

**CONCERNS AND RECOMMENDATIONS
ON THE REPUBLIC OF KOREA**

NGO Submission

To The UN Committee

on the Elimination of Discrimination against Women

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Coordinating Organization: Korea Women's Associations United (KWAU)

Korean Network of Gender Budgeting, KPTU - Korean Railway Workers' Union - KTX Train Crew Branch, Korea Women's Political Solidarity, Korea Women Workers Association, Korea Women's Associations United, Korea Women's Hot Line, Korean Hanbumo Association, Korean Womenlink, MINBYUN-Lawyers for a Democratic Society, National Solidarity against Sexual Exploitation of Women, Rainbow Action Against Sexual-Minority Discrimination, Women's Human Rights Defenders, Women Migrants Human Rights Center

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Introduction

The Korea Women's Associations United (KWAU)¹ and 12 women's rights NGOs submit this report to the UN Committee on the Elimination of Discrimination against Women for its review on the Republic of Korea (ROK) at the 69th Session from 19 February to 9 March 2018. The Report is based on the List of Issues adopted by the Committee at the 69th Pre-session from 24 – 29 July 2017 (CEDAW/C/KOR/Q/8) and the Replies of the ROK to the List of Issues (Replies to the LOIs) submitted to the Committee (CEDAW/C/KOR/Q/8/Add.1).

General (List of Issues 1)

NGO participation in the preparation of the periodic report and the establishment of gender equality policies

1. The government stated that it has collected and reflected the opinions of major NGOs in preparing its 8th periodic report (Replies to the LOIs, para. 1) but this process was a mere formality. Moreover, there is no official procedure to report on the implementation of recommendations from UN human rights conventions to the National Assembly. Gender-equality policies under the past two administrations (February 2008 – March 2017) were conservative policies which disregarded the unequal gender power dynamics as well as excluded the diverse sexual orientations and gender identities of LGBTI persons. Furthermore, there was literally no consultation with progressive women's organizations representing a diverse range of women's voice during the policy establishment and implementation. However, the change in administration in May 2017 is a positive sign for the gradual improvement of such governance.

✓ With regards to the establishment and implementation of gender equality policies, the government should reflect the voices of the most marginalized and vulnerable groups of women and girls as well as guarantee the meaningful participation of women's organizations advocating for their rights. It also should implement a legal and institutional framework to broaden the activities and financial support for such women's organizations.

¹ The Korea Women's Associations United (KWAU) is an umbrella organization of 7 chapters and 28 member organizations that work on gender equality, democracy, and peace by facilitating solidarity and collective actions among women's groups in the ROK.

Legal Status of the Convention and Legislative and Institutional Framework

(Article 2, 3 of the Convention, List of Issues 2, 3)

Withdrawal of reservation to Article 16.1(g) of the Convention

2. Accordingly with the Replies to the LOIs, current Civil Act (Article 781 para. 1) stipulates a child shall succeed his or her father's surname and origin of surname, provided that when the parents agree to have the child assume his or her mother's surname and origin of surname (hereafter referred to as 'origin') at the time of filing a report on their marriage, he or she shall succeed the mother's surname and origin of surname. In a family borne by marriage, however, child rarely succeeds his or her mother's surname. It is attributable to an institutional restriction that urges to reach an agreement on succession of mother's surname and origin at the time of filing a report on one's marriage, to a gender-discriminatory provision which mandates the succession of father's surname when there is no agreement, and to a pervasive patriarchal culture.

3. Current Civil Act (Article 781 para. 6) stipulates that the surname and origin of child can be altered with a necessity to do so for the welfare of the child. However, Family Litigation Act (Article 59.2 para. 2) stipulates that there shall be a hearing of biological father (upon death of biological father, direct ancestor from father's side with the same surname and origin of surname) to alter the surname and origin of child. Accordingly, there is a margin that elements other than 'welfare of the child' may intervene in receiving court's permission to alter surname and origin. There actually are many cases where the alteration of surname and origin was overruled due to opposition from a biological father. Considering the introduction of patrilineal surname principle in Civil Act and the placement of provision in Family Litigation Act that factor into the Korean context of putting emphasis on blood ties, there clearly is an intent of government to maintain or consider the patrilineal principle. It, however, should be removed as it violates the gender equality in familial life stipulated in the Constitution of ROK.

- ✓ Withdraw a reservation to the Article 16.1(g) of the Convention before the submission of follow-up State report. Accordingly, revise the gender discriminatory Article 781 para. 1 of Civil Act which addresses the issue regarding surname and origin of child.

- ✓ Immediately remove provision (Article 59-2 para. 2 of the Supreme Court's Family Litigation Act) which mandates the hearing of biological father (upon death of biological father, direct ancestor on father's side with the same surname and origin) for alteration of child's surname and origin.

Enactment of a comprehensive anti-discrimination law

4. Almost all UN human rights treaty bodies and mechanisms, including the Committee (2011)², Committee on Economic, Social, and Cultural Rights (2009³, 2017), Committee on the Rights of the Child (2011)⁴, Human Rights Committee (2015)⁵, and Universal Periodic Review (2012⁶, 2017⁷) have recommended that the government enact a comprehensive anti-discrimination law for the full enjoyment of rights prescribed in the abovementioned conventions and covenants without discrimination. With regards to the inquiries of the Committee, however, the government replied (Replies to LOIs, para. 3). “Currently, there are ongoing social controversies surrounding various issues related to the anti-discrimination law, including sexual orientation and gender identity (SOGI) and other causes of discrimination.” Yet, it was the government itself which caused a controversy by excluding categories such as sexual orientation from the Anti-Discrimination Bill of 2007⁸. It is the government which has stigmatized the very groups whom this law seeks to protect as the cause of controversy. This goes directly against the stance of General Comment No.28 and the recommendations from the Committee in its previous Concluding Observations (para. 15). In addition, the government neither disclosed details of its research on the legislation nor conducted any public campaign. Meanwhile, the enactment of the law continues to be delayed. Furthermore, there has been no attempt to build a cooperative relationship with civil societies for the enactment of the law.

✓ The government should follow up the recommendation (para. 15) from the Committee’s previous Concluding Observation that urges the immediate enactment of a comprehensive anti-discrimination law applicable to gender-based hate speech, discrimination on grounds of SOGI, online-based or digital sexual violence and harassment, and also extensively in private sector. Then, the outcome of its implementation should be presented to the Committee in the next periodic report.

National Machinery for the Advancement of Women (Article 3 of the Convention, List of Issues 4, 5, 6)

The Framework Act on Gender Equality and gender equality policy

5. The government stated in its periodic report that the revision of the 1995 Framework Act on Women’s Development into the Framework Act on Gender Equality (FAGE)⁹ in 2014 shifted the policy paradigm from that of women’s development to practical actualization of gender equality

² CEDAW, Concluding observations, 1 Aug. 2011, CEDAW/C/KOR/CO/7, at para. 15.

³ CESCR, Concluding observations, 17 Dec.2009, E/C.12/KOR/CO/3, at para.9.

⁴ CRC, Concluding observations, 2 Feb. 2012, CRC/C/KOR/CO/3-4, at para.29.

⁵ UN HRC, Concluding observations, 3 Dec.2015, CCPR/C/KOR/CO/4, at para. 12-13.

⁶ UN HRC, Report of the Working Group on the Universal Periodic Review (UPR): Republic of Korea, 12 Dec. 2012, A/HRC/22/10, at para. 124.24, 124.33.

⁷ UN HRC, Report of the Working Group on the UPR: Republic of Korea, TBD, A/HRC/37/11

⁸ Human Rights Watch, ‘South Korea: Anti-Discrimination Bill Excludes Many’, 6 Nov. 2007.

<https://www.hrw.org/news/2007/11/06/south-korea-anti-discrimination-bill-excludes-many>.

⁹ Please note that ‘gender equality’ from the Framework Act on Gender Equality refers to the equality between men and women exclusive of persons with diverse sexual orientations and gender identities.

(Periodic Report para.12). The FAGE, however, may set back the discourse on gender equality as it places too much weight on numerical equality between two biological sexes and focuses exclusively on women and men as policy target groups. In August 2015, the Ministry of Gender Equality and Family (MOGEF) ordered the Daejeon Metropolitan Council to remove the provisions on LGBTI persons from its Basic Ordinance on Gender Equality claiming that “the provisions are incompatible with the legislative objectives of the FAGE.” This clearly demonstrates the fact that the FAGE served as a legal framework for the past two administrations to neglect the rights of LGBTI persons.

6. Although the MOGEF should have promoted policies in accordance with its objective of redressing gender power dynamics and creating a gender-equal society, it still cannot break away from a focus on numerical equality between two biological sexes. Regardless of the new administration’s attempt to redress the problem, it is still promoting a project that solidifies the gender-based roles and prejudices prevalent in our society. For instance, a make-up artist was invited for an event of MOGEF to give a lecture to mentor female college students. There was an increase of approximately 7.3% in budget for the Ministry of Gender Equality and Family compared to that of previous year, but this still represent only 0.18% of the total government budget.

- ✓ In order for projects run by the MOGEF to adequately redress and transform the gender-based prejudices and gender power dynamics, a budget should be secured to recruit gender-responsive officers and conduct gender impact analysis and assessment on the advancement of gender equality via its projects.

The Gender Equality Committee

7. The first Gender Equality Committee (GEC) under the Prime Minister, established in 2015 July, was operated as a mere formality and thus could not take on the role of coordinating and deliberating on policies related to gender equality. The second GEC which commenced in December 2017 under the new administration still has institutional limitations which prevent it from mainstreaming the gender perspective into all policies across the Ministries, central and local governments, and public institutions. While there has been an improvement, there still is a lack of substantive representation of women’s organizations based on region, agenda, and class. The current administration announced that one of its major tasks is establishing a GEC in the Office of the Presidency. However, it has not yet provided a concrete road map for implementation.

- ✓ The government should enhance the substantive representation of the GEC members from the private sector based on region, issue, and class.
- ✓ The government should immediately establish a Gender Equality Committee (GEC) to the Office of the Presidency equipped with the means of implementing the recommendations from GEC and an independent secretariat which enable the gender-mainstreaming of all policies across the Ministries. Lastly, a sufficient budget should be allocated to the Committee so that it is able to operate adequately.

Gender Impact Analysis and Assessment and Gender-responsive Budgeting

8. Although there has been a gradual increase in the number of projects on gender impact analysis and assessment, there is no department or government official in sole charge of gender impact analysis and assessment. Moreover, the procedure that should entail target selection, analysis and assessment, report of suggestions and recommendation, and policy feedback do not result in actual improvement in policy.

9. The government is only presenting number of projects and its budget with regards to impact of gender-responsive budgeting (Replies to the LOIs <Table 3>, <Table 4>). The impact and effectiveness of gender-responsive budgeting should be assessed with a focus on improving gender-equality policies and taking into account the actual policy impacts. However, there is a lack of policy tools to perform systematic monitoring. Also, with regards to the Permanent Cooperative Body on Gender-responsive Budgeting run by the Ministry of Strategy and Finance, there is a limitation as it is an ad hoc institution without legal framework though it performs crucial functions and tasks. Moreover, it is run with only 10 officers and only 4 among them are experts from the private sector. Thus, it is very difficult to proceed with discussion on overall gender-responsive budgeting across the Ministries.

- ✓ A mid- to long-term framework development plan for gender impact analysis and assessment that secures human resources in charge of gender impact analysis and assessment as well as the establishment of a systematic monitoring system should be established and implemented within an overarching body for gender mainstreaming. Then, the outcome should be presented in the next periodic report.
- ✓ In order to secure the effectiveness of gender-responsive budgeting, a systematic monitoring mechanism should be developed including the development of policy tools to monitor the actual effect of policy improvement from gender perspectives.
- ✓ The government should increase the number of members and experts from the private sector in the Permanent Cooperative Body on Gender-responsive Budgeting. In addition, a legal framework on its structure and function should be found in connection with the overarching body for gender mainstreaming.

Gender equality policy officer

10. Although the government responded that it has appointed gender equality policy officers and professionals in 47 central administrative bodies and 17 municipal/local government bodies (Replies to the LOIs para. 6), they are not solely in charge of women's policy and many of them are lack of gender perspectives.

- ✓ The government should establish a division solely in charge of gender equality policy in all Ministries and national institutions, and ensure that the appointed gender equality policy officers are properly equipped with gender-perspectives.

The National Human Rights Commission

11. The National Human Rights Commission of Korea (NHRCK) is not adequately performing the monitoring on gender and women's rights, policy recommendations, and corrective measures for gender-based discrimination. This is due to the fact that the Sex and Gender Discrimination Settlement Team in the NHRCK was closed down during the previous administration in 2009. Although the Commission has announced its plan to appoint 7 officers to new gender equality division, it is still unlikely for such a small division to perform its mandated functions on gender and women's rights.

✓ The government should allocate sufficient human and financial resources to the NHRCK to strengthen its monitoring function on gender and women's rights sector as well as actively perform corrective measures and policy recommendations with regards to gender-based discrimination.

Temporary Special Measures (Article 4, 7 of the Convention, List of Issues 7)

Measures to enhance women's representation in political and public areas

12. While women public officials in South Korea account for 45.4%, the percentage of women officials at Level 4, Level 3, and Level 2 and above are only 12.3%, 6.6%, and 4.7% respectively¹⁰. It clearly demonstrates that structural and cultural gender discrimination in workplace remains predominant. This suggests that it will be difficult to tackle gender discrimination with non-compulsory measures, unlike that the government expects in the Replies to the LOIs (para. 10, 11), such as annual goal-setting and monitoring, or non-binding recommendation on the appointment of women.

13. The FAGE stipulates that there should be no particular sex more than 60 percent in the composition of the members in any government committees. However, the MOGEF has so far supervised the level of women's participation not in individual committees, but on a ministerial basis, leaving the effectiveness of this legal provision low. Particularly, women's representation is very low in committees which are featured as the central administrative body and play a significant role in people's lives, such as the Korea Communications Committee, the Fair Trade Committee, the Financial Services Committee, the Anti-Corruption and Civil Rights Committee, and the Nuclear Safety and Security Committee. Female members of the aforementioned five committees take up merely 15.4% and all the committees have literally chairmen, apart from the Anti-Corruption and Civil Rights Commission (as of October 2017). Moreover, although the rate of female members of the

¹⁰ Ministry of Personnel Management, 2017, Statistical Yearbook on Personnel Management

government committees has gradually increased, there is lack of monitoring mechanism on whether they serve the substantive representation of women or have a gender equality perspective.

14. The Public Official Election Act stipulates that political parties should nominate at least one female candidate for municipal or local councils in every electoral district (excluding countryside district). In realities, however, political parties tend to choose to nominate a female candidate at the level of a local council, rather than that of a municipal. Accordingly, the rate of women elected in municipal and local council in 2010 local election were 8.1%, 10.9% respectively, and in 2014, 8.2% and 14.41%, intensifying gender hierarchy in political area.

15. Proportional Representation (PR), which is deemed as one of the effective ways to improve women's political participation, is applied only to 15.7% out of the total parliamentarian seats, weakening its effectiveness. While the Public Official Election Act stipulates that the list of PR should have gender parity, the lack of punitive provisions in general election puts at risk the enforcement of such requirement. Furthermore, although there is a legal provision on gender quotas to recommend female candidates to be nominated in 30 percent of single-member districts (SMDs), there are no enforcement measures or punitive provisions. As a result, no party has put it into practice, ever since the adoption of the provision in 2004. Also, informal institutions are still rampant in a candidate-nomination process within parties, which provides unfavorable condition for women, who lack personal networks and financial resources, to run for SMD elections.

- ✓ The government should establish and implement affirmative measures, including quotas for appointment of women public officers at senior level, and take practical steps to increase the effectiveness of such measures in order to improve women's representation in public bodies.
- ✓ The government should examine and publish a gender ratio in the members of a committee which is the central administrative body, and provide specific measures in order to increase the rate of women's participation up to 40 percent in the committees where women's representation is low. Moreover, the government should make an appropriate standard and procedure to nominate committee members in consultation with women's organizations, so as to ensure the appointed members to serve the substantive representation of the represented.
- ✓ The government should take actions to make political reforms in a gender-sensitive way, including 1) introducing PR linked with districts in the National Assembly; 2) making the ratio between PR and SMDs seats at least 2:1; 3) making gender quotas in SMDs mandatory; and 4) enacting enforcement measures to impose gender quotas on political parties.

Violence against Women **(Article 5 of the Convention, List of Issues 8, 9, 10, 11, 21)**

Legislative measures to criminalize rape on the basis of lack of consent, including marital rape

16. The Supreme Court's May 2013 decision (2012Do14788) on marital rape has set a good precedent in the application of such offenses. However, this decision recognized the offense as rape because it

was a situation in which a ‘husband forced himself upon the wife by rendering her unable to resist or by applying a considerable level of violence or threat’, rather than recognizing the offense on the basis of ‘lack of consent’, as recommended by the Committee. Moreover, this decision has limitations as it applies an extremely narrow interpretation of marital rape on the premise that, with a view to maintaining the family, ‘the State should refrain from intervening in the sex life of married couples’. It is necessary to reform the legal system regarding sexual violence by amending the definition of rape in the Criminal Act to include ‘marital rape’ on the basis of lack of consent, in line with the recommendation from the Committee’s Concluding Observations in 2011 (para. 21(e)), or by establishing provisions on the crime of non-consensual sex. Meanwhile, the government does not make available statistics on crimes where the victim and perpetrator are a married couple, including marital rape, and on the judicial action taken thereon.

- ✓ The government should include and sex-disaggregated data, on cases where the perpetrator and victim are married, in all criminal and judicial statistics, and make such information public.

- ✓ The government should specify in the law punishments for non-consensual sex, including marital intercourse without consent, as well as protection and support measures for victims.

Reporting and punishment on domestic and sexual violence

17. Only 2.8% and 2.2% of female victims of domestic and sexual violence, respectively, file reports to the police¹¹. Such low reporting rates for domestic and sexual violence stem from uncertainty of perpetrator punishment, blaming of the victim, fear of retaliation, and human rights violations in the investigation and trial process. The indictment and detention rates for domestic violence are on a steady decline; 15% and 1.7% in 2013, and 8.5% and 0.9% in 2016¹². In other words, domestic violence is being left virtually unpunished. This is because the primary purpose of the ‘Act on Special Cases Concerning the Punishment, etc., of Crimes of Domestic Violence’ is to maintain and restore the family, therefore leading to use of protective disposition instead of criminal punishment for domestic violence. In accordance with this law, prosecutors may suspend the indictment of domestic violence offenders on condition of counseling after taking into consideration their personality and behavior, or handle the case as a home protection case to issue a protective disposition. However, there is a lack of principles, procedures, or expertise to ensure the safety and rights of victims in this process. According to the 2015 statistics on family protection cases received and handled¹³, despite 84.4% of the cases falling under bodily injury or assault, no action was taken in 43.4% of the total cases, and most of the protective dispositions involved counseling, training, or community service. Suspending indictment on condition of counseling or handling domestic violence as a home protection case, rather than a criminal case, in the majority of domestic violence cases, grants impunity to the perpetrators in effect, and this stems from the false common notion that domestic violence is a minor issue. Therefore, domestic violence cases are handled as dispute resolution procedures, involving

¹¹ Ministry of Gender Equality and Family, 2016, Fact-finding survey on sexual violence and domestic violence

¹² MP Chun-sook Jeong, 2017, ‘Measures taken against Domestic Violence Offenders’, material submitted by the Ministry of Justice

¹³ Institute of Justice, 2016, White Paper on Crime

reconciliation and mediation between the victim and perpetrator. In addition, imposing administrative fines on violators of urgent ad hoc measures (Reply to LOIs, para. 15) is ineffective in the punishment and prevention of recurrence of domestic violence, and instead leads to burdening the victims with the payment of administrative fines.

18. 1) Abolishing the policy on criminalizing sex offenders solely based on the complaint made by the victim (entered into force in June 2013), 2) increasing statutory punishments, and 3) strengthening security measures including public disclosure of perpetrators' identities and electronic ankle bracelets have led to arbitrary decisions on what constitutes sexual violence, doubting of victims, and avoidance of punishment, rather than increasing the possibility for punishment. In reality, the suspension of indictment for sexual violence offenders has sharply increased since 2013; the rates were 4.3% in 2012, 9.6% in 2013, 19.3% in 2015, and 18.5% in 2016. In relation to first instance judgments on sexual violence cases, the proportion of punishments of restricting physical freedom sentenced to offenders, such as prison labor, steadily decreased from 34.8% in 2012 to 22.7% in 2015, but the proportion of suspended sentences and pecuniary punishments increased respectively from 23.2% and 15.8% in 2012, to 31.1% and 35.5% in 2015¹⁴.

19. In Korea, there is a widespread misconception that 'many reports of sexual violence are false'. According to the MOGEF's fact-finding survey on sexual violence in 2016, 31.3% of the male participants replied 'Yes' to the item 'Women who report rape are making false accusations due to anger or revengeful thoughts towards the man'. Victims are at risk of being charged with false accusations or defamation when reporting or notifying others of sexual violence. At the end of 2016, there were cases in which people who raised issues of sexual violence and expressed support for victims through online platforms were sued or threatened with suit¹⁵. Also, the district prosecutor's offices are conducting intensive crackdowns on false accusations of sexual violence, and the media often reports incorrect information assuming that the victims have made false accusations if the perpetrators were acquitted. Furthermore, there are many instances of secondary victimization in the sexual violence investigation and trial process, as there is an inclination for investigative and judicial institutions to doubt the victim's intentions and damages received and to make decisions based on information irrelevant to the case, such as the victim's sexual background or accusation history, victim's relation to the perpetrator or presence of an agreement, victim's appearance or age, occupation, and socioeconomic status.

¹⁴ Republic of Korea's periodic report to the CAT, Annex (submitted on 3 Mar. 2016)

¹⁵ The Hankyoreh, '#Sexual Violence_in the Cultural Field' Exposing leads to "Defamation" Mass charges filed against victims, 9 Feb. 2017

- ✓ The government should, in line with the Committee’s general recommendation No. 35 (para. 32) and recommendations of the Human Rights Committee (2015) and Committee against Torture (2017), fully amend the Act on Special Cases concerning the Punishment, etc. of Crimes of Domestic Violence so that its purpose is to ‘ensure the safety and human rights of victims and their families’ rather than to ‘maintain and restore the family’, and establish principles to handle domestic violence crimes as criminal cases.
- ✓ The government should abolish the system of suspending indictment on condition of counseling for domestic violence, allow counseling and training orders for the correction of the personality and behavior of the offender to be imposed separately from or together with punishments, and strengthen the management and oversight of the programs’ content and implementation.
- ✓ The government should establish criminal punishment regulations to immediately arrest and detain violators of urgent ad hoc measures, and strengthen on-scene measures, such as implementing a preferred arrest policy at domestic violence scenes, in order to ensure the separation of the offender and victim and the prevention of recurrence.
- ✓ The government should implement comprehensive and proactive measures to prevent violations of the victim’s human rights during the investigation and trial process, including by 1) providing statistics on the situation and handling of false accusation and defamation charges against sexual violence victims, 2) establishing strict standards and procedures for false accusation investigation and indictment in the sexual violence investigation and trial process, 3) and creating regulations to prohibit the victim’s sexual background from being used as evidence.

Increasing the number of female police officers and enhancing gender awareness in police

20. Women only account for 10% of the police force in the ROK due to sex-segregated recruitment and quotas on the number of female officers in the recruiting process. Also, less than 5% of female police officers are in managerial positions (inspector or higher)¹⁶ due to gender discrimination in office and work placement, promotions, etc. However, in response to the recommendations of the NHRCK and Police Reform Commission on sex-integrated recruiting, the National Police Agency stated that it would implement male and female integrated recruiting for Korean National Police University and cadets in 2019, but regarding the recruitment of regular officers, it later deferred its decision citing concerns on the ‘weakening of field security’. In other words, the National Police Agency still maintains a passive stance towards basic measures to increase the number of female police officers and realize gender equality in police.

- ✓ The government should immediately abolish sex-segregated recruitment for police officers, and implement proactive measures to increase the number of female police officers and their proportions in each rank and duty.

¹⁶ Korean National Police Agency, press release, 19 Oct. 2017

Misogyny and emerging forms of violence against women

21. The government did not provide a response to the Committee's question regarding statistics on misogyny and related hate crimes, stalking, online sexual violence and harassment. Various forms of online sexual violence are rapidly increasing in Korea, and this has become a serious social problem. In addition to the distribution of sexual images of women taken with hidden cameras and of videos of sexual intercourse between intimate partners, in 2017, there were cases of death threats against women through internet video channels and group harassment of women in mobile chat rooms. However, there is still a lack of laws and policies to prevent the above mentioned violence against women, which occurs in everyday life in various forms, and to punish perpetrators, and it is difficult to conduct systematic investigations due to the lack of expertise of investigative institutions and number of personnel, and lack of gender sensitivity of police officers.

✓ The government should conduct a systematic survey for the prevention of emerging forms of violence against women including misogyny and related hate crimes, stalking, and online sexual violence and harassment, and promptly amend relevant laws and policies. Also, it should ensure the investigative expertise of the police, increase the size and budget of the police force, and carry out police gender sensitivity training.

Sexual violence in universities and the military

22. The government stated that, for the prevention of sexual violence, it has made gender equality training mandatory in universities and the military, and has established and operates gender equality centers and/or sexual violence counseling centers (Reply to LOIs, para. 19). However, the counselors and employees at these centers are irregular workers, and the majority of whom perform other duties in addition. There are difficulties in accumulating expertise due to issues of job stability, and limitations in handling sexual violence within the community in an independent and proactive manner.

23. Sexual violence and harassment occurs frequently in the military. According to the NHRCK's 2017 survey, 47.6% of the 170 female military personnel replied that 'sexual violence in the military is at a serious level' and 6.5% responded that sexual violence is at an 'extremely serious' level. However, it is difficult to bring up sexual harassment and sexual violence issues within the military due to its strict command hierarchy and organizational exclusiveness, and the degree of punishment and disciplinary action is very low. When looking at the total decisions on sexual violence cases by the military court from January 2014 to June 2017, the proportion of suspension of sentences in cases where the victims were female was 10.34%, which is much higher than that of regular courts (1.36%)¹⁷. Meanwhile, the Korean military and the MOGEF have not disclosed the results of their survey on sexual violence within the military conducted in 2016.

¹⁷ National Human Rights Commission of Korea, 2017, 'Ex Officio Investigation on Human Rights Violations caused by Sexual Violence in the Military'

- ✓ The government should allow gender equality centers in universities and the military to accumulate expertise through job stability by employing regular workers and designating exclusive duties.
- ✓ The government should reform relevant systems to allow strict punishments and fair trials for sexual violence cases in the military, and promptly establish and implement effective measures to prevent sexual violence and sexual harassment in the military, including amending the internal system for victim protection, by cooperating with relevant ministries and NGOs.

Sexual harassment in the corporate sector

24. Though the government has presented information on the provision of sexual harassment prevention training material as a preventive measure against sexual harassment in small businesses (Replies to the LOIs, para. 20), this is insufficient to adequately address the issues of sexual harassment which occurs with high frequency in small and medium-sized businesses. In practice, many small businesses do not implement sexual harassment prevention training, and instead merely provide related materials.

25. In relation to the process for filing complaints on sexual harassment, the government stated that it ‘supervised and monitored organizations and companies, especially those hiring a significant number of female workers’ and ‘installed equal employment counseling centers’ (periodic report, Annex 1, Article. 11). However, when sexual harassment actually occurs in a corporate setting, the company imposes unfavorable measures against those who raise the issue, in an attempt to prevent the filing of complaints, and the Ministry of Employment and Labor has maintained a lukewarm stance on this matter. Protection measures for sexual harassment victims in the workplace and measures for the mandatory disciplinary action against offenders were provided with the amendment of the ‘Equal Employment Opportunity and Work–Family Balance Assistance Act’ in November 2017. However, considering that the Ministry of Employment and Labor received 26 cases of violations from 2012 to 2016 on the prohibition of unfavorable action against sexual harassment victims, stipulated in article 14 paragraph 2 of the above Act, but only 2 cases led to indictment (7.7% indictment rate),¹⁸ there is clear indication that further efforts are still needed to ensure the effectiveness of the law.

- ✓ The government should promptly establish and implement a systematic management and oversight system to ensure the effectiveness of sexual harassment prevention training (content and methods, implementation status, etc.), prevention of sexual harassment and remedy for victims. In particular, the government should conduct surveys on unfavorable actions taken against sexual harassment victims and disclose the findings, and ensure that these businesses are penalized according to relevant laws.

¹⁸ This is extremely low compared to the indictment rates in general criminal cases (47.3%) and Labor Standards Act violations (37.6%) from the past 10 years (2008 - June 2017).

Prevention of sexual violence against women defectors from DPRK

26. The MOGEF operates 10 counseling and psychological therapy centres for women defectors from the Democratic People's Republic of Korea (DPRK) since 2013 June (Replies to the LOIs, para. 21). The MOGEF, however, is providing very small subsidy to adequately run above centres and they are starting to abandon the consignment of programme due to the austerity.

27. Gender equality and human rights education, counseling and psychological therapy provided by the Korean government for women defectors from DPRK is a mere follow-up to overcome trauma, not fundamental measures to prevent human trafficking and sexual violence that occurs during the defection process. Women defectors from DPRK who experienced such difficulty from defection process are likely to experience secondary trauma due to the discrimination in South Korean society, and lack of social exchange opportunity with South Korean. Moreover, with regards to sexual violence committed against women during defection process by agents and human traffickers, there is a lack of situational analysis conducted by the Korean government and measures to penalize the perpetrators within its jurisdiction.

✓ The government, through cooperation with related civil society organizations, should actively develop and implement programs that eradicate negative public perceptions on women defectors from DPRK and provide social exchanges between South Korean women and women defectors from DPRK. The government also should allocate human and financial resources to systematically promote such programs.

✓ The government should immediately establish and implement comprehensive measures including investigation on all forms of crime including sexual violence committed against women during defection process, adequately penalize the perpetrators, and extend support for the victims including counseling and psychological therapies.

Trafficking and Exploitation of Prostituted Women (Article 6 of the Convention, List of Issues 12)

Trafficking and the sexual exploitation of migrant women and women defectors from DPRK

28. Migrant women who entered Korea holding E-6-2 visas with the dream of working in show business are led to adult entertainment businesses by their agencies, and often experience sexual harassment, sexual assault and prostitution in the process. Due to the lack of legal and institutional groundwork aiming to provide aid, medical services, and protection for victims of trafficking, it is common for these women to be sent to the immigration office then deported without being offered any related information or resources. Even though there is the 'miscellaneous' visa (G visa) available to survivors of trafficking, only those actively engaged in legal procedures (lawsuit, police report and investigation, etc.) against their perpetrators are eligible for this visa. Despite the recommendation made by the NHRCK in 2016 to arrange the identification standard for comprehensive human

trafficking victims, law enforcement continues to apply a very narrow standard when identifying victims of trafficking. Already, the Committee recommended in its Concluding Observations in 2011 (para. 23(a,g)) that the ROK enact a comprehensive human trafficking law based on the Palermo Protocol, but it ceased its effort after only amending the Criminal Act by adding a statute regarding trafficking for sexual exploitation. But it is impossible to respond in an integrated and holistic manner to human trafficking without appropriate statutes on preventive measures and international cooperation which are not included in the existing Criminal Act.

29. The education program provided by the ROK for women defectors from DPRK are grinding and rote rather than customizing the content and method considering their backgrounds. The women had long been exposed to patriarchal gender roles and stereotypes which make it extremely difficult to understand gender equality perspectives and human rights approach through a short-term educational program. Furthermore, many women defectors from DPRK experience poverty and therefore, some are pressured to work in sex industry and/or provide survival for their families. The government is yet to take comprehensive measures to address structural causes of the problem.

- ✓ According to the recommendation from the Committee’s previous Concluding Observations (para. 23(a)), a comprehensive legislation which fulfills the standard on support for and protection of victims of trafficking provided by Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children is required.
- ✓ A cooperation and training program is necessary in the criminal justice system for better penalization of perpetrators of human trafficking and protection of victims including interpretation services during the victim identification process.
- ✓ A temporary visa acquisition system including residency and work visas are required to aid migrant women’s recovery from victimization by human trafficking and to safeguard their new lives.
- ✓ The government must develop and implement an appropriate gender quality education program customized based on their particular backgrounds, and establish measures to enhance its effectiveness.
- ✓ The government should establish and implement a policy which understands and prevents the structural causes of the entry of women defector from DPRK into survival sex industry and prostitution through thorough research of their actual conditions.

Decriminalization of women’s involvement in prostitution

30. In Korea, prostitution is defined as a form of violence and sexual exploitation against women, and the ‘victims’ of prostitution are not penalized. However, the ‘victim’ here only refers to those who have been sexually exploited forcefully or under coercion, and those who either do not have pimps or sell sex for monetary gain are still subjected to penalization. In fact, women are often classified to be “selling sex voluntarily” and are penalized for it. Therefore, women, including juveniles and disabled

women, who report or file a lawsuit regarding their victimization may still be penalized for engaging in the act of prostitution if they fail to legally prove such victimization. Sting operations targeting prostituted women are also commonly conducted by the police who disguise themselves as sex buyers and lure the women to sell sex. In 2014, there was a case in which a prostituted woman died from jumping out the window during a sting operation. As for the penalties for buying sex, the first offence is only subjected to 16 hours of preventive education known as ‘John school’ or punishment of a small fine. The Committee has recommended in its previous Concluding Observations in 2007 and 2011 to decriminalize all women who are prostituted (immunity from criminal penalty).

- ✓ The government should decriminalize prostituted women, establish aggressive countermeasures to prevent and suppress the demand for prostitution, and supplement specialists and resources to the criminal justice system (i.e. establishing a unit specializing in prostitution). A policy revision regarding sex buyers is also required to intensify the penalty.
- ✓ It is necessary to improve the effectiveness of the educational programs for those who work in the criminal justice system on prostitution, women’s human rights, and gender equality.

Victimization of prostitution involving children and juveniles

31. According to the existing Act on the Protection of Children and Juveniles against Sexual Abuse, children and juveniles who have been the counterpart of the act of purchasing sex are classified as ‘children or juveniles involved’ rather than victims, and they become subjected to treatment and correctional education as protective juveniles defined by the Act on the Treatment of Protective Juveniles instead of being provided with support for victims. Hence, sex buyers sexually exploit children and juveniles for extended periods of time by blackmailing them using their vulnerability and stopping them from reporting it to the police. Children and juveniles usually enter the sex trade due to homelessness and financial difficulties, and are victimized by sexual exploitation through social media and smartphone chat apps which are increasingly becoming popular. An amendment bill for the Act on the Protection of Children and Juveniles against Sexual Exploitation which would classify all children and juveniles who have been counterparts of the act of purchasing sex as victims has been submitted to the National Assembly, it is yet to be passed as of December 2017.

- ✓ The existing Act on the Protection of Children and Juveniles against Sexual Abuse is required to classify those who have been victimized by sex buyers as ‘child and juvenile victims’ instead of ‘children and juveniles involved’, and amend the law to provide holistic and sustainable support for them.
- ✓ The Korean government must establish a holistic and sustainable support system for child and juvenile victims of the purchasing of sex.
- ✓ A legal and institutional basis is required to actively intervene and stop children and juveniles’ inflowing into the survival sex industry and luring into a trap of sexual exploitation through smartphone apps, social media, and other electronic devices and software.

Nationality

(Article 9 of the Convention, List of Issues 13)

Gender-based discrimination during nationality acquisition process of married migrant women

32. In Korea, over 83% of married migrants are women and they are placed under severe human rights violation in various dimensions including marriage that borders human trafficking via marriage brokers, domestic violence, instability in acquiring residency and nationality, etc. Therefore, the State's response 'there are no discriminatory provisions against women in the Nationality Law (Replies to the LOIs, para. 26)' is contrary to the facts. Also, the government responded as if it respects the intention and choice of married migrant women by stating Korean nationality can be acquired 'upon their wish'. Discrimination and human rights violations, already mentioned by the Committee in the previous Concluding Observations in 2011 (para. 26), experienced by married migrant women during the naturalization process still persist. Namely, the government did not implement the Committee's recommendation to remove all discriminatory provisions related to eligibility requirements for the nationality acquisition. Married migrant women can apply for nationality only after more than 2 years of residence under married status, with the possession of asset equivalent to 30 million KRW (approximately 28,000 USD) or more, and with sponsor's letter of guarantee. Therefore, married migrant women are subject to Korean spouse and difficult to actively correspond to husband's violence and mistreatment.

33. According to the Guide for Processing Period of Nationality Affairs introduced by the Ministry of Justice in November 2017, naturalization test of married migrant women who applied for naturalization takes over 11 months for those with children and 19 months for those without children as of November 2017. Ultimately, married migrant women live under unstable foreigner's identity for 3-4 years (requirement for naturalization 2 years + naturalization processing period). In addition, according to the Immigration Act, the immigration office allows the residency of less than 2 years at discretion regardless maximum allowable residency is three years. Therefore, it became necessary for married migrant women to receive extension of residency more than couple of times before the nationality acquisition. Such problem arises largely due to recognition of discretion by authorities without clear indication of processing period of nationality affairs on the law. It results in unstable legal status and anxiety of married migrant women and subject them to relationship with their spouses.

34. With broad scope and abuse of discretion by immigration offices, cases of human rights violation are frequently reported. Although an enforcement rule that requests the Korean sponsor's letter of guarantee when married migrant women apply for residency extension was removed in 2012, some immigration offices still request for Korean sponsor's letter of guarantee. Also, current legislation stipulates the recognition of simplified naturalization to marriage interrupted migrants without attributable causes and extension of residency to married migrant women who suffered from domestic violence. On the guideline of immigration office, data which verify that married migrant women has no attributable cause is mostly the data which verify the physical violence by Korean spouse thus the scope of admissible data is very narrow. There are cases in which immigration office denied the residency with discretion without recognition of domestic violence even with the court ruling that clearly states the divorce by attributable cause of Korean spouse.

35. Human rights violations against marriage interrupted migrant women are more severe. Marriage interrupted migrant women are suddenly deprived of residency in Korea which has been the base of their lives for several years unless she has the custody of children borne between Korean spouse or she support the parents or family of Korean spouse in case of no children. Although dual nationality is allowed when married migrant women maintaining the marriage status acquire Korean nationality (the Nationality Act, Article 10 para. 2 sub-para. 1), the maintenance of dual nationality is now allowed in case of separation by death or divorce. Therefore, even with the nationality acquisition, there is a problem of giving up the nationality of mother country different from migrant women maintaining the marriage status.

- ✓ The government should immediately implement the recommendation (para. 27) of the Committee's previous Concluding Observations in 2011. Particularly among naturalization acquisition requirements, 'domestic residency of over two years' should be removed or initial residency of 3 years should be given to married migrant women as stipulated in the Immigration Act. Alternative provision should be adopted instead for married migrant women who cannot satisfy prerequisite asset standard.
- ✓ Maximum nationality test period for married migrant women should be stipulated in the law and the cause should be explained in case of non-compliance. Also, the Nationality Act should be revised to restrict the conditions of discretion exercised by immigration offices. Furthermore, related provisions and guidelines should be revised.
- ✓ The abuse of authorities by immigration officers including insulting treatment toward married migrant women and request for sponsor's letter of guarantee is prevalent during nationality test process. The government should regulate it by taking measures such as human rights education for staff and refinement of guidelines.
- ✓ The government should actively redress the human rights violations committed against marriage interrupted foreign women during naturalization permission test. In details, 1) nationality acquisition should be available for marriage interrupted migrants without attributable causes, 2) attributable cause of the spouse borne from domestic violence should be applied with extension from physical violence to psychological and verbal abuse, economic abuse or control, and negligence so that nationality acquisition and residency extension is available when there is such attributable cause. 3) Also, childcare should not be reflected into naturalization permission of marriage interrupted migrant women and related provisions should be revised so that marriage interrupted migrant women can make decision on the maintenance of dual nationality.

Education

(Article 10 of the Convention, List of Issues 10, 15)

Gender equality education in schools

36. Since education on gender equality is not provided as regular curricular in schools, there is a limitation in systematically accomplishing the objective of enhancing students' gender awareness and equality. Also, there is a fragmentation among statutory provisions, supervisory ministries and departments for the gender equality education within school. With regards to human rights education on the rights of LGBTI persons mentioned in the Replies to the LOIs (para. 29), although there is sporadic mention of LGBTI persons in related curricular, an improvement on awareness of LGBTI persons is not a direct objective of the education. Furthermore, it is problematic as a large of portion of contents are based on prejudices against LGBTI persons¹⁹.

37. Although the Korean government responded that research to supplement data for sex education has been conducted (Replies to the LOIs, para. 29), the procedure was mere formality to counteract the awareness of public on the National Guideline on Sex Education. Also, a meeting of a public-private consultative body created by the MOGEF and the Ministry of Education was conducted only once, and a public-private consultative body proposed by the Ministry of Education was mostly composed of anti-LGBT organizations. The National Guideline on Sex Education is problematic as it reproduces the distorted perception on sexual violence cases by underlining the culpability of victims of sexual violence and strengthening the prejudices on gender stereotypes against various gender identities. Also, although the government responded that schools are conducting over 15 hours of sex education per year (Replies to the LOIs para. 18), many schools are incorporating the contents dealt in existing curricular into 15 hours of sex education per year. Furthermore, effective and systematic education on comprehensive sex and reproductive health and rights (SRHR) has not been carried out on actual venue of education and there is lack of adequate monitoring system as well.

- ✓ The government should immediately remove existing National Guideline on Sex Education and implement effective sex education which includes comprehensive sexual and reproductive health and rights (SRHR) within public education system.

- ✓ The government should arrange gender equality education that includes the rights of LGBTI persons as regular curricular, systemize the gender equality system, and furthermore establish the government's monitoring system for contents and methodology of education, with a view to encouraging students to change their languages, attitudes, and behaviors towards the transformation of the existing unequal gender power relations

¹⁹ Media Today, 'What is your opinion on covering LGBTI persons in ethics textbook?' 9 Jul. 2013.

Employment

(Article 11 of the Convention, List of Issue 16, 17, 18)

Gender wage gap and the principle of equal pay for equal value work

38. Job segregation by gender is already solidified in Korean labour market thus it is difficult to find a comparison target within same workplace. Since the government considers equal 'value' work as 'same' labour, it is difficult to redress the violation of equal pay for equal value work through complaint procedure of the Ministry of Employment and Labour. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of International Labour Organization (ILO), accordingly with Equal Remuneration Convention (No. 100), urged the Korean government in 2013 to take the necessary steps to bring the Equal Employment Opportunity and Work-Family Balance Assistance Act into full conformity with the Convention so as to ensure that men and women receive equal remuneration not only for work of a similar nature but also for work that is entirely different but nevertheless of equal value, and that the scope of comparison between men and women extends beyond the same establishment or enterprise. However, the government is not disclosing the information on number of complaints submitted to the Ministry of Employment and Labour and related case to the public.

39. Although the government proposed development and distribution of the Gender Equal Wage Manual as a corrective measure for severe gender wage gap in Korea, it has little to no improvement effect as it takes the form of guidelines distributed primarily for large corporations without institutional regulatory power.

- ✓ With consideration of Equal Remuneration Convention (No. 100) and Discrimination (Employment and Occupation) Convention (No. 111) of ILO, the government should reveal why redress procedures are not operating effectively even though equal pay for equal value work provision stipulated in the Equal Employment Opportunity and Work-Family Balance Assistance Act revised in 1989 has been adopted since then, and establish measures for the improvement.

- ✓ The government should establish and implement comprehensive labour policy that encompasses every step of women's life to reduce gender wage gap and guarantee the gender equal labour rights of women. Moreover, the outcome should be reflected into the next periodic report.

Discrimination against women in employment (case of female KTX crew members)

40. The case of female Korean Train Express (KTX) train crew members, who were first employed by a subsidiary of the Korea Railroad Corporation (Korail) before being dismissed in 2006, demonstrates the current level of discrimination against women workers in Korea. These women workers do work equivalent to that performed by male crew team leaders who are directly employed by the Korail. Their duties include permanent functions central to train operations, including passenger safety and instruction functions. Nonetheless, the Korail has devalued their work as simple and repetitive

customer service. The company employed only those in the separate job category of ‘KTX female crew’ in a low-wage, precarious and indirect employment situation, and excluded them from opportunities for promotion and other rewards. In September 2006, the NHRCK recognised the Korail, the real employer of female KTX crew, as the perpetrator of discrimination and recommended that the company reform its employment structure to alleviate gender discrimination (Case: 06jincha116-06jincha merged). The Korail, however, failed to follow these recommendations. The female KTX crew members who were dismissed in 2006 have been fighting to win reinstatement and direct employment from the Korail for the last 12 years. At the same time, a look at the situation of crew members currently employed by the Korail’s subcontractor for train crew services, Korail Tourism Development, shows that the same discriminatory labour structure that existed 12 years ago persists today. The vast majority of these crew members (71.9%) are women. These workers’ wages and employment conditions are greatly inferior to those of directly-employed crew team leaders, the vast majority (90.5%) of whom are men.

✓ The government should take into account the recommendations of the NHRCK in relation to gender discrimination by the Korail against female KTX crew members and act swiftly to strengthen its management and oversight aimed at the alleviation of structural gender discrimination against women in the area of employment, including in the case of the female KTX crew.

Women in managerial positions in private sector enterprises

41. The government reported in its periodic report that there is an increase in ratio of women in managerial positions in private sector enterprises upon introduction of affirmative action (AA) (Replies to the LOIs para. 32). Since the standard on women in managerial and CEO position is unclear, multiple numbers of private sector enterprises make voluntary decision and report related statistics. Furthermore, there is a lack of follow-up measures including review and assessment of report. According to the analysis of the Weekly Economist in 2017, ratio of women in managerial and CEO position in Korea was mere 10.5% (OECD average: 37.1%) and 2.4% (OECD average: 20.5%) respectively and the glass-ceiling index was the lowest amongst OECD countries for the 5 consecutive years. With regards to the affirmative action of Korea, it is difficult to grasp actual improvement effect in employment due to a lack of monitoring system to assess the quality of women’s job.

✓ In order to secure the effectiveness of affirmative action, the government should 1) add new categories to assess the quality of women employment (gender segregated statistics on regular and part-time job, ratio of women among new recruitment, rate of departments with 30% or less female workforces among all departments, definition of managerial position, ratio of women promotion compared to men, present situation on leave before and after the childbirth or childcare leave, etc.), 2) obligate enterprises to submit related data, 3) make legislative and institutional improvement by arranging incentives or penalties based on execution of enterprise’s implementation plan.

Prevention of women's career interruption

42. The previous administration promoted the expansion of time-flexible job for the purpose of supporting the work-family reconciliation of women. However, the government has rather solidified the gender-discriminatory prejudices which consider women as main care takers at home through this policy and further deteriorated the quality of women's employment. The government assessed the cause of career interruption in women as pregnancy, childbirth, and childcare and promoted policy based on it. However, women in 30's and 40's who experienced career interruption responded the leading cause of quitting job (27.5%) as poor working conditions, including low wage, long working hours, and termination of contract, and response rate of pregnancy, childbirth, and others was mere 13.7%.²⁰ The government has introduced 'Sae-il (re-employment) Centre's operation of custom support for re-employment of career interrupted women as the countermeasure to prevent the career interruption of women, 'a cause of gender wage gap' (Periodic Report Annex 1, Article 11). The centre, however, is an institution which assists the re-employment of career-interrupted women with no focus on prevention of the career interruption.

✓ On the foundation of clear situational analysis on the cause of career interruption in women, the government should break away from narrow perspectives of focusing only on pregnancy, childbirth, and childcare of women workers. It should also establish comprehensive career interruption prevention policy.

Employment of women defectors from DPRK

43. Occupational training and certificate acquisition support provided by the government for women defectors from DPRK rarely results in actual employment. This is the reason why most of them tend to choose a day job or part-time job. According to the survey, 50.2% of women defectors from DPRK who received occupational training responded that they have not worked in the field of occupation training and 53% responded that they have not worked in the field after acquiring the certificate.²¹ Meanwhile, although the Ministry of Unification introduced Future Happiness Bankbook System in which the government matches one-to-one the amount North Korean defectors saved from earned income since November 2015, a budget execution rate of 2016 project was mere 31% of target goal due to minimum payment (over 100,000 KRW) and regulation that prohibits the interim change to the amount of initial payment.²² Also, since there is only one Good Mom Center of Korea of Hana Foundation which runs occupational training program for women defectors from DPRK that exists in Seoul, it is difficult for women defectors from DPRK in rural areas to receive such benefits.

²⁰ Mi-ae Guk, 2017, 'Situational analysis on career interruption of women in Seoul-si and policy demand analysis', Seoul Foundation of Women and Family

²¹ Korea Economic Daily, 'Though risked life coming...most vulnerable in job market 'women defectors from DPRK', 13 Jun. 2017

²² Breaknews, 'Vice chairmen Ju-seon Park, 'Execution rate of Future Happiness Bankbook Project is mere 31%', 8 Aug. 2017.

- ✓ Through active cooperation with related departments, local governing organizations, and civil societies, the government should 1) strengthen the connectivity with employment and accessibility for occupational training and employment program of women defectors from DPRK, 2) actively establish and implement comprehensive measures for job expansion of women defectors from DPRK such as the expansion of financial support for related civil society organizations, and others.
- ✓ The government should make adjustments to the system related to re-establishment of women defectors from DPRK, including Future Happiness Bankbook System, etc.

Gender discrimination in the labor market and access to social insurance benefits

44. Ratio of Korean women with higher education is the highest among OECD countries but prevalent gender discrimination in labour market places women under low wage, poor working condition, unstable employment, and repetitive career interruption. It was revealed through investigation of prosecution that major public enterprises including Korea Gas Safety Corporation, Korea Coal Corporation, and others have intentionally eliminated women applicants during recruitment process. According to the survey, 72% of women who had job-seeking experience responded that they have experienced disadvantage based on gender during job seeking process.²³ According to the outcome of employment reporting system introduced in 2014, the ratio of women was 34.8% for business with over 300 employees and 12.0% for business with over 10,000 employees. 60% of women workers are working in business with less than 30 employees. In Korean society where the quality of job is severely polarized depending on the size of enterprises, women mostly have low quality job in small and medium-sized enterprises poor working conditions. The ratio of women among workers who work extremely short hours of less than 15 hours per week reached 70.3%, and they are excluded from benefits of social security insurance and labour law²⁴.

- ✓ The government should immediately revise labour-related laws to secure the labour rights of workers who work extremely short hours of less than 15 hours per week. Also, the government should grasp the current situation of time-flexible labour concentrated on women and implement measures to improve unstable and low wage job of women.

Working condition of social service workers

45. In Korea, care work is considered as chores that any women could carry out and one of low-wage sectors. The government mostly runs social service and welfare sector as consignment via private sector. Social service workers are mostly women who receive less than minimum wage when considering actual intensity and hours of labour. Moreover, they are under unstable employment status.

²³ Incruit, 2017, 2017 'Incrut Survey'

²⁴ Statistics Korea, Aug. 2015, 'Additional Survey by Work Type'

Moreover, there is lack of comprehensive statistics and monitoring system on current situations of social service workers, such as number of workers, wage and working conditions.

- ✓ The government should conduct systematic situational analysis on women workers in social service sector and establish policies to secure fair wage and stable working conditions for them.

Welfare policies for single parent families

46. With regards to the fact-finding survey on single-parent families conducted by the Korean government, it is difficult to systematically grasp the needs for each lifecycle of single-parent families and there is also a lack of linkage with policy. Also, policies for single-parent families mostly focus on financial support such as childcare and living expense support thus there is a lack of policy with the objectives of independence and empowerment reflecting the needs for each life cycle. Furthermore, the government policy and budget for single-parent families are concentrated on support for single-parent welfare facilities thus there is relatively few welfare policies for in-house single-parents who are the majority.

- ✓ The government should make improvements to a fact-finding survey on single-parent families so that the needs of single-parent families during each lifecycle can clearly be reflected as well as related policy should be established based on it. Also, legal framework should be in place so that systematic investigation on current situation of single-parent welfare facility use can be conducted and single-parent welfare budget concentrated on welfare facility support can also be used to in-house single-parent support as well.
- ✓ Through related civil society organizations, the government should establish a general policy for single-parent families with focus on their independence and empowerment such as introduction of peer counseling service system, etc.

Health

(Article 12 of the Convention, List of Issues 19)

Decriminalization of Abortion

47. An abortion is still penalized by Criminal Act in Korea. Although the Mother and Child Health Act gives limited permission for abortion, admissible grounds for operation are very limited. Even on such grounds, hospitals are requesting the proof of admissible grounds for operation with the concern of being penalized under the Criminal Act. For instance, even when the person opts for an abortion on the grounds of sexual violence, the person is often requested to submit a written complaint or guilty verdict from the court to the hospital for the verification of harm done onto the person. Under these

circumstances, a considerable number of women who opt for abortion seek after risky and costly illegal operation or illegal medication distributed online. Therefore, they cannot receive social support even when results in severe physical sequela and/or medical accidents. Moreover, these women are often threatened to be filed to the policy by their own partners when there are financial or relational problems. However, the government maintains its stance that it is necessary to build a social consensus on this issue considering the resistance from the religious conservatives, and has yet to take any proactive measures to address such situations of women.

48. In the paragraph 34 of Concluding Observation in 2011, the Committee expressed its concern that ‘even though abortion is allowed under certain circumstances, including rape and incest, abortion is still a punishable offence under articles 269 and 270 of the Criminal Act of the State party.’ The government, however, did not follow up on above recommendation. Particularly, in 2016 September, the Ministry of Health and Welfare stipulated ‘abortion in violation of Mother and Child Act Article 14 para. 1 as ‘unethical medical practices’ which can be penalized up to 1 year of medical license suspension. It was a part of pre-announcement of legislation for proposed amendments to Medical Treatment-related Administrative Disposition Act (hereafter referred to as ‘proposed amendments to Enforcement Decree of Medical Service Act’) which triggered a series of incidents including declaration by Korean Association of Obstetricians and Gynecologists to completely suspend abortions. With the backlash from the public, the government voluntarily retracted the amendment proposal.

✓ As proposed in General Comment No. 22 (2016) on the sexual and reproductive health and rights (SRHR) and Concluding Observations on the fourth periodic report of the ROK (2017) of the Committee on Economic, Social, and Cultural Rights, and Concluding Observations on the seventh periodic report of the ROK (2011) of the Committee, the government should not only immediately remove abortion from Criminal Act but also establish comprehensive medical framework for safe abortion and support system for before and after the operations.

Human Rights Policy on sexual and reproductive health and rights (SRHR)

49. The government’s policies on the sexual and reproductive health and rights (SRHR) in Korea are only focusing on women who are pregnant or have given birth to a child. It entails that the government has taken narrow interpretation of viewing women’s SRHR as the maternal and health issues related to reproduction of population and increasing the birth rate. Moreover, the government project to support at-risk unmarried mother in the first and second trimester does not provide custom support for each stage of pregnancy, childbirth, and childcare as it does not consider the situations of unmarried mother. Moreover, hub organizations for unmarried mother in each region are inadequately run with low accessibility, low budget, and thus insufficient support.

- ✓ The government should establish and implement policies that secure women's comprehensive SRHR, including by covering medical costs borne from visits to gynecologists unrelated to pregnancy and childbirth, counseling on contraception, and other procedures with health insurance.
- ✓ The government should implement gender-sensitive monitoring on counseling for unmarried mother and project to support at-risk unmarried mother in the first and second trimester. Then, the monitoring outcome should be reflected onto the policies.

Socially Disadvantaged Women (List of Issues 21)

Provision of adequate protection to migrant women and children

50. According to the statistics of the Ministry of Justice, the number of migrant children in Korea reached about 130,000 and it is increasing rapidly each year²⁵. There have been cases where migrant girls from country with early-marriage custom have been engaged in early-marriage within Korea, but no research has been conducted yet. Moreover, even when cases of early-marriage are reported to the police and related department, they are not taking any action on the grounds of absence of a legal ground.

51. There is an agreement among international society that female genital mutilation is gender-based violence and persecution against certain child that it could be grounds for refugee status recognition. In December 2017, the Supreme Court decided that the refugee case of a Liberian girl who fled from female genital mutilation should not be rejected only because her mother's refugee case is denied (Case No. 2016Du42913). Before the Supreme Court decision, the Ministry of Justice have made numerous decisions without considering the specific context of women and children. For example, the Ministry of Justice denied the refugee applicants with the fear of female genital mutilation on the grounds that the protection should be requested primarily to the country of origin.²⁶

²⁵ Entry-Exit/Foreign National Policy Head Office, the Ministry of Justice, Monthly Statistics on Entry-Exit/Foreign National Policy, 2017 Nov. Issue

²⁶ The Hankyoreh, 'Mother and daughter flee genital mutilation, but not yet settled in S. Korea', Mar. 5, 2016. http://english.hani.co.kr/arti/english_edition/e_international/733466.html

- ✓ The government should recognize the potential persecution against girls including female genital mutilation and early-marriage as well as take into consideration such context when performing related tasks of determining refugee status and treatment.
- ✓ The government should recognize that early-marriage and female genital mutilation are child abuse regardless of parents' or the persons' intention and an issue that should be dealt through cooperation among related department, police, health and education authorities. Furthermore, the government should implement preventive measures including education for parents and local communities regarding harmful effects of early-marriage.

Marriage and Family Relations **(Article 15, 16 of the Convention, List of Issues 22)**

Equal distribution of marital property upon divorce

52. Under current Civil Act, the division of property is only applicable in case of a divorce. It is not applicable during the marriage or commencement of inheritance upon death of one spouse. Therefore, there is an issue of equity as a claim for division of joint property under the name of spouse after the death of spouse by legal marriage or de facto marriage is not recognized different from the division of property upon divorce (Civil Act, Article 1000, 1003, 1009). Moreover, women cannot exercise the entitled property rights in Korea without divorce even when male spouse is squandering the property through gambling, extramarital affairs, and speculation and the rest of family members is under the threat of losing their livelihood. It is because, in the Korean context, the joint property is owned under the name of male spouse most of the time even if both made joint efforts to acquire that property.

- ✓ There is a necessity for legislation that recognizes the division of property upon death of spouse from legal or de facto marriage in order to recognize the remaining spouse's contribution toward the property upon death of one spouse and protect the property rights of spouse from de facto marriage.
- ✓ There should be a legislation that recognizes the division of property during legal or de facto marriage as well when the necessity is recognized due to squandering by the spouse or other reasons.

Revision of the Framework Act on Healthy Families

53. The Framework Act on Healthy Families takes stance of prescribing only families borne from hetero sex based marital relation as 'normal family' and it becomes an impediment in establishing policies that support families of various forms. For instance, it is prescribed that a family is

considered as basic unit of society borne from marriage, blood relation, and adoption (same Act, Article 3 para. 1) and all citizens shall recognize the social importance of marriage and childbirth (same Act, Article 8). A revised bill with supplementary measures to support single-person households has passed in the National Assembly in December 2017 but fundamental revision that embraces families of various forms is still necessary.

- ✓ With regards to name of act, its objectives, definition and form of family, and others, a complete revision of Framework Act on Healthy Families should be adopted so that there can be an establishment of policy that embraces families of various forms including single-person families, single-parent families, migrant families, de facto marriage families, etc.

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Comprehensive statistics on structural cause of violence against women, etc.

54. Despite the recommendation (para. 21(f)) in the Committee's previous Concluding Observations in 2011, the government has not made available comprehensive data that can be used to identify the structural cause of all forms of violence against women, and has not applied the collected data to its policies. The government only provides fragmented data on the occurrence of crimes, arrest and action taken, characteristics of the situation in which the crime occurred, perpetrator characteristics, victim characteristics, type of offender, etc. according to the type of offense. In particular, there are no separate statistics disaggregated by the victim and perpetrator's sex, and there are also no data that takes into consideration the victim's age, disability, nationality, characteristics of the relationship with the offender. As a result, it is impossible to comprehensively grasp the characteristics of and situation on judicial action taken against gender-based violence against women, including domestic violence.

- ✓ The government should, in order to fully identify the structural cause of all forms of violence against women and relevant judicial action taken and to establish an effective policy feedback system, create and make publicly available comprehensive crime statistics disaggregated by the victim and perpetrator's sex and relationship (separate categorization for spouses).
- ✓ The government should establish a comprehensive sex-disaggregated data collecting system which guarantees the gender-responsive implementation of the Sustainable Development Goals (SDGs) including SDGs 5.2 and 16.2 in order to prevent violence against women and girls.

Matters That Are Not Covered by the List of Issues But Require Attention

Contents and process of the constitutional amendment

55. Since the 9th constitutional amendment followed by 1987 June Struggle for Democracy, there have been talks about the constitutional amendment several times with focus on the rearrangement of power structure in the National Assembly. However, there has been nothing like nationwide resistance toward supra-constitutional political corruption which started from the end of 2016 to the impeachment of the former President Park in March 2017. It was the national sovereignty movement to protect the constitutional rights which sparked the interest of people in the constitution. Therefore, the talks about constitutional amendment which centred around the National Assembly in January 2017 became a nationwide agenda for a variety of social actors including but not limited to the National Assembly, the government, and the civil society organizations. Furthermore, there has been a shift of paradigm in the constitutional amendment from rearrangement of power structure in the National Assembly to extension of people's fundamental rights as well as change into ecological and sustainable life. Looking at the 31-year old constitution from a gender perspective, some provisions are too outdated to be applied to the national legislations and incompatible with the international human rights standard. In the upcoming constitutional amendment, there should be a gender mainstreaming in all provisions with a view to achieving the gender equality and improve daily lives of women.

- ✓ Following items must be incorporated into the 10th constitutional amendment;
 - 1) Realization of substantive gender equality as a guiding principle of the constitution.
Clear indication of the State's objective and duty for the realization of substantive gender equality.
 - 2) Enhancement in the representation of women in all sectors including politics, economy, society as well as culture.
 - 3) Provisions on rights to form a family
 - 4) Provisions on sexual and reproductive health and rights
 - 5) Gender equality in labour sector, Assurance on work-life balance
 - 6) Economy that internalizes the unpaid care work by women
 - 7) Strengthening of corporate social responsibility (CSR)
 - 8) Strengthening of social, economic and cultural rights for full enjoyment of life
 - 9) Provisions on rights to care
 - 10) Clear indication of the State's duty to enhance the human rights of all people
- ✓ The voices of women's organizations, particularly the most marginalized and vulnerable groups of women, should be incorporated into the constitutional amendment.

Discrimination based on sexual orientation and gender identity: LGBTI women and persons

56. LGBTI women and persons in the ROK cannot enjoy the rights in the Convention wholly due to discriminatory social climate, laws, and practices. Article 92-6 of the Military Criminal Act is the only legal clause in the country stipulating punishment for consensual sexual acts between the same sex. On August 4, 2015, the MOGEF requested the deletion of the clause that “Sexual minorities, too, must be guaranteed human rights equally and participate and be treated equally in all fields” from the Daejeon Basic Ordinance on Gender Equality, stating that it was outside the legislative purpose of the Framework Act on Gender Equality. Subsequently, the Daejeon Metropolitan Council amended to exclude the clause. In other words, the Ministry’s stance was that the FAGE “[did] not include or stipulate concepts or policies related to sexual minorities.” However, this goes against UN agencies’ position on intersectionality among women. The Life Partnership Bill, which would grant to two non-married persons sharing housing and livelihood the right to access social welfare including property issues before and after cohabitation, the right to medical self-determination, public housing, and National Health Insurance, and addresses issues of domestic violence in cohabiting relationships, was prepared. However, this draft bill was not proposed in the National Assembly. Many hate crimes against LGBTI persons were reported; however, there’s no segregated statistical data on the number of complaints about such crimes, investigations, prosecutions, and convictions of perpetrators, as well as on redress provided to victims.

- ✓ Adopt targeted laws, policies and programmes to tackle the discrimination against LGBTI persons.
- ✓ Denounce attacks on the human dignity and integrity of LGBTI persons, including by raising public awareness of their rights in partnership with civil society.
- ✓ Adopt measures to prevent hate crimes against LGBTI persons and ensure investigations, prosecutions, convictions and reparations.