

Alternative Report to the United Nations Human Rights Committee

Republic of Korea, 115th Session

**Submitted by
Advocates for Public Interest Law**

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I. INTRODUCTION

1. Advocates for Public Interest Law (APIL) is a public interest lawyers' organization, which seeks to defend the human rights of refugees, victims of human trafficking, stateless persons, long-term detained migrants and victims of the human rights violations committed by Korean Corporations abroad through litigation, legislative advocacy, legal education, and domestic and international coalition work with other human rights organizations.
2. Advocates for Public Interest Law would like to bring the following areas to the Human Rights Committee: 1) arbitrary detention of foreigners including minors; 2) human rights abuses in the deportation room; and 3) issues related to the human trafficking. Each section conveys suggested Recommendations for the Human Right Committee's review.

II. Arbitrary Detention of Foreigners Including Minors: ICCPR Art. 9

No Limit on the Detention Period

3. In its Deliberation No 5, the Working Group on Arbitrary Detention stipulates that detention should be for a defined period "set by law" and "may in no case be unlimited or of excessive length": A maximum period should be set by law and the custody may in no case be unlimited or of excessive length.¹ However, under the Article 63 (1) of Korean Immigration Control Act², foreigners can be detained indefinitely as it fails to specify the maximum period of the detention.
4. Despite the Government's allegation that the average period of detention is 12.2 days in 2014, the average period of detention for refugee applicants is much longer. In 2014, the average period of detention of refugee applicants was 100 days at Hwasung Immigration Detention Center, 124 days at Cheongju Immigration Detention Center, and 83 days at Yeosu Immigration Detention Center.³

¹ Working Group on Arbitrary Detention, Deliberation No. 5. Principles concerning the detention of

² Article 63 (Detention of Persons Subject to Deportation Orders, or Release from Detention) (1) If it is impossible to immediately repatriate a person who is subject to a deportation order, out of the Republic of Korea, the head of office or branch office or the head of the immigration detention center may detain him in a detention facilities until the repatriation is possible.

³ Data obtained by Information Disclosure Request in 2013. 12., 2015. 8. From Hwasung, Cheongju, Yeosu Immigration Detention Center

Year	Period of Detention (day)					
	Hwasung (general)	Hwasung (refugee applicants)	Cheongju (general)	Cheongju (refugee applicants)	Yeosu (general)	Yeosu (refugee applicants)
2012	12.5	375	12.5	143	16.3	156
2013	12.1	171	12.1	149	15.9	122
2014	11.3	100	11.9	124	16	83

5. Long-term detainees suffer from the devastating consequences; for example, a refugee applicant detained for 3 years and 9 months at the Hwasung Immigration Detention Center suffered from mental disease such as suicidal tendencies and social phobia and he also lost most of the teeth due to the severe stress. He was recognized as a refugee after the release from the detention center, yet no compensation was available to him for wrongful detention. Furthermore, Korean government continues to detain refugee applicants without the limit on the period; and there are refugee applicants who are still detained in the immigration detention facilities even for more than 3 years.⁴

No Effective Reevaluation/ Judicial Review on Detention

6. It is the view of the Human Rights Committee that the detention during the immigration control is arbitrary unless it is justified as reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time. The Human Rights Committee further provides examples of relevant factors to be considered for the decision on extension of detaining asylum-seekers such as an individualized likelihood of absconding, danger of crimes against others, risk of acts

2015. 6	10.0	84.3	13.5	98	14.2	0(None)
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⁴ Period of detention of 21 refugee applicants at Hwasung, Cheongju, Yeosu Immigration Detention Centers as of 5 August 2015 (data obtained by Information Disclosure Request)

Number	Start Date of Detention	End Date of Detention	Period of Detention (days)
1	2012.05.18	Unfinished	1175
2	2012.08.23		1078
3	2012.10.24		1016
4	2013.06.26		771
5	2014.02.17		535
6	2014.04.23		470
7	2014.05.01		462
8	2014.05.12		451
9	2014.07.11		391
10	2014.08.07		364
11	2014.09.25		315
12	2014.10.22		288
13	2014.12.11		238
14	2015.03.05		154
15	2015.04.23		105
16	2015.05.22		76
17	2015.07.03		34
18	2015.07.09		28
19	2015.07.10		27
20	2015.07.28		9
21	2015.08.03		3

against national security, or physical/ mental health.⁵ However, the Immigration Control Act of Korea fails to satisfy this standard.

7. The Government alleges that the prior approval by the Minister of Justice according to the Immigration Control Act revised on 21 April 2010⁶ serves as an effective review system for the detention (CCPR/C/KOR/4, para 154); the Government also asserted that objection to the Minister of Justice, the temporal release, and the administrative litigation seeking revocation of the detention order as procedures for seeking review of the detention (Government’s reply to List of Issues, para. 38). However, none of these procedures can be effective, independent review of the detention as required by the ICCPR.

8. As for the prior approval by the Minister of Justice, the procedure fails to serve as the effective review. According to the data obtained by the Information Disclosure Request, there was only one case that the Minister of Justice did not approve the extension of the detention from the enforcement of the revised Immigration Control Act after the enforcement of the revised Immigration Control Act.^{7 8} In addition, the reasons for approving the extension of the detention were mainly the reasons for not being able to deport the detainee.⁹ Thus, this procedure does not provide any effective review of the reasonableness, necessity, and proportionality of the detention by the independent body; it is rather reporting procedure to provide the reasons for delay of the execution of the deportation order.

⁵ Human Rights Committee, General Comment No.35 - Article 9: Liberty and Security of person (Advance Unedited Version), CCPR/C/GC/35 (28 Oct 2014) at para. 18

⁶ Article 63(2) When the head of office or branch office or the head of the foreigner internment camp detain a foreigner according to provision(1) and the period of detention exceeds three months, a prior approval from the Minister of Justice shall be obtained every three months.

⁷Number of foreign detainees whose detention order was canceled due to the absence of approval from the Minister of Justice under Article 63(2) of the Immigration Control Act

Year	2011	2012	2013	November 2014
Number of Detention Order Canceled	0	1	0	0

⁸ The only case in 2012 is assumed to be the case of a refugee applicant we (Advocates of Public Interest Law) were assisting regarding the refugee claim and the prolonged detention. The refugee applicant was detained for 23 months at Hwasung Immigration Detention Center, and was released from the detention after APIL raised the issue that the Minister of Justice’s approval was made one day later than the due date. It is assumed that the Minister of Justice did not approve the extension of the detention for the first time (and the last time so far) for this regard.

⁹An example of the refugee applicant’s reasons of approval under the Article 63(2) of the Immigration Control Act is as below:

Number	Approval Date	Reasons for Approval
1	2010.11.16.	On refugee application procedure (Appeal was made on 2010.11.12.)
2	2011.02.10.	On refugee application appeal procedure
3	2011.05.11.	On preparing the litigation for non-recognition of refugee
4	2011.08.10.	On litigation for non-recognition of refugee
5	2011.11.07.	On litigation for non-recognition of refugee
6	2011.02.03.	On litigation for non-recognition of refugee

9. The objection to the Minister of Justice and the temporal release cannot be the effective reevaluation or judicial review required by the ICCPR either. Though the objection and the request for temporal release can be raised anytime, the criteria for the decision is not clear as it is stipulated by the General Comment by the Human Rights Committee; instead, it is fully depends on the discretion of the Minister of Justice.¹⁰ It rather hinders right to seek the judicial review by delaying the decision on the objection or temporal release.¹¹ Therefore, under current Korean law and practice, foreigners, especially asylum-seekers in the detention centers, can be arbitrary detained.

10. In case of the administrative litigation seeking revocation of the detention order, it fails to satisfy the standard set by ICCPR for the independent judicial review as well. First of all, the statute of limitation period for administrative litigation is 90 days since the detention order is issued; thus, long-term detainees cannot bring their litigation after 90 days passes from the detention. Furthermore, lacking the maximum limit of the detention period, the judiciary does not have the ground to make the detention illegal for exceeding 'time limit' of the detention. In other words, it is impossible for the judiciary to decide whether the detention order is illegal or not without the standards of the time limit in the law. Thus, the administrative litigation does not serve as the effective judicial review either.

Detention of Immigrant Minors

11. The Human Rights Committee especially emphasizes the protection on the liberty of children by requiring detaining children to be a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors.¹²

12. The Committee on Rights of the Child also expressed its concern on the detention of the refugee, asylum-seeking and unaccompanied children without periodic and timely review and the time limit.¹³ The Committee on Rights of the Child urged Korean government to accommodate children in such situations in

¹⁰Article 55(2) In case the Minister of Justice has received the objection under the provision of paragraph 1, he/she shall, without delay, review related documents. If the objection is considered as groundless, he/she shall, by decision, dismiss it, and if the objection is considered as grounded, he/she shall, by decision, order to release detention of the detainee.

¹¹ The case cited by the Human Rights Committee suggests that delay of seven days to seek judicial review was against the ICCPR (291/1988, Torres v. Finland, cited at Human Rights Committee, General Comment No.35 - Article 9: Liberty and Security of person (Advance Unedited Version), CCPR/C/GC/35 (28 Oct 2014) at para. 42); however, there was a case in Korea that took more than 70 days to receive the result of objection against the detention order.

¹² Human Rights Committee, General Comment No.35 - Article 9: Liberty and Security of person (Advance Unedited Version), CCPR/C/GC/35 (28 Oct 2014) at para. 18

¹³ Committee on the Rights of Child, Concluding Observation, Republic of Korea, CRC/C/KOR/CO/3-4 (6 Oct 2011) at para. 66

facilities sensitive and respectful to their rights and subject to timely periodic review with the clear time limit.¹⁴ It also recommended Korean government to ensure that the detention to be used as a measure of last resort and promote alternative measures to deprivation of liberty.¹⁵

13. However, children are still found in the immigration detention facilities. From January 2012, since the Concluding Observation was released from the Committee on Rights of the Child regarding immigration detention of the child, to June 2015, total 113 children were detained in immigration facilities in Korea.¹⁶ Among those cases, even babies were found to be detained for year-old girl for eighty-one days.

14. The Government alleges that when it is inevitable to detain children, special rooms and officers are designated to take care of the detained children (Government's reply to List of Issues, para. 39). However, these regulations do not amount to the measures required by the Committee as well as the Committee on Rights of the Child as the Government detains the children without considering the alternatives to detention, the duration and conditions of detention, and the extreme vulnerability of the children. As the Government is neither required to consider the best interest of child nor use detention as a last resort for the shortest appropriate time period when the detention order was issued, the children are, as a general rule, detained without consideration on their best interests.

15. In 2012, there was a case of unaccompanied minor detained in the deportation room, which is *de facto* detention in the deportation room in Incheon International Airport to prevent the entrance of the foreigners. A fifteen-year-old boy from Somalia sought asylum on arrival to Incheon International Airport, but denied and detained in the deportation room for not having the passport. Though he disclosed the fact that he was only 15 years old, the Korean government disbelieved his assertion without any

¹⁴ Id., at para. 67

¹⁵ Id., at para 81(c)

¹⁶ Detained migrant children under age 18 from January 2012 to June 2015 (Source: Ministry of Justice, via Information Disclosure Request)

Age		Gender	Period of Detention
Age 1 : 2	Age 11 : 2	Boy: 63	Under one day: 1
Age 2 : 4	Age 12 : 2		For 1 day: 20
Age 3 : 7	Age 13 : N/A		For 2-5days : 53
Age 4 : 6	Age 14 : 1		For 6-10days : 25
Age 5 : 3	Age 15 : N/A		For 11-15days : 3
Age 6 : 5	Age 16 : 18	Girl: 50	For 16-20days : 3
Age 7 : 4	Age 17 : 56		For 21-25days: 4
Age 8 : 1	Age 18 : 1		For 26-30days: 1
Age 9 : 1			Longer than a month: 3 (From One month 26 days, 81 days, four months 9 days, respectively)
Age 10 : 1			

confirming procedure on his age. Furthermore, Korean government continuously attempted to repatriate him, refusing his refugee application; once he was forcibly taken to the airplane but he strongly refused and managed to remain in the deportation room. He was allowed to enter Korea after 25 days by intervention of the lawyers and UNHCR, but suffered from severe stress due to the experience in the deportation room.

16. Thus, it is evident that Korean government fails to abide by the standard set by the Human Rights Committee in terms of protection of securing the liberty of refugee, asylum-seeking and unaccompanied children by detaining them without considering the alternatives to detention, the duration and conditions of detention, and the extreme vulnerability of them.

Suggested Recommendations

17. Revise the Immigration Control Act Art. 63(1) to limit the period of the immigration detention and provide the legal ground to prohibit the indefinite detention of the foreigners.

18. Provide the legal ground to conduct periodic independent review on reasonableness, necessity and proportionality of the detention of foreigners considering the relevant factors such as individualized likelihood of absconding, danger of crimes against others, risk of acts against national security, or physical/mental health.

19. Prohibit the detention of the minors in immigration detention facilities as a general rule and provide the alternatives to detention.

20. Provide the legal ground to make the detention of the children as a measure of last resort and for the shortest appropriate period of time, taking into account the best interests of child as a primary consideration.

III. Human Rights Abuses in the Deportation Room: ICCPR Art. 7, 9, & 10

Arbitrary Detention Without Legal Ground

21. Deportation room is an accommodation facility under the control of the Chief of the Immigration Office at the Incheon International Airport that is used to temporarily accommodate the foreigners not admitted the entry to Korea. It is a *de facto* detention center operated for administrative purposes without any legal grounds. Though most of the foreigners are repatriated to their countries promptly within a few days, refugee applicants whose application was rejected but refused to return to his/her country can be detained indefinitely.

22. In 2011, an asylum-seeker from Ethiopia was detained in the deportation room for two months and seventeen days. Even though he manifested his intention to seek asylum in Korea upon arrival, he was denied to apply for a refugee status and sent to the deportation room. After suffering from two months of detention, he was removed

from Korea to his country of origin; however, he was consequently detained in the deportation room in Thailand, where he was in transit, for more than six months.

23. In 2014, even after the enforcement of the Refugee Law, a refugee applicant was detained in the deportation room for five months. It was decided by the Korean Courts that detaining a refugee applicant for five months in the deportation room is illegal and groundless.¹⁷ Thus, the current law and practice allowing detention of foreigners in the deportation room for an indefinite period of time without any review of the detention consists of arbitrary detention.

Deprivation of the Right to Counsel

24. The Human Rights Committee requires that detainees to be afforded prompt and regular access to counsel for effective review, regardless of types of detention.¹⁸

25. However, under the current practice, foreigners detained in the deportation room are deprived of the right to counsel. In case of refugee applicants, lawyers are allowed to visit their clients upon request; this practice was made possible due to the decision by the Constitutional Court in 2014, upholding the right to counsel of refugee applicants in the deportation room.¹⁹

26. Though the Government alleges that the deportation room is operated as ‘an open facility with free access’, in fact, foreigners who stay in the deportation room do not have free access to any facilities in the airport. According to the data provided from the Ministry of Justice, out of 17,891 those who use the deportation room from December 31, 2014 to August 31, 2015, only 68 people were allowed to leave the room for the reasons other than the execution of deportation. Among them, 49 people were allowed to exit the room as their refugee application was accepted and 19 of them were allowed to go out from the deportation room under the Urgent Landing Permission. No case was reported that the foreigners stayed in the deportation room have free access to outside world, and were guaranteed of the right to counsel. Thus, it is far from the reality that the deportation room is operated as an open facility where the detained foreigners can freely enter and exit.

27. After the judgment upholding the right to counsel of the refugee applicant in the deportation room, the Government started to request to submit the application to use the deportation room to the foreigners denied entry to Korea. By collecting the application from the foreigners denied entry, the Government alleges that the foreigners use the deportation room out of their free will; however, as the foreigners do not submit the application to use the deportation room are forced to survive by themselves and required to take care of the food and accommodation, submitting the application to use the deportation room and being detained is *de facto* the only option for the foreigners who are rejected entry to Korea.²⁰ Thus, the Government assertion

¹⁷ Incheon District Court 2014 INRA 4, Supreme Court 2014 INMA 5

¹⁸ Human Rights Committee, General Comment No.35 - Article 9: Liberty and Security of person (Advance Unedited Version), CCPR/C/GC/35 (28 Oct 2014) at para. 40, 46

¹⁹ Constitutional Court 2014HeonRA 592

²⁰ From December 31, 2014 to August 31, 2015, the Government requested 17,891 foreigners to

that the foreigners choose to use the deportation room out of their free will does not have grounds.

Inadequate Food and Accommodation

28. As the deportation room was built for short-term detention, long-term detainees suffer from inadequate treatment. As of August 2015, a refugee applicant who received the non-referral decision of his application has been detained more than 6 months. Long-term detainees like such as this refugee applicant suffer from severe stress due to the treatment in the deportation room. The only menu served at the deportation room is chicken burger and coke or even worse food; there are no adequate beddings to rest. Furthermore, lacking prior education on refugees or human rights, the private security guards working in the deportation room, often insult the detainees with the racist insults, ignorance, and criminal-like treatment. However, the Government does not even disclose the number of the refugee applicants who were detained in the deportation room.

Rejection at the Border

29. Once refugee status applicants receive the notice of non-referral of the refugee status application and sent to the deportation room, it is hard for them to bare the poor conditions in the deportation room and most of them choose to leave Korea, results in *de facto refoulment*.

30. There were cases that deported refugee applicants are turned out to be genuine refugees. For example, the case of Ethiopian asylum-seeker mentioned above, was recognized as a refugee by UNHCR in Thailand, he was able to resettle in New Zealand. Thus, detaining refugee applicants in the deportation room often results in deporting the refugees; Korean government is, thus, in breach of the principle of *non-refoulement*.

Suggested Recommendation

31. Provide legal grounds for the operation of the deportation room and improve the conditions for detained foreigners, especially refugee status applicants for whom long-term detention period is expected.

32. Ensure the access to outside for the detained foreigners in the deportation room including the right to counsel.

33. Improve the condition of the deportation room in terms of food and accommodation and provide regular training to the private security guards working in the detention room regarding the human rights and refugee issues.

34. Disclose the number of the refugee applicants who were detained in the deportation room after they expressed their intention to apply for refugee status; and the period of the detention of the refugee applicants detained in the deportation room.

submit the application form to use the deportation room; and only 0.45%, which is 81 of them, denied to submit the application form.

35. Provide the full right to seek asylum at the border by abolishing procedure for referral of the refugee status application.

IV. Issues Related to the Human Trafficking: ICCPR Art. 8

Exploitation of Shin-Ahn Salt Pan Slavery

36. On February 4th, 2014, it was alleged that a visually impaired person was forced to work at Shin- Ahn Salt Pan for a year and a half under confinement without payment of wages. Another person with intellectual disability was under forced labor for five years, during which time he suffered from cruel treatment such as beatings, no wages, and sleeping less than five hours a day; he had labored not only at the salt pan, but also worked at new building constructions and household chores. These workers were not allowed to rest even when they were sick, and were forced to work under harsh conditions (not even a pair of gloves or a proper pair of rain boots during cold weather, being subjected to assault and threats, and no provision of mealtime).²¹

37. A national joint investigation comprising private and public bodies followed immediately after the crisis was revealed to the public,²² which even found cases in which homeless persons and the disable were brought to the Salt Pan, provided with alcohol and prostitution, and thereby incurred enormous debt which they were forced to pay off by working for several years without wages. Local residents, aware of the slavery at the Salt Pan, not only stayed silent, but also informed owners of the Salt Pan when a victim attempted to escape. Taxi drivers even reportedly drove victims trying to escape by cab back to the Salt Pan.

38. Many of the victims were deceived by employment agents that falsely disguised the Salt Pan as a lucrative working opportunity. In other words, employment agents approached people with intellectual disability and the homeless, deceiving the victims by promises of high salary and selling them off to the salt pan and laver cultivation sites. In turn, owners of the salt pan paid the employment agents a recruitment fee.

39. Even though their crime could easily be identified as such at first glance, none of the perpetrators were charged with human trafficking under the criminal law due to the insufficient definition of the human trafficking.

Exploitation of Migrant with Entertainment Visas

40. E-6-2 visas (entertainment visas) are issued after a complex procedure. Applicants are required to pass local auditions, have the audition tapes examined by

²¹ Newspaper article, Dong-A Daily, February 13th, 2014, "A Modern Version of Slaver Who Wanders Around Seoul Station". Newspaper article, Yon-Hap News, February 17th, 2014, "Unreliable Police Despite Proclaimed All-Out War Against Violation of Human Rights".

²² March, 2014, Briefing from the National Police Agency, "Result from Complete Search of the Salt Pan, etc."

the Korea Media Rating Board, and visit Korean embassy to be permitted to work as singers in the country after showing the performance.

41. However, the E-6-2 Visa holders, after entering Korea, are typically assigned to entertainment industry, and instead of acting as singers, as according to their original visa status, are forced to provide entertainment receptions, and are even forced to sexual trafficking at times. In the businesses that these women are assigned to, they are each given a 'Juice Quota,'²³ and in cases that they are not able to meet the quota, they are disadvantaged by being deprived of their off days and of the commissions earned from the quota amount that they had managed to satisfy.²⁴ The business owners have induced the women, who have not been able to satisfy their excessive quota, to agree to prostitution, called the 'Bar Fine', which gives 30 points each time; this practice, in fact, can be considered to be a system of forcing human trafficking through the use of Juice Quota.

42. Also, the E-6-2 Visa holders have been typical victims of human trafficking, being subject to violence and pressures about sales from the customers and the pimps at the businesses,. There were many cases in which the victims had to bare through their human rights violations due to having their passports confiscated and being delayed in payment of their wages.²⁵

43. Knowing that the female migrants, especially from the Philippines, who entered Korea with E-6-2 visas become victims of human trafficking, the Ministry of Justice has taken no measure to prevent the women with the entertainment visas from the exploitation. Though the Government alleges that the number of the migrants with entertainment visas decreased by strengthening the screening procedure, it has not been effective for the Filipino migrants with E-6-2 visas as their number has been increasing.²⁶

²³ 1 point is given per 1 cup of juice; women are assigned 300 to 500 points of quotas each month.

²⁴ After the system of juice quota has become the issue these days, the bonus or additional off days are given to encourage to meet the quotas.

²⁵ Women who ran away from the place of business were often unstable; or they were not even able to run away from the business place because they did not hold the passport. Only 40% of female in the shelters have their own passports; however, this includes the cases that the shelter provided to take the passport back from the previous owners. Thus, it is reasonable to conclude that the holding rate of passport by the female workers is much lower than 40%. Usually, managers (28%) or the owner of the business has the passport. (Seol, Dong hoon, et al., Research on migrant women's prostitution and the policy improvement (2011), pp.61-62).

²⁶ Number of Migrants Entered Korea with Entertainment Visas by Countries

Year	Total	Russia	Philippines	Uzbekistan	Kyrgyzstan	Mongol
1999	4,486	2,049	1,225	321	31	5
2000	7,044	3,510	1,849	545	51	35
2001	8,586	3,901	2,051	30	117	956
2002	6,452	3,238	1,208	72	153	437
2003	4,640	1,856	1,375	76	128	73
2004	3,943	305	2,215	4	2	80
2005	4,759	438	2,381	16	4	124
-	-	-	-	-	-	-

Insufficient Definition Human Trafficking

44. In Korean, human trafficking is literally translated to “trade of human being.” By using such term, the interpretation of the crime itself becomes very limited by nature. Currently, jurisprudence in Korea interprets the term ‘sale(trafficking) of human being’ as buying and selling of humans, in which there is monetary payment for the price of the persons being handed over. Only extreme acts of human trafficking such as slavery is the only act that would actually be applicable under this definition. Since the investigative agency and the judicial agency have interpreted the human trafficking such that for it to be recognized as trafficking, there needs to be an actual exertion of control over the victim, for an act to be considered as trafficking, and as such, if there was any voluntary intent involved, the reality is that the trafficking crime does not apply.²⁷ According to these standards, without the confinement of the victim through actual use of confinement devices, but only with verbal abuse or coercions of forced repatriations or denial of wages or severance pay, and confiscation of identity and passports, there is very little chance of the claims being accepted as human trafficking.

45. Since human trafficking was actually added as a crime under criminal law in April 5th, 2013, until August, 2015, there were only 6 cases in which the perpetrator was successfully prosecuted for trafficking.²⁸ To take a look at these three cases, only in limited cases where 1) the victim had developmental disadvantage and was incapable of reasoning; or the victim was confined after being beaten, and the fact that the perpetrator had clear control over the victim is substantiated, and where 2) there was a clear payment of cost between the seller and the buyer, were they ruled as "trafficking."²⁹ In sum, it is impossible under the current Korean law and practices to

2011	4,246	126	3,135	15	7	126
2012	4,528	91	3,303	33	7	149
2013	4,940	85	3,494	53	39	138

²⁷ “Sale(Trafficking) of Women refers to transfer of the women from the seller who has completely actual control over her (for the purpose of using her in prostitution) to the buyer for actual control over her after monetary payment for the price of the persons being handed over; the crime is committed if the woman was handed over from the seller who has actual control over the women when the reasonable women could not have asked the police for the help due to the threatening atmosphere such as continuous threats, explicit or implicit threats of battery.” (Supreme Court 1992.1.21. Decision 91Do1402).

²⁸ 1) Human Traffic, Violation of Enforcement Decree Of The Act On The Punishment Of Acts Of Arranging Sexual Traffic, Supreme Court, 15 October 2014, 2014Do4451, 2) Human Traffic for the Purpose of Sexual Exploitation, Violation of Enforcement Decree Of The Act On The Punishment Of Acts Of Arranging Sexual Traffic, Busan High Court, 25 March 2015, 2014No776, 3) Human Traffic for the Purpose of Sexual Exploitation, Violation of Punishment Of Violences, Etc. Act, Seoul High Court, 27 March 2015, 2015No167

²⁸ 1) Quasi-Fraud, Violation of Labor Standards Act, 8 October 2014

²⁹ Among these cases, Pusan District Court 2014Gohap586 case made reference to the article 2 provision 3 in Act on the Punishment of the Arrangement, etc. of Sexual Traffic, which stipulates ‘transferring to a third person juveniles as defined in subparagraph 1 of Article 2 of the Juvenile Protection Act (hereinafter referred to as "juvenile"), persons who have no or weak ability to discern

adequately punish the perpetrators for the Shin-Ahn Salt Pan Slavery or migrant women with entertainment visas under the current definition.

Absence of Victims Identification Procedures

46. Lacking victim identification procedures for human trafficking, the victims of human trafficking were not able to access to remedy. Furthermore, in case of foreign victims, the victims are often detained and deported without being identified.

47. In 2014, two Vietnamese fishing crews who suffered from physical and verbal violence sought relief to the Immigration Office by requesting change of their working place; however, the Immigration Office issued the deportation order to the crews for absconding from designated working place and the crews were deported without any remedies.

48. In 2015, Filipino women, who entered the country with E-6-2 visa but sexually exploited at the club, were investigated as criminal and witnesses after the police's raid. From the absence of the identification indicators, the police sent the women to the immigration after listening to women's stories including the exploitation. Immigration officers, without considering the women as the victims of human trafficking, issued the deportation orders to the women for violation of the Immigration Control Act and detained the women at the immigration detention center in Hwasung. While the victims were detained, they were investigated as the offender of the prostitution and even forced to meet the traffickers in person while they were detained. Through this detention and investigation, women were re-traumatized and suffered.

49. In sum, the Government completely fails to identify the victims of human trafficking and provide protection to the victims as it does not have any identification procedure for the victims; rather, the victims are re-traumatized by the Government's actions such as detention and deportation, and completely deprived of the opportunity to access to remedy by being removed from Korea.

Suggested Recommendation

50. Take measure to prevent the disabled men to return to the salt farm where they are constantly exploited and provide the comprehensive protection system to deter the recurrence.

things or make decisions, or persons with serious disabilities determined by Presidential Decree who are targeted for the purposes of making them sell sex or do obscene acts referred to in Article 245 of the Criminal Act, or using them as an object of pictures, videos, etc. depicting sexual intercourse and other obscene scenes while holding them under control and management in return for providing or promising to provide money or valuables, such as pre-payments, and other property gains to such juveniles or persons or to persons who protect or guard the said persons' and 'transferring targeted persons for the same purposes listed above or for the purpose of resale, in awareness that acts referred above take place' to determine the 'human traffic aimed at sexual traffic'. Though this interpretation is broader than the Supreme Court's interpretation of 'sale(trafficking)' or definition of human trafficking under the Criminal Code, the cases cited were only when there were obvious actual control over the victims and the clear monetary payment was made between the seller and the buyer, it is impossible to apply for the general cases of E-6-2 visa holders.

51. Take effective measures to prevent the migrants who entered Korea with E-6-2 visas from the trafficking; and once identified as, provide the comprehensive protection to the victims.
52. Amend the definition of human trafficking in the Criminal Code to be consistent with the definition of human trafficking under the Palermo protocol.
53. Provide the training regarding the human trafficking to the members of judiciary to understand the definition of the human trafficking under the Palermo Protocol.
54. Take measure to establish the guideline for identifying human trafficking victims and distribute them to the all government agencies. Conduct the victim identification training to the relevant officers especially to law enforcement bodies such as police officers and immigration officers.
55. Prohibit issuance of the deportation order as well as detention order for the foreign victims of trafficking once they are identified.