

Independent Report of
National Human Rights Commission of Korea
For
Consideration of Fourth Periodic Report of State to United
Nations Human Rights Committee



National Human Rights Commission of Korea

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A. Introduction

The National Human Rights Commission of Korea (“**NHRCK**”) hereby submits this independent report (this “**Report**”) to the United Nations Human Rights Committee (“**UNHRC**”) in relation to the consideration of the “fourth periodic report of the Republic of Korea on the implementation of the International Covenant on Civil and Political Rights (the “**Covenant**”).” NHRCK is an independent national human rights institution that uses its best efforts to ensure full compliance with the Covenant within Korea through its monitoring activities. Taking into account the consolidated guidelines for State reports under the Covenant (CCPR/C/66/GUI/Rev.2), this Report has been prepared in order to provide information and opinions which may be helpful in the consideration of the fourth periodic report based on the issues presented by the UNHRC on an issue-by-issue basis.

B. Status of Covenant Implementation

1. Article 2 (Measures Taken by State Party in Covenant Implementation)

Issue 1. Necessity of Maintaining Reservation to Article 22 of the Covenant (Freedom of Association)

1-1. (Necessity of Maintaining Reservation to Article 22 of the Covenant)

- The Committee on Freedom of Association of the International Labor Organization (“**ILO**”) indicates that public officials should be afforded with the same right as other workers to establish and join at their discretion an association which is for the furtherance and defense of their occupational interests.
- The Act on the Establishment, Operation, Etc. of Public Officials’ Trade Unions provides that (i) public officials of Grade six and below may not join a trade union if they are in a position to exercise a right to direct and supervise other public officials; and (ii) public officials of Grade five and above may not join a trade union even if they are not in a position to exercise a right to direct and supervise other public officials.

1-2. (Implementation of Views Adopted by UNHRC)

- At this point, no legislative measure is planned for the implementation of the decisions made by the UNHRC on individual communications submitted to the UNHRC.

Issue 2. Independence of NHRCK

2. (Independence of NHRCK)

- For the purpose of enhancing the NHRCK’s independence and the diversity of its member composition, the NHRCK has recommended to the Speaker of the National Assembly and the Prime Minister a proposed partial amendment to the National Human Rights Commission Act on September 22, 2014 and January 12, 2015, respectively, and the legislative process for the proposed amendment is currently pending. The contents of the proposed amendment are as follows: (i) introduction of the system of confirmation hearing for the standing commissioners and increase in the percentage of female commissioners; (ii) allowing people from diverse levels of the social hierarchy to recommend candidates or provide opinions during the process of nomination/appointment for the commissioners by the President, the Speaker of the National Assembly and the Chief Justice of the Supreme Court; (iii) establishment of objective review criteria for the nomination/appointment of the

commissioners; and (iv) establishment of the qualification standards for the commissioners for the purpose of ensuring diversity of the commissioner composition, such that persons from the academia or legal profession, human rights activists and persons recommended by a civil society organization who have insights and experience relevant to human rights issues, each with 10 or more years of experience in the relevant field, may be appointed as a commissioner.

- In addition, the NHRCK resolved on the “Guidelines for the Principles and Procedures for the Nomination/Appointment of Commissioners” on September 22, 2014, and has recommended to the President, the Speaker of the National Assembly and the Chief Justice of the Supreme Court to establish rules that reflect those guidelines and to nominate and appoint commissioners based on those guidelines until such rules are established. Although the rules reflecting those guidelines have not been enacted yet, (i) the New Politics Alliance for Democracy, which is the main opposition party, implemented through its internet homepage public solicitation of candidates for standing commissioners and non-standing commissioners from January 15, 2015 until January 23, 2015 and from July 23, 2015 until August 2, 2015, respectively, and (ii) the Office of the President implemented the procedures for its public notice of vacancy of the seat of the chairperson of the Commission from July 13, 2015 until July 20, 2015.
- The NHRCK established on December 30, 2014 the “Administrative Rules of the Commission for Nomination/Appointment of Commissioners,” pursuant to which (i) notice of any vacancy of a seat of commissioner shall be provided to the nominating/appointing authorities at least three months in advance; and (ii) information relating to matters that include, among others, expiration of the term of office of a commissioner, is announced to the outside (e.g. the civil society) through various media including the internet homepage, and opinions of the civil society relating thereto are received and forwarded by the Commission to the nominating/appointing authorities.

Issue 3. Business and Human Rights

3. (Business and Human Rights)

- During the course of the NHRCK’s research in 2013 on the investigation of the human rights violations by Korean business enterprises operating abroad and measures for improving the legislative regime, testimonies were received from the locals that the children’s right to learn was being infringed upon because the teachers had to harvest cotton due to the tightening up of the adult forced labor and a new form of child labor was being created because of the adults who hired children in order to avoid the forced labor. The Government has responded on paragraph 3-1 of its Replies to the list of issues that (i) the Korea Minting, Security Printing & ID Card Operating Corporation was made aware of the forced child labor issue in Uzbekistan and took its efforts to improve the situation; and (ii) the ILO has concluded, based on its comprehensive monitoring of child labor issues during the cotton harvesting within Uzbekistan in 2013 and 2014, that no systematic forced child labor existed.
- The United Nations’ Special Rapporteur and expert groups on the eight areas of human rights (*i.e.*, Right to Food, Adequate Housing, Right to Health, Extreme Poverty, Water and Sanitation, Freedoms of Peaceful Assembly and Association, Promotion of Democratic and Equitable International Order and International Business and Human Rights) issued a joint statement on October 1, 2013, urging that POSCO suspend its business under the memorandum of understanding of 2005 by and between POSCO and the State Government of Odisha, India until arrangements for the measures of protecting the

residents' human rights are made and the Korean government take proper actions in relation thereto. POSCO announced in July 2015 that it will put a hold on the steel processing plant project and resume the project when the situation of the Indian government changes.

- In order to prevent human rights infringement arising from business operations, the NHRCK indicated in its recommendation to the Government relating to the National Action Plans for the Promotion and Protection of Human Rights of 2012 (the “NAP”) that a legislative regime for human rights management should be established within Korea so that business enterprises may recognize human rights management as one of their important corporate values.

2. Article 2 (Non-Discrimination), Article 3 (Gender Equality), Article 20 (Prohibition of Propaganda for/Advocacy of War, Violence, Etc.), Article 26 (Equality before Law), Article 27 (Minority Rights)

Issue 4. Anti-Discrimination Legislation

4. (Anti-Discrimination Legislation)

- In 2006, the NHRCK recommended to the Prime Minister to enact a comprehensive anti-discrimination law that includes, among others, one's sexual orientation as a prohibited ground of discrimination. In December 2007, the Ministry of Justice submitted an anti-discrimination bill to the seventeenth National Assembly for deliberation but the proposed law did not include seven items, including sexual orientation, as the prohibited grounds of discrimination due to the public's opposition and ended up being discarded when the term of the seventeenth National Assembly ended. Another anti-discrimination bill has been submitted to the nineteenth National Assembly for deliberation, but no progress has been made on the deliberation of the proposed law since April 2013.
- However, the Korean Constitution generally bans discrimination in all aspects, and there are around twenty individual laws relating to anti-discrimination, such as the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion and the Act on Prohibition of Discrimination against Disabled Persons, Remedy against Infringement of their Rights, Etc. On a separate note, the National Human Rights Commission Act provides that discriminatory acts based on one of nineteen specified grounds (including sexual orientation) as a matter subject to the Commission's scrutiny.

Issue 5. Racially-Motivated Violence and Concept of Multicultural Families

5-1. (Racially-Motivated Violence, Etc.)

- When the NHRCK monitored the internet for racist remarks in 2010, a substantial number of racist remarks, such as remarks reflecting (i) a long-standing adherence to the “pure-blood” doctrine (*e.g.*, “international marriage should be banned to prevent the increase of interracial birth”); (ii) a tendency to link terrorism to foreigners from particular countries and to consider those persons dangerous; or (iii) a stereotype against particular countries or skin colors, was found.
- In light of the above, in April 2011, the NHRCK provided its opinion to the Minister of Justice that (i) “policies for promoting mutual understanding among different races”, which is set forth as the party states' obligation under the International Convention on the

Elimination of All Forms of Racial Discrimination, be reflected in the Basic Plan for a Foreign Resident Policy; and (ii) proper regulatory measures be established against remarks on the internet that promote racism. Also, the NHRCK has provided its opinion to the chairperson of the Korea Internet Self-Governance Organization that efforts need to be made to prevent racial discrimination or dissemination of expressions promoting the same on the internet.

5-2. (Concept of Multicultural Families)

- Under the legal framework for multicultural families, no provision exists that discriminates marriage migrants based on their gender.
- Under the Multicultural Families Support Act, “multicultural families” are defined as those encompassing a marital relationship with a Korean national, such as (i) families composed of a Korean with citizenship from birth and a foreigner or a naturalized Korean and (ii) families composed of a naturalized Korean or an “acknowledged” Korean (*i.e.* a person conceived out of wedlock whose Korean citizenship is from paternity/maternity confirmation) and a foreigner or a naturalized Korean.

Issue 6. Discrimination against Minorities and the Socially Weak Including Unwed Mothers

6-1. (Discrimination against Minorities and the Socially Weak Including Unwed Mothers)

6-1-1. (Discrimination against Unwed Mothers)

- According to the “Research on the Means of Integration of Unwed Parents into Society” that was published in 2010 by the Korean Women’s Development Institute (which is an institute under the Ministry of Gender Equality & Family), the percentage of unwed mothers who left their job due to pregnancy, out of the 571 unwed mothers who lived throughout the 43 residence facilities for unwed mothers in 2009, reached as high as 93%. According to the “Employment Investigation by Region” issued by Statistics Korea in 2011, only 19.3% of mothers within marriage left their job due to pregnancy, giving birth, childrearing, child educating, etc.
- Also, the research report above states that 67% of the pool of unwed mothers dropped out of school due to pregnancy. The “Measures for Ensuring Education Rights for Unwed Mothers who are Students” that was issued by the same researcher in 2014 points to the fact that numerous junior high and high schools have policies which includes punishment against dating (*e.g.* expulsion of the student) as the reason for this phenomenon.

6-1-2. (Discrimination against North Korean Defectors)

- In the “Survey on Violations of Humans Rights of North Korean Defectors” that was conducted in 2012 among 400 North Korean defectors, (i) 61.5% of the respondents stated that they had experienced discrimination; (ii) 43.5% of the respondents stated that they had experienced unfair treatment at school or workplace because they were from North Korea; and (iii) 40.2% of the respondents stated that they wanted to hide the fact that they were from North Korea.

- According to the “Investigation on Status of North Korean Defectors” that was conducted in 2012 by Korea Hana Foundation, each of North Korean defectors’ economic participation rate, employment rate, unemployment rate and average monthly wage were 54.1% (61.4% for ordinary Korean nationals), 50.0% (59.7% for ordinary Korean nationals), 7.5% (2.8% for ordinary Korean nationals) and 1,377,000 Korean Won (2,104,000 Korean Won for ordinary Korean nationals), respectively, which figures are substantially worse than the average among ordinary Korean nationals.
- On October 17, 2013, the NHRCK recommended to the Minister of Unification that (i) measures be established for improving the connection between vocational training and actual employment of North Korean defectors so that they may help them gain the ability to self-support; (ii) activities for removing stereotypes against North Korean defectors be further reinforced; and (iii) the Ministry proceed with an amendment to Article 9 of the North Korean Refugees Protection and Settlement Support Act which currently provides that North Korean defectors who apply for support after one year has been elapsed from their entry to Korea may be denied the protection afforded under the Act.
- In respect of the recommendation referred to above, the Minister of Unification stated that the Ministry is in discussion with the Ministry of Employment and Labor, etc. to take measures to reinforce North Korean defectors’ ability to self-support and is pushing ahead a plan to remove stereotypes against North Korean defectors. However, regarding the amendment to the Act, the Minister stated that (i) it would be difficult to think that North Korean defectors who do not apply for protection under the Act within a year from his/her entry to Korea would have a desire to settle down in Korea; (ii) persons who have a desire to settle down in Korea but could not apply for support due to their lack of knowledge of the procedures are still eligible to receive the support; and (iii) administrative support is still legally available even for those who are deemed not eligible for the protection under the Act.

6-1-3. (Discrimination against Sexual Minority)

- In 2014, the NHRCK conducted through an internet survey the “Investigation on Discrimination Based on Sexual Orientation and Gender Identity” among sexual minority juveniles at the age of thirteen to eighteen and analyzed 227 survey responses. The responses showed that, at school, homosexuals are at times identified and their names are submitted, same-sex dating is prohibited, and homosexuals are punished for being a sexual minority. In a survey among 1,290 adult sexual minorities who resided mostly in Korea for the last decade, 28.7% of the respondents stated that they experienced discrimination or harassment at their workplace.
- Recently, there is a debate as to whether to accept marriage reports from same-sex couples and there currently is a lawsuit pending at the Seoul Western District Court which relates to the non-acceptance by the administrative authority of a marriage registration filing submitted by a male same-sex couple in 2014.
- As the Framework Act on Women’s Development was replaced by the Framework Act on Gender Equality as of July 1, 2015, local authorities are proceeding with establishment/amendment of their gender equality ordinances. Daejeon Metropolitan City set forth provisions relating to the protection of, and

support for, the sexual minority and protection of their human rights in their gender equality municipal ordinances that were in effect as of July 1, 2015. However, on August 4, 2015, the Ministry of Gender Equality & Family directed the city to amend the ordinances because the Framework Act on Gender Equality do not set forth any concept or policy relating to the sexual minority and the city's ordinances thus went beyond the legislative intent behind the Act. The city then submitted to the city council a bill to delete the ordinances' provisions relating to the sexual minority and the city council approved the amendment on September 18, 2015, drawing a controversy.

6-1-4. (Discrimination against Persons with HIV/AIDS)

- Under Article 11 (Denial of Entry) and Article 46 (Persons Subject to Forced Removal) of the Immigration Control Act, the entry to/departure from Korea of persons with an infectious disease, narcotics addicts and other persons who are deemed to be hazardous to the public sanitation is subject to restrictions. Prior to January 2010, the Ministry of Justice had a policy of directing foreigners with HIV to leave the country and prohibit their re-entry to Korea. However, the Ministry has eased the restriction and now prohibits re-entry only when the Ministry of Health and welfare deems the person's re-entry inappropriate and requests the Ministry of Justice to impose the re-entry prohibition.

6-2. (Punishment on Homosexual Sexual Activities Within the Army)

- In 2011, the Constitutional Court held that the provisions of Article 92 of the old Military Criminal Act, which punished homosexual sexual activities within the army, was not unconstitutional. With respect to that case, the NHRCK submitted to the court its opinion that the said provisions subject homosexual sexual activities to criminal sanctions while not subjecting heterosexual sexual activities to criminal sanctions, thereby infringing upon one's right to sexual autonomy, constituting a discriminatory act based on one's sexual orientation and infringing upon one's right to privacy and freedom. Article 92(6) of the Military Criminal Act that is currently in force still provides that homosexual sexual activities within the army are subject to punishment.

Issue 7. Discrimination against Women and Marriage Migrants, Etc.

7-1. (Discrimination against Marriage Migrants)

- The "2014 Annual Report of Policies on Immigration and Foreigner-related Matters" released by the Ministry of Justice shows that there are 1,797,000 non-Korean nationals residing in Korea as of 2014, among whom there are 151,000 marriage migrants, and the number is continuously increasing. Among them, the number of female marriage migrants is 128,193, which accounts for 84.9% of the total marriage migrants.
- Under the Nationality Act, marriage migrants have to extend their period of stay every year until they acquire Korean citizenship. When they divorce before acquiring Korean citizenship, they shall be deported out of the country or become illegal residents. With that

said, Article 25-2 of the Immigration Control Act¹ adopts certain special rules for domestic violence victims, etc.

- In the past, when marriage migrants applied for an extension of their period of stay in Korea, the Enforcement Rule of the Immigration Control Act required their Korean spouses to submit a letter of guarantee; however, in September 2011, the NHRCK advised the Ministry of Justice on deleting the provision as it did not conform to the constitutional values of protecting marriage and family life based on individual dignity and gender equality. The Ministry of Justice, as a result, deleted the provision in December 2011.

7-2. (Women's Roles in Society)

- Under the Public Official Election Act, as amended in 2010, the political gender quota system was adopted in Korea, which mandates each political party that (i) at least 50% of the candidates to be nominated to the seats of local council members allocated to the relevant party based on the percentage of the total votes won by such party should be women and (ii) efforts be made to ensure that at least 30% of the candidates to be nominated to the seats of elected members of the National Assembly and local councils are women. In the nationwide local election held on June 4, 2014, nine (4.0%) were elected as heads of Gu (district), Si (city), and Gun (county) governments, 113 (14.3%) as members of Si (city) and Do (province) councils and 732 (25.3%) as members of Gu (district), Si (city), and Gun (county) councils. However, there is no female head of Si (city) or Do (province) governments.
- The number of female members of the National Assembly has consistently been increasing from 16 (5.9%) elected in the 2000 election to 39 (13%) in 2004, 41 (13.7%) in 2008 and 47 (15.7%) in 2012.
- According to the "Personnel Statistics of Government Official in 2013" issued by the Ministry of Government Administration and Home Affairs, as of December 31, 2013, female government officials account for about 48.1% of the 621,823 government officials nationwide, while the ratio of females drops to 14.6% out of a total of 19,591 managerial positions from Grade three through five. The ratio stands at 3.7% among a total of 991 senior officials. When it comes to political service positions, only nine officials are women, which accounts for 7.7% of the total number of 116. The ratios of female officials of local governments are even lower than those of central administrative agencies; women account for 31.3% of the total number of 287,220, 8.8% out of the total number of officials from Grade one through five; and a mere 2.4% out of the total 241 political service positions.

7-3. (Pay Discrimination against Working Women)

- The "Survey on Non-regular Female Workers' Wage" conducted by the NHRCK in 2013 shows that, as of March 2013, 7,620,000 workers among the total number of 17,740,000 salaried workers are women. Only 37.2% of the male employees, or 3,760,000, are

¹ Immigration Control Act, Article 25-2 (Special Rules for Immigrants through Marriage): (1) Where a foreign spouse of a national of the Republic of Korea, in whose case a trial in a court, investigation by an investigative agency or procedure for the remedy of a right under other Acts due to domestic violence as defined in subparagraph 1 of Article 2 of the Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence is pending, applies for permission for an extension of his/her stay period, the Minister of Justice may permit an extension until such procedure is completed. (2) Where the Minister of Justice deems it necessary to recover damages, etc. even after the expiration of the stay period as extended under paragraph (1), the Minister may grant permission for a further extension. [This Article Newly Inserted by Act No. 10545, Apr. 5, 2011]

non-regular workers, while 57.5% of the female workforce, or 4,380,000, are non-regular employees.

- The “2014 Employment and Labor Statistics of Korea” issued by the Ministry of Employment and Labor shows that the average monthly wage of male regular workers is KRW 3.05 million, while that of female regular employees is only KRW 2.07 million. For male non-regular workers, the average monthly wage is KRW 1.57 million, while that of female counterparts is KRW 1.05 million.

3. Article 2 (Respect of Individual Rights Without Discrimination), Article 7 (Prohibition of Torture or Inhumane Treatment), Article 24 (Rights of Children)

Issue 8. Domestic Violence, Sexual Assault and Abuse against Children

8-1. (Domestic Violence and Sexual Violence)

- The legislative and policy approach for addressing sexual violence seem to have been taken in a multifaceted and diligent manner; however, the number of sexual crimes reported by the National Police Agency has consistently been increasing during the recent five years, from 20,375 in 2010 to 21,912 in 2011, 22,933 in 2012, 28,786 in 2013 and 29,517 in 2014.

8-2. (School Violence)

- According to the data disclosed by the Ministry of Education, the number of inspections made by autonomous committees on measures against school violence of elementary, junior high and high schools across the nation has increased from 17,749 in 2013 to 19,521 in 2014, which represents a 10% increase (or, increase by 1,772 more cases).
- In addition, according to a series of School Violence Condition Surveys² (2nd survey in 2012, 1st and 2nd in 2013, and 1st in 2014) by the Ministry shows that the number of easily detectable types of bullying activities such as forcing victims to run errands or extortion are decreasing, while the number of covert or hidden bullying activities such as relational aggression or cyberbullying is on the rise.

8-3. (Abuse against Children, including Child Sexual Molestation)

- According to statistics by the Ministry of Education, the number of teachers submitted to a disciplinary measure for sexual crimes was 42 in 2011, 60 in 2012, 54 in 2013, 40 in 2014 and 35 in the first half of 2015. According to the “Survey on Sexual Violence in School” released by the Ministry of Education, elementary, junior high and high schools nationwide

² <Table> Share(%) of ostracization and cyberbullying among school bullying

* Source : The Ministry of Education, compiled from 2nd School Violence Condition Survey in 2012 to 1st in 2014

Types	2 nd Survey in 2012	1 st in 2013	2 nd in 2013	1 st in 2014
Ostracization	11.4%	16.7%	16.5%	17.1%
Cyberbullying	7.3%	9.2%	9.7%	9.2%
Forced errand	11.3%	6.1%	5.3%	4.7%
Extortion	16.2%	10.0%	9.2%	8.0%

saw a total of 2,357 cases of sexual violence within the boundary of schools from 2013 to 2014 where 2,020 offenders were students, 179 were teachers or school personnel, and 158 were outsiders.

- As the Government stated in paragraph 8-3 of its Replies to the list of issues, the protection for child victims has been reinforced in criminal procedures; however, secondary victimization still remains possible and the NHRCK thus made a policy recommendation to the Government in 2010 to reform relevant policies to protect and support the rights of sexual assault child victims. The recommendation urges the Government to “reduce the number of interviews; enhance professional investigation; allow replacement of written statements with video-recordings; avoid unconditional permission of parents’ participation in the forensic interviews; avoid participation of a counsellor whom a child victim meets for the first time on the day of investigation or of a mother in a rape case committed by the father; devise protective measures for child victims who appear in the court to testify.”
- Despite continuous efforts made by the Government to protect children from child abuse, the number of reports on child abuse is continuously on the rise. According to the “2014 Status Report on National Child Abuse” by the Ministry of Health & Welfare, the number of reported child abuse cases in 2014 was 17,791, recording a 36.0% increase as compared to the previous year. In terms of the types of child abuse, child neglect and abandonment accounted for 18.6%, emotional abuse 15.8%, and multiple forms of child abuse 48.0% in 2014.

4. Article 7 (Banning Torture and Inhumane Treatment), Article 9 (The Right to Personal Liberty and Safety), Article 10 (Treatments for Restrainers), Article 14 (The Right to a Fair Trial)

Issue 9. Counter-terrorism Legislation

- The NHRCK had opposed to the legislation of the Counter-terrorism Act in 2002 for the concern of infringing upon human rights, as the provisions relating to the definition of terrorism and the provisions relating to the punishment, procedures and reorganization of the Government’s authorities seemed unconstitutional and not in line with the International Human Rights Law, and for the fact that existing laws and regulations were sufficient to prevent and respond to acts of terrorism. The revised version of the legislation in 2003 was also opposed by the NHRCK due to the fact that the provisions relating to the requests for special forces mobilization would have a possibility of violating the Constitution and the possibility that the reinforcement of the intelligence agency’s power would restrict people’s fundamental rights.

5. Article 2 (Respect of Individual Rights Without Discrimination), Article 6 (Right to Life, Death Penalty), Article 7 (Banning Torture and Inhumane Treatment), Article 10 (Treatments for Restrainers)

Issue 10. Youth Suicide Issue and Death Penalty

10. (Death Penalty)

- There are 61 prisoners sentenced to death in Korea, and Korea is a de facto “abolitionist in practice” country as the death penalty has not been executed for over 17 years since it was last carried out for 23 condemned criminals on December 30, 1997. However, Korea is not

a member state of the Second Optional Protocol to the Covenant. In addition, numerous countries had urged Korea to abolish the death penalty through the UNHRC Universal Periodic Reviews on Korea in 2008 and 2012.

- The NHRCK had expressed its opinion on April 6, 2005 that capital punishment should be abolished in light of Article 10 and Article 37(2) of the Constitution and the Second Optional Protocol to the Covenant, and submitted its opinion on August 4, 2009 that abolition of capital punishment would be in line with the Constitution and the International Covenants on Human Rights regarding the Constitutional Court's request for Adjudication on the Constitutionality of Death Penalty (2008Hun-Ka23).
- A total of 172 members of the National Assembly tabled a Special Bill on Abolishing the Death Penalty on July 6, 2015, which is the 7th submission that proposes to replace the death sentence stipulated in law with "life imprisonment" whereby the criminal will remain imprisoned for his/her lifetime with no possibility of parole.
- According to a survey by the Korean Bar Association on September 13, 2015, among approximately 9% of the member lawyers (which is 1,426 lawyers) who had responded to the survey, 53% of them were for the retention of the death penalty while 47% of them replied that it should be abolished.

Issue 11. Torture and Inhumane Treatment

11. (Torture and Inhumane Treatment)

- Between 2012 and 2014, there were 5,222 complaints related to correctional institutions submitted to the NHRCK, among which 1,528 cases (29.3%) were related to the abuse of the investigation and disciplinary punishment authority, excessive use of protective devices, and violence and brutal treatment. Nine cases (0.0017%) were acknowledged as human rights violation owing to the abuse of the investigation and disciplinary punishment authority, excessive use of protective devices, and violence and brutal treatment.
- The Administration and Treatment of Correctional Institution Inmates Act stipulates fourteen types of disciplinary punishment against inmates that include warning, labor service, and cut in work incentives. However, according to the "Status Report on Misconduct of Inmates in Correctional Institutions" by the Ministry of Justice, 76,015 cases of disciplinary punishments were imposed during the five years between 2009 to 2013, among which the number of inmates in solitary confinement of more than ten days up to twenty days was 33,876 (44.56%) and solitary confinement of more than twenty days up to thirty days was 20,353 (26.77%), indicating that solitary confinement takes up the overwhelming majority of the imposed punishments. Solitary confinement is the heaviest form of punishment, confining the inmate in a punishment room and limiting his/her access to certain conditions of living.

Issue 12. Involuntary Hospitalization in Mental Health Facilities and Forced Sterilization of Women with Disabilities

12-1. (Involuntary Hospitalization in Psychiatric Institutions)

- According to the "2013 Mental Health Statistics Report" by the National Mental Health Commission, among the 80,462 patients detained in mental health facilities, 73.1% were involuntarily hospitalized by the person responsible for protection. On May 11, 2015, the NHRCK submitted its opinion to the Constitutional Court on the currently ongoing

adjudication of the constitutionality of forcible hospitalization by the person responsible for their protection, stating that “the regime under Articles 24(1) and 24(2) of the National Mental Act, which allows involuntary hospitalization of a mentally ill person up to six months only with the consent of two persons responsible for the person’s protection and one neuropsychiatrist’s diagnosis, is against the principle of due process under the Constitution and unnecessarily limits self-determination and personal liberty of the mentally ill, and is thus unconstitutional.”

12-2. (Protection of Maternity Right of Disabled Women)

- The Act on the Prohibition of Discrimination Against Disabled Persons, Remedy Against Infringement of Their Rights, Etc. stipulates that “no person shall forcibly impose on or deprive any disabled women of roles in relation to pregnancy, childbirth, nurturing and homemaking due to their disabilities.” In Korea, there is no practice of forced sterilization of women with disabilities.
- The “2008 Survey Report on Disabilities” by the Ministry of Health & Welfare shows that 48.7% of disabled women experienced a miscarriage and 9.9% experienced violation of their self-determination right during pregnancy and childbirth. The “2014 Survey Report on Disabilities” continued to show that the most required service for disabled women is “child care support” (16.1%), followed by “pregnancy and childbirth support for women and the disabled” (11.8%), and “housekeeping service” and “childbirth cost subsidy” (9.4% each).

Issue 13. Violence in the Military

13. (Violence in the Military)

- In April 2014, an army soldier died after suffering from continuous acts of personal insults and cruel treatment inflicted by his senior colleagues, escalating the issue of violence in the military as an important social issue.
- Upon this incident, the military authorities conducted a survey of all army units on soldier management for one month in April 2014, exposing over 3,900 cases of cruel acts, including physical and verbal abuse. The Ministry of National Defense revised the Military Human Rights Administrative Order in August 2014 to establish the Military Human Rights Council and expand the number of military human rights instructors from 250 to 2,000, and is planning to conduct assessments on the military human rights situation in 2015. In September 2014, the NHRCK also organized a “military human rights team” to monitor and prevent human rights violations in the military. In November 2014, the National Assembly organized the Ad-hoc Committee on Improvement of Human Rights and Progressing the Culture in the Military to discuss ways to improve the human rights situation in the military. The Ad-hoc Committee advised the Ministry of National Defense to establish a “system to improve the military culture tailored to different phases of military service” and, on July 30, 2015, tabled a revision of the National Human Rights Commission Act to introduce a military human rights ombudsman under the NHRCK endowed with the rights to request information and statements and conduct unannounced visits and investigations.
- In 2014, the “Survey on Sexual Violence in the Military” conducted by the New Politics Alliance for Democracy, the main opposition party in Korea, surveyed 100 female soldiers revealing that one out of five female soldiers have experienced sexual harassment, and 28% have witnessed incidents of sexual harassment. Among the sexual harassment victims, 83% replied they were not able to take any action in their defense. According to the Ministry of

National Defense, the number of sexual crimes against female soldiers surged from 22 cases in 2011 to 67 in 2014, out of which 94 cases were tried and only 8 cases, or 8.5% of such cases, were sentenced to actual punishment.

- In March 2015, the Ministry of National Defense decided to introduce comprehensive countermeasures to prevent sexual violence, applying an one-out system that discharges the offender from his/her position and imposing aggravated punishment if related personnel including one's colleagues or the commander were acknowledged of acquiescence or abetment in sexual crimes including harassment and violence.

6. Article 9 (The Right to Personal Liberty and Security), Article 10 (Treatments for Restrainers), Article 14 (The Right to a Fair Trial), Article 24 (Protection of Children)

Issue 14. Arrested or Detained Person's Entitlement to be Brought Before a Judge

14. (Arrested or Detained Person's Entitlement to be Brought Before a Judge)

- According to the Criminal Procedure Act article 214(2), an arrested criminal suspect may request the competent court to review the legality of the arrest and is assured the right to be immediately taken to the judge accordingly.
- In terms of emergency arrest³, it is stipulated that the criminal suspect shall be released immediately if a warrant of detention is not requested within 48 hours. According to the Korean National Police Agency, out of 25,716 emergency arrest cases from 2012 to 2014, release ratio to number of emergency arrests due to non-issuance of a detention warrant or failure to request for a detention warrant was 35.6% in 2012, 38.4% in 2013, and 37.9% in 2014.

Issue 15. Protection Order of the Immigration Control Act and Asylum-seeking Children

15-1. (Protection Order of the Immigration Control Act)

- Under the Immigration Control Act article 55⁴, which took effect on June 19, 2014, a foreigner protected in an immigration detention facility may raise an objection to the Minister of Justice on the detention. Controversies arose as the Habeas Corpus Act, which establishes the procedure of habeas corpus relief for individuals unduly deprived of their personal liberty by an illegal administrative disposition and etc., explicitly excludes any person who is interned in accordance with the Immigration Control Act in article 2(1)⁵

³ Emergency arrest refers to the arrest of a criminal suspect without an arrest warrant, where a probable reason exists to suspect that the suspect has committed a serious crime. For the suspect is to be detained, a warrant of detention shall be requested for within 48 hours from the time when the criminal suspect is arrested. When a warrant of detention is not requested or is not issued as prescribed, the criminal suspect shall be released immediately. (Criminal Procedure Act article 200(3), 200(4)).

⁴ Immigration Control Act, article 55 (Objection to Internment): (1) A person interned pursuant to an internment order, or his/her legal representative, etc., may raise an objection to the internment to the Minister of Justice via the Commissioner of the competent Regional Immigration Service. <Amended by Act No. 12421, Mar. 18, 2014> <Enforcement Date Jun. 19, 2014>; (2) The Minister of Justice, in receipt of an objection under paragraph (1), shall promptly examine the relevant documents, and if the application is deemed groundless, the Minister shall reject it by decision, and if it is deemed reasonable, the Minister shall issue a directive for the foreigner to be released from internment. (3) If required before making a decision under paragraph (2), the Minister of Justice may hear statements from interested persons.

⁵ Habeas Corpus Act, article 2 (Definitions): (1) The term "inmate" in this Act means any person held, protected or confined

from those to which the Habeas Corpus Act applies. On August 28, 2014, the Constitutional Court decided that this article is “constitutional, because procedures for obtaining infringed rights relief through administrative litigation seeking revocation of the protection order or suspension of the execution of the order are in place and there is a system which allows detained foreigners to submit objections to the Minister of Justice.”

15-2. (Detention of Refugee Children, Improvement in Detention System)

- According to the “2014 Visiting Research on Immigration Detention Facilities” by the NHRCK, from January 1, 2013 until April 30, 2014, 29 children under the age of 18 were detained at immigration detention facilities at the Hwaseong Center, nine were at the Cheongju Center, and three were at the Yeosu Center, and among these cases, a Vietnamese child (born in 2013) accompanied by parents had been detained for approximately three months from January 6 to March 28, 2014. When asked for further explanation on this case, the immigration authority replied that the child was admitted to the facility upon the detainment of both of the child’s parents due to a violation of the Immigration Control Act, as there were no other facilities or family members to entrust the child with.
- Against this backdrop, the NHRCK advised the Minister of Justice on November 25, 2014 to “strengthen the monitoring function on the protection of social groups vulnerable to human rights violations such as children, pregnant women, and patients, as well as to review the introduction of new types of detention facilities.” The Ministry of Justice revised the Immigration Control Act on December 30, 2014 correspondingly, inserting detailed stipulations on giving special protection to patients, pregnant women, the aged and invalids, and persons of less than 19 years of age by offering more consideration in terms of visits, room allocation, exercise, meal service, and medical treatment. The Ministry also said that continued efforts will be made to expand the number of special protection rooms and improve facilities, but that introducing various types of detention facilities such as Australia’s Immigration Residential Housing Centers or Alternative Places of Detention requires a long-term review due to limited budget and resources.

Issue 16. Right to Counsel for Suspects and Detained Foreigners before Trial

16-1. (Right to Counsel)

- Separate from the Constitutional provisions, article 243-2 was inserted in the Criminal Procedure Act in 2007, explicitly stipulating that “upon receiving an application from a criminal suspect or his/her defense counsel, a prosecutor or a senior judicial police officer shall allow the defense counsel to participate in the interrogation of the suspect, unless there is good cause.” The Supreme Court of Korea ruled that the “good cause” in this article refers to where the counsel’s participation clearly causes hindrance to the investigation such as disturbing the interrogation or revealing confidential materials pertaining to the investigation.
- According to the Administrative Rule of Prosecutorial Case article 9-2, the participation of a counsel may be restricted by a prosecutor if the participating counsel clearly hinders interrogations, such as unduly interfering with the interrogation without the prosecutor’s approval, conducting improper actions or words without the prosecutor’s consent,

against his/her free will in any medical facility, welfare facility, confinement facility or protective facility (hereinafter referred to as "confinement facility") managed by the State, a local government, a public corporation, an individual, a private organization, etc.; provided that this shall not include any person arrested and detained according to criminal procedures, any convict, nor **any person who is protected in accordance with the Immigration Control Act.**

answering the interrogation on behalf of the defendant or inducing changes to the statement already made or specific answers or testimony, and filming, recording, or documenting the interrogation.

- The NHRCK advised the Commissioner General of the Korean National Police Agency to revise the Criminal Investigation Rules (same as the above stated Administrative Rule of Prosecutorial Case) to ensure the right to communicate with a counsel, upon the decision that human rights had been violated during the lengthy interrogation process of seven hours where the police interdicted the defendant's four-time request for consultation and advice of a counsel on May 27, 2013. On October 27, 2014, a defense counsel, who was participating in the investigation of a defendant at the National Intelligence Service, was forcefully evicted from the investigation room by the investigator for raising objection to the investigation method and recommending the defendant to exercise the right to refuse to make statements. The incident was decided by the Supreme Court of Korea as a violation of the right to counsel (the right to participate in the defendant's investigation).

16-2. (Right of Foreigners to Communicate with a Defense Counsel at the Deportation Room at the Incheon International Airport)

- A foreigner who applied for refugee status but was decided as a non-referral to the refugee status determination procedure and was denied entry to Korea filed a constitutional complaint to the Constitutional Court of Korea with respect to the incident whereby the Head of Incheon Airport Immigration Office rejected the foreigner's request to communicate with a counsel. The application for the provisional disposition was granted, but the judgement on this issue is still pending. This deportation room has been operating as an open facility since October 2014.

Issue 17. Correctional Facilities and Immigration Detention Facilities

17-1. (Overcrowding in Correctional Facilities)

- According to a report announced by the Ministry of Justice in 2014, the average incarceration rate of national correctional institutions and detention centers stands at 111.4%.
- The NHRCK conducted in 2013 an ex officio investigation on 13 correctional facilities regarding the improvement of the overcrowding issue in the facilities, and consequently recommended comprehensive measures to relieve the overcrowding of metropolitan correctional facilities to the Minister of Justice on November 8, 2013.
- Regarding this issue, the Ministry of Justice replied that it has established and is operating a "plan to improve correctional facilities by forming a promotion team on the modernization of facilities' structure in the Ministry of Justice," and will carry on with solving the overcrowding issue, enhancing treatment of detainees awaiting judgement, expanding the standard size of space per detainee to meet the international standard, promoting the "change in admittance classification by types of inmates to solve the imbalance among facilities," moving locations of or expanding the decrepit facilities, constructing new facilities, and improving worker's environment. As the measures require budget and resources, the Ministry will be in cooperation with the Ministry of Security and Public Administration and the Ministry of Strategy and Finance so that the recommendation will be implemented in earnest.

17-2. (Medical Treatment at Correctional Facilities)

- Out of 5,222 complaints related to correctional facilities filed to the NHRCK from 2012 to 2014, 1,066 cases (20%) were on the issue of health and medical treatment, out of which 9 cases (0.0017%) were acknowledged as a human rights violation.
- On December 23, 2011 the NHRCK advised to dispatch full-time psychiatrists and psychiatric health nurses to improve medical treatment conditions for mentally-ill inmates in detention facilities and to provide related process guidelines. The NHRCK also advised the Head of Jeonju Correctional Institution and the Minister of Justice to provide recurrence prevention measures regarding a case in which an inmate died of a liver disease in 2013 at the Jeonju Correctional Institution to ensure human dignity and the right to pursue one's happiness by paying closer attention to medical treatment and understanding inmates' illness-related symptoms, although conceding that the facility is not accountable for the death as no correlation was recognized between the inmate's death and whether or not the liver function test was carried out.

7. Article 8 (Prohibition of Forced Labor)

Issue 18. Migrant Workers

18-1. (Migrant Agricultural Workers and Fishermen)

- The NHRCK conducted the "Survey Report for Human Rights of Migrant Workers in the Fishing Industry" in 2012 and found cases in which migrant fishermen in coastal fishing areas were subject to abusive language, violence, and wage discrimination, and consequently advised the Minister of Maritime Affairs and Fisheries on December 6, 2012 to provide various measures that include stipulating the prohibition of unreasonable discrimination in terms of labor contract, addressing wage discrimination, and executing regular inspection of human rights violations and the status of discrimination. Accordingly, the Government replied that it developed a "Plan to Improve Human Rights and Working Conditions of Foreign Seafarers" in 2012 and have been inspecting the working conditions of seafarers since 2013 (Replies to the list of issues 18-5).
- Moreover, the "2013 Survey Report for Human Rights of Migrant Workers in the Agricultural and Dairy Industries" by the NHRCK found that the migrant workers in agriculture and dairy industries are subject to excessive working hours, low wages and poor living conditions. Therefore, the Commission advised the Minister of Employment and Labor on December 5, 2013 to provide various measures including revision of acts and systems pertaining to working environments, change of business sites, living conditions, and occupational health and safety insurances to improve the human rights of migrant workers in the agriculture and dairy industries.

18-2. (Human Trafficking of Foreigners in Possession of Arts/Entertainment Visa)

- The "2014 Survey Report for Human Rights of Migrants in Possession of the Arts/Entertainment Visa" by the NHRCK applied the UNODC's Human Trafficking Indicators to review the status of migrant workers in the entertainment industry to find that, out of 36 indicators, 23 were relevant⁶. In the survey, 42.9% of the respondents were forced

⁶ UNODC Human Trafficking Indicators relevant to the findings of the NHRCK's Survey Report: • Be unable to leave their work environment; • Show signs that their movements are being controlled; • Feel that they cannot leave; • Show fear or anxiety; •

to converse with a customer, 18.3% to prostitution, 17.5% to lap dance, 15.9% to escort service, and 82 women, representing 68.0%, out of 120 were sexually assaulted. According to the “Status of Prostitution on Migrant Women and Research on Improvement Measures” released by the Ministry of Gender Equality and Family in 2012, 53% of the 51 respondents replied that they had been forced to provide sexual services.

- Management and supervision should be enforced on the Arts & Performances (E-6-2) visa system so that it will not be altered from the original intent into a means of prostitution through such activities as adult entertainment. Protective measures to ensure sojourn rights of trafficking victims are also needed.

18-3. (Labor of the Disabled at Salt Farms)

- In February 2014, the NHRCK conducted a basic investigation on the human rights status of disabled laborers at Sinan salt farms in Jeonnam. It turned out that most farm-owners have been bringing in laborers to work by paying job agencies (or unauthorized agencies, voluntary employment by visiting etc.) an introduction fee and down payment. The duration of employment is usually about 8 months, from March to September, which is the production period for sun-dried salts. Outside of this period, the laborers would engage in other types of work or move to their hometowns. Meals and board are provided and, depending on labor skills, the laborers were being paid in differential rates ranging from KRW 300,000 to KRW 1 million. The form of payment is usually giving cash directly to salt farm laborers. The reason the payments are not usually wired to bank accounts is that most of the salt laborers are without family and friends and are not registered on a family registry or do not have resident registration certificates.

8. Article 17 (Freedom of Residence, Privacy and Communication)

Issue 19. HIV Testing for Foreigners, Etc.

19-1. (Mandatory HIV Testing on Foreigners)

- HIV testing is not mandatory for all foreigners. Regarding the individual communication submitted to the Committee on the Elimination of Racial Discrimination in 2012 by a New Zealand national surnamed C, the Committee voiced an opinion on May 18, 2015 that the Korean government’s practice of exempting Korean nationals and ethnic Koreans from abroad from the HIV/AIDS and drug testing requirement while subjecting foreign instructors to mandatory testing falls under discrimination against race, and that the testing requirement is not justified by public health concerns or other reasons.

Suffer injuries that appear to be the result of an assault; • Suffer injuries or impairments typical of certain jobs or control measures; • Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else; • Have false identity or travel documents; • Be unfamiliar with the local language; • Be forced to work under certain conditions; • Be unable to negotiate working conditions; • Receive little or no payment; • Have no access to their earnings; • Work excessively long hours over long periods; • Not have any days off; • Live in poor or substandard accommodations; • Have no access to medical care; • Have limited or no social interaction; • Have limited contact with their families or with people outside of their immediate environment; • Be unable to communicate freely with others; • Be in a situation of dependence; • Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination; • Have acted on the basis of false promises.

19-2. (Mandatory HIV Testing on Prisoners)

- Article 3(5)⁷ of the Prisoner Medical Management Rules, an established rule of the Ministry of Justice, stipulates that all newly confined inmates shall be subject to syphilis and HIV/AIDS testing. The Ministry of Justice submitted to the National Assembly the revision of the Administration and Treatment of Correctional Institution Inmates Act which imposes mandatory health examinations on new inmates, and article 16 paragraph 3 of the Act was added on March 27, 2015⁸.

19-3. (Mandatory HIV Testing on Soldiers)

- As of February 16, 2009, the Military Manpower Administration is conducting HIV testing on all candidates of physical examinations for conscription across the country. According to the Military Service Act and the Physical Examination Rule for Conscription prescribed by ordinance of the Ministry of National Defense, a person who receives a definite HIV-positive diagnosis shall be exempt from military service.
- On December 31, 2008, the Ministry of Defense revised the rule of HIV testing during physical examinations for conscription stipulated in the Order for Military AIDS Prevention⁹, an ordinance of the Ministry of Defense, from “execute upon individual consent” to “mandatory execution.”

Issue 20. Communication Surveillance and Base Station Investigation, Etc.

20-1. (Base Station Investigations and the Provision of Communications Confirmation Data)

- Base station investigations are “investigation methods that are provided with all phone numbers transmitted from a particular base station at a particular time” and “investigation methods that proceeds with investigations by tracking phone numbers transmitted from the base station in the area where the case occurred in such instances as serial crimes of which the investigative agencies cannot specify suspects or when clues for the same case are found in various locations with time differences” and, under article 13¹⁰ of the Protection of

⁷ Prisoner Medical Management Rules Article 3 (medical examinations for newly confined persons):

(5) Immediate syphilis and HIV/AIDS testing on newly confined persons shall be requested to professional examination institutions or public health centers within the jurisdiction.

⁸ Administration and Treatment of Correctional Institution Inmates Act Article 16 (Confinement, etc. of Newly Confined Persons):

(1) Any person newly confined in a correctional institution from the court, prosecutors' office, police agency, etc. (hereinafter referred to as "newly confined person") shall be confined after a written direction for execution, court records, and other necessary documents for confinement are examined.

(2) Any warden shall conduct medical examinations for newly confined persons without delay.

(3) Newly confined persons shall undertake the medical examinations conducted by the warden according to paragraph 2. <Newly added on March 27, 2015>

⁹ Current Order for Prevention of Infectious Disease in the Military (ordinance no. 1581 of the Ministry of Defense) Article 8 (Testing, Etc. on AIDS):

(1) Testing on AIDS shall be performed when executing physical examinations for conscription to military service candidates.

¹⁰ Protection of Communications Secrets Act Article 13 (Procedures for Provision of Communication Confirmation Data for Criminal Investigation):

(1) Any prosecutor or any judicial police officer may, when he/she deems it necessary to conduct any investigation or to execute any punishment, ask any operator of the telecommunications business under the Telecommunications Business Act (hereinafter

Communications Secrets Act, prosecutors or judicial police officers must request and obtain authorization from court.

- On December 26, 2011, the prosecution conducted investigations on base stations around Seoul Center of Education and Culture (where the primary for electing the representative of the Democratic United Party took place), for approximately 10 minutes at 5 p.m., and it became known that they had, during the process, screened personal data and call records of a total of 650 people. It was revealed that even the mobile phone call records of a reporter were screened, which led to the reporter's filing of a constitutional complaint to the Constitutional Court of Korea in June 2012 whereby the reporter claimed that the prosecution's investigation on the base stations infringed upon his rights to privacy and communications secrets.
- On February 10, 2014, the NHRCK recommended to the Minister of Science, ICT and Future Planning that the request for communications confirmation data from prosecutors or judicial police officers should be limited to cases in which "there are circumstances where there is a reason to suspect that the perpetrator committed the crime and it is acknowledged that the circumstance is related to the case" as well as limiting the request for "real-time location information" targeted to investigate crimes only in instances that need additional supplementation. However, the Ministry of Science, ICT and Future Planning conveyed to the Commission the opinion of investigative agencies that communications confirmation data poses relatively weaker concerns in terms of infringement of one's rights than confiscation and that the current system needs to be maintained to secure the actual effectiveness of communications investigations.

20-2. (Provision of Communications Data by Telecommunications Business Operators)

- According to the rule stipulated in article 83(3)¹¹ of the Telecommunications Business Act, communications data is defined as user information of subscribers to the respective service

referred to as the "operator of telecommunications business") for the perusal or the provision of the communication confirmation data (hereinafter referred to as the "provision of the communication confirmation data").

(2) Any prosecutor or any judicial police officer shall, when he/she asks for the provision of the communication confirmation data under paragraph (1), obtain permission therefor from the competent district court (including any ordinary military court; hereinafter the same shall apply) or branch court with a document in which the reason for such asking, the relation with the relevant subscriber, and the scope of necessary data are entered; provided that if urgent grounds exist that make it impossible to obtain permission from the competent district court or branch court, he/she shall obtain permission immediately after asking for the provision of the communication confirmation data and then shall send it to an operator of the telecommunications business.

¹¹ Article 83 (Protection of Confidentiality of Communications)

(3) A telecommunications business operator may comply with a request for the perusal or provision of any of the following data (hereinafter referred to as "provision of communications data") from a court, a prosecutor, the head of an investigative agency (including the head of a military investigative agency, the Commissioner of the National Tax Service and the Commissioner of a Regional Tax Office; hereinafter the same shall apply) or the head of an intelligence and investigation agency, who intends to collect information or intelligence in order to prevent any threat to a trial, an investigation (including the investigation of a violation committed by means of a telephone, the Internet, etc. among the offenses prescribed in Article 10 (1), (3) and (4) of the Punishment of Tax Evaders Act), the execution of a sentence or the guarantee of the national security:

1. Names of users;
2. Resident registration numbers of users;
3. Addresses of users;
4. Phone numbers of users;
5. User identification word (referring to the identification codes of users used to identify the rightful users of computer systems or communications networks);
6. Dates on which users subscribe to or terminate their subscriptions.

and business operators had previously been providing communications data to investigative agencies upon request. Regarding “the case in which subscribers (plaintiffs) filed for a damage suit on grounds that the telecommunications business operators (defendant, internet portal sites) had provided information of the subscribers to the investigative agencies upon request”, the Seoul High Court acknowledged on October 18, 2012 the defendant’s liability for damages to the plaintiff on grounds that “upon request of personal information from the investigative institutions, telecommunications business operators have the duty to evaluate whether to provide personal information as well as the scope of the information, and also to prepare provision criteria in relation thereto.” Even after the ruling, certain mobile communication providers are still complying with the requests of investigative agencies, and the case above is currently pending in the Supreme Court of Korea.

- On February 10, 2014, the NHRCK recommended to the Minister of Science, ICT and Future Planning that article 83(3) of the Telecommunications Business Act be deleted and to newly establish the definition of “subscribers’ information” in the Protection of Communications Secrets Act, while limiting the communications data requirement of the prosecutor or judicial police to “circumstances in which there is a reason to suspect that the perpetrator committed the crime and it is acknowledged to be related to the respective case.” However, the Ministry replied to the NHRCK by conveying the opinion of investigative agencies etc. that such measures have the concern of allowing the opportunity to delay criminal investigation, destroy evidence or escape, and that foreign examples of not requiring a warrant on requests for communications data should be considered.

20-3. (Obligation to Preserve Communication Confirmation Data)

- Under article 41¹² of the Enforcement Decree of the Protection of Communications Secrets Act, a telecommunications business operator should preserve communication confirmation data for 3, 6 or 12 months, depending on the type of the data.

9. Article 18(Freedom of Religion), Article 19(Freedom of Expression), Article 21(Freedom of Peaceful Assembly), Article 22(Freedom of Association)

Issue 21. Conscientious Objection to Military Service, Alternative Civilian Service and Disclosure of Personal Information of Military Service Evader

21-1. (Conscientious Objection to Military Service and Adoption of Alternative Civilian Service)

- According to the “Analytical Report on Conscientious Objection to Military Service” published by the UNHRC in 2013, among the 723 conscientious objectors imprisoned

¹² Article 41 of the Enforcement Decree of the Protection of Communications Secrets Act (Telecommunications Business Operators’ Duty to Provide Cooperation, etc.):

(1) Where the imminent risk of the life or health of an individual, such as murder or robbery with hostages, exists, any telecommunications business operator shall provide cooperation so that a request for measures restricting communications or for providing date for confirmation of the fact of communications is complied with without delay pursuant to Article 15-2 of the Act.

(2) The period for preservation of data of confirmation of the fact of communications of a telecommunications business operator under Article 15-2(2) of the Act shall be at least the period in the following classification.

1. Data for confirmation of the fact of communications under subparagraph 11 (a) through (d) and (f) of Article 2 of the Act: 12 months: Provided, That in cases of data related to long-distance call and local call services, the period shall be six months:

2. Data for confirmation of the fact of communications under subparagraph 11 (e) and (g) of Article 2 of the Act: three months.

worldwide in 2012, 669 (92.5%) were Koreans. As of June 13, 2013, 6,090 people had refused military service for religious reasons or personal belief during the last decade. Among them, 5,695 (93.5%) objectors were convicted.

- The NHRCK continues to recommend for recognition of the right to conscientious objection and adoption of alternative civilian service¹³ and strives to change social perception by, for example, producing and showing a movie titled “Ice River” on a conscientious objector for religious reasons in 2013. However, there are no signs from the Government to adopt the alternative military service.
- The Constitutional Court, in 2004 and 2011, ruled that provisions of the Military Service Act are constitutional, and the Supreme Court, on 27 August, 2015, confirmed the original verdict which declared a conscientious objector guilty and stated that conscientious objection does not fall under the category of “reasonable grounds” prescribed as an exception from punishment under the Military Service Act.
- At present, an amendment draft to the Military Service Act is proposed to the National Assembly, and 631 imprisoned conscientious objectors had submitted an individual communication to the UN Working Group on Arbitrary Detention from July to August 2015.
- The Ministry of National Defense and Military Manpower Administration, when introducing the social service system in 2007, established a policy to allow conscientious objectors for reason of religion to be subject to the system. However, in 2008, they withdrew the policy for lack of a public consensus, and no related policy has yet been proposed.

21-2. (Disclosure of Personal Information of Military Service Evader)

- Article 81(2) of the Military Service Act which was newly created with the amendment on December 30, 2014, prescribes to disclose personal information of military service evaders, and the provision went into effect on July 1, 2015. Under article 165(2) of the Enforcement Decree of the Military Service Act, the director of each military manpower office, at the time of notifying tentative persons to disclose personal information, should urge them to comply with the duty and allow them to present material for vindication in case of failing to fulfill the military duty due to unavoidable reasons. Under the Act, the evader’s name, age, address, and date and purport of evasion and violated clauses of the Military Service Act may be disclosed on the website of the Military Manpower Administration or bulletin boards of each regional military manpower office including military manpower branch offices. The article went into effect on July 1, 2015, which gave rise to concerns for a possible human rights infringement.

¹³ The NHRCK, in 2005, advised the Minister of National Defense to acknowledge the right to conscientious objection to military service and to introduce alternative military service. In July, 2007, the NHRCK once again expressed its opinion to the Minister of National Defense to urge the establishment of a detailed implementation plan to acknowledge the right to conscientious objection. Moreover, it recommended for the establishment of measures to introduce alternative military service and to address subsequent side effects in the recommendation for the First and Second Phase of the NAP in 2006 and 2012, respectively.

Issue 22. Religious Discrimination at Religiously Affiliated Schools

22. (Religious Discrimination at Religiously Affiliated Schools)

- In 2010, a high school in Anyang, Gyeonggi province made the entire students go to a nearby church once a week, practically carrying out a religious class, and organized a class on Christianity for freshmen, leading to resistance from some parents and students. Another high school in Seoul operated a religious class including chapel without providing an alternative class, causing an issue as a student of the school reported it to the Human Rights Education Center of the Seoul Metropolitan City in July 2012.
- The Government answered in paragraph 22 of its Replies to the list of issues that it continues to make endeavors to protect the students' freedom of religion, as seen from the General Chapter of Curriculum of Elementary and Secondary Schools which requires schools to provide an alternative class when they open a religious class. It is hoped that such change would put an end to forced religious classes in schools.

Issue 23. Freedom of Expression Online

23. (Punishment on Defamation)

- Some of the criticisms on the government policy or public affairs have been subjected to a criminal accusation and a claim for damages for reasons of defamation for containing incorrect information. In April 2008, the then Minister of Food, Agriculture, Forestry and Fisheries and others requested the prosecution to initiate an investigation into the staff of "MBC PD Note" claiming defamation through dissemination of false information, as the show broadcasted a program relating to the danger of the mad cow disease from imported beef from the US. The prosecution indicted the accused in June 2009 but, on September 2, 2011, the Supreme Court ruled that they were not guilty. Meanwhile, three investigators of the National Intelligence Service ("NIS") filed a lawsuit against the producer of "Newstapa" for defamation as their show, aired in November 2013, argued that the investigators of the NIS extracted false confession by means of cruel treatment regarding the case of alleged spying of a Seoul city official. On the same case, a NIS official filed a suit for damage compensation, which was dismissed by the Seoul Central District Court in September 2014, where the court held that the producer was not liable for damages as the display of a group name "NIS investigators" in the broadcasting could not be deemed to have specifically referred to the plaintiff. The case is still pending at the High Court.
- In July 2015, the Korea Communications Standards Commission has pushed ahead with the amendment to the Regulation on Communications Standards under which, in relation to defamation online, a report by a third party alone (*i.e.* without requiring the report of the interested person) could initiate the Commission's deliberation to delete or block online posting. The draft amendment has led to a concern that public criticisms could be quickly deleted or blocked.

Issue 24. National Security Act and Decision to Dissolve the Unified Progressive Party

24-1. (National Security Act)

- The NHRCK, in 2004, recommended to the Speaker of the National Assembly and the Minister of Justice to abolish the National Security Act for the reason that the Act is highly likely to undermine the value and dignity of human beings including freedom of thought, conscious, and expression, and, in relation to the Second Phase of the NAP, recommended

to the Minister of Justice to establish certain measures including modification of Article 7 of the Act to prevent misapplication of the Act and possible human rights infringement. However, no movement from the Government has yet been made.

24-2. (Decision on Dissolution of the UPP)

- On December 19, 2014, the Constitutional Court ordered the dissolution of the Unified Progressive Party (“**UPP**”) in an unprecedented petition in the Korean constitutional history to dissolve a political party. With eight ayes and one nay, the order to dissolve the unconstitutional political party was issued, and, at the same time, five seats of the incumbent lawmakers were deprived of. Following up on the decision, the National Election Commission confirmed resignation of the proportional representative local council members of the UPP. The Constitutional Court concluded that the UPP’s real objectives and the activities based thereon are considered to be in violation of the basic democratic order, while the Court did acknowledge that judgment on the dissolution of a political party is a product of a normative will of the legislators of the Constitution to specifically guarantee the existence and activities of an opposition party.
- 387 members of the UPP applied for a retrial on the decision of the dissolution in February 2015 to the Constitutional Court, but the process for the retrial has not initiated yet as of August 2015. The Constitutional Court stated that "there is no legal ground for the request for a retrial" since the current law does not have provisions on retrial of a decision made on the dissolution of a political party.
- On September 10, 2015, the Seoul Administrative Court rejected the revocation litigation on the resignation due to the loss of seats filed against the National Election Commission by the six former proportional representative local council members of the UPP for the reason that the notification of resignation, which is a notification of rightful resignation and not a law enforcement on concrete fact, is not subject to administrative litigation and is a mere internal decision-making, and the revocation litigation should be filed against the competent election commission as the notification for resignation was conveyed under the name of each level of election commission.

Issue 25. Allegation of Surveillance on Journalists, Etc.

25. (Allegation of Harassment and Surveillance on Journalists, Etc.)

- In 2012, journalists went on a large-scale strike for a long period of time, asking for "fair broadcasting," "resignation of high-level handed personnel" and "reinstatement of unfairly laid-off workers".
- Journalists of the Munhwa Broadcasting Corporation (“**MBC**”) went on a strike from January 30, 2012 to July 17, 2012, asking for resignation of the then president of MBC, and, around the same time, journalists from the Korea Broadcasting System (“**KBS**”) and Yonhap Television News (“**YTN**”) also started a strike, asking for resignation of the presidents of the KBS and the YTN, respectively.
- KBS journalists called off the strike upon agreement to reinstate an investigative reporting team and establish a consultation body including a Watchdog Committee on Fairness of Broadcasting. Journalists of the MBC returned to their work on a condition that the president of the MBC be dismissed. However, the president was not fired but, instead, disciplinary

measures were taken against the reporters who had joined the strike¹⁴.

Issue 26. Freedom of Assembly

26-1. (Report on Assembly)

- Notification of a ban of assembly under the Assembly and Demonstration Act is an administrative measure that prohibits an assembly in advance to prevent possible danger from the assembly. Article 6(1) of the Act and article 2 of the Enforcement Decree prescribe that nearly 20 details should be reported. When such details are omitted, the head of competent police authority may give notice to require supplementation of the required details or to ban the assembly.
- The police delivered a notification to ban the Queer Parade which was part of the Queer Culture Festival in Seoul and Daegu in May 2015, citing traffic inconvenience, including potential confrontation due to demonstration or protest from the opposition, as the reason. The Seoul Administrative Court ordered suspension of the effectiveness of that notification in June 2015.

26-2. (Excessive Use of Public Authority on Candlelight Protests and Demonstration on the Sewol Ferry Accident, Etc.)

- The NHRCK conducted an investigation on complaints received and an ex-officio investigation on events that took place during a candlelight vigil from early May to late August 2008. Then, the NHRCK advised the Minister of Public Administration and Security to give a warning to the Chief of the National Police Agency for command responsibility as it was acknowledged that some excessive crackdown by the police caused injury on the protesters and infringed upon their human rights. It also advised the Chief of the National Police Agency about strictly conforming to the defense-oriented guarding principle, establishing legal provisions on detailed standards on the use of a water wagon and devising measures to prevent the riot police from throwing objects.
- In regards to the death of five displaced residents and one police officer from the Seoul Metropolitan Police Agency on January 20, 2009 during the sit-down of the evicted residents in a watchtower at the rooftop of Namildang building in Yongsan, Seoul, the prosecution dropped the case against police officers despite the criticism on the excessive crackdown by the police. Then, the evicted residents filed an application for adjudication to the Seoul High Court to cancel the decision to drop the case. Regarding this case, the NHRCK submitted its opinion to the Seoul High Court in February 2010 that the police excessively exercised their power which went against the principle of proportionality, not fulfilling its duty of care. However, the Seoul High Court dismissed the case, stating that detailed measures for crackdowns are at the discretion of the police and failing to take perfect measures does not mean failing to fulfill their duties. The Court added that protesters died of fire, and it cannot account the crackdown by the police for the death without taking into consideration of the cause of the death.
- In regards to the crackdown by the police using a water cannon with tear gas during the memorial rally for victims of the Sewol Ferry Accident on May 1, 2015, the Council of Families of Victims to Find Truth of the April 16 Sewol Tragedy and Establish A Safe Society filed a constitutional complaint to the Constitutions Court on May 6, 2015, arguing that the

¹⁴ MBC fired all the six writers of "PD Note," a notable investigative reporting team, and stated that "the fired writers unilaterally supported and joined the strike of the Union."

use of water cannons with tear gas is unconstitutional.

26-3. (Restriction on Freedom of Assembly by Car Blockades)

- Restriction of passage by car blockades by the Chief of the National Police Agency is an immediate administrative compulsion, which constitutes an act of fact that is in the nature of the Government's power.
- The Constitutional Court ruled that bus blockades ordered by the Chief of the National Police Agency to restrict passage by surrounding the Seoul Plaza in June 2009 infringed upon the complainants' right to freedom of act as the complete restriction of passage of all citizens could not be regarded as fulfilling the principle of proportionality because even when there was a need to take comprehensive and broad measures to prevent a demonstration, the police should have considered measures through which it could achieve its goal to some extent while not excessively restricting passage or leisure and cultural activities of the public by creating paths to allow passage under control or lifting restriction during hours with less possibility of large-scale illegal or violent demonstration or during crowded hours including rush hours.
- On August 19, 2015, the Seoul Central District Court ruled on the special obstruction of public duty, concluding that the bus blockade by the police was lawful since there was no other measure to prevent damages in property, life and body which could be incurred due to the confrontation between the police who were trying to block access of demonstrators to a place within 100 meters from the Blue House and approximately 6,000 protesters and bereaved families who were trying to move toward the Blue House, absconding from the reported demonstration site.

Issue 27. Freedom of Association of Public Officials and Acknowledgement of Migrant Workers' Trade Union

27-1. (Freedom of Association of Public Officials)

- The Act on Establishment and Operation of Public Officials' Union guarantees the right to organize of public officials of Grade six or lower and the right to collective bargaining and collective agreement. However, the Act also stipulates that contents of collective agreement regulated by legislation, ordinance or budget and contents regulated by delegation of legislation or ordinance do not have the effect of a collective agreement. In addition, the Act prohibits the public officials' union and its members from conducting a strike, slow-down, or any act of disputes that interferes with the normal discharge of their duties. The Constitutional Court ruled on December 26, 2008 that the Act which limits the right to organize of public officials of Grade five or higher and Grade six or lower in positions to monitor and control others does not violate the Constitution.
- The Ministry of Employment and Labor returned the filing of the establishment of the Korean Government Employee's Union ("KGEU") for four times on December 24, 2009, March 3, 2010, April 9, 2012, and August 2, 2013, respectively, on the ground that "dismissed workers are eligible to be members of the Union."
- The ILO has continued to make recommendations to accept the application for the establishment of the KGEU and guarantee unlimited right to organize for public officials of Grade five or lower (ILO Governing body CFA Report No. 304, 306, 307, 309, 311, 327, 331, 335, 340, 346, 353, 363, 371) since June 1996 and, in August 2013, carried out an emergency intervention (ILO TUR 1-145/1-145-3); however, the KGEU still remains illegal.

27-2. (Notification on "Not a Trade Union" to the Korea Teachers and Educational Workers' Union)

- On September 23, 2013, the Government stated that it would notify the Korea Teachers and Educational Workers' Union that it is "not a trade union" unless it excludes nine laid-off workers from union activities and amends article 5 of the supplementary provisions of the Regulation of the Korea Teachers and Educational Workers' Union within 30 days which acknowledges laid-off workers as members of the union, and on October 24, 2013, the Government notified the union that it was not a trade union because it had failed to exclude laid-off workers from union activities and to implement the order to correct its regulation. Accordingly, the union initiated a lawsuit for revocation on the notification of outlawing the union and for suspension of the notification's effectiveness.
- The litigation was dismissed at the first instance trial, but the Seoul High Court, the court of appeals, on September 19, 2014, requested the Constitutional Court to adjudicate on the constitutionality of article 2 of the Teachers Union Act, stating that there was considerable doubt on the constitutionality of the article and suspending the effectiveness of the notification of outlawing the union, acknowledging an urgent need to prevent possible irrevocable damage to the union. However, on May 28, 2015, the Constitutional Court ruled that the article constitutional. Further, on June 2, 2015, the Supreme Court reversed and remanded the decision of the Seoul High Court, concluding that the Seoul High Court misunderstood the legal principle of suspension of execution prescribed under article 23 of the Administrative Litigation Act. Accordingly, the union is currently not recognized as a trade union under the law.
- The NHRCK recommended the Ministry of Labor and Employment in September 2010 to delete item (d) of article 2(4) of the Trade Union and Labor Relations Adjustment Act which denies the dismissed persons union membership eligibility, but the Ministry did not accept the recommendation. The NHRCK announced a statement on October 22, 2013, calling for withdrawal of the "not a trade union" notification issued to the union by the Ministry.

27-3. (Establishment of Trade Union of Migrant Workers)

- Migrant workers residing in Seoul, Gyeonggi, and Incheon established a Seoul-Gyeonggi-Incheon Migrants' Trade Union ("MTU") on April 24, 2005 and submitted a report on the establishment of a trade union to the head of the Seoul Regional Labor Administration. However, the report was not accepted on the ground that the trade union allowed illegal migrant workers to join the union; thus, the MTU filed litigation for revocation of the non-acceptance in June 2005. The Supreme Court confirmed on June 26, 2015 that migrant workers, regardless of their status of stay, have a right to establish and join a trade union. Under the decision, the Court concluded that aliens not qualified to be employed under the Immigration Control Act could be regarded as a worker who is allowed to establish and join a trade union.
- After the ruling by the Supreme Court, the MTU submitted to the Seoul Regional Labor Administration the list of union officers and regulation of the union. However, the Ministry of Employment and Labor ordered supplementation on July 7, 2015 because the purpose of the union's activities and their business scope were mostly of political nature (*e.g.* "legalizing migrant workers' status," "objection to the employment permit system," and "abolition of training system.") On August 17, 2015, the MTU submitted a supplemented report which replaced the aforementioned phrases with "improvement of the socio-economic status of migrant workers" and "abolition of all types of discrimination." On August 20, 2015, the Ministry issued to the MTC a certificate of acceptance of the report on the establishment of a

trade union.

10. Article 24 (Rights of Children)

Issue 28. Universal Birth Registration System, Etc.

28. (Universal Birth Registration System)

- In Korea, the birth of a child born within wedlock should be reported by either parent. The birth of a child born out of wedlock should be filed by the mother, and in cases where the parents are unable to file such report, relatives living together or the doctor, midwife or any other persons involved in the delivery of the child should file the report (in such order).
- While the birth of unregistered children living in child welfare facilities may be reported by relatives living together or the doctor involved in the delivery, there are cases where they delay or refuse to do so. In addition, the birth of migrant children is difficult to be registered because of the status of sojourn of their parents, and, as a result, abandonment of children or infant death cannot be properly monitored. Out of concerns on such issues which the birth reporting system entails, the UN Committee on the Rights of Children, and the UN Committee on the Elimination of Racial Discrimination and UPR of the Human Rights Council recommended to introduce a universal birth registration system for all children born in Korea in 2011 and 2012, respectively.
- Introduction of the universal birth registration system could be burdensome to unwed parents when their personal information is recorded against their will, and, hence, their privacy also needs be protected. On this matter, in October 2013, the NHRCK recommended to the Minister of Justice and the Chief Justice of the Supreme Court to amend relevant law to put in place provisions on lifting restrictions on the information relating to the biological parents or adoption history recorded on the family relation register and provisions on permitting access to restricted records or receiving a certificate in relation thereto as necessary after obtaining permission from the court. However, the Government has not yet prepared any relevant policy.
- The Government proposed the Partial Amendment to the Act on the Registration, Etc. of Family Relationship to the National Assembly in June 2015, which allows prosecutors or heads of local governments to file a birth report when the welfare of the child is in danger because those who are responsible for the filing of the birth report neglect their duty. Such amendment would enhance the right of unregistered children to some extent; however, as the system still depends on the concept of "filing," it seems hardly proper measures in line with the recommendation from the human rights treaty bodies that encourage the adoption of the universal birth registration system.