employment rate in their 30s is lower than the rate in their 20s. Although female employment rate in their 40s is higher than the rates in their 20s and 30s, in a typical M-shaped trend, it is worried that most of the jobs among the women in their 40s are in non-regular employment, whose quality is lower than that of the jobs held by men in the same age group or women in their 20s. In particular, the data released by the Statistics Korea show that the bottom point of employment rate among women in their 30s shifted from the early 30s (34 years or younger) to the late 30s (35 years or older), which reflects the reality that the women who succeeded in finding a good job in their 20s tend to give birth to a child at a later age than in the past.

Employment rate by year and by gender

| Classification | | Employment rate by year (%) | | | | | | |
|----------------|-----------|-----------------------------|------|------|------|------|------|------|
| Gender | Age group | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| Men | 20~29 | 59.2 | 58.4 | 58.2 | 58.3 | 57.3 | 55.7 | 55.8 |
| | 30~39 | 90.3 | 89.1 | 89.5 | 89.8 | 90.3 | 90.2 | 90.9 |
| | 40~49 | 91.8 | 90.9 | 91.2 | 91.6 | 91.7 | 92.0 | 92.7 |
| Women | 20~29 | 59.1 | 58.0 | 58.3 | 58.7 | 58.8 | 57.8 | 59.0 |
| | 30~39 | 54.7 | 52.7 | 53.7 | 53.7 | 54.5 | 55.5 | 56.3 |
| | 40~49 | 64.7 | 64.1 | 64.2 | 64.9 | 64.6 | 64.6 | 65.1 |

(Source: Statistics Korea, Survey of Economically Active Population 2016)

Since the inauguration of the current Government in 2013, youth employment rate among those aged 15-29 recorded slight increases to 39.7% (in 2013), 40.7% (in 2014) and 41.5% (in 2015), but youth unemployment rate also increased to 8.0% (in 2013), 9.0% (in 2014) and 9.2% (in 2015). As the 9.2% youth unemployment rate of 2015 is the highest in the recent decade and this upward trend in youth unemployment is likely to continue for a while, youth unemployment is emerging as a serious social problem.

⁸ It should be noted that the "Madrid International Plan of Action on Ageing (MIPAA)" stresses that support for income security and economic activities should be provided even before people start their old-age life and the issue of right to health should not be limited to 'currently' older people but should be expanded to younger generations so that the latter may 'start an old-age life in good health conditions'. 'Low fertility' is a

sign of social crisis which should be overcome, but aging is a positive development which can be regarded as “a great victory for the humanity”. Just as much as it is a very big challenge, aging needs to be dealt with active responses.

⁹ The current Government set, as one of its priorities for national administration, ‘the road map for 70% employment rate’, which includes a wide range of measures, such as different supportive programmes to help women continue their work career in different life courses, under the goal of increasing female employment rate by 10%, but it has been pointed out that these measures are not effective enough. Since the current Government was inaugurated in 2013, female employment rate grew by a mere 2.3%p as in 2016 and it still remained much lower than male employment rate (by about 20%p). In terms of female employment rate as in 2015, the ROK ranked only the 29th among the then 34 OECD member states.

Trends in employment rate by gender (15-64 years of age) since 2011

(Unit: %)

| | 2011 | 2012 | 2013 | 2014 | 2015 | Nov 2016 |
|-------|------|------|------|------|------|----------|
| Men | 74.5 | 74.9 | 74.9 | 75.7 | 75.7 | 75.8 |
| Women | 53.1 | 53.5 | 53.9 | 54.9 | 55.7 | 56.2 |

(Source: Statistics Korea, Survey of Economically Active Population (SEAP) 2016)

¹⁰

Proportion of non-regular work by gender

(Units: %; %p)

| | 2011 | 2012 | 2013 | 2014 | 2015 | Jun 2016 |
|------------|------|------|------|------|------|----------|
| All | 34.2 | 33.3 | 32.6 | 32.4 | 32.5 | 32.8 |
| Men | 27.8 | 27.2 | 26.5 | 26.6 | 26.5 | 26.4 |
| Women | 42.8 | 41.5 | 40.6 | 39.9 | 40.2 | 41.0 |
| Gender gap | 15.0 | 14.3 | 14.1 | 13.3 | 13.7 | 14.6 |

(Source: Statistics Korea, Supplementary Survey by Employment Status of the SEAP, August 2016)

¹¹ See Endnote 7 above.

¹² According to the gender pay gap indicators of OECD members which are annually published by PwC, a UK-based independent accounting consulting firm, the ROK recorded 36% in average gender pay gap in 2015, which was the worst among the observed nations (PwC, *PwC Women In Work Index: Closing the gender pay gap*, Feb 2017, p.24).

¹³ According to an analysis of the court decisions that confirmed sex crimes and ordered the perpetrators' personal information to be made public in 2015, which was commissioned by the Ministry of Gender Equality and Family to the Korean Women's Development Institute, 3,366 persons were given an order of personal information disclosure after being convicted of a sex crime against children or juveniles over the year, which was a 4.1% increase from the previous year (3,234 persons), while the number of convicted rapists declined from 855 (in 2014) to 733 persons (in 2015), of which only 495 (67.5%) were put into prison and 237 (32.3%) were released on probation (the press release dated 1 March 2017 of the Ministry of Gender Equality and Family).

¹⁴ The data presented by the Ministry of Education to the National Assembly in 2016 showed that the cases of sexual violence against students were on the rise, from 892 in 2013 to 1,306 in 2014. It was also revealed that, during the same period, 87% of the student victims suffered sexual violence from other 'students'. In response, the relevant government agencies, including the Ministry of Education, the Ministry of Gender Equality and Family and the National Police Agency, jointly announced the *Measures to Prevent Sexual*

Violence against Students at School in February 2017, under which they plan to provide active education for sexual violence prevention starting from the level of elementary school, reinforce the infrastructure for reporting and counselling of sexual violence cases against students and strengthen school programs to protect and support student victims.

¹⁵ See Recommendation 124.60 of the Theme E1 in the Annex

¹⁶ See Recommendation 124.40 of the Theme F13 in the Annex.

¹⁷ See Recommendation 124.38 of the Theme D25 in the Annex.

¹⁸ The current *Mental Health Act* will be renamed to the *Act concerning Mental Health Promotion and Welfare Service Support for the Mentally Disabled* on 30 May 2017, in the wake of its revision bill adopted on 29 May 2016. The revised Act includes a new principle that, in taking care of persons with mental disabilities, community-based care should be preferred to hospitalized care (Article 2 (5) of the revised Act).

¹⁹ According to the statistical data of the National Mental Health Commission, voluntary admission takes up a mere 29.7% of the total cases of hospitalization and it is not likely that the high proportion of involuntary admission will record a significant decline in the near future. Moreover, on 29 September, 2016, the Constitutional Court, in the case of petition (2014Heonga9) for unconstitutionality of the provision on involuntary admission (Article 24 (1) (Hospitalization by a person responsible to provide protection; see below) of the *Mental health Act*, ruled that the provision in question is not constitutional. The Constitutional Court reasoned that the provision is not complemented by sufficient measures designed to minimize infringement on the personal liberty of mentally disabled persons. It also determined that the right given to the psychiatrist to judge on the hospitalization concerned might be abused. As this provision remains almost unchanged in the new version of the Act which was finalized (on 29 May 2016) before the Constitutional Court gave the ruling of unconstitutionality, the Act should be revised again to incorporate the Court's ruling or, at least, new measures should be introduced into its subordinate regulations, including the Enforcement Ordinance, to prevent the abuse or misuse of the provision. Moreover, an adequate system for mentally disabled persons' return to society needs to be set up so that they can be provided with a community care program, instead of being hospitalized.

Article 24 (Hospitalization by Person Responsible to Provide Protection) (1)

The director of a mental institution, etc. may, limited to the cases where a psychiatrist judges that hospitalization, etc. is necessary, hospitalize a mentally disabled person, with the consent of two persons responsible to provide protection to the mentally disabled person (with the consent of one person, in cases where one person has the responsibility to provide protection), and shall receive, from the person responsible to provide protection, a written consent to hospitalization and a document verifying that he/she is a person with such responsibility.

²⁰ The NHRCK, in the statement of its views on 29 December 2015, pointed out that the residents' opposition to the establishment of a vocational training centre for persons with disabilities, which was one of the heated social controversies at that time, might constitute 'an act of discrimination against persons with disabilities', while stressing that the local government concerned needs to make further efforts to improve people's understanding and awareness about persons with disabilities in order to prevent recurrence of discrimination against disabled persons in the local community.

²¹ On 16 July 2016, the Minimum Wage Commission finalized hourly minimum wage for the year 2017 at KRW 6,470 (KRW 1,352,230 per month in the case of 40-hour work per week). According to the press release by the Minimum Wage Commission, this hourly minimum wage is a 7.3% rise from the year 2016, and

this increase rate of minimum wage in 2017 is lower than the corresponding rate (8.1%) of 2016 but is similar to the rates in 2014 (7.2%) and 2015 (7.1%). The underpayment rate (the proportion of workers who are paid less than minimum wage, as percentage of all wage workers) began to decline after it peaked at 12.8% in 2009, but rebounded in 2013. The underpayment rate per year is as follows:

Proportion of workers paid less than minimum wage, as percentage of all wage workers

(Unit: %)

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|------|------|------|------|------|------|------|------|------|------|
| Rate | 11.9 | 10.8 | 12.8 | 11.5 | 10.8 | 9.6 | 11.4 | 12.1 | 11.5 |

(Source: Minimum Wage Commission, *2017 Analysis on Wage Conditions, etc. for Minimum Wage Deliberation*, June 2016, p.12.)

^{2 2} On 17 September 2007, the NHRCK expressed, to the National Assembly and the Government, its opinion that the legislation should be enacted and revised at an early time in order to protect the EDW by securing minimum labour standards for these workers, guaranteeing them three basic labour rights and applying four social insurances to them. In addition, on 27 November 2014, the NHRCK recommended that the coverage of the Industrial Accident Compensation Insurance (IACI) should be made more substantial for the EDW of the six occupations which are already governed by the IACI Act; and that the coverage of the IACI should be expanded to cover all of the EDW. In 2008, a special provision on EDW (Article 125) was inserted to the IACI Act, entitling the EDW in the nine occupations (four occupations in July 2008; two additional occupations in May 2012; and three additional occupations in July 2016) where those workers exclusively belong to their current workplaces to the protection of the IACI. However, ten years have passed since this legal revision, with no additional legislative action being taken to promote protection of the EDW.

^{2 3} The Constitutional Court and the Supreme Court of the ROK have showed some significant changes in their practices of applying the criminal penalties of obstruction of business to workers' strikes, as described below:

- a. The Constitutional Court (in Decision No. 2009Heonba168 on 29 April 2010), in relation to the petition for unconstitutionality of Article 314 (1) (obstruction of business) of the Criminal Act, stressed that an industrial action, even if it inevitably causes interference with business, is a fundamental right under the Constitution and, therefore, additional evidence is required to establish that the industrial action constitutes a crime of interference with business, although the Court upheld its position that the provision is constitutional.
- b. The Supreme Court (Full-bench Decision No.2007Do482 on 17 March 2011) ruled that a strike may be established as a crime of obstruction of business only when the two additional conditions of 'suddenness of the strike concerned' and 'serious confusion or enormous damage due to the strike' are satisfied and that the burden of proof is on the prosecution.

^{2 4} According to the aforementioned survey²⁴ conducted by the NHRCK with regard to hate speech, all of the respondents (about 1,000 persons) who are women, sexual minorities, persons with disabilities or migrants were fearful of hate speech and felt threatened by relevant crimes, and some of them even hid their identity in fear of their exposure to hate speech and relevant crimes. More than half of the respondents said that they did not know how to react any hate speech made online or offline against themselves.

^{2 5} On 25 August 2016, the NHRCK recommended the Ministry of Justice to revise the Refugee Act and other relevant legislation so that the reasons for the decision not to refer a refugee status application to the deliberation process should be minimized to non-compliance with formal requirements and that all applications should be referred to the deliberation process, except for the cases where it is apparent that the applicant concerned is not a refugee. However, the Ministry of Justice refused to accept the NHRCK's recommendation,

saying that if the reasons of not-to-refer decision are minimized to non-compliance with formal requirements, the Ministry is concerned that those who find it difficult to enter this country in a lawful manner might take advantage of refugee status application scheme and, as a result, current national border security system could collapse.

²⁶ On 5 November 2014, the NHRCK recommended the Minister of National Defence:

- a. to seek to legislate a law on human rights in the armed forces;
- b. to work out effective measures to prevent human rights infringements, including beating and other abusive acts;
- c. to draw up the measures to enhance human rights sensitivity, including the designation of human rights education in the armed forces as a controlled subject;
- d. to upgrade and enforce the law and regulations concerning the grievance-handling system;
- e. to expand the institutional framework for officers' and soldiers' participation in the operation of military camp life and improve human rights conditions of junior officers; and
- f. to guarantee external experts' participation in the process of military unit assessment.

Although the Ministry of National Defence was passive in implementing these recommendations, the *Framework Act on Military Status and Service* was formulated on 9 December 2015 and came into force in June 2016, largely thanks to the endeavours from the National Assembly. This Act provides that the Military Ombudsman may be appointed under a separate law, and a relevant bill (concerning the establishment of the Military Ombudsman within the NHRCK) is currently pending before the National Assembly.