

**Republic of Korea NGO Alternative Report to the
UN COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION**

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I. THE HISTORY OF RACISM IN KOREA

Early twentieth century Korea saw discrimination against ethnic Chinese and other populations from nearby countries. However full-fledged racism started with the discrimination against military kids born to Korean women and US soldiers stationed in Korea since the end of the Second World War, especially where the father was of African descent.

Such discrimination against African Americans had not been initiated by Koreans; rather it was the result of passive reflection of black-white discrimination within US armed forces. In those times, there existed a more or less visible racial hierarchy between black and white soldiers within US army bases, which was copied by Korean society. Koreans living in communities nearby army bases were informed by the discrimination of white soldiers against black soldiers. In order not to lose customers, they provided services geared towards white soldiers, whose numbers exceeded that of black soldiers.

The reality was that women who worked in white-soldiers-only clubs were beaten or experienced damage to their business if mingling with black customers, and Koreans finding themselves in a situation where their white 'customers' practiced and favored discrimination found it difficult to treat African Americans equally. As a result Koreans 'spontaneously' learned and absorbed the racism prevalent in the US army.

US media also contributed to racial discrimination. Prior to the recent increase of market share by Korean movies, for a long time US movies dominated the Korean movie market. The same applies to TV dramas. US TV dramas are still popular, but in the past they dominated the TV screens in Korean living rooms. These movies and TV programs were the teachers of racial discrimination.

Although it is said that there have been improvements, Hollywood movies (and TV dramas) still portray black people as criminals or drug dealers, Middle Eastern people as terrorists conspiring to take over the world, Asians as shop owners with limited English skills, and South Americans are put on set as so many extras acting as pawns of dictators and finally killed at the hand of the white hero.

The way Korean society views race conformed to these stereotypes and surprisingly coincides completely with the white man's perspective. The civilized white and barbaric non-white, the developed white and underdeveloped non-white, technology and science of the white and undeveloped wilderness of the non-white, the white conqueror and the conquered non-white, and therefore the masculine white and the feminine non-white. If orientalism is the way the white western world views Asia, Korean society's perspective is a 'copied orientalism'. Korean society without realizing it is permeated by a sense of racial hierarchy with the white man on top and the black man in the bottom, and Koreans somewhere in the middle. Korean society regards Asia, including Korea, with the eyes of the white man. "They failed to achieve economic development", "They do not know how to run a democracy properly". Envy of the US and the white man was at the same time an expression of a sense of inferiority, which was compensated by contempt of black people and other non-whites.

Examples of racial discrimination against certain populations

As of June 2018, the number of non-citizens living on Korean soil reaches 2,290,000, more than 4% of the whole population. Compared with 1,160,000 in 2008, it is an increase of almost 100% within a short span of 10 years. Recent trends show that this is not a passing phenomenon but has continued steadily over the years and it can be assumed that new arrivals will continue into the future. In fact in light of Korea's record low birth rate and rapidly aging population the need for foreign-born manpower has become an unavoidable reality. In step, voices calling for shedding off the myth of a homogenous nation and going forward towards a multicultural society have gained the mainstream. Nevertheless this has not solved all problems. On one end people are openly expressing their hate against non-citizens, and discriminatory acts based on racism are being perpetrated, while laws and institutions to stop such actions have not properly been put in place. On the contrary, a considerable number of legal systems are based on or effectively strengthen and aggravate such hate and discrimination.

Toward surmounting racism

By unquestioningly accepting the perspective of the US and the western world, Korean society came to envy the white man. This aspiration leads to "we wish we were white" thinking, and finally to a "we are white" quasi-white consciousness. Quasi-white consciousness means aspiring to be treated as white by taking on similar ways of thinking and feeling. Quasi-white consciousness resulted in absorption of white man's racism and discrimination among non-whites.

In general, racism refers to the "belief that biological differences per race determine a human being's ability." This concept implies that one race may be superior to another, and leads to viewing as natural discrimination according to a hierarchy of races. Racism originated in the modern western world and therefore meant that whites regarded all non-whites inferior, but racism in Korea emerged as a concept where the non-white Korean regards other non-whites as inferior.

Racial discrimination in Korea can be categorized into two types. The first type involves Koreans discriminating against people who have darker skin than the average Korean, for example people of African descent or from South-East Asia. It is an extension of western racism in that it is based on a physical feature, skin color.

The second type involves discrimination against Asians who outwardly share the same features. This kind of discrimination is faced by Chinese, Mongolians and even Chinese of Korean descent and North Korean defectors. It could be suggested that this kind of discrimination is better explained as discrimination based on nationalism or as ethnic discrimination. But it is still a kind of racial discrimination in that it discriminates against certain populations by defining them as inferior.

There have also been cases of discrimination against white persons such as in the case of mandatory HIV tests for native English teachers, and discrimination against white people who are from countries with lower incomes than Korea is also widespread. But that does not mean that because whites and non-whites alike are being discriminated against it is not racial discrimination.

The modern state has striven to bind a heterogeneous population, which by chance found itself within newly drawn borderlines, into one nation, and some populations resisted and tried to maintain their own uniqueness. The fact that within the newly drawn borders there did not exist a homogenous culture was the very reason the modern state deliberately tried to conceive a homogenous culture that was discernable from outside cultures. Sometimes internal unity was pursued by putting excessive

emphasis on cultural homogeneity and repeated indoctrination of common ancestry. In other cases populations with different cultures were banished or forced to assimilate to achieve purity. Even worse, as in the case of Nazi Germany, policies calling for the annihilation of certain populations came into existence. It is ironic that the reason the modern state so persistently strove for cultural unity, was exactly because internal composition was not homogenous and a common culture did not exist.

The same applies to Korea. Before multiculturalism became a slogan, Korean society prided itself on its uniform culture, which it did not doubt. Excessive emphasis on ‘oneness’ took the form of wariness and rejection of ‘difference’, and contributed to formation of a racist attitude not actually based on experience with other races. This attitude faded into the background with the appearance of multiculturalism as a new trend, but without having been properly scrutinized or overcome. Can one be sure that racism that passed without being faced properly will not return? No. To overcome racism it is necessary to analyze and scrutinize the mindset that has dominated our thinking. Furthermore, it is necessary to form a common understanding that socially and economically marginalized populations should be warmly embraced. Only then will it be possible to overcome the barriers of racism and neo racism.

At present racial discrimination in Korea appears in the form of Koreans discriminating against people who are at the same time non-citizens and non-white. Even though discrimination against those populations is intertwined with discrimination based on citizenship, immigration status and social class, it should not be overlooked that discrimination against these populations is based on a notion of inferiority to the Korean race and therefore has the characteristics of racial discrimination. The recent expansion of anti-multiculturalism rhetoric is also based on a notion that inferior aliens are tainting Koreans and Korea, and therefore has strong characteristics of racism.

Suggested Recommendations

In light of the above, it is vital that Korea enacts a comprehensive anti-discrimination act, including prohibition of racial discrimination, to prevent further proliferation of racism and discrimination based on race and other grounds including country of origin, religion, culture, language, immigration status.

II. DEFINITION OF RACIAL DISCRIMINATION

The UN has urged to include the definition of racial discrimination in domestic law. The Ministry of Justice has claimed that even though there was no law in ROK in which the definition of racial discrimination is stated, the racial discrimination is practically banned by various pieces of legislation. For example, Article 11(1) of the Constitution of the ROK states that “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status”.

There is no legal definition of racial discrimination in the ROK. There is one provision that prohibits discriminatory reporting on racial description (Article 6-2 of the Broadcasting Act), but there is no specific content or standard. The Migrant Human Rights Guidelines of NHRCK also do not define

what constitutes racial discrimination. In other words, the State Party is not fulfilling its direct or indirect obligations to eradicate racial discrimination.

In fact, the current situation could be defined as a ‘state racism’ where the State Party persists or intensifies racism to adhere to the idea that the ROK is still a homogeneous ethnic state. In other words, the State Party makes it almost impossible for foreigners to exercise their own rights without depending on the citizens of the ROK with the ‘identity guarantee system’ which maintains the identity hierarchy between the citizens and non-citizens. Despite increasing dependence on immigrants, except for few married migrants, immigration of migrant workers is denied, and the anti-immigration sentiment is prevalent.

In addition, through the Employment Permit System, migrants are concentrated in a ghettoized form of occupation, and the structure of creating profit through exploitation is maintained. In terms of culture, the government has recognized the group which publicly expresses the threat of expulsion and explicit hate towards certain religions such as Muslims and refugees as “civil society organizations”. There is no punishment for those who produce false information in the social network that promotes racism and hatred on foreigners.

Suggested Recommendations

Therefore, it is urgent for the State Party to amend the criminal law to have a legal definition of racial discrimination and its penalties.

III. RACIALLY CHARGED LAWS AND REGULATIONS

1. General

The Republic of Korea’s policy and legal system on immigration are based on the principles of ‘distinction and exclusion’ and ‘selective assimilation’. Accordingly, the rights of migrants are systematically and differentially restricted by their origin state, nation, job and blood-tie. Such approach of the government is responsible for proliferation of ‘racial’ prejudice and stereotype, and even xenophobia and ‘racial’ discrimination in the society. The government, however, has taken no proactive measure to eliminate and prevent ‘racial’ discrimination.

The Constitution of the Republic of Korea stipulates the basic rights including ‘human worth and dignity’ and ‘the right to pursuit of happiness’ are entitled to ‘all citizens’ rather than ‘everyone’ or ‘human beings’. It consequently excludes ‘foreigners’ from the rights. However, the Constitution still confirms that, as proclaimed in the Universal Declaration of Human Rights, ‘everyone is entitled to all the rights and freedoms’ ‘without distinction of any kind, such as race, colour’ ‘national or social origin’. It also confirms that the government of the Republic of Korea is in compliance with the fundamental obligations laid down in International Convention on the Elimination of All Forms of Racial Discrimination. They are because the Article 6 of the Constitution of the Republic of Korea stipulates that ‘treaties duly concluded and promulgated under the Constitution’ and ‘the generally recognized rules of international law shall have the same effect as the domestic laws’ as well as that ‘the status of aliens shall be guaranteed as prescribed by international law and treaties’. Thus,

‘everyone’ in the Republic of Korea is entitled to the right to ‘elimination of all forms of racial discrimination’ and the government has obligations as such. This is a constitutional value.

The legal system of the Republic of Korea was, however, established on the basis of the Constitution’s restrictive notion of ‘citizen’, which consequently differentiates citizens and foreigners and excludes foreigners. For example, the laws on economic, social and cultural rights including National Health Insurance Act, National Basic Living Security Act, National Pension Act, Framework Act on Education restrict the entitlement of rights to ‘citizens’ only. Although these laws states the government may exceptionally provide foreigners with specific status of sojourn with specific entitlement of the laws, they do not confirm that ‘foreigners’ are entitled to those rights without discrimination. Immigration Control Act prohibits ‘an alien’ from engaging in ‘any political activity’ without clarifying the scope of the political action (Article 17), which seriously restricts the civil and political rights. Moreover, the Immigration Control Act obliges ‘any public official’ who ‘finds a person’ ‘deemed to have violated this Act’, ‘in the course of performing his/her duties’ to ‘immediately notify’ the immigration authority, which is often an obstacle to providing appropriate remedy to undocumented foreigners.

The Immigration Control Act is the core legal system that determines the protection of migrant’s rights in the Republic of Korea. The ‘status of sojourn’ (Article 10), especially, is the precondition to the rights of ‘foreigners’. On the ground of this law, the government classifies the foreigner’s ‘status of sojourn’ into 36 categories in accordance with the purpose of sojourn as decided by the government¹; and it again classifies into 192 detailed statuses². The period of ‘sojourn’ and the scope of ‘activity’ of foreigners are determined by the hierarchical ‘status of sojourn’ given by the government according to so-called the professional level of a ‘workforce’, blood-tie, family-relationship with nationals.

For example, if one is employed as a professor, a foreign language teacher or a researcher, he or she is considered to be categorized into ‘professional workforce’ and provided with a relevant status of sojourn³ that allows them to stay for two years or five. If he or she stays in the Republic of Korea with these status and without pause, they may transfer to ‘permanent residence (F-5)’ and stay in the country without any restriction to the period of stay or the scope of activity. They are also entitled to apply for naturalization and to acquire a Korean citizenship as determined by the Nationality Act. If one is recognized as a person who seek a ‘professional’ job like ‘employee of the world top 500 companies’ or ‘graduates of the world top 200 universities’, he or she may enter the country for ‘job-seeking activities’ with ‘job-seeking’(D-10) status but without an employment contract. Then, the one may stay up to six months and transfer to ‘professional workforce’ status of sojourn if he or she is employed during the permitted period of time.

However, the workers who are employed by small and medium sized-business or petty business in the sectors of manufacturing, construction, agriculture or fishery are considered as ‘low-skilled workforce’. They may receive relevant status of sojourn⁴ and may stay up to three years and extend

¹ Attached table 1 of Article 12, Enforcement Decree of the Immigration Control Act.

² Korea Immigration Service, Ministry of Justice. 2018. *Korea Immigration Service Statistics 2017*.

³ The status of sojourn of short-term employment(C-4), professor(E-1), language instructor(E-2), researcher(E-3), technical instructor(E-4), professional(E-5), art and entertainment(E-6) and special activities(E-7).

⁴ Unskilled employment(E-9), vessel crew(E-10), visit and employment(H-2).

the period for one more year and ten months. The worker's choice or change of a job is strictly restricted as stipulated in Act on the Employment, etc. of Foreign Workers, which results in a significantly disadvantageous position of the workers in negotiating wages and working condition with their employer. After the employment period of the four years and ten month, the workers have to leave the country but may return to the Republic of Korea for another four years and ten months by the invitation and employment contract. Although they have stayed up to nine years and eight months, they are still not eligible for the application for 'permanent residence' status, because they are not considered to have stayed for five years without pause. Moreover, accompanied family is strictly prohibited as a way of 'preventing settlement', which results in the restriction of the right to family union. These restrictions on migrant workers consequently lead them to socially exclude and vulnerable conditions. Since they have no opportunity to extend their period of stay, they have to leave the country without exception before their 'status of sojourn' is expired; if not, they are considered to be 'illegal stayer' or 'subject to deportation' and may be arrested and detained.

Foreigners of Korean descent are allowed to enter the country without employment contract for the purpose of job-seeking and to stay up to four years and ten months according to 'special cases for employment of foreign workers' (Article 12 of Act on the Employment, etc. of Foreign Workers). They are allowed to change their jobs without restriction and also to accompany their family. If they meet a certain condition such as 'long-term continuous service', they may be entitled to 'permanent residence' (F-5) status.

In sum, the labour migration policy of the Republic of Korea distinguishes nationals and foreigners and restricts the labour rights of foreign migrant workers. It imposes more restrictive conditions of sojourn on the migrant workers who are considered to be 'non-professional'; and even more restrictions in the choice of jobs on the migrant workers who are considered to be both 'non-professional' and 'of non-Korean descent'. If a foreigner is considered to have less professional 'workforce' and different blood-tie, he or she is excluded from entire protection of basic rights.

The demographic characteristics of above two statuses of sojourn show stark differences. According to the official statistics of 2017⁵, almost half of 45,685 foreigners of 'professional workforce' have either Chinese (12,804) or American passport (9,981). Among the Chinese professionals, Korean descent are only 0.3 % (93). On the contrary, among 534,076 foreigners of 'low-skilled workforce', almost half are Korean descent from China, Uzbekistan or Kazakhstan. They hold 'visit and employment' (H-2) status according to the 'special case' provision of the Act on the Employment of Foreign Workers, etc. Others are from 16 Asian countries that signed intergovernmental 'Memorandum of Understanding on the Sending of Workers' with the Ministry of Employment and Labor of the Republic of Korea including Vietnam (42,253), Cambodia (38,798), Nepal (31,509) and Indonesia (29,681). The most sending countries, except China and Thailand (higher middle income), are lower middle income countries of Gross National Income per capita (GNI) lower than 4,035 US Dollar or low income country (Nepal) of GNI per capital lower than 1,025 US Dollar.⁶

The data shows the majority of 'professionals' are Chinese of non-Korean descent and Americans, while migrant workers who are considered to be 'low-skilled workforce' are mostly Chinese of Korean descent and those who are from lower-middle or low income countries.

⁵ Korea Immigration Service, Ministry of Justice. 2018. *Korea Immigration Service Statistics 2017*.

⁶ World Bank. 2017. *World Development Indicators 2017*. Washington, DC: World Bank.

In 1991, the government of the Republic of Korea introduced a quasi-labour migration scheme, 'Industrial Trainee System' in order to supply workforce to small and medium-sized and petty businesses in so-called 'declining industry'. This policy was designed to supply fixed-term workforce in low cost without ensuring safe working condition, worker's right to choose a job and labour rights. Its consequence was serious violation of human rights. Facing resistances of workers and civil society, the government introduced the Employment Permit System that seeks to ensure minimum wage and protection of labour rights. However, the new policy is not different from the previous one in its aims: to supply low-wage workforce from less-developed countries to workplaces of poor working conditions.

The last 28 years of the exclusionary policies was enough time to generate such social prejudice that 'foreigners from less-developed Asian countries are low-wage migrant workers'; to develop the prejudice to a stereotype and eventually to discriminations and exploitations of migrant workers. The government took only impediment measures by providing temporary and charitable assistance rather than recognizes universal rights of migrant workers. Thus, when it introduced Framework Act on Treatment of Foreigners Residing in the Republic of Korea, it adopted such an exclusionary definition of 'foreigners in Korea' as 'those who do not possess the nationality of the Republic of Korea and who legally stay in Korea for the purpose of residing in Korea'. 'Illegally staying' foreigners are not entitled to the 'treatment' but only subject to deportation.

Meanwhile, 'marriage migrants', who are supposed to perform the role as spouse of a national, parent of nationals and daughter- or son-in-law of nationals, are included into the subject of 'selective assimilation'. The government introduced Multicultural Families Support Act and specifically named the family of a 'marriage migrant' as 'multicultural family'. It presupposes the 'multicultural families' need special 'support' that enable them to 'enjoy a stable family life' and to 'fulfill roles and responsibilities as members of society' (Article 1).

The demographic characteristic of 'marriage migrants' shows again stark differences with 'migrant workers'. It is related with international marriage industry that is widespread in Asian region. According to the official statistics of 2017, among 155,457 total marriage migrants staying in Korea, the majority (83.8%) is female (130,227). This data is an extreme contrast to that of 'low-skilled workforce', 77.0% of who are male (411,457). The majority of the 'marriage migrants' are from either China (37.1%) or Vietnam (27.1%).

As the international marriage industry has expanded and the number of 'marriage migrants', the government treated them as the subject of support rather than the agent of rights and emphasized the preservation and reproduction of family. This policy, however, only generated the prejudice that marriage migrants are all from poor area in less-developed countries and that the government provides them with special advantages. Since the Multicultural Family Support Act was introduced in 2007, the social prejudice and stereotypes has become permanent. It caused the sense of relative deprivation among socially disadvantaged groups and, consequently, generated hatred and discrimination.

It is not the case that the government of the Republic of Korea directly encouraged the xenophobia and racial discrimination. However, its immigration policy based on 'exclusion and differentiation' and 'selective assimilation' without recognition of their rights has certainly been an important background of the increased 'racial' prejudice and discrimination in the society. It is certain that the

government failed in taking necessary measures to prevent, punish and eliminate ‘racial’ prejudice and discrimination in Korean society.

2. Right to equal treatment before the tribunals and all other organs administering justice

A. Introduction

Article 5 (A) of the CERD states that “the State Party should guarantee everyone the right to equal treatment before the tribunals and all other organs administering justice”. By Oct 2017, the number of foreigners living in Korea has reached 2.13 million (4.1% of the total number of residents in Korea). The number of foreigners who are placed in judicial proceeding (civil, criminal and administrative in case of refugees) is increasing. Therefore, it is a question whether the rights of foreigners are guaranteed to the same level as those of Koreans in each level of judicial proceedings such as the police, the district prosecutor’s office, and the Court.

Translation and Interpretation

Article 180 of the 「Criminal Procedure Act」 that provides “The statement of a person who does not communicate with the Korean language shall be interpreted by the interpreter” is the only provision in law stipulating the interpretation for foreigners. It applies to the investigation process (Article 221 (2) of the same Act) as well as the court process. Even though In Seoul, the number of foreigners registered in Seoul increased by 22% from 2013 (224,410) to 2017 (273,233)⁷ but the number of police interpreters in Seoul has decreased from 873 in 2012 (317 police officers and 556 civilians), to 724 in 2016 (285 police officers and 439 civilians).⁸ And in the refugee determination process, there has been a scandalous case in where an interpreter has intentionally misinterpreted the statement of refugees several times. The number of interpreters in refugee determination process is currently down to 174, while minority languages are still indirectly translated.⁹ In order to strengthen the right to judicial access of foreigners, interpretation by interpreters who are value-neutral and competent should be guaranteed.

Notification of rights

Consular notification and access: In 2014, the police have rejected one Nigerian’s right to consular notification and access. The NHRCK found it as a case of human rights violation, and the court also recognized the illegality in this case.¹⁰ However, there is still no procedure to guarantee and to confirm whether or not the right has been respected.

⁷ Seoul Open Data Square - Number of registered foreigners in the first quarter of 2013, the fourth quarter of 2017, <http://data.seoul.go.kr/dataList/datasetList.do>

⁸ 2017. 12. 27. HanKyoung daily, <http://news.hankyung.com/article/2017122721131>

⁹ 2018. 7. 19. Kukmin daily
<http://news.kmib.co.kr/article/view.asp?arcid=0923977134>

¹⁰ NHRCK decision 14Jin-Jung1033000, Seoul Central District Court Decision 2017Ga-Dan25114, Seoul High Court Decision 2018Du34558

Miranda Principle: In practice, there are many cases where the Miranda principal is not notified at all or notified only in Korean in process of arresting foreign suspects. However, the Court finds that there is no problem if the suspects sign the document (also written in Korean) confirming that he/she has been notified the Miranda principle. It is problematic since there is no way to confirm whether the person has signed the document with full knowledge of its content.

Notification duty

According to Article 84 (1) of the Immigration Act, public officials who find a foreigner subject to deportation (such as those who do not have a status of residence) are obliged to inform the immigration office (here and after 'the notification duty').¹¹ The Presidential Decree has designated 'victims of crime' as an exception of the notification duty. However, the range of the crimes subject to the exception of the Presidential Decree is very limited. So the notification duty applies to those who are a victim/suspect at the same time and to the victims of labor related law. And the witness to a crime is not designated as an exception to the notification duty. So it is difficult for the police to find a foreign witness who are willing to cooperate to the investigation despite of risk being reported to the immigration office.

Suggested Recommendation

- Guarantee all foreigners their right to receive proper interpretation and translation at every stage of judicial process, and establish a system to ensure the independence and the competence of judicial interpreters.
- The Consular notification/access and the notification of Miranda principle should be a mandatory procedure and it should be provided in a language which the subject can fully understand.
- Set the deadline for the notification duty by Article 84 (1) of the Immigration Act after the prosecutor's decision to prosecute. Also, the scope of "victims of crime" subject to the exemption of notification duty should be extended and the notification duty should not be

3. Right to security of person and protection by the State against violence or bodily harm

A. Human trafficking for purposes of sexual exploitation

Migrant women sex trafficking victims, who enter Korea through various routes including the E-6-2 entertainers' visa, are being exploited in the Korean sex industry. The range of distribution of E-6-2 visa holders is no longer limited to foreigner-exclusive entertainment establishments around U.S. military bases and has expanded to adult entertainment establishments of small and medium-sized

¹¹ Immigration Act Article 84 (1) : If any public official of the State or a local government finds, in the course of performing his/her duties, a person falling under any subparagraph of Article 46 (1) or a person deemed to have violated this Act, the public official shall immediately inform the head of the office or branch office or the head of a foreigner internment camp of the fact thereof: Provided, That this shall not apply where the public official is deemed unable to achieve the very purpose of the performance of his/her duties due to his/her notification, which correspond to grounds prescribed by Presidential Decree.

cities, Korean entertainment establishments in port cities, etc.; and in recent years, Thai women (visa exempt) have been deceived by brokers and led to work in Thai massage parlors in Korea. Therefore, the level of migrant women's exposure to sexual exploitation is continuously increasing. In addition, there are cases in which women—who come to Korea from various countries such as Russia and Laos, as well as South and Central American countries through various visa routes such as the short term tourist visa, medical tourist visa, etc.--are sent to work in the Korean sex industry and experience harm and exploitation.

The South Korean government reported that it had enforced the more strict criteria for the evaluation of visa issuance to entertainers qualified for the E-6 Arts and Entertainment visa, restricted club owners with a legal record of coercing and facilitating prostitution from obtaining approval to sponsor visas for foreigners (Certificate for Confirmation of Visa Issuance), and is working to improve the Arts and Entertainment visa system through cooperative effort within the government. However, these restrictions do not resolve fundamental problems and can rather create harmful and exploitative condition for women. For example some clubs have created a system of economic confinement by withholding half of a woman's salary until she returns home. In doing so, women are unable to report harmful working conditions or leave. As a result, it makes even more difficult for women to report exploitation and more easy for the club owners to avoid punishment. In addition, club owners with criminal record are able to run a club simply by changing the name of the owner. Instead of hiring E-6-2 visa holders, club owners hire women with a visa exempt status or a tourist visa and hide them during government inspections. Therefore, it became more difficult to report the exploitative condition of a club.

Cases of exploitation of foreign women with visa exempt status or tourist visa are continuing to surface nationwide. Women are forced into the Korean sex industry and exploited in Thai massage parlors, "officetel" (multipurpose residential unit) prostitution, etc. However, most cases surface in sex industry crackdown or request for emergency intervention. During the investigation process, victims are firstly identified as criminal suspects or witnesses before victim support organization could provide any assistance. Because women are considered as being in violation of the Immigration Act and deported, there is a severe lack of punishment towards human trafficking perpetrators. While the government argued making an effort to provide support to foreign women victims of sexual exploitation by conducting joint inspection of foreigner-exclusive entertainment establishments, it fails to offer appropriate alternatives to the changing trends of the industry.

The government reported that the Ministry of Justice had the authority to grant an extension of stay (visa status) throughout the entire legal process of a victim of human rights violation. However, during the course of civil lawsuits and enforcement of court decisions, since the extension of stay is in discretion of the local Immigration Office, there are victims who must undergo legal proceedings without a stable status.

***Case: In her civil court case, "A" was granted a compensation for damages and proceeded to enforce the court decision. "A" was able to collect her compensation because the court granted a seizure of funds, yet she had to stay in Korea until she could collect the whole compensation. Under these circumstances, "A" submitted a copy of court decision of collection and seizure of funds as documentary evidence when applying for an extension of stay, but her application was denied. (January 10, 2018. Pyeongtaek, Gyeonggi.) However, when "B" and "C" were undergoing the same legal proceedings, they submitted the same documents with their application for an extension of stay and were granted the extension unlike "A". (May 4, 2018. Pyeongtaek, Gyeonggi.)

The government reported that it was operating the shelter facilities for foreign women victims of sexual violence, domestic violence, prostitution, etc., and assisting victims so that they could settle down in Korea. However, in case of migrant women victims of sex trafficking, victims are granted limited sojourn status only during their legal proceedings; once their legal case ends, they can no longer extend their stay. In other words, women with unstable visa status can participate in therapy programs to recover from the trauma of sexual exploitation, but the majority is not able to receive support to enter school or get a job through economic rehabilitation program. In this reality, migrant women victims of sexual trafficking are seen not as subjects who should gain self-sufficiency but rather as subjects who should be repatriated.

The first stage of an investigation begins with a process of identifying whether the victim was a consenting agent or not. Even though they had experienced obstacles in escaping and requesting emergency intervention after their passports were confiscated, lacking geographical knowledge of their surroundings, being unable to leave the sites, women who request emergency assistance are identified as suspects and deported only because of the fact that they could use their cellphones freely. In addition, although a victim requests emergency intervention in person, instead of being questioned for damages, it is customary for officials to focus on verifying what Immigration Act violations she has committed. In the preliminary stage of investigation, the victim does not get referred to a counseling center, and instead she is transferred to the Immigration Office and deported before having access to any assistance. For those reasons, the request by support organizations for the right to accompany victims from the preliminary stage of investigation is denied and the cases of exploitation are left unveiled.

Women must give testimony about their experiences through the interpreters hired by investigating agencies. However, if the interpreter does not have an understanding about sex trafficking, the women are put in a situation where they cannot fully and correctly testify on their experiences due to the incorrect interpretation of questions and answers. In addition, there are cases of interpreters who put their own arbitrary judgement to the investigator, leaving the woman who requests emergency intervention and assistance to be identified as a suspect.

***Case: A Thai woman victim escaped from an establishment and went to the police for emergency assistance. Her statement was given through the interpreter provided by the investigating agency. However, the police have considered the interpreter's subjective opinion on the case. After the questioning, instead of relying on the woman's statement, the police confirmed the interpreter's judgement again and confirmed the woman as a suspect in the case. (June 4, 2018. North Jeolla.)

The government reported that the revision of the Criminal Act had introduced human trafficking as a crime and included regulation for heavy penalty for the crime. From 2013 to 2016, only 4 cases were charged in relation to the defined provision as crime of human trafficking for purposes of labor exploitation, prostitution and sexual exploitation, organ harvesting. While the name of the offense cannot be confirmed, it is possible that the 4 charges are not related to prostitution and sex trafficking. In the current law revision on the crime of human trafficking, the legal analysis of the scope of victimization is narrow. If the victim agrees to anything during the investigation, the abuse of the position of vulnerability, etc. lead to the victim's not receiving recognition for the harm she experienced due to traffic and she cannot receive protection under the law.

Suggested recommendation

- The relevant laws must be revised so that a stable status of residence and basic livelihood are guaranteed for the victims until the remedy process ends, allowing victims to participate in investigation procedure under stable condition.
- Personnel of related organizations (investigation agency, Immigration Office) that have contact with women victims must receive human rights and sensitivity training, and investigating agencies should focus on investigating women's experiences of harm due to sex trafficking, not on her visa status or intention to work.
- The policy should be changed so that referral to a counseling center and accompaniment by a trusted party in the initial stages of police investigation become mandatory, and women victims should be able to give their statement without hesitation.
- The Palermo Protocol must be implemented so that the victims' rights are protected and victims can receive assistance, and the human trafficking activity should be severely punished and comprehensive anti-human trafficking should be legislated.

B. Human Trafficking for purposes of Labour Exploitation

Labour Exploitation, Racial Discrimination and Human Trafficking of Migrant Fishers Working on Korean Fishing Vessels in Distant Waters¹²

According to FAO, the Republic of Korea's fishery and aquaculture output is 1.77 million ton in 2014. The value of this output is estimated to be approximately USD 4.4 billion, ranking the ROK as the world's 13th largest fishing nation. What is not reflected in these statistics is that most of the workers on Korean fishing vessels are migrants. In fact, 70 per cent of fishermen on Korean distant water fishing (DWF) vessels are migrant workers in 2016. Migrant fishermen working on the distant water fishing (DWF) vessels are suffering from several problems such as but not limited to long working hours, health and safety problems low and unequal wages, physical abuses, and general discrimination.

Long working hours, low and unequal wages and no overtime payment

Recruitment and labor contracts for DWF vessels are completely silent on working hours, and the Seafarers' Act of ROK does not place a limit on the hours of work. Though labor on DWF vessels is necessarily unpredictable and irregular to a certain extent, there is no justification for an unlimited number of working hours. Migrant fishermen work grueling, inhumane hours on DWF vessels; some reported working 12 hours a day, but most interviewees suggested they worked for an average of 18 to 20 hours, even reaching 22 hours during busy periods. The average wages of migrant fishermen on DWF vessels were remarkably lower than their Korean counterparts despite of the same amount of working hours. Seafarers' Act in the ROK dictates that the minimum wage of fishermen is determined by the annual announcement of the Minister of Oceans and Fisheries. However, minimum wage for migrant fishermen is determined through an entirely different process of labor-management agreement, by fishing companies and Korean fishermen's labor union, both of whom have conflicting interests with migrant fishermen. Furthermore, most vessels even failed to abide by the ILO minimum wage; some migrant fishermen we interviewed were paid a mere USD 250 a month. The most discriminatory and exploitative factor in wage determination is that the migrant fishermen receive a fixed salary, while Korean fishermen are part of a so-called profit-sharing system (Bohapje in Korean)

¹² This is based on the report titled 'tied at sea', http://apil.or.kr/?page_id=10351

whereby they divide the net profit among themselves. Therefore, migrant fishermen are not only entirely excluded from the profits, but the system incentivizes Korean workers to increase work hours of migrant workers.

Physical abuse

The research team found out, after years of investigation and interviews that physical abuse against migrant fishermen occurred frequently on DWF vessels. As with verbal abuse, Korean fishermen justified their exercise of physical violence by blaming migrant fishermen for being slow, vomiting, or not doing their work well, as well as for being impolite – such as refusing to do errands for or bowing to them. The problem must have been worsened since migrant fishermen on DWF vessels had no recourse for such violence other than asking the captain for help, but their plea was rarely accepted.

Discrimination

The Article 6 of the Labor Standards Act prohibits discrimination based on nationality, and Article 22 of Act on Foreign Workers' Employment, etc. also requires employer not to discriminate or unfairly treat any person on the ground that he/she is a foreign worker; Article 5 of the Seafarers' Act applies Article 6 of above Labor Standards Act. However, migrant fishermen told the research team countless stories of the discrimination they had experienced. First, migrant fishermen were under much worse living conditions than their Korean counterparts, and were sometimes even given leftover food from Koreans. Similar discrimination extended to the use of bathrooms, toilets, and water.

Physical, social and financial coercion

Normally, one can leave the job position or go back to one's homeland if one dislikes the working conditions. However, this is not the case for the most migrant fishermen on Korean DWF vessels. 1) Due to docking costs money, companies often require the main vessel to stay offshore, transporting the fish and supplying necessities through other ships. Because of such practice of transshipment, migrant workers cannot leave or ask for outside help even in the face of severe exploitation, abuse and discrimination; there are no means of communication on the seas for migrant fishermen other than the satellite communication tools which are not available to migrant fishermen. 2) Sometimes Korean manning companies forced the worker to stay in the Institute of Welfare and Education for Distant Water Migrant Fishermen at the cost of the vessel-owning company, which is a de-facto detention center. Migrant fishermen detained in the institute cannot leave the premises freely. There are surveillance cameras near the first-floor exit; the building is full of CCTVs; the floors on which migrant fishermen stay are locked with iron-barred windows and doors; and a guard watches them constantly. 3) The recruiting companies confiscated the passport and other personal documents of migrant fishermen being recruited for DWF vessels. Those documents were returned to the migrant briefly upon departure from their country of origin but were taken away by the Korean manning agency or the captain immediately upon arrival; they were then kept away from the worker until the employment ends. Without their passports and documentation, it is difficult for migrant fishermen to seek help. 4) Migrant workers on DWF vessels paid a huge sum of money to the recruiting agency as security deposit. Therefore, despite experiencing exploitation and abuse during employment, most migrant fishermen had no choice but to stay on the vessel for fear that they would not get back their security deposit. Yet, there was another avenue of financial pressure: predetermination of the amount of damages. The recruiting agency usually had a contract with the Korean manning agency which required the former to pay a penalty fee to the latter for migrant fishermen who desert the workplace.

And to protect them, the recruiting agency included a clause on predetermination of the amount of damages in the recruitment contract with the migrant worker. The provision on predetermination of the amount of damages serves as a measure of putting financial pressure on the migrant fisherman to prevent him from leaving the vessel. 5) Furthermore, Korean vessels owners often withholding payments to prevent migrant workers from leaving the workplace. On DWF vessels, the practice of withholding a certain amount of wages to discourage migrant fishermen from leaving the vessel was widespread. Some withheld months' worth of wages, while others withheld a portion of the salary throughout the contract period. The withholding was done by the recruiting companies, or the fishing companies.

Measures taken by the Government

It must be noticed that these violations and exploitations of their rights are possible due to the fundamental loophole or short of legal protections as well as the lack of willingness to enforce the existing laws by the government of ROK. Even though all these serious violations on migrant fishermen in which the Korean DWV fishing companies have been directly and indirectly involved, the government of ROK has been given a huge amount of subsidies to the DWV fishing companies amounting to approximately 280,000,000 USD in 2012 along with the investment of the Korean National Pension Fund, to the extent that the Fund were holding 6.79% of total shares of Sajo Industries and 10% of Dongwon industries which are the two biggest Korea DWF companies. As thus, the government of ROK has violated its obligations to protect the Convention rights of migrant workers breached by local recruitment companies in the country of origin of migrants by failing in properly regulating the Korean DWF companies to which on the contrary, the government of ROK has given subsidies and invested through the Korean National Pension Fund.

Suggested Recommendations

The State Party should:

- Assess the exact amount of recruitment cost and its specific breakdowns paid by migrant fishermen through in-depth interview with migrant fishermen by types of fishing vessel, share information on migrant fishermen system with sending country government, develop a policy roadmap to implement 'Employer Pays Principle' in coordination with the sending countries and revise relevant legislation to implement the 'Employer Pays Principle', with various leverage including subsidies ensure the Korean fishing companies to conduct the due diligence to identify, prevent and mitigate the violation of the Convention rights of the migrant fishermen by their business partners, the local recruitment companies.
- Strengthen the human and financial resources of the labour inspection to enable it to perform its functions effectively and to take effective measures to Increase labour inspection on the infringements of the Convention rights of migrant crews in Korean fishing vessels operating in distant waters,
- Take steps to hold exploitative fishing companies accountable and to compensate victims.
- Ensure that the Korean National Pension Funds undertake systematic and independent human rights impact assessments, establish effective monitoring mechanisms and guarantee accessible complaint mechanisms for violations of the Convention rights by Korea distant water fishing companies,
- Impose a duty on companies to report on their policies and procedures to ensure respect for human rights and providing effective means of accountability and redress for abuses to Covenant rights

C. Inadequate Protection for foreign residents and undocumented migrant victims of crimes

The State Party has enacted the Crime Victim Protection Act to promote crime victims' welfare, protect and support crime victims, and provide aid to a victim to whom death or bodily harm is caused by the criminal conduct of others. Nevertheless, Article 23 of the Act stipulates that "If a foreigner is a victim subject to relief or a bereaved family member, this Act shall be applicable only where the cross-guarantee agreement with the relevant country exists." According to the government report, there are no cases in which citizens of countries where the cross-guarantee agreement exists, such as Spain and Canada has made the application for relief funds since the enforcement of this Act (the Government Report 95 - Footnote 11). In other words, there have not been any cases that foreigners received the relief for their injuries under Crime Victim Protection Act.

The relief fund system under the Crime Victim Protection Act is the system giving shape to Article 30 of Constitution of the Republic of Korea. The right to claim relief for criminal damage is a fundamental human right, which should also be applied to foreigners. In addition to the Republic of Korea, Mexico and Switzerland also have the right to claim relief for criminal damage as a part of constitutional rights. Those two countries provide relief funds for crime injuries to foreigners in the same manner, regardless of their nationalities.¹³

Additionally, with regard to the rates of foreigners residing in Korea is Chinese(47.4%), Vietnamese(7.8%), American(7.1%), Thai(5.8%) and Filipinos(2.8%)¹⁴, people from these countries, except for the American, are frequently exposed to crimes because they have relatively poor social status in ROK.¹⁵ On the other hand, the number of residents from Spain(not ranked) and Canada(1.2%), where have the cross-country agreements with ROK, is relatively few, leading to the relatively low crime rates.¹⁶ In this regard, the Crime Victims Protection Act, which requires the strict reciprocity is inadequate to achieve its purpose of protection of and provision of aid to foreigners. Therefore, the reciprocity rule under the Crime Protection Act should be abolished as soon as possible.

The government claims that in accordance with Article 92-2 of the Enforcement Decree of the Immigration Act and the "Guidelines on Exemption from Obligations to Notify", which is an exemption from the obligation to notify undocumented foreigners, the public prosecutor, the police, and the officials of The National Human Rights Commission of Korea (NHRCK), is exempted from the obligation to notify the immigration officer the personal information of victims of crime learned from the rescue work. This provision is enacted to protect and support the victims of crimes, and to encourage the victims to report the cases.

However, the scopes of the public officers who are exempted from the obligation and the requirements for exemption are to be decided at the discretion of the Ministry of Justice under the current Enforcement Decree of Immigration Act. In addition, according to the Guidelines on

¹³ Korean Institute of Criminology, "Support for Foreign Victims of Crime and Improvement Plan", pp.23-24, 2017

¹⁴ Refer to the graph 2-3, on page 40-41

¹⁵ According to the nationality distribution of foreign victims of crimes in 2016-2017, Chinese is the highest(40.2%), followed by Vietnamese(35.6%), Cambodian(5.7%), Uzbekistan(4.6%) and Mongolian(3.4%). (Refer to the graph 3-4, on page 50)

¹⁶ Refer to the graph 2-6, on page 40-41, and the graph 3-4, on page 50

Exemption from Obligation to notify, only the public prosecutors, the police, and the officials of the NHRCK are exempted from the obligations who often do not even know that they are exempted from the obligation of notification, so that a minor loss report to the police may lead to the notification to the immigration office, and as a result to the deportation. Also, many undocumented foreigners do not know that there is such an exemption from obligations to notify, so they are reluctant to report situations because of the fear that they may be deported even after suffering crime damage.

Suggested Recommendations

The State Party should:

- Amend the current Crime Victim Protection Act so as to a foreigner who has suffered a crime in the Republic of Korea, or a crime by a citizen of the Republic of Korea could be protected and supported by the Government of the Republic of Korea against the crime regardless of the status of sojourn and reciprocal guarantee between countries.
- Abolish the provision of notification under the current Enforcement Decree of the current Immigration Act.
- Provide a ‘notice prohibition clause for public officers to the immigration’ so that undocumented migrants can request relief and legal remedy without fear of crackdown or deportation when suffering crime.

4. Other Civil Rights

A. Right to Citizenship

The Committee on the Elimination of Racial Discrimination in General Recommendation No. 30 on discrimination of non-citizens recommended that State Parties should “take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention’s anti-discrimination principles.”

Most social benefit schemes in South Korea are restricted to Korean nationals and non-citizens are only included if specially provided for. As a result, non-citizens are largely excluded from basic social benefits including basic livelihood benefits for the indigent, medical aid, benefits for the disabled, and child welfare services. The same applies to marriage migrants¹⁷ and other long term residents and permanent residents. Therefore only by acquiring Korean citizenship can migrants become fully eligible for social benefits.

According to the Supreme Court, even if a candidate fulfills all legal requirements, whether to allow naturalization or not, lies within the discretion of the Minister of Justice. Therefore, a significant number of non-citizens settled in Korea have not been able to naturalize, and due to the jus sanguine principle of Korea’s nationality laws, such lack of citizenship is passed onto the next generation.

Marriage Migrants

¹⁷ For example, a marriage migrant is only eligible for basic livelihood benefits if (s)he or the Korean citizen spouse is pregnant, (s)he is raising a Korean citizen child or sharing home or livelihood with the Korean citizen parent of the Korean citizen spouse.

A marriage migrant who has been separated from his/her Korean citizen spouse by death or divorce, who is not raising a Korean citizen child born of the marriage, and who cannot prove that discontinuance of the marriage occurred through no fault of his/her own, will be denied the right to stay in Korea, regardless of length of residence. Therefore, a marriage migrant who was not able to naturalize or acquire permanent residence while (s) he was married to her/his Korean citizen spouse or rising his/her Korean citizen child has to leave the country.

Such discrimination against marriage migrants whose marriages with their Korean citizen spouse was discontinued or who are not raising a Korean citizen child is carried on to naturalization. In the case of the former, they are excluded from a waiver of the requirement to pass a written exam for naturalization, and dual citizenship, which has been granted only to marriage migrants since 2010, is denied. In the case of the latter, the time needed for decision-making increases considerably. According to a ‘Notice of Processing Period for Naturalization Matters’ published by the Ministry of Justice, in the case naturalization of marriage migrants, the processing period is 11 months if the candidate’s marriage to the Korean citizen spouse is ongoing and (s)he is raising a child born of the marriage, and if not, the processing period is 19 months.

Furthermore, according to Ministry of Justice statistics, the ratio of marriage migrant naturalization candidates who fulfilled all other requirements including means to sustain a livelihood, criminal records etc., but nevertheless were denied naturalization based on failure to pass their interviews increased sharply since 2013. The fact that denial based on interviews exceeds 60% of all denials raises deep concerns due to a lack of objective criteria and large room for subjective and biased decision making.

| year | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|--------|--------|--------|-------|-------|-------|
| Number of candidates | 13,093 | 11,812 | 10,729 | 7,456 | 8,882 | 9,396 |
| Total number of denials | 3,021 | 3,201 | 3,781 | 3,653 | 3,883 | 1,821 |
| Denials based on failure to pass interview | 59 | 896 | 2,363 | 2,146 | 2,553 | 1,280 |
| Ratio of denials based on failure to pass interview | 2% | 28% | 62% | 58% | 65% | 70% |

Children

A child born out of wedlock between a Korean father and non-citizen mother can acquire Korean citizenship by making a report to the Minister of Justice if recognized by the father (Article 3 of the Nationality Act). However in practice, immigration offices demand passports issued for the child by the government of the country of origin of the mother, based on Article 2 of the Enforcement Rule of

the Nationality Act which requires submission of “documentation proving non-citizenship”. It appears that immigration authorities insist on above practice to ensure that nationality passed on by the mother is properly renounced after acquisition of Korean nationality. However several cases have been reported where due to above practice acquisition of citizenship and birth registration¹⁸ were delayed for several years, leaving the child without medical insurance, child care support and access to other vital social services, because the parents were unable to acquire a passport for their child from the government of the mother’s country of origin, for example, due to the mother not being able to pass on her nationality per nationality laws of her country of origin, or the mother being an asylum seeker and unable to contact her embassy.

As explained above, according to relevant laws, acquisition of citizenship by paternal recognition is supposed to become effective as soon as a report is filed. Therefore the current practice of refusal to accept such report for reasons of administrative convenience constitutes a clear violation of the right to citizenship.

<Case1>

Philippine citizen A met her current Korean husband after her first husband, who had also been a Korean citizen, died. They married after their son was born in 2011, due to which the child was deemed born out of wedlock. However, immigration authorities refused to accept the report of acquisition of citizenship by paternal recognition, demanding submission of a Philippine passport issued in the name of the child. However, A had not been able to report the death of her first husband to the relevant Philippine authorities, and when A made inquiries to the Philippine embassy, she was told that it was impossible to register her son’s birth because the name of her husband and the name of the father did not coincide. For 3 years A was not able to register the birth of her son with both Korean and Philippine governments. A could not go to the Philippines to report the death of her first husband because she could not leave behind her toddler son nor take him with her because he had neither birth registration nor passport. She was finally able to register the birth of her son with both Philippine and Korean authorities in 2014, but only after an NGO was able to get past the reception window to the first secretary of the Philippine embassy who was more versed in relevant laws and helped register the child’s birth with the Philippine government.

<Case2>

B is a citizen of a Middle East country. She gave birth to a child out of wedlock in 2016. The child was recognized by the Korean father in court. B is not able to contact her embassy because she is an asylum seeker, and nationality laws of her country of origin in principle do not allow a mother to pass on her nationality. Nevertheless Korean immigration authorities are demanding that B submit her child’s passport issued by the government of her country of origin and the child to the present has neither birth registration nor citizenship.

Stateless Persons

Article 32 of the 1954 Convention relating to the Status of Stateless Persons, to which South Korea is a party, sets forth that the Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. However South Korea to the present has not provided for a procedure to determine statelessness, nor a system for the protection of stateless persons, including facilitation of naturalization.

¹⁸ Birth registration in Korea is only available to citizens.

Refugees

Article 34 of the 1951 Convention relating to the Status of Refugees, to which South Korea is a party, sets forth that the Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. However South Korea does not provide for a scheme to facilitate naturalization of refugees. It has been pointed out that strict asset and income requirements (financial capital exceeding KRW 60 million, real estate worth the same amount or income exceeding GNI (Gross National Income) per capita) have been one of the main barriers faced by refugees wishing to naturalize.

Introduction of prerequisite acquirement of permanent residence

Up to the present, all non-citizens residing in Korea for more than 5 years could apply for naturalization, provided that they satisfied relevant requirements. This will change from December 20, 2018, and only permanent residents will be eligible for naturalization (except for those eligible for facilitated naturalization). According to the draft revision to the Presidential Decree and Enforcement Rule of the Immigration Control Act made public by the Ministry of Justice on June 19, 2018, eligibility for permanent residence itself is restricted to specific immigration statuses, and the requirements for permanent residence echo current requirements for naturalization, including residence, asset/income, and completion of assimilation education program. The government has not made public any plans to expand social benefits granted to permanent residents. Therefore it is expected that permanent residence as a prerequisite will make the road to naturalization longer and more difficult.

Cancellation of naturalization

According to Article 27 Paragraph 1 Clause 4 of the Presidential Decree of the Nationality Act “any person whose permission to naturalize has a grave flaw” is subject to cancellation of naturalization. However there exist no clear criteria on what would constitute a “grave flaw”¹⁹. In practice, having previously entered the country under another identity or cases where birth date and name given on the passport do not coincide with “real” name and birth date have been subject to cancellation. The problem is that it is not always clear which date and name should be deemed “real”. The result is that not only passports issued using the identity of another person (usually with consent of that person), or identity laundering to conceal criminal records or past violation of immigration laws, but also changes or corrections of personal data that took place in a bona fide manner triggered cancellation of naturalization

Suggested Recommendations

¹⁹ According to clause 1, 2 and 3 of the same paragraph forgery or alteration of identity documents, criminal conviction related to marriage or adoption and court decisions nullifying or cancelling the legal basis for naturalization constitute grounds for cancellation of naturalization. Therefore clause 4 refers to “grave flaws” that do not fall under any of the above.

- Eliminate discrimination of marriage migrants based on continuance of marriage or production of Korean citizen offspring
- Eliminate barriers to acquisition of citizenship by paternal recognition
- Provide for a process to determinate statelessness
- Provide for facilitation of naturalization for refugees
- Minimize discretionary nature of naturalization decisions and maximize routes for long-term residents to acquire permanent residence
- Prevent arbitrary cancellation of naturalization by setting forth clear and careful parameters for decision making

B. Freedom of Assembly

The Migrants' Trade Union (MTU) was established on Apr 24 2005, as an independent and autonomous labor union of migrant workers. A successor of the past labor movement of migrant workers in Korea, it is a member of the Korean Confederation of Trade Unions (KCTU). Initially, the Ministry of Labor (MOL) refused to accept the report of establishment, citing the fact that the MTU was mostly comprised of undocumented migrant workers. Subsequently, MTU filed an administrative lawsuit against the MOL's decision, and won on its appeal on 2007. MOL appealed the decision, and the Supreme Court confirming the High Court's decision was handed down on June 26 2015, 10 years after MTU's establishment. International law and the Korean Constitution provide for basic labor rights of all workers, and recognize the right of undocumented migrant workers to form a labor union.

Workers establish labor unions to be ensured of their workers' rights. However, under the current EPS system, migrant workers are forced to subordination to their employers, and are deprived of their basic labor rights. Labor union activities have been viewed as political activities, a ground for forced deportation under the Immigration Act. Ensuring that all migrant workers, regardless of their status, can participate in labor union activities is crucial.

Article 17, para. 3 of the Immigration Act (Stay and Scope of Activity of Aliens)²⁰ can be arbitrarily interpreted to prohibit political activities of migrant workers.²¹ Indeed, several labor union activists including the past leader of the MTU have been deported, and the provision has effectively limited labor union movement of migrant workers, including forcing the MTU to amend its labor union bylaws.

The Korean government has continuously targeted and arrested union leaders and officials. As a result, the government succeeded in deporting every MTU leader, effectively incapacitating the union, while delaying legalization of the MTU in the courts for more than 10 years, thereby denying basic labor rights to migrant workers. The case of arrest and deportation of the third union leader of the MTU,

²⁰ Article 17 (Stay and Scope of Activity of Aliens)

(1) Every alien may stay in the Republic of Korea as permitted by his/her status of stay and within the authorized period of stay.

(2) No alien staying in the Republic of Korea shall engage in any political activity unless otherwise permitted by this Act or other Acts.

(3) If an alien staying in the Republic of Korea engages in any political activity, the Minister of Justice may order the alien in writing to suspend such activity or may issue other necessary orders.

²¹ Pressian, Jun 7, 2018

Torna Limbu, illustrates that the Korean government repressed MTU's activities viewing them as political activities to be suppressed. The press release by the Ministry of Justice at the time was as follows.

Especially, Nepalese L, despite his illegal status, has joined the foreigner labor union a long time ago, and has played a crucial role within the union. Last year, on November 27, when Nepalese K, the third president of the MTU, was caught and deported, L became the acting president and cooperated with civil organizations to organize anti-government protests under the slogans such as 'no to government crackdown', 'legalize all illegal migrants', and 'abolish EPS, achieve labor permit system'.

Especially, at the 4th general assembly of the MTU on Apr 6, he was elected as one of the members of the 4th executive committee. Since then, until the May Day of May 1 2008, he has cooperated with a number of civil organizations and they have led protests against the new government's policies regarding illegal migrants. Especially, at the 4th general assembly of the MTU on Apr 6, he was elected as one of the members of the 4th executive committee. Since then, until the May Day of May 1 2008, he has cooperated with a number of civil organizations and they have led protests against the new government's policies regarding illegal migrants. Especially, at the 4th general assembly of the MTU on Apr 6, he was elected as one of the members of the 4th executive committee. Since then, until the May Day of May 1 2008, he has cooperated with a number of civil organizations and they have led protests against the new government's policies regarding illegal migrants.

The immense power of Immigration Act acts has a chilling effect for migrants not only in participation of protests, but even just signing on to a statement. The majority of migrant workers, even if they do not know the exact provision, are aware that because the Immigration Act forbids political activities, they are not allowed any political activities in Korea. Even those who had been politically active in their home countries are reluctant to do the same in Korea, and sometimes restrain other migrant workers' activities. During the 3 day training that every migrant worker receives upon entering Korea, the lecturers sometimes portray negative picture of migrant workers participating in collective actions or protests. Embassies often eschew the role of protecting their nationals and instead suppress political activities of migrant workers. In 2013, workers of an automobile parts company located at Kyungju, Kyungbuk-do, MS Auto Tech Co., attempted to form a democratic union. Both Korean and migrant workers began a strike, and collective sit-ins. The employer, in order to pierce the weak link, told a Filipino worker close to management to make fake reports to the Philippines embassy and the police that migrant workers are being confined by Korean workers. When the Philippines embassy and the police came to the scene, Filipino migrant workers had to leave the labor union and the sit-in.²²

"Political activities" encompasses a wide range of rights including suffrage rights, freedom of political expression, and freedom of assembly. While it is commonly understood that the question of to what extent should migrants be endowed with suffrage rights and allowed to participate in the political process is a matter of policy within each country, it has been widely recognized that it is important that migrants' be granted freedom of expression to be able to enjoy basic rights as members of society. Indeed, the 'Declaration on the human rights of individuals who are not nationals of the country in which they live', adopted by the UN General Assembly on 1985, emphasizes that all

²² Media Today, Aug 20, 2013

foreigners, with the exception of reasons of national security and public order, must be ensured of their freedom of expression and assembly. As such, the Article 17 of the Immigration Act that forbids political activities of foreigners and prescribes deportation for those who have engaged in political activities, is in severe violation of basic rights and international norms.

According to the State Report²³, the Korean government has eased conditions for changing workplaces, and has conducted regular labor inspections to check whether the employers violated any labor laws, and such inspections are not aimed at identifying undocumented migrants. However migrant workers have continued to be hurt or killed during violent crackdowns by the Ministry of Justice. Reported cases of injuries and death during the period of 2012 to 2018 are as follows:

| | |
|------|---|
| 2012 | In March, in the city of Dong-hae, Chinese worker Heo threw himself into the sea while escaping from crackdown, and died. In November, in the city of Busan, an Indonesian worker fell from a wall erected at a construction site while escaping from crackdown, and died from severe injuries. |
| 2015 | In March, Seoul Immigration Office arrested a 2 year old baby along with its Filipino mother. |
| 2016 | A migrant worker from Uzbekistan held hunger strikes and even tried to commit suicide while being detained at Hwasung Foreigner Protection Center, but was forcibly deported against his will. |
| 2017 | On July 4, an Egyptian migrant worker fell from a 6m high fence while escaping from a crackdown in the city of Ulsan, and suffered severe injuries. He was forcibly moved from the hospital he was being treated, and when activists protested this, an immigration official hit the activists. On November 1, a Thai undocumented worker was imprisoned in a car for 15 hours and killed by a Korean co-worker who lured her outside by falsely telling her that immigration officers are coming. |
| 2018 | On Apr 25, immigration office conducted massive crackdown at factories in Yeongcheon, Kyungbuk, with 25 undocumented migrant workers being caught and detained. A Thai worker suffered severe injuries as a result. On November 16, Uzbekistani student at a Korean university who was working part-time at a construction company during summer vacation was severely beaten by immigration officers during crackdown. The scene was caught on video, and criminal charges were brought against the immigration officers. |

Suggested Recommendations

| |
|---|
| <p>The State party should</p> <ul style="list-style-type: none"> • Amend the Immigration Act that enforces discrimination against and control of migrant workers • Stop inhumane and violent crackdown against undocumented migrant workers • Protect migrant workers who became undocumented due to employer's acts or flaws in the system • Develop measures to regularize undocumented migrant workers |
|---|

²³ Combined seventeenth to nineteenth periodic reports submitted by the Republic of Korea under article 9 of the Convention, paragraph 71

C. Right to Security of Person

(1) Detention of Migrants

The State Party's Report only briefly touches upon recommendation from the Committee regarding the detention of migrants, neglecting to indicate the State Party's position thereon. The Report does not reflect the grave situation regarding immigration detention in Korea.

The legal basis for immigration detention is the Article 63, Immigration Act.²⁴ CRC, ICCPR and CAT^{25 26 27} already have separately provided the State Party with recommendations to amend the provision, and the majority opinion of the Constitutional Court has determined the Article to be unconstitutional.²⁸ The Article provides that a person may be detained if he or she cannot be 'immediately repatriated'. Without specific conditions and standards for detention, it is possible, and is the usual practice, to issue detention order almost at the same time as the deportation order to a migrant. Secondly, the ambiguity of the phrase 'until it becomes possible to repatriate' allows for indefinite detention. Thirdly, when extending the period of detention, the immigration office enjoys wide discretion, without being subject to judiciary or other independent review.

57 foreigners in 2014, 75 in 2015, 111 in 2016 and 23 in October 2017²⁹ were detained for a prolonged period of time, exceeding 6 months. There was a case in which a foreigner was detained for

²⁴ Article 63 (Protection and release of protection for an individual who received compulsory deportation order)
-The chief of the regional immigration office · foreigner office cannot immediately deport those who received compulsory deportation order but do not own passport nor procured transportation outside of Republic of Korea and instead can detain them at 'protection'/detention centers until they can be repatriated.
- In accordance with Paragraph 1, the chief of the regional immigration office · foreigner office should request for approval from the Minister of Justice every 3 months in the case that the detention period exceeds 3 months.
- In accordance with Paragraph 2, the chief of the regional immigration office · foreigner office should release detainees if they did not receive approval from the Minister of Justice.
-The chief of the regional immigration office · foreigner office can release those who received compulsory deportation order in the case that it is clear that they cannot be repatriated because the recipient country rejects their entry, etc.
-The chief of the regional immigration office · foreigner office can add restriction on residence and add conditions in the case that the detainees were released in accordance with Paragraph 3 or 4.
-From Article 53 to 55, from Article 56 Paragraph 2 to Paragraph 9, and Article 57 applies in the case that a person is detained in accordance with Paragraph 1.

²⁵ 2012. In the CRC Concluding observations of the third and fourth reports submitted by States parties of the Republic of Korea [CRC/C/KOR/CO/3-4]7), the committee recommends Republic of Korea to rectify 'the problems that refugee children can be the subject of compulsory deportation, that there is no limit on the length of detention, and that there is no regular evaluation procedure.'

²⁶ 2015. In the ICCPR Concluding observations of the fourth reports submitted by the States parties of the Republic of Korea [CCPR/C/KOR/CO/4]8), the committee recommends the Republic of Korea to rectify 'the problems that there is no limit on the length of detention, that children can be detained, that the detention facilities are in poor conditions, and that there is no regular and independent evaluation procedure.'

²⁷ 2017. In the CAT Concluding observations of the third, fourth, and fifth reports submitted by the States parties of the Republic of Korea [CAT/C/KOR/CO/3-5]9), the committee 'expresses grave concerns that there is no limit on the length of detention, that children can be detained, and that the conditions of the detention facilities are poor' and recommends the Republic of Korea 'to rectify these problems.'

²⁸ Falling short, however, of reaching the number of 6 Justices (out of 9), which is the threshold for declaring the unconstitutionality of a law. Decision by the Constitutional Court on 22 February 2018 (2017HunGa29).

²⁹ The decrease in the number of foreigners in long-term detention in 2017 can be attributed to the effort by the Ministry of Justice to decrease the number by means of the forced repatriation, as well as temporary release. This trend has been observed after the close Constitutional Court decision almost recognizing the Article as

6 years, the longest period of detention recorded. A violation of the Immigration Act resulted in detention on par with, or longer than imprisonment of criminals who have committed serious criminal offences. Moreover, there have been cases in which migrant who clearly should not have been detained, such as refugees, were detained because of lack of regular judicial review and limit on the length of detention.³⁰

The State Party is of the view that introducing a limit on the length of detention would delay the execution of deportation order and impede effective immigration management; thus unlimited length of detention is inevitable. The State Party has argued that detainees can dispute the detention by administrative appeal or lawsuit against the detention order. However, administrative appeal against the detention order is reviewed by the MOJ, and thus neutrality and objectivity of the appeal decision are not guaranteed. Furthermore, there have been only a small number of cases in which appeals were accepted on substantive grounds. For litigations for the cancellation of the detention order, one should file the complaint within 90 days of receiving the order; if unlawful detention has occurred after the statute of limitation has passed, then the victim has no legal recourse. Consequently, there is virtually no remedy available for long-term detention, which is the most problematic form of detention in terms of violation of personal liberty. Moreover, the Habeas Corpus Act excludes detainees under the Immigration Act from its scope.³¹

Detention of migrants also occurs at airports. Refugee applications at the ports of entry are provided under the Refugee Act (Article 6, Refugee Act, Article 4, Enforcement Decree of the Act). Law provides that such refugee applicants may stay at Refugee Status Waiting Room, but most of them are in fact detained at 'waiting room' for deportation. As discussed in more detail below, argue that the screening process at the airport is limited to refusing to refer manifestly unfounded applications to the RSD procedure, and detained refugee applicants are often able to enter Korea if they dispute the non-referral decision at the court. However, due to difficulties in accessing legal service, many refugee applicants at the port of entry end up in detention.

The Deportation Room is essentially designed as a temporary waiting place before repatriation; it was not meant to be used as a detention facility; thus, it is not equipped with the most basic accommodations. A room with one bathroom without any sunlight, the waiting room has accommodated as many as 200 people. Rooms are infested with bedbugs; food condition is poor; they are not provided with toiletries, clothes, bedding, etc. and have limited access to medical care; they receive threats of repatriation and verbal abuses from the guards.

Refugees, when their refugee applications are denied, cannot endure for long such severe conditions and choose to be repatriated without commencing litigation. Ultimately, refugee applicants who are

unconstitutional, and efforts within the Congress to amend the Artic

³⁰ For example, an Iranian-national refugee applicant was recognized as a refugee in 28 May 2015 after being released from 10 months of detention; a Nigerian-national refugee applicant was recognized as a refugee in the beginning of 2013 after being released from one-year-and-nine-months of detention; a Pakistani-national foreigner was released in 2010 after being recognized as a refugee from one-year-and-six months of detention; an Iranian-national foreigner who was detained away from his daughter and wife was recognized as a refugee in 15 April 2017 after being released from 8 months of detention; a Egyptian-national college students was released in 24 February 2014 after being recognized as a refugee from 8 months of detention; a Pakistani-national political activist was temporarily released because he was getting weak from long-term fasting, but was recognized as a refugee in 27 October 2016 afterwards.

³¹ There also exists practice of detention of migrant children; for a detailed review and recommendations thereon.

protected under the Refugee Convention are repatriated in direct violation of the principle of non-refoulement at the port of entry in Korea. Clearly, severe conditions of illegal detention at the waiting rooms have contributed greatly to the repatriation of refugees.

Suggested Recommendations

The Civil Society recommends the State Party:

- To amend Article 63 of the Immigration Act to specify grounds for the detention of an individual who received deportation order, limit the length of detention, implement independent review for extension of detention.
- To grant entry for all refugee applicants excluding those with manifestly unfounded claims at the port of entry, in order to prevent detention at the waiting rooms. In the case where detention is unavoidable, refugee applicants should be able to stay at the refugee waiting room instead of at the waiting room while they are going through the referral procedure or litigation

D. The right to leave any country, including one's own, and to return to one's country

Undocumented migrant children residing in Korea are essentially limited in their freedom to leave Korea without valid grounds. According to the testimonies of NGO activists and media reports, the immigration office prohibits foreign guardians and their children from leaving the territory until they pay administrative fines levied for not having fulfilled the duty of foreigner registration of the children. Undocumented foreigners, before issuance of an airline ticket, must visit the immigration office and receive confirmation from an immigration officer. If the officer notifies the foreigner that he/she cannot leave the country until the administrative fines are paid, the foreigner cannot be issued a plane ticket, effectively being prohibited from leaving Korea.

Such cases have been recognized by NGO activists for several years. According to recent media reports, undocumented migrant children who were born in Korea (7, 3, and 1 year old Vietnamese children residing in Gimhae; 5, 3, and 1 year old Ugandan children residing in Ansan) voluntarily tried to leave Korea with their guardians, but were prevented by the airport immigration officers from departing from Gimpo and Incheon Airport, respectively. Immigration officers of both airports did not provide clear reasons for their decisions, and ordered each party to pay administrative fines of 2.2 million won and 850 thousand won, respectively, and notified them they cannot leave the country until the fines were paid. Unable to pay the fines, these families had wander at NGO offices and friends' homes for several days, until they raised enough money with the help of their friends.

These immigration practices clearly go against Article 13, section 2³² of the Universal Declaration of Human Rights, Article 12 section 2³³ of the International Covenant on Civil and Political Rights, and Article 5 (d)³⁴ of the International Convention on the Elimination of All Forms of Racial Discrimination. Undocumented status is not a sufficient reason to restrict the freedom to leave,³⁵

³² “Everyone has the right to leave any country, including his own, and to return to his country.”

³³ “Everyone shall be free to leave any country, including his own...”

³⁴ “The right to leave any country, including one's own, and to return to one's country...”

³⁵ Human Rights Committee’s General Comment No. 15, section 9 and General Comment No. 27, Section 8

which can only be limited by law to protect national security, public order, public health or morality, and the rights and freedoms of others.³⁶ In line with international norms, Korean law provides specific and limited legal grounds for "suspension from exit". Foreigner's suspension from exit is enforced "to the minimum extent necessary", not "merely for the convenience of performing official duties" and nor "for the purpose of administrative sanctions against the person who has received an administrative penalty."³⁷ Legal grounds for suspension of exit are generally criminal punishment and unpaid criminal restitution, which the administrative fines are clearly not. Nor do the fines fall under any other reason for suspending individual's right to exit.³⁸³⁹ Therefore, migrant children in Korea are restricted in their freedom to exit only on the basis of their undocumented status, unlike other documented or Korean children. There exist no domestic or international legal justifications for this discrimination.

Suggested Recommendation

The State Party should:

- Suspend the current illegal immigration practice, so that all foreigners can enjoy their right to leave and return home without discrimination pursuant to d (ii), Article 5 of the Convention.

5. Economic, social and cultural rights

A. Labor Rights

(1) Discrimination of Wages and Working Conditions

a. Labor laws that fail to protect migrant workers

The State Report states that the principles governing the Employment Permit System ("EPS"), the main system for bringing migrant workers to Korea, are 'prevention of permanent residency' and 'subsidiarity to domestic labor market'. These principles are an expression of the Korean government's decision to, instead of putting in place policies to improve the poor working conditions of jobs that Koreans avoid, brings in migrant workers who will endure such poor working conditions. In short, migrant workers are forced to work under poor working conditions that Koreans cannot possibly endure, without the right to choose and change jobs, to bring their families, to social security and to naturalize.

The State Report claims that labor-related laws, including the Labor Standard Act and the Minimum Wage Act are equally applied to both migrant and native Korean workers, and that the Korean

³⁶ Article 12 Section 3 of the International Covenant on Civil and Political Rights

³⁷ Article 29 of the Immigration Act, Section 1, 2 of Article 39 of the Enforcement Rule of the same Act

³⁸ Article 4 of the Immigration Act, Section 1 of Article 3 of the Enforcement Decree of the Act and subdivision 1 of section 2 of Article of the Enforcement Rule of the Act

³⁹ The Korean government's practice of levying administrative fines at the airport also is in violation of domestic law on administrative penalties, including, inter alia, duty to give prior notice, duty to grant opportunities to submit opinions, and statute of limitations. Article 16, Article 17, Article 19 of the Act on the Regulation of Violations of Public Order, Article 4 of the Enforcement Decree of the Act.

government has conducted labor inspections on businesses to check whether employers violated any labor laws.

However, in reality labor laws are not abided by, and the migrant worker claiming violation of labor laws in many cases is required to provide all the evidence. In 90% of the cases where a violation of labor laws was found, the Ministry of Labor does nothing more than instruct the employer to correct the violation, and only rarely will the employer be indicted, rendering inspections ineffective.

Table 1 Inspections of Businesses employing Foreign Workers by the Ministry of Labor

| period | number of businesses inspected | number of violations found | measures taken | | | | |
|-------------------|--------------------------------|----------------------------|------------------------|-------------|------------|----------------------------|-----------------------------------|
| | | | instruction to correct | indictment | fine | administrative disposition | notification of relevant agencies |
| 2015 to June 2017 | 8,108 | 16,488 (100%) | 14,884 (90.3%) | 18 (0.001%) | 633 (3.8%) | 225 (1.4%) | 728 (4.4%) |

b. Racial Labor Laws and Instigation of Discrimination of Wages

Discrimination of wages by nationality is a racial discrimination in violation of domestic law and international conventions. Nevertheless in many cases migrant workers are denied bonuses and allowances and not even paid minimum wages in violation of relevant labor laws.

Recently, rhetoric by news media and politicians citing low productiveness and national wealth being lost by earnings remitted abroad, and arguing for differentiation of migrant workers' minimum wages is reaching an alarming level. Even some sectors of the government and the parliament have responded favorable to such incitement. In July 2018 the 'Korean Federation of Small and Medium Businesses' proposed a scheme whereby 'foreign workers' would be paid 80% of the minimum wage the first year in Korea, and 90% the second year, and the Minister of SMEs and Startups stated that the proposal would be reviewed proactively. Furthermore, MPs tabled two bills proposing to apply a differentiated minimum wage to 'foreign workers'.

In fact, migrant seafarers working on fishing vessels, which working conditions are among the poorest, have already been subject to discriminatory minimum wages. Although the Ministry of Oceans and Fisheries is supposed to promulgate the minimum wages for seafarers each year, decision of minimum wages for migrant seafarers has been turned over to collective bargaining between seafarers' unions and ship owner unions. As a result, discriminatory minimum wages have been applied in the fisheries industry, and in spite of continuous objection by human rights organizations, the gap is growing. At present the minimum wage for Korean seafarers is KRW 1,982,340 a month, whereas the minimum wage for migrant seafarers in the fisheries industry is KRW 1,400,000 for coastal fishing vessels of more than 20 tons, and USD 457 to 614 for high sea fishing vessels. For Korean seafarers, incentives calculated according to the catch take up a much higher proportion of gross wages. Since migrant seafarers are excluded from such incentives, Korean seafarers' wages can at times be up to 10 times higher than migrant seafarers' wages.

In January 2014, the Ministry of Labor tabled a bill to amend the EPS Act so that migrant workers were not able to claim ‘Departure Guarantee Insurance’ before actual departure. The purpose was to prevent migrant workers from staying beyond expiration of their employment term. The ‘Departure Guarantee Insurance’ is a mandatory insurance for employers of migrant workers to guarantee that migrant workers are paid severance payment. The Labor Standard Act provides that severance payment should be paid within 14 days of termination of the labor contract so as to provide the worker with means to support herself and her family, because delayed payment can result in economic hardship. The same of course applies to the migrant worker and her family. Nevertheless the EPS Act was amended in violation of the Labor Standard Act, and migrant workers are no longer able to receive ‘Departure Guarantee Insurance’ during their stay in Korea, even if the labor contract with their employer is terminated and they have to move on to another.

c. Housing Rights of Migrant Workers

Most migrant workers live in housing provided by their employer. However many of those dwellings lack basic facilities such as fire protection systems, proper ventilation, bathroom and kitchen. Even door locks are often not secure, rendering female migrant workers vulnerable to sexual violence. Housing for migrant workers is often provided in temporary makeshift structures that are not properly heated or cooled and vulnerable to fire. As a result, each winter there have been cases of migrant workers being injured or killed by fire originating from overheated electric heaters. According to a field research, 34% of all migrant workers, 70% of migrant workers working in the agricultural sector and 33% of migrant workers working in construction were housed in temporary structures.⁴⁰

Nevertheless, employers are increasingly charging excessive fees for their substandard housing. Human rights organizations have received reports on cases where migrant workers were charged KRW 150,000 to 400,000 per person for staying in rooms shared by several other workers. This practice is more frequent in the agricultural sector. As migrant workers’ demands for payment of minimum wage according to actual working hours rose, employers started to deduct housing fees from due wages to reduce the overall amount.

As a response to continuous issue raising, the Ministry of Labor in July 2017 published the ‘Guidelines on Provision of Housing Information for Migrant Workers and Collection of Housing Fees’. However, above guidelines did not set forth any guidelines on adequate housing for migrant workers, and only provided that employers can deduct 8-20% from ordinary wages as housing fees. It also specifically provided that deduction was allowed if the housing was provided in temporary structures, thereby providing justification for employers’ practice of utilizing housing fees to cut wages. As a result, the practice of collecting housing fees has spread from the agricultural sector to all other sectors.

(2) Discrimination of permanent residency, family reunification and naturalization

⁴⁰ Korea Support Center for Foreign Workers et al., 2013, ‘Report on Field Research on Housing Conditions and Sexual Harassment/Violence and Proposed Improvements to relevant Laws and Institutions’; Lee Byung Ryul et al., 2013, ‘Human Rights Situation of Migrant Workers in the Agricultural Sector’, National Human Rights Commission; Lee Chang Won et al., ‘Human Rights Situation of Foreign Workers in the Construction Sector’, 2015, National Human Rights Commission

The State Party arbitrarily categorizes migrant workers into skilled and non-skilled, with those categorized as “skilled” being a minority.⁴¹ For those categorized as non-skilled, the majority of migrant workers, term of residence is limited and they are barred from applying for permanent residency or naturalization, nor are they granted the right to bring their families. The Committee for the Elimination of Racial Discrimination and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have repeatedly made recommendations against such restrictions which up to the present were not accepted by the State Party.

As mentioned in the State Party report, a point system for technically skilled workers has been adopted, whereby non-skilled E-9, H-2 and E-10 visa holders, if satisfying certain requirements, can change their status to E-7, a status without limitation on employment term and with eligibility to bring family. However the quota for this system is too low to be meaningful. In 2018 the quota was 100 for each quarter year. The quota for the first quarter was used up within 3 days. Also the requirement on length of residence was revised from 4 years in 2017 to 5 years from 2018. As the majority of migrant workers are only allowed 4 years and 10 months consecutive residence, they are barred from applying for adjustment of status.

As mentioned in the State Party report, in 2012 a scheme was adopted whereby EPS workers who worked for 4 years and 10 months were allowed to return to work for another 4 years and 10 months. However, even though those workers end up residing in Korea for almost 10 years, they are still barred from applying for permanent residence, naturalization and bringing their families. When this issue was raised, the Ministry of Justice in November 2017 responded by revising the Enforcement Rules to the Immigration Control Act to bar issuance of certificates for visa issuance for E-9, H2 and E-10 visa holders residing in Korea for more than 5 years.

(3) Irregularities in the Placement Process

The State Party report states that to address irregularities in the placement process due to the intervention of private brokers, placement under the Employment Permit System is fully implemented through public agencies. However according to field research reports, placements that are not conducted through the EPS and implemented by private profit-seeking agencies or illegal brokers are still prone to grave irregularities. Seafarers working on coastal and high sea fishing vessels, migrant workers with Specific Activity (E-7) visas who are categorized as skilled workers, and seasonal workers come to work in Korea by paying several million to more than ten million KRW.

Even under the EPS expenses have risen by large amounts, due to the Korean government, preoccupied with lowering overstay rates, making sending countries such as Vietnam or Myanmar demand deposits from migrant workers leaving for Korea.⁴²

⁴¹ According to the ‘2017 Survey on Residence and Employment of Migrants’ by Statistics Korea/Ministry of Justice, the number of non-citizens employed in Korea in 2017 is around 834,000. Of those that hold an employment visa, those under the EPS (E-9) and holding a visitor employment visa (H-2) form the majority at 30.6%, and 23.0% respectively. Together with seafarers (E-10) and other visa holders they are categorized as non-skilled workers by the State Party. Only 4.8% of migrant workers are categorized as ‘skilled’ by the State Party.

⁴² Migrant workers from Myanmar are required to deposit 1.5 million Kyat in cash and real estate security certificates amounting to 3 million Kyat before departure. Migrant workers from Vietnam are required to remit one hundred million dong to an account held by the government and submit a form consenting to confiscation of

(4) Labor forcing Restrictions on Change of Workplace under the EPS

Under EPS, Korea's main system for bringing in workers from overseas, migrant workers are allowed to change jobs only 3 times during the first 3 years of employment and 2 times during the remaining one year and 10 months, and that only with consent of the employer. If the migrant worker does not apply for a new job within 1 month of quitting her last job or is unable to find a new job within 3 months her status will be cancelled. As a result, migrant workers are forced to work in poor labor conditions and rendered vulnerable to exploitation, discrimination and abuse.

The State Party report states that change in workplaces due to causes not attributable to the migrant worker is not counted into the number of job changes allowed. And that the government strengthened the rights and interests of migrant workers by further amending the ministerial notification on "Causes for Change in Workplaces which are not attributable to Migrant Workers". However above ministerial notification arbitrarily restricts the range of violations of labor law or human rights deemed causes for job change, through wording such as "if it is found that continuance of employment is no longer feasible due to 30% of wages overdue for two or more months". Furthermore, the burden of proving that cause for job change falls under one of the causes enumerated in the notification falls on the migrant worker. Therefore it is difficult to claim violations such as discrimination, repeated abusive language, sexual harassment and violence as cause for job change due to difficulties in providing proof. Even in cases of overdue wages and violations of the labor contract, which should be easy to establish, job centers and district labor offices often do not accept evidence submitted by the worker, such as daily work hour records.

Contrary to the State Party's report, restrictions on job change have grown stricter over the years. In 2009 the EPS Act was revised to allow up to three year employment contracts, putting migrant workers in the danger of being subjected to up to 3 years forced labor. Since the Ministry of Labor's decision not to provide job searching migrant workers with a list of businesses offering jobs, and only businesses with a list of job searching migrant workers, the range of options for migrant workers has been reduced even more drastically. Now migrant workers have to wait for text messages sent by the job center before being able to meet with a prospective employer. Since her status will be cancelled if not being able to find a job within three months, it has become very difficult to refuse a job referral even if working conditions are not adequate.

The State Party report states that as compared with the trainee system (ITS), under the EPS, absent without leave from workplace rates and the rate of overdue wages dropped significantly indicating that migrant workers' rights and interests in Korea have rapidly improved. However, while the overall rate of undocumented migrants is 10.5%, the rate of undocumented workers under the EPS is much higher at 16.7%⁴³. Notably, for sectors where working conditions are notoriously poor, the rate of undocumented EPS workers is even higher, at 24.1% for construction, 21.9% for the agricultural sector, and 42.1% for fisheries. This is on account of the EPS constantly reproducing undocumented workers due to strict restrictions on causes for termination by the migrant worker, on the period granted for job searching and other requirements for job changes. For the period from 2010 to 2015,

the amount in case of overstay and other forms of undocumented stay.

⁴³ The Korea Immigration Service, 2017 Immigration and Non-citizen Policy Statistics Yearbook

the number of migrant workers in danger of being rendered undocumented solely on account of the 1 month and 3 month restrictions on job searching amounted to 42,996.

Furthermore, the rate of overdue wages for migrant workers is much higher than that for Korean workers. From 2012 to 2016 the number of cases of overdue wages of migrant workers reported to the district labor offices rose by 3 times. As of August 2017, wages of 150,000 migrant workers in the amount of 3 mil KRW per person are outstanding.

(5) Basic Labor Rights of Migrant Workers

On June 25 2015, the Supreme Court handed down a decision that recognizes undocumented migrant workers' rights to organize and join labor unions, cancelling the MOL's refusal in 2005 to accept the report of the establishment of MTU. Despite the Supreme Court decision, MOL declined to promptly deliver certificate of completion but demanded amendments to the report. Among the 4 demands for amendments, the most problematic demand focused on MTU's scope of work that included 'protesting against crackdown and deportation, demanding regularization of migrant workers, protesting against the EPS, and abolishing the trainee system'. MOL demanded that the MTU change the above scope of work, citing Para. 4 (e), Art 2 of the Trade Union and Labor Relations Adjustment Act (Trade Union Act) that provides that organizations which main purpose is political activity cannot be considered trade unions.

Such demands by the MOL unduly violates migrant workers' rights to organize unions, under the distorted perspective of holding regular labor union activities as political movements, as explained in the following.

First, the gist of the Supreme Court decision is that regardless of immigration status, all migrant workers are workers according to the Trade Union Act, and can organize labor unions. Labor unions' establishment is not subject to MOL's permission. NHRC has in the past also recommended that the government's involvement in the establishment of labor unions should be kept to a minimum formal examination.

Especially, the Supreme Court decision holds that since 'any person who lives on wages, a salary, or any other income equivalent thereto, regardless of the person's occupation' is a 'worker', anyone who provides labor to another party based on a subordinate relationship and receives wages, etc. in return, is to be considered a worker under the Trade Union Act and enjoy full rights provided therein, regardless of their nationality or right to engage in employment (immigration status).

Second, trade union activities by nature include criticisms of government policies in order to advance worker's social status and fight discrimination of workers. MTU, as part of its objective to ensure labor rights of all migrant workers, naturally has to protest against crackdown and deportation, demand regularization, and protest against EPS. Such objectives are shared by most of civil society organizations working for migrant workers' rights.

Third, such objections of MOL were not raised 10 years ago, when the MTU initially submitted its report of establishment. It is irrational to suddenly advance a new argument against the establishment of MTU after 10 years, during which the MOL has never raised this issue.

Suggested Recommendations

The State Party should

- Fully recognize MTU's rights and activities as a lawful trade union
- Ensure basic labor rights to all migrant workers.
- Stop selective crackdown and deportation of migrant workers based on their participation in labor union movement

(6) Forced Labor of Migrant Workers in Agriculture

Migrant workers in agriculture are especially vulnerable to racial discrimination since they work and live in conservative and exclusive rural areas where ignorance and prejudice against foreigners are rampant. They experience various types of human rights violations including forced labor, verbal, physical and sexual violence, invasion of privacy, control, contempt, and poor living conditions.

According to the Article 63 of the Labor Standards Act, the provisions pertaining to working hours, breaks, and days off referred to in the Act do not apply to workers in agriculture. As a result, migrant workers in agriculture forced to work excessively long hours with few breaks and days off. They usually work more than ten hours per day and take less than two days off per month. Also, they are frequently lent out to another farms or factories during slow season by their employers who treat them like slaves. Such illegal practice of lending out workers leaves little time to rest to migrant workers in agriculture.

Although the Minimum Wage Act applies to workers in agriculture, in practice, most of the migrant workers in agriculture are paid much less than the minimum wage. Those who are employed in a small non-corporate farm are not covered by occupational insurance, since the Enforcement Decree of the Industrial Accident Compensation Insurance Act excludes unincorporated agriculture businesses with less than five workers from taking out the insurance. About 51% of farms permitted to employ migrant workers is not officially registered as a business, which hinders migrant workers employed in those farms from enrolling in the National Health Insurance as the employee insured.

Under the EPS, the agriculture sector has the highest proportion of women workers at 33.8% as of December 2017. This results in especially high proportion of sexual harassment or violence against migrant workers in agriculture. Migrant women workers in agriculture, therefore, are in a situation of triple vulnerability – as agricultural workers, as migrants, and as women.

However, it is very difficult for migrant workers in agriculture to get redress in case of human rights violations. Since their workplaces are located remote areas far from cities and they are strictly under control by their employers, they can hardly access to non-government migrant support organizations as well as government agencies for help.

For the reasons above, prospective migrants under the EPS are unwilling to work in agriculture. Thus the Korean government designated five specialized countries to recruit migrant workers for agriculture and has tightly restricted the agricultural migrant workers from transferring to other industries.⁴⁴

⁴⁴ The Korean government's practice of levying administrative fines at the airport also is in violation of domestic law on administrative penalties, including, inter alia, duty to give prior notice, duty to grant opportunities to

In his 2015 country visit report, the Special Rapporteur on Racism recommended the Korean government for migrant workers in the agriculture sector to ensure that all are paid the full overtime rate for any work performed outside the regulated hours, clarify what constitutes adequate food and accommodation when those are included as part of a migrant worker's contract, ensure that the Ministry of Employment and Labor regularly inspects all farms to ensure the proper implementation of the Labor Standards Act and EPS contracts, and take appropriate action to remedy the situation, including appropriate sanctions against employers who are in breach of their obligations.⁴⁵ Also in 2015, the CCPR addressed its concerns over agricultural migrant workers for they were trafficked into Korea for the purpose of exploitation, including forced labor,⁴⁶ and in 2017 the CESCR urged the government to ensure that labor and social security rights are protected and respected for migrant workers in the fisheries and agricultural sectors.⁴⁷

(7) Seasonal Migrant Workers

As the issues of racial discrimination and human rights violations against migrant workers in agriculture and fishery have been raised constantly, the Ministry of Justice introduced the “Foreign Seasonal Worker Program (FSWP)” into the agricultural and fisheries sectors instead of taking measures to improve the situations of migrant workers in those sectors. The FSWP was piloted from 2015 to 2016, and then fully operated from 2017. Migrant advocacy organizations have opposed the FSWP concerning about potential human rights abuses against seasonal migrant workers, yet the Ministry of Justice has kept expanding the quota of migrant workers without considering potential problems.

The FSWP is being carried out with no legal framework in place. The operation and management of the FSWP are left to the local governments whose main tasks are the recruitment and placement of seasonal workers. Migrant workers under the FSWP are not only experiencing the same problems as those in the agricultural and fisheries sectors under the EPS, but also facing additional problems due to the lack of regulations. They are employed without standard employment contracts, and are not able to apply for alien registration since they are only allowed to stay in Korea less than three months. As a result, they cannot enroll in any social insurance schemes, including the NHI, and cannot open a bank account for salary transfer.

However, the Ministry of Justice has only concerned about seasonal migrant workers becoming “illegal stayers” and requested the local governments to come up with preventive measures. Consequently, seasonal migrant workers are forced to pay collateral of 20,000USD in order to come to Korea or get paid their wages in a lump sum right before their departure to home country instead of being paid regularly every month. Such practices make seasonal migrant workers fall under the category of trafficking victims.

(7) Migrant Women Workers

a. Labor Rights

submit opinions, and statute of limitations. Article 16, Article 17, Article 19 of the Act on the Regulation of Violations of Public Order, Article 4 of the Enforcement Decree of the Act.

⁴⁵ A/HRC/29/46/Add.1. para. 70.

⁴⁶ CCPR/C/KOR/CO/4. para. 40 (a).

⁴⁷ E/C.12/KOR/CO/4. para. 37.

Migrant women with various types of visas are currently working in Korea. According to the Statistics Korea, almost 50 percent of all migrant women over 14 years old is being employed as a worker as of May 2017. As women and as migrants, migrant women workers are exposed to sexism and racism. Yet, since the Korean government has assumed that migrant women would play the traditional women's role as wives and mothers, little attention has been paid to the policies to protect the rights of migrant women who work outside home.

Many migrant women workers are employed in domestic service, agriculture, or small businesses on a temporary basis where the labor laws, including the Labor Standards Act, do not apply. For that reason, their rights as workers are often violated by long working hours with low pay, lack of breaks and days off, and exclusion from occupational insurance.

Also, migrant women workers are more likely to be employed with visas other than work visas, and in such cases they do not have an opportunity to get work-related education before employment, which is prerequisite for migrants with work visas. As a result, migrant women workers have less knowledge about their rights as workers, labor-related laws or regulations, and redress system than their men counterparts. In addition, the support services for migrant workers provided by the Korean government are targeting the EPS workers, thus do not reach to most migrant women workers. For example, the temporary shelters for migrant workers funded by the government accommodate the EPS workers only and some of them refuse to accept women workers at all even if those women workers do hold an E-9 visa under the EPS.

b. Sexual Violence

Sexual violence against migrant women workers is often motivated by racial discrimination. Yet, it is difficult for victims to seek remedy due to language barrier, lack of information or resources, and fear of deportation in case they are undocumented.⁴⁸

Migrant women workers under the EPS can change their workplace without being counted in the allowed number of times to change workplace, if they have experienced sexual harassment or sexual violence at work. However, the workplace change is not counted in only when the perpetrator is either their employer or their manager, the victims themselves can prove their damages, and the damages are confirmed by police investigation. Under such strict conditions most victims choose to give up changing their workplace.

Furthermore, if the action taken were merely to allow workplace change in case of sexual harassment or violence, it would not be a proper remedy. Also, unless the victims are employed under the EPS, allowing workplace change is meaningless. Redress procedures without the punishment of perpetrators and the provisions of counseling, legal and medical assistance, living and housing support, and renewal or extension of stay for victims cause migrant women workers, especially those who are undocumented, to hesitate to report a case of sexual harassment or violence. Currently, undocumented

⁴⁸ According to a research, among migrant women who have experienced sexual harassment and/or sexual violence at work, 38.1% just have stayed quiet or quit their job. Among those who have complained verbally or reported the assault to their local employment center, labor office, or police, 32.1% said no action has been taken afterwards and 12.7% said they have suffered disadvantages at work, such as dismissal, disciplinary action, or bullying. (Park, S. 2015. *Sexual Harassment at Work against Migrant Women Workers in Gyeonggi-Do*. Gyeonggi Institute of Research and Policy Development for Migrants' Human Rights.)

migrant women can get support as victims of sexual violence, but they are to be deported after their case is closed.

c. Maternity Protection

Migrants with work visa and oversea Korean visa (F-4) are exempt from mandatory enrollment in the Employment Insurance (EI) that provides maternity leave benefits and child care leave benefits as well as unemployment benefits. Thus, migrant women with those visas are practically excluded from maternity protection benefits provided by the EI.

Migrant workers under the EPS are not allowed to be accompanied by their children. Only the children born in Korea can get dependent visas. Yet, it is almost impossible for migrant women workers under the EPS to raise their children born in Korea, since they are not only excluded from maternity protection benefits by the EI but also ineligible for child care subsidy by the Infant Care Act.⁴⁹

Even when migrant women workers are covered by the EI, it is difficult for them to demand maternity leave or child care leave from work, since many migrant women are employed in a small business or on a temporary basis and are not protected by the Labor Standards Act. It is proved by the fact that the proportion of dismissal due to pregnancy is higher for migrant women workers without work visa or naturalized women workers.⁵⁰

Suggested Recommendations

⁴⁹ The only groups of migrant women who can get child care subsidy by the Infant Care Act are marriage migrants raising children with a Korean nationality and women recognized as a refugee under the Refugee Act.

⁵⁰ Chang, M. et al. 2016. Human Rights Conditions on Migrant Women Workers in Manufacturing. NHRCK.

- The Korean government should abolish discrimination against migrant workers based on their nationality or visa status, and ensure that all migrant workers enjoy equal rights to family reunification, permanent residency and naturalization.
- The Korean government should amend the Employment Permit System that puts migrant workers into forced labor, in particular with regard to the limitations on the number of times to change workplaces, job seeking period, and employment period.
- All migrant workers should be allowed to enroll in the Employment Insurance, so that they can enjoy the equal benefits from the system.
- The Korean government should take effective measures, for example, intensifying penalties against the employers who are in breach of their obligations to ensure the equal protection of migrant workers by labor-related laws.
- The Korean government should prohibit discrimination of pay based on nationality. Migrant workers should be given equal pay, including bonuses and compensations, for equal work. The discrimination of minimum wage against migrant fishermen should be abolished urgently.
- The discriminatory provisions in the Act on the Employment, etc. of Foreign Workers, such as the provisions on the time of payment of Departure Guarantee Insurance or the period of employment contract, should be abolished.
- The Korean government should abolish the Guideline for Providing Information and Collecting Expenses of Meal and Accommodation issued by the Ministry of Employment and Labor. Instead, the government should establish the standards of housing provided for migrant workers by their employers and sanction the employers who breach the standards by restricting the employment of migrant workers.
- The Korean government should take effective measures to exterminate corruption and reduce expenditure in all migrant worker recruitment systems. It should consider amending the systems by letting the public sector is in charge of recruitment and placement of migrant workers and making the employers pay for the related expenses.
- The article 63 of the Labor Standards Act should be abolished in order to protect the working conditions for migrant workers in the agriculture and fisheries sectors.
- The Korean government should stop the Foreign Seasonal Workers Program and take measures to protect the working conditions of and prevent the human rights violations against seasonal migrant workers already in Korea. An effective redress system should be available for seasonal migrant workers whose human rights have been violated.
- All migrant women workers should be equally provided with education on their labor rights and support services for migrant workers.
- The government should take necessary measures to abolish discrimination against migrant women workers in the maternity protection and child care support systems.
- The Korean government should establish a redress system for migrant women workers who are the victims of sexual violence, which includes the punishment of perpetrators and the provisions of counseling, legal and medical assistance, living and housing support, and renewal or extension of stay for victims.
- The Korean government should guarantee the opportunity to learn Korean language for all migrant workers. At the same time, it should expand publicly available translation services for migrant workers in the process of redress.
- The Korean government should stop targeted raids and deportations of migrant workers involved in trade union activities and ensure the basic labor rights including the right to organize for all migrant workers.

B. Racial Discrimination in the State Legal System on Right to Health

(1) Migrant workers and the issue of health insurance

The state report claims that both migrant and national workers equally have the coverage of health insurance and industrial accident compensation insurance,⁵¹ but only 59.4% of documented migrants have health insurance coverage⁵². The ill-judged employment license to the workplaces without health insurance coverage results in the low subscription rate of employer-provided health insurance. The lack of regulation and sanctions on the violation of providing health insurance coverage also contributes to the issue. Workplaces in agriculture, forestry, fishery that are not corporations with fewer than four laborers are currently excluded from the mandatory obligation of providing health insurance coverage. In addition, although migrant workers with the short term employment visa(C-4) are admitted under the supervision of the Ministry of Justice, they are not eligible for health insurance coverage. Another reason for the low rate of subscribing health insurance in the migrant population is that the length of stay for the eligibility is fixed and the criteria for imposing health insurance fee for migrants is higher than those of nationals. Nonetheless, the government stated a prior announcement of legislation on the recent revision of the Enforcement Decree of the National Health Insurance Act (hereinafter referred to as the "Act") which includes extending the length of stay for subscribing national insurance from three months to six months⁵³. The revision also restricts foreigners who defaulted health insurance fee from extending their stay and limiting the length of stay at the time of foreigner's registration. This kind of government action only highlights that migrants are taking advantage of the insurance system compared to how much they actually pay for it⁵⁴ although there has been an annual surplus of 200 billion won paid through migrant workers' employer-provided health insurance. The action, in the long term, will increase social expenses, prohibit migrant's right to health and overlook discrimination against migrants.

(2) Industrial accident prevention education and Industrial accident Compensation Insurance for migrant workers

The state report notes that occupational safety and health education and counseling services in diverse languages are available for preventing industrial accidents⁵⁵, and Industrial accident Compensation Insurance is equally applied to migrant workers as it is for national workers⁵⁶. The rate of industrial accidents in migrants, however, is six times higher than that of nationals⁵⁷. Between 2014 and 2016, migrant workers' rate of industrial accidents increased in construction, service, agriculture and other

⁵¹ The 67th clause in the 17th, 18th and 19th State Reports on CERD.

⁵² 2017 Health Insurance Statistics, National Health Insurance Service.

⁵³ The National Health Insurance Improvement Plan for Foreigners and Overseas Korean Nationals, June 2018, the Ministry of Health and Welfare.

⁵⁴ "How to stop foreigners from taking advantage of the national health insurance" Hankookilbo (June 7, 2018).

⁵⁵ The 30th clause in the 17th, 18th, and 19th State Reports on CERD.

⁵⁶ The 67th clause in the 17th, 18th and 19th State Reports on CERD.

⁵⁷ "Migrant workers' rate of industrial accidents 6 times higher than that of nationals," Maeil Nodong News, September 25, 2017 (In May 2017, the rate to get industrial accidents for nationals is 0.18% while migrant workers have 1.16%. At the same time, 17,980,617 nationals are registered in industrial accidents insurance while 215,532 migrant workers are registered. There are total 32,440 national victims, including 759 deaths, in industrial accidents (Source: Korea Occupational Safety and Health Agency under the Ministry of Employment and Labor).

sectors. Although the national rate of industrial accidents from 2011 to 2016 constantly decreased, the rate for migrant workers has been increasing every year since 2013 (Reference from the request of information disclosure, Korea Occupational Safety and Health Agency, Korea Workers' Compensation and Welfare Service). 98% of accidents that migrant workers experienced for five years were industrial accidents. The National Human Rights Commission of Korea (NHRCK)'s research presented that 68% of migrant workers who were injured while working in construction sites were not able to get any industrial accident compensation (Human Right Conditions in Migrant Construction Workers 2015). Also, according to the Ministry of Labor, among 88 migrant deaths caused by industrial accidents, 45.5% cases were found in the construction industry in 2016.

Infection control policies are not available in migrants' languages although migrant workers work in slaughtering, disinfecting and burying infected animals. For instance, in May 2017, four migrant workers were suffocated and killed in septic tanks of swine farms in Gunwi, Geong-buk and Yeosu, Geong-gi while working without any safety gear.⁵⁸ Similar cases will continue happening unless practical solutions for migrant workers' occupational safety and health.

Migrant workers also encounter difficulties after they experience industrial accidents since they are not familiar with the procedures and Korean language, and their stances are not independent from their employers. According to the Investigation on Foreign Industrial accident Victims (Gyeonggi Institute of Research and Policy Development for Migrants' Human Rights, 2017), 52.9% of them did not apply for industrial accident compensation insurance, and 36.45% paid for their own medical expenses caused by industrial accidents. The main reasons behind these situations are: employers are not cooperating (18.6%), refused based on undocumented status and illegal employment 9.3%, and refused for being a foreigner 5.5%. The report also shows that many victims got paid smaller amount of salaries or did not get paid (40%) and were forced to work when they were still in the medical treatment (39.1%). Migrant workers in small construction sites and farms tend to experience more difficulties in terms of claiming industrial accident compensation.

(3) The issue of government's negligence in protecting the right to health of asylum seekers and humanitarian status holders

State reports note that refugee applicants are allowed to get employed after 6 months from submitting applications, and housing, health check-up and medical assistance are provided for them. Depending on the budget availability, the report also mentions, that living expenses, health check-up and medical fee assistance are primarily available for prioritized applicants.⁵⁹ However, according to the documents on the government's refugee related budget in 2017⁶⁰, only 26,000,000 won of medical fees and 11,880 won of health check-up fees (6,000 per person) are planned for 3 years (2015~2017). The compilation of the budget does not reflect the current reality of increasing refugee applicants. It is even worse because 99% of the budget is used by refugee assistance facilities, and refugee applicants outside the facilities do not have any access to the medical assistance. Unless refugee applicants obtain work permits and get employees' medical insurance, most refugee applicants need to pay more medical fees for hospital treatments. After reviewing the 15th and 16th state reports, the Committee on the Elimination of Racial Discrimination advised the necessary measures for refugee applicants

⁵⁸ "Migrant workers did not come to die!", Medias, August 17, 2017.

⁵⁹ The 41th clause in the 17th, 18th and 19th State Reports on CERD.

⁶⁰ Refugee related budget details provided by the Ministry of Justice by responding to Refugee Rights Center's request of information disclosure.

and their families in terms of getting the right to labor, appropriate living standards, housing, medical services, and education. However, the government has failed in securing appropriate budgets in spite of the increasing number of refugee applicants since 2013.

The case of Mr. K (Pakistan national/male) shows the lack of appropriate medical assistance for refugee applicants. Mr. K was detained in Hwaseong Immigration Detention Center from March 2016 to May 2018, and contracted an infectious disease in the communal detention environment and was left untreated⁶¹. According to article 7 (Measures in case of identification of patients) of the 'Foreigner Detention Enforcement Rules', immigration detention centers have a duty to protect the right to health for refugees and other foreign detainees under protracted conditions, but currently this duty has been neglected in the centers. In addition, when many Yemeni refugees arrived at Jeju Island through TWOV (transit without visa), the government temporarily banned them from leaving the island owing to the highly negative public opinions against refugees, and many of them had to pay expensive medical fees for their emergency surgeries and child deliveries. The Ministry of Justice was supposed to provide emergency medical fees for refugees. The Ministry, however, only showed a passive attitude toward refugees because of the lack of appropriate budget and the negative public opinions. Instead, non-profit organizations were involved in providing medical assistance for refugees.

Suggested Recommendations

- The Korean Government urgently needs to keep WHO's principles to protect and promote the right to health for migrants and secure the right to health for both nationals and migrants with a comprehensive public health policy.
- It is necessary to remove discriminatory aspects for migrants that can result in employment related disadvantages and forced expatriation on the basis of health conditions.
- Thus, we strongly demand the government to reinforce employers' compliance in providing health insurance for migrant workers, medical information in migrants' languages, and industrial safety and health education.

C. The Right to Social Security

The Korean government has been reluctant to make the right to social security accessible to all migrants. The Committee on the Elimination of Racial Discrimination recommended the Korean government to ensure that migrant workers, refugees, asylum seekers, and their families, in particular children, enjoy the rights to adequate livelihood, housing, healthcare and education in 2012.⁶²

⁶¹ He started coughing blood and having stomachache after 7 months since his initial detention and received medications from the center's health facility. He was eventually diagnosed with tuberculosis outside the center. In addition, he was diagnosed with hepatitis C too, but the center did not provide any medical support and he was not able to afford the treatment. His detention continued, but since his health condition was aggregating, the center allowed him to leave the detention center temporarily. Since May 2018, he has been medically treated through NGO supports.

⁶² He started coughing blood and having stomachache after 7 months since his initial detention and received medications from the center's health facility. He was eventually diagnosed with tuberculosis outside the center. In addition, he was diagnosed with hepatitis C too, but the center did not provide any medical support and he was not able to afford the treatment. His detention continued, but since his health condition was aggregating, the center allowed him to leave the detention center temporarily. Since May 2018, he has been medically treated

However, the Korean Constitution still confines the rights listed above only to its nationals. Although some of the laws regarding social security contain exceptional clauses that provide an entitlement to public support for non-national migrants, there are clear limitations in that the eligibility criteria are based on the visa status or length of stay of migrants and the scope of assistance is restricted compared to nationals.

Among social security systems, public assistance programs and social services, which are funded by general tax revenue, exclude migrants from eligibility with very few exceptions. Consequently, the number of migrants who cannot enjoy adequate livelihood in times of need, such as unemployment, poverty, homelessness, illness, disability, pregnancy, childbirth and childrearing, etc., is increasing.⁶³

a. Public Assistance Programs: Basic Livelihood Security and Emergency Aid and Support

Basic Livelihood Security (BLS) and Emergency Aid and Support (EAS) are two representative government programs that give cash assistance and other benefits to needy individuals and families. For BLS, two eligible groups of non-national migrants are marriage migrants and recognized refugees. Among them, marriage migrants are only eligible when they are pregnant while married to a Korean national, rear a minor child with Korean nationality, or dwell together with their spouse's parent(s) with Korean nationality.⁶⁴ Migrants outside those two groups cannot be properly protected by the social safety net, and consequently, cannot live a 'life worthy of human beings' (a right recognized by the Korean Constitution to all persons), when they are not able to earn a living due to illness or disability.

Migrants subject to protection and to be admitted to welfare facilities, such as victims of child abuse, domestic violence, or sexual violence, are in even more difficult situations. According to the Article 32 of the National Basic Living Security Act, those who are admitted to welfare facilities become eligible recipients of basic security benefits, including livelihood benefits, medical benefits, and education benefits. However, migrants in welfare facilities are not eligible for the benefits, unless they are marriage migrants or recognized refugees. As a result, ineligible migrants are often refused to be accepted by welfare facilities, or cannot maintain a minimum standard of living even if they are accepted. The Ministry of Health and Welfare has issued a guideline stating that local governments could make an effort to provide basic security benefits for migrant children in welfare facilities, such as group homes or adolescent shelters, at their expense. Yet, very few of those children are receiving security benefits. Also, the Ministry of Gender Equality and Family announced that it would allow undocumented migrants to be admitted to migrant women's shelters for victims of violence, but disqualifies them from applying for livelihood benefits.

Unlike BLS, EAS is eligible for migrants who have become victims of fire, crime, or natural disaster through no fault of their own regardless of their visa status. Once approved as recipients, migrants are provided with livelihood, housing, and medical benefits for a certain period of time. However, some criteria used to determine which situations are emergencies and require public assistance do not apply for migrants. For example, loss of income due to the death of the main income earner of the

through NGO supports.

⁶³ According to the *2017 Survey on Immigrants' Living Conditions and Labour Force* by Statistics Korea, 11.6% of migrants have experienced economic difficulties in the course of the past year. Among them, 44.6% could not receive necessary medical treatment, 24.6% could not pay the school expenses for themselves or their families, 15.5% could not pay utility bills on time.

⁶⁴ See the Article 5-2 (Special Cases Concerning Foreigners) of the National Basic Living Security Act and the Article 32 (Basic Living Security) of the Refugee Act.

household, serious illness or injury, or neglect, abandonment, abuse, or domestic violence by any household member are the situations where Korean nationals can be eligible for EAS, but not non-national migrants.

b. Social Services: Welfare Services for Persons with Disabilities and for the Homeless

Act on Welfare of Persons with Disabilities began to allow migrants to be registered as a person with disabilities after its amendment in 2012. However, the Act limits eligible migrants to ethnic Korean returnees, Korean nationals residing abroad, permanent residents, and marriage migrants only, and had a proviso that the State and local governments may restrict registered migrants from receiving services in consideration of budget constraints.⁶⁵ Consequently, migrants with severe disabilities cannot receive rehabilitation medical services, adaptation training, or personal assistance services, even if they are registered as disabled. Through another amendment of the Act in 2017, recognized refugees became eligible for disability registration, and from 2018, they are able to use personal assistance services. Yet, migrants other than recognized refugees are still excluded from the services.

Act on Support for Welfare and Self-Reliance of the Homeless, Etc. stipulates that persons who are eligible for the services referred to in the Act are homeless persons, and there are no clauses regarding the person's nationality. However, the Ministry of Health and Welfare views that non-national migrants are not qualified for the services for homeless persons. As a result, homeless migrants do not receive assistance for food, housing, medical treatment, or job training. Furthermore, from the government's point of view, homeless migrants are subject to deportation rather than being welfare recipients. In the 2017 Action Plans for Immigration Policy, the Ministry of Justice states that it will look for the ways to allow homeless migrants who are permanent residents or marriage migrants to be admitted to welfare facilities for the homeless, but for other homeless migrants, it will cancel their residence status and issue deportation or departure order. Also, the Ministry of Health and Welfare states that it will cooperate with local governments to send homeless migrants to immigration detention centers so that they can be processed to be deported.

Suggested Recommendations

⁶⁵ See the Article 32-2 (Registration as Person with a Disability by Overseas Koreans and Foreigners) of the Act on Welfare of Persons with Disabilities.

The Civil Society recommends the State Party to:

- Take measures to ensure the right to social security of all migrants regardless of their nationality or visa status. In particular, migrants who suffer from extremely poor living conditions, child abuse or neglect, domestic or sexual violence should be covered by the National Basic Living Security Act and the Emergency Aid and Support Act, and thus be able to receive basic social security benefits, such as livelihood, medical, housing, and education benefits. When protection is necessary, migrants should be admitted to welfare facilities or shelters and given the entitlement of same social security benefits as Korean nationals. Regardless of their visa status, all migrants with disabilities are qualified for disability registration and welfare services for the disabled.
- Take measures to ensure that, without any discrimination, all people with disabilities can be provided with adequate social services, including medical and rehabilitation treatment services, education and training, and personal assistance service. In particular, it should consider giving higher priority in providing social services to migrants with severe disabilities and migrant children with disabilities.
- Take measures to ensure that migrants be not subject to deportation only because they are homeless. The Korean government should provide homeless migrants with food, housing, and medical treatment the same as Korean nationals, and in the long term, offer them adequate education and training to help them support themselves. Additional assistance should be provided for migrants who have lost their residence status during homelessness to regain their status.

6. Racial Discrimination on Vulnerable Migrants

A. Racial Discrimination intersecting with Gender Discrimination

(1) Multicultural Families and Marriage Migrant Women

a. Multicultural Families Support Act that Excludes Foreign Families

The Multicultural Families Support Act, which aims to support marriage migrants and their families, has narrowly defined multicultural families focusing on Korean nationals. According to the law, multicultural family is a family composed of 1) a marriage migrant and a family member who acquired Korean nationality through birth, 2) a person who has been granted a naturalization permit and a person who has acquired Korean nationality through birth. It limits the scope of a multicultural family to the cases of naturalization and marriage to Koreans. The support provided by the Multicultural Families Support Act includes promoting understanding of multicultural families, providing living information and education support, taking actions for equal family relationships, protecting victims of domestic violence, supporting medical and health care, caring for and educating children and adolescents, providing multilingual services, establishing and operating a General Information Call Center for Multicultural Families, establishing and operating Support Centers for Multicultural Families. Families where both adults are foreign nationals and married to each other are classified as ‘foreign families’ and excluded from all support under the Multicultural Families Support Act. Therefore, various kinds of families like ‘immigrant families composed of married couples from the same country who have settled in Korea, immigrant families composed of married couples from different countries who have settled in Korea, families with compatriots who immigrated to Korea

from other cultural areas ('Koryoin', Koreans from China, North Korean immigrants, etc.)' are fundamentally excluded.

b. Mandatory Education upon International Marriage to Persons Only from Certain Countries

From March 7, 2011, the Ministry of Justice made it mandatory to complete the Information Program of International Marriage for Koreans who are planning on marrying foreign nationals or have already married foreigners and want to invite their foreign spouses to live in Korea. 'The seven countries notified by the Minister of Justice are China, Vietnam, the Philippines, Cambodia, Mongolia, Uzbekistan and Thailand. Countries with high divorce rates or whose people have acquired substantial Korean nationality through international marriage were selected. The Koreans preparing for international marriage with people from the countries notified by the Minister of Justice can apply for the F-6 visa issuance only after completing the 'Information Program of International Marriage'. The State Party is systematically discriminating certain countries.

c. The Instrumental Policy Means Regarding Marriage Migrant Women as a Childbirth Tool

The Lineage-Centrality in Residence and Naturalization

The marriage migrant visa (F-6) is classified depending on whether the family is maintained or not and has a child or not. According to 「The Sojourn Guide for Foreigners」 by Korea Immigration Service, Ministry of Justice, marriage migrant visas are classified as follows.

| Abbreviation | The Criteria for Classification |
|--------------|--|
| F-6-1 | Your marriage is valid in both countries, and you have decided to stay in the Republic of Korea in order to continue the marriage. |
| F-6-2 | Although you are not eligible for 'F-6-1' status, a baby was born during the marriage (including the de facto marriage), and you are currently raising that child or planning to raise him/her in Korea as a his/her biological father or a biological mother. |
| F-6-3 | You were married to a Korean national, but you were unable to continue your marriage due to various reasons and circumstances beyond your control such as death and missing of your spouse. |

Source: Korea Immigration Service, Ministry of Justice. 「The Sojourn Guide for Foreigners」 (June, 2018)

If a marriage migrant woman and her Korean husband filed for consensual (also known as uncontested) divorce when they didn't have any children, the woman must return to her home country because sojourn status is granted according to her child-rearing status. In 2017, the number of marriage migrant visa holders who became undocumented (also known as unauthorized, illegal) individuals in Korea after their visa had expired was 1,334 which are not insignificant. It is due to the flawed visa system that one is given sojourn status according to one's family maintenance and presence of children. It is an obvious discrimination against foreign women who do not have children of Korean nationality and being an instrumental policy means that it connects childbirth to sojourn status.

A marriage migrant visa holder's 'Simplified Naturalization by Marriage' has a similar effect. A Foreigner who is in a marital relationship with a Korean national is exempted from the written test during the naturalization process. However, a foreigner whose marriage has been broken due to divorce or death of his or her Korean spouse must take the written test. Although divorce or death of the Korean spouse is not the foreigner's fault, the State Party is discriminating those foreigners by making the naturalization process more difficult. Also, the evaluation period is quite different depending on the presence of children. According to the Korea Immigration Service's 「Guide for Processing Period of Nationality Affairs」 (July, 2018), the evaluation of 'Naturalization by Marriage' is divided into child-rearing parents and others. For the former it takes 11 months. And for the latter, on the other hand, it takes 19 months.

| Classification | Date of Application | Category | Processing Time (approximation) | |
|---|--|---|--|-----------|
| Naturalization by Marriage | Child- Rearing Parents | Before August, 2017 | a person who is in a marital relationship with a Korean national (rearing a minor child who was born of the marriage) | 11 months |
| | Naturalization by Marriage Others | Before December, 2016 | cases that do not fit the child-rearing class | 19 months |
| Special Naturalization (Descendants of those involved in the independence movement) | Approximately 1 month from the Committee for Descendants of Korean Independence Fighters' evaluation | Descendants of those involved in the independence movement or other meritorious deeds | - | |
| Special Naturalization | Interviewee | Before December, 2016 | a child of a person who recovered Korean nationality/obtained Korean nationality by naturalization a person who has been adopted and is a minor | 19 months |
| | Special Naturalization Exempt from Interview | Before January, 2018 | A person under 15 | 6 months |
| Simplified Naturalization | Before October, 2016 | A person who was adopted after he or she had reached his or her majority | 21 months | |
| | Simplified Naturalization Before June, 2017 | A person who was born in Korea | 13 months | |

| | | | | |
|------------------------|-----------------------|---|-----------|--|
| General Naturalization | Before December, 2016 | a person with over 5 years of residence in Korea | 19 months | |
| Nationality Recovery | Before February, 2018 | a person who has applied for nationality recovery and is not Korean Chinese | 5 months | |

Source: Korea Immigration Service, Ministry of Justice.

「Guide for Processing Period of Nationality Affairs」 (July, 2018)

Department Names Showing Multicultural Business being Equivalent of Answers for Low Birth Rate

The names of local government agencies' departments that deal with multicultural family support reflect how marriage migrant women are viewed.

Most of the departments related to the multicultural family in Seoul's 25 districts use names that show the word 'multicultural' as being equivalent with 'low birth rates' as in the following tables. For example, Jongno-gu district, where Women Migrants Human Rights Center of Korea is located, has a department called Childbirth-Multicultural Support Team. Only Guro-gu district and Yeongdeungpo-gu district, which have many migrants being developing areas, have it separately, and the names of the teams in those departments are not linked to low birth rates.

| District | Division | Department | Teams |
|-------------|-------------------------|------------------|---|
| Gangnam-gu | Welfare and Culture | Social Welfare | Life Security, Welfare for the Disabled, Self-support and Living, Multicultural Support |
| Gangdong-gu | Welfare and Education | Women and Family | Childcare A, Childcare B, Women's Welfare, Childbirth and Multiculture, Korean Children's Center |
| Gangbuk-gu | Living and Welfare | Women and Family | Childcare Support A, Childcare Support B, Women's Welfare, Childbirth Promotion & Multiculture |
| Gangseo-gu | Living and Welfare | Women and Family | Childcare A, Childcare B, Low Fertility Policy(A Team that Deals with Multicultural Families), Women Policy |
| Gwanak-gu | Welfare and Environment | Family Welfare | Childcare Policy, Childcare Support, Women Policy, Childbirth and Multiculture |
| Gwangjin-gu | Welfare and Environment | Family Welfare | Childcare Administration, Childcare Support, Childbirth Promotion, Dream Start(an active welfare business that offers services for growth and development of needy children custom-designed to fit each service recipient and reconsiders the potential of the growth of country and cuts down on the social cost that will happen in the future), Women and Multiculture |

| | | | |
|-----------------|-------------------------|--------------------------|---|
| Guro-gu | Living and Welfare | Multicultural Policy | Multicultural Policy, Multicultural Support, Foreigner Support |
| Geumcheon-gu | Welfare and Culture | Social Welfare | Senior Support, Senior Facilities, Welfare for the Disabled, Foreigners and Multiculture |
| Nowon-gu | Education and Welfare | Women and Family | Women Policy, Childcare Administration, Childcare Support, Childbirth Promotion(A Team that Deals with Multicultural Families) |
| Dobong-gu | Welfare and Environment | Women and Family | Women Policy, Childcare Support, Childcare Operation, Childbirth and Multiculture |
| Dongdaemun-gu | Welfare and Environment | Family Welfare | Childcare Planning, Childcare Support, Women Policy, Childbirth and Multiculture |
| Dongjak-gu | Welfare and Environment | Childcare and Women | Childcare Administration, Childcare Support, Childcare Management, Women Policy, Childbirth and Multiculture |
| Mapo-gu | Welfare and Education | Family Welfare | Women Welfare, Childcare Administration, Childcare Support, Childbirth and Children(A Team that Deals with Multicultural Families), Dream Start |
| Seodaemun-gu | Welfare and Culture | Women and Family | Childcare Administration, Childcare Support, Childcare Management, Women Policy, Childbirth and Multiculture |
| Seocho-gu | Resident Living | Women and Family | Childcare Policy, Childcare Operation, Daycare, Women's Happiness |
| Seongdong-gu | Resident Living | Women and Family | Childcare Planning, Childcare Operation, Women Policy(A Team that Deals with Multicultural Families) |
| Seongbuk-gu | Welfare and Culture | Women and Family | Childcare Administration, Childcare Support, Women Welfare, Childbirth and Multiculture Support(Overcoming the Low Fertility Task Force) |
| Songpa-gu | Welfare and Education | Women and Childcare | Women Policy, Childcare Support, Childcare Business, Childbirth Promotion and Multiculture |
| Yangcheon-gu | Welfare and Education | Childbirth and Childcare | Childbirth Promotion(A Team that Deals with Multicultural Families), Public Childcare, Private Childcare |
| Yeongdeungpo-gu | Welfare | Multicultural Support | Multicultural Policy, Multicultural Support, Foreigner Support |

| | | | |
|--------------|-------------------------|------------------|---|
| Yongsan-gu | Resident Living Support | Women and Family | Women Policy, Childcare Administration, Childcare Support, Children and Adolescents, Childbirth and Multiculture, Dream Start |
| Eunpyeong-gu | Governance and Culture | Women Policy | Women Policy, Women Welfare Promotion, Multicultural Family |
| Jongno-gu | Welfare and Environment | Women and Family | Childcare Support, Women and Adolescents, Child-friendly City, Childbirth and Multicultural Support |
| Jung-gu | Welfare and Environment | Women and Family | Women Policy, Childcare Support, Child-friendly City, Childbirth Promotion(A Team that Deals with Multicultural Families) |
| Jungnang-gu | Living and Welfare | Women and Family | Women Policy(A Team that Deals with Multicultural Families), Childcare Administration, Childcare Support, Dream Start |

Referred to the Websites of Seoul's 25 Districts (July 12, 2018)

Suggested Recommendations

The State Party should

- Expand the legal definition of multicultural family to include families where both parties are foreign nationals and married to each other
- Stop discriminating marriage migrants who have children of Korean nationality over the rest in case of sojourn and naturalization
- Should guarantee the same right to naturalization for marriage migrants who are no longer married to Korean nationals due to divorce or death of their Korean spouses
- Separate the multicultural family support work from the work to boost the birth rates

(2) Returnee Marriage Migrant Women and Overseas multicultural family children

Because the present Support for Multicultural Families Act only concerns the foreigners living in Korea, marriage migrant women after having returned to their home country, either on their own or accompanying their children due to divorce or separation have difficulty getting benefits from the Act abroad.⁶⁶

Marriage migrant women usually return to their home country immediately after divorce or family dissolution. And from the very beginning of the marriage, many of them were often discouraged from participating activities such as visiting Multicultural Family Support Center. As a result, most of them

⁶⁶ According to the Korea National Statistical Office (KNSO), in the case of Vietnam, as of end 2016, one out of five (19.25%) Vietnamese marriage migrant women underwent family dissolution: divorce cases with minor children amount to 3,183, 19% of the whole divorce cases, which means at least 3,777 Korean-Vietnamese minor children went over family dissolution. P52, "A Survey Study on the Methods of Supports for Returnee Migrant Women and Korean-Vietnamese Children in Vietnam", at the symposium to commemorate the opening of "Legal Aid Center for Han-Viet family relations" in KOCUN Can Tho, January 25th, 2018.

are isolated from the legal services by Danuri Call Center, return neither home without a clean closure to the marital status [marriage relationship] nor child custody, and often forced to be divorced.⁶⁷

In this case, children who are minors with Korean nationality have difficulty getting benefits because their mothers as legal guardian do not have legal support and counselling service. They have difficulty getting foreign residence permit, proper education, and medical service since their Korean fathers are out of contact or stop financial support.⁶⁸

As many years have passed since the sharp increase of marriage migrant women, various forms of family dissolution are taking place. Even though many returnee marriage migrant women and overseas multicultural families face the harsh reality where their right to education and basic health are not guaranteed, but the policy for systematic support for them is not placed.

Suggested Recommendations

- Improve the administrative, legal accessibility for the multicultural family:
- Provide an entrusted service at the local Korean Embassy or Consulate of returned marriage migrants' home countries to confirm the Korean spouse's address, marital status, issuance and delivery of divorce documents.

B. Rights of Children

(1) Birth Registration of Migrant Children (Government Report 42)

The Committee recommended Korea to and establish a system and procedures to properly register the birth of children of refugees, humanitarian status holders and asylum seekers born in the State party,

⁶⁷ Return procedure: immediate return after family dissolution 47.31%, return after unregistered stay 22.94% (deportation 9.68%), refusal or limit of reentry after return for family visits 9.32%. P54, *ibid*.

⁶⁸ Related cases: Vietnamese woman Thuy (an assumed name) in 2007 married a Korean man through a marriage broker, went to Korea, lived with him and his parents, giving a birth to Hyun-Seok (an assumed name) who has a Korean nationality. Her husband showed serious alcohol addict symptoms, hardly caring for his family. In 2010 when Hyun-Seok was 3 years old, she visited her family in Can Tho, Vietnam, and decided not to return to Korea. She has lived there since with her boy without contacting her husband and in-laws. In 2014 Hyun-Seok's passport expired but was not renewed because she was out of contact with her husband. The boy was in unregistered stay until 2016 when public safety police visited and informed her of his illegal stay. Tui wanted to get counselling services regarding reissuance of her boy's passport and visa application. In August 2016 she, with the help of the Thot Not Vietnam Women's Union, visited the Can Tho Office of Korea Center for UN Human Rights Policy [KOCUN Can Tho Office]. KOCUN Can Tho Office provided information to her. According to the written judgement on the divorce between Tui and her husband, both parental rights and child custody belong to her ex-husband. It was impossible by principle to get Hyun-Seok's passport reissued because it is required to get the permission of Hyun-Seok's father, the parent right holder. Fortunately, however, she got the contact of her ex-husband and obtained documents required for the reissuance of Hyun-Seok's passport. Granted the support fund for the residence of Korean-Vietnamese children by Korean Chamber of Commerce and Industry in the South and Middle of Vietnam [KOCHAM], she had the passport and the 6 month visa successfully issued.

and of children of undocumented migrants.⁶⁹ However, migrant children still face significant restrictions on their right to be registered.

The government report replied that registration of births of foreigners is closely linked with issues such as the acquisition of Korea nationality, and thus requires careful examination. It also added that it is the responsibility of the foreign diplomatic missions in the Republic of Korea to register a child born to its national in accordance with the law of the respective country.⁷⁰ The Korean government's law and practice unduly discriminates against migrant children because (1) it is possible for a country following the law of *jus sanguine* to allow foreigners' birth registration; and moreover, (2) it is now established obligation of each State Party to implement universal birth registration. In addition, contrary to the Korean government's response, there exist numerous cases where it is impossible to register a birth through the embassy -- in particular, children of refugees, humanitarian status holders, and refugee applicants, as well as children of undocumented migrants.

Refugees, humanitarian status holders, and refugee applicants find it difficult or impossible to report their children's birth to a governmental agency of their home country, which is likely to be the agent of prosecution that they have fled from. The Korean government responds that these children have been granted status of sojourn to give them a legal status in the Republic of Korea.⁷¹ That is, the Korean government's position is that entering personal information of these children into the foreigner registration system of Korea is sufficient. However, this falls far short of universal birth registration because (1) it is not possible to verify a child's legal identity and provide legal identification of the child through a system designed for immigration control, not civil registration, (2) thus alien registration card or proof of alien registration can serve as documentary evidence of status of residence, but not of fact of birth, (3) there exist cases where an immigration official or the parents have arbitrarily given children certain nationality during alien registration, when they were actually *de jure* or *de facto* stateless due to laws of their parents' country or because they have not registered their birth at their parents' country,⁷² and (4) at any rate, children of undocumented parents cannot be registered as foreigners as they do not have the right of residence. Ultimately, children of refugees, humanitarian status holders, and refugee applicants are *de facto* stateless because they could not register their births; cases where a refugee child was not able to register his birth for 16 years have been reported.⁷³

Also, children of undocumented immigrants face practical barriers to registering their births to the embassies of their parents' country. Because the Korean government routinely request sending countries to make efforts to reduce the number of undocumented migrants, embassies of such countries often place obstacles to the undocumented migrants in reporting their children's birth, such as confirming their documented status first or demanding to return to their country for birth registration. Cases of requiring excessive fees for undocumented migrants have also been reported. Thus it can be said that the Korean government is effectively blocking all registration of these

⁶⁹ Concluding Observations, CERD/C/KOR/CO/15-16, para. 13.

⁷⁰ Government Report, CERD/C/KOR/17-19, para. 42.

⁷¹ *Ibid.*

⁷² Kim Chul Hyo, etc., Registration of Birth Registration for Children with Migrant Background, Save the Children, 2013, 57.

⁷³ Kim Yae-yoon, Dong-a Ilbo, "I want to make a music that mixes the culture Myanmar, the country of parents, and Korea. - [Shadow children] The dream of 16-year-old Joshua who acquired an alien registration card" (2017.5.19.), <http://news.donga.com/View?gid=84434554&date=20170519>

children's birth, by denying alien registration and also by hindering birth registration at the embassies of their parent's home country. In addition, it is often difficult for migrants living in the province to visit the capital where their embassies are located, and there are more than 30 countries without their embassies in Korea.

Suggested Recommendation

The State Party should:

- Provide all foreigners, regardless of their residency status, identity, or nationality, with the duty and the right of birth registration.
- Ensure that access to administrative services for birth registration is not hindered due to absence of right to residence.

(2) Health of Migrant Children (State report 26. 41)

The government report states that the second National Action Plan for the Promotion and Protection of Human Rights (NAP) includes medical assistance for undocumented migrants and their children as one of the implementation tasks with regard to the elimination of racial discrimination per the recommendations of the Committee.⁷⁴ Currently, migrant children under the age of 12 who are born or residing in Korea, regardless of their legal status, can receive free vaccinations through the <National Immunization Program for Children> conducted by the Korea Centers for Disease Control and Prevention (CDC). However, after implementation of the Control Number Issuance Guide in 2014, undocumented migrant children without an Alien Card Number can get free vaccinations only at public health centers, whereas before free vaccinations were also accessible at private medical institutions.⁷⁵ Due to this change, migrant families living far away from public health centers and who have no other recourse than go to the closest private clinic, have to pay all medical expenses. Although this is a free vaccination program provided by a national undertaking, by limiting undocumented migrant children to only go to public health centers, is still burdening the families financially. As a result, in some cases there were the children who missed the inoculation schedule. In fact, during parliamentary audit of the state administration of the CDC in 2017, it was pointed out that there was a need to identify and explain the cause of regional immunization gaps in 4~6 year olds. Furthermore, it was requested that detailed multi-lingual information for multicultural families and foreign children be disseminated in order to decrease vaccination resistance.⁷⁶ Following these requests, multi-lingual information in nine languages⁷⁷ was produced. However increase the vaccination rate effectively; access to free vaccination has to be expanded beyond public health care centers.

Since 2005, the Medical Service Program for Marginalized Groups including Migrant Workers has been granting medical aid to undocumented migrant workers who do not have health insurance, and starting from 2006, their children have also been covered. However, the complexity of choosing

⁷⁴ State Report paras. 26, 27.

⁷⁵ Korea Center for Disease Control and Prevention, Guidance on Issuance of Foreigner Management Number, Dec 10 2014

⁷⁶ The ROK Government, Report on the Follow Up to the Requests of the 2017 National Assembly Inspections (Relating to Ministry of Health and Welfare), Apr 2018, pp 135-136.

⁷⁷ Russian, Mongolian, Vietnamese, English, Japanese, Chinese, Cambodian, Thai, Filipino

among applicants and limitation on appropriate medical institutions has made the governmental aid difficult to access. Also, there is always the threat of possible disruption by the government because of its unsecured budget and absence of relevant statutory provisions. Furthermore, economic barriers, such as co-payments, non-benefit items, upper grade ward fees or optional fees, all need to be paid by the individual. Moreover, there are cases in which they cannot prepare personal documents like a passport, alien registration card, employment documents, among others, rendering them illegible to access medical aid services.

Recently, the Ministry of Health and Welfare has announced a revision of the Health Insurance for Korean nationals and foreigners. To now be eligible for national health insurance, the minimum period of stay has been extended from 3 months to 6 months.⁷⁸ However, undocumented migrant children do not even have access to such health insurance, as well as documented migrant children are unable to access the national health insurance if their parents are unemployed or cannot afford to pay the insurance contribution.⁷⁹ Migrant children are also being excluded from the current Medical Care Assistance Act, since it is only available to those who are recognized as refugees based on the Refugee Act; and to some married migrants residing in Korea.

The Korean government has reported that they have been aiding asylum seekers and not only refugees, for housing and health examination expenses, along with medical treatment fees. However, due to budget issues, in urgent need asylum seekers are given priority.⁸⁰ As for the national health insurance, asylum seekers with a G-1 visa, or those humanitarian status holders who are not recognized as refugees, are not eligible for the self-employed insurance, and as a result their children also are not covered. Although the National Human Rights Commission of Korea has recommended a revision to this policy⁸¹, the Ministry of Health and Welfare has not accepted the recommendation. Instead, it has recently, announced it would make humanitarian status holders eligible for self-employed national health insurance. It is forecast that they will now receive the minimum medical security.

Suggested Recommendations

⁷⁸ Ministry of Health and Welfare, Press Release, Aug 29 2018.

⁷⁹ Jung, Seok-ho, "'No medical insurance available' Undocumented Migrants not covered by welfare', CBS Nocut News, Dec 12 2017. (<http://www.nocutnews.co.kr/news/4890814>)

⁸⁰ State Report para. 41.

⁸¹ NHRCK, Policy Recommendations on Limiting Community Health Insurance for Humanitarian Status Visa Holders, Nov 19, 2013.

- Amend the Enforcement Decree of the National Health Insurance Act Article 76 - 4 in order for migrant children to be able to join the national health insurance regardless of their parents' or their own legal status; as well as for the Medical Care Assistance Act Article 3 to include migrant children as recipients of medical aid.
- Amend Article 2 to clearly include migrants and migrant children in the category of 'local resident' on the Regional Public Health Act; and to establish a Regional Healthcare Plan following Article 7 (3), to cover migrants and migrant children residing in that region, regardless of their legal status.
- Secure a budget for a Medical Service Program for Marginalized Groups, including migrant workers within the Ministry of Health and Welfare; and to establish a health support system for migrant children.
- Guarantee mandatory immunization for all migrant children, regardless of legal status and reinstate accessibility to medical services by expanding eligible medical institutions for vaccinations beyond public health centers.

(3) Childcare of Migrant Children (State report 17.)

Undocumented migrant children are occasionally being refused enrollment in daycare centers. Even when they are accepted, there are preconditions which have to be signed and which state that parents absolve daycare centers of any responsibility in case of negligence or accidents. Parents are also required to attend with a Korean acquaintance to act as guarantor. Although migrant children can be registered through the Childcare Integrated System even if they do not hold an alien registration card, passport or birth certificate, they may still be asked to submit hard to obtain documents, if the daycare center director does not know it is not a requirement. If a daycare center accepts a migrant child without counting it into the prescribed capacity, an audit can result in the child being prohibited from attending the center.

Children who are not Korean citizens cannot receive government child home-care allowances and support for daycare center fees. This results in situations where if the parents of migrant children cannot afford daycare center costs, their children are placed in inappropriate child-care environments, such as leaving them at home unattended, taking them to their work which might have a poor environment, or leaving them with an unverified babysitter.⁸²

Article 4 of the Infant Care Act states that all "citizens" have a responsibility to nurture children under the age of six in a healthy manner, and the state and local government should strive to secure the necessary resources. This means non-citizens are excluded from this childcare responsibility.

Article 34 of the Infant Care Act states that the state and local government should provide free childcare services for infants through daycare centers. It also, especially prioritizes handicapped children and children of multicultural families (in Korea 'multicultural family' means a family where one spouse is a Korean citizen) as recipients of the Provision of Infant Care Services for the Vulnerable (Article 26) and Preferential Provision of Infant Care (Article 28). Moreover, Article 34-2 enables the state and local governments to support child home-care through allowances considering the age of the child, as well as the income level of the parents if the child does not attend a daycare

⁸² Jung, note 6.

center or kindergarten. However, as non-citizens are excluded from the responsibility of childcare, migrant children do not receive free childcare or child home-care allowances support.

Per the guidelines of the Ministry of Health and Welfare, among non-citizen children, only those who have been recognized as refugees are eligible for childcare and child home-care allowances support.

Suggested Recommendations

- Expand the responsibility of caring for infants from ‘citizens’ to ‘all people living in Korea’ under the Infant Care Act, and provide financial assistance for infant care costs and child home-care allowances to all infants, regardless of their nationality and legal status.
- Include childcare support for migrant children under the local governments’ Ordinance on Childcare.
- Simplify the procedures for daycare centers so that migrant children might more easily register in the Childcare Integrated System.

(4) Migrant Children - Education

Migrant children in the Republic of Korea are able to receive compulsory public education regardless of their parents’ status of sojourn. Article 19 and Article 75 of the Presidential Decree of the Elementary and Secondary Education Act, and regulations of the Ministry of Justice and other government ministries allow all children, including undocumented migrant children to receive compulsory public education. There are a number of preparatory schools for migrant children. Undocumented migrant children are subject to suspension of deportation until they complete education. Nevertheless the principles of non-discrimination and prioritizing the best interests of the child as set forth in the Convention on the Rights of the Child (hereinafter “CRC”) have not been fully implemented.

In many cases, migrant children, including undocumented children and children of marriage migrants are refused admission to schools without any due reasons. Moreover, undocumented migrant children are sometimes not well-protected from bullying or school violence when the teaching staffs who are not aware of the current law wrongly advise them that undocumented children are not able to transfer to another school.

As the Framework Act on Education states that only ‘citizens’ have a right to receive compulsory education under the Act, the notice to enroll into elementary school is not delivered to migrant children and parents. As parents are not able to obtain enough information about the education system in the Republic of Korea, some migrant children of school age are neglected at home for several months. Also, preparatory schools established to promote academic ability of migrant children are scarcely placed, and tend to be too far from the residence, thus not many migrant children benefit from such institutions.

With regard to undocumented migrant children, even when they successfully enter schools, they are excluded from social and educational services for students, such as education benefits and student bank account. Migrant children and parents who are not fluent in Korean struggle to adapt as educational information is provided only in Korean, and teachers speak Korean only. Talent contests and competitions that children can show their abilities normally do not provide opportunity for

undocumented children to participate. Also, undocumented migrant children in the Republic of Korea are basically not able to enter universities which lead to the dropping out of schools for the migrant children.

Suggested Recommendations

To implement and enforce relevant policies for migrant children to easily access and adapt to the compulsory public education, the State Party should:

- Based on the principle of non-discrimination under CRC, amend Article 8 of the Framework Act on Education to guarantee that migrant children also have a right to receive the compulsory education.
- Reform relevant provisions so that migrant children can transfer to or enters into schools without fear of rejection, deliver the notice to enroll into elementary school to migrants so that no children are left behind, and provide administrative guidance and directions to the teaching staff about the rights of undocumented migrant children in terms of education.
- Establish the multilingual interpretation system for education for migrant children to adapt, and parents not to be excluded from educational information or events such as PTA.
- Regardless of social status or status of sojourn, ensure that no migrant children are discriminated in educational services, and provide all children, including undocumented migrant children opportunities to show their abilities, and to contribute to their countries of origin and residence

(5) Protection and Support for Migrant Children

There is no official statistics about the current state of child protection system regarding migrant children, however according to the National Child Protection Agency, the number of maltreatment of children with immigration background has more than tripled in 2016 with 1217 cases, compared to those in 2013. It indicates that the increase in the number of migrants in the Republic of Korea in general leads to the increase in the number of migrant children in need of special services and protection due to abuse, poverty, etc.

The current Child Welfare Act in the Republic of Korea, enacted to guarantee the welfare of children defines the term “child” as a “person”, not as a “national” or a “citizen” who is under 18 years of age. It also states that children shall grow up without experiencing any kinds of discrimination on the grounds of birthplace or race. Nevertheless, in reality the government in connection with other social welfare-related legislation, such as the National Basic Living Security Act, which in principle is applicable to only citizens, interprets migrant children as not being the target of the Child Welfare Act. Therefore, the vast majority of migrant children are excluded from the child protection system in the Republic of Korea even when they do not have parents or are separated from a parent, or when they need special services and protection due to abuse, illness, disabilities, or poverty.

Also, child welfare facilities, such as specialized child protection agencies, are not able to provide proper assistance to migrant children and their families because of lack of budget, or the difficulties in communication. In the case of citizen children, child welfare facilities are able to receive government support in the form of livelihood benefits, housing benefits, and medical benefits under the National Basic Living Security Act, whereas the government does not provide such assistance to migrant children who are not eligible recipients under the Act. Moreover, undocumented migrant children

cannot even report incidents to the authority when they are subject to abuse due to fear of possible deportation.

Suggested Recommendations

The State Party should:

- Take necessary measures to amend relevant legislation regarding social welfare system so that every migrant child in the Republic of Korea can practically enjoy rights under the Child Welfare Act. In this regard, Article 5-2 of the National Basic Living Security Act where only few foreigners satisfying certain requirements, such as being married to a Korean citizen and raising a citizen child born of that marriage, etc. should be amended to include those who are in the child welfare facilities under Article 50 of the Child Welfare Act.
- Amend the current Immigration Control Act to guarantee residence so that migrant children who are in need of special services and protection can report abusive incidents without fear of deportation.

(6) Migration Detention of Children (State Report 70, 71)

The Immigration Control Act defines ‘detention’ (under Korean law, the term ‘protection’ is used in lieu of ‘detention’) as enforcement activities impounding foreigners subject to deportation at immigration detention centers. Under the current Act, there are no specific provisions regarding detention of non-citizen children except for Article 56-3 prescribing that ‘a person under 19 years of age’ shall be provided with treatment adjusted to his/her specific needs. Under Article 4 of Administrative Rules on Alien Detention, the head of an immigration detention center may grant permission to a detained alien to bring a child not subject to detention when the child is under 14 years of age, the detained alien supports the child and no other person desires to support the child; a child under 3 years of age may be granted permission to be with a detained alien who is his/her parent even when another person desires to support the child. Therefore, a child under 14 years of age can be detained when a deportation order is issued to his/her parent and the parent gives consent for the child’s detention. As the parents often have no alternatives for protection of the child, detention of children is practically compulsory.⁸³ Therefore, it can be said that there exists a practice of detaining migrant children, including infants and toddlers, together with their parents.⁸⁴

The Committee has urged the State Party to protect the rights of undocumented migrant workers and has requested information on the number of undocumented workers identified during labour inspections, their condition and length of detention, as well as the number of migrant workers who have been expelled.⁸⁵ However, the State Party reported only the number of undocumented migrant workers identified during labour inspections and did not give a response on the age of persons in

⁸³ Lee, Il, Legal Issues of Undocumented Stay (control). Korea Migration Law Association, The Institution for Legal Studies School of Law Hanyang University, Inha University BK21+Center for Global Multicultural Education Professional Development 2016 Autumn Conference (2016. 10. 28.). 49

⁸⁴ 26 children under 8 years of age have been detained at immigration detention unit or center throughout Korea from 2013.1 to 2015.6. Among them, a 3-year-old boy a 2-year-old girl were detained for 30 days and 81 days respectively. Kim, Jongcheol, Toward Elimination of Detaining Children of Migrants and Alternatives to Detention, Apil, World Vision, 2015, 5

⁸⁵ Committee on the Elimination of Racial Discrimination, Concluding observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, adopted by the Committee at its eighty-first session 12

detention or what measures are taken if the detained migrants are with children,⁸⁶ though the State Party report mentions that in cases where the immigrant parents of primary or secondary school students face immediate deportation for having been caught violating the Immigration Act, in order to guarantee the children's rights of education, the parents are granted temporary release from deportation, which effectively allows them to take time to prepare for their departure before they are ready to leave the country.⁸⁷

67 migrant children have been detained in the last 3 years at Hwa-Sung Immigration Detention Center⁸⁸, the largest detention center in Korea. 70 migrant children over 14 years of age were in detention in 2016⁸⁹ and the total number of migrant children under 18 years of age who have been in detention centers throughout Korea from January 2015 to December 2017 is 225.⁹⁰ Administrative Rules on Alien Detention include provisions on education and protection of children in migration detention. However, even if such education or special protection are provided, negative impact of detention on the children cannot be offset⁹¹ and as examined in a recent report, the Rules are not being complied with.

Table: Compliance with the Administrative Rules on Alien Detention or Enforcement Regulations

| | Hwa-Sung Immigration Detention Center | Cheong-ju Immigration Detention Center | Yeo-su Immigration Control Office |
|---|---|--|---|
| Family Room | ○ | × | ○ |
| Education according to age and capability | × | × | × |
| Education provided by professional welfare facilities | × | × | × |
| Interview with public officials once in two weeks (under 17 years of age) | ○ | ○ | ○ |

Source: Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, 25.

The UN Committee on the Rights of the Child (CRC) on Oct. 7. 2011 urged member states to refrain from detaining refugees, asylum seekers and unprotected children, and clearly stipulate the maximum number of days of detention.⁹² The UN Human Rights Committee (CCPR) on Nov. 3. 2015 recommended that children should not be deprived of their liberty except for a minimum period required as a last resort.⁹³ The UN Committee against Torture (CAT) on May. 10. 2017 expressed

⁸⁶ The 17TH, 18TH and 19TH Periodic Reports on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination 70

⁸⁷ The 17TH, 18TH and 19TH Periodic Reports on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination 71

⁸⁸ Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, 25.

⁸⁹ Korean Bar Association, 2015 Report on Survey of Immigration Detention Center, 2015, 25.

⁹⁰ National Human Rights Commission of the Republic of Korea, Opinion on Revision Bill on Immigration Act, 2018. 7. 26.

⁹¹ Solidarity with Migrants, The Study on Update of Guideline for Migrant Human Rights, National Human Rights Commission of the Republic of Korea, 2017, 180.

⁹² United Nations Commission on the Rights of the Child's Final opinion on the Republic of Korea's 3rd and 4th integrated national report 67

⁹³ United Nations Human Rights Committee's final opinion on the Republic of Korea's 4th national report 39

concern over the lack of legislation on the upper limits of immigrant detention, child custody, and conditions pertaining to protective facilities such as overcrowding and inadequate facilities.⁹⁴

NHRC recommended in 2011 that “If a child is to be detained, alternative measures must first be considered and, if detention is inevitable, measures should be taken to ensure that the child is detained with the child’s parent under minimum restrictions.”⁹⁵ In 2014 the following were recommended by the NHRC: 1. to strengthen review of vulnerable groups such as children, pregnant women and patients, and consider new forms of detention facilities; and 2. to take all administrative measures related to children under the consideration of ‘best interests of the child’. NHRC also determined that children should be detained at an environment where the best interests of the child is considered and the children’s development is adequately ensured; moreover, they should be detained at facilities where their parents' rights and responsibilities as guardians can be realized.⁹⁶ In 2016, the NHRC suggested, "It is desirable to provide various alternative detention facilities for children and other detained foreigners who need special protection."⁹⁷

Suggested Recommendation

The State Party should

- Detain migrant children only as a last resort. If detained for reasons such as child protection, family room, education, food and medical care should be provided to realize the best interests of the child.
- Revise the "Immigration Control Act" so that, in principle, foreigners who have children under their care are not detained in detention centers.
- Revise the “Immigration Control Act” to include provisions related to the principle of best interests of the child, in order to duly reflect rights of the child in all immigration decisions.

(7) Deportation and right of stay of Migrant Children

The current Immigration Control Act does not have specific provisions for detention and sojourn of migrant children. Therefore, migrant children who do not have a documented status or whose period of residency has expired are, in principle, subject to deportation pursuant to Article 46 of the Immigration Act. The Korean government has not yet implemented a regularization policy for undocumented children. Internal regulations of the Ministry of Justice provide some protection for children of undocumented immigrants attending elementary, middle, and high school, by deferring from deporting them until graduation. Parents of such children are, in principle, subject to deportation but are provided suspension of detention and temporary residence in unavoidable circumstances.⁹⁸ The above regulations do not have legal basis, and there is no published data on whether they are being consistently enforced. Nevertheless, such policies are meaningful to the extent that it explicitly acknowledges the need for educational rights of migrant children and guarantees their right to stay for

⁹⁴ United Nations Committee against Torture’s final opinion on the Republic of Korea’s 3rd, 4th, 5th integrated national report 42

⁹⁵ National Human Rights Commission, Recommendation for improvement of protection facility and human rights of foreigners, 2011.11.3.

⁹⁶ National Human Rights Commission, Recommendation for improvement of protection facilities for the promotion of protected foreigner’s human rights, 2014.11.25.

⁹⁷ National Human Rights Commission, Opinion on improvement measures of foreigner protection facility, 2016.4.12.

⁹⁸ MOJ, Measures to Support Educational Rights of Illegal Migrant Children, 2013.

a certain period. Still, there exist a significant number of children who are not protected under these regulations, such as (1) pre-school children; (2) children outside of school; and (3) high school graduates. Therefore, these children are subject to deportation pursuant to the Immigration Control Act, and there indeed exist children under the age of 18 who have been detained for deportation because of their undocumented status.⁹⁹ In addition, because the regulations do not grant the children a status of residence but merely suspend their deportation orders, it is difficult to derive their right to stay therefrom, no matter how long they have resided in Korea.

Unstable status of residence hampers the child's psychological development and social relations. Leaving school before completion of education gives rise to problems of discontinued learning and maladjustment after returning home. The greatest problem is that the children are detached from the identity and relationship they have established in Korea. Migrant children who completed the compulsory education in Korea are likely to have established a stronger identity as a Korean, and hence find the language, culture, and society of their home country unfamiliar. Since deportation for these undocumented children are usually accompanied by prohibition of re-entry for many years (the deportation order generally prohibits entry for five years, the exit order prohibits entry for 1 to 5 years), making it highly difficult to restore the severed relationship that they have built in Korea.¹⁰⁰ If there are siblings who are still enrolled in school, they will be separated from their families for a long period, unless they abandon their studies in Korea.

There is no regularization policy for such migrant children who grew up in Korea. The Ministry of Justice has taken the position that additional regulations are unnecessary since pursuant to Article 61¹⁰¹ of the Immigration Act and Article 76¹⁰² of the Enforcement Decree of the Act, deportation may be suspended for undocumented migrant children.¹⁰³ However, there are no provisions indicating when the standard of "special circumstances to reside based on humanitarian grounds" is applicable, making it difficult for the addressees of the law to predict the outcome. Furthermore, there is no safeguard against arbitrary management of the system. Indeed, there exists concern that the Ministry of Justice is making arbitrary determinations of "special circumstances." Of the total of 35 special residency permits granted in 2016 and 2017, 19 cases¹⁰⁴ were on the grounds that they were

⁹⁹ MOJ, Response to Inquiries by Legislator Keum, Tae-sup, 2017.

¹⁰⁰ There exist reports of being denying entry visas due to past violations of Immigration Act

¹⁰¹ Article 61 (Special Cases on Permission to Stay)

(1) In making a decision under Article 60 (3), even where the objection is deemed groundless, if a suspect was a former national of the Republic of Korea, or in exceptional circumstances under which a suspect need to stay in the Republic of Korea, the Minister of Justice may permit his/her stay.

(2) In granting permission under paragraph (1), the Minister of Justice may impose necessary conditions, such as the period of stay.

¹⁰² Article 76 (Obligation to Repatriate)

The captain of a ship, etc. or a forwarding agent operating a ship, etc. on which any of the following aliens embarked shall immediately repatriate such alien out of the Republic of Korea at his/her expense and on his/her own responsibility: <Amended by Act No. 11224, Jan. 26, 2012>

1. A person who fails to meet any of the requirements under Article 7 or 10 (1);

2. A person whose entry is prohibited or refused under Article 11;

3. A person whose entry is not permitted by any reason attributable to the captain of the ship, etc. or the forwarding agent under Article 12 (4);

4. A crew member who has landed under Article 14 or a passenger who has landed for tourism under Article 14-2 fails to return to the ship, etc. on which he/she embarked until the ship, etc. departs from the port;

5. A person who falls under Article 46 (1) 6 or 7, and subject to a deportation order.

¹⁰³ Ministry of Justice, Response to Migrant Children Rights Act, Inter-ministry discussion (second) related to Legislator Jasmine B. Lee's proposed Migrant Children Rights Act, Dec 17 2013.

¹⁰⁴ MOJ, The past two years of objections to decisions and special permission to stay, response to Inquiry to

"foreigners of Korean origin." MOJ has not disclosed why this fact is material to the decision or how much weight is given to it.

In 2012, a Mongolian high school student who entered Korea as a child and graduated from both elementary and middle school in Korea was investigated by the police for trying to stop a fight of his classmates. When the police confirmed his undocumented status, he was transferred to the immigration office and was later deported. In 2017, the case of a Nigerian teenager ("F") received media attention. All five siblings including F were born and raised in Korea, but due to their father being deported they were living in Korea with their mother without documented status. All of them graduated or are currently attending elementary, middle or high school in Korea. They have been assimilated with Korean society in all relevant aspects, including language, culture, and lifestyle. All ties between relatives and friends in Nigeria have been essentially disconnected. After graduating from high school, he began to work at a factory but after a few months was caught in a crackdown in 2017 and was given deportation order.¹⁰⁵ F won the administrative lawsuit¹⁰⁶ filed in the district court, and the Ministry of Justice forewent appealing the decision, finalizing it on June 6, 2018. However, the Ministry of Justice has announced that its decision not to appeal the court decision is based on specific background and circumstances of F, and upheld its position to "pursue strong policies to curb and reduce illegal migrants" in the future.¹⁰⁷ Also, since the district court decision does not bind other courts, it is difficult to expect legal/institutional changes to the current situation.

Suggested Recommendation

The State Party should:

- Amend the Immigration Act to establish a special provision for granting regular status to migrant children
- Specify criteria for granting regular status in the law to prevent arbitrary or limited interpretation of the law
- Amend laws to specifically provide that the status of residence of parents and children will not have negative effect, and that qualification for permanent residency and naturalization does not exclude or penalize residence status granted in accordance with above amendments
- Add a provision in the Immigration Act providing the principle of best interests of the child, in order to consider the rights of the child in all decisions pertaining to immigration; and suspend their parent's deportation to ensure that the child is not separated.

C. Provoking conflict by implementing policies of selective benefits based on countries of origin, races, etc.

(1) Discrimination among overseas Korean – between American Koreans and Chinese/ Soviet Koreans, between overseas Korean and other migrants

Legislator Baek Hye-ryun, 2017.

¹⁰⁵ Cho-Eun-ah, “‘Even pleas that I had to work to feed my little brothers and sisters had no effect’ Favour’s Tears”, Dong-ah Ilbo, May 17 2017,

<http://news.donga.com/3/all/20170517/84395038/1#csidxa286b016214e5babe0bd35ba09a7aa4>

¹⁰⁶ 2017KuHap2275, Cheongju District Court, rendered on May 17 2018

¹⁰⁷ MOJ, Press Release: “Explanations on not appealing the court’s decision on Favour’s lawsuit against deportation order”, June 12, 2018

As of May 2018, there are 857,273 foreign nationality Koreans residing in the Republic of Korea. By visa categories, there are 429,514 F-4(overseas Korean) visa holders, 243,930 H-2(working visit) visa holders, 90,008 F-5(permanent foreign resident) visa holders, and 32,430 F-1(visiting or joining family) visa holders.

By nationalities, there are 715,023 Chinese nationals which amounts to a vast majority, 83.4% of all foreigners, followed by 45,056 those of U.S. (5.2%), and 31,785 Uzbekistan nationals (3.7%).

Many Chinese Korean moved to the Republic of Korea for employment after the decision of constitutional nonconformity was made by the Constitutional Court of Korea in November 2011, which held that the Act on the Immigration and Legal Status of Overseas Koreans (hereinafter the “Overseas Koreans Act”) enacted in 1999 violated the principle of equality.

The Overseas Korean Act was amended in March 2004 to add a phrase “including those who had emigrated abroad before the Government of the Republic of Korea was established” after the Constitutional Court of Korea held that the exclusion of overseas Koreans who emigrated abroad before the government was established amounted to discrimination. The amendment of the Act is significant as it recognized the historical significance of the emigration of people before the establishment of South Korean government. As a result of the amendment, Chinese Koreans and CIS Koreans fall under the definition of overseas Korean under the Act.

Since then, both Chinese Koreans and CIS Koreans have demanded for F-4 visa which allows overseas Koreans to travel and work freely in the Republic of Korea. Currently, Zainichi Japanese Koreans have also requested for a greater accessibility to South Korean territory.

(2) Discrimination and stereotypes against Chinese Koreans

Chinese Koreans claim that the Korean society treats them similar to other migrant workers, however in terms of the visa type and conditions, Chinese Koreans are in a better position than other migrant workers. But in reality, discrimination against Chinese Koreans is greater than migrant workers in general.

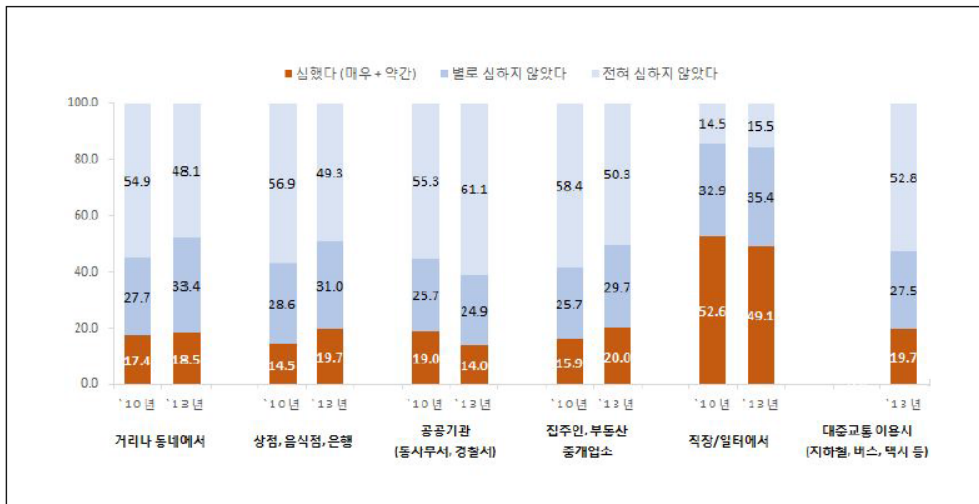
<Table 1: Experience of discrimination answered by Chinese Koreans – by types of business>

| Year | Experience of discrimination | Manufacturing industry | Construction industry | Restaurant business | Others | Total |
|------|------------------------------|------------------------|-----------------------|---------------------|--------|-------|
| 2013 | O | 35.3 | 48.1 | 39.2 | 54.4 | 37.6 |
| | X | 64.7 | 51.9 | 60.8 | 45.6 | 62.4 |
| | Total (%) | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | No. of cases | 663 | 27 | 171 | 57 | 918 |
| 2010 | O | 48.2 | 53.3 | 16.8 | 60.0 | 43.5 |
| | X | 51.8 | 46.7 | 83.2 | 40.0 | 56.5 |

| | | | | | |
|--------------|-------|-------|-------|-------|-------|
| Total (%) | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| No. of cases | 650 | 60 | 184 | 80 | 974 |

Kiseon Chung, et al (2013) 2013 research on foreign residents, Korean Immigration Service, Ministry of Justice p. 439.

Table 1 shows that in 2013, Chinese Koreans in the construction industry (48%), restaurant business (39%), and manufacturing industry (35%) experienced discrimination. It should be addressed that the rate almost doubled for those who were in restaurant business from 16.8% in 2010 to 39.2% in 2013. As there were no significant differences in terms of the number of cases, it suggests that the discrimination got worse in industries where have more contact with Korean citizens.



<Table 2: Experience of discrimination – by cases>

Kiseon Chung, et al (2013) 2013 research on foreign residents, Korean Immigration Service, Ministry of Justice p. 441.

Table 2 is about the comparison in experiences of discrimination answered by Chinese Koreans - by cases. Compared to the situations in 2010, the rate of discrimination experiences in public sector had decreased, whereas the worst place of discrimination was shown as the workplace.

Chinese Koreans residing in the Republic of Korea experienced discrimination in the People's Republic of China as an ethnic minority, and experienced discrimination in the Republic of Korea as a non-citizen. Chinese Koreans who migrated to South Korea after the establishment of diplomatic relations between the two countries has branded as 'illegal migrants', 'criminals', 'poor overseas Koreans' and faced severe discrimination.

Suggested Recommendations

The State Party should:

- Based on Article 2 and Article 4 of CERD, re-emphasize the principle of non-discrimination as the core value of the State.
- Enact legislation to eliminate discrimination based on race, nationality, or country of origin, and take all measures for awareness and education, especially in culture, history and cultural diversity.

7. Rights of Refugees

A. Improvements of the Refugee Status Determination Procedure

Refugee recognition rate and refugee status determination procedure that do not conform with the international standard.

As the main agent for refugee status determination procedure, the Ministry of Justice is supposed to take an active role to protect refugees, however the average refugee recognition rate of the first instance decision of the procedure conducted by refugee officers under the Ministry of Justice for the last 5 years remains at 0.66%¹⁰⁸ Such an extremely low recognition rate is the result of the process which is carried out with a view that the majority of refugee applicants are ‘false refugees’ who abuse the system in place.

Appeal process without any effectiveness

¹⁰⁸ The statistics from the Ministry of Justice include those who were recognized as refugees by means of family unification, in the cases that immediate family members are granted refugee status as a result of one of the family members being recognized as a refugee after going through refugee status determination process, and resettled refugees. The statistics presented here include only those who were recognized as refugees as a result of going through the refugee status determination process, carried out by the Ministry of Justice; it excludes those who were recognized as refugees by means of family unification and resettlement.

| Year | First-instance (Ministry of Justice) | Appeal (Refugee Council) | Judicial review (Administrative Courts) |
|------|--------------------------------------|--------------------------|---|
| 2013 | 5 | 9 | 10 |
| 2014 | 18 | 53 | 3 |
| 2015 | 13 | 27 | 0 |
| 2016 | 17 | 10 | 3 |
| 2017 | 27 | 24 | 5 |

Refugee recognition rate based on the number of refugees recognized by the RSD process only is presented below.

| Year | First-instance (Ministry of Justice) | Appeal (Refugee Council) | Judicial review (Administrative Courts) |
|------|--------------------------------------|--------------------------|---|
| 2013 | 0.8 | 1.5 | 1.7 |
| 2014 | 1.3 | 3.7 | 0.07 |
| 2015 | 0.6 | 1.2 | 0 |
| 2016 | 0.2 | 0.1 | 0.04 |
| 2017 | 0.4 | 0.4 | 0.08 |

On the other hand, an appeal procedure against the first instance decision remains as perfunctory, and fails to perform its function as a meaningful remedial process. The notice of non-recognition of refugee status is written only in Korean language, does not specify reasons for non-recognition, incomprehensible for refugee applicants for their non-recognition, and does not give full explanation to applicants about following procedure. The applicants are supposed to submit additional evidences at the appeal process, and are able to present his/ her statement at the refugee council meeting, but the notice of non-recognition, which is the only document given to applicants, does not provide such information. Moreover, the refugee council that reviews appeal applications have to deal with hundreds of cases for each meeting¹⁰⁹, thus, they mechanically approve the first instance decisions by the Ministry of the Justice, rather than carefully and concretely reviewing reasons for appeal.¹¹⁰

Suggested Recommendations

The State Party should:

- Review its refugee status determination standards based on the rights of refugees, independent from immigration control policies.
- Arrange infrastructure and manpower to professionally carry out refugee status determination process.
- Provide the notice of non-recognition of refugee status in languages comprehensible by the applicants.
- Protect the rights of the refugee applicants at the appeal process by providing with information, for example by notifying that they are able to submit additional evidences, and have a right to present at the refugee council.
- improve the infrastructure and human resources of the refugee council to independently and professionally review the appeal applications

The Courts aggregate danger rather than providing remedy

In the ROK, a refugee applicant whose application is declined by the Ministry of Justice is able to make an application for judicial review to the administrative court about the decision. This process, however is also not working properly. It is difficult for refugee applicants to file a lawsuit because all kinds of notices and court rulings, such as written complaints, the order of correction, and the notice of date of pleading, etc., are given in Korean language only, and not translated in the language comprehensible by the applicants, however there is practically no legal aid for the stamp fee,

¹⁰⁹Refugee Council meetings convened in 2017

| | 1 st | 2 nd | 3 rd | 4 th | 5 th | 6 th | Total |
|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------|
| Time of Assembly | 2/17 | 4/14 | 6/2 | 7/12 | 9/29 | 12/1 | - |
| Number of Cases | 721 | 1,077 | 470 | 801 | 638 | 835 | 4,542 |

¹¹⁰ Average refugee recognition rate at the second round of review by the Refugee Council for five years from 2013 to 2017 was 1.38%.

transmittal fee and legal fee provided for refugee applicants. Hence, it is almost impossible for the refugee applicants to utilize the judicial review process as a remedial means.¹¹¹

Meanwhile, currently almost all the courts keep court hearings of refugee cases open. As a result, there have been a few cases in which court hearing procedures of refugee applicants were exposed to the general public. It means that a complete stranger can visit the court to observe the court hearing of refugee applicants. Such exposure of personal information would endanger not only the applicant him/herself but also his or her family members, but the courts still do not protect the right to privacy of refugee applicants.

Suggested Recommendations

The State Party should:

- expand legal aid for refugee applicants and guarantee refugee applicants an access to remedial procedures by means of providing translation and interpretation services

Inconsistent refugee status determination procedure leading to undocumented stay and re-application

People who cannot return to their countries even after exhausting appeal and judicial review process have to re-apply for refugee status. Ultimately, the inconsistency of the appeal process leads to re-application. Nevertheless, the Ministry of Justice uses the fact that there are many re-applicants to claim that there are too many people who abuse the system in ROK. The Ministry of Justice confiscates their alien registration cards and makes it difficult for them to work. In worse cases, the Ministry of Justice detain the re-applicants in the case that they are undocumented, further limiting their rights as refugee applicants and forcing them into more vulnerable situations.

Suggested Recommendations

The State Party should:

- Guarantee the accuracy of the refugee status determination procedure, and protect the basic rights of re-applicants.

Deportation of refugee applicants at the port of entry

With the refugee status determination procedure at the port of entry, refugee applicants who enter the border have to go through the referral procedure to be granted ‘refugee applicant’ status. Although it is the preliminary review of whether the case is suitable to be referred to the substantive refugee status determination procedure, the standard applied for the referral procedure is almost the same as the standard applied for the substantive refugee status determination procedure. The procedure at the airport is getting more and stricter. After the detention of 28 Syrian asylum seekers for seven months in 2015, the rate of referral decreased from 70 per cent to 10 per cent in 2017.¹¹²

¹¹¹ Refugee recognition rate through litigation from 2013 to 2017 was 0.38%.

¹¹² Entry/non-entry decision at the preliminary review at the port of entry (by year)

Nonetheless, separate appeal procedure against non-referral decision does not exist. The only way to file a complaint about the decision is to file a lawsuit for judicial review of the cancellation of non-referral decision. However, it is difficult for the applicants to find a lawyer while being detained at the deportation room, immigration detention room, or the boarding gate after receiving the non-referral decision. Thus, many are eventually deported after they receive non-referral decision, without any intervention from the lawyers.

In May 2018, there were cases of deportation of two ethnic Uighur Chinese national even when they filed a lawsuit for judicial review of the non-referral decision. Also in June 2018, one Egyptian national was deported. There is no official statistics about the number of asylum seekers whose entry was rejected.

Suggested Recommendations

The State Party should:

- create a separate standard for the referral procedure at the port of entry, independent from refugee status determination standard, and let refugee applicants, except for the cases in which it is clear enough that they cannot present specific reasons for applying for refugee status, enter the country to go through an appropriate refugee status determination procedure

Translation/Interpretation below standard

The interview plays a critical role in refugee status determination process because it is a chance for the applicants to talk about their stories. However, due to limited human resources for interpretation, applicants are not provided with proper interpretation service. The total number of trained interpreters for refugees of 222 in 2015 decreased to 174 in 2018. While the number of applicants who speak Arabic increased, the number of available Arabic interpreters decreased from 12 to 10.

The quality of interpretation is also problematic. There is no way to guarantee the quality of interpretation with the current selection process of trained interpreters for refugees; there are no

| Year | Non-entry | Entry | Entry Rate |
|-------|-----------|-------|------------|
| 2013 | 11 | 16 | 59.3% |
| 2014 | 45 | 26 | 36.6% |
| 2015 | 111 | 289 | 72.3% |
| 2016 | 126 | 61 | 32.6% |
| 2017 | 176 | 21 | 10.7% |
| Total | 469 | 413 | 46.8% |

criteria other than 8-9 hours of informal training sessions for selecting interpreters for refugees. Consequently, there have been cases in which refugee applicants were disadvantaged by malicious misinterpretation by interpreters.

Recently, there were cases of one particular interpreter and a public officer falsely recorded the parts of refugee applicants' interviews about persecution during the interview, and falsely wrote in the interview report that the applicant came to Korea to earn money only. It was discovered that more than 100 refugee applicants were denied refugee status because of such misinterpretations.¹¹³ Nevertheless, the Ministry of Justice has not investigated on the exact extent of damage. Instead, the Ministry rejected the re-application on the grounds that the contents of falsely recorded interview report and those of re-application are different.

Suggested Recommendations

The State Party should:

- improve the quantity and quality of interpreters by reinforcing the refugee interpreter system
- obligate audio and video recording of refugee interview process and to practically guarantee the rights of the applicants to apply for audio and video recording
- hold accountable of the interpreter and the officer for misinterpretation by means of disciplinary action and to create appropriate remedial measures including re-examination of refugee applicants who were disadvantaged by inappropriate misinterpretation

B. Improvement in the treatment of refugees

No control tower or comprehensive system for the refugee settlement program

(1) The State Party's report states that the government has guaranteed the right to stay, employment, social security and health insurance of refugees. The State Party also states that it has provide basic livelihood benefits, Korean language education, social adaptation education, and travel documents to refugees.¹¹⁴ However, the report of the 2nd National Action Plans for the Promotion and Protection of Human Rights produced by the State Party shows that there was nothing from the government about the social adjustment of recognized refugees, except for the performance of one pilot project for the resettled refugees.¹¹⁵

¹¹³ For all the interview reports recorded by these two, they were all identically written as such: "I applied for refugee status in order to make money by working and legally stay in Korea for a long-term." "(Are all the reasons for applying for refugee status you have written on the refugee application form false?) Yes, they are all untrue. I falsely filled out the reasons for applying for refugee status." Afterwards, lawsuits were filed for the cancellation of non-recognition of refugees on the grounds that the interview reports crafted by the specific interpreter and public officer were problematic for case 2017GuDan4294 decided on 12 October 2017 at the Seoul High Administrative Court and case 2017Nu47245 decided on 27 June 2018 by the Seoul High Administrative Court. Specifically, for 2017Nu47245, it was noted that "it is a rare case in-and-of-itself that (a refugee applicant) would testify in opposition to the reasons he/she stated for applying for refugee status; what is more, the fact that identical sentences are written on the refugee interview reports interpreted by an Arabic interpreter B shows that the content and the way Arabic interpreter B conducts his/her interpretation are problematic."

¹¹⁴ The State Party Report, Section 41.

¹¹⁵ The 3rd National Action Plans for the Promotion and Protection of Human Rights, October 10, 2017

(2) The Ministry of Justice has assigned only two public officials to work on the settlement and social adjustment of 839 recognized refugees.^{116 117} Those officers also have to work on the resettlement, therefore it is extremely difficult for them to work on the social adjustment of recognized refugees who individually went through the refugee status determination procedure. The Council for Treatment of Recognized Refugees which is supposed to be held under Article 22 of the Enforcement Decree of the Refugee Act has not been held in 2016 and 2017.¹¹⁸ The Ministry of Justice has held meetings of the Working Group for the Resettlement since the enactment of the Refugee Act in 2013, however the meetings were only about the reviews and plans for the resettlement. In other words, there has no action been taken by the government about the long-term plan for the settlement or adjustment of recognized refugees.¹¹⁹ Furthermore, the Ministry of Justice has not set the budget for recognised refugees, while spent KRW 249,936,000 for the resettlement program in 2017.¹²⁰

(3) The Ministry of Justice, which is responsible for the stay, immigration control, and refugee status determination, has been criticized by the civil society for its limited expertise in terms of the settlement support for recognized refugees. While operating the pilot project for the resettled refugees, the Ministry of Justice abruptly decided to resettle all 86 resettled refugees in one area. Moreover, despite the efforts to establish the system with private sectors by organizing exhibitions of works by refugee children, etc., the Ministry failed to cooperate with other Ministries and local governments due to limited resources.¹²¹

Failure to protect basic rights of recognized refugees, and continued violation

(4) Whereas the marriage migrants have rights to information on daily life and educational support under the Article 6¹²² of the Multicultural Families Support Act, recognized refugees are only provided with a 3-page-document about rights stated in the Refugee Act upon recognition. In contrast to marriage migrants who are provided with translation and interpretation services in all stages under Article 11 of the Multicultural Families Act,¹²³ there is no language support or interpretation services for recognized refugees. Also, despite Article 14 of the Framework Act on the Treatment of Foreigners residing in the ROK and Article 34 of the Refugee Act state the rights of refugees to social

¹¹⁶ Monthly Statistics, Korea Immigration Service, Ministry of Justice, May 31, 2018

¹¹⁷ Current States of Public Officials of the Ministry of Justice, Ministry of Justice, July 17, 2018

¹¹⁸ Request of Information Disclosure made by NANCEN, Ministry of Justice, February 2, 2018

¹¹⁹ Request of Information Disclosure made by NANCEN, Ministry of Justice, January. 1, 2016

¹²⁰ Request of Information Disclosure made by NANCEN, Ministry of Justice, April 4, 2014

¹²¹ Evaluation and implementation of the resettlement system in South Korea, Young-Hee Cho, IOM Immigration Policy Research Institute, 2018.1.22

¹²² Article 6 (Provision of Information on Daily Life and Educational Support) The State and local governments may provide immigrants by marriage, etc. with basic information necessary for living in the Republic of Korea (including information related to learning and guidance for children and youth), and assistance in receiving education for social adaptation, vocational education and training as well as Korean language education to enhance their communication skills.

¹²³ Article 11 of the Multicultural Families Support Act (Provision of Multilingual Services) The State and local governments shall, in promoting support policies prescribed in Articles 5 through 10, endeavor to provide multilingual services in order to remove communication barriers facing immigrants by marriage, etc. and improve accessibility to such services.

adaptation education,¹²⁴ it is difficult for the refugees to access such education due to the lack of opportunities and plans.

(5) Article 25 of the 1951 Refugee Convention and the Article 30 of the Refugee Act stating that a recognized refugee residing in ROK shall be treated in accordance with the Refugee Convention,¹²⁵ recognized refugees suffer from violations of basic rights, such as the right to open bank account, use mobile phones, and marriage. While Article 35 and 36 state the rights of recognized refugees on the recognition of a school career and other qualifications, there have not been any cases of recognition because there is no particular system for recognition of a school career or qualifications. With regard to Article 30 and 31 of the Refugee Act about the rights to social security, the local governments and ministries have interpreted such rights of recognized refugees extremely narrowly. In January 2017, there was a case where a registration as a disabled person of a refugee child with brain disorder was rejected. After a lengthy litigation, and a recommendation from the NHRCK (2017. 4. 40), the government accepted the application for registration. Still, refugees are denied access to social services in general.

Suggested Recommendations

The State Party should:

- Eliminate the gap between the resettled refugees and refugees recognized with individual refugee status applications.
- Establish the basic action plan on adjustment of refugees, integrated governance, and systematic implementation of the settlement program.
- Identify the obstacles that recognized refugees experience at the early stage of settlement, and improve the system under Article 30 of the Refugee Act.

C. Rights of refugee applicant and humanitarian status holder in ROK

Rights of refugee applicant

Introduction: From 1994 when the Republic of Korea joined the Refugee Convention till December 31, 2017, a total of 32,733 people have applied for refugee status. In 2017, 9,942 people have applied for refugee status, of which 121 have been recognized as refugees and it led to an extremely low refugee recognition rate which is 1.5%.¹²⁶

Living expenses: The State Party subsidizes a certain amount of money to support the livelihood of a person who is under refugee status determination process. Refugee applicant can apply for living expenses for up to 6 months from the date of application for refugee status. However, the ratio of

¹²⁴ In addition, the Framework Act on Treatment of Foreigners residing in the Republic of Korea provides that refugees who are refugees may be provided with "Korean Language Education, Korean Institutions, Cultural Education, Childcare and Education Support" by applying "Marriage migrants and Their Children" Article 1)

¹²⁵ Article 35 (Recognition of school career) A recognized refugee may obtain the recognition of a school career equivalent to the degree of school education he/she has completed in foreign nations as prescribed by Presidential Decree. Article 36 (Recognition of Qualifications) A recognized refugee may obtain recognition of a qualification equivalent to or part of the qualification he/she acquired in a foreign nation as prescribed by the relevant statutes.

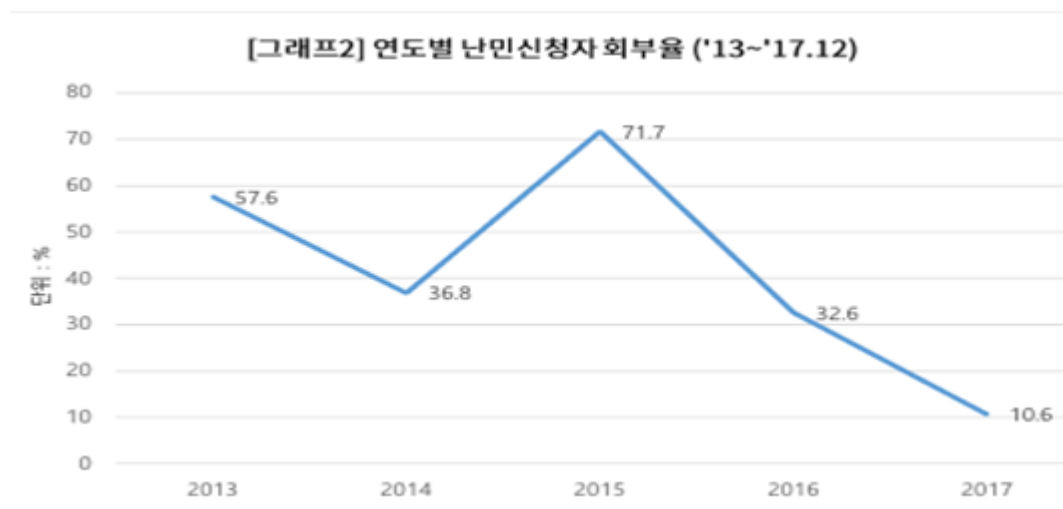
¹²⁶ Refugee Human Rights Center – Statistics on 2017 <http://nancen.org/1741> : This statistics are the result of official information disclosure request to the State Party by Refugee Human Rights Center.

refugee applicants who received 6 months or more of living expenses is no more than 3% of total refugee applicants. And the average period of receiving living expenses is 3 months. In addition, the ratio of refugee applicants who received living expenses is only 8.6% in 2016 and 3.2% in 2017 of total refugee applicants.¹²⁷

Health care: In practice, refugee applicants are rarely covered by health insurance since the employers are reluctant to hire them because of their unstable status. In addition, refugee applicants are facing a medical loophole during the first six months after the refugee application where they are not allowed to get a job. During that period, refugee applicants have limited access to medical services through health insurance and thus, their health condition is jeopardized.

Detention and repatriation: In case of refugee application at the port of entry, a referral review based on the Refugee Conventions and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is made. And almost half of the applicants are repatriated from the airport being deprived of a chance to undergo a proper refugee status determination process. In 2017, only 10% of the applicants were allowed to enter the country, and the remaining 90% had to stay at the airport until they were either repatriated or won a cancellation order for a non-referral decision from the court.

[Table: Rate of referral for refugee applicants by year 2013~ 2017. 12.]



Furthermore, in case of a violation on immigration related law (such as overstay, forgery of passport, illegal entry, etc.), refugee applicants are subject to deportation order without a proper refugee determination process¹²⁸ and are subject to indefinite detention.¹²⁹ The immigration officer has power to either make a decision to deport or actually deport a person without the decision by the court. And if the officer decides that a person has a risk to harm the public safety, deportation can be forced at any time before the refugee determination process finishes.

¹²⁷ Refugee Human Rights Center – Statistics on 2017 <http://nancen.org/1741>

¹²⁸ It is the current position of the immigration authorities and the court that the deportation order can be issued to the refugee applicant at any time and that is not contrary to the principle of non-refoulement unless the eviction is actually enforced.

¹²⁹ The Immigration Act Article 63

In its concluding observation on the 3-5th State Party report, the Committee against Torture has invited the State Party to “revise article 5 of the Enforcement Decree of the Refugee Act with a view to removing the grounds for non-referral to asylum procedures and ensure that an effective appeal mechanism exists with regard to negative decisions and that appeals have a suspensive effect” and to “establish a legally prescribed maximum duration of immigration detention, avoid detaining immigrant minors”.¹³⁰

Rights of Humanitarian Status Holder

As of December 2017, a total of 1400 asylum seekers have been recognized as humanitarian status holder.¹³¹ The State Party considers as if the humanitarian status holders have been given the same level of protection as refugee status holders. However, only one provision about working permit concerns the humanitarian holders in the Refugee Law (Article 39).¹³² Otherwise, the situation of humanitarian status holders is no different from the one of refugee applicants when it comes to visa type, working permit, coverage of health insurance, etc.

In the current Refugee Law, only one provision about working permit concerns the humanitarian status holder (Article 39). The humanitarian status holders are deprived of the benefits which are given to the refugee status holder (such as social security, basic livelihood guarantee, education guarantee, family reunification, academic recognition, qualification recognition, etc.). Humanitarian Status Holders should be provided as same level of protection entrants as refugee status holders.

Current humanitarian status holders are given ‘G-1’ visa which allows a temporary stay in ROK (same visa as refugee applicants). The humanitarian status holder should be given either a new type of visa that guarantees longer and stable stay or the same visa type as refugee status holder (F-2 visa).

Suggested Recommendation

The State Party should

- Notify the refugee applicant of the existence of living expenses support system and expedite the examination process on the living expenses so that the period of six months set by law can be guaranteed.
- Make sure that the employers pay for the health insurance for the refugee applicant at work. Provide access to health insurance for refugee children regardless of their parent’s status.
- Establish a legally prescribed maximum duration of immigration detention, avoid detaining immigrant minors.
- Create a supplementary protection system other than current humanitarian status for those in need of long-term stay or grant them a residence (F-2) visa.
- Ensure the same level of protection for humanitarian status holders as for refugee status holders.

¹³⁰ CAT/C/ROK/CO/3-5

¹³¹ Refugee Human Rights Center – Statistics on 2017 <http://nancen.org/1741>

¹³² Article 39 of Refugee Law (the treatment of humanitarian status holder) The Minister of Justice may permit a humanitarian status holder to engage in wage earning employment

D. Situation of Yemeni Refugees in Jeju Island and its problems

Background

In May 2018, around 500 Yemeni refugees entered Jeju Island, South Korea. They came to seek asylum from a civil war which has continued since 2015. As conflicts escalate, more than 22 million people are left in dire need of assistance and protection in Yemen and the United Nations said that the Yemen war is 2018's worst humanitarian crisis.¹³³

This is an unprecedented number of Yemeni refugee's entry to the country and South Koreans are having the heated debate over the refugee issue. This incident is an opportunity to show the reality of refugees in South Korea which lacks protection by the Government, especially before the review of the UN Committee on the Elimination of Racial Discrimination.

The situation of Yemeni refugees in Jeju Island

Jeju Island is located in the southern part of South Korea. According to the Article 197 of the Special Act on the Establishment of Jeju Special Self-Governing Province and the Development of Free International City, foreigners, other than the citizens of national determined and publicly announced by the Minister of Justice who enter Jeju Self-Governing Province for the purpose of tourism, transit etc., may enter the Province visa-free. Consequently, Yemenis were able to enter the Island without visa in April and May 2018. When the Ministry of Justice realized a high number of asylum seekers from Yemen, the government suddenly banned Yemeni asylum seekers from leaving the island on 30 April and added Yemen as a country that requires visa on 1 June.¹³⁴ Such a response by the Ministry of Justice branded refugees as 'dangerous beings' who are not allowed to enter the mainland and intensified fear among the public.

It is the first time that these many numbers of asylum seekers came to Jeju Island. While the Ministry of Justice did not come up with practical measures, individuals started to mobilize support for asylum seekers. 39 Jeju based civil society organizations and progressive political parties established a "Jeju People's Coalition for Refugee Rights" and started to support asylum seekers. They voluntarily created Korean language classes for Yemeni refugees, provide medical supporting and housings, find jobs, and have meetings with the Ministry of Justice.

In an urgent situation, the only government measure was to grant exceptional work permit to Yemeni asylum seekers and link them with jobs which do not harm the local job market. Yemeni asylum seekers' work permits are limited to fishery, farming and restaurant business, and if they want to find a job in other areas, they need to get permission from the immigration. As of 20 July 2018, there are 486 Yemeni asylum seekers in Jeju Island. Only half of them are now working, but the other half was not able to find a job or left jobs. It is a result of the government's measure which randomly assigns asylum seekers to any jobs without any proper job training. As asylum seekers' independence based

¹³³ UN Office for the Coordination of Humanitarian Affairs, Yemen: As conflict escalates, more than 22M people are left in dire need of assistance and protection, <https://www.unocha.org/story/yemen-conflict-escalates-more-22m-people-are-left-dire-need-assistance-and-protection> (accessed on 15 July 2018)

¹³⁴ As of July 2018, citizens of below countries should present visa when entering Jeju Island: Ghana, Nigeria, Macedonia, Sudan, Syria, Afghanistan, Yemen, Iraq, Kosovo, Cuba, Palestine, Egypt, Senegal, Gambia, Bangladesh, Kyrgyzstan, Pakistan, Somalia, Uzbekistan, Nepal, Cameroon, Sri Lanka, Myanmar

on an employment should be the first step, urgent and practical measures should be taken in relation to social enterprises in Jeju Island.

Even worse, the government announced that they will reinforce the patrol and consider refugee applicants as potential criminals. Instead of declaring that refugees are those who were forced to leave the country because of persecution and should be protected based on the international law, the government was busy covering problems. Meanwhile, fake news about refugees, misunderstanding on Yemen's situation and fear of strangers are expressed as hate speech. Protests against Yemeni refugees were held twice in Jeju, and almost 700,000 people signed the petition to the President Office to not accept Yemenis refugees. Fear of unknown refugees and fear that the government will not be able to protect is people create hatred against refugees.

The refugee status determination procedure in the Republic of Korea has been criticized for a long time for its unfairness and hastiness. The Ministry of Justice announced that they recruited more staff for Yemeni refugee to undertake interview process and in total, 6 people are in charge of it now. It is, of course, important to have a rapid RSD procedure, but more important thing is to have a quality interview by developing the expertise of refugee officers. While the world average refugee acceptance rate is 29.9%, South Korean refugee acceptance rate claims 4.1% as of May 2018. The Government's position which views asylum seekers as potential criminals are represented in this low acceptance rate.

Conclusion

This is the first time not only for the government but also for the public to face this number of asylum seekers' entry to the country. Also, the current crisis clearly demonstrates problems of the refugee system in the country and how the South Korean society has perceived refugees. While the government failed to provide practical measures for refugees and to deliver clear messages based on international human rights laws, hate speech dominated the space. The UN Committee on the Elimination of Racial Discrimination (CERD) has recommended ROK to take all necessary measures for refugees and asylum seekers to enjoy the right to work and that they and their families enjoy an adequate livelihood, housing, healthcare and education.¹³⁵ Also, enacting a comprehensive anti-discrimination law has been recommended several times by not only the CERD but also from other treaty bodies and special procedure mandate holders.

A refugee is someone who has been forced to leave his or her country because of persecution and needs international protection. The Refugee Act which was enacted for the first time in Asia also stipulates its reason of enactment as "since we have not accepted enough number of refugees and it does not fulfil its responsibility as a member of international society... and to build a foundation to move on as human rights country." What we need right now is not an attempt to identify 'real' refugees nor to filter out 'fake' refugees, but to seek ways to end the war in Yemen and to live peacefully with asylum seekers.

Suggested Recommendations

¹³⁵ UN Committee on the Elimination of Racial Discrimination, Concluding Observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, adopted by the Committee at its eighty-first session (6-13 August 2012), CERD/C/KOR/CO/15-16

The State Party should:

- Announce its position on fake news and hate groups based on international human rights laws.
- Urgently produce the government's message since a comprehensive anti-discrimination law does not yet exist in the country.
- Immediately enact a comprehensive anti-discrimination law.
- (The Jeju island should) present a mid, long-term program to support the settlement of Yemeni refugees and provide humanitarian aid.
- (The local government should) establish a good precedent so that such a system at the local level can be used in other regions with refugee settlements.

E. Problems of the Recent Reports on Refugees

Recent Press Releases on Refugees

Recently, racist media reports about refugees have increased dramatically since about 500 Yemeni refugees flee to Jeju Island. Such reports have sparked hatred and fear of the public to refugees, and have led to the rejection of certain ethnic groups and races.¹³⁶ The characteristics of such reports are as follows.

The Depersonalization of Refugee Applicants

Recently in the media, terms that depersonalize the refugees are often used. Using such terms have played a role in triggering fear for refugees as it is likely for the general public to treat a refugee not as a human being but as one of the “group of people with no personality.”

Yonhap News, <The Reason behind a bunch of Yemenis from the Middle East coming to Jeju Island>

Insight, <Muslim Refugees Flocking to Jeju Island, which was once occupied by the Chinese>

Insight, <Jeju Island Filled with Yemeni Refugees after granting them the Work Permit>

Dong-A Ilbo, <Jeju Island should not take the Refugee Bomb>

Eyesight News, <Refluencer (Refugee + Influencer) Jeju Island>

JoongAng Ilbo, “...mass flux of refugees”

Racist expressions about refugees

Yemeni asylum seekers have been labeled as “sex offenders”, “criminals”, “fake refugees”, “asylum seekers who came to South Korea just for employment”, “illegal refugees”, and “false refugees”, just because they are men in their 20s and 30s, and are Muslims. The following terms, which are not internationally accepted in most articles, are replacing “refugee applicants”¹³⁷

¹³⁶ From the fear of Yemeni refugees, there have been a number of anti-refugee demonstrations from 30 June 2018 with the slogan of “Get Out, Fake Refugees”. During the demonstration, provocative comments such as “let’s put the citizen first”, “let’s withdraw the Refugee Convention”, “look at German cases of sexual assaults committed by refugees” were used by the participants. In front of the Jeju City Hall, there was a banner saying “Have you seen German cases where citizens were raped by refugees?”.

¹³⁷ Korea Refugee Rights Network conducted the media monitoring of 36 press companies from 2018. 5. 20. to 2018. 7.9.

Fake refugees, Illegal aliens, false refugees, Economic migrants / migrants, Job-seeking refugees, Islamic refugees, Don't-ask-why-refugees, Terrorists, Extremists

Hatred-agitating Press releases based on hatred to certain religion and culture

A series of recent articles about refugees reflect the lack of understanding of the Arab culture and the prevalent cultural absolutism in South Korean society. “Taharrush,” which does not exist anymore, for example, was presented as the Arab culture. The reports about child marriage and female genital mutilation strengthen stereotypes and hatred towards certain group of people. As a result, when searching the internet the word “refugee,” the keyword ‘sexual violence’ is combined automatically. Moreover, words such as ‘Jeju refugee rape’ are coming up on the list of the relevant search results even when such things have not even happened.

Dispatch, <8-year-old young bride who died on the first night of the wedding>: Introduced child marriage as the custom of “buying a girl”, and a part of the culture of Yemen

Dispatch, <Yemeni's creepy customs in Jeju Island>

Asian Time, <2016 Cologne gang rape reappearance>

Dong-A Ilbo, <Even at work, we must pray ... Jeju Yemen Refugee Workplace Conflict>

Insight, <Yemeni refugees do not greet the customer because they are not Allah>

Insight, <Mass sexual assault Taharrush, Islamic customs>

Reports combining unrelated contents with refugees

There have been more and more cases that combine unrelated contents with refugees. iNews24 reported an article titled “Let’s have a one-night stand, a Yemeni refugee who sexually harassed a Korean woman caught for possession of drugs” even though it is irrelevant to Yemeni refugees in Jeju. The article also contained photos of Yemeni refugees. In addition, recent reports of a fight between Yemeni refugee applicants contained provocative photos irrelevant to the incident itself, and agitated hatred for migrants in general by referring to irrelevant statistics of assaults committed by migrants. There was also a case where an irrelevant murder case committed by an undocumented Chinese citizen was cited to introduce the situation of Yemeni refugees.

Problems and Possible Measures

Problems

Whereas the public used to be indifferent to refugee issues, the above cases and reports stirred up interest towards refugees, and led to misunderstanding and hatred towards refugees. There have been very few cases where voluntary corrections or deletions were made by the media. Only few articles were corrected as a result of complaints made by the civil society.

In this information-oriented society emphasizing high speed, misleading and skewed keywords and terms are more than enough to stimulate hostility and hatred towards migrants and refugees. To make the situation worse, even the journalists who want to have a relatively neutral view have failed to understand that asylum seekers they want to interview are highly likely to be in risk of further persecution. As a result, photos, names, and places of residence of asylum seekers are reported unfiltered. The biggest problem here is that no one can be held accountable for any misbehavior and unfortunate consequences.

Loopholes and lack of measures

While the Hankyoreh, Chosun Ilbo, JTBC, and YTN have their own guidelines, a majority of press companies do not have guidelines, nor have released them on the Internet.¹³⁸ There are no companies with the Code of Ethics for refugees. The Korean Press Association and the NHRCK published the Reporting Regulations for Human Rights in 2011 dealing with report regulations for migrants, foreigners, and North Korean defectors, however, there is a need of more specific regulations and rules on reporting of refugees in such a special situation of threat to persecution. Moreover, there is no way to impose real sanctions when the regulations are violated because it is entirely up to the “discretion” of the press companies. When it comes to broadcasting, there is Korea Communications Standards Committee, however there is nothing for the newspaper other than the non-binding Korean Press Ethics Committee. Thus, it is almost impossible to have practical measures to impose sanctions on misleading articles.

Suggested Recommendations

The State Party should:

- Publish the refugee report guidelines focusing on refugees, and actively supervise the compliance with the guidelines.
- Have plan to take practical measures to impose sanctions on racist comments and hate speech against refugees.

8. Remedies for racial discrimination

In its concluding observation on the 15 – 16th State Party report, the Committee on the Elimination of Racial Discrimination has urged the State Party to amend its Criminal Code to include racial discrimination as a crime and to adopt comprehensive legislation which criminalizes racial discrimination, provides for adequate punishments proportional to the gravity of the offence, considers racial discrimination as an aggravating circumstance and provides for reparations to the victims.

Paragraph 35 of the 17- 19th State Party Report, citing the 15 – 16th State Party Report, states that criminal acts based on racial discrimination, including hate crimes, were being punished as criminal offense through existing individual laws. The State Party also suggests that “defamation” (Criminal Code, Article 307) and “contempt” (Criminal Code, Article 311) could apply to incitement of racist acts.¹³⁹ However, since only defamation or insult of a specific victim constitute a crime, only a very small portion of racist acts is punishable under the above provisions. The State Party also stated that violence based on racial discrimination can be punished by existing provisions on various crimes and the court would consider the perpetrator’s racist motive in its sentence.¹⁴⁰ However, racist motives are not defined as weighting factors in the sentencing criteria¹⁴¹ of the Sentencing Commission.¹⁴²

¹³⁸ Nam Jae Il, Current Situation and Tasks for Journalism Ethics in Korea, Korea Press Foundation, 2006.12

¹³⁹ Paragraph 51 of the 15-16th State Party report

¹⁴⁰ Paragraph 51 of the 15-16th State Party report

¹⁴¹ The sentencing committee's sentencing criteria require the judge to state the reason for the sentence. Therefore the sentencing criteria shall not be violated without reasonable grounds.

Suggested Recommendation

The Civil Society recommends the State Party to:

- Define incitement of racism as a crime, stipulate violence based on racism as an aggravated crime, or define racist motive as weighting factors in the sentencing criteria of the Sentencing Commission.

Statistics on data such as complaints, prosecutions, and judgments concerning racial crimes

In its concluding observation on the 15 – 16th State Party report, the Committee on the Elimination of Racial Discrimination has requested the State party to undertake an in-depth analysis on the low number of complaints and to provide, in its next report, data and statistics on the number of cases of racial discrimination reported to the relevant authorities, the nationality of the complainants and their legal status, the percentage of investigations and prosecutions of those complaints and outcomes.

Paragraph 37 of the 17- 19th State Party report states that the statistics on crime in ROK are classified based on the name of the crime, and that not all crimes with foreigner victims are crimes based on racial discrimination, and that the State Party does not keep separate statistics on the crimes based on racial discrimination.

In order to identify the types and patterns of racial crimes and to establish appropriate preventive measures thereto, statistics on crimes based on racial discrimination should be provided.

Suggested Recommendation

The State Party should have mechanism to collect / analyze information and statistics on the number of cases of racial discrimination, the nationality and legal status of the accuser, the percentage of investigations and prosecutions of those complaints and outcomes.

Failure to implement the recommendation on compensation by the Committee on the Elimination of Racial Discrimination

In 2015, the Committee on the Elimination of Racial Discrimination found that it was a violation of the Convention to require HIV / AIDS tests only for foreign English teachers and recommended that the State Party abolish mandatory HIV/AIDS tests on foreign teachers and to provide adequate compensation to the complainant.¹⁴³

The mandatory HIV/AIDS test to the foreign teachers was abolished in 2017. However, the complainant has not yet received compensation from the State Party.

Suggested Recommendation

(<http://sc.scourt.go.kr/sc/krsc/criterion/standard/standard.jsp>)

¹⁴² http://sc.scourt.go.kr/sc/krsc/criterion/criterion_19/violence_01.jsp

¹⁴³ L.G. v. Republic of Korea, CERD/C/86/D/51/2012 Communication No. 51/2012

The Civil Society recommends the State Party to:

- In accordance with the recommendation of the Committee on the Elimination of Racial Discrimination, provide appropriate compensation for mental and economic damages to the victim of mandatory HIV / AIDS tests.
- Establish effective mechanisms to ensure the implementation of the recommendation of the Committee on the Elimination of Racial Discrimination.

Inadequate remedies by the judiciary

Judicial authorities in the ROK such as the Constitutional Court tend to comparatively easily accept justification of discrimination against foreigners. Two typical examples are as follows:

The Constitutional Court concluded that the Article 25 (3) of the ‘Act on Foreign Workers’ Employment, etc.’ which restricts the change of workplaces by migrant workers to 3 times, was constitutional.¹⁴⁴ It found that it was a legitimate restriction on the freedom of choice of workplace, on the grounds that it “intends to protect the employment opportunities of Korean nationals and to facilitate supply of workers to small and medium-sized businesses by efficiently managing the employment of foreign workers.”

In its concluding observations on the 15 – 16th State Party report, the Committee on the Elimination of Racial Discrimination recommended that the State Party amend the restrictions of the migrant workers’ ability to change their workplaces. As seen in detail above, due to restrictions on the change of workplace, even if there exists unfair labor practice such as delay in wage payment, unless the migrant worker can clearly prove such violation she is unable to change the workplace and thus placed in a situation where she is tied to the employer.¹⁴⁵

The Constitutional Court also ruled that Article 13 (3) of ‘the Act on Foreign Worker’s Employment, etc.’, which stipulates that Departure Guarantee Insurance (Insurance that guarantees severance pay by the employer for migrant workers) should be paid within 14 days after departure, is constitutional.¹⁴⁶ In general, the severance payment is supposed to be paid ‘within 14 days from termination of employment’. Therefore the fact that payment of the Departure Guarantee Insurance, which by nature is a form of severance payment, was delayed to after departure raised issues of violation of labor rights and right to equality.

The majority opinion of the Constitutional Court was that "even if the Departure Guarantee Insurance is by nature severance payment for the protection of the livelihood of workers after termination of employment, considering the various problems caused by illegal stay, to prevent illegal stay, it is inevitable to link the payment period with departure," and the discrimination was found to be legitimate because “it was based on the special status of foreign workers who entered the country by a work permit”. However, severance payment is for the protection of the livelihood of workers, and

¹⁴⁴ Constitutional Court Decision 2007HunMa1083, rendered on Sep 29, 2011.

¹⁴⁵ News 1 2018. 5. 27. "Employment Permit System- Modern Slavery Law. Migrant workers who are not protected by law" (<http://news1.kr/articles/?3327392>)

¹⁴⁶ Constitutional Court Decision 2014HunMa367, rendered on Mar 31, 2016.

livelihood, as the basis of human dignity is should not dependent on nationality, but be guaranteed universally for all human beings.¹⁴⁷

Suggested Recommendation

The Civil Society recommends the State Party to:

- Ensure that judicial authorities in ROK, including courts and the Constitutional Court, should judge cautiously and adhere to international human rights norms including the Convention on the Elimination of Racial Discrimination, when judging the legality of discrimination against foreigners. The legality of discrimination against foreigners should not be recognized simply on the basis of vague and abstract policy objectives.

IV. RACIAL DISCRIMINATION ON THE MEDIA

In its Concluding Observations on ROK government's 15th and 16th periodic reports, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) recommended that, in accordance with its general recommendations No. 7 (1985), No. 15 (1993), and No. 30 (2004), the State party monitor the media, Internet, and social network to identify those individuals or groups who disseminate ideas based on racial superiority or incite racial hatred against foreigners. The Committee also recommended that the State party prosecute and adequately punish the authors of such acts.

Having analyzed various forms of media in the Korean society since 2012, civil society organizations in Korea would like to share their findings as to whether the above mentioned recommendations have been implemented by the State party.

1. News media: Biased reports that incite racism with impunity

News reports that create the image of migrants as criminals (2012)

Case) The incident of sexual violence and murder of a woman by a man was reported as a crime committed by a Chinese of Korean descent, distortedly sensationalizing it as migrant crime. (The Oh Won-chun case)¹⁴⁸

The news media encouraged a portrayal of a migrant worker as a terrorist in order to support the enactment of the Anti-Terrorism Act.

Case from 2015) The media manipulated the news by portraying an Indonesian migrant worker as a terrorist without proper verification, based on the photo of an Islamic State (IS) flag posted on his social media page. He was later deported due to his undocumented status.

The media's misleading reports and fake news reports that incite anti-refugee sentiments.¹⁴⁹

¹⁴⁷ The opposing opinion by Constitutional Court judges Lee Jung-mi, Seo Gi-seok, Kim I-su on the case. Constitutional Court Decision 2014HunMa367, rendered on Mar 31 2016.

¹⁴⁸ http://news.chosun.com/site/data/html_dir/2012/04/27/2012042700262.html
http://news.chosun.com/site/data/html_dir/2012/04/05/2012040500207.html

Case) As the Yemeni refugees on the Jeju Island became an issue, news media produced misleading reports by citing foreign media reports that emphasize the criminal acts of refugees.¹⁵⁰

For the above mentioned reasons, we believe it is necessary to add specific provisions for preventing racial discrimination to the reporting guidelines. The said provisions should be implemented strongly in practice, and related trainings should be provided to journalists.

2. Broadcast media and films: Discriminatory racial hierarchy and class based racism

Although in 2015 the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance raised concerns about the racist implication of the media's use of the term "multicultural" to refer to a specific group of persons, the Korean media continues to use the term without any moderation. (Case: <Stories of Multicultural Mother and Daughter-in-Law>, a TV documentary series.¹⁵¹)

Racist TV programs, where values of racial and cultural diversity are not reflected, continue to be produced and aired. Whereas white people are featured as elites, marriage migrants and migrant workers from Asian countries and refugees are represented as recipients of social benefits or a group of troublemakers.

Case) <Stories of Multicultural Mother and Daughter-in-Law>¹⁵² VS <Love is not for Everyone>¹⁵³ / <3,000 Leagues in Search of Father>¹⁵⁴ VS <Welcome. Are You New to Korea?>¹⁵⁵ / <Abnormal Summit>¹⁵⁶ or <Extraterrestrial Communication>¹⁵⁷ (mainly featuring white elites from western or European countries)

Films with distorted messages that reinforce the criminal image of and incite prejudice against Chinese of Korean descent and their residential areas continue to be produced and aired. (Case: <Young Police>,¹⁵⁸ <Crime City>,¹⁵⁹ etc.)

¹⁴⁹ http://news.chosun.com/site/data/html_dir/2012/04/27/2012042700262.html

http://news.chosun.com/site/data/html_dir/2012/04/05/2012040500207.html

¹⁵⁰ <http://www.yonhapnews.co.kr/bulletin/2018/01/03/0200000000AKR20180103171100082.HTML>

<http://www.hani.co.kr/arti/international/europe/725048.html#csidx589d249fdaef8c2b7b90ab04b1169fb>

Hankyoreh headline (Feb. 20, 2016): "Germany in uproar over 'mass sex attacks by migrant men'... Refugee policy 'under fire'"

¹⁵¹ Mutuma Ruteere, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2015)

¹⁵² http://home.ebs.co.kr/gobu/main;jsessionid=nlasEjP3nWbj741bcMX4u0Iz9rmJ4wy1il4SWUULuxv61GVD0K6n84QyFZL7qGGQ.enswasb02_servlet_engine2

¹⁵³ <http://search.chosun.com/tvchosun/total.search?query=%EC%82%AC%EB%9E%91%EC%9D%80+%EC%95%84%EB%AC%B4%EB%82%98+%ED%95%98%EB%82%98>

¹⁵⁴ http://home.ebs.co.kr/finddad/main;jsessionid=8a11lpZwCj8l8WY5BZaTuI774jd5eUzMiAajqJmjN1KcCS7q0ZEhhDQj19ltnkkB.enswasb01_servlet_engine2

¹⁵⁵ <https://www.mbcplus.com/web/program/contentList.do?programInfoSeq=62>

¹⁵⁶ <http://tv.jtbc.joins.com/nonsummit>

¹⁵⁷ http://program.tving.com/tvn/globalviews/2/Contents/Html?h_seq=2

¹⁵⁸ www.dongponews.net/news/articleView.html?idxno=3489

¹⁵⁹ <http://news.donga.com/3/all/20170920/86430050/1#csidxee6eceb7735b69282da737ebad05ba4>

The Broadcast Law and the Rules on Broadcast Review should be revised with a full consideration of the above mentioned points, and the guidelines for broadcasting production should be followed in the production of films. And there is a need for a quota system that ensures racial and cultural diversity of cast members.

In addition, with regard to filmmaking, production guidelines that address racial stereotypes and negative images about specific migrant groups and their residential areas should be provided. In-house production staff and cast members should be made aware of these guidelines.

3. Internet and Social Media: Lack of regulation on web portals that disseminate videos with sexist and racist contents

Sanctions should be imposed on sexist and racist advertisements by international marriage agencies and others.¹⁶⁰

With the rapid growth of one-person media, it is necessary to have regulations about web platforms such as YouTube, Facebook, and Naver that spread sexist and racist videos. (Case: Evil Factory TV, <6 BEST Countries to Hook Up with Girls. Where’s Korea and Japan at??>, Feb. 20, 2018.)

For the above mentioned reasons, the State party should be requested to distribute production guidelines to the owners of these web portals for the purposes of preventing the dissemination of videos with sexist and racist contents, as well as establish codes of ethics for the production of videos and come up with preventive measures.

Suggested Recommendations

- The ROK government should be requested to revise the Broadcast Law and the Rules on Broadcast Review, and to come up with measures to proactively supervise or restrict the Internet and web portals created by individuals or groups. To bring about these changes in the Korean society, a strong recommendation should also be made to the ROK government to enact a comprehensive anti-discrimination law.

V. RACIAL DISCRIMINATION BY PARTICULAR RELIGIOUS GROUPS

1. Racially-Charged Opposition against Legislation of Comprehensive Anti-Discrimination Act (Government Report 32-33)

In its concluding observations in 2012, the Committee on the Elimination of Racial Discrimination (CERD/C/KOR/CO/15-16) urged the government of the Republic of Korea “to take immediate action on the finalization and adoption of the Discrimination Prohibition Act or other comprehensive legislation to prohibit racial discrimination, in line with article 4 of the Convention.”¹⁶¹ The other treaty bodies, including the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3,

¹⁶⁰ http://m.womennews.co.kr/news_detail.asp?num=143159#.W0s8gUxuI2x

¹⁶¹ UN Committee on the Elimination of Racial Discrimination(CERD), Concluding observations: Republic of Korea, CERD/C/KOR/CO/15-16, 2012, para.7.

E/C.12/KOR/CO/4) in 2009 and 2017, the Committee on the Rights of the Child (CRC/C/KOR/CO/3-4) in 2011, the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7) in 2012, and the UN Human Rights Committee (CCPR/C/KOR/CO/4) in 2015, have uniformly urged that the State take measures to adopt a comprehensive anti-discrimination law. The CESCR in 2017 made a special request that the government provide information on the implementation of the recommendations on non-discrimination legislation within 18 months.¹⁶²

The Anti-Discrimination Act bill was first introduced in 2007 by the Ministry of Justice as a legal basis for the national and local governments to regularly investigate the situations of discrimination, to establish national plan for elimination of discrimination, to raise awareness about the equality and discrimination in society, and to provide effective remedies for those who are victims of discrimination, including civil actions. Civil society has persistently demanded for legislation of a non-discrimination law, to enhance the effectiveness of relief, challenge the structural discrimination embedded in the hierarchical culture, and expand the scope of discrimination to include harassment and hate speech.

In 2007, however, the Ministry of Justice, facing a protest by some conservative Christians and others, removed “sexual orientation, medical history, national origin, language, family type and family situation, criminal history and protective disposition, educational background” from the prohibited grounds of discrimination under the bill. Such removal was criticized as an act of undermining the fundamental principle of the anti-discrimination law to ban all forms of discrimination.¹⁶³ Later, some legislative efforts were made by members of the National Assembly, including Rho Hoe-chan (2008), Park Eun-su (2011), Kwon Young-gil (2011), Kim Jae-yeon (2012), Kim Han-gil (2013), and Choi Won-sik (2013), but they were formally or *de facto* withdrawn upon the protest by some conservative Christian groups.¹⁶⁴

These conservative Christian groups have aggressively opposed the enactment of an Anti-Discrimination Act by propagating the messages of homophobia and Islamophobia, such as “Islam is a religion of terrorists” and “homosexuality is a sin” through various social media.¹⁶⁵ Some local churches are reported to have held “a united prayer rally to stop Islam, distributed a “prayer for eradication of Islam” and campaigned against the refugees¹⁶⁶ In the general election in April 2016, the Christian Liberal Party, a Christian-based political party pledging to promote “anti-gay,” “anti-Muslim,” and “opposition of anti-discrimination law,” won 2.64 percent.¹⁶⁷ The Election Commission has distributed their election material that contained such messages to all voters (see Figure 1 below).

¹⁶² UN Committee on Economic, Social and Cultural Rights(CESCR), Concluding observations: Republic of Korea, E/C.12/KOR/CO/4, 2017, para.74.

¹⁶³ "The anti-discrimination law discriminates against people." Hankyoreh 21. November 8, 2007.

¹⁶⁴ “Civic groups call for anti-discrimination act”, The Korea Herald, February 23, 2017.

¹⁶⁵ “Groundless rumors around Anti-Discrimination Act floating social media”, News & Joy. April 4, 2017; Se-Woong Koo, “South Korea's Enduring Racism”, New York Times, July 1, 2018.

¹⁶⁶ “Korean churches united for hatred, from anti-North to anti-Muslim”, The Hankyoreh, June 25, 2018.

¹⁶⁷ “4.13 general election, Christian Liberal Party won 2.64% but failed to advance into the National Assembly”, Nocut News, Apr 14, 2016; “Religion-affiliated parties want to 'protect' the country from Islam, homosexuality”, The Korea Herald, April 11, 2016.



Figure 1. Election Material for Christian Liberal Party Officially Distributed by Election Commission
 (Partial English translation added to the original Korean version)

Despite such propaganda of inciting racial hatred, governmental efforts to enact a comprehensive anti-discrimination law have been little to none. The top 100 national agenda that Moon Jae-in government announced in August 2017 did not include the enactment of an anti-discrimination law.¹⁶⁸ The 3rd National Action Plans for Human Rights announced by the Ministry of Justice in August 7, 2018 do include “the preparation of a plan to legislate a basic law regarding non-discrimination.” Though encouraging, however, the plans lack concrete measures and a roadmap to make the law actually enacted; instead, they take a conditional and reserved approach by referring to “a legislation that harmonizes the social and economic burden and the efficacy of non-discrimination.”¹⁶⁹ This raises concerns on the government’s will to realize equality.

Korean civil society has constantly demanded for the enactment of a comprehensive anti-discrimination law during the last decade. The United Nations Treaty Bodies and Human Rights Councils uniformly requested for the legislation since 2009. In fact, the opposition movements of the conservative Christian groups and individuals, which caused the 10 years of delay, more than clearly show that the legislation of a comprehensive anti-discrimination law is crucial and urgent. The government attempts to avoid its duties to promote equality and non-discrimination by requiring

¹⁶⁸ Government of Korea, The Top 100 National Agenda, 2017. http://www.pmo.go.kr/pmo/inform/inform01_02a.jsp.

¹⁶⁹ Government of Korea, The 3rd National Action Plans for Human Rights: 2018-2022. 2018.

“social consensus” as a precondition for the legislation. Meanwhile, the voice of inciting discrimination and the resulting divisions and conflicts are getting worse.

Suggested Recommendations

- The Republic of Korea shall, pursuant to Article 2 & 4 of the Convention, **immediately** set out and implement concrete measures to enact a comprehensive non-discrimination law without further delay, (1) to prohibit dissemination of racist ideas and any act of promoting or inciting racially-motivated discrimination and violence; (2) to end islamophobia and all forms of activities that invoke hostilities on the basis of country of origin or religion, (3) to take the principle of non-discrimination as the key value governing the State and establish and implement national policies for its realization, (4) to prevent racial discrimination and enhance inclusiveness of diversity through campaigns and educations to the general public, and (5) to provide effective remedies for the victims of racial or other discrimination, thereby bringing about systematic changes.

2. Abolition of Local Human Rights Ordinance due to Islamophobia Movements

The movement to abolish the human rights ordinance of local governments, led by Protestant groups, is also strongly underway at the level of metropolitan and basic units. For example, a bill to abolish the human rights ordinance of South Chungcheong Province was passed by the provincial assembly twice (February 2 and April 3, 2018). Currently, a lawsuit on the legitimacy of the abolition of the ordinance is ongoing at the Supreme Court.

Movements to abolish the human rights ordinance of South Chungcheong Province began in earnest in February 2017. A massive signature collection campaign was conducted by church groups which resulted in an unanticipated number of participants, nearly 80,000. At the time, the representative of petitioners who submitted the petition to abolish the human rights ordinance was a pastor and the chairperson of the Christian Council of Chungnam Province.

The groups for abolishment of the human rights ordinance insist that the ordinance will put the local community in jeopardy and spread AIDS, since it promotes Islam and support homosexuality. These groups use homophobic and Islamophobia expression in public areas such as streets and squares.

The movement to abolish the human rights ordinance utilized various channels, including posting banners, holding mass rallies of thousands, signing a petition to abolish the ordinance, and holding press conferences.

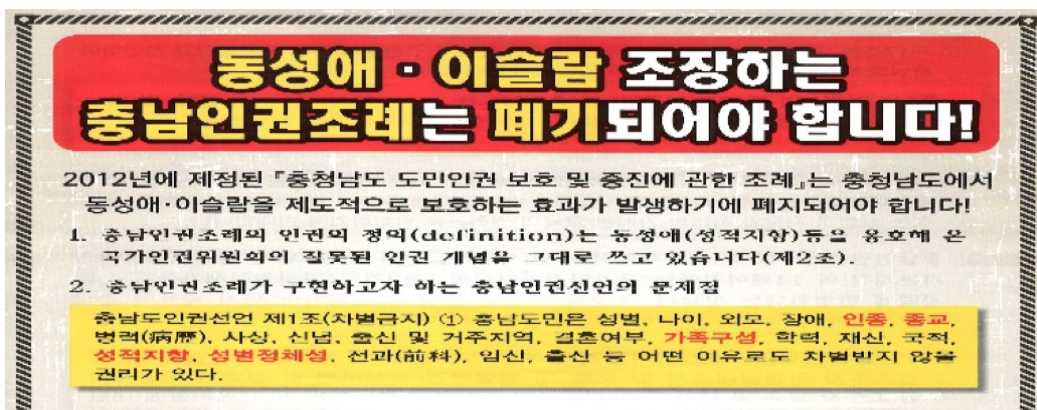


<banners installed in church towards the road and banners posted on the streets - The main culprit of AIDS! The main culprit on destroying families! Abolish the South Chungcheong Human Rights Ordinance which support homosexuality and promote Islam!>

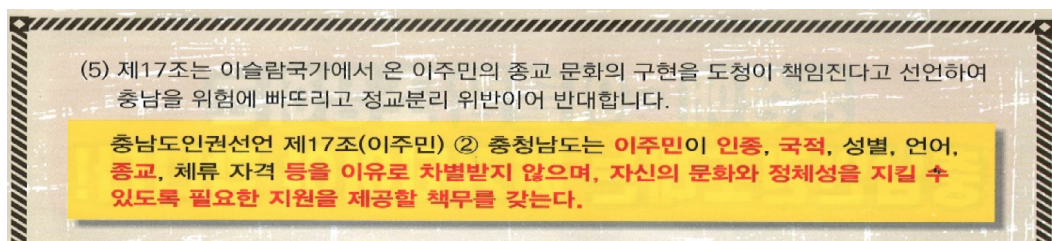


<Vehicle promoting the campaign to abolish human rights ordinance - The South Chungcheong Human Rights Ordinance promotes homosexuality and Islam! The wrong human rights ordinance that defends and promotes homosexuality should be abolished!>

The banners on the street were removed after several days because they were posted without government permission, but ones hung inside the church compound were posted for at least three months so that anyone passing by the street could see them. There was also no control over the wording on the vehicle, "Chungnam Human Rights Ordinance promotes homosexuality and Islam!"



<Front part of a leaflet distributed to the citizens at the rally demanding abolition of the human rights ordinance in South Chungcheong Province - The ordinance which encourages homosexuality and Islam should be abolished!>¹⁷⁰



<Backside of the leaflet - "We object to the ordinance as provincial government declaring to take responsibility to realize culture of migrants' religious culture from Islam countries, which jeopardize South Chungcheong and violate the separation of church and state.">

The insistent propaganda against the human rights ordinance from churches and streets is rooted upon, and encourages ‘islamophobia’ and discrimination against migrants. It’s also a church-led practice of severe racism.

There is no statement encouraging Islam in the ordinance. In accordance with the international human rights norms and the Korean law, the ordinance bans discrimination regardless of religions. The total number of Muslims in Korea is 150,000 including 30,000 to 40,000 Koreans. It’s a small size compared to other countries.

However, the South Korean government, including the police, has not taken any action to regulate expressions of hate. The government has made no effort, since the Committee on the Elimination of Racial Discrimination (CERD) urged it to amend its Criminal Code, to class racial discrimination as a crime and to adopt comprehensive legislation that provides for adequate punishments in 2012.

¹⁷⁰ On the list of the organizations that produced the leaflet, Protestant groups included are: ‘Asian Christian Association’, ‘Asan Christian Lay Believer Association’, and also groups that suddenly emerged such as ‘Citizen’s Solidarity for Healthy Society Chungnam branch’, and ‘Asan Headquarter against Homosexuality’.

Suggested Recommendations

- The Government of the Republic of Korea faces the urgent task of enacting strong legislations that prevent all forms of racism and racial discrimination from gaining any social justification for any reason.

VI. DISCRIMINATION BY CORPORATIONS AND OTHER BUSINESS ENTERPRISES

The State Report does not include specific information on punishment of racially motivated acts of crimes (para.35 CERD/C/KOR/17-19). Nevertheless, acts of racial discrimination occur on a daily basis, including acts by corporations and other business enterprises. Some prominent examples are as follow.

1. Discrimination in Employment

Case 1) A Korean-American was notified that she was not qualified to be an English teacher in school. Cited reason was that parents want ‘white teachers’ or ‘100% American teachers’ because they supposedly have better ability. The victim had lived since her teenage years and received education in the United States¹⁷¹.

Case 2) A Cambodian migrant worker was asked to work during Korean Thanksgiving holidays, which is one of the biggest holidays in Korea. Expecting over-time allowance, he worked during the holiday season but was not compensated for his overtime work. The employer simply stated that foreigner workers to work on holidays. When employees ask questions or raise issues, the employer threaten to send them “back to their country.”¹⁷²

2. Discrimination in relation to Goods and Services

Case3) Three women, a black African, white American and a Korean woman, went to a sauna. As they were heading for the pool, two Korean women blocked them and said, “The black can’t get into the tub.” Their Korean friend angrily asked why. The Korean women brought the manager, complaining that water in the tub would get dirty if the black woman entered the tub. The manager became angry at them, but they did not stop complaining. The manager told them they need to leave for their discriminatory acts, but there was no way to make them leave. The black woman, disheartened, decided to leave instead.¹⁷³

Case 4) An Indian male went to a pub with friends in Seoul on June 2017. A guard requested them to show ID cards. All of them complied, but the Indian male was not allowed to enter. The guard stated

¹⁷¹ Gyeonggi Institute of Research and Policy Development for Migrants’ Human Rights(GMHR), *Monitoring on Racial discrimination in Gyeonggi Province*, 2016, available at: <http://www.gmhr.or.kr/archive/view.php?idx=697&gotopage=&search=&find=>.

¹⁷² Chuan Moyse, *Monitoring on discrimination against Migrants*, 2017.

¹⁷³ Gyeonggi Institute of Research and Policy Development for Migrants’ Human Rights(GMHR), *Monitoring on Racial discrimination in Gyeonggi Province*, 2016, available at: <http://www.gmhr.or.kr/archive/view.php?idx=697&gotopage=&search=&find=>.

that “Indians are not allowed”. Pressed for a reason, the guard explained that “People from India, Pakistan, Mongolia, Kazakhstan, Saudi Arabia, and Egypt are all not allowed in.”¹⁷⁴

3. Discrimination in Private Educational Institutions

According to a monitoring conducted by Gyeonggi Institute of Research and Policy Development for Migrants’ Human Rights (GMHR) in 2017, approx. 30% of foreigner children were refused entrance to a nursery/kindergarten. The ratios of foreigner children who do not attend a nursery/kindergarten are 22.4%, much higher than that of nationals - 1.7%.

Case 5) A Pakistani mother informed a teacher in nursery that her child could not eat pork for religious reasons. But the teacher simply responded that “children should have well-balanced meal”, with no understanding of Islam religion. When the child played with other children in the playground, mothers stopped their children from playing with her, seemingly out of negative perceptions or fear of Muslims.¹⁷⁵

Case 6) A mother from Philippines wanted her child to attend a very popular Korean kindergarten in her district. But the principal told her “Sorry, we don't accept a half Korean kid (mixed-blood child) here. If we do, many Korean mothers would take their kids away from here”. Next day, her husband went to the kindergarten and met the principal, but only heard that “You are the Korean that is bringing down our country’s level.” Angered and shocked, the parents decided to leave Korea.¹⁷⁶

VII. HATE GROUPS, COMMUNITIES AND NETWORKS (GOVERNMENT REPORT 105 -109)

The internet has served as the fast and effective means to circulate discourses that promote racial discrimination against migrants and refugees. There are many Internet communities, though the size varies, including, for example, the “Anti-Multicultural Policies,” which opened in June 2008 with over 12,000 members, the “Solidarity for the Practice of Correct Understanding of Multiculturalism,” which opened in 2003 with over 900 members, the “Solidarity of Nationals for Love of Our Culture”, which calls for nationalism with over 300 members, the “the Citizens’ Alliance Against Jeju Refugees and Multicultural Policies,” and others.¹⁷⁷ Many internet sites have served as platforms to produce and use insulting remarks against foreign-born people, such as “Paquibulre (blending the word cockroach in Korean with Pakistani)”, “Ttongnama” (referring to Southeast Asian with prefix meaning excrement)”, “Jjajang”(meaning Chinese noodle as used to mock Chinese people).¹⁷⁸

Some frequently used contents of racism include “foreigners rape Korean women”, “Muslims conspire terrorism and Islamize Korea”, “Foreigners are criminals”, “Multicultural policies are to annihilate Korean people”, “Those who support multicultural policies are traitors,” and “Koreans First”, which are false or exaggerated statements and fake articles that encourage fear or slogans that

¹⁷⁴ Kim, Hyun-jung’s News Show, June 8 2017, available at <http://www.nocutnews.co.kr/news/4796109>

¹⁷⁵ Chuan Moyse, Monitoring on discrimination against Migrants, 2017

¹⁷⁶ Gyeonggi Institute of Research and Policy Development for Migrants’ Human Rights(GMHR), *Monitoring on Racial discrimination in Gyeonggi Province*, 2016, available at: <http://www.gmhr.or.kr/archive/view.php?id=697&gotopage=&search=&find=>.

¹⁷⁷ See Daum cafe (<http://cafe.daum.net/>)

¹⁷⁸ “Paquibulre, Jjajang... Xenophobia wiggles everywhere in Korea”, JTBC, March 31, 2015.

promote the ideas of racial superiority.¹⁷⁹ Such messages that stimulate xenophobia, racial hatred and nationalism are produced through the anti-migrant and anti-refugee groups and internet communities and circulated to the general public through SNS. Individuals' comments to news articles posted on portal sites such as Daum and Naver, regarding issues on immigrants and refugees, further reproduce racially-biased hate speech disguised as public opinion.

The hate groups and networks also encourage people's participation in offline activities such as anti-refugee rallies, anti-Muslim rallies, etc. and extend their influence to adversely affect national and local policies on migrants and refugees. Lee Jasmin, a former member of the National Assembly (with term of office 2012 to 2016), who is a marriage migrant, was severely attacked with racist name-calls and insults, which made reasonable debates impossible on bills that she proposed.¹⁸⁰ As shown from the advertisement entitled "The Suicide of the Republic of Korea" appeared on the daily Dong-A Ilbo on January 19, 2015 (see Figure 1), more than 20 groups have gathered and financed for their organized action to promote the ideas of superiority of Korean ethnics and justify and incite racial hatred and discrimination.

In the Republic of Korea, the severity, amount and extent of propagation of the ideas of superiority of Korean ethnics and incitement to racial hatred and discrimination, which are acts prohibited under Article 4 of the Convention, raise serious concerns. Especially, hate groups' persistent actions to encourage fear and exclusion of migrants and refugees are widely and repeatedly delivered to the public through the Internet media. The government's response, however, is narrow and scant.

Suggested Recommendations

The government of the Republic of Korea should

- (1) encourage all forms of online service providers, including Internet search engines & portals, participative web platforms, Internet access & service providers, on-line game providers, etc. to adopt non-discrimination policy and strengthen monitoring and self-regulation on racial hatred and discrimination;
- (2) fill the legal and institutional gap that fails prompt review and actions, such as removal of the posts that advocate and incite racial discrimination and violence;
- (3) provide adequate supports for the relief of victims;
- (4) Educate and publicize for all citizens to understand that dissemination of the ideas and theories of racial superiority and promotion and incitement of racial hatred and discrimination are against the international human rights and constitutional law, along with their harmful effects on the society, and encourage the citizens' participation in activities to monitor and challenge racism.

¹⁷⁹ "Imaginary enemies found by the frustrated ... Yemen refugees and exclusion," The Hankyoreh, June 26, 2018.

¹⁸⁰ "[Interview] Lee Jasmin, First Multicultural Congressperson, Leaves the National Assembly," Yunhap News, April 21, 2016; "How Jasmine Lee, One Of The Most Hated Women In Korea, Is Changing The Country", The Huffington Post Korea, 2015. 5. 7.

