

# Visit of the United Nations High Commissioner for Human Rights

## NGO Briefing Paper on the Human Rights Situation in the Republic of Korea

A. Constitutional and legislative framework on human rights	1
B. National human rights institutions and policy measures	2
C. Equality and non-discrimination	3
D. Right to life, liberty and security of the person	4
E. Right to privacy	4
F. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life	5
G. Freedom from torture and inhumane treatment	8
H. Minorities	9
I. Other issues	16

**17 June 2015**

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Advocates for Public Interest Law (APIL), Catholic Human Rights Committee, Center for Military Human Rights Korea, CRPD Monitoring Coalition, GongGam Human Rights Law Foundation, Joint Committee with Migrants in Korea, Korea Center for United Nations Human Rights Policy (KOCUN), Korea NPO Coalition for UNCRC, Korean Confederation of Trade Unions, Korean Council for Women Drafted for Military Sexual Slavery by Japan, Korean House for International Solidarity, Korean Progressive Network “Jinbonet”, Korean Women’s Association United, Migrants’ Trade Union, MINBYUN-Lawyers for a Democratic Society, Nanuri+ HIV/AIDS Human Rights Solidarity, People’s Solidarity for Participatory Democracy, Rainbow Action Against Sexual-Minority Discrimination, SARANGBANG Group for Human Rights, Save the Children Korea, Solidarity Against Disability Discrimination, Truth Foundation, World Without War

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### **Foreword**

This report was jointly prepared by 23 NGOs based in the Republic of Korea, in light of the visit to the country by the United Nations High Commissioner for Human Rights. The following questions and recommendations are either targeted directly to the High Commissioner or are questions and recommendations the participating organizations would like to suggest that the High Commissioner forward to the Government during his meetings with government officials. In general, the enclosed information also has the purpose to be a reference for the High Commissioner when preparing his press briefing, as well as for the OHCHR in carrying out its mandate upon the High Commissioner's return to Geneva.

## **A. Constitutional and legislative framework on human rights**

### **1. Implementation of UPR recommendations**

The Republic of Korea (RoK) was reviewed under the 2nd cycle of the Universal Periodic Review (UPR) in 2012 and received 70 recommendations on various issues from civil and political rights to economic, social and cultural rights. Civil society organisations issued a report "Implementation Plan by NGOs for the 2nd UPR on the Republic of Korea" on January 2014, which was one year after the Government received these recommendations. Civil society organisations also sent a list of questions to relevant government branches to follow-up on their plan on how to implement these recommendations. Unfortunately, the Government sent replies almost after nine months (on October 2014), in which civil society organisations could only find similar answers that the Government made during the Working Group session, rather than presenting concrete implementation plans.

#### **Question(s) to the High Commissioner**

- The Government's main reason of not implementing the UN recommendations is that it conflicts with domestic laws. Do you have any good examples on amending national law to coincide with international standards?
- To implement the UN recommendations, all three government branches - judicial body, legislative body and executive body - should jointly work together on human rights and also well aware of the UN human rights mechanism. What will be the best way that three government branches work together on implementing the UN recommendations?

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## **2. Ratification of non-ratified international human rights instruments**

Despite the Government's voluntary pledges and continuous recommendations received under the UPR and treaty bodies, the ROK has not signed and ratified the ICRMW, CED, ICESCR-OP, ICCPR-OP2, OP-CAT, CRC-OP3 and OP-CRPD. In addition, the Government has not ratified four of the ILO's fundamental conventions, namely the C87, C98, C29 and C105, which also resulted in the reservation of art. 22 of the ICCPR. The government has argued that those international human rights treaties need to be carefully examined taking into account the need for social consensus and the special characteristics of the country, yet it has neither publicly disclosed the results of any such examinations nor carried out efforts to reach a social consensus through awareness-raising initiatives.

### **Question(s) to the High Commissioner**

- To ratify the international human right treaties, the government needs the National Assembly's agreement. However, the National Assembly is often overlooked in the effective implementation of international human rights norms and its duty to protect human rights through taking action to urge and agree with the ratification of international human rights instruments. Would it be possible for OHCHR to provide technical support with legislators with regard to National assembly's roles and responsibility to ensure the proper implementation of decisions made by international human rights bodies , and also to protect international human rights norms?
- Despite that the ROK's voluntary pledges have continued to show a regression, particularly in regards to ratifying non-ratified treaties, and more or less resemble unfulfilled promises, it has continued to secure its status as a Council member. What mechanism can be put in place in order that Council members better adhere to their own pledges and that the lack of adherence is reflected during the next round of elections?

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## **B. National human rights institutions and policy measures**

### **3. Independence of the National Human Rights Commission of Korea**

The National Human Rights Commission of Korea (NHRCK) was established in 2001 and has been active since. However, it has been receiving criticism from civil society for repeatedly appointing unqualified members, due to an absence of a selection procedure, and for disproportionately appointing legal professionals.

In 2008, the former Lee Administration reduced the size of the organization by 21%, as well as its functions, by infringing upon its independence and appointing unqualified members, who then turned a blind eye to major human rights issues. The institution's relationship with civil

society further hampered due to its opaque management, including non-disclosure of meeting minutes.

As a result, the ICC deferred its review of the NHRCK's status 3 times in a row, recommending that it actively state its position on urgent human rights issues and introduce a transparent selection procedure for appointing the Chairperson with the participation of civil society.

#### **Suggested recommendation(s) to the Government**

- The NHRCK should actively investigate and state its position in a timely manner on urgent human rights issues.
- The NHRCK should introduce a transparent selection procedure for appointing its members and, in the process, ensure civil society participation. Experienced members must be appointed in accordance with the National Human Rights Commission Act.
- The NHRCK should reduce the number of closed meetings and increase management transparency, including by addressing the problem of anonymity in meeting minutes and, thus, increasing the responsibility of its members.

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### **C. Equality and non-discrimination**

#### **4. Enactment of a comprehensive Anti-Discrimination Act**

In the absence of a comprehensive anti-discrimination legislation, biases and stereotypes are prevalent, while discriminatory public attitudes are deepening. Such a law is needed to prohibit discrimination against, in particular, children with multi-cultural or migrant backgrounds or who have come from the Democratic People's Republic of Korea, refugee children, single mothers, and LGBTI persons.

#### **Suggested recommendation(s) to the Government**

- The Government should adopt a comprehensive anti-discrimination law that prohibits discrimination on all grounds, including sexual orientation and gender identity, and should carry out effective public education to reduce prejudice among children and in society.

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## **D. Right to life, liberty and security of the person**

### **5. Human rights in the military**

There is serious concern over military justice and Korean soldiers' right to the life and fundamental freedoms. Article 92(2) of the Military Criminal Act punishes any form of consensual homosexual relationship by imprisonment. Cases of suicide are mostly caused by beating and brutal treatment; since 2012, 72, 79, 67 soldiers died in each year respectively. A slight decrease in 2014 was mainly due to the outbreak of the case of Private Yoon, who was beaten to death. Only 4% of personnel were punished for these cases; 54% of them were only reprimanded. The rate of sex crimes has gone down, but female victims account an increase from 2.3%, to 5.3%, and again to 5.7% from 2011 to 2013. However, no offenders were imprisoned. In case of conscripted police, 77 beating cases and 7 sex crimes were reported from 2012 to 2014.

Every year, over 10,000 conscripts are arbitrarily sent to military prisons without going through a formal judicial trial. In addition, Military Courts fail to fairly deal with the current situations as its composition is subordinated to a commander's mandate. Thus, impunity and concealment, and diminution of cases prevail in the military.

#### **Suggested recommendation(s) to the Government**

- The Government should establish a fully-independent Military Ombudsperson mechanism to monitor the human rights situations in the military.
- The Government should amend or abolish the Military Court, Military Criminal Act and Decree on Military Service in accordance with international human rights laws and standards.

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## **E. Right to privacy**

### **6. Right to privacy and access to information**

According to official statistics, approximately 95% of all wiretapping in the country is carried out by the National Intelligence Service (NIS), often causing controversy over the monitoring of civilians and illegal involvement in national politics. As for foreigners, wiretapping can be conducted with only the approval of the President, without any court oversight. This can lead to the misuse of the NIS's authority.

Investigative agencies have been provided with the call history, collected by base stations, of every mobile phone, especially those located within the range of assemblies. They have also

been wiretapping Internet connection using Deep Packet Inspection (DPI). In addition, the Government and the ruling party have sought to strengthen their wiretapping capability by obliging Internet service companies to make their communication networks 'wiretap-ready' for government agencies. The related legislation is currently under discussion at the National Assembly.

In 2014, the NHRCK recommended that supervision by court be strengthened regarding the requirements and procedure for intelligence and investigative agencies' collection of communication metadata and location data. However, the Government and the National Assembly have not yet made any effort to review the procedures, practices and legislation regarding the surveillance of communications, interception and collection of personal data.

#### **Suggested question(s) to the Government**

- Does the Government have plans to provide effective and independent oversight regimes in order to prevent the National Intelligence Service (NIS) from abusing its monitoring authority?
- Is the Government willing to withdraw its plan to introduce a system that requires telecommunication companies to make their communication network 'wiretap-ready'?
- Is the Government willing and planning to apply the same measures for nationals to foreigners with regard to wiretapping in matters related to national security?

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## **F. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

### **7. National Security Act**

Despite recommendations by the UN over the last many years, the National Security Act is still in existence and the Government has abused the Act to restrict conscience, ideology, knowledge, art, speech and press or infringe on its essential nature. The number of cases on the grounds of violating art. 7 of the Act amounted to 76%, 73%, 93%, 79.4% and 79.7% of all cases from 2008 to 2013, respectively. Most were related to posting or sharing pro-North content online. The Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. requires the Korea Communications Commission (KCC) to request that information providers or bulletin managers delete "a posting that is an act prohibited under the National Security Act" (art. 44(7)). The police carries out routine online surveillance and, under a "request for business cooperation," request the deletion of certain material to those who posted it or website managers. As a result, even before a forced execution by the KCC takes place, most contents of expression are deleted by the request of the police.

Recently, such misuses have extended to not only on-line posting and tweeting but the members of the Unified Progressive Party (UPP), a party that was dissolved in 2014 in violation of ICCPR, Article 22.

#### **Question(s) to the High Commissioner**

- What efficient measures would the OHCHR and other related human rights agencies be able to take regarding the consistent non-compliance of the Government with the recommendations?

#### **Suggested recommendation(s) to the Government**

- The Government should suspend the practice of the police and the KCC of requesting deletion, both of which are tantamount to broad censorship and disallowance of free expression on the basis of the National Security Act.

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### **8. Right to freedom of peaceful assembly**

In contrast with the Constitution, the Assembly and Demonstration Act is currently operating as a de facto system of authorization. Although the Supreme Court ruled that a dissolution order cannot be issued even if there was no prior notice of assembly, in practice, any assembly that was not notified in advance or goes beyond the scope initially notified is categorized as an “illegal assembly” and, thus, is ordered to disperse and/or participants face indictment.

Since 2008, prosecutors and the police are broadly applying the General Obstruction of Traffic provision of the Criminal Code and punishing assembly participants. In addition, based on illegal photo-taking, participants are later summoned and prosecuted under the same provision and receive a fine ranging from 1 to 5 million won. As such, a broad interpretation of the provision in the Criminal Code is being used to violate the Constitutional right to freedom of assembly.

Even with prior notice, assemblies are being suppressed by the abuse of police forces, including: bus blockades that block and isolate assemblies, impeding movement that blocks and hinders participation and movement in assemblies, camera and camcorder footage in order to monitor the assembly and punish participants, not wearing any identification such as name-tags, and the use of weapon-like equipment to forcefully disperse assemblies.

In particular, assemblies near the premises of the Blue House and in the downtown area are being broadly prohibited. Recently, at an assembly relating to the Sewol Ferry accident, the police also used water cannons mixed with tear-inducing solution, the use of which has been

prohibited by the international community. The use of water cannons on 1 May 2015 alone was equivalent to the yearly usage last year.

#### **Suggested recommendation(s) to the Government**

- The Government should ensure the freedom of assembly enshrined in the Constitution and end the practice of criminally prosecuting and imposing fines against assembly participants.
- The Government, as recommended by the Special Rapporteurs on freedom of expression and on human rights defenders, should end other practices that limit the freedom of assembly, including bus blockades, usage of water cannons and excessive force, and the police not wearing any identification.
- The Government should rescind the broad prohibition of assemblies near the premises of the Blue House and in the downtown area, in accordance with the Supreme Court's decision.
- The Government should refrain from violating the freedom of assembly on the basis of an arbitrary interpretation of the General Obstruction of Traffic provision.

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#### **9. Freedom of association of teachers and civil servants**

The Korean Government Employees' Union (KGEU) has been rejected its registration in August 2013, while the Korean Teachers and Education Workers Union (KTU) was deprived of its status in both October 2013 and in May 2015. Such decisions were on the grounds that 136 out of the 140,000 and 9 out of the 60,000 members respectively had been dismissed for union activity and the bylaws of these unions allow dismissed workers to maintain their membership, which is prohibited by national legislation. The ILO found such cases a violation of the principle of freedom of association (ILO CFA case 1865) and recommended the Government to revise the related laws. Other UN bodies have echoed this recommendation as well.

#### **Suggested recommendation(s) to the Government**

- The Government should recognize the KGEU and KTU and bring the relevant laws on trade unions into conformity with the principle of freedom of association.

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#### **10. Conscientious objectors**

Despite that various human rights mechanisms made recommendations to the Republic of Korea to recognize the rights of conscientious objectors and to introduce an alternative service system, the government is refusing to introduce an alternative service system in practice, on the grounds of security concerns related to the military tension between North and South Korea. The government also stated that it has deferred its decision to allow alternative service as national consensus has not been reached. Currently, ROK has the largest number of conscientious objectors in prison in the world.

#### **Question(s) to the High Commissioner**

- The government has received many recommendations regarding conscientious objectors from the various international human rights instruments. Are there any other helpful ways to make use of the UN?
- Despite repeated recommendations, the Government continues to repeat the same answer. How can the Government be more intensely pressured to implement the recommendations at the international level?

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### **G. Freedom from torture and inhumane treatment**

#### **11. Restorative justice**

During the dictatorial regimes of the 1970-80s, many gross violations of human rights were committed by the State, including numerous fabricated guilty verdicts of individuals as “North Korean spies,” which were induced via torture and resulted in imprisonment or the death penalty. Previous administrations, notably those of Kim Dae-jung and Roh Mu-hyun, had made sincere efforts to rectify these wrongdoings and, simultaneously, took responsibility and sought justice for the victims through measures such as the establishment of the Truth and Reconciliation Committee (TRC). However, recent administrations have reversed course and subtly re-opened old wounds via policy and judicial decisions.

In 2013, the Supreme Court reduced the statute of limitations regarding the right to reparation of the victims of gross violations of human rights from 3 years to 6 months from the date the TRC uncovered the truth of a case. Those who suffered from State violence in the past were again exposed to yet another form of violence in the process of trying to exercise their right to justice. Victims who were in very similar cases of gross human rights violations received different rulings of either being awarded reparations or receiving nothing due to this change.

This change of the ruling, which the logic or policy basis behind it has never been explained, violates Paragraph 6 and Paragraph 7 of “UN Reparation Principles,” Article 2 of ICCPR, Article 14 of CAT, and also the own precedents of the Supreme Court. We believe this deserves

international attention, and that the Government of South Korea should respond to the inquiry of civil society.

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## **H. Minorities**

### **12. Women**

#### **1) Domestic and sexual violence**

The reporting rate of domestic violence in Korea is approximately 1.3% and 1.1% for sexual violence (Ministry of Gender Equality and Family, 2013). The reasons for not reporting domestic violence are that victims thought “the violence was not serious (64.1%)”, “domestic violence is a private problem, so letting others know is shameful (17.7%),” “because he is my partner (8.1%),” and “reporting would be useless (3.7%).” The reasons for not reporting sexual violence are that “the damage was not serious (52.6%)” and that “reporting would be useless (14.4%)”. In short, low levels of understanding about violence against women and the distrust of the legal system make the crime report rate low.

The Government eliminated the requirement for a victim’s complaint to prosecute crimes of sexual violence and allowed the police the authority to execute ‘urgent temporary measures’ which prohibit the offender’s access to the victim, etc. in order to raise the reporting rate of domestic violence. However, those systems cause various problems due to a lack of measures to raise awareness of investigative officers and to protect victims.

In the case of sexual violence, by eliminating the requirement for a victim’s complaint, the process of the investigation proceeds unrelated to the victim’s own intent, but depends on the statement of the victim because mostly there is no witness or evidence. Furthermore, through inaccurate conventional wisdom, in any case which does not match the typical ‘rape scenario’, the honesty of the victim is easily questioned with any conflict in the statement. If the situation that bolsters the detective's doubts happens during the process, the victim becomes the assailant, accused of false accusations leading to secondary damage.

The system which was designed to support victims of violence against women is not properly executed same as domestic violence. In November 2014, though the victim of domestic violence reported incidents to the police several times, the victim was murdered and secretly buried by her husband because of errors in the first investigation by the police. Korea Women’s Hotline charged the police with delinquency of duties and professional negligence resulting in death, but the case was not indicted because of a lack of evidence and intentionality. This represents how the Korean government deals with issues of domestic violence.

The reporting rate will be not increased if the level of understanding of violence against women is not improved and the safety of victims is not guaranteed when they report incidents.

### **Suggested recommendation(s) to the Government**

- The Government should immediately introduce the practice of ‘arrest first’ of the principal assailant for domestic violence
- The Government should introduce exceptions to the charge of false accusations for victims of sexual violence, such as by postponing the charge of false accusations for sexual violence until the end of trial.

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### **2) Violence against women in armed conflict**

As continuously affirmed by decisions and recommendations of the UN human rights bodies and the UN Special Rapporteur on violence against women, the Japanese military sexual slavery ("comfort women") issue is a case of violence against women in armed conflict, which is a very serious matter that occurred during the Second World War. However, the Japanese government has not yet complied with the UN recommendations, and victims are still waiting for recovery of their justice.

### **Question(s) to the High Commissioner**

- On 11 June 2015, two Japanese “comfort women” victims passed away and now, only 50 victims remain alive. What are your plans to address this urgent and pressing issue of “comfort women,” and what would you recommend to the Japanese government?

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## **13. Children**

### **Universal Birth registration**

In 2012, both the CRC Committee and CERD Committee recommended that the Government undertake measures to ensure that birth registration is available to all children regardless of their parents’ legal status and/or origin. However, birth registration is still only available to Korean nationals and no steps have been taken to remedy the situation. Under the lack of a universal birth registration system, unregistered children include: adopted children, children of undocumented migrants, refugees, and those who cannot prepare relevant documents. These children are in high-risk of infant mortality, child abandonment and trafficking.

### **Suggested recommendation(s) to the Government**

- The government should establish a universal birth registration system under relevant laws to protect all children regardless of their parents' status and/or origin.
- The government should ratify the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

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## **14. Persons with disabilities**

### **1) Disability grading system**

The current Disability Grading System is a bureaucratic criteria to provide monotype service while ignoring personal needs and the environment of persons with disabilities. The President promised to abolish the Disability Grading System, but it has not been taken board. Repealing the system is to remove one single criteria for services and to establish a new support system based on individual needs.

### **2) Families' obligation to support**

The National Basic Living Security Act ensures the minimum level of social security. The rate of relative poverty was increased to 14.0% in 2012 from 11.4% in 1999. Unlike the government's statement that the criteria for families' obligatory support has been loosened, 70% of 1.17million people neither receive support from their families nor from the government, which has sadly resulted in suicides.

### **3) Accessibility of buses**

The Mobility Enhancement for the Mobility Impaired Act was established in 2005 as a result of the disability mobility movement. However the implementation of the Act is very poor. According to the Enforcement Decree of the Act, the provision of lower-floored city buses should reach 41.5%, but it reached only 19% in 2014. The Act also includes accessible long-distance buses, but there is no single express/long-distance bus yet.

### **Question(s) to the High Commissioner**

- The Concluding Observations by the CRPD Committee recommend the government to review the current issues and to take appropriate measures. However no changes have been made yet. What would be the view and recommendation of UN Human Rights Council?
- What is the direction of approach and possible solution to solve multiple discrimination, such as with regards to women with disabilities, who face problems related to violence, education, employment, and poverty, simultaneously?
- Before adopting the SDGs, what is the effective method and process for the inclusion of persons with disabilities?

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## **15. Migrants**

### **1) Refugees**

Immigrants, of whom are mostly asylum-seekers, have suffered from prolonged, indefinite detention without periodic judicial review. Victims of human trafficking have hardly been identified as victims, rather than criminals, by law enforcement bodies.

#### **Suggested recommendation(s) to the Government**

- The Government should reform the immigration detention system, which falls into arbitrary detention.
- The Government should enact legislations in order to implement the recently ratified UN human trafficking protocol, including to ensure protection mechanisms for victims of trafficking.

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### **2) Migrant workers**

In the concluding observations by the CESCR Committee in 2009, the Committee expressed concern on the abuse, discrimination, and overdue payment faced by migrant workers. In particular, it also recommended that the Government adhere to the High Court's decision to recognize the legal status of the Migrants' Trade Union (MTU), a recommendation which has also been repeated by the ILO (ILO CFA case 2620) and ECOSOC. The MTU, which was established in 2005 and represents more than 1,000 migrant workers, has been rejected its registration on the grounds of the Ministry of Labor's assumption that the union's members are mainly undocumented. However, as of June 2015, the Supreme Court has not yet made a decision on the legalization of the MTU and the case has now been pending for 8 years.

#### **Question(s) to the High Commissioner**

- What is the UN's position and follow-up plans regarding the non-implementation by the Government of the CESCR Committee's recommendations regarding the legalization of the MTU?
- The Employment Permit System seriously violates the rights of migrant workers, such as by restricting changes of workplace and allowing receipt of retirement benefits only upon leaving the country. Are there any comparable systems in other receiving countries regarding foreign workers that incorporate a more migrants' rights-friendly approach?

#### **Suggested recommendation(s) to the Government**

- The Government should recognize the MTU without further delay.

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### **3) Migrant women**

Despite the CEDAW Committee's recommendation to conduct awareness-raising campaigns for all women, foreign women who came to Korea as migrant spouses are still widely exposed to various forms of domestic violence including mental or sexual abuse, or withholding of economic support, which are difficult to prove. Reports of foreign women being killed as a result of domestic violence continue to appear in the news, the root cause being that the dependence of their legal status upon the marital status with the Korean spouse makes it difficult for them to actively pursue remedial actions against their spouses.

No research has been conducted on the sexual abuse of female migrant workers working in the manufacturing and agricultural sectors, although there have been frequent reports of migrant women, especially those working in the agricultural sector in isolated locations, having become victims to continuous sexual violence by their employers. Their vulnerable position due to legal restrictions on their ability to change employers makes it difficult for them to report the perpetrators to the authorities.

In addition, the government has taken no action to enhance its screening procedure of entertainment companies who recruit foreign women. As a result, to this day, every year 2 to 3 thousand women from the Philippines enter Korea under the E-6-2 visa and are placed in foreigners-only establishments located in the vicinity of US military bases where they are subjected to exploitation of prostitution.

#### **Suggested recommendation(s) to the Government**

- The Government should alleviate the burden of proof for foreign spouses so that her legal status is guaranteed regardless of whether she is raising a child of Korean nationality, and it

should especially take measures in order that victims of forms of domestic violence that are difficult to prove, such as mental or sexual abuse and withholding of economic support, can be recognized as such.

- The Government should conduct research on the prevalence, causes and consequences of sexual violence against migrant women. Educational programs for migrant workers entering Korea must include mandatory education on sexual violence. Migrant workers especially should be provided with accurate information on available measures for protection against sexual violence, and protection of their legal status after having filed a report to the relevant authorities, so that victims of sexual violence are able to report to the authorities.
- The Government should comprehensively review the screening procedure and guidelines for issuance of E-6-2 visas, with a view to eradicating trafficking and sexual exploitation of women entering under E-6-2 visas.

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#### **4) Migrant children**

Migrant children face a broad range of discrimination with regard to basic human rights, including their right to birth registration, to education and to protection from abuse or neglect. In 2012, the CRC Committee recommended that the State party develop and adopt policies and strategies to ensure access to and actual receipt of education for children of migrants, including children of illegal migrants. However, mandatory education covering elementary and middle school is still not mandatory for non-nationals. Notices for mandatory enrollment are not sent out to non-nationals, regardless of their legal status and non-nationals must submit separate applications to enroll. Regarding high-school, whether to grant entrance depends wholly upon the discretion of the principal, and no remedy exists if entrance is denied on grounds of nationality or legal status. Undocumented migrant children cannot hope to enter university, since there is no way for them to acquire a student visa or to attend university without one. For migrant children who, for whatever reason, cannot enjoy or should not be left in the protection of their parents, alternative care is not available regardless of legal status. The main reason is because government subsidies only apply to nationals.

#### **Suggested recommendation(s) to the Government**

- The Government should take appropriate measures to ensure that, regardless of nationality or legal status, all children enjoy equal access to education, including secondary and higher education, as well as equal access to protection by the State.

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## **16. LGBTI persons**

Despite the strong voting record of the Government on LGBTI rights at the Human Rights Council, domestically, there has been a lack of government support or action to implement the rights of sexual and gender minorities. Consequently, there is very little legal recognition and protection of the rights of LGBTI persons and considerable work is required in order for ROK to be in compliance with international human rights laws.

Issues of particular concern include: the absence of a comprehensive anti-discrimination law to address the discrimination and violence against individuals based on their sexual orientation and gender identity; the failure of the State to combat social exclusion, stigma and prejudice, by failing to sanction hate speech in the media or to implement campaigns or strategies to raise awareness on LGBTI persons and related issues; the failure to deal with the incitement to hatred and discrimination by organized hate groups; the prohibition of homosexual acts in the military under art. 92(6) of the Military Penal Code; the failure to recognize same-sex relationships; the lack of protection for same-sex couples in regards to domestic violence and lack of equal protection for LGBTI persons in regards to sexual assault; violation of freedom of expression, association and assembly; discriminatory requirements for changing of legal gender, which forces surgical intervention; and discriminatory sexual education guidelines that fail to include homosexuality or sexual minorities and a lack of actions to tackle homophobic and transphobic bullying at school.

### **Question(s) to the High Commissioner**

- Is there any plan to introduce a new mechanism to implement LGBTI rights, other than UPR and existing treaties and special procedures?
- “Advanced countries” like ROK tend to get excluded from UNDP programs, such as ‘Being LGBT in Asia.’ Generally speaking, much efforts to implement LGBTI rights of the UN failed to reach our country. How can the government be more intensely pressured for the implementation of LGBTI rights?

### **Suggested recommendation(s) to the Government**

- The Government should improve its system and practices, in order to prevent organized hate groups from restricting the right to freedom of expression and assembly of minorities.

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## **17. Persons with HIV/AIDS**

30 years have passed since the first case of HIV was reported in the country in 1985, but stigma and discrimination against those suffering from HIV/AIDS remains a harsh reality. It is not

uncommon that clinics deny medical treatment to PLWHA, such as dental treatment or surgery. As a result of refusals of treatment, many PLWHA go to general hospitals that have a division for infectious diseases, yet such hospitals also often refuse dental treatment or surgery. Even AIDS patients with psychosocial disability and who are in need of nursing care are denied hospitalization in a psychiatric and care facilities. Both national and public psychiatric hospitals and all private and municipal hospitals reject the hospitalization of PLWHA.

#### **Suggested recommendation(s) to the Government**

- The Government must establish or designate a national public hospital for HIV/AIDS treatment, thereby ensuring access to health by PLWHA, and carry out human rights education on HIV/AIDS for health care providers.

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### **I. Other issues**

#### **18. Transnational corporations**

Concerns over human rights violations committed by Korean companies overseas, particularly those operating in developing countries, have been repeatedly raised by the international community. Notably, UN Special Procedures have expressed concerns over POSCO's project in India in both 2013 and 2014. However, the Korean government has not taken any effective measures to address these issues. Moreover, the Korea Minting and Security Printing Corporation (KOMSCO), a public corporation, recently established cotton processing factories in Uzbekistan, a country that is known to use forced labor in the cotton industry.

Furthermore, the Korean National Contact Point (NCP), established in 2002 by the OECD Guidelines for Multinational Enterprises, has dismissed a total of 19 complaints without carrying out a single investigation, mediation or recommendation.

#### **Suggested recommendation(s) to the Government**

- The Government should develop an NAP on business and human rights in compliance with the UN Guiding Principles on Business and Human Rights and take necessary measures to encourage Korean companies to implement due diligence in their operation.
- The Korean NCP should comply with the OECD Guidelines both in its functions and operations.

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