

## **Unidentified Victims and Unpunished Offenders**

- **ROK government's failure to address human trafficking with the Act on the Prevention of Trafficking and Protection of Victims, etc. -**

**Advocates for Public Interest Law**

### **I. Introduction**

Advocates for Public Interest Law (APIL) is a public interest lawyers' organization based in South Korea which seeks to defend human rights of refugees, victims of human trafficking, stateless persons, long-term detained migrants and victims of Korean Corporations abroad through litigation, legislative advocacy, legal education, and domestic and international coalition work with other human rights organizations.

Advocates for Public Interest Law would like to bring to the Human Rights Committee issues related to human trafficking as concerned in LoIPR 14. The submission is divided into the following sections: Comments to the State Party's Positions Based on LoIPR 14; on the Act on Human Trafficking and Protection of Victims; on human trafficking for the purpose of sexual exploitation; on human trafficking for the purpose of labor exploitation. The submission ends with recommended suggestions for the Committee to make in its concluding observations.

### **II. Comments to the State Party's Positions**

#### **Failed Measures to Prevent and Eradicate Trafficking in Persons**

The State party emphasizes the role of the public institutions under the Employment Permit System (hereinafter 'EPS'). However, EPS is a part of the many other mechanisms to enter the State party for the migrant workers and public institutions fail to play the role to ensure the prevention and eradication of the human trafficking for the upsurge in receiving the migrant workers in State party's industries suffering from shortage of workforce. For example, migrant workers were introduced to the shipbuilding industry after the industry continued to complain about the outflow of domestic workers and difficulties in obtaining new workers. Under this scheme, private manning agencies are in charge of recruitment procedures and it was reported that the migrant workers paid high recruitment fees<sup>1</sup> and the passports of the migrant workers were confiscated by the manning agency despite the prohibition in the Immigration Control Act.<sup>2</sup>

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<sup>1</sup> Kang Ye-seul (2022. 12. 23), "For a Foreign Worker to Get an E-7 visa, One Has to Pay KRW 15 million", Maeil Labor News, <https://www.labortoday.co.kr/news/articleView.html?idxno=212616> (access date: 2023. 9. 11)

<sup>2</sup> Kim Ji-hwan (2023. 7. 25), "Hyundai Heavy Industry's Foreigner Support Center, Confiscated the Passport of the Migrant Workers... Violation of the Immigration Control Act," The Kyunghyang Shinmun, <https://www.khan.co.kr/national/labor/article/202307250700011> (access date: 2023. 9. 11)

The labor inspection by the State party has been considered as ineffective. The number of the labor inspector is still insufficient and one labor inspector is in charge of about 1,000 workplaces.<sup>3</sup> It was reported that the unpaid wages to the migrant workers amounts to 120 billion KRW in a year but the labor inspectors fail to provide the remedy to the migrant workers. It was also pointed out that despite the State party's ambitious plan to increase the number of the migrant workers under the EPS from 69,000 to 120,000 in 2024, there is no plan regarding strengthening the supporting system.<sup>4</sup> Instead, the State party announced a sharp cut in operating the Counseling Center for Foreign Workers and the Korea Support Center for Foreign Workers from 6 billion KRW to 0 KRW in 2024.<sup>5</sup>

The State party clarified that their policy to address human trafficking is to crack down on the business places where the vulnerable migrant workers are employed. However, the crackdowns do not lead to punish the offenders or to protect the victims. According to the press release by the Ministry of Justice after the crackdown on the entertainment and massage shops, none of the foreigners found during the crackdown were investigated as potential victims of the human trafficking; instead all of them were deported or reported to the police as perpetrators for illegal employment or violation of the relevant laws.<sup>6</sup> The extensive crackdowns have caused severe rights infringements against the migrant workers; in March 2023, the immigration officers even raided the concert where a famous Thai singer was performing and 83 migrants without legal status were deported. In the same month, even the church where the migrants were having religious service were raided and 9 Filipinos without legal status were deported. In April 2023, a Nepali migrant worker who got hurt during the crackdown was deported without proper treatment.<sup>7</sup>

The State party insists that they make the foreigners fill out the forms regarding the victim identification indicators and the health insurance when they visit the immigration office. However, the foreigners are accompanied by the agencies when they visit the immigration office, and they are monitored and guided by the agencies not to disclose the real conditions of their workplace. There has been no case where the immigration officers identified the victims of human trafficking based on the indicators submitted by the foreigners on their visit to immigration office. Thus, the State party's measures fail to prevent or eradicate human trafficking.

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<sup>3</sup> Kwak Ju-hyun (2022. 9. 12), "Labor Inspection Rate Drops to 30%...Workers Give Up Their Case Not Trusting Reporting", Hankook Ilbo, <https://www.hankookilbo.com/News/Read/A2022091213410004406> (access date: 2023. 9. 11)

<sup>4</sup> Choi Na-shil (2023. 9. 6) "120 Billion KRW Unpaid Wages A Year for the Migrant Workers...More Workers but the Number of the Inspectors Remains the Same", Hankook Ilbo, <https://www.hankookilbo.com/News/Read/A2023090516010005084> (access date: 2023. 9. 11)

<sup>5</sup> Kwon Min-ji (2023. 9. 7) "Foreign Workers Would Come to Work?...Next Year's Budget for Support Center Becomes '0 KRW' for the First Time.", KukminIlbo, <https://n.news.naver.com/mnews/article/005/0001636402?sid=102> (access date: 2023. 9. 11)

<sup>6</sup> Ministry of Justice (2022. 8. 19) "Ministry of Justice, Special Inspection on Illegally Employed Foreigners in Entertainment and Massage Industry for Strict Immigration Order" <https://www.moj.go.kr/bbs/moj/182/562235/artclView.do> (access date: 2023. 9. 11)

<sup>7</sup> Lee Jaeho (2023. 5. 4) "Raid Even to the Church...Human Rights Violation against Migrant Workers By Minister of Justice Han Dong-hun." Hankyoreh, [https://www.hani.co.kr/arti/society/society\\_general/1090424.html](https://www.hani.co.kr/arti/society/society_general/1090424.html) (access date: 2023. 9. 11)

## Ineffective Mechanisms to Identify and Support Victims of Trafficking

Despite the law prohibiting the punishment of prostitution by the victims of sexual trafficking and compelled actions, the law is rarely invoked in the real world as the investigators do not go through the trafficking victim identification procedure. It is natural and lawful for the investigators not to undergo the victim identification procedure lacking no legal obligation. Instead of imposing the legal requirement for victim identification procedures for the investigators or relevant agencies, the new Act on Prevention of Trafficking and Protection of Victims, etc. (hereinafter 'APTPV') merely requires the Ministry of Gender Equality and Family (hereinafter 'MOGEF') to **develop** a 'victim identification indicators' and to **recommend** the use of the indicators to the head of the relevant agencies such as prosecutors, police, immigration officers and other public officers working for foreigners. As a result, there has been not a single case where the public officers found out the victims of the human trafficking by using the victim identification indicators.

The first case to issue the certificate of the victim under the new APTPV was initiated by the civil society organizations in early 2023. However, due to the absence of the controlling agency to manage the victim identification procedure, the victims had a hard time going through the identification procedure. Even if the victims successfully obtain the certificate of the victims of human trafficking, they are not entitled to receive any financial or housing support, which are crucial for the victims to sustain their lives to rehabilitate as well as to seek justice. In addition, as the victim identification procedure is completely independent from the investigation procedure, holding the certificate of the victims of human trafficking does not guarantee them to be recognized as the victims through the criminal procedure.

The State party insists that the victims may receive the various supports if they fall under the definition of the victims of criminal torture under the Crime Victim Protection Act (hereinafter 'CVPA'). However, in order to be able to receive the support under the CVPA, the victims need to suffer from criminal injury amounts to death, disability, or serious injury<sup>8</sup> and victims of human trafficking do not necessarily meet these requirements, thus, there has been no case for the victims of human trafficking who have received such support.

The State party also alleges that the public officers are exempted from the obligation to report the undocumented foreigners 'when the remedying of an injury is deemed to be a priority for the foreigner.' However, as 'not to report' is under the discretion of the public officers, the public officers rarely exercise such discretion and the undocumented foreigners are usually reported to the immigration. Thus, it is common for the foreign victims to be detained and deported after the

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<sup>8</sup> Crime Victim Protection Act, Article 3(1)4. The term "criminal injury subject to relief" means death, disability, or serious injury caused by an act corresponding to a crime injuring human life or body committed inside the territory of the Republic of Korea or in a vessel or an aircraft of the Republic of Korea outside of the territory of the Republic of Korea (including acts which are not subject to punishment under Article 9, 10 (1), 12, or 22 (1) of the Criminal Act, but excluding acts which are not subject to punishment under Article 20 or 21 (1) of the same Act or acts committed by negligence);

crackdown instead of being identified and protected. There are numerous cases of immigration deporting ‘illegal foreigners’ upon the crackdown on entertainment and massage places.<sup>9</sup>

For example, the victims of human trafficking from Thailand filed a case against the police officers who investigated them as the suspects of the prostitution without the victim identification procedure. The victims came to the State party with false information regarding the workplace and were forced to work at the prostitution business. The police did not conduct the victim identification procedure despite the prevalent human trafficking scheme against Thai women; instead the police investigated the women as the perpetrator of prostitution without notifying the right to be accompanied by the persons with reliable relationship and right to be visited by the Consulate while the women were hospitalized due to the injury suffered from the crackdown. The National Human Rights Commission of Korea found that the Thai women’s rights were infringed and recommended the police agencies to set up the relevant regulation and manual for the identification procedure and protection measures for the human trafficking victims, to provide the training to the each police officers and to review the relevant regulations to ensure that the migrant women to have persons with reliable relationships to accompany during the investigation proceedings.<sup>10</sup>

### **Problems of Definition of Trafficking and Failed Measures Taken to Punish Perpetrators of Trafficking Appropriately**

The Criminal Act of the State party defines the act of trafficking in persons as ‘buying or selling’<sup>11</sup> which is not in line with the definition under the Palermo Protocol. This narrow definition of trafficking in persons has led to the rare punishment of the crime of human trafficking. From 2013, when the article on human trafficking was newly enacted in the Criminal Act, to 2020, merely five cases were punished; among 251 cases charged as human trafficking, 9 cases were indicted and 5 cases were found to be guilty. This is because the judiciary of the State party

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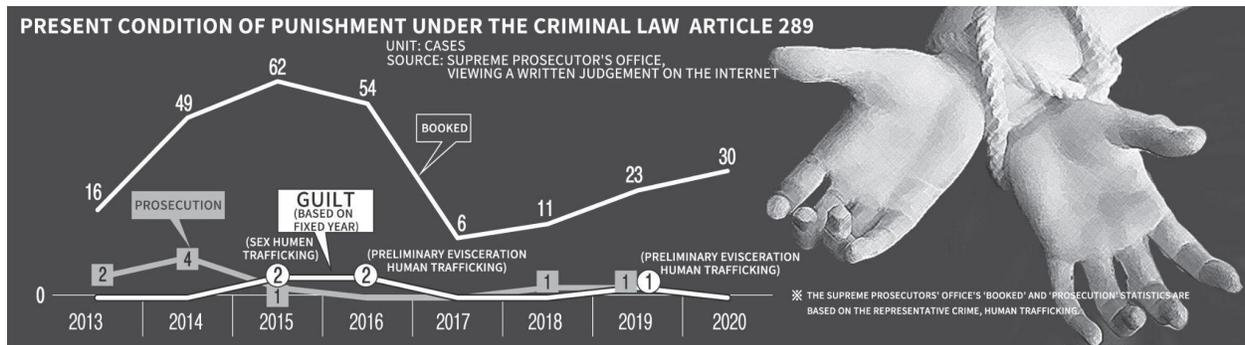
<sup>9</sup> See Appendix #5 for the list of the cases reported to the media on deportation of the Thai women after the crackdown.

<sup>10</sup> National Human Rights Commission of Korea, “Human Rights Violation Found Against Migrant Women Hospitalized After Fallen for Excessive Investigation and Lack of Identification Procedure on the Human Trafficking” (2021. 4. 12) <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7606483&searchCategory=&page=1&searchType=total&searchWord=%EC%9D%B8%EC%8B%A0%EB%A7%A4%EB%A7%A4&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>11</sup> Criminal Act Article 289 (Trafficking in Persons)

- (1) A person who buys or sells another shall be punished by imprisonment with labor for not more than seven years.
- (2) A person who buys or sells another for the purpose of engaging in an indecent act, sexual intercourse, marriage, or for gain, shall be punished by imprisonment with labor for at least one year up to ten years.
- (3) A person who buys or sells another for the purpose of labor exploitation, sex trafficking, sexual exploitation, or the acquisition of organs shall be punished by imprisonment with labor for at least two years up to 15 years.
- (4) The preceding paragraph shall apply to a person who buys or sells another for the purpose of transporting him or her or her out of the Republic of Korea, or a person who transports a purchased person out of the Republic of Korea.

requires the monetary exchange with the physical evidence to admit the ‘buying or selling’ to be established. For example, the convicted men who admitted the fact that they traded the woman with mental disability to exploit sexually for 400,000 KRW during the investigation changed their statements during the judicial proceedings were exonerated as the court found that mere statements by the offenders were not enough evidence for buying or selling.<sup>12</sup> Furthermore, based on the definition in the Criminal Act, no conviction was made for the purpose of labor trafficking.



(Image from the Kyunghyang Shinmun)

The State party alleges that the new “Act on Prevention of Trafficking and Protection of Victims, etc” would be enacted to address ‘the narrow definition of trafficking under the Criminal Act and insufficient punishment on perpetrators’; however, the APTPV failed to address both problems. Instead of complying with the definition of trafficking in the Palermo Protocol, the APTPV created a set of new definitions such as ‘human trafficking, etc,’ ‘crime of human trafficking, etc.’ causing confusion by the relevant agencies. Furthermore, lacking a provision punishing the perpetrators, the victims of human trafficking cannot be properly protected as they have to prove themselves as the ‘victims’ to be entitled to receive the ‘certificate of the victim’ from the Minister of Gender Equality and Family apart from the investigative procedure. As a result, the police do not recognize victim identification as their task but rather consider it as the task of the Minister of Gender Equality and Family.<sup>13</sup> In fact, the members of the civil society<sup>14</sup> as well as the UN experts<sup>15</sup> have severely criticized the creation of the new definition of human trafficking, etc. and

<sup>12</sup> Huh Jinmu (2021. 3. 19) “Arrested as Offender of Human Trafficking...Unpunished for ‘Human Trafficking’”, The Kyunghyang Shinmun

<https://www.khan.co.kr/national/court-law/article/202103190600035> (access date: 2023. 9. 11)

<sup>13</sup> The police agency stated that the identification and issuing the certificate of the victim of human trafficking are the mandate of the MOGEF and they do not have any information regarding the victim identification procedure in the answer to the information disclosure request by the reporting organization.

<sup>14</sup> Coalition for the Enactment of Special Law on Human Trafficking (2021. 2. 8), “[Statement] Government and the National Assembly should enact the Special Act on Human Trafficking!”

<https://apil.or.kr/press-releases/17511>; Coalition for the Enactment of Special Law on Human Trafficking (2021. 3. 5) “[Press Release] Enactment of Special Act on Human Trafficking, CSOs Urge Effective New Act” <https://apil.or.kr/press-releases/17827>

<sup>15</sup> Letter from Special Rapporteur on trafficking in persons, especially women and children and Special Rapporteur on contemporary forms of slavery, including its causes and consequences to the Republic of Korea (2021. 3. 15) OL KOR 2/2021

the absence of the punishment provision. However, the State party enacted the APTPV with the original proposal with the flaws and the victims are rarely protected under the new law.

It is not clear which cases are reported as ‘trafficking cases’ in the State party’s report to the Committee; the number of the ‘trafficking cases’ under the Criminal Act is extremely small as shown above. The State party should provide the names of the specific crimes for the statistics and explain the reason why they considered those crimes as ‘trafficking cases.’

### **Problems in Change in Employer under the EPS**

The State party’s allegation that the change of employer is permitted regardless of the number of times pursuant to the Act on the Employment, etc. of Foreign Workers is misleading since the law imposes the restriction on the grounds as well as the number of the change of the workplace. In fact, the basis for change of employer is still severely restricted, and the burden of proof falls entirely on the worker. A worker only has three chances to change their employer, and upon exhaustion, they cannot change their employer even if the workplace closes down or becomes unauthorized. Even though these cases should constitute “grounds not attributable to the worker”, one has no choice but to leave the State party or become undocumented with no fault of their own. It is also entirely possible, and therefore common, for employers to report the migrant workers to immigration officers as having “illegally escaped”, which renders them undocumented and subject to deportation. There have been numerous reports of cases where migrant workers attempt to change their employers due to volatile conditions, yet fail to do so due to the employers’ threat to report them to immigration.<sup>16</sup> In some cases, the request to change the workplace was denied by the labor office on unreasonable grounds such as the amount of wage withheld is not enough, or the degree of violent acts was not severe enough.<sup>17</sup>

Furthermore, the State party’s position of restriction on the change of workplace was justified by the judiciary. In December 2021, the Constitutional Court dismissed the claim brought by migrant workers and found the provisions in the Act On The Employment Of Foreign Workers<sup>18</sup>

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[https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/JointOpenLetter\\_OL\\_KOR\\_15.03.21.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Slavery/SR/JointOpenLetter_OL_KOR_15.03.21.pdf) (access date: 2023. 9. 11)

<sup>16</sup> Haemi (2023. 8. 25) “6.9 Times More Death... Migrant Workers Only Have “Rights to be Exploited.”” Pressian News, <https://www.pressian.com/pages/articles/2023082510525774875> (access date: 2023. 9. 11)

<sup>17</sup> Ryu Jiho (2023. 7. 25) “On cases of migrant workers vulnerable to forced labor” 「Policy Debate on Evaluating Human Trafficking and its Prevention in South Korea」 National Human Rights Commission of Korea, <http://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609350&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>18</sup> Act On The Employment Of Foreign Workers Article 25 (Permission for Change of Business or Place of Business)

(1) Where any of the following events occur, a foreign worker (excluding a foreign worker under Article 12 (1)) may file an application for transfer to another business or place of business with the head of an employment security office, as prescribed by Ordinance of the Ministry of Employment and Labor:

which restricts the grounds and the number in change of business or place of business constitutional.<sup>19</sup> The claimants could not change their employers despite suffering from withholding of wages, industrial accidents, and threats of deportation. However, the Constitutional Court sentenced that the need to effectively regulate ‘illegal foreigners’ and migrant workers trumped the rights of the migrant workers, which was widely criticized as justifying the current restriction that perpetuates forced labor and modern slavery.<sup>20</sup>

The rise in the number of changes in employers does not by itself signify better protection of workers’ rights. It is still significantly rare for a migrant worker to be able to request change of employer, and then get approved, for forced labor indicators such as withholding of wages, threat, or physical and sexual violence. In 2021, the number of requests for change of employer was 32,140. Of these, 85.6% were due to end of contract. Only 14.4% were based on “reasons not attributable to workers”, of which 13.4% were due to the workplace’s closure, break, or restriction of employment. Aside from these, mere 1% (335 out of 32,140 requests) were due to violations of workers’ rights, such as violence, poor housing conditions, or unfair treatment.<sup>21</sup>

Furthermore, the State party is strengthening its suppression on the basic rights of the migrant workers. On July 5th 2023, the government announced new restrictions on change of employer, where migrant workers under the EPS can now only change their employers within the same industry and the same regional province,<sup>22</sup> whereas previously there was no geographical

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1. If his or her employer intends to terminate the labor contract during the contract period, or intends to refuse renewal of the labor contract after its expiration, on a justifiable ground;
  2. Where the Minister of Employment and Labor gives public notice, as he or she deems, under a social norm, that the foreign worker is unable to continue to work in the business or place of business on a ground not attributable to him or her, such as temporary shutdown, closure of business, revocation of employment permission under Article 19 (1), limitation on the employment under Article 20 (1), provision of a dormitory in violation of Article 22-2, or the employer's violation of terms and conditions of employment or unfair treatment;
  3. Where any other cause or event prescribed by Presidential Decree occurs.

(4) Foreign worker’s change of business or place of business under paragraph (1) shall not, in principle, exceed three times during the period under Article 18 or two times during the extended period under Article 18-2 (1): *Provided*, That the foregoing shall not include cases of change of business or place of business on any ground prescribed in paragraph (1) 2.

<sup>19</sup> 2020-Heonma-395 (decided on 2021. 12. 23) Constitutional Court

<https://casenote.kr/%ED%97%8C%EB%B2%95%EC%9E%AC%ED%8C%90%EC%86%8C/2020%ED%97%8C%EB%A7%88395> (access date: 2023. 9. 11)

<sup>20</sup> Chingune Center for Migrants (2021. 12. 28) “Denouncing the Constitutional Court’s Decision on EPS That Violates Migrant Workers’ Fundamental Rights”

[http://www.chingune.or.kr/bbs/board.php?bo\\_table=B31&wr\\_id=161&page=7](http://www.chingune.or.kr/bbs/board.php?bo_table=B31&wr_id=161&page=7) (access date: 2023. 9. 11)

<sup>21</sup> Park Hayan and Park Chaeyoung (2022. 1. 12) “Migrant Workers Are Trapped by “Restriction on Change of Workplace”... “Settlement Recommended” Despite Employers’ Fault”, The Kyunghyang Shinmun, <https://www.khan.co.kr/national/labor/article/202201121723001#c2b2> (access date: 2023. 9. 11)

<sup>22</sup> Ministry of Labor (2023. 7. 5), “Ministry to actively support fluent management in industry, e.g. improving the policy on change of employer for foreign workers” [https://www.moel.go.kr/news/enews/report/enewsView.do?news\\_seq=15223](https://www.moel.go.kr/news/enews/report/enewsView.do?news_seq=15223) (access date: 2023. 9. 11)

restriction. The civil society criticized this change as effectively restricting the workers' right to free movement within the country.<sup>23</sup>

### III. On the Act on Prevention of Trafficking and Protection of Victims, etc.

#### Confusing Definition, No Punishment

The APTPV fails to adhere to the definition of human trafficking under the Palermo Protocol. As stated above, the APTPV invented a set of new definitions such as 'human trafficking, etc.', 'crime of human trafficking, etc.'. As a result, there are five different types of 'human trafficking' under the legislation of the State party: (1) human trafficking under the Criminal Act, (2) human trafficking under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, (3) human trafficking, etc. under the APTPV, (3) crime of human trafficking, etc. under the APTPV, and (5) human trafficking for the purpose of commercial sex acts under the Act on the Punishment of Arrangement of Commercial Sex Acts.

Human trafficking under the Criminal Act	(1)A person who buys or sells another shall be punished by imprisonment with labor for not more than seven years. (2)A person who buys or sells another for the purpose of engaging in an indecent act, sexual intercourse, marriage, or for gain, shall be punished by imprisonment with labor for at least one year up to ten years. (3)A person who buys or sells another for the purpose of labor exploitation, sex trafficking, sexual exploitation, or the acquisition of organs shall be punished by imprisonment with labor for at least two years up to 15 years. (4)The preceding paragraph shall apply to a person who buys or sells another for the purpose of transporting him or her or her out of the Republic of Korea, or a person who transports a purchased person out of the Republic of Korea.
Human trafficking under the Palermo Protocol	the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
Human trafficking, etc. under the APTPV	committing any of following acts for the purpose of any commercial sex act, sexual or labor exploitation, organ removal, or other forms of exploitation to recruit, transport, transfer, harbor, hand over, or receive persons: <i>Provided</i> , That where children or youth defined in subparagraph 1 of <u>Article 2 of the Act on the Protection of Children and Youth against Sex Offenses</u> (hereinafter referred to as "children or youth") or persons with disabilities under <u>Article 2 of the Act on Welfare of Persons with Disabilities</u> (hereinafter referred to as "persons with disabilities") are recruited, transported, transferred, harbored, handed over, or received, any of the following acts shall not be required: (a) Assaulting, threatening, coercing, arresting, confining, capturing, enticing, or trading a person;

<sup>23</sup> Kang Suk-young (2023. 7. 12) "Unprecedented regression' as the government exacerbates restriction on change of employer for migrant workers" Labor Today, <https://www.labortoday.co.kr/news/articleView.html?idxno=216142> (access date: 2023. 9. 11)

	<p>(b) Using deceptive means or force against a person, or taking advantage of the vulnerability and desperation of a person;</p> <p>(c) Offering, or promising to offer, money and valuables or property gains to a person who protects and supervises persons due to business or employment relations or other forms of relations;</p>
<p>Crime of human trafficking, etc. under the APTPV</p>	<p>any human trafficking, etc. which falls any of the following crimes:</p> <p>(a) A crime under <u>Article 274 of the Criminal Act</u> among the crimes of abandonment and maltreatment under Chapter XXVIII of Part II of that Act, and a crime under <u>Articles 287, 288, 289, 290, 291, 292, 294, and 296</u> of that Act among the crimes of kidnapping, abduction, or trafficking in persons under Chapter XXXI of that Part;</p> <p>(b) A crime under <u>Articles 18 and 23 (limited to an attempt of crimes under Article 18 of the Act on the Punishment of Arrangement of Commercial Sex Acts)</u> of that Act;</p> <p>(c) A crime under <u>Articles 12 through 15 of the Act on the Protection of Children and Youth against Sex Offenses</u>;</p> <p>(d) A crime under <u>Articles 55 through 57 of the Youth Protection Act</u>;</p> <p>(e) A crime under <u>Article 71 (1) 1, 2 (limited to an act falling under subparagraph 7 or 8 of Article 17 the Child Welfare Act), 3 (limited to an act falling under subparagraph 10 of Article 17 of that Act), and 4 of that Act</u>;</p> <p>(f) A crime under <u>Article 107 of the Labor Standards Act (limited to an act falling under Article 7 of that Act)</u>;</p> <p>(g) A crime under subparagraph 3 of <u>Article 167 of the Seafarers' Act</u>;</p> <p>(h) A crime under <u>Article 86 (2) 2 of the Act on Welfare of Persons with Disabilities</u>;</p> <p>(i) A crime under subparagraph 5 of <u>Article 85 of the Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients</u>;</p> <p>(j) A crime under <u>Article 26 (1) of the Act on Support for Welfare and Self-Reliance of the Homeless</u>;</p> <p>(k) A crime under <u>Articles 44 (limited to a crime under paragraph (1) 2 through 6, 8, and 9 of that Article), 45, and 48 (limited to a crime under subparagraphs 3 through 7 of that Article) of the Organs Transplant Act</u>;</p> <p>(l) A crime under items (a) through (k), which is subject to aggravated punishment under other statutes.</p>
<p>Human trafficking for the purpose of commercial sex acts under the Act on the Punishment of Arrangement of Commercial Sex Acts</p>	<p>committing any of following acts for the purpose of any commercial sex act, sexual or labor exploitation, organ removal, or other forms of exploitation to recruit, transport, transfer, harbor, hand over, or receive persons: <i>Provided</i>, That where children or youth defined in subparagraph 1 of <u>Article 2 of the Act on the Protection of Children and Youth against Sex Offenses</u> (hereinafter referred to as "children or youth") or persons with disabilities under <u>Article 2 of the Act on Welfare of Persons with Disabilities</u> (hereinafter referred to as "persons with disabilities") are recruited, transported, transferred, harbored, handed over, or received, any of the following acts shall not be required:</p> <p>(a) Assaulting, threatening, coercing, arresting, confining, capturing, enticing, or trading a person;</p> <p>(b) Using deceptive means or force against a person, or taking advantage of the vulnerability and desperation of a person;</p> <p>(c) Offering, or promising to offer, money and valuables or property gains to a person who protects and supervises persons due to business or employment relations or other forms of relations;</p>

Due to the different ways of defining human trafficking in each law, it is confusing for the public and the public officers to coherently understand the meaning of the human trafficking. What can be problematic especially is that the public officers who are in charge of enforcing the relevant laws do not apply these laws as it is confusing and difficult to understand the applicability of each article.

Furthermore, absence of the punishment provision has been severely criticized during the legislative procedure. However, the State party insisted that punishment provision was not necessary as there are other provisions for the punishment related to the crime of human trafficking in the Criminal Act, the Act on the Punishment of Arrangement of Commercial Sex Acts, Act On The Protection Of Children And Youth Against Sex Offenses and Act On Special Cases Concerning The Punishment Of Specific Violent Crimes. However, under the current laws, the crime of human trafficking has been rarely punished as shown above. Some of the perpetrators of human trafficking under the Palermo Protocol have been merely found to be guilty under 'acts of arranging commercial sex acts' under the Act on the Punishment of Arrangement of Commercial Sex Acts. Thus, it is clear that the current legislation in the State party is not sufficient to punish the perpetrators of the human trafficking, which is crucial to prevent the human trafficking.

### **Ineffective Identification and Protection**

Given the lack of coherency defining human trafficking as a crime, it is no surprise that identification of victims follow the same suit. Article 13 of the APTPV authorizes the Ministry of Gender Equality and Family (the "MOGEF") to develop "victim identification indicators". However, officials are not mandated to utilize this index and recent cases indicate that the index is not being utilized. Civil society organizations have been reporting cases upon the APTPV's enactment where they tried to coordinate with the public agencies in order to report human trafficking, but the officials were incapable of pointing out which agency is in charge of producing victim identification certificate, or when identified as victims, connecting them to proper support agencies due to the lack thereof.<sup>24</sup> Furthermore, the certificate of victim does not guarantee the outcome of the criminal proceedings as the investigative agencies are independent from the victim identification procedure by the MOGEF.

Likewise, even if the victims get identified, the protection measures under the APTPV appear dire. While the APTPV tasks overall victim support such as rescue, residence, medical assistance and education to regional 'support facilities,' the State party has been continuously failing to establish such facilities due to lack of interest and understanding among regional governments. To this date, only the "Women's Human Rights Institute" performs as the epicenter of overarching support work for victims of not only sex trafficking but also labor trafficking. The APTPV also narrows down the support during the criminal proceedings to be provided only to 'a victim of crime' and the victims of human trafficking under the Article 3(1) or

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<sup>24</sup> So-ah Lee (2023. 7. 25) "On What the HTPV Act without a punishment clause looks like on the field" 『 Policy Debate on Evaluating Human Trafficking and its Prevention in South Korea』 National Human Rights Commission of Korea, <http://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609350&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

Article 3(3) of the APTPV<sup>25</sup> are not entitled to receive the protection during the investigative and trial proceedings for crimes of human trafficking.

### **Failure to Ensure the Right to Stay for the Migrants**

Before the adoption of the new APTPV, Article 11 of the Act on the Punishment of Arrangement of Commercial Sex Acts did provide the ground for extra protection for the foreigners. Relevant provisions stated that if the foreign woman files a report on offenses under the law or is investigated, execution of the deportation order and the detention order should be suspended and the investigative agency is to take necessary measures with regard to the immigration management.<sup>26</sup> The relevant provision is not sufficient to provide the protection to the male victims for the purpose of labor trafficking and has clear restrictions. However, the worst part is that the article was rarely applied in the real world. On most of the occasions that the

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<sup>25</sup> Article 3 (Victims of Human Trafficking Eligible for Application of This Act)

(1) Any of the following victims of human trafficking, etc. (hereinafter referred to as "victim") shall be protected and supported under this Act:

1. A child, youth, or person with a disability who suffers damage from human trafficking, etc.;
2. A victim of a crime of human trafficking, etc. (hereinafter referred to as "victim of a crime");
3. A person who suffers damage from human trafficking, etc. (excluding a person falling under either subparagraph 1 or 2) and is issued with a certificate by the Minister of Gender Equality and Family pursuant to Article 14.

<sup>26</sup> Article 11 (Special Cases concerning Foreign Women)

(1) When a foreign woman files a report on any offense prescribed in this Act or a foreign woman is investigated as a victim of sexual traffic, an order for compulsory deportation referred to in Article 46 of the Immigration Control Act and internment referred to in Article 51 of the same Act shall not be executed until the following time. In such cases, the investigative agency shall take necessary measures for immigration management, such as notifying the local immigration office and foreign affairs office of the relevant foreign woman's personal information and residence: When a senior judicial police officer makes a decision not to transfer the case concerned; In such cases, it shall be limited to cases where there has been no request for reinvestigation under Article 245-8 of the Criminal Procedure Act within 90 days from the date of receipt of subparagraph 2 of Article 245-5 of the same Act (including cases where a request for reinvestigation has been made, but there has been no request to send the case within 30 days from the date of notification of the result of the reinvestigation) and there has been no objection under Article 245-7 of the same Act until the expiration of the relevant period;

1. When the public prosecutor has not prosecuted the case, or has instituted a public prosecution.

(2) After instituting a public prosecution against a case referred to in paragraph (1), a prosecutor may request the heads of the relevant agencies, such as the chief of a regional immigration office, to suspend the execution of an order for compulsory deportation under paragraph (1) or temporarily lift internment under the same paragraph for a fixed period of time, taking into account the actual conditions of victims of sexual traffic, testimony, necessity for compensation and other circumstances.

(3) The relevant foreign women may use shelters, etc. during the period in which the execution of an order for compulsory deportation is suspended or internment is temporarily lifted pursuant to paragraphs (1) and (2).

(4) When an investigative agency investigates a foreign woman as a victim of sexual traffic, the agency shall inform her that she can file a claim for compensation in accordance with the Act on Special Cases concerning Expedition of Legal Proceedings.

(5) When a foreign woman who is a victim of sexual traffic files a claim for compensation in accordance with the Act on Special Cases concerning Expedition of Legal Proceedings, paragraph (1) shall apply *mutatis mutandis* to such foreign woman until a relevant order of compensation is made final and conclusive.

investigative agencies first encounter the migrant women working in the sex industry, the migrant women are investigated as the offender and deported.

On the other hand, the APTPV did not have specific clauses to ensure the right to stay of the foreigners but instead designated the relevant articles in the Immigration Control Act which only ensures extension of the legal stay, suspension of the deportation order or permission on the temporal release from the detention center.<sup>27</sup> In fact, whether prolonged stay or delay of deportation is under the discretion of the immigration officers. However, the right to stay should not be decided by the immigration officers' discretion but to be ensured by the APTPV.

### **III. On Human Trafficking for the Purpose of Sex Exploitation**

#### **E-6 (culture and entertainment) Visa Holders**

This reporting organization had previously detailed the process of women with E-6-2 visas entering the State party under the false promise of becoming artists, while in reality being forced into sex trafficking. In lieu of this issue, the Committee noted at its 115th session that it is concerned with the fact that "Women entering the country on E-6 visas are frequently trapped into prostitution."<sup>28</sup> Below seeks to highlight where these women stand now, and what follow-up measures, if any, the government took to combat sex trafficking.

In the 2015 cases of sex trafficking, the law enforcement had failed to identify the migrant women as human trafficking victims, but rather interrogated them as criminal suspects for prostitution.<sup>29</sup> The women were detained in an immigration detention facility due to a deportation order, but were only able to stay upon making a criminal accusation against the club owners and production companies. However, the Prosecutor's Office decided not to indict the perpetrators

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<sup>27</sup> Act On Prevention Of Human Trafficking And Protection Of Victims Article 43 (Special Cases concerning Foreign Victims) Articles 25-2 and 46-2 of the Immigration Act shall apply to suspending the execution of a written order for deportation issued to foreign victims, temporary release from detention, and an extension of the period of stay. <Amended on Dec. 13, 2022>

Immigration Control Act Article 25-2 (Special Rules for Marriage Migrants)

(1) Where any of the following aliens applies for permission to extend the period of stay, the Minister of Justice may grant permission to extend the period of stay until remedy procedures such as the relevant trial are completed:

4. An alien who is a victim of human trafficking, etc. defined in Article 3 of the Act on the Prevention of Human Trafficking and Protection of Victims, for whom a court trial, investigation by an investigative agency, or a remedy procedure under other statutes is pending.

Immigration Control Act Article 46-2 (Special Rules for Enforcement of Deportation)

When an alien falling under any subparagraph of Article 25-2 (1) is subject to a pending court trial, investigation by an investigation agency, or remedy procedure under other statutes, the head of a Regional Immigration Service may postpone the enforcement of a written order of deportation under Article 62 or temporarily release the alien from detainment after making him or her deposit a bond under Article 65 while imposing restrictions on his or her residence or attaching other conditions necessary therefor.

<sup>28</sup> CCPR/C/KOR/CO/4

<sup>29</sup> Ko Dong-hwan (2018. 10. 31), "The curse of E-6-2", The Korea Times, [https://www.koreatimes.co.kr/www/nation/2018/10/177\\_255570.html](https://www.koreatimes.co.kr/www/nation/2018/10/177_255570.html) (access date: 2023. 9. 11)

on human trafficking charges, and thus they were convicted only of violation of the Immigration Act, sexual harassment and the arranging of prostitution.<sup>30</sup>

In 2019, another five migrant women fled from the very same club upon being trafficked for sexual exploitation in the same manner as the 2015 case. The women signed false employment contracts with local broker agencies, and upon entering the State party, were forced to sell drinks and to engage in commercial sex with customers at clubs. The coercion of commercial sex was achieved via confiscation of passport, physical violence, threats of deportation, debt bondage, and detention. The criminal proceeding against the club owners for the human trafficking, violation of the Act On The Punishment Of Arrangement Of Commercial Sex Acts, coercion, embezzlement, confinement, violation of the Immigration Control Act, violation of the Passport Act and against the promoters for human trafficking, violation of the Immigration Control Act and violation of the Act on the Protection of Temporary Agency Workers were all dismissed;<sup>31</sup> and the civil proceeding seeking unpaid wages has been pending to this day.<sup>32</sup>

Most recently in March 2023, after the implementation of the APTPV, there was another case of 3 migrant women who entered South Korea with E-6 with the promise by brokers that they will perform as singers. Prior to entrance, these women had gone through the appropriate procedure of applying for and being approved of the E-6 visa through the Korean Embassy and the Korean Media Rating Board. Despite the government's monitoring and approval, these women were immediately subject to sex trafficking by Korean operators. Fortunately, these women were able to escape and accused the operators of human trafficking under the Criminal Act; however, no indictment has been made to this day. In addition, the women also requested the MOGEF to certify that they were indeed victims of human trafficking under the Act to be

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<sup>30</sup> APIL (May 2015), "Julia: despair or hope of E-6 human trafficking victim" <https://apil.or.kr/news/4598> (access date: 2023. 9. 11)

<sup>31</sup> In order to initiate the criminal proceedings, the Complainant and her colleagues had to report to the police directly, they submitted the complaint to the Complaint mechanism under the Supreme Prosecutors' Office on 9 July 2020. This was to avoid the women being investigated as offenders for prostitution. However, the Supreme Prosecutors' Office clarified that they had to report the case to the police by filing a complaint for the investigation. On 13 August 2020, various offenses were brought against both the owner as well as the promoters and her colleagues reported the offenders. However, 31 December 2020, the Uijeongbu District Prosecutor's Office decided not to indict the offenders. Upon the decision, the counsel for the Complainant and her colleagues appealed the non-indictment decision twice. First, they appealed to the Supreme Prosecutors' Office and the appeal was dismissed except the case against the owners and the promoters for violating the Labor Standard Act. The Complainant and her colleagues then again appealed to the Seoul High Court but the appeal was dismissed on 19 August 2021. The Prosecutor then reopened the case only for the violation of the Labor Standard Act. During the investigation the prosecutor investigated the Complainant and her colleagues with the offenders in the same room. The Complainant and her colleagues were afraid of facing the offenders in person, but the prosecutor put them into the small room together. The complainant and her colleagues requested the prosecutor to allow them to accompany the persons with reliable relationship but the request was denied.

<sup>32</sup> In 2022, the reporting organization filed claims for unpaid wages and compensation for mental distress, which again was dismissed. As of September 2023, the case is pending at the Seoul High Court.

eligible for support and protection. However, as of July 2023, the MOGEF has been silent in providing protection for these victims, let alone a confirmation that they are indeed the victims.<sup>33</sup>

### Short-term Visa Holders

Sex trafficking is not a problem confined to the E-6 category. Migrants who enter the State party under visa-exemption (B-1) program or “short-term visit visa” (C-3) also have been subject to the victims of sex trafficking as well since these categories require a minimum screening process. For example, the brokers seduce the migrants with the false promise of a well paid job and lend the money to the migrants; however, the migrants are immediately taken to the place where they are sexually exploited. When the migrants’ legal stay expires, they become even more vulnerable to exploitation. In mid-2022, relying on the Ministry of Justice’s official report alone, there were 642 migrant women employed without government authorization in “indecent entertainment and massage industries.”<sup>34</sup> Significant majority of the Korean employers and operators, on the other hand, were only fined without indictment. For the rest of 2022, the Ministry of Justice continued to arrest and forcibly deport 75 migrant women<sup>35</sup> who had previously entered the State party for short-term stays, only to be illegally employed and exploited.<sup>36</sup>

All 717 migrant women arrested were, without exception, forcibly deported with no investigation or victim identification, despite there being clear indications of human trafficking, e.g. confiscation of passports, restriction of movement, and forcing of commercial sex acts. This pattern has been persisting even upon the enactment of the APTPV.<sup>37</sup>

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<sup>33</sup> Woo Junghee (2023. 7. 25), “On cases of sexual exploitation against migrant women with E-6 visas”, 「Policy Debate on Evaluating Human Trafficking and its Prevention in South Korea」.  
<http://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609350&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>34</sup> Ministry of Justice (2022. 8. 19), “Special Inspection on illegally employed foreigners in entertainment and massage industry for strict immigration order”  
<https://www.moj.go.kr/bbs/moj/182/562235/artclView.do>

<sup>35</sup> Notably in December 2022, the MOJ reported that a South Korean operator of a massage agency illegally employed migrant women, and evaded inspection by locking down the venue. What is disturbing is that this operator had already been caught 4 times for the exact same pattern of exploitation, but had only been punished for violation of the Immigration Act. Despite this record of perpetual violation, the operator was again arraigned without detainment, not for trafficking related crimes but, again, for violation of the Immigration Act. See Park Sejin & Kim Hyuntae (2022. 12. 29), “An operator in 40s arrested for illegally employing 46 Thai female masseuse” Yonhapnews,  
<https://www.yna.co.kr/view/AKR20221229085551053> (access date: 2023. 9. 11)

<sup>36</sup> Donga News (2022. 10. 28), “Illegal employment at massage agencies upon tourist visas... 24 Thai arrested” <https://www.donga.com/news/Society/article/all/20221028/116201127/1> (access date: 2023. 9. 11); Newsis (2022. 12. 12), “A massage operator in 30s who illegally employed Thai women arraigned to prosecution’s office” [https://newsis.com/view/?id=NISX20221212\\_0002119933](https://newsis.com/view/?id=NISX20221212_0002119933) (access date: 2023. 9. 11) Newsis (2022. 12. 29), “Daegu Immigration Office arrested an operator for employing 46 illegally staying Thai women” [https://mobile.newsis.com/view.html?ar\\_id=NISX20221229\\_0002141443](https://mobile.newsis.com/view.html?ar_id=NISX20221229_0002141443)

<sup>37</sup> Most recently in May 2023, a local police agency arraigned a case where 4 migrant women were trafficked for the purpose of sexual exploitation from July 2022 to April 2023, the period of which would fall under the jurisdiction of the new Act. These women had entered South Korea with 3-months short-term

## IV. On Labor Trafficking against Migrant Workers

### Fisheries

The high risk of human trafficking and forced labor in the fishing industry in the State party lies both in coastal fishing vessels weighing 20 tons or more and in distant water fishing vessels. Fishing industry is well known for its harsh working conditions and this is especially true for the migrant workers as the domestic workers of the State party are aging. According to a recent investigation on coastal migrant fishers by the Human Rights Network for Migrant Fishers, coastal migrant fishers' working hours a day averaged to 18 hours, while off-days in a given month averaged to 2.3 days. Excessively lengthy working hours is also true to the workers in the DWF as 60% of the migrant fishers reported working hours as more than 14 hours per day and 26% of the migrant fishers also reported that sometimes they had to work more than 18 hours straight without rest.<sup>38</sup>

Despite the excessive working hours, migrant fishers are subject to discriminately low minimum wage. This is because the migrant fishers' wages working in the coastal fishing vessels weighing 20 tons or more are decided by the collective agreement between the seafarers' labor union and the shipowners' organization. The migrant fishers are not represented by the seafarers' labor union, in this case the Federation of Korean Seafarers' Union. In 2023, the minimum wage for migrant coastal fishers has been determined to be 1,632 USD, which is 85% of minimum wage for Korean coastal fishers.<sup>39</sup> On the other hand, the minimum wages for the DWF is determined by the International Transport Workers Federation (ITF), which is 561 USD for the crews of the lowest rank.<sup>40</sup>

What traps the migrant fishers in these harsh working conditions are financial constraints placed on them such as debt bondage and withholding of wages. Both coastal and DWF migrant fishers make contracts with brokers and recruitment agencies in their home countries, which charge high recruitment fees as well as "escape deposits" that they are told will be returned once they complete their contracts. Due to these charges, migrant fishers rarely receive their

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visas, but once expired, became undocumented. Due to this lack of legal status, the women were not afforded victim support, but rather transferred to the Immigration authorities.

See: Kim Yong-gu (2023. 5. 8), "Arranged sex trafficking in the middle of Changwon by employing Thai women", Kookje News

<http://www.kookje.co.kr/news2011/asp/newsbody.asp?code=0300&key=20230508.99099002464> (access date: 2023. 9. 11)

<sup>38</sup> EJF & APIL (May 2023), 「Korea's Migrant Fishers Plan fails to end human rights abuses at sea」 <https://apil.or.kr/reports/3005637320> (access date: 2023. 9. 11)

<sup>39</sup> Hansook Lee (2023. 7. 25), "Reality of labor exploitation and forced labor against migrant fishers", 「Policy Debate on Evaluating Human Trafficking and its Prevention in South Korea」. <http://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609350&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>40</sup> ITF ILO Minimum Wage Scale, <https://www.itfseafarers.org/sites/default/files/node/resources/files/ILO%20Min%20Wage%20%201st%20January%202023%20-%20Consolidated%20Interpretation.pdf>

wages, already below the minimum standards, in full, as parts of their wages are automatically transferred as recruitment fees. The amount of the recruitment fee is increasing especially for the migrant workers in the coastal fishing vessels weighing 20 tons or more; in 2023, migrant workers from Vietnam paid over 17 million KRW and migrant workers from Indonesia paid over 11 million KRW.<sup>41</sup> In addition, passport confiscation still remains a prevalent custom against migrant fishers, even though the Seafarers' Act prohibits it. This, combined with the inherent vulnerability of being at the sea for an extended period of time e.g. restriction of movement and lack of food and water, renders migrant fishers vulnerable to forced labor and human trafficking.

Aware of these risks, in 2021, the MOF had attempted to establish a public agency in charge of recruitment and immigration process of coastal migrant fishers in order to prevent practices of debt bondage and recruitment fees.<sup>42</sup> However, this attempt was turned down due to harsh pushback from the employers' association as well as the Korean fishers' union, particularly on the claim that they ought to be in charge of the recruitment process for migrant fishers.<sup>43</sup> The MOF had also attempted to tackle human trafficking risks in the DWF as well in 2021 by releasing a set of measures to regulate working hours, minimum wage, and recruitment fees. However, as these measures lacked any legal authority or enforcement, the problems have been persisting without improvements.<sup>44</sup>

## Agriculture

There are largely two types of programs in which migrant workers are employed in agriculture: Seasonal Worker Program ("SWP", E-8 visa) and the Employment Permit System ("EPS", E-9 visa). Unlike other industries, work in the agricultural sector is exempted to regulate the work hours;<sup>45</sup> As a result, the migrant farmers are extensively exploited without proper break and

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<sup>41</sup> Hansook Lee (2023. 7. 25), "Reality of labor exploitation and forced labor against migrant fishers", 「Policy Debate on Evaluating Human Trafficking and its Prevention in South Korea」.  
<http://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609350&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>42</sup> Korea Ministry of Government Legislation (March 2021), Legislation Notice: Act on Public Agency on Oceans and Fisheries  
<https://moleg.go.kr/lawinfo/makingInfo.mo?mid=a10104010000&lawSeq=63005&lawCd=0&lawType=TYP E5&currentPage=21&keyField=&keyWord=&stYdFmt=&edYdFmt=&lsClsCd=&cptOfiOrgCd=>

<sup>43</sup> Kim Miyoung (2021. 4. 16), "Why is the Korean Fishers' Union against the Public Agency on Oceans and Fisheries?" Labor Today News, <https://www.labortoday.co.kr/news/articleView.html?idxno=202372> (access date: 2023. 9. 11)

<sup>44</sup> EJF & APIL (May 2023), 「Korea's Migrant Fishers Plan fails to end human rights abuses at sea」  
<https://apil.or.kr/reports/3005637320>

<sup>45</sup> Labor Standards Act Article 63 (Exclusion from Application)

The provisions pertaining to work hours, recess, and holidays referred to in this Chapter and Chapter V shall not apply to an employee who falls under any one of the following subparagraphs: An employee engaged in cultivation or reclamation of land, seeding, cultivation, or collection of plants, or other agricultural and forestry work;

1. An employee engaged in breeding of animals, collection or catching of marine animals and plants, cultivation of marine products, or other cattle breeding, sericulture and fishery business;

compensation. Workers at the farms are virtually unprotected against unjust firings or wage theft, uncompensated for workplace injuries, and have scant access to healthcare. They often must pay \$90-\$270 a month to stay in miserable makeshift dormitories that often are just shipping containers equipped with propane tanks for cooking.<sup>46</sup>

Due to the harsh working conditions, lengthy working hours, the number of the migrant workers running away from the original farm is increasing. As a response to address the increasing runaway, the Ministry of Justice requires the local governments to present the measures to prevent the migrant workers' runaway. The local governments in order to secure and expand the quota of the migrant workers, they adopt the measures causing human rights violations such as deposit money, forced savings, joint liability among the relatives.<sup>47</sup>

Under the SWP,<sup>48</sup> farms can hire migrant workers for a concentrated period of time when labor is most needed. The local governments have been criticized for lack of workforce and capacity, where a single official has to be in charge of several hundred migrant workers. Due to this lack of capacity and oversight, the SWP has been largely reliant on brokers' interference from recruitment to immigration. In one instance, the local government admitted that it outsourced the recruitment process to brokers due to its own lack of competence. These brokers proceeded to take more than half of the migrant workers' wages as fees, which resulted in the workers escaping to another workplace for more livable wages, which makes them undocumented and subject to forced deportation.<sup>49</sup> While the MOJ attempted to outlaw brokers' interferences in 2019, no progress was made.<sup>50</sup> Far from being a singular instance,<sup>51</sup> experts have recently

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2. An employee engaged in surveillance or intermittent work, whose employer has obtained the approval of the Minister of Employment and Labor;

3. An employee engaged in such business as prescribed by Presidential Decree.

<sup>46</sup> Kim Tong-Hyung (2021. 3. 5), "Migrant Workers Face Dire Conditions at South Korean Farms." The Diplomat, <https://thedi diplomat.com/2021/03/migrant-workers-face-dire-conditions-at-south-korean-farms/> (access date: 2023. 9. 11)

<sup>47</sup> Koh Kibok (2023. 5. 19), "Problems of the Korean Seasonal Workers' Program with Comparison", 『Seasonal Workers Oversea Research』, National Human Rights Commission of Korea, <https://www.humanrights.go.kr/base/board/read?boardManagementNo=24&boardNo=7609130&menuLevel=3&menuNo=91> (access date: 2023. 9. 11)

<sup>48</sup> As of August 2023, 18,982 migrants are working with E-8 visa, with those from Vietnam (8,692) and Philippines (5,555) making up the majority.

Ministry of Justice, Monthly Statistics on Immigration Policy (July 2023)

<https://www.immigration.go.kr/immigration/1569/subview.do?enc=Zm5jdDF8QEB8JTJGYmJzJTJGZW1taWdyYXRpb24IMkYyMjclMkY1NzQ0NjQIMkZhc nRj bFZpZXcuZG8IM0ZwYXNzd29yZCUzRCUyNnJnc0Jn b m R I U 3 R y J T N E J T I 2 Y m J z Q 2 x T Z X E I M 0 Q I M j Z y Z 3 N F b m R k Z V N 0 c i U z R C U y N m l z V m l l d 0 1 p b m U I M 0 R m Y W x z Z S U y N n B h Z 2 U I M 0 Q x J T I 2 Y m J z T 3 B I b l d y Z F N l c S U z R C U y N n N y Y 2 h D b 2 x 1 b W 4 I M 0 Q I M j Z z c m N o V 3 J k J T N E J T I 2>

<sup>49</sup> Cho Suyoung (2022. 10. 21), "Disappearance of seasonal workers... there were "brokers" behind" MBC News, [https://imnews.imbc.com/replay/2022/nwtoday/article/6419203\\_35752.html](https://imnews.imbc.com/replay/2022/nwtoday/article/6419203_35752.html) (access date: 2023. 9. 11)

<sup>50</sup> Kang Jae-gu (2020. 6. 6), "Seasonal foreign workers regularly stripped of wages by brokers in worker-exchange program" Hankyoreh, [https://english.hani.co.kr/arti/english\\_edition/e\\_international/923343.html](https://english.hani.co.kr/arti/english_edition/e_international/923343.html) (access date: 2023. 9. 11)

<sup>51</sup> A 2018 study found that out of the 29 local government agencies in charge of SWP, 5 outsourced the recruitment process to brokers.

called for strengthened governmental oversight, as too many migrant workers are being exploited and rendered vulnerable in the status quo.<sup>52</sup>

Migrant farmers under the EPS have been known to live in illegally constructed shelters made of plastic sheets, while having their wages forcibly deducted for “residence fees”.<sup>53</sup> There are also frequent reports of physical and verbal violence by Korean employers, wage deduction, and industrial accidents without compensation<sup>54</sup>. However, migrant farmers are practically trapped in these precarious conditions due to the systematic restraints designed in the EPS, approved and authorized by the government.

## Salt Farm

In 2014, more than 100 workers were rescued from salt farms in Sinan County. They were trapped without pay, subject to violence and forced labor, without identification and bank documents, and were brought by brokers to the farms from young ages<sup>55</sup>. Investigations later found 107 workers with unpaid wages amounting to more than 100,000 USD, 49 of whom were victims with disabilities<sup>56</sup>. However, not a single employer was convicted of human trafficking under the Criminal Code<sup>57</sup>, and no official was held liable<sup>58</sup>. From these cases, at least 40 victims have been reported to have gone back to the salt farm due to lack of support and infrastructure in the outside world for human trafficking victims with disabilities<sup>59</sup>.

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Korean International Migration Studies Association (December 2018), 「Study on short-term seasonal workers program: analysis of status quo and general improvements,

[https://migrants.or.kr/bbs/board.php?bo\\_table=m21&wr\\_id=208&page=6](https://migrants.or.kr/bbs/board.php?bo_table=m21&wr_id=208&page=6) (access date: 2023. 9. 11)

<sup>52</sup> Park Minsuk (2023. 3. 27), “What is the cause and solution for illegal escapes of SWP migrants?” Jeollailbo, <http://www.jeollailbo.com/news/articleView.html?idxno=687578> (access date: 2023. 9. 11)

<sup>53</sup> Jun Jonghee (2022. 12. 29), “10 years stay for migrant workers without even a family visa... human rights are missing”, Hankyoreh, <https://www.hani.co.kr/arti/society/labor/1073690.html> (access date: 2023. 9. 11)

<sup>54</sup> Cho Iljun (2022. 12. 18) “Slavery forced upon 240,000 people with “Korean Dream””, Hankyoreh, [https://h21.hani.co.kr/arti/society/society\\_general/53043.html](https://h21.hani.co.kr/arti/society/society_general/53043.html) (access date: 2023. 9. 11)

<sup>55</sup> Business & Human Rights Resource Centre (2015. 1. 1), “South Korea: Disabled slaves tell of 'living hell' on remote South Korean salt farms”

<https://www.business-humanrights.org/en/latest-news/south-korea-disabled-slaves-tell-of-living-hell-on-remote-south-korean-salt-farms/> (access date: 2023. 9. 11)

<sup>56</sup> Shim Younggu (2014. 3. 5), “The ‘salt farm slaves’ were only re-discovered”, SBS News, [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1002277791](https://news.sbs.co.kr/news/endPage.do?news_id=N1002277791) (access date: 2023. 9. 11)

<sup>57</sup> The Prosecutors’ Office indicted 48 employers, yet out of 33 trials, 26 ended up in fines and probations. A single employer was convicted of forced labor under the Labor Standard Act, as opposed to the crime of human trafficking under the Criminal Code, and received a light sentence of 14 months of imprisonment.

<sup>58</sup> Several victims testified that local government officials knew about their slavery and even prevented them from escaping. However, the courts ruled that no government official was liable for the failure in discovering and rescuing the victims.

New York Post (2015.11. 13), “Victims claim South Korean officials knew about slave islands” <https://nypost.com/2015/11/13/victims-claim-south-korean-officials-knew-about-slave-islands/>

<sup>59</sup> Park Sangjin (2022. 1. 25), “Victims of ‘salt farm slavery’ are going back to the salt farms... why?”, SBS News, [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1006618099](https://news.sbs.co.kr/news/endPage.do?news_id=N1006618099) (access date: 2023. 9. 11)

7 years later in 2021, at least 14 workers had to be again rescued from salt farms in the same region. Majority of them were either registered or later diagnosed with disabilities. These victims were exploited without pay, de facto detained within an island, and were forced to work from 3am to 11pm everyday. The incident was publicized when one victim with disability, Mr. P, escaped and publicly appeared in the media. However, when Mr. P initially attempted to seek remedy via the Ministry of Employment and Labor, the government pressured Mr. P to make a settlement with the employers and move on, even though Mr. P explained to them that there were other victims remaining at the salt farms<sup>60</sup>. Another troubling revelation was that the employers of Mr. P had already been discovered and indicted from the 2014 cases<sup>61</sup>. However, they had been freed without punishment, and had continued their exploitation without repercussions.

Despite the victims coming out to the world, protection has been lacking. While some of the victims were able to relocate to local communities, they have been unable to receive any governmental support due to lack of regional infrastructure. The victims have been largely reliant on individual donations and NGOs' aid for residence, medical support, and legal aid<sup>62</sup>.

Unfortunately, these are not exceptional cases,<sup>63</sup> and there have been recent reports of forced labor against people with disabilities outside of the salt farms as well. A temple operator enslaved, stole the identity of, and physically abused a victim with disability for 32 years. In 2020, the operator was only convicted with charges of battery and sentenced with fines<sup>64</sup>. In 2021, a “dog farm” operator was caught for having detained and exploited without pay a person with disability for 10 years.<sup>65</sup> In 2022, a person with disability came out to the media on 30 years

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<sup>60</sup> Kim Kang-won (2022. 9. 29), “Labor Exploitation in the Saltern field, an Unfinished Story”, 「International Conference to end forced labor in salt farms」, <https://apil.or.kr/reports/2202967381> (access date: 2023. 9. 11)

<sup>61</sup> Business & Human Rights Resource Centre (2022. 9. 13), “S. Korea: Forced labour in Sinan salt farms reportedly unaddressed after 2014 exposé; company responses included”, <https://www.business-humanrights.org/en/latest-news/south-korea-victim-exposes-chronic-forced-labour-issues-unaddressed-after-2014-expos%C3%A9-in-sinui-island-salt-farms/> (access date: 2023. 9. 11)

<sup>62</sup> Lee Girim (2022. 9. 29), “Proposal: Solving the Problem of Salt Farm Labor Exploitation against Persons with Disabilities”, 「International Conference to end forced labor in salt farms」, <https://apil.or.kr/reports/2202967381> (access date: 2023. 9. 11)

<sup>63</sup> According to a local government’s investigation upon the 2021 cases, 39% of all salt farm workers were suspected to have disabilities; they worked 14.5 hours a day and 6.5 days a week; they received 2,120,000 KRW as wages in average, which is only 60% of the legal minimum wage; 20% suffered from industrial accidents; 21% experienced physical and sexual violence.

Jung Bansuk (2022. 6. 16), “94 hours a week, 2,212,000 KRW a month... “salt farm slavery” revealed”, SBS News, [https://news.sbs.co.kr/news/endPage.do?news\\_id=N1007232292](https://news.sbs.co.kr/news/endPage.do?news_id=N1007232292) (access date: 2023. 9. 11)

<sup>64</sup> Park Yeji (2020. 8. 12), “5,000,000 KRW fine sentenced on 32 years of labor exploitation against a person with disability... Prosecution claims “not a big deal”” Social Focus, <https://www.socialfocus.co.kr/news/articleView.html?idxno=8361> (access date: 2023. 9. 11)

<sup>65</sup> Ha Minji (2021. 7. 15), “An undocumented person with disability has suffered from labor exploitation for 10 years in an illegal dog farm” Be Minor, <https://www.beminor.com/news/articleView.html?idxno=21678> (access date: 2023. 9. 11)

of forced labor in a cattle farm, with all wages and government subsidies stolen by the operator. The operator has been reported to have only been charged with the crime of embezzlement<sup>66</sup>.

## V. Suggested Recommendations

- Amend the Act on Human Trafficking and Protection of Victims to newly install a provision for the punishment of the crime of human trafficking and to revise the definition of human trafficking to comply with the Palermo Protocol.
- Provide legal grounds to mandate utilization of human trafficking victim identification index for immigration, law enforcement, and judicial authorities, particularly in dealing with migrants in industries vulnerable to human trafficking, including but not limited to entertainment venues, massage industries, agricultural sectors, and fisheries.
- Ensure legal status for migrants identified as victims of human trafficking for the duration of legal proceedings as well as support and recovery processes, and thereby prevent detention and forced deportation against victims of human trafficking.
- Establish public agencies nationwide responsible for and capable of holistic support for victims of human trafficking, including but not limited to legal aid, psychological counseling, residence, and medical support, that can cater to specific categories of victims, i.e. women, people with disabilities, and migrants, etc.
- Prohibit private agencies both in the State party and in the sending countries, from exploiting the migrant workers by imposing escape deposits, recruitment fees, and debt bondage, and ensure that the central government oversees all aspects of recruitment and immigration.
- Eradicate legal grounds for labor exploitation against migrant workers such as discrimination on wage, absence of provision on work and rest hours, and restriction on change of employer.
- Ensure the implementation of the law prohibiting the confiscation of the passport and other personal documents.
- Strengthen the labor inspection to the workplace where the migrant workers are reported to be exploited.

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<sup>66</sup> Na Bobae (2022. 4. 28), "Person with intellectual disability under forced labor for 30 years in a cattle farm", Yonhapnews, <https://www.yna.co.kr/view/AKR20220428115600055> (access date: 2023. 9. 11)

<List of Appendix>

- #1. English translation of the Act On Prevention Of Human Trafficking And Protection Of Victims
- #2. English translation of the Act On The Punishment Of Arrangement Of Commercial Sex Acts
- #3. English translation of article regarding statistics of the punishment of human trafficking
- #4. English translation of Statement by Coalition for the Enactment of Special Law on Human Trafficking
- #5. List of the articles related to crackdown (2018-2023)