

**NGO Thematic Alternative Report on the Rights of Children  
to the Human Rights Committee**

**Republic of Korea**

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### **Participating Organizations:**

- Duroo – Association for Public Interest Law
- Dongcheon Foundation
- LGBTQ Youth Support Center “DDingDong”
- MINBYUN – Lawyers for a Democratic Society
- Network for the Rights of Children and Adolescents with Migrant Background
- Political Mamas
- Rainbow Action against Sexual Minority Discrimination
- Stand Up against Sex-trafficking of Minors
- Study Group for Deinstitutionalization of Child Care
- Universal Birth Registration Network

### **Contact Details:**

- Jeanie KIM ([jkim@duroo.org](mailto:jkim@duroo.org)), Duroo – Association for Public Interest Law
- Sooyeon Lee([earwenlee@gmail.com](mailto:earwenlee@gmail.com)), NOW – Group for Legal Public Interest

## 1. Background

In the Republic of Korea (“ROK”), children are seen as subjects to be protected, rather than right holders of the right to life, exercisers of political freedom, and privacy. Children in the ROK are incorrectly perceived as immature and dependent on adults. This leads to the logic that the respect for student rights infringes on the authority of educators, and transitioning institutionalized children into family-based or community-based protection makes it difficult to control them.

However, the State must fully guarantee that right to life is a fundamental right of every individual. The Human Rights Committee emphasized that the rights enumerated in Article 24 of the International Covenant on Civil and Political Rights (“Covenant”) are specific to children but not exclusive; the Covenant recognizes that children must be respected as individuals with full civil and political rights.<sup>1</sup>

The civic and political rights of children are particularly important: Failure to adequately recognize the evolving capacities of children at each developmental stage is connected to a failure to ensure children are included in societal freedoms. Through this report, we ask the Committee to stress to the Korean government that children are entitled to all civic and political rights.

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<sup>1</sup> General Comments No. 17, para. 2.

## 2. Child Sexual Exploitation

The issue of sexual exploitation of children in the ROK is not any less prevalent than before. Even though the age of child victims is gradually decreasing, the Korean government has failed to prioritize this issue in any national policy. In 2020, the Law on the Protection of Children and Youth Against Sex Offenses ("Youth Sexual Protection Law") was enacted, providing the legal basis for the establishment and operation of the Child and Adolescent Support Center. The Center serves victims specifically of commercial sexual exploitation. Nevertheless, the government started discussion abolishing the Ministry of Gender Equality and Family, the key government department responsible for victim support. There are severe personnel and budget shortages that impede efforts to address the issue of child sexual exploitation.

Despite the slightly improved legal system, little has changed in reality. There have been repeated cases where investigative agencies treat child and adolescent victims of sexual exploitation as perpetrators under the "Act on the Punishment of Arrangement of Commercial Sex Acts".<sup>2</sup> In fact, no provision exists to punish the crime of attempted online grooming. This impedes the police's ability to combat sexual exploitation: A perpetrator will not be charged even if identified by the police during an operation where an undercover police officer disguised as a child approaches said perpetrator and is targeted for grooming by that person. This gap in punishment arises because, under the law, although the perpetrator thought they were targeting a child, but the "child" was a police officer (and therefore an adult) in reality. As undercover operations are ineffective, active investigations cannot be conducted. Consequently, police have no available methods to combat online grooming.

The victims of digital child sexual exploitation crimes will struggle to fully recover all damages. Judges often issue lenient punishments for offenders. Of all final verdicts in cases involving child and adolescent sexual crimes in 2021, the most common sentence was probation (52.3%), followed by imprisonment (39.5%), and lastly, fines (7.9%). On average, perpetrators of sexual crimes against children and adolescents were sentenced to prison for only 3 years and 10.3 months. Particularly for the crime of purchasing sex, the probation rate was the highest while the imprisonment period was the lowest among all sexual crimes.<sup>3</sup>

There was a legislative commitment to raise the age of statutory rape for minors from 13 to 16 years old.<sup>4</sup> Yet, in reality the problem still exists. In July 2023, 6 sex offenders who preyed

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<sup>2</sup> Stand Up Against Sex-Trafficking of Minors (2021). Compilation of materials, Evaluation Seminar on one year of implementation after deletion of "target children and adolescents".

<sup>3</sup> Trend Analysis of Sexual Offense Convictions Targeting Children and Adolescents, Ministry of Gender Equality and Family (March 23, 2023)

<sup>4</sup> **CRIMINAL ACT Article 305 (Sexual Intercourse or Indecent Acts with Minor)** (1) A person who has sexual intercourse with or commits an indecent act on another who is under 13 years of age shall be punished under

on two children, both under 13-years old, received only a fine or a suspended sentence.<sup>5</sup> Furthermore, the judiciary has demonstrated a limited awareness of the need for enhanced sentencing of sex offenders: The judiciary submitted a petition arguing that the statute governing punishment of sex offenders was unconstitutional on the basis that punishing all individuals over 19-years old who engage in sexual acts with minors is an excessive exercise of the state's authority to punish crimes.<sup>6</sup>

Moreover, since December 2022, it has been possible to make a deposit payment (as per Article 5-2 of the Deposit Act<sup>7</sup>) even without the victim's consent. In cases where there is no remorse from the perpetrator and no forgiveness from the victim, the fact that a criminal deposit was paid can be considered a favorable mitigating factor, hindering the recovery of the child victims.

### **Conclusion & Recommendations**

1. The State Party should develop a comprehensive strategy to prevent and combat all forms of child sexual exploitation.
2. The State Party should enhance punishment for crimes related to sexual exploitation of children, including sex trafficking, to align with international standards.
3. The State Party should amend laws such as the Criminal Act, the Act on the Protection of Children and Youth against Sex Offenses, and the Act on the Punishment of Arrangement of Commercial Sex Acts to include new forms of sexual exploitation facilitated through online platforms.

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Article 297, 297-2, 298, 301, or 301-2. (2) A person 19 years of age or older who has sexual intercourse with or commits an indecent act on another who is 13 years of age or older but under 16 years of age shall be punished under Article 297, 297-2, 298, 301, or 301-2.

<sup>5</sup> [http://www.teen-up.com/load.asp?sub\\_p=board/board&b\\_code=1&searchValue=%BA%B8%B5%B5%C0%DA%B7%E1&searchType=subject&page=1&idx=3912&board\\_md=view](http://www.teen-up.com/load.asp?sub_p=board/board&b_code=1&searchValue=%BA%B8%B5%B5%C0%DA%B7%E1&searchType=subject&page=1&idx=3912&board_md=view)

<sup>6</sup> As stated in Article 11 below, the Constitutional Court has ruled that admitting video testimony of underage sexual assault victims as a substitute for in-person testimony is unconstitutional in order to guarantee the defendant's right to cross-examination. Given the significant retreat of the judiciary from a child protection perspective, the judiciary's petition regarding the constitutionality of enhanced sentencing has raised considerable concerns regarding the judiciary's willingness to comply with the statutory intent to punish perpetrators.

<sup>7</sup> **DEPOSIT ACT Article 5-2 (Special Cases concerning Criminal Deposits)** (1) Where the defendant of a criminal case may not know the personal information of the victim under statutes or regulations, etc., the reimbursement deposit for the victim (hereinafter referred to as "criminal deposit") may be made at a deposit office in the location of the court where the relevant criminal case is pending.

(2) The deposit form of a criminal deposit shall state, in lieu of the personal information of the recipient of the deposited article (hereafter in this Article referred to as "beneficiary"), the court where the criminal case is pending (hereafter in this Article referred to as "court"), case number, case name, and the signifier used in the protocol, statements, indictment, etc. to denote the victim, in addition to the facts giving rise to the deposit which may be stated in a way that specifies the time the damage arose and the nature of obligations.

4. The State Party should implement systematic education and monitoring programs to improve awareness and understanding among law enforcement agencies and the judiciary regarding child sexual exploitation crimes.

## Article 9: Right to Liberty and Security of Persons

### **3. Children and Deinstitutionalization**

According to the Ministry of Health and Welfare's 2021 "Report on the Inspection Results of Children's Welfare Facilities in terms of Child Residents' Human Rights and Operational Status", approximately 20% of the 778 children's welfare facilities nationwide, totaling 143 facilities, had problems with child abuse, drug use, and neglects in drug management, with a total of 300 issues identified. The results of the National Human Rights Commission of Korea (NHRCK)'s visitation survey in 2021 also pointed out the operation of child governance committee with a mere formality and unreasonable rules (such as restrictions on going out, no cellphone usage, limited playtime, and restrictions on furniture arrangements).

Despite these findings, most children and adolescents who are separated from their families are placed in child welfare facilities for a long-term. As of 2021, out of 14,482 children in child welfare facilities,<sup>8</sup> 10,352 (71.48%) reside in child care institutions. Due to COVID-19, children residing in these institutions often face restrictions on and even a total prohibition from going outside, making it even more challenging for them to interact with local communities and their original families. Initially, the Yoon administration announced its plan to prioritize the "deinstitutionalization of children", but they have since revised their approach by omitting the word 'deinstitutionalization' and introducing a roadmap for the transition to "family-based residency" model for protected children. This shift has raised doubts about the feasibility of effectively reducing institutional care for these children.

Since March 2021, the government has implemented a system in which, after receiving a report of suspected child abuse, the government immediately separates a child. According to 2021 data, 72.8% of children separated due to child abuse reports were placed in institutions, and 53.8% continued to reside in these institutions. The primary reasons for implementing child protection measures included child abuse (48.19%), but there were also cases involving parental death (10.27%), divorce of parents (12.93%), poverty and unemployment (6.07%). Even in these cases, 48.54% were placed in institutions.

There is a shortage of facilities such as temporary shelters for child abuse victims<sup>9</sup> and temporary protection facilities for children.<sup>10</sup> As a result, the placement of separated children

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<sup>8</sup> As of December 31, 2020, the number of children under protection in child welfare facilities of the Ministry of Health and Welfare and the number of children under protection in group homes of the Ministry of Health and Welfare were combined.

<sup>9</sup> As of 2021, the capacity is 506 and the number of occupants is 368 (occupancy rate of 72.7% relative to the capacity).

<sup>10</sup> As of 2021, the capacity is 420 and the number of occupants is 315 (occupancy rate of 75% relative to the capacity).

in youth shelters or facilities for people with disabilities is increasing. Also, when children are placed in child welfare facilities, it is likely that they would be placed for a long-term. Although the principle for all out-of-home protection to be temporary except for permanent protection such as adoption should be applied, child welfare facilities such as child rearing facilities and group homes are referred to as "long-term protection facilities," and there is a tendency for foster care to be prolonged.

The independent living support program for children and adolescents is provided only to those who have resided in institutions until the end of the “protection period”, excluding those who have left the institutions before the termination of their protection. Although the provision to support the independent living of those who left the institutions before the termination of their protection period will be implemented from 9 February 2024, the eligibility criteria have not been specified yet. This delay in implementation prolongs the institutional protection of children and hinders their transition to family reunification, family-based care, community integration and independent living. Moreover, the institutional protection policy does not adequately focus on ensuring the autonomy of children and adolescents or strengthening their self-support capacity. These limitations ultimately result in difficulties and uncertainties for independent young people after the protection period. Due to the nature of group living, facilities have not guaranteed children's right to visitation, including prohibiting going out and overnight stays during disasters like a pandemic.

The child and adolescent service delivery system is fragmented and designed around service providers—not children. For example, the current system makes it difficult for a protected child who has stayed in a youth shelter to receive both protection and self-reliance support per the Child Welfare Act. Furthermore, different ministries have jurisdiction over child welfare and family welfare policies, a division that further impedes the Korean government’s ability to fulfill its obligations to protect the child's biological family, preserve family unity, and ensure family reunification.

In sum, the focus of the Korean government’s child protection policy is misguided. Rather than ensuring the autonomy of children and adolescents and strengthening their self-support capacity, the policy emphasizes institutionalization.

### **Conclusion & Recommendations**

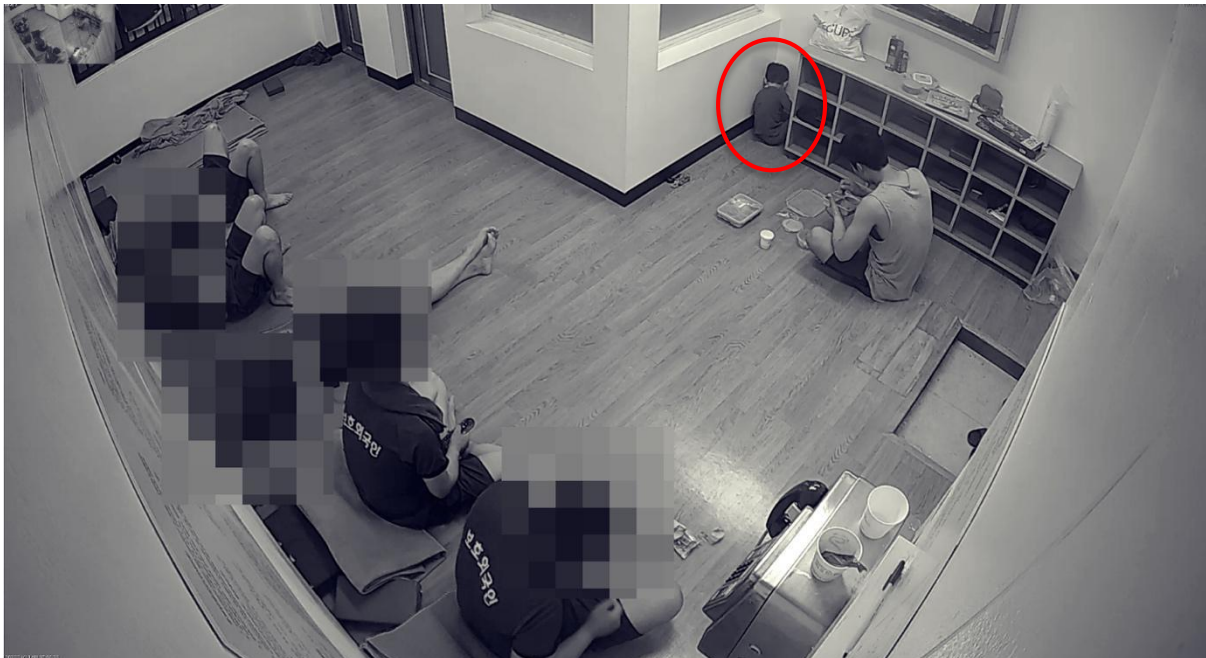
1. The State Party should develop specific measures to promote the return of children in institutions to their original families, transition to foster care protection, and promote an adoption policy controlled and monitored by the State.
2. When preparing ‘the roadmap for transitioning children to family-based care’, the State Party should clearly state that institutional protection is a temporary measure and the last resort only, and present specific plans to prevent long-term placement in child care institutions.
3. The State Party should integrate all child protection system that are divided into protection



services for children and adolescents, and increase resources, budget, and manpower to support the recovery and reunification of families and self-reliance.

#### 4. Immigration Detention of Migrant Children

No specific provision in the current Immigration Act prohibiting the detention of migrant children other than Article 56-3 stipulating that “special protection” must be provided to persons under 19 years of age. According to Article 4 of the Administrative Rules on Detention of Aliens, if a detained alien is caring for a child under the age of 14, the head of the immigration detention center may allow the child to live with the detained person even if the child is not subject to a detention order. Therefore, when issuing a deportation order for parents, it often results in the detention of children under the age of 14, as there are often no alternative measures for the the children. As a result, it is common for infants and children to be detained with their parents.<sup>11</sup> For example, in April 2023, a 3-year-old child was detained with his father before they forcibly evicted; in May 2023, a 6-year-old child with a valid visa was detained with a mother who lost her sojourn status after she divorce her husband.



(Suwon Immigration Office. CCTV photo of the child hiding in the corner after refusing to eat adult meals.)

In 2016 alone, 70 migrant children aged 14 and above were detained,<sup>12</sup> and from January 2015 to December 2017, a total of 225 children under the age of 18 were detention in immigration detention centers nationwide.<sup>13</sup> Every year, there are also dozens of children detained with their

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<sup>11</sup> From January 2013 to June 2016, 26 children under 8 years of age have been detained at an immigration detention unit or center throughout Korea. Among them, a 3-year-old boy a 2-year-old girl were detained for 30 days and 81 days respectively. Kim, Jongcheol, *Toward Elimination of Detaining Children of Migrants and Alternatives to Detention*, April, World Vision, 2015, 5.

<sup>12</sup> Korean Bar Association, *2015 Report on Survey of Immigration Detention Center*, 2015, 25.

<sup>13</sup> National Human Rights Commission of the Republic of Korea, *Opinion on Revision Bill on Immigration Act*,

parents, with 13 children under the age of 3 in 2022, 12 children in 2021, and 16 children in 2020 being detained in immigration detention centers.<sup>14</sup> Although the Rules on the Detention of Aliens have some additional provisions regarding education and protection for detained children, the negative impact of detention on children cannot be offset even education or special protection measures are provided. And as recent surveys have shown, these provisions are not being properly enforced either.

#### **Conclusion & Recommendations**

1. The State Party should amend the Immigration Act to completely prohibit the detention of children.
2. The State Party should amend the Immigration Act to refrain from detaining migrant children and their parents or guardians.
3. The State Party should amend the Immigration Act to add provisions related to the principle of the best interests of the child, ensuring that the rights of children are considered in all immigration-related decisions.

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2018. 7. 26.

<sup>14</sup> The statistics provided by the Ministry of Justice, June 2023.

## Article 10: Humane Treatment of Persons Deprived of their Liberty

## Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial

### **5. Child Justice**

The current Juvenile Act allows for protective measures such as probation, facility placement, and commitment to a juvenile detention center, which restrict/deprive the right to liberty, residence relocation, and privacy for children aged 10 to 14 (referred to as “law breaching minors”) who commit acts that violate criminal laws. In practice, this system imposes similar disadvantages on children over the age of 10 as criminal punishment. The Act also defines "Crime-liable youth" as children over the age of 10 who have inclinations to cause uneasy feeling for people around them by roaming in groups, who stay away from home without any justifiable reason, who have inclinations to drink alcohol, raise a disturbance or be exposed to harmful environment influences. Based on the concern that they “may” commit acts violating criminal laws, protective measures can be taken against them even without any actual criminal behavior.

There is no objective evidence or data within government reports or announcements to suggest that juvenile crime is becoming more heinous. Nevertheless, on 26 October 2022, the Ministry of Justice announced the "Comprehensive Measures for Juvenile Crime", which includes lowering the age limit for law-breaching minors to under 13 years old, allowing for criminal punishment of children at the age of 14 years old, and maintaining provisions for Crime-liable youth. The Crime-liable youth provisions entail imposing punishment similar to criminal penalties, even though no actual violation of criminal laws has occurred. This constitutes clear discrimination against children, as it convicts them for elements that do not constitute a crime and imposes punishments based on an arbitrary criterion of “risk of crime”. While it is possible to prevent crimes and achieve social integration with provision of therapeutic and educational supports, Crime-liable youth are deprived of their right to education due to juvenile court proceedings and protective measures, leading to their exclusion from local communities and separation from their caregivers, resulting in a lack of appropriate protection.

This law is enforced through the “Notification System”: Parents, guardians, heads of schools or social welfare facilities, and probation officers who discover law breaching minors or crime-liable youth can notify the relevant Juvenile Department. Once the Juvenile Department has been notified, the youth will immediately face trial. Teachers or personnel in charge of childcare facilities, if the child resides there, are granted the discretion to impose punitive measures without needing to involve investigative agencies. Within child protection facilities in particular, the Notification System is frequently used as a tool for discipline and control. As a result, children residing in these facilities may experience exclusion and discrimination solely based on the facility head's decision to report them.<sup>15</sup>

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<sup>15</sup> Kim, Si Ah (2021). Out-of-Home Care Youth’s Experiences of Court Notification in Juvenile Act (Doctoral

On the other hand, the government has proposed a bill, now pending in the National Assembly, to establish regulations that allow prisons to hold offenders under the age of 19 as necessary in order to implement education and rehabilitation programs tailored to their individual characteristics. While the same bill includes a provision to separately accommodate pre-trial offenders over the age of 19 from those younger than 19, this measure is merely intended to separate living spaces within the same correctional facility. Considering that, since 2012, as documented in the Ministry of Justice's Correctional Statistics Yearbook, the correctional facility occupancy rate has been over 100% for the past eleven years, this provision will be ineffective.

### **Conclusion & Recommendation**

1. The State Party should abolish the provisions regarding Crime-labile youth and notification system.
2. The State Party should immediately stop discussions on lowering the age of criminal responsibility and prohibit any form of detention for law breaching minors.
3. The State Party should separate minor offenders and defendants from adults and accommodate them in separate facilities.

## 6. Protective Measures in Judicial Proceedings for Sexually Abused Children

The Constitutional Court has ruled unconstitutional Article 30(6) of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, which allows for the use of video recordings of statements made by victims of sexual crimes under the age of 19, obtained through the presence of a trusted person during the investigation process. As a result, for the victim's statement at the time of investigation to be recognized as evidence, the child victim must appear in court and confirm that the statement is consistent with their testimony. Furthermore, during subsequent examinations, the child victim may be subjected to cross-examination by defendant's lawyer, potentially leading to multiple court appearances. This situation not only prolongs the child's involvement in the investigative and judicial processes, but also raises concerns about psychological harm, and the risk of testimony being influenced by inappropriate questioning, leading questions, repeated statements, and recollection of past memories.

The main amendments to the law on July 11, 2023 include the introduction of national defense lawyers for victims, an expansion of participation by trusted persons and intermediaries, and use of preparation hearing procedures or relay devices. However, the measures aimed at preventing secondary harm, such as repeated statements or aggressive questioning, are not effective. The amended law permits the exceptional use of video recordings as evidence when children are unable to attend court and make statements due to reasons such as death, foreign residence, physical or mental illness or disability, unknown whereabouts, or similar circumstances. Nevertheless, there is a concern that protection may not be provided for children without illnesses or disabilities, as the reasons for the exception are limited. Additionally, video recordings may be omitted if the child or legal representative does not wish to use them. Making videotaped testimony the exception and providing this power to the child or their representative may perversely give rise to grave injustices by, for example, incentivizing investigators to improperly persuade the child or, to reduce procedural inconvenience at the early stages of the investigation, lead other officials to pressure the child to make decisions without proper legal advice.

### **Conclusion & Recommendations**

1. The State Party should ease the requirements for recognizing the evidential value of videotaped statements and testimony to facilitate the early release of child sexual abuse victims from the judicial process.
2. The State Party should make it mandatory to conduct examination with children in a child-friendly environment when it is unavoidable to involve them in the process.

Article 23: the Family

Article 24: Rights of the Child

## **7. Protection of Original Family**

### **1) Problems Inherent in the Immediate Separation System**

In the Republic of Korea, since 2021, the government has implemented a system that allows officials to immediately separate a child from their family when the government receives two or more reports of abuse within the same year (Article 15-6 of the Child Welfare Act). Concerningly, officials can easily decide to immediately separate a child without judicial review. Despite the rapid, discretionary process, the government may indefinitely keep the child separated from their parents for an indefinite period, even though most children are placed in facilities.<sup>16</sup>

The scope of this power could allow officials to abusively separate children just for administrative convenience—even without considering the child’s best interest or possible support for the child’s original home. During the nine months after the introduction of the Immediate Separation System—from March 30, 2021 to December 31, 2021—the government separated children from their families in a total of 2,831 cases of separation: 1,043 cases through immediate separation and 1,788 cases through emergency measures. This number constitutes a 132.4% increase overall when compared to the 1,218 cases of emergency separation in the same period of the previous year. Specifically, instances of emergency separation also increased by 46.8%.<sup>17</sup> Immediate separation limits the child’s freedom to determine their place of residence.

### **2) Baby Box and Anonymous Childbirth Systems**

A child who is abandoned in a baby box is stripped of their right to be (1) issued a birth registration with biological family information, including parental information; and (2) raised by their parents if possible<sup>18</sup> Despite the UN Committee on the Rights of the Child’s recommendations to abolish baby boxes, these baby boxes have been available in Korea for

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<sup>16</sup> A total of 1,250 children were separated through immediate separation, with facility placement accounting for 843 cases (67.4%) and kinship protection for 383 cases (30.6%). Among the 1,250 children separated through immediate separation, 312 cases (25.0%) were reunited with their families, and 938 cases (75.0%) remained under continuous protective separation. (Source: Statistics on Child Abuse in 2021, pp. 27-28, National Child Protection Agency (2022), Ministry of Health and Welfare,).

<sup>17</sup> Press Release from the Ministry of Health and Welfare (March 29, 2022): "One year since the implementation of Immediate Separation from March 30, Striving for Safer Protection of Children at Risk of Abuse" [http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR\\_MENU\\_ID=04&MENU\\_ID=0403&page=1&CONT\\_SEQ=370808](http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&page=1&CONT_SEQ=370808)

<sup>18</sup> A/HRC/RES/52/25

more than ten years. In fact, ongoing efforts seek to establish ordinances at the local government level to legalize the installation of baby boxes.

In the audit report of the Board of Audit and Inspection of Korea in 2023,<sup>19</sup> the agency found that there were numerous cases of unregistered births resulting in child abandonment and death. There is an urgent need to establish a comprehensive crisis pregnancy and childbirth support system and child protection system to support women and babies facing difficulties in pregnancy and childbirth. Nevertheless, the Korean government relies on prejudices to form the erroneous belief that introducing a birth notification system would lead to an increase in child abandonment. Therefore, the government seeks to concurrently establish the "Anonymous Childbirth System" that would allow mothers to give birth in medical institutions without disclosing their identity. In practice the proposed Anonymous Childbirth System would prevent the child from ever knowing the parent's information absent the consent of the biological parents. This system would create two areas of possible rights violations: (1) it would infringes upon the child's rights to identity and rights to know, effectively creating a situation that produces orphans; and (2) it would deprive guardians of their rights to seek family support for their babies in pregnancy, childbirth, and child-rearing. Therefore, the Korean government should immediately halt efforts to pass the Anonymous Childbirth System bill.

The indivisibility and interdependence of human rights means that all the rights of the child must be universally respected for the right to life to be fully realized. However, as evidenced by the extremely low birth rate, the ROK significantly lacks universal support for pregnancy, childbirth, and child-rearing.<sup>20</sup> As such, it is even more difficult to find appropriate family support that minimize discrimination that vulnerable children, such as migrant children and children with disabilities face in reality.

**Conclusion & Recommendations**

1. The State Party should revise the Child Welfare Act and the Act on Special Cases Concerning the Punishment of Child Abuse Crimes to abolish the immediate separation system and ensure the protection of original homes.
2. The State Party should intervene to discontinue the use of baby boxes and enhance the personnel, materials, and financial resources necessary for an adequate public child protection system.
3. The State Party should strengthen family support policies to guarantee children's birth registration and rights within families.
4. The State Party should stop the discussion on the Anonymous Childbirth System, which infringes on the child's right to identity and the right to know their parents. Furthermore, the

<sup>19</sup> See 7. Birth Registration

<sup>20</sup> Korea's family support budget is 1.56% of GDP, which is lower than the OECD average of 2.29%. In terms of cash payments such as child allowances and parental leave benefits, it is only 0.32% of GDP, which is only 30% of the OECD average of 1.12%.



government should ensure women can safely terminate unwanted pregnancies. Lastly, the government should provide support for the entire childbirth process for those who choose childbirth.

## 8. Universal Birth Registration

In June 2023, the Board of Audit and Inspection of Korea announced the results of a regular audit of the Ministry of Health and Welfare, stating that there were over 6,000 unregistered children among those born in hospitals from 2015 to 2022. The government conducted a focused investigation on 2,236 children whose parents had “responsibilities to register the births of their children” and after additional investigations by the police, it was confirmed that 601 of them (54.9%) were abandoned in baby boxes or similar facilities, and 249 children were found to have died.<sup>21</sup> After the audit and focused investigation, the government finally amended the Act on Registration of Family Relations, which had been pending in the National Assembly for several years, and introduced a "birth notification system" requiring medical institutions to report the births of children to the government.

However, as seen in that about 4,000 migrant children among those born in hospitals were excluded in the government’s focused investigation, there are significant constraints on exercising the right of birth registration for migrant children born in the ROK. Refugees, humanitarian stay permit holders, and refugee applicants often face difficulties in reporting their children's births to the governmental agencies of their home countries, which are likely to be the persecutors, eventually cannot register the births of children in any states. Children who are not registered at birth essentially become stateless, and there has been a case of a child who was not be able to be registered at the age of 16.<sup>22</sup>

For children of undocumented migrants, it is often impossible to register their births at the embassies of their parents' home country due to practical barriers. As the ROK government requests labor-exporting countries to make efforts to reduce the number of the undocumented, these countries sometimes impose disadvantages such as verifying the immigration status when reporting the child's birth at the country's diplomatic office or requiring a return to the home country as a condition for birth registration.

The government prohibits alien registration on the grounds of unregistered stay for these children. While birth registration is also restricted both in the ROK and with the diplomatic office of the parents' home country, those children are left with no forms of identification at all.

On the other hand, the birth notification system is scheduled to be enforced and implemented in 2024, but the government has not yet devised any specific plans for the introduction of the system. In particular, as the current birth registration system only applies to Korean children,

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<sup>21</sup> Press Release of the Ministry of Health and Welfare, July 18, 2023, "Full investigation of 2,123 unreported births reveals 1,025 confirmed alive, 249 deceased, 814 under investigation."  
[https://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR\\_MENU\\_ID=04&MENU\\_ID=0403&page=1&CONT\\_SEQ=377321](https://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&page=1&CONT_SEQ=377321)

<sup>22</sup> Kim Yae-yoon, Dong-a Ilbo, "I want to make a music that mixes the culture Myanmar, the country of parents, and Korea. - [Shadow children] The dream of 16-year-old Joshua who acquired an alien registration card" (2017.5.19.), <http://news.donga.com/View?gid=84434554&date=20170519>

there is significant concern that even if the birth notification system is introduced, it will not be applicable to migrant children and no measures have been put in place to address this issue.

**Conclusion & Recommendation**

1. The State Party should introduce the 'universal birth registration system', ensuring that all children born in the State are registered immediately after birth and given a name.
2. The State Party should explicitly grant the obligation and right of birth registration to all foreigners, regardless of their own or their legal or social status, or nationality.
3. The State Party should take all necessary administrative and legislative measures to ensure that children are not excluded from public protection even when their birth registrations have not been completed.

## **9. The Human Rights of Children in Schools**

1) Suppressing the realization of students' rights to freedom by blaming the violation of teachers' human rights on the improvement of students' human rights.

The current law does not specifically stipulate students' civil and political rights other than the comprehensive and general basic rights provisions of the Constitution. As a result, some local governments and civil society groups sought to pass ordinances to guarantee and enhance the human rights of children in schools; however, the ordinance was only enacted in certain geographic areas.

Recently, in South Korea, two cases concerning teachers have caused a significant uproar in the media: (1) a new elementary school teacher committed suicide in the classroom<sup>23</sup>; and (2) a special teacher's educational activities were reported as child abuse, and when the trial began, the special teacher was dismissed from her position.<sup>24</sup> The government and the National Assembly argue that these violations of teachers' rights happened as a result of the protection of students' rights. President Yoon Suk-yeol announced the need to amend student rights ordinances to protect teachers' authority.<sup>25</sup> As such, the government is seeking to revise the Elementary and Secondary Education Act and the Act on Special Cases Concerning the Punishment of Child Abuse Crimes to exclude instances in which teachers discipline children from child abuse.

The government also has drafted guidelines to detail how teachers may place limits on students' actions.<sup>26</sup> These guidelines include prohibiting the use of mobile phones in schools, confiscating mobile phones, and checking students' belongings based on suspicion alone.<sup>27</sup> This effort to amend laws in a manner that would create a conflict between student rights and teachers' authority is a kneejerk effort to quell the current controversy. Enforcing teacher guidelines in such a manner would excessively violate students' basic rights without

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<sup>23</sup> The Hankyoreh, Korean teacher's suicide sparks massive outpouring of grief calls for protections for educators, [https://english.hani.co.kr/arti/english\\_edition/e\\_national/1101204.html](https://english.hani.co.kr/arti/english_edition/e_national/1101204.html)

<sup>24</sup> Korea JoongAng Daily, Korea divided over special education teacher's rights, <https://koreajoongangdaily.joins.com/2023/08/05/national/socialAffairs/Joo-Homin-special-education-autism/20230805060016012.html>

<sup>25</sup> Yonhap News Agency, Yoon calls for devising guidelines to protect teachers' rights, <https://en.yna.co.kr/view/AEN20230724003900315>

<sup>26</sup> Yonhap News Agency, Gov't unveils measures to strengthen teachers' rights protection, <https://en.yna.co.kr/view/AEN20230823005600315?section=search>

<sup>27</sup> Ministry of Education, [Press Release] Enhanced Guidelines for 2nd Semester: Strengthening Teacher Rights and Prohibiting Cell Phone Use during Classes, 17 August 2023, <https://english.moe.go.kr/boardCnts/viewRenewal.do?boardID=265&boardSeq=96157&lev=0&searchType=null&statusYN=W&page=1&s=english&m=0201&opType=N>

fundamentally improving the educational environment.<sup>28</sup>

### **Conclusion & Recommendations**

1. The State Party should revise the Elementary and Secondary Education Act and related laws to protect the universal rights of students within schools.
2. The State Party should withdraw the draft guidelines on student life guidance, which aim to resolve problem from the erroneous perspective that student rights impinge on teachers' necessary authority.

### 2) Student political freedom (additional)

In December 2020, the revised Public Official Election Act granted high school students aged 18 and above the right to vote. As of the 21st General Election, some third-year high school students were eligible to participate in voting.<sup>29</sup> Additionally, in 2022, the Political Parties Act was amended to lower the age for political party membership to 16. However, certain schools created school regulations to prohibit students from engaging in political activities and discipline students who engage in political expression or join political organizations. Furthermore, the age requirements to participate in local government systems—such as resident vote and recalls—have not yet been lowered.<sup>30</sup>

### **Conclusion & Recommendations**

1. The State Party should revise the Elementary and Secondary Education Act and related laws to prohibit the restriction of students' right to freedom of political expression.
2. The State Party should reorganize the curriculum to enable students to learn about their rights of political participation and freedom of expression.

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<sup>28</sup> In response to this, Korean society responded by filing an emergency complaint to the UN Human Rights Council on December 2022 in relation to the attempt to abolish the Student Human Rights Ordinance, and a cancellation lawsuit is in progress in relation to the residents' initiative to abolish the Seoul Student Human Rights Ordinance.

<sup>29</sup> The Korea Times, Teenage hopefuls run in local elections, [https://www.koreatimes.co.kr/www/nation/2023/08/113\\_328737.html](https://www.koreatimes.co.kr/www/nation/2023/08/113_328737.html)

<sup>30</sup> National Human Rights Commission of Korea, [Press Release] NHRCK Chairperson's Statement on Welcoming the Adjustment on the Electoral Eligibility, 18 January 2022, <https://www.humanrights.go.kr/eng/board/read?boardManagementNo=7003&boardNo=7607621&searchCategory=&page=6&searchType=&searchWord=&menuLevel=2&menuNo=114>

## Article 26: Non-Discrimination

### **10. Prohibition of discrimination and guarantee of educational rights for sexual and gender minority (LGBTI) children, right to self-determination of personal information**

In the State Party Report, the government failed to answer whether it would develop a sex education curriculum that provides accurate, age-appropriate, and integrated information on all aspects of sexuality—including sexual orientation and gender identity—at every stage of education, as requested in paragraph 6 of the List of Issues.

Korean schools have never taught about sexual minorities; in fact, the school environment is hostile towards sexual minorities.<sup>31</sup> According to a survey conducted by the National Human Rights Commission in 2014, 92% of sexual minority children and adolescents responded that they have heard homophobic expressions at school. Furthermore, transgender students are not allowed to choose restrooms, changing rooms, or uniforms that match their gender identity, and alternative facilities are not provided. In addition, information about students' sexual orientation and gender identity can be disclosed to third parties by school teachers and counselors, even without their consent, and can be legally notified to parents, resulting in significant violations of privacy and the right to self-determination of personal information.<sup>32</sup> As a result, a survey by the Seoul Shinmun newspaper in 2021 revealed that the dropout rate of transgender students is 27 times higher than the overall dropout rate of all students. Some students' guardians bring discriminatory complaints against teachers who educate about the human rights of sexual minorities. School administrators and the Ministry of Education fail to intervene to protect the teachers; in fact, teachers sometimes risk official reprimand for supporting LGBTI students.

Discrimination against and infringement on the educational rights of sexual minority children are intensifying. In late 2022, the Ministry of Education announced its intention to revise the curriculum (guidelines) applicable to all grades of elementary, middle, and high schools by (1) removing the terms "sexual minority," "gender equality," and "reproductive rights" from the curriculum; and (2) excluding content related to sexual minorities from social and ethical subjects.<sup>33</sup> Furthermore, only regulation explicitly prohibits discrimination based on sexual orientation and gender identity in schools: The "Student Human Rights Ordinance" (being implemented in Seoul and Chungcheongnam-do). That ordinance is at risk of being abolished due to misguided claims that the ordinance infringes on the rights of teachers by prohibiting them from teaching discriminatory ideas, such as the disproven beliefs that gender

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<sup>31</sup> Human Rights Watch, How Schools in South Korea Can Help LGBT Youth Thrive, 22 September 2021, <https://www.hrw.org/news/2021/09/22/how-schools-south-korea-can-help-lgbt-youth-thrive>

<sup>32</sup> Human Rights Watch, South Korea: LGBT Students Face Bullying, Discrimination, 14 September 2021, <https://www.hrw.org/news/2021/09/14/south-korea-lgbt-students-face-bullying-discrimination>

<sup>33</sup> The Hankyoreh, Korean teachers worry new policies will undo inclusive education on sex, gender 29 December 2022, [https://english.hani.co.kr/arti/english\\_edition/e\\_national/1073604.html](https://english.hani.co.kr/arti/english_edition/e_national/1073604.html)

reassignment and homosexuality are harmful.<sup>34</sup>

### **Conclusion & Recommendations**

1. The State Party should revise relevant laws, such as the Framework Act on Education, to explicitly prohibit discrimination against sexual minority students in schools and ensure that transgender students are not excluded from school facilities or educational programs.
2. The State Party should redesign sexual education and educational curricula to include sexual minority students in order to guarantee their right to education. The State Party should also provide sensitivity training on human rights of sexual minority to school staff and parents.
3. In order to protect the privacy and self-determination of sexual minority children and adolescents, the Elementary and Secondary Education Act and other applicable laws regarding schools should specify "sexual orientation and gender identity" as personal information. Guidelines should be developed and provided to prevent schools from outing students to parents or other third parties without the individual's consent.

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<sup>34</sup> The Korea Herald, Conservative churches ramp up attacks on student rights ordinance, 30 May 2022, <https://www.koreaherald.com/view.php?ud=20220530000300>

## 11. Prohibition of Discrimination against Children with Disabilities

In the ROK, children with disabilities are institutionalized at a high rate compared to both the total number of both children and the total number of persons with disabilities. Yet, to-date, the government has created few specific policies for deinstitutionalizing children living with disabilities. The 2021 "Roadmap for Deinstitutionalization and Community-Based Independent Living Support for the Disabled" only mentions that the government should preferably use family-type protection, such as foster care and group homes for children with disabilities. The "Roadmap for Deinstitutionalization of Protected Children"—adopted as a national agenda by the current government in 2022—also lacks specific considerations for family-based protection, support for family reunification, or the creation of family-type protection for disabled children. The Ministry of Health and Welfare’s Child Protection Service Work Manual states that, “[I]n the case of protection at a facility for persons with disabilities, the case is transferred to the relevant department [for persons with disabilities] after deliberation by the case decision committee,” but “even after the case is transferred, contact is maintained with the relevant department, the protection facility, and the child, for necessary case management, such as attending case conferences.”<sup>35</sup> This guidance indicates that the health and child protection system is not designed to include children with disabilities, let alone provide specialized support. In fact, many children with disabilities live in facilities for adults with disabilities, rather than child welfare facilities. As a result of being placed in a facility for adults, child protection services discontinue monitoring the child’s welfare.

Children with disabilities are being excluded from equal access to education. During the COVID-19 pandemic, the education system failed to accommodate children with disabilities. The sudden transition from postponed school openings to online remote learning did not provide appropriate educational activities tailored to their disabilities. Nor did schools provide teachers with the necessary expertise in creating appropriate education. Without the full support of their parents or guardians, children with certain diverse, disability-related learning needs were unable to properly participate in classes. Contrary to the Act on Special Education for Persons with Disabilities and government announcements, appropriate inclusive education was not provided due to concerns about infection and lack of resources.

Furthermore, after the suicide of an elementary school special education teacher in July 2023, the incidence of hate speech against children with disabilities has increased across a broad spectrum of society. The teacher’s death occurred after a parent accused the teacher of abusing his autistic child. After the teacher’s death, the media published articles that depicted the child’s behavior in a sensationalist, demeaning manner, fueling hatred against persons with disabilities. The current wave of hate speech commonly relies on and repeats the erroneous belief that the need to accommodate students who display challenging behaviors as a symptom of their disability infringes on a teacher’s rights. Meanwhile, criticism of the lack of a suitable

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<sup>35</sup> See page 78, 2022 Child Protection Service Work Manual of the National Center for the Rights of the Child (2022), Ministry of Health and Welfare.



environment to educate students with disabilities is absent. These discussions are rooted in discrimination against children with disabilities, ignoring a child's rights to (1) self-determination; (2) education in an environment where their dignity is respected; and (3) to actively participate in society. Furthermore, these discriminatory discussions are turning a blind eye to the need to create an appropriate work environment for teachers.

### **Conclusion & Recommendations**

1. The State Party should establish disability support policies based on local communities. Furthermore, the government should implement policies that include children with disabilities in all social policies.
2. The State Party should develop specific measures to achieve family-based protection and community-based living for children with disabilities in the roadmap for deinstitutionalization of persons with disabilities and children.
3. The State Party should develop comprehensive measures to promote an inclusive culture at all levels of education and invest human, material, and financial resources in inclusive education.
4. The State Party should develop alternative and accessible learning materials, assistive devices, and information and communication technologies to ensure access to education for children with disabilities during disasters such as pandemics.
5. The State Party should conduct mandatory education and awareness campaigns for legislators, administrators, judiciary officials, media personnel, politicians, educators, related professionals, and the general public to prevent and respond to discrimination and hostility towards children with disabilities.

## **12. Prohibition of discrimination against migrant children**

Migrant children residing in the ROK are often excluded from the application of domestic laws and systems related to child protection, support, and welfare due to the fact that they do not hold Korean citizenship. Among them, undocumented migrant children are classified as "illegal residents" and are not only deprived of their rights as children but also considered targets for crackdown and deportation.

The collection of data and the formulation of policies for migrant children are not being carried out properly either. The immigration statistics released annually by the Ministry of Justice do not separately count children under the age of 18, and they also do not include undocumented children born and living within the country. The foreign resident statistics provided by the Ministry of Interior and Safety include the children whose parent is foreigners by local governments, but children whose both parents are foreigners are excluded from this data.

In 2018, the Ministry of Justice ordered a research project to assess the situation of undocumented migrant children and develop relevant policies. However, there were concerns by civil society that the research could infringe upon the rights of these children and undermine research ethics, as the Ministry of Justice demanded the research institution to submit personal information of the undocumented migrant children and their families, and stated that they would develop "manageable measures" based on the research results for these "illegally staying" children. In such a situation, even if migrant children are born in the ROK, they face discrimination from the moment of birth, as they are unable to register their birth in the ROK. The Framework Act on Education obliges primary and secondary education for all "citizens," excluding migrant children from compulsory education and causing them to be rejected in admission and transfer of schools for various reasons. There are also cases where they are unable to join health insurance due to their residence status, resulting in a significant violation of their right to health.

Furthermore, migrant children often do not receive appropriate protection and support even when they experience child abuse. On one hand, this is because the laws and systems related to child protection exclude migrant children. On the other hand, immigration laws and systems do not consider the unique needs of children and instead judge their residence status by the same standards as adults.

The Child Welfare Act defines "children," the target group of its application, as "individuals under 18 years of age" regardless of nationality, and explicitly states that no discrimination shall be made based on the child's or parents' birthplace, race, etc. However, in reality, migrant children are not fully covered by the Child Welfare Act. In particular, the National Basic Living Security Act, which provides support for children living in child welfare facilities or children from impoverished families, excludes foreigners except for those recognized as refugees. As a result, migrant children do not receive financial support for their livelihood, housing, medical expenses, etc.

The Ministry of Health and Welfare is making efforts to provide protective measures for migrant children and to support their living expenses through local funds.<sup>36</sup> However, as it is a mere effort not an obligation of the government, it leads to inconsistent and unstable support for migrant children. Particularly, migrant children in protective facilities currently cannot receive support for medical expenses under the medical aid system, and they have to pay for health insurance. Starting from 2019, the criteria for imposing insurance premiums on them have changed, leading to a predicted increase in their financial burden.<sup>37</sup> In the ROK, there is no entity that can determine the "best interest of the child" specifically for migrant children, and different government departments responsible for each stage and situation of a child's life do not communicate effectively with each other. In this situation, it is difficult for migrant children who have experienced abuse to receive appropriate protection.

### **Conclusion & Recommendation**

1. The State Party should specify in child-related laws such as the Child Welfare Act and the Framework Act on Education that discrimination based on the nationality or residence status of the child or their parents is prohibited, and include migrant children as a target group for application, protection, and support.
2. In order to ensure the best interests of migrant children who are victims of abuse, the State Party should establish an independent body that can review the protection of children as well as extension of stay or granting of status of stay, and also develop measures to grant stable status of stay to children based on the decisions of this body.

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<sup>36</sup> "Program Guide for Child Sector in 2018", Ministry of Health and Welfare

<sup>37</sup> The immigrant children under protection in the facilities either stay unregistered without obtaining accompanying visa from their parent status, or stay with accompanying visa (F-1) without some guardians present. In the former case, they are unable to join health insurance, while in the latter case, they have to sign up for health insurance in the local area at their own expense. Until now, F-1 visa holders have been subject to health insurance premiums based on the same criteria as Korean citizens, resulting in insurance premiums for the protected children in the facilities amounting to only 2,000 to 3,000 KRW. However, starting in 2019, it is expected that they will be charged more than the average insurance premium, which could be over 100,000 KRW.

### **13. Freedom of residence and right to protection of sexual minority children outside the home**

In the ROK, youth shelters—nationally operated facility that provides temporary, short-term, and mid- to long-term protection for out-of-home youth—are divided based on legal gender. As a result, youth with gender identities that do not match their legal gender are unable to access an appropriate shelter, even if they have left home due to domestic violence. As such, sexual minority youth are excluded from the national protection system, exacerbating the risks they face.<sup>38</sup> Moreover, there is a lack of basic education on sexual minority issues, including gender identity and sexual orientation, among the staff in youth shelters (An article related to government audit on the Ministry of Gender Equality and Family will be attached). Consequently, sexual minority children have experienced discrimination and prejudice within the shelters that are supposed to protect them, further limiting sexual minority children’s and youth’s freedom to choose their housing.

Furthermore, youth counseling and welfare centers—delegated by the Ministry of Gender Equality and Family—available to all children and adolescents lack understanding of (1) the concept of sexual minority identities; and (2) the difficulties uniquely faced by sexual minority children and adolescents. As a result, they are unable to provide appropriate counseling to these individuals, leading to the violation of their rights to be free from discrimination.<sup>39</sup>

#### **Conclusion & Recommendations**

1. To ensure the right to housing of out-of-home sexual minority children and youth within the national protection system, the State Party must establish and implement a system for the operation of youth shelters that considers sexual orientation and gender identity. Additionally, the State Party should conduct mandatory human rights education for shelter staff members regarding sexual minorities.

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<sup>38</sup> The Hankyoreh, Young LGBTQ S. Koreans rejected by their families and peers, [https://english.hani.co.kr/arti/english\\_edition/e\\_national/951994.html](https://english.hani.co.kr/arti/english_edition/e_national/951994.html)

<sup>39</sup> The number of counseling cases for sexual minority children and adolescents in private support organizations is more than six times higher than that of government agencies. The Ministry of Gender Equality and Family Affairs acknowledged during the October 2021 Parliamentary inspection that their policies for sexual minority youth are insufficient and even lack basic aspects. The Ministry stated that it will conduct research and carry out research projects to assess the current situation, improve counselor education, and develop guidelines to ensure the safe protection and support for sexual minority youth. However, as of 2023, no related research projects or policy improvements have been undertaken.