For submission to the Committee against Torture

KOREAN NGO REPORT ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Republic of KOREA, THE 60TH SESSION

2017. 3. 20

Participating Organizations (63 Organizations)

Advocates for Public Interest Law (APIL), Catholic Human Rights Committee, Committee for the Truth Finding of the Brothers Home Incident, Cultural Action, Daegu Solidarity Against Disability Discrimination, Democratic Legal Studies Association, Durebang-My Sister's Place, GongGam Human Rights Law Foundation, International Child Rights Center, Joint Committee with Migrants in Korea (Bucheon Migrant Welfare Center, Global Love and Sharing, Migrant Health Association in Korea We_Friends, Women Migrants Human Rights Center of Korea, Seoul Migrant Workers Center, Asan Foreign Worker's Center, Solidarity for Asian Human Rights and Culture, Namyangju Migrant Welfare Center, The Association Migrant Workers Human Rights, Yongsan Nanum House, Yongin Migrant Worker Shelter, Uijeongbu EXODUS Migrant Center, Incheon Migrant Worker's Center, Chungbuk Migrant Support Center, Paju Migrant Worker Center Shalom House, Pocheon Nanum House / total: 16 organizations), Korea Women's Hot Line, MINBYUN-Lawyers for a Democratic Society, NHRCK-Watch, Rainbow Action against Sexual Minority Discrimination (Chingusai – Korean Gay Men's Human Rights Group, Christian Solidarity for a World without Discrimination (Chasegiyeon), Daegu Queer Culture Festival, Daejeon LGBTQ Human Rights Group Solongos, GongGam Human Rights Law Foundation, Gruteogi : 30+ Lesbian Community group, Korea Queer Culture Festival Organizing Committee, Korean Lawyers for Public Interest and Human Rights (KLPH), Korean Sexual-Minority Culture and Rights Center (KSCRC), Labor Party Sexual Politics Committee, Minority Rights Committee of the Green Party, Lesbian Counseling Center in South Korea, Lesbian Human Rights Group 'Byunnal' of Ewha Womans University, Lezpa : The Korean lesbian community radio group, LGBTQ Youth Crisis

Support Center : DDing Dong Network for Global Activism, QUV: Korean LGBTQ University Student Alliance, Rainbow Solidarity for LGBT Human Rights of Daegu, Sexual Minority Committee of the Justice Party, Sinnaneun Center: LGBT Culture, Arts & Human Rights Center, Social and Labor Committee of Jogye Order of Korean Buddhism, Solidarity for HIV/AIDS Human Rights: Nanuri+, Solidarity for LGBT Human Rights of Korea, Pinks: Solidarity for Sexually Minor Cultures & Human Rights, The Korean Society of Law and Policy on Sexual Orientation and Gender Identity, Unni network, Yeohaengja: Gender non-conforming people's community / total: 27 organizations and groups), Research Institute of the Differently Abled Person's Right in Korea, Solidarity for HIV/AIDS Human Rights : Nanuri+, South Korean NGOs Coalition for Law Enforcement Watch (Catholic Human Rights Committee, Dasan Human Rights Center, Democratic Legal Studies Association, Human Rights Movement Space 'Hwal', Korean Lawyers for Public Interest and Human Rights, Sarangbang Group for Human Rights / total: 6 organizations), Truth Foundation

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1. Definition of Torture and Revision of Criminal Law

1. There has been no legislation or amendment of laws that include punishment provisions to the act of torture defined in Article 1 of the Convention. The State continues to repeat its answers[1] from the previous reports that Article 124 (illegal arrest and confinement) and Article 125 (violence and cruel acts) of the Criminal Act and other special criminal laws criminalize and punish all aspects of torture.[2] According to this stance of the State, further actions are not necessary if the act of torture can be punished under any national law. This is absolutely contrary to the recommendations of the Committee and the request from the Convention that the punishment provisions should be designed to fully reflect grave nature of torture crime and the punishment should be proportional to the level of the seriousness of the torture crime.[3]

2. Article 124 and Article 125 of the Criminal Act are apparently insufficient to be regarded as the punishment provisions to torture crimes in accordance with Article 1 of the Convention. Firstly, the subject of offences under Articles 124 and 125 are limited to "a person who performs or assists in activities concerning judgment, prosecution, police, or other functions involving the restraint of the human body", which applies only to public officials from the legal or investigative institutions demand illegal arrests or detentions or commit violence or cruel acts. Secondly, those punishment provisions are sorely applicable when public officials "abuse his/her official authority (Article 124)" or "while in the performance of his/her duties (Article 125)" commit an act of violence or cruelty. These two conditions allow the act of torture irrelevant to the duty of public officials under de-facto detentions not to be punished by Articles 124 and 125. The general punishment provisions of the Criminal Act, the crimes of arrest, detention, violence, injuring and battery with assault, can only apply to these cases. For instance, Articles 124 and 125 are not effective when there was torture from public officials who do not have the right to investigate or when it was committed in no relation to investigations or trials. When detention staffs at correctional facilities commit the crime of torture to their detainees in particular, which is under the concept of crime under the Convention, Article 125 cannot be implemented due to the limitation of its application.[4]

3. According to Article 4 of the Convention, the grave nature of each offence should be considered when judging the level of the penalties. The statutory punishment under Article 124 of Criminal Act is "imprisonment for not more than seven years and suspension of qualifications for not more than ten years", and the one under Article 125 of Criminal Act is "imprisonment for not

[1] CAT/C/32/Add.1 Paras. 105-111; CAT/C/53/Add.2 Paras. 28, 100-101.

[2] CAT/C/KOR/3-5, para. 3..

[3] OH Byoungdu. (2008). Implementation of the Convention Against Torture at the National Level and its Criminal-substantive Issues, Democratic Jurisprudence 37. 185-190.

[4] Gwangju High Court 1992. 11. 21. 선고 92 초 43. If a general punishment provision of violence (Article 260-1) is applied to a torture crime by prison officers, the penalty is imprisonment not more than 2 years and the fine not more than 5 million.

more than five years and suspension of qualifications for not more than ten years".[5] Both cannot be regarded as the provisions that properly reflect grave nature of torture as a crime in terms of the statutory penalties. Firstly, the maximum period of imprisonment under Article 125 of the Criminal Act is the same amount as of the one under Article 123, abuse of authority of public officials, and the period of ceiling is also 5 years under Article 276 (False Arrest, Illegal Confinement, those on Lineal Ascendant), which is a general punishment provision, and Article 123 (Special Violence), which is applied when violence was committed with a dangerous weapon. Therefore, it is hard to consider Articles 124 and 125 of the Criminal Act guarantee appropriate punishment reflecting grave nature of torture. Secondly when it comes to the relation of Articles 124 and 125, the sentence under Article 125 is lighter than the one under Article 124. This does not refer to the severeness of grave nature of torture required under the Convention.

4. The State points out that the Special Subcommittee on the Amendment of Criminal Legislations, an advisory body to the Minister of Justice discussed the amendment of the Criminal Act and will examine whether Article 125 needs to be amended to reflect the definition of torture from the Convention.[6] It has been 8 years since the Special Subcommittee was established in 2009, and yet the content of the discussion regarding the amendment of the Criminal Act has never been known outside the Subcommittee and the actual progress of the discussion is impossible to know. What is very clear as a fact is that the Subcommittee has never consulted this issue regarding the appropriate amendment reflecting the definition of torture from the Convention with academics or human rights organizations.

2. National Security Act

5. The government argues that the National Security Act has a reason to exist in a special situation called a divided state like Korea, and also it is being strictly and carefully applied. However, the National Security Act has been extended and abused by the Lee Myung Bak administration in 2008 and the Park Geun-hye government from 2013. The number of people who were arrested in the National Security Act in 2008, which was 46 in the early days of the Lee Myung-bak administration, increased to 129 and the number of those arrested and prosecuted reached 70 in 2013 as Park Geun-hye government begins.

6. According to the Government, the National Security Act protects the liberal democracy of the ROK as it remains in a unique and confrontational state of division with the DPRK. Through strict interpretation and judicious application, the Government applies the National Security Act in conformity with the standards and intent of the Act. However, the National Security Act has been liberally interpreted and abused by the Lee Myung Bak Administration in 2008 and the Park Geun-hye Administration from 2013. Under Lee Myung Bak Administration, 46 people were

[5] If the victim was injured or killed by illegal arrest or detention o violence and cruel acts, aggravated punishment will be applied under Article 4-2 of Act on the Aggravated Punishment, etc. of Specific Economic Crimes.

[6] CAT/C/KOR/3-5, para. 4.

arrested under the National Security Act in 2008. Under Park Geun-hye Administration in 2013, this number increased to 129, and the number of those arrested and prosecuted reached 70.

7. There was one incident of arrest for having a meeting with DPRK in relation to the North-South Exchange and Cooperation Project, which was performed under the approval of the previous Administration's Ministry of Justice. And a photographer Park Jung-geun was arrested for re-twitting the contents of 'Our Nation' which is the media of DPRK.

8. In addition, the Supreme Court decided that the act of proposing a "revolutionary comrade" violated Article 7 of the National Security Act, which states as follows: "Only in a case where there is a clear danger of harming existence and safety of the State or fundamental order of liberal democracy shall this Act be applied (2014Do10978)." The Constitutional Court held that under the Constitutional Review of Article 7 of the National Security Act, liberal interpretation of the related clauses and judicious application of the Act was not arbitrary (2012Hun-Ba95). This is an example of the Government's failure to implement the recommendations of the Torture Prevention Committee's revision of the National Security Act.

9. The UN Special Rapporteur on Freedom of Expression recommended the abolition and revision of the National Security Act respectively during two visits in 1995 and 2011. The UN Commission on Human Rights and the Covenant on Human Rights also recommended such revision. Particularly the definition of Article 7 (Praise, Incitement, etc.), is vague and has a prior history of severe infringement on freedom of expression and idea. Therefore, it was recommended to be revised as top priority.

10. However, the Government has not made any efforts to revise nor abolish the National Security Act, and according to the Supreme Prosecutor's Office's 2016 data, the number of people arrested for the past five years was 118.

	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of people who are investigated	46	57	97	90	112	129	57	79	43
Number of people who are criminal detained	16	18	32	19	26	38	7	26	21
Number of people who are indicted and tried	27	34	43	39	59	70	34	50	27

11. 2011. 8. 23. In the so-called 'Wangjaesan case', the Court sentenced five people to 1 to 7 years in prison under the National Security Act for contacting North Korean personnel, conducting espionage activities and establishing an anti-state organization. At that time, various inhumane treatments were reported during the investigation process.

12. There was also a case of infringement on the right to remain silent during investigations. During the NIS investigation, out of retaliation of being silent during investigation, the 5 suspects were restricted from having the family access. Confession was obtained illegally by verbal abuse, insult, and threat by the investigator. Although the suspects refused to be investigated by the NIS, they were dragged out of the detention center.

13. In addition, Shin Eun-mi, a Korean-American, was investigated and eventually deported for violating the Article 7 (Praise, incitement, etc.) of the National Security Act for stating "I want to help the youth of the DPRK by opening a youth center in the DPRK" during a lecture after travelling to the DPRK.

14. Likewise, still many people have been imprisoned, deported, and suffered from inhumane acts by government applying the National Security Act. The Act itself is an evil act that suppresses freedom of thought and undermines the freedom of expression, so that it should be completely abolished including Article 7 of the Act so as not to be abused politically anymore.

15. Where political legitimacy is an essential qualification for continuation of the Act, any abuse of power or act of misfeasance erodes legitimacy. Through the National Security Act, the Government committed inhumane acts by illegal imprisonment and deportation. The National Security Act, along with the Article 7, should be completely abolished as it suppresses the fundamental right to thought and expression.

3. Detention and Correctional Facilities

16. N/A

4. Hotline Center

17. The government has pled that 'Hotline Center' is a so-called 'self-control center' of the Ministry of Justice where it can investigate all kinds of ongoing human rights violations committed by its employees. [7]

18. But between 2008 and 2013, 38 cases have been reported to the Hotline center run by the district prosecutor's office and there are only 7 cases per year in average. The top 5 district

[7] CAT/C/KOR/3-5, para. 15

prosecutor's offices that handle the most cases in Korea (such as Seoul central, Seoul southern, Seoul western, Busan and Daegu district prosecutor's office) have never been reported. [8] And the circumstances have not changed since. (2014-6 cases, 2015 - 0 case and 2016 until June- 3 cases were reported.)[9]

19. Nevertheless, during the same period (2008-2013), 834 cases (concerning the district prosecutor's office) have been reported to the other center run by the National Human Rights Commission. [10]It is 21 times higher than the cases that are reported to the Hotline center.

20. It shows that it is neither practical nor easy for someone whose human rights are violated by the district prosecutor, to go to the Hotline center which is located in the "same" building as the district prosecutor's office and report.

21. Therefore, the government should not exaggerate and publicize its human right protection program when it is obvious that the Hotline center is considered to be nominal between the victims.

5. Interrogation of Criminal Suspect and Right to Counsel

22. Legal Issues

Relevant Laws

Criminal Procedure Act Article 243-2 Defense Counsel's Participation

① Upon receiving an application from a criminal suspect, his/her defense counsel, legal representative, spouse, lineal relative, or sibling, a prosecutor or a senior judicial police officer shall allow the defense counsel to have an interview with the suspect or shall allow the defense counsel to participate in the interrogation of the suspect, unless there is good cause.

23. Enforcement Decree of the Act on the Performance of Duties by Special Judicial Police Officers (Defense Counsel's Participation)

① Special judicial police officers shall allow defense counsel to participate interrogation of suspect specified under the Criminal Procedural Act Article 243 section 2-1 to participate

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[8] (KR) 「2013 parliamentary inspection of the administration - Hotline center run by the district prosecutor's office handle 38 cases for 6 years」, Newstomato, 31 Oct 2013 http://www.newstomato.com/ReadNews.aspx?no=414146

[9] (KR) 「Jintae Kim – the district prosecutor's office hot line center handles 0 case last year」, 4 Oct 2016, Yonhap News, http://www.yonhapnews.co.kr/bulletin/2016/10/04/0200000000AKR20161004027800004.HTML?input=1195m

[10] (KR) 「The district prosecutor's office uses its nominal hot line center to advertise its human rights advocacy」, 31 Oct 2013, Law issue, http://www.lawissue.co.kr/view.php?ud=20131031184849001578l_12

unless there are good causes. Good causes may include obstruction of interrogation, revealing of investigative secret, etc. caused by defense counsel which could lead to adversely affect the investigation.

② When there is a request from a suspect under the section 1, special judicial police should guide the applicant to submit written statement regarding the appointment of counsel prior to the counsel's participation.

③ Although the suspect applied under the section 1, special judicial police officer can interrogate the suspect without defense counsel's participation if the counsel failed to attend after substantial period of time had passed or unable to attend.

④ Special judicial police could restrict the defense counsel's participation when one of the following causes occur by the counsel's participation and it leads to obstruction of interrogation or revealing of investigative secret, etc.

1) The counsel unreasonably interferes with the interrogation or insults during the interrogation; 2) The counsel leads the suspect's particular response, reversal of the statement, or the counsel responses on half of the suspect; 3) The counsel unfairly raise objection against Criminal Procedure Act Article 243-2 Section 3; 4) The counsel films, records, or documents the interrogation content except the counsel takes notes to recall the content for the purpose of providing legal advice.

24. Legal Issues

Issue regarding 'a good cause' in Criminal Procedure Act Article 243-2 Section 1

25. There is a possibility that right to counsel may not be fully guaranteed since 'a good cause' leaves room for arbitrary decision of prosecutors or judicial police officers.

26. Problems of Article 18 Section 2 of Enforcement Decree of the Act on the Performance of Duties by Special Judicial Police Officers

Section 1

27. It is highly likely that the suspect would not be able to be guaranteed his or her right to counsel due to arbitrary decision of judicial police under 'obstruction of interrogation' clause and possibility of judicial officer's arbitrary decision in determining scope and forms 'investigative secret' under the 'revealing of investigative secret' clause.

Section 4

28. Assuming that right to counsel is guaranteed for a suspect to assure he or she could defense against unfair interrogation, section 4 degrades right to counsel to a mere formality and makes impossible to guarantee right to defense though the suspect's right to counsel.

29. Cases

30. Right to Counsel at Joint Interrogation Center (Case of 12 North Korean restaurant defectors)

31. Facts: After 12 North Korean female restaurant employee defectors were detained at National Intelligence Service's Protection Center for North Korean Defectors on April 7, 2016, every external communications including counsels' request to interview, delivery of documents which contains legal rights were denied. NIS did not recognize their right to counsel claiming that they voluntarily entered the country. The defense counsels filed a writ of habeas corpus, but the Court dismissed the case.[11]

32. According to the ROK government report's response no. 20, it stated that "National Intelligence Service Act specifies that any person who infringes on the rights of the suspect, defense attorney, or other persons concerned shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding ten million won." However, NIS has been denying the defectors' right to counsel without any justifiable grounds.

33. Illegal Arrest of Counsels at Ssangyong Motor's Union Strike

34. Facts: Attorney Young-guk Kwon was arrested for obstruction of justice at the Ssangyong Motor's union strike when he requested to have access to the arrested 6 union workers in June 2009. Attorney Kwon filed a law suit against the police officer for abuse of official authority and interference with exercise of a right, but the prosecutor's office sought not guilty for the police officer.[12]

35. The police officer who illegally arrested attorney Young-kuk Kwon testified at trial that 'I arrested Attorney Kwon according to my own decision'. Attorney Kwon testified that 'I requested the police officer to explain reasons for arrest and to guarantee right to counsel, but the requests were denied.' This confirms that there was a violation of right to counsel by a police officer.[13]

36. The case affirms there is a possibility that the right to counsel could be violated by police officer's arbitrary decision.

37. Issue regarding CCTV installation in detention center's interview room

38. Facts: The complaint was detained at Seoul detention center since January 2, 2015 after arrested for fraud on December 27, 2014. When the complaint was having an interview with his public defense attorney on February 9, 2015 at Seoul detention center's interview room, the room had CCTV installed. An officer at the detention center took an envelope from the complaint's counsel which was addressed to the complaint from his counsel. The officer recorded the subject line of the envelope's contents at the center's list of litigation related documents, and then he returned

[11] http://www.reuters.com/article/us-northkorea-southkorea-defectors-idUSKCN0Z60VN

[12] http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=102&oid=001&aid=0006080390

[13] http://www.newsis.com/ar_detail/view.html/?ar_id=NISX20131017_0012442132&cID=10203&pID=10200

the envelope to the counsel. The complaint filed a petition to the Constitutional Court on March 9, 2015 that the fact his interview with the counsel was monitored by CCTV at the center although the complaint hadn't been convicted yet, the officer opened the counsel's envelope, and recorded the subject line of the envelope's contents constitutes violations of his right to counsel.

39. The Constitutional Court held installation of CCTV at the interview room constitutional and stated in its rationale that "CCTV at the interview room is necessary to prevent exchange of prohibited items or violence, etc. Security monitoring by CCTV is a mere substitution of monitoring by the officers' naked eyes, hence the purpose of CCTV installation is legitimate and the method is also appropriate. CCTV monitoring neither interferes with communications with the counsel nor infringes the confidentiality of the interview content because CCTV installed at the interview room only live streams and does not record or receive any audio signals. The CCTV also does not have zoom-in function and its footage is divided into 16 screens in a 19-inch monitor."

40. The decision is disputable since right to counsel can be only guaranteed without investigative agency's monitoring or unfair restriction. Right to counsel is not guaranteed by providing a mere interview space or opportunity.

6. Independence of the Judiciary and Judges' Tenure

41. It is a mere change of a system to change current judge's term system which is an appointment from Chief Justice of the Supreme Court with the consent of the Supreme Court Justices' Council to undergoing the justice personnel committee with the consent of the Supreme Court Justices' Council, then serving consecutive terms by decision of the Chief Justice of the Supreme Court. This changed system is irrelevant to guarantee the judges' tenure. A judge's term is 10 year and he or she could serve consecutive terms.[14] It is customary for a judge to retire when the judge failed to get promoted to a Higher Court.[15] As long as there are multilevel promotions and a customary retirement of a judge who didn't get promoted, judges' tenure would not be guaranteed.

42. The Court dismissed the prosecutor's request for an arrest warrant of Samsung's Vice President, Jae-yong Lee on January 19, 2017. Regarding the dismissal, Justice Sung-an Cha at Jeonju District Court posted an article on the court intranet, 'Proposed system reform to win judicial reliability over the controversial dismissal of Jae-yong Lee's arrest warrant'. The article pointed out that judges at the Corruption Division Court tend to be self-censored when they deliver the decision because the judges are getting closer to the promotions for senior judge positions.[16] Hence, the

[14] Court Organization Act, Article 45 Section 3

[15] Heong-soo Moon, Attorney at Law, Roadmap to democratic judicial reform (3) Harmful effect of multilevel promotion system, Pressian, 2006. 10.1., http://www.pressian.com/news/article.html?no=33417

[16] Sung-an Cha, Recommendation of an incumbent judge over Jae-yong Lee's arrest warrant controversy, SisaIN, 2017.2.16.

multilevel promotion system causes serious problems, for example, it might interfere with independent decision of human resources personnel in addition to having an adverse effect on the guarantee of judge's tenure.

43. National Intelligence Service (NIS) participated in a job interview for experienced judgeship positions and NIS asked questions regarding Sewol ferry accident and opinions on labour unions to screen the applicants' political ideology in 2013 and 2014.[17] Also, the deceased Senior Secretary to the President, Young-han Koh's journal revealed that the Blue House was surveilling the judiciary branch. The journal contained several phrases, such as 'Sang-Ok Park', 'Proceed with the Supreme Court Justice recommendation committee', 'Seems to be on going according to Ministry of Justice's scenario'. Right after such phases were appeared in the journal, Sang-ok Park, then President of Korean Institute of Criminology, was appointed as a Supreme Court Justice. Also, there were other sentences, for example, 'employ appropriate measures to control, Chief justice of Gang-chul Hong case is the key, mention that the Court is responsible for national security too,' after Gang-chul Hong was found not guilty for violation of National Security Law.[18] These are the evidence of the Park's administration's deliberate infringement on the independence of the Judicial branch.

44. On the other hand, the administration argues that it has secured impartiality of personnel and disciplinary action related process since Court Organization Act and Discipline of Judges Act have regulations on outside committee members at the Judicial Appointment Committee and Judicial Disciplinary Committee.[19] However, the impartiality of personnel and disciplinary decisions are still questionable because the above mentioned regulations require the outside committee members to be 'attorney, professor of law, or person with substantial knowledge and experience',[20] and it is customary for retired judges to become attorneys or law professors in Korea. For this reason, lack of diversity in the Committees' outside committee members cause limitation in rendering fair decisions.

7. Emergency Arrest

45. Despite the 2007 Criminal Procedure Act reform, the emergency arrest process is still being abused as emergency arrests were made with suspects with no probable causes. Arrest with warrant is an investigative proceeding when law enforcement agency has a probable cause to temporarily take freedom of a person prior to the detainment of the suspect. Contrarily, emergency arrest does not require a warrant. (Criminal Procedure Act, Article 200, Section 3). The ROK Constitution (Article 12, Section 3) declares as a basic principle that arrest should made

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(SisaIN posted Judge Sung-an Cha's writing) http://www.sisain.co.kr/?mod=news&act=articleView&idxno=28432

[17] Statement of Seoul Bar Association, 2015.5.27.

[18] http://www.hani.co.kr/arti/society/society_general/774436.html#csidx634f09d5d2de5b2b622179be4c8fde4 Hankyoreh daily news, 2016.12.13

[19] CAT/C/KOR/3-5, para. 29, 30.

[20] Court Organization Act, Article 25-2 Section 4, Discipline of Judges Act, Article 5 Section 1.

with warrant. However, the statistics shows that the number of emergency arrest was largely outnumbered arrest with warrant. This is problematic that emergency arrest procedure is being abused where emergency arrest should be made in only exceptional cases.[21]

46. Furthermore, most suspects who were made with emergency arrest tend to be released without charges. After the 2007 reform, the rate of not applying for an arrest warrant after emergency arrest warrant was made was between 18%~21% (18% in 2008, 21% in 2009, and 18% in 2010).[22] According to the Criminal Procedure Article 217 Section 1, the law enforcement agency could search and seizure of a suspect who was made with emergency warrant within 24 hours of the arrest without a search warrant if deemed necessary. Law enforcement agency tend to make emergency arrest without probable cause under this regulation, then release the suspect if they were not able further find causes to charge the suspect. According to the statistics provided by Won-sic Choi, member of ROK National Assembly, the release rate after emergency rate of prosecutor's office is also as high as 13%~22%. Current emergency arrest system needs to be improved as investigative law enforcement agencies arbitrarily make emergency arrests and there is no outside control over the process.

	The number of arrestment	The number of not applying for an arrest warrant	The number of warrant requested	The number of warrant issued	Issue Rate (%)
2008	13,654	2,482(18%)	11,172	9,537	85%
2009	14,730	3,126(21%)	11,604	9,673	83%
2010	10,308	1,883(18%)	8,425	7,046	84%
2011	8,184	1,501(18%)	6,683	5,599	84%
2012	8,178	1,761(21%)	6,417	5,335	83%

Polices request and issuance for a warrant of custody after emergency arrest

[21] In 2013, only 13,482 cases were arrested with warrant, while those arrested without a warrant reached 98,778., Presidential Committee on Judicial Reform, Reports on Arrest, 113.

[22] Request and issuance for a warrant of custody after emergency arrest, National Police Agency (A Study on Current State and Improvement approaches of warrant system, National Human Rights Commission of Korea, 2013).

year	The number of emergency arrests	The number of released	The rate of release (%)
2008	456	102	22.4
2009	505	149	29.5
2010	406	62	15.3
2011	367	60	16.3
2012 August	198	27	13.6

※ The number of released = the number of cases including not applying for an arrest warrant after emergency arrest + dismissal of warrant request by judge + released after review on legality of custody

Current status of the released after emergency arrest [※state administration inspection on 2012, Provided by Won-sic Choi, member of ROK National Assembly]

8. Torture and Confession

47. Jung-hoon Lee and Sang-yeol Han, who were sentenced and released from prison for violation of National Security Law, filed a law suit against Ministry of Justice to cancel their renewal of security surveillance. The Court ruled for the complaint, and stated in its opinion that "there should be sufficient evidence that the person in question is likely to commit the same crime to issue or renew security surveillance order".[23] The government argues that the current Security Surveillance Act is strictly applied to the least according to the decision of security surveillance disposition review board. However, it is still customary to renew the security surveillance order without examining possibility of commitment of the same crime.

48. Security Surveillance Act only states that the surveillance order can be renewed and is silent on the number and period of the renewal.[24] This allows an absolute indefinite surveillance in effect. For example, a person in question could be subject to the security surveillance until his or her death if the order is renewed every 2 years. Security Surveillance Act is unreasonable and should be repealed. If repeal of the Act is not possible, the Act should specify the surveillance period to minimize violations of the subject's freedom of conscience, freedom of movement, freedom of travel, and right of privacy.

9. Marital Rape and Domestic Violence

Establishing Marital Rape as a Criminal Offense

[23] Supreme Court Decision 2016Du34929 delivered on August 24, 2016. 'Revocation of decision of renewing period of security surveillance disposition' etc.,

[24] Security Surveillance Act, Article 16 Section 1

49. In the periodic reports, the government of the Republic of Korea (hereinafter "the Government") argued that the Committee should reconsider its recommendation on this issue because (a) no clauses in the criminal law explicitly prevents spouses from defined as a victim of rape and (b) there is a case in which the Supreme Court recognized marital rape. However, in that case, the defendant was found guilty only because the marriage had come to a *de facto* end and his actions included grave assault, intimidation, and the use of a weapon. Moreover, the ruling stresses that rape cases must be tried under the premise that "state intervention into a married couple's sex life must be limited to a minimum in order to protect the family." Taking into consideration that the Act of Special Cases Concerning the Punishment, Etc. Of Crimes of Domestic Violence has a tendency to order protective disposition rather than impose criminal punishment for perpetrators of domestic violence crimes, this shows that the judiciary is reluctant to penalize spousal sexual violence, including marital rape, unlike other types of sexual violence.

50. A thorough examination on whether marital rape is clearly punished within the current criminal law system is required in order to determine whether amending the Criminal Act is necessary to establish marital rape as a criminal offense However, the Government statistics on sexual violence does not collect or classify cases in which the victim and the perpetrators are spouses, nor does it offer cross-analysis according to the gender of the victims and perpetrators. This is a problem prevalent in other criminal statistics, revealing that the Government does not take spousal abuse seriously as a criminal offense and gendered violence. It is imperative that the Committee demand the Government to submit gender-disaggregated data that reveals the status of criminal punishment on spousal abuse perpetrators, including marital rape, for the last five years.

Problems in Handling Domestic Violence Crimes

51. The indictment rate on domestic violence cases continues to fall, from 15% in 2013 to 13.3% in 2014 and 8.5% in 2015.[25] In other words, domestic violence crimes remain virtually unpunished. As the Prosecutors' Office Guideline on the Suspension of Indictment on Condition of Counseling makes habitual offenders and possible repeat offenders eligible for suspension of indictment on condition of counseling, even serious cases that warrant criminal punishment often end up unprosecuted. As for "home protection cases" (i.e. when a victim of domestic violence wants legal intervention without having the abuser prosecuted, the case may be deemed a home protection case and tried in family court instead of criminal court), many of these end up not being disposed, and in the majority of cases that do receive protective disposition end up referring the offender to counseling centers, with few measures taken to protect the victim[26].

[25] Table 3: The Status of Processing Domestic Violence Reports, Appendix, Periodic Report

[26] In the last three years (2013-2015), 11,947 (38.3%) of the 31,153 domestic violence offenders whose cases were tried as home protection were not disposed. Among the 18,218 offenders who were subjected to protective disposition, 31.4% (5,713) were referred to counseling centers and 16% (2,920) were ordered to do community services and/or take classes at

52. For instance, an analysis on the perpetrators of domestic violence who had received probation or suspension of indictment on condition of undergoing counseling in 2011, conducted by the Korea Legal Aid Center for Family Relations, found that 25.5% of these individuals had used weapons such as knives, scissors, and axes[27]; there was even a case when an abuser, whose case was deemed a home protection case and who had undergone five months of counseling, assaulted his wife to death right after the day he had a counseling session[28]. Time and again victims' lives and safety come under threat. There are instances where counseling centers that serve victims are commissioned to run correction and treatment programs for abusers, as well as cases of divorce courts forcing victims to meet the abuser instead of separating them by ordering marriage counseling or granting child visitation rights to the abuser[29].

Selective Assistance for Victims of Violence against Women (VAW) and the Violation of Their Information Rights

53. To guarantee the safety of victims of VAW such as domestic violence, sexual violence, and prostitution, protecting their personal information must be a priority. However, the Government accumulates the personal information of victims of VAW crimes in a computer network database called the Social Security Information System (SSIS)[30], citing the necessity for efficient welfare administration and the prevention of overlaps and/or frauds in receiving welfare benefits, and uses it to conduct means tests and provide selective assistance. This puts domestic violence victims at a particular disadvantage, for even those with property to their own name have difficulty exercising their property rights because their assets are usually seized and used by their abusers and they need to avoid detection.

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the Attendance Center, while only 1.61% (293) were denied access to victims (including access through telecommunication) and a mere 0.02% (3) received restrictions on exercising their parental authority. Source: Legal Yearbooks 2014-2016, National Court Administration.

[27] Yonhap News, April 10, 2012.

[28] Nocut News, June 7, 2016.

[29] [Case 1] The victim, who had suffered persistent abuse — including assaults and intimidation with weapons — from her husband during her 14-year marriage, escaped to a shelter and filed for divorce. In spite of the domestic violence, the divorce court ordered 10 sessions of marriage counseling. Under the circumstance, when the abusive husband made an offer to the victim that he would agree to the divorce if she "came home for just one day with the children," she accepted. The next morning (May 4, 2013), she was strangled to death by her abuser.

[Case 2] On December 7, 2015, a woman who was four months pregnant and her six-year-old child was abducted and murdered by the woman's ex-husband and abuser, who came to see them on the pretext of visitation rights.

[30] The Social Security Information System (SSIS, aka *Haengbok-eeum*) is a government administration system that screens a potential welfare beneficiary for their income and assets and tracks each individual's and household's history of receiving welfare benefits. Civil servants in local governments use the system to handle applications for welfare services, survey the applicant's property, determine the applicant's eligibility, pay benefits, and provide follow-up services. It is connected to 16 thousand social service and childcare facilities, and serves 12 million people. As of October 2013, it is estimated that 230 thousand civil servants log on to the system annually and an average of 25 thousand log on each month. The *Haengbok-eeum* is linked to a pan-government social security information system, and all government ministries and departments (total 22 ministries and departments) and affiliated organizations (52 organizations) share the information in it.

54. Nevertheless, the Government conducts means tests on those who enter shelters for domestic violence victims, classifying them as either institutionalized beneficiaries or non-beneficiaries, providing selective assistance for the former group and creating difficulties in supporting victims; for instance, those deemed as non-beneficiaries are not eligible for Medical Aid (a public health care program specifically designed for the poor)[31]. In spite of the serious leakage and mismanagement of personal information in SSIS[32], the Government is accelerating efforts to extend its reaches and build a comprehensive government subsidy management system (aka *e-Naradoum*) that would integrate all information regarding the execution of government subsidy programs, including assistance programs for VAW victims, thereby attempting further to violate the information rights of crime victims.

10. Data on complaints, investigations, prosecutions, convictions and sentences imposed relating to the number of women and children trafficked

Children

55. According to the 2016 Prosecution Yearbook published by the Supreme Prosecutor's Office, the number of cases for which trafficking was reported were 195. 49.7% of those victims were below the age of 15. When trafficking victims below the age of 20 are added to the estimates, the percentage of victims in this age group ranges to 68%. The number of cases involving violations of the Act on the Protection of Children and Juveniles Against Sexual Abuse (including prostitution) was 336. 45.25% of those victims were below the age of 15 and 65.78% were below the age of 20. This represents a relatively high proportion of young children being exposed to human trafficking and prostitution.

[31] While a beneficiary needs only to bring her Medical Aid card, a non-beneficiary, who cannot use her default National Health Insurance for fear of being tracked, has to spend 40,000~50,000KRW (approx. 35~44USD) for each treatment session, which actually results in a waste of national budget. Also, shelters with insufficient medical budget face difficulty in providing adequate medical assistance.

[32] There are a total of 10,402 suspected cases of accessing and browsing personal information on SSIS illicitly from 2012 to September 2014. There were 2,056 cases of illicit access to personal information uncovered in the last four years (2012~2015) by local governments, but 81.1% of these cases ended with the offender merely receiving written and/or oral warnings. Source: reports submitted to the annual Parliamentary Inspection of Government Office in 2014 and 2016.

<2016 Crime Statistics, Supreme Prosecutors' Office>

		≤ 6	≤ 12	≤ 15	≤ 20	> 20	unidentified	subtotal	Total
Trafficking	male	15 (7.69%)	17 (8.72%)	3 (1.54%)	6 (3.08%)	16 (8.21%)	-	57 (29.23%)	195 (100.0%)
Kidnapping and Abduction	Female	19 (9.74%)	22 (11.28%)	21 (10.77%)	29 (14.87%)	41 (21.03%)	-	132 (67.69%)	195 (100.0%)
Kidnapping and Abduction	unidentified	6 (3.08%)							195 (100.0%)
Act on the protection of children and juveniles against sexual abuse (including prostitution)	male	-	-	2 (0.60%)	2 (0.60%)	2 (0.60%)	17 (5.06%)	23 (6.85%)	336 (100.0%)
Act on the protection of children and juvenile against sexual abuse (including prostitution)	Female	-	7 (2.08%)	143 (42.56%)	67 (19.94%)	-	-	217 (64.58%)	336 (100.0%)
Act on the protection of children and juvenile against sexual abuse (including prostitution)	unidentified	113 (33.63%)							336 (100.0%)

56. In 2016, the National Human Rights Commission of Korea launched a survey on 103 trafficking victims under the age of 19. The Survey asked what age the survivor was at the time of their first prostitution. 66% of the respondents were minors, below the age of 16. 51.5% of trafficking survivors answered that they were investigated by law enforcement. Among the latter group,

63.6% were children aged 13-14. This number could potentially be bigger as the survey respondents were recruited from organizations that support victims from human trafficking. According to a research conducted by the Policy Forum on Children and Women's Rights (consisted by members of the National Assembly), it was reported that 1,745 adolescents were involved in prostitution in 2006. This figure rose to 4,457 in 2012, which is 2.55 times increased. 78% of the respondents reported using the internet and smart phones to initiate their first prostitution experience.

57. Citing the "2016 Trafficking in Persons Report- Republic of Korea," published by the US Department of State, "South Korean children are vulnerable to sex trafficking and commercial sexual exploitation through online recruitment. In need of money for living expenses and shelter, some runaway girls are subjected to sex trafficking." Using apps as tools for easier access to prostitution, children become more vulnerable to the sale of children and prostitution from an early age.

58. The 3rd-4th Concluding Observations published by the Committee on the Rights of the Child specified that "The Committee strongly encourages the State Party to establish a coherent system to comprehensively collect disaggregated data covering all areas of the Convention." Despite the growing reality of trafficking, one of the biggest knowledge gaps lies in the area of data collection, which needs further improvement for a better analysis.

Trafficking of Migrant Women

59. The Foreign Women Support Center (FWSC) assisted with filing complaint and prosecuting of 80-85 cases (approximately 121 victims) from 2009 to 2016. There has been no prosecution or conviction of human trafficking, and only 10 cases were convicted for procurement of prostitution, sexual molestation, rape and violation of the Immigration Act and etc.

60. Among those cases that the FWSC supported the following resulted in conviction of prostitution under the Act on the Prevention of Sex Trafficking and Protection for Victims: case no. 2011 Godan 6, 2016 Godan 4 from Changwon District Court, and no.2013 Godan2688 from Daejeon District Court. Although the complaints include human trafficking, most cases were prosecuted for procurement of prostitution by the law enforcement. Because there is not enough awareness nor education on human trafficking, the charges of human trafficking are mostly dropped. The extension of stay at the Foreign Women Support Facility is allowed only for receiving legal support, not for medical or psychological treatment.

61. Undocumented prostitution victims are entitled to the privileges under the paragraph 11 of the Act on the Sex Trafficking Prevention Act and Associated Acts only when she files complaint to the law enforcement. When a victim whose duration of stay has been expired files a complaint, she still can acquire a legal immigration status and the support from the government. Legal effectiveness on prescription of filing case is the reason.

62. Undocumented prostitution victims are entitled to the privileges under the paragraph 11 of the Act on the Sex Trafficking Prevention Act and Associated Acts only when they file a complaint to the law enforcement. When a victim whose duration of stay has been expired, files a complaint, he/she still can acquire a legal immigration status and support from the government. Legal effectiveness on prescription of filing case is the reason for such allowance.

63. However, if the victim is undocumented and does not file a complaint, there would be no government support. Rather, he/she would fall under deportation status. It was confirmed by the Ministry of Gender Equality and Family that the government cannot support victims who are not willing to file a complaint under the Article 2, paragraph 11 of the Sex Trafficking Prevention Act and the Associated Acts. When a victim is in custody at a foreign detention center, he/she could be temporarily released only when she possesses a document of complaint. Before obtaining a complaint document, consultation would take place inside the foreign detention center. There are some cases where the victims abandon their legal rights and return home due to insecurity and threat by the perpetrators (i.e. former owner) who could visit the detention center without any restrictions.

64. It is regrettable that there exists no material regarding case consultations for the victims because they have not been published in the press.

65. The Foreign Women Support Center was established to support foreign female victims of sex trafficking. But there is only one center nationwide. There has been no case of a foreigner acquiring E-7 visa in the FWSC since 2009. The duration of stay is randomly given from 1 month to 12 months to G-1 visa applicants, and they could apply for approval of other activities. But this can be done only after they apply for extension of stay. Moreover, they should make a payment for extension of stay, which requires a costly revenue stamp fee.

66. Fee for changing visa type: ₩100,000, fee for reissuing ID card: ₩30,000, fee for extension of G-1 visa: ₩60,000, fee for applying for the approval of other activities: ₩120,000.

67. Regardless of being a victim for human trafficking, the Immigration Office deports foreigners whose status becomes undocumented for doing activities beyond what their visa permits. And this is a violation of the Immigration Act. Despite the fact that they are human trafficking victims, the Immigration Office has tendency to press for deportations using narrow interpretations of the statute.

68. The Ministry of Gender Equality of Korea already recognized the problem and has been considering a support system. However, the government should provide training which enables the immigration officers in the field office to be informed about human trafficking of foreign women and to recognize the existence of support groups. The previous passive aggressive attitude by the immigration officers towards the victims of human trafficking can be improved

significantly by effective education and training.

69. It is a difficult task to support victims of human trafficking of foreign women. When the victims cannot acquire clear evidence, not only the government but also the private sector must cooperate to provide a secure atmosphere for the victims to enable their ability and willingness to testify against the perpetrators. This will result in effective conviction and punishment for the crime committed.

11. Refugee applicants' deportation, return, or repatriation

Legal Issues

70. The Government of the Republic of Korea must ensure that the requirements of Article 3 of the Convention apply when deciding to deport, return or repatriate a foreigner.[33]As the government report shows, some of the notion of the CAT is included in the Refugee Law, which is the implementation law of the Refugee Convention since July 1, 2013.[34]

71. It is declared that the administrative authorities do consider the notion of the CAT in discretionary and complementary manner during the evaluation of refugee applicants as according to the Refugee Law in Korea. There still lacks a system to prevent deportation where a person to be deported s likely to be subjected to torture in the country of which he/she is a national or citizen. Therefore, the following problems arise due to the absence of legal protection that prevents the repatriation of persons who are at risk of torture at the time of actual deportation, return or repatriation.

72. 2. The problems of policy, institution, law enforcement and practice

1) In the case of a protection request that takes place at the border, a brief screening is conducted on whether or not the applicant is subject to protection based on the Refugee Convention and the Convention against Torture. If rejected, the applicant is kept for an indefinite period of time in the inhumane accommodation facility called Repatriation Waiting Room without any legal grounds and go through long-term litigations. Or there is a risk of enforcement of self-repatriation due to suffering at the accommodation facility and pressure from airlines. In theory if an applicant, during a refugee status determination, asserts that repatriation may put him/her in danger of being subjected to torture, thorough investigations and reviews should be carried out on whether such danger exists objectively. However, there are regulations that enable repatriations without a formal screening despite the possibility of danger such as torture according to the screening standards of the enforcement ordinance created by the government.

[33] CAT Committee Final Recommendation 2006, Article12

[34] The Refugee Act Article 3 (1) http://www.refworld.org/docid/4fd5cd5a2.html

73. Furthermore, the actual execution of interpretation of 'Manifestly Unfounded' is also arbitrary,[35] so that about half of the foreigners are repatriated at the airport without a formal refugee status determination opportunity.

<Table> Refugee Application at the Port of Entry Statistics (2013. 7. 1. ~ 2015. 12. 31.)[36]

	Incheon Airport				Gimhae Airport				Jeju Airport				Ulsan Airport			
	Applied	Permitted	Denied	pending	Applied	Permitted	Denied	pending	Applied	Permitted	Denied	pending	Applied	Permitted	Denied	pending
13	25	16	10	0									1	0	1	0
14	71	26	45	0	70	26	44	0								
15	393	284	109	0	6	2	4	0	1	1	0	0				

2) As a rule, applicants for refugee status are not detained while the determination procedures are ongoing. However, if there is any violation of the Immigration Law (over-stay, fake passport, illegal entry, and evaluator forgery), even foreigners who applied for protection are detained without an evaluation by a judge. The same practice applies to foreigners whose review of the application of a claim under the Refugee Convention and the Convention against Torture is not complete. Again, if there is any violation of the Immigration Law, compulsory deportation orders are issued without due process.

74. There is no time limit of detention[37], and it is in fact, the same as forcing foreigners to give up their right to an examination including right to a review on the legality of detention, and return home on their own accord. Additionally, the decision and the ultimate enforcement of eviction can be made arbitrarily by the immigration officer without going through a hearing and right to have access to a judge If the foreigner is considered to be a harm to public safety or capable of being one, arbitrary enforcement of eviction is possible at any time even when the examination of risk of torture is not complete.

75. 3) If the foreigners applying for protection satisfy certain conditions and when the case is accepted, they should be exempted from punishment under the Article 31 of the Refugee Convention. However, there are occasions when the refugees are indirectly subjected to

[35] UNHCR's Comments on the Draft Presidential Decree and Regulations to the Refugee Act of the Republic of Korea(26 March 2013) http://www.refworld.org/docid/54100f8f4.html

[36] an open source of the related lawsuits of Korea Immigration Service

[37] The Immigration Act Article 63

compulsory repatriation because the police & immigration office mechanically prosecute the refugees for forgery. Without considering the specificity of each refugee cases who escaped from their own countries and arrived in Korea, the authorities have them stand trial and punish them for the reasons of partial illegality in forging invitation letters and visa application documents.

Specific Examples

76. In relation to 2.1), like the executive order of Trump Administration of the United States, if an adult male of Syrian nationality applies for protection, the government of Republic of Korea arbitrarily has considered him as Manifestly Unfounded, denied his entry, and ordered repatriation since the end of November, 2015. Twenty-eight Syrian men who were not aware of the change in policy were detained at the Repatriation Waiting Room at the airport for approximately eight months, and received interim measure from ICCPR[38] They were allowed to enter the nation only after winning the lawsuit. This case has become internationally controversial.[39]

77. Additionally, in relation to 2.2), although an evaluation of a refugee applicant from Uzbekistan was not complete, the applicant was repatriated on March 22, 2012 and disappeared. Recently on November 23, 2016, one refugee from Uzbekistan was detained simultaneously when receiving refugee objection dismissal notification letter, was taken to the airport and was almost repatriated. Human Rights organizations barely stopped the repatriation and the government is yet to provide an answer to the questions about specific details of the incident. When issuing such written notices, the content of the statements therein should be fully explained and accurately conveyed and applicants must be informed of the procedures to be followed. For the deportation of a person whose recognition of refugee status has been denied, and for whom a written deportation order has been issued, such a person must be informed of his/her right to file an objection, and implementation of the deportation is determined after thought has been given to the process of procedures for a considerable period of time, giving consideration to the right of access to the courts, for example, by confirming whether the person to be deported intends to file an action against the disposition.

78. In relation to 2.3), at the time of writing the present report, sixteen Syrian nationals' cases were sent to the prosecutor's office on the grounds of illegality in the process of making the invitation letter, which resulted in suspension of their indictment. Eight of the Syrian nationals' cases were transmitted to each district prosecutor offices,[40] at least two were charged with a fine of 5 million won, and two refugee applicants who were a couple were prosecuted for 2 million

[38] Ibrahim Salama Director Human Rights Treaties Division (19 Feb 2016), REF: G/SO 215/51 KOR (131) 2735/2016

[39] CNN, Syrian refugees stuck in limbo at Seoul airport(2nd June 2016) http://edition.cnn.com/2016/06/01/asia/south-korea-airport-syrians/

[40] Seoul Metropolitan Police Agency, Foreign Affairs Division, International Criminal Investigation 2016-2575

won.[41] It is difficult to confirm how many refugees in similar cases were criminally punished and how many contributed to forced repatriation.

12. Expel, Return or Extradition of a Person

79. 883 people gained humanitarian status over 10 years from 2006 to 2015. In 2013, only 6 people gained humanitarian status. In 2014, there was a significant increase from 6 to 539 due to crisis in Syria. In 2015 there was a report stating that among 5711 refugee applicants, only 194 were granted a humanitarian status. 62 of these applicants claimed that they were not informed from immigration about their rights and how they should be treated[42].

80. Back then, there was no application process to gain Humanitarian status. Getting an approval will depend on the discretion of the Ministry of Justice.[43] Also it has been reported that foreign workers were not given enough information about their rights. Though they were given a working permit, issues including social security and basic livelihood are not guaranteed.[44]

13. Extradition by another state of a suspect

81. N/A

14. Extraterritorial jurisdiction over the offences referred to in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

82. The Criminal Act allows punishment of a citizen of the ROK who committed a crime outside the territory of the ROK. It also allows punishment of a non-Korean who committed a crime against a citizen of the ROK. But there has been no relevant statistical data on any actual cases.

83. In addition, the crimes as defined in the「Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes」, 「Act on the Protection of Children and Juveniles against Sexual Abuse (hereafter referred to as the Act on the Sexual Protection of Children and Juveniles)」, and 「Act on the Punishment of Acts of Arranging Sexual Traffic」do not include crimes as defined in 「The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children,

[41] Incheon District Prosecutor's Office 2016 hyeongjae 113558
[42] Pinan, 2015, Research on refugee with humanitarian statue, P14
[43] Refugee Law, Chapter 1, Paragraph 2, Article 3 and Chapter 4, Paragraph 2, Article 39
[44] Pinan, 2015, Research on refugee with humanitarian statue, P16

Child Prostitution and Child Pornography (hereafter referred to as the 2nd Optional Protocol)」 despite of ROK's ratification to the Protocol.

84. For example, child pornography in the 2nd Optional Protocol is defined as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes". However, the Act on the Sexual Protection of Children and Juveniles limits the scope of child pornography to entail real sexual activities only.

85. As observed in the Extradition Act, the Ministry of Justice has the authority for extradition. However, the actual official proceedings are conducted by the Ministry of Foreign Affairs and Trade as it relates to diplomatic procedure. This serves as an impediment to extradition. In practice, compulsory repatriation by Interpol method is more often utilized but the Extradition Act does not specify applicable provisions in regards to matters with the Interpol.

15. Training Programmes on the conduct of the police and other officers, including detention officers

86. N/A

16. Programmes to train medical and law enforcement personnel treating physical and psychological torture injuries

87. N/A

17. Programmes and information campaigns to prevent trafficking

88. N/A

18. Substitute Jails

89. Over-crowdedness in Correction Facilities: The Government says that it expanded the size of the space per inmate and constructed new correction facilities to alleviate the problem of overcrowding.[45] However, since Administration and Treatment of Correctional Institution Inmates Act does not specify necessary space per inmate and the Ministry of Justice directive is made by the Ministry itself, there are no regulations on restrictions upon violation. As a result,

[45] CAT/C/KOR/3-5, para. 105

the ratio of inmates present to maximum capacity exceeds 100%.[46] In August 2016 during the heat waves, two inmates who were imprisoned in an investigation detention room in Busan Detention Centre, which had 1.72m2 of personal space, died, in 2 consecutive days.[47] One inmate of Seoul Detention Centre who stayed in 1.06~1.59m2 of personal space filed a constitutional complaint to the Court. In December 2016, the Constitutional Court ruled that such a small space for an inmate was unconstitutional. It stated "if a personal space of a correction facility is excessively small, to the point of causing difficult for an inmate to fulfil his/her basic needs, it goes beyond exercising punitive authority and violates inmate's dignity and values."[48]

90. Substitute Jail: There is no female police officer deployed in a substitute jail and therefore, female detainees are watched by male officers.[49] Substitute jails are structured not in a linear form but in circular form which makes it easier for male officers to monitor female detainees' every move. Moreover, bathrooms in substitute jails are not closed but open, only with 1-meter height sliding door.[50] Therefore, there is no privacy as posture, sound, and smell of bathroom is exposed to not only to other female detainees in jail but also to male police officers. Also, CCTV is installed towards the jail and police officers can monitor and record upper body of female detainees when they use the bathroom.

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[46] Submitted by the Ministry of Justice to MP Il-pyo Hong during parliamentary inspection in 2015. As of June 2015, South Korean prisons and detention centers can accommodate 46,700 inmates but actual number of inmates is 53,990. The ratio of inmates presents to maximum capacity reached up to 115.6%. In case of detention centers in big cities, the situation is worse: Seoul Detention Centre (142.0%), Sungdong Detention Centre (155.4%), Incheon Detention Centre (159.7%), Uijeongbu Prison (159.6%), Daegu Prison (166.9%), Daejeon Prison (155.6%), Gwangju Prison (145.1%)

[47] Mr. Lee passed away in prison on 19 August 2016. He was beaten by other inmates on 17 August and diagnosed with concussion, but isolated in an investigation detention room and was not able to receive a proper medical treatment. On 19 August, he lost his conscious and suffered from high fever (40.5°C), was sent to the hospital but died. A space per person of the investigation detention room was only 1.72m^2, since 3 people were detained in a room size with 154cm x 337 cm. Also, there were no air conditioner and fan. It only had a bathroom window (width 26cm) but when one inmate closed a bathroom door to use it, there was no ventilation. Another victim, Mr. Suh, was also detained in an investigation detention room because he had an argument with another inmate on 9 August. On 18 August, his fever reached up to 39.9 °C. He was sent to the hospital but unfortunately, died on 20 August. National Forensic Service presumed their cause of death was heatstroke. According to Korea Meteorological Administration, the highest temperature of 18 and 19 August was 32.5 °C and 32.7 °C respectively. (Result of autopsy by National Forensic Service and Court's spot inspection submitted to the civil court, filed by the bereaved family) Both victims had chronic diseases such as diabetes and it is assumed that overcrowded situation and heat wave was their cause of death.

[48] Constitutional Court, 29 December 2016,2013HEONMA142

[49] CAT/C/KOR/3-5, para. 114. 2012. 10. 26. According to the document submitted by the National Police Agency to the Catholic Human Rights Commission (according to the Information Disclosure Act No. 1797898), there is no or very few female police officers who are in charge of substitute jails, even at the regional level. Number of female police officers in charge of substitute jails are: Gangwon Provincial Police Agency (0); Chungbuk Provincial Police Agency (0); Jeonbuk Provincial Police Agency (2); and Gyeongnam Provincial Police Agency (1)

[50] According to the document submitted by the National Police Agency to the Catholic Human Rights Commission (according to the Information Disclosure Act No. 1797898, 24 August 2012), number of closed and open bathrooms in substitute jails are: Sokcho (0, 12); Youngdong (1, 5); Namwon (0, 10); and Geochang (2, 11).

19. Statistical data on prison staff regarding incidents of sexual violence

91. N/A

20. Data on complaints relating to torture and ill-treatment allegedly committed by law-enforcement officials

92. N/A

21. Fair and adequate compensation rights of torture victims

93. The State Report states that the Constitution and relevant laws guarantee victims of torture and their bereaved families the right to fair and adequate compensation and reparation.[51] However this is simply the list of general regulations of compensation lawsuits against the State. The most striking issue is that the judiciary has given rulings with the tendency to reduce the great amount of state's reparation for the torture victims from the past military dictatorship.

94. The State established special legislation to recover the honour of the victims who were illegally arrested, detained, and tortured by the investigative institutions due to their participation in democratization movement over the military dictatorship and to compensate their damages.[52] <Act on the Honor Restoration of And Compensation to Persons related to Democratization Movements> and <Act on the Compensation to Persons related to Gwangju Democratization Movement> are two representative examples. The goal of such special laws is to open a shortcut for the victims of torture during the military regime to reach monetary compensation rather quickly. However a recent verdict of the Supreme Court said that the compensation based on those special acts above accomplishes 'consent judgment', hence the torture victims' right to state reparation is denied. [53] The number of victims whose right to state reparation was denied because of a certain amount of compensation they had received reaches approximately a few hundreds. [54]

[51] CAT/C/KOR/3-5, para. 146.

[52] Compensation is to make up for the loss of individuals sacrificed by any legal activities of the State whereas reparation is based on the premise that the State has committed a certain illegal act.

[53] As a representative decision of the Court, Supreme Court 2015.1.22 2012DA204365 en banc

[54] JUNG Eunju <Shameful, Extremely Shameful Supreme Court> Hankyoreh21 No.10005, 2014.4.3

95. In the past the Supreme Court decided that the emergency rule of a former President Park Jung-hee was unconstitutional with invalidity, yet the state's responsibility to reparation to those victims illegally tortured and punished under the rule could not be recognized as the announcement of such rule is a highly political activity, which is logically contradictory in one verdict.[55] Regarding the statute of limitations of the state's reparation, the Supreme Court denied the completion of the statute of limitations of the State since this was the abuse of its authority, and yet the Court ruled a verdict that if certain illegal activities of the State such as torture were committed long time ago, the amount of reparation should be reduced a great deal considering devaluation.[56]

96. This is the reality of the Republic of Korea where individual victims who were illegally arrested, detained and tortured by the military regime in the past cannot be appropriately compensated. In order to guarantee effectively the right to state reparation in the case of torture crime committed by national institutions or public officials, the measures such as the legislation of special act must be considered.

22. Torture Reporting Center

97. The Torture Reporting Center was in operation for 3 months from June 8 to September 28, 2010. It was established as a follow-up measure of an *ex officio* investigation by the National Human Rights Commission of Korea(NHRCK) on June 6 2010, after the torture case committed by police officers of Yang-cheon police station.[57] The Republic of Korea has mentioned on its periodic report that the Center received 15 cases: 2 petitions, 12 counseling cases, and 1 report. The Human Rights Counseling Center in NHRCK under which the Torture Reporting Center is affiliated, has been reporting every year in its Human Rights Counseling Case Report the statistics on counseling, petition, and cases that are filed each year.

98. It contains basic facts about the cases except for personal information, and follow-up measures. However, the results and the statistics on the cases filed in the Torture Reporting Center have not been included in the Case Report of that year, and no evaluation on the operation results of the center was revealed separately. After the NHRCK's report on the torture case of Yang-cheon police station, not only the NHRCK but also the Torture Reporting Center was deluged with petitions regarding cruel acts and human rights infringement committed by the investigators, such as police officers.

99. After the NHRCK's report of the case, for 40 days from June 17 to July 27 2010, the number of

[55] Supreme Court 2015. 3. 26. 2012DA48824

[56] Supreme Court 2011.7. 21. 2011JAEDA199 en banc

[57] NHRCK. The Torture Reporting Center Established. NHRCK Press Release. 29 June 2010.

petitions filed against police officers was 248, which is a staggering increase compared to 177 within the same length of time from May 5 to June 15 2010.[58]

100. Below is the statistic presented in the 2010 (20,562 counseling cases filed in NHRCK from July 1 2009 to June 30 2010) and 2011 (22,596 counseling cases filed in NHRCK from July 1 2010 to June 30 2011) Human Rights Counseling Case Report.

101. <Table 1> Statistics on The Cruel Acts by Investigators out of the Human Rights Infringement Counseling Cases[59]

Type	July 2010 ~ June 2011	July 2009 ~ June 2010	July 2008 ~ June 2009	Nov. 2001 ~ Sep. 2011
The prosecutor's offices, the police, the National Intelligence Service, special judicial police officer, military prosecutor, military police, Defense Security Command				
Total				
Violence, cruel acts, excessive use of firearms	502	560	377	3,106
Human rights infringement such as excessive physical check-ups	501	467	298	2,507

102. We have asked the NHRCK for the results of the 15 cases that were filed in the Torture Reporting Center, but no answer was received. According to the ROK's periodic report, 2 cases were dismissed and 1 was filed under counseling and petition. The report stated the following: 1) there was no big advertisement on the Torture Reporting Center, and 2) referring to the <Table 1>, the number of cases that are filed in the Human Rights Center regarding the cruel acts done by investigators has increased. However, the ROK government has not done any evaluation on the operation result of the Torture Reporting Center and has not been separately managing the follow-up measures.

[58] "NHRCK Now Investigating Two Petitions – 'Torture Again by The Police'". Yonhap News. 30 July 2010.

[59] Corresponding statistics were integrated from the <2010 Human Rights Counseling Case Report> and <2011 Human Rights Counseling Case Report>, issued from the NHRCK.

23. Application of a statute of limitations to crimes against humanity (including torture)

103. As it was described in the State Report[60], Articles 8 ~ 14 of the Act on the Punishment of Crimes under the Jurisdiction of the International Criminal Court, enacted December 21, 2007, a statute of limitations shall not be applied to crimes against humanity including torture, crime of genocide, and war crimes. <The Act on the Punishment of Crimes under the Jurisdiction of the International Criminal Court> was established to implement the Rome Statute. A statute of limitations is eliminated in the cases of war crimes and genocide included in the jurisdiction of the International Criminal Court. Therefore, this Act is only applicable to few cases only, and general rules of statute of limitations are applied to torture crimes committed by public officials at the national level.

104. Along with the activities of Presidential Truth Commission on Suspicious Deaths from 2002 to 2007, there was the effort to establish special laws that spot or reduce statute of limitations regarding inhumane crimes, state-sponsored violence in order to proceed punishments the perpetuators of state-sponsored violence committed over the military dictatorship and to repair the past. However this has never reached the actual legislation.[61] Since then for 10 years there has been no further discussions regarding the establishment of provisions that exclude or stop the statute of limitations of inhumane or anti-human rights state crimes.

24. Illegally tortured suspects by employing inhumane methods in order to coerce confessions

105. N/A

25. Complaint and investigation mechanism to look into allegations of abuse of migrant workers

106. It is said that the main contents of the Labor Standards Act, including the complaint and investigation mechanism, are explained during job trainings offered to migrant workers under

[60] CAT/C/KOR/3-5, para. 135.

[61] On May 21, 2002 civil society organizations demanded a petition for legislation of <The Act on Special Cases Concerning Statute of Limitations of Crimes against Humanity(Bill)>, and on July 11, 2005 <The Act on Special Cases Concerning Statute of Limitations of State's Crimes against Humanity(Bill)> was introduced in the National Assembly.

the Employment Permit System(EPS) before they are sent to respective workplaces. The Korean government should provide the contents of 16-hour curriculum during job trainings before they are sent to their workplaces and report how much of the labor rights including complaint and investigation mechanism of the Labor Standards Acts are covered, and whether the training is done in various languages. It is doubtful whether or not there is an outcome review on workers' understanding or satisfaction with the training. After the 16-hour job training, an EPS worker can work for maximum of 9 years and 8months. However, it is questionable whether additional training is provided or not during the working term.

107. It is said that an employee who has received a disadvantage by an employer's violation of the Labor Standards Act or other labor-related Acts and subordinate statutes may report to a labor inspector regardless of his/her nationality and the labor inspector can carry out measures to correct the situation. However, in October 2016 a migrant worker who visited a labor office to receive back wages, was handed over to an immigration office by the report of the employer of the migrant worker, and the labor inspector just looked on without doing anything. [62] The CESCR expressed concern on the situation of labor inspectors who focused on the resident status of migrant workers rather than the guaranteed rights of industrial safety.[63]

108. A labor inspector who is supposedly responsible for protecting workers had said to workers who sent petitions for unpaid wages, that workers are like slaves. His statement created a stir in Korea and was reported on Korean Broadcasting System(KBS)'s 9 o'clock news on April 20, 2015.[64] This shows the level of public awareness on the local workers but this can be more seriously problematic with migrant workers. More needs to be done to reveal the seriousness of this situation.

109. Such behavior of labor inspectors must be corrected. Korean government must put into effect not only strengthening job training but also raising awareness with improving education for labor inspectors.

110. The Korean government must also report whether or not translation service is provided when migrant workers who visit labor offices. And they should disclose concrete examples of employers with prior history of criminal punishment for violating the Labor Standards Act and the regulation of EPS.

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[62] http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002254305&CMPT_CD=P0001
Seong-ho Yoon, 「Migrant worker tried to receive back wages and was forced to return」, OhMyNews, 2016.10.25
http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002254305&CMPT_CD=P0001

[63] (E/C.12/KOR/CO/3) E/C.12/KOR/CO/3

[64] Rang Lee, 「Labor inspector said "A worker is in fact a slave."」, KBS NEWS, 2015.04.20.
http://news.kbs.co.kr/news/view.do?ncd=3060545&ref=D

111. In case of agricultural and dairy industries, due to long working hours and poor living environment at isolated workplaces from outside, the number of desertion of workplaces is higher than manufacturing industries. So confiscating migrants' workers' passports is a daily event and is used as a measure of controlling desertion of workplaces.[65] In 2015 a research on hate crimes and countermeasures[66] shows that amongst 665 foreign workers 1.1% (7 people) experienced violence, 2.4% (16 people) have suffered from verbal & physical abuse. 0.4% of Koreans experienced physical injury.

112. In July 2016 there was a reported incident in Gyeonggi Province when a middle aged man pushed a Myanmar migrant worker more than once and slapped his face. The said man accused the foreign worker of being impolite that triggers him to do this. This incident was caught on video and got uploaded in social media, and after 4 days the suspect turned himself to the police.[67]

113. Another incident that was reported involves a female migrant worker from Cambodia. She requested to take a leave off her work but when there was a disagreement between her and her employer, the employer grabbed her neck and pushed her down. This was also reported on KBS 9 o'clock news on 21st of July 2016.[68]

114. Migrant workers are prone to workplace violence more than local workers due to the discrimination against migrant workers and language barrier. The situation of undocumented migrant workers is worse. Even though they are abused or exploited, because of fear of deportation they are afraid of reporting itself. In August 2015, a male migrant worker from China was assaulted by his employer after requesting his back wages; however the employer reported to the police that the migrant worker was the assailant.[69] Administrative agencies like Job Center, Employment and Labor Office, are negligent in managing and overseeing the workplaces that hires migrant workers. The Korean government must actively report what kind of not only measures of correction but also strong punishment is imposed on the employer when they violate the law.

115. According to the actual situation survey on agricultural and dairy industry migrant workers' human rights situation in 2013, (National Human Rights Commission of Korea) 30.8% of female respondents experienced sexual harassment and 50.0% heard about such experiences of their

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[65] Migrant Human Rights Solidarity, Agricultural and Dairy Industry Migrant Workers' Rights Network, 2014, the White Paper on Human Rights - Employment Permit System Agricultural and Dairy Industry Migrant Worker, P34-43

[66] Korea Institute of Criminology, 2015 Research on Situation of Hate Crimes and Countermeasures

[67] In-hae Son, 「Myanmar migrant worker was violated at Yang-ju station, Focus News, 2016.07.14 http://www.focus.kr/view.php?key=2016071400102530024

[68] Da-young Ahn, 「Deserted 'Korean Dream' by violence」, KBS News. 2016.07.21 http://news.kbs.co.kr/news/view.do?ncd=3316250

[69] Uijeongbu District Court 2015 Gaso 25352, 2016 Gaso 112000

coworkers or acquaintances in their workplace. Moreover, when such situation happened, 55.6% of victims couldn't do anything but endure it. 27.8% protested back verbally and 16.7% quit the farm they had worked.[70]

116. Recently a survey targeting female migrants from Vietnam and Cambodia which was held by Women Migrants Human Rights Center (2016) showed that 25 people had experienced sexual violence. The reasons why they did not request a help from public institutions or supporting organizations were that they were not good at speaking Korean (68.4%), that they didn't know where to ask for help (52.6%), that they thought people would not believe their words (42.1%) and that they were worried about getting disadvantaged in their work place (15.8%).

117. Of the 23 people who experienced sexual violence in the above survey, only 5 (21.7%) respondents applied to change their workplace as compensation, but only 3 got permission to change the workplace and moved. However, even these three people were able to transit by "agreement by employer". There was not one case where the employment center permitted the change as an aftermath of sexual violence. It means changing workplace depends on employers.

118. The crime of sexual violence should be proved in order to move workplaces. Proof of sexual violence is possible by a final court judgment. In this process, female migrant workers are in a vulnerable position and they might be easily sent back to their country. Let's say a victim reports an assailant as a sexual criminal and temporarily gets a job in another farm. If the suspect is acquitted, and non-prosecution or innocent judgment was declared, the employer who the victim is working for may not permit to change the workplace. She also loses her legal labor qualification and must return to her home country. In this case, the victim who is supposed to get compensation, instead gets more damaged by being an undocumented worker.

119. Korean women who suffer sexual violence have difficulty in proving and showing the actual damage. It is even more difficult for female migrant workers because their residence rights are also threatened. Despite of being victims to sexual violence, they have to come to an agreement with the employer.

120. There needs to be public data on the number of consultations due to sexual assault at the Foreign Worker Support Center operated by the government. In addition, information should be disclosed whenever there are cases involving migrant workers applying for workplace change due to sexual violence at the employment support center.

121. It is doubtful whether the qualification of directors who teach officers about human rights is fully enough and whether the officers are fully prepared after the education. This is because there is no way to check out how directors are qualified and how the officers are well educated.

[70] Byung-ryul Lee, 「Research on Human Rights Situation of Migrant Worker in Agricultural and Dairy Industries」, National Human Rights Commission, 2013, P194

Thus, it is necessary to test how the education contents are accurate and proper, first. In checking up, it should include the details as well: the plan for enforcement, compliance with the legitimate procedure, the protection of human rights, and so on. This is seriously needed because in the real field, there are many the complete opposite cases; "Are you illegal? Or never mind!" type crackdown is still going on[71] and it is enforced even at table in a restaurant.[72] Seeing the news reports of Gyeongnamdomin Daily News on the crackdown in restaurant recently with posting a video together, the need for a thorough examination of these details is more reinforced.

122. In the video, immigration officer's enforcement seems to be far away from the Regulation on Due Process of Law and Protection of Human Rights in the Course of Crackdowns on Immigration Offenders (Directive of the the Ministry of Justice(MOJ)). The Korean government says the directive is to prevent human rights violations[73] but it did not work properly maybe because the contents of education might not be right. What kind of lessons were immigration officers educated with? So why did they act like that? They might have heard about the enforcement criteria, compliance with the legitimate procedure, and the protection of human rights. The officers emphasized that "there were no legal flaws in the process of the two first team leaders entering the restaurant, informing them of their activities and enforcement activities in a loud voice, and requesting identification". They seemed to surely have received the training about compliance with the legitimate procedure.

123. In their enforcement, however, there was no action stated in the state report.[74]Furthermore, it is deeply doubtful what they learn about to prevent human rights. Even though a Korean nearby said "take them after finishing their meals", immigration officers firmly kept doing their action, taking out the migrant workers, saying "It is necessary to proceed urgently to prevent fleeing and accidents. They can eat at the lockup." This case shows immigration officers are not serious about human rights of migrant workers. Not knowing their wrong, they rather showed confident attitude, saying, "Only with the fact that they don't carry their ID, they can be punished. They don't have their ID right now so the team has to check out one by one. They could have been put handcuffs on but they were not." However, considering the news report saying that "The restaurant has only one entrance and one window but if a person passes through the window he/she has no option but to face the entrance right away. It is more persuasive as an eyewitness said it was fully possible to check their status out after finishing their meal", the action of immigration officers is certainly far from preventing human rights violations. In this sense, the

[71] Jaehong et al. "'Plastic Greenhouse Dormitory, Thicket Bathroom by the River', Foreign Workers Are Sad." Yonhap News, July 12, 2016.
http://www.yonhapnews.co.kr/bulletin/2016/07/11/0200000000AKR20160711136900051.HTML

[72] Heegon, Kim. "Rushing Criticism of Excessive Crackdown on Foreign Workers at Table." Gyeongnamdomin Daily News, February 16, 2017. http://www.idomin.com/?mod=news&act=articleView&idxno=530690

[73] CAT/C/KOR/3-5, para. 141

[74] CAT/C/KOR/3-5, paras. 119, 200.

director probably had explained only about the plan, 'Reduce the Illegal Foreign Residence Rate to Less Than 10% By 2018.'[75]Therefore, even though the government has stated that directors have to educate on legal process compliance and human rights protection, in actual cases, it is very doubtful whether the contents and curriculum are intended to "prevent human rights abuses against foreigners".

124. Moreover the cases where the migrant workers were injured when they fled through the windows,[7677] show that dangerous things of life-threatening and anti-human rights are still happening in the crackdown. The present life-threatening crackdown-deportation policy e.g. with the goal to "Reduce the Illegal Foreign Residence Rate to Less Than 10% By 2018"[78] through crackdowns, should be re-examined and stopped.

26. Role of the National Human Rights Commission of Korea in protecting human rights and its independence

Violation of rights of persons with disabilities by members of National Human Rights Commission

125. In December 2010, around 200 rights defenders and persons with disability staged a peaceful sit-in in the headquarters of the National Human Rights Commission demanding the resignation of the Chairperson for failing to protect the rights of the disabled, and failing to improve three disability laws. During the sit-in, the electric power and heating was cut off, and access to food and assistants was restricted. As a result of the extreme weather and low temperatures, one of the persons taking part in the protest caught pneumonia and died two weeks later.[79] Disability rights organizations filed a petition before the NHRC, but it was denied because the target was the Chairperson.

126. When the Chairperson was reappointed in 2012, the issue of him abusing the rights of the disabled came to the surface again. A group of petitioners including 5 members of the National Assembly was organized and made a request to conduct investigation ex officio of the

[75] Jeong, Yeonggyu. "Reduce the Illegal Foreign Residence Rate to Less Than 10% By 2018." News Window, April 4, 2016 http://www.newswin.co.kr/news/articleView.html?idxno=8261

[76] Kim, Gyuhyeon. "Crackdown without Human Rights Violation? Crackdown on Undocumented Migrant Workers is Murder." Cham Sesang. April 8, 2016. http://www.newscham.net/news/view.php?board=news&nid=100732

[77] Kim, Jiyeon. "Undocumented Woman in Gyeongju, Injured on Running Away from Crackdown." Peace News. April 7, 2016. http://www.pn.or.kr/news/articleView.html?idxno=14086

[78] Jeong, Yeonggyu. "Reduce the Illegal Foreign Residence Rate to Less Than 10% By 2018." News Window, April 4, 2016. http://www.newswin.co.kr/news/articleView.html?idxno=8261

[79] A/HRC/25/55/Add.1, para.60.

NHRCK regarding the death of the disability-rights defender.[80] Even though the Commission could reject a petition if it was filed after one or more years have elapsed after the fact[81], it granted the petition and investigated the case. However, the case was dismissed.[82]

NHRCK dismissing a petition regarding a soldier's death.

127. In April 6, 2014, a soldier, who has been identified as Private First Class Yoon, collapsed and was hospitalized. He was pronounced dead at a hospital the next day. It was revealed that he had been beaten and seriously abused by other soldiers. However, the army said in a terse letter that he had died after choking.[83] Yoon's family suspected beating based on the bruises in his body and filed a petition before the NHRC in April 6. But the NHRC dismissed the case after conducting a field investigation on April 14, 2015 and cited the reason for dismissal was because the military was conducting an investigation.[84] It was also known that the investigator called the victim's family members and persuaded them to withdraw the petition. In July 31, when the Center for Military Human Rights revealed the cause of the death of Yoon was violence by various forms of brutal abuse and when it became a big issue, it was only then the NHRC conducted investigation ex officio.[85]

128. In the military, the degree of influence that a commanding officer has is immense, which makes an independent investigation and/or fair trial very difficult to happen. According to the statistics of the National Human Rights Commission of Korea(NHRCK), 1,177 petitions regarding military human rights issues were filed between 2009~2013. The NHRCK dismissed 74.3%(875 cases) of the petitions for the reason of not fulfilling the necessary conditions for an investigation. The biggest reason for dismissal was 'withdrawal of petitioner' (58%, 507 cases) and the second biggest reason was 'a petition was filed after one year since the fact causing the petition

[80] (KOR) "NHRCK investigates Hyun Byung-chul, the Chairperson, for the violation of human rights of persons with disabilities, JTBC News, Aug. 3, 2010,
available at http://news.jtbc.joins.com/article/article.aspx?news_id=NB10147110, accessed Feb.17,2017.

[81] Article 32(1) of the National Human Rights Commission Act: (1) The Commission shall reject a petition which falls under any of the following subparagraphs: 4. Where the said petition is filed after one or more years have elapsed since the fact causing the petition occurred: Provided that this shall not apply to any case in which the prosecution or civil prescription with respect to such fact has not been completed and which the Commission determines to investigate.

[82] (KOR) Gal Hong-sik, "UN report of NHRCK misled the facts", Mar. 12, 2014, available at http://www.newscham.net/news/view.php?board=news&nid=73390, accessed Feb.17,2017.

[83] Choe Sang-hun, "Outrage Builds in South Korea in Deadly Abuse of a Soldier", The New York Time, Aug. 6, 2014, available at https://www.nytimes.com/2014/08/07/world/asia/outrage-builds-in-south-korea-over-military-abuse.html?_r=0, accessed Feb. 21, 2017.

[84] (KOR) Choi Woo-ri, Jin Myung-sun, "NHRCK covered up the death of private first class Yoon", the Hankyoreh, Aug. 7, 2014, available at http://www.hani.co.kr/arti/society/society_general/650186.html, accessed one Feb.17, 2017.

[85] (KOR) Lim Dong-hyun, NHRCK dismissed the petition regarding private first class Yoon, NBS, Aug. 7, 2014, available at http://www.nbstv.co.kr/sub_read.html?uid=33838, accessed Feb.17,2017.

occurred' (18.3%, 160 cases).[86] The NHRCK needs to analyze why the rate of 'withdrawal of petitioner' is so high.

129. One of the reasons the NHRC had become passive regarding the human rights violations in the military was it had appointed quite a number of military generals as a member of policy advisory committee.[87] The NHRC's efforts to have the military rights defender position within the commission would not be fruitful as long as people with vague stance on the military human rights issues remains as policy advisors or members of the commission

The violation of human rights of a female inmate in a detention center

130. Yoo Heung-hee, the president of Kiryung Electronics union branch, announced to face custody at a workhouse instead of paying fine in order to protest against the court's unfair sentence and went to the Seoul Detention Center in April 29, 2016. However, what she experienced there was naked body inspection. The Seoul Detention Center required naked body inspection, which was an unnecessary procedure for 14 days of labor. Yoo refused the request saying that she was not a person who committed a crime related to drug and had no tattoo or surgical scars. However, several prison officers grabbed her, forcibly undressed her underwear and inspected her body without offering any notification or explanation. The Center also performed another unnecessary naked body inspection after Yoo came back from the prosecution investigation. On top of that, they insulted her saying "Times have changed" and "You might have heard something, but the court's decision is favorable to us".[88]

131. Several human rights organizations and labor organizations filed a petition regarding this matter on May 9, but the NHRC dismissed the case. The reason for the dismissal was that it accepted the testimonies of the prison officers that they informed Yoo that she could wear a robe and disregarded her testimony. Considering the fact there was no way to confirm what really happened in the changing room, the NHRC should have taken her testimony more into consideration and made the decision accordingly. The NHRC's made a different decision in 2014 that conducting a naked body inspection to an inmate who was put in prison was a violation of

[86] (KOR) NHRC, the only investigation agency of the military, have dismissed 75% of the military related petition", AP News, Aug. 11, 2014, available at http://www.yonhapnews.co.kr/society/2014/08/09/0701000000AKR20140809054351004.HTML?template=2087, accessed Feb. 21, 2017.

[87] (KOR) "A rapid increase of policy advisor from the military in the NHRC", AP News, July 7, 2013, available at http://www.yonhapnews.co.kr/society/2013/07/06/0702000000AKR20130706040200004.HTML, accessed accessed Feb. 21, 2017.

[88] Lee Hye-ri, "Seoul Detention Center forcibly undresses the inmate for an inspection", The Kyunghyang shinmun, May 9, 2016, available at http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201605091600001&code=940100., accessed Feb.17,2017.

human rights.[89] In order for the NHRC to fulfil its role as an agency that examines human rights violations in detention facilities, it should expand its personnel, educate investigators properly about abuse and torture in those facilities, listen to all stakeholders (including the victims) involved and understand the current situation of the facilities by doing research on the actual situation about naked body inspection.

27. Comprehensive programmes for the treatment and rehabilitation (both physical and mental) of victims of torture and ill-treatment, including the right to fair and adequate compensation

132. The torture victims' and their families' right to claim compensation under constitutional law and individual laws is not based on separate laws specified for the victims of state violence and terror. As a result the sphere and the extent of which the compensation is considered vary depending on the court's interpretation of the law.[90] The Statue of limitations to claim compensations was reduced significantly to 6 months, counting from the day of their criminal reparation was ruled, for victim's of past cases of state violence. According to the precedent court rulings, the prescription period was 3 years beginning on the day the court ruled the victim to be innocent in the retrial. With this change of the precedents, altering the initial court rule with no clear legal principles, the victims witnessed the same sovereign state that hosted the violence in the past act the part of the perpetrator once again today. This is unacceptable not only in respect to legal stability but also allows for nullifying punishment of past perpetrators of state violence.

133. Furthermore, as the State Report points out, the State does not keep records of statics on the court cases of civil compensation or criminal reparation given to the victims or keep individual statistics for compensations derived from perpetrators. Even if the trials were appealed and proceeded individually, it is the responsibility of the State to the records of the results of the cases regarding State-sponsored violence, and the demand from the civil society to this is very high. Therefore, the data and statistics collecting regarding the compensation and reparation of state-sponsored violence cases should be done by the State.

134. It is difficult to state that institutional care and physical and psychological rehabilitation services for victims of state violence are being provided by the State. In October 2012, Gwangju Trauma

[89] Written decision 14petition0158100, human rights violation by prison guard, HNRCK, Nov. 25, 2014: NHRCK recommended the Minister of Justice to revise the task guidance on safe custody so that it stipulates specific ways to do a body inspection.

[90] Supreme Court 2013DA201844 Compensation(Gi) (Sa) Dismissal of the Appeal

Center, which was set up as an experimental project as part of Gwangju City's Mental Health and Welfare Programme, was partially funded for the first time by the Ministry of Health and Welfare for its healing and rehabilitation programme for victims of state violence and torture. However, the above mentioned funds were cut by the Ministry of Health and Welfare in January 2016 claiming that the healing service programme differed to that of the policies of the Ministry of Health and Welfare.[91] Currently, in 2017, there have not been any public reports in regards to state supported programmes for the healing and rehabilitation offered to individuals who have been tortured or received maltreatment.

135. Smile Center is an affiliated organization of the Ministry of Justice that provides psychological support for victims of criminal offence. There are no records known to the public that shows the Ministry of Justice and the Supreme Prosecutors' Office have supported any efforts to provide extensive protection for human rights of victims of state violence and torture as well as support for therapy and rehabilitation of the victims.[92]

136. Since the ceasefire of the Korean War in 1953 until today, it is difficult to claim that an organized system for psychological support or programmes has been set up for surviving soldiers who have been injured during incidents that resulted in mass loss of lives within the military or combat against North Korea occurred due to the unique circumstance of Korea's divided borders. As pointed out in the State's Report, although there are programmes and protocol for preventions and psychotherapy for stress disorders, there is no systematic support operating for damages that has already been done.

137. Particularly, in cases of the 2010 Cheonan Ship Sinking and the Yeonpyeong Island Battle with the Democratic People's Republic of Korea(DPRK), the 2015 DMZ PSD series mines and more, the Ministry of National Defense has not provided any support for psychotherapy for the soldiers who survived the incidents despite the critical damages and number of deaths caused by such incidents. Furthermore, it became evident that the two injured soldiers who have amputated their ankles from the injuries of the DMZ PSD series mines on August 4, 2015 have had to independently pay for the physical rehabilitation therapy as a result of insufficient enactment of relevant law. The funds were collected from the public to commemorate its victims and the relevant military unit used the collected money to install a bronze statue in the form of an ankle. This shows that the administration of the Ministry of National Defense, spending funds collected from civilians for the use of exhibitory functions, does not take on the responsibility nor execute its responsibilities for the affected soldiers and their potential psychological traumas.

28. Compensation and rehabilitation, including medical,

[91] "Gwangju City Altering Trauma Center Who Had Its National Funding Cut into the City's Affiliated Institution"

[92] 2017.2.22 Data submitted by Gwangju Trauma Center

psychological and legal support provided to victims of trafficking

Human Rights Violations of victims of sexual violence crimes during investigation and trial process

138. In the periodic reports, the Government expected sexual violence crimes to be punished more severely as the "offense subjected to complaint" (i.e. the victim of a sexual violence crime must press charges in person for the case to be investigated and prosecuted) clause was removed from sexual crime legislation[93]. Since 2012, however, the percentage of prison sentences has gradually declined while the percentage of probation and pecuniary punishment has been on the rise[94], and victims continue to suffer serious human rights violations during investigation and trial. A settlement between the victim and the perpetrator is considered an important factor in determining sentences and probation[95], which makes it one of the major causes of secondary victimization: law enforcement agencies and the judiciary urge victims to settle with disregard to the victim's wishes, or the defendant contacts and pressures the victim into settling. Also, while a victim's sexual history (e.g. sexual experience, behavior, reputation, records of sexual violence lawsuits or prostitution-related criminal activities) is often used as grounds for questioning or submitted as evidence during investigation and trial, the current criminal law has no provision for sanctioning such practices[96].

139. The practice of distrusting and judging sexual violence victims, such as investigating and indicting them for false accusation based on sexual histories that are not relevant to the case, is a serious problem[97]. The myth that sexual violence is often falsely reported prevails in South Korea, and District Prosecutors' Offices across the country even launched an intensive crackdown on false accusations with the removal of the "offense subjected to complaint" clause[98]. The reality is that

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[93] Periodic Report, Article 154

[94] Periodic Report, Appendix, Table 6:

[95] When determining the sentence of a sex crime, the victim's intention to let the crime be unpunished is considered a special factor for sentence reduction as well as a major factor for considering probation.

[96] [Case] On June 1, 2011, a victim of sexual violence committed suicide the day after testifying in court. She stated in her suicide note that "the judge insulted me by siding with the perpetrator and urging me to settle" and "the judge did not believe me, saying things like "you're someone who had a rough life — you didn't even finish middle school and worked as a 'companion' at karaoke.""

[97] [Case] The victim, identified only as Ms. A, filed a complaint against the owner of the karaoke where she worked after suffering repeated molestation and rape at his hands. During the investigation, the prosecutor indicted Ms. A for the crime of false accusation, believing that she had filed a false complaint for money because she had a history of prostitution and financial difficulties, in spite of the fact that the perpetrator had repeatedly pressured the victim to settle and that she eventually dropped the lawsuit without receiving any settlement money because she found the process of the litigation agonizing. The prosecutor's investigation was harsh: Ms. A was cross-examined with the perpetrator for four hours, then summoned again to be investigated for false accusation as she was on her way home after the cross-examination. She was eventually acquitted after being tried at all three levels of court.

[98] *Daehanilbo*, May 12, 2014.

40.3% of sexual violence crimes are not prosecuted, and in 38% of these cases the reason is because they do not meet the “theory of extreme restriction” requirement (i.e. the level of the violence or intimidation has to be such that it is impossible or extremely difficult for the victim to resist) or the evidence is considered insufficient[99].

140. Under these circumstances, a large number of sexual violence cases are subjected to investigation for false accusation in accordance with Article 70 of the Regulations on Prosecutory Affairs[100]. The law enforcement’s prejudiced notion of prevalent false accusations of sex crimes puts victims at great risk of being charged with false accusation. However, as public defenders for sexual violence victims operate under the authority of the Prosecutors’ Office and therefore not free from the influence of the prosecution, they cannot function properly when the victim is investigated by the prosecutor for false accusation. It is necessary to take active measures to prevent the violation of the victims’ rights during investigation and trial, such as setting strict standards and well-defined processes for charging sexual violence victims of false accusation and prohibiting the use of the victim’s sexual history as evidence in criminal procedure law.

29. Forced Confessions by Torture

141. There is a practice of 'all-nighter investigation': ROK National Assembly member, Kyung-hwan Choi, (2017. 3. 3. 21:10 - 3. 4. 4:15)[101], Byung-woo Woo, former Senior Secretary to the President for Civil Affairs (2017. 2. 19. 9:53 - 2. 20. Morning time, 19 hours), Jae-yong Lee, Vice President of Samsung Electronics, (2017. 1. 12. 9:30 - 1. 13. Morning time), etc.

142. Also, the police brutality and coerced investigation causing false confessions were revealed from retrials of 'A trio of robbery in Samrye', 'Murder in Yakchon Five-way Intersection'. A trio of robbery in Samrye case occurred in February 6, 1999. Three suspects were sentenced from 3-6 years and served their time. Retrials began 2015. They were found not guilty in November 4, 2016.[102] Murder in Yakchon Five-way Intersection case occurred in August 10, 2000. The police investigated the only eye witness, then 15-year-old boy. He was sentenced 15 years, then 10 years at appeal after he confessed. He gave up his right to appeal to the Supreme Court. Tips on the real person who committed the crime received in 2003, retrial started in 2015. The witness was found not guilty in November 17, 2016.[103]

143. There should be effort to improve current practice and to investigate the status of 'forced

[99] Ministry of Justice report for the 2016 Parliamentary Inspection of Government Office.

[100] Article 70, Regulations on Prosecutory Affairs: “If a prosecutor finds a complaint or an accusation not suspicious, the prosecutor must determine whether the complainant or the accuser is suspected of false accusation.”

[101] Kyungggi News, 2017. 3. 4. <http://www.kyeonggi.com/?mod=news&act=articleView&idxno=1320820>

[102] Yonhap News, 2016. 11. 17. <http://www.yonhapnews.co.kr/bulletin/2016/11/17/0200000000AKR201611 17079200055. HTML?input=1195m>

[103] YTN 2017. 2. 23. <http://www.ytn.co.kr/_ln/0103_201702231515049902>

confession by torture' by investigative agencies. The procedure has not been improved as conditions for a retrial is difficult to meet and often up to the judge panel. There was a discussion on the 'non-stop public defense' for a public defense counsel to handle the case from the arrest to the trial stage at the National Chief Justice Meeting in March 9-10, 2017,[104] but no specific plans were introduced. There is also no specific system to hold a public officer accountable when there was a confession by torture.

30. Admissibility of written evidence in legal proceedings

144. The National Human Rights Commission in Republic of Korea (NHRCK) recommended in its second NAP (2012-2016) to repeal the written statement of a suspect system, but the ROK criminal procedure act still has the system under certain conditions and there is a regulation to admit the suspect's written statement as evidence in Court.

145. -Criminal Procedure Act, Article 244 Section 1: The statement of a criminal suspect shall be entered in the protocol.

146. -Criminal Procedure Act, Article 312 Section 1:A protocol in which the prosecutor recorded a statement of a criminal defendant when the criminal defendant was at the stage of criminal suspect, shall be admissible as evidence, only if it was prepared in compliance with the due process and proper method, the criminal defendant admits in his/her pleading at a preparatory hearing or during trial that its contents are the same as he/she stated, and it is proved that the statement recorded in the protocol was made in a particularly reliable state.

147. -Criminal Procedure Act, Article 312 Section 3, A protocol concerning interrogation of a criminal suspect, prepared by any investigative institution other than a prosecutor, shall be admissible as evidence, only if it was prepared in compliance with the due process and proper method and the criminal defendant, who was the suspect at the time, or his/her defense counsel admits its contents at a preparatory hearing or a trial.

148. The prosecution is planning to adopt 'Plea Bargaining System', reducing a penalty if confession is made. The attorney general Sunam Kim stated during the parliamentary inspection by the Legislation and Judiciary Committee of the National Assembly in October 13 2016 that "we should adopt advanced investigation system such as plea bargaining system and we're internally exploring the option"[105]. The Supreme Prosecutor's Office's bureau of future planning received opinions from prosecutors and outside experts on the adoption of plea bargaining.[106]

[104] Legal Times, 2017. 3. 10. <http://www.lec.co.kr/news/articleView.html?idxno=43742>

[105] Seoul Economics, 2016. 10. 13. <http://www.sedaily.com/NewsView/1L2OFUX8QS>

[106] Yonhap News, 2016. 4. 26. <http://www.yonhapnews.co.kr/bulletin/2016/04/25/0200000000AKR20160425132400004.HTML?input=1195m>

149. Supreme Prosecutor's Office's Planning and Coordination Department stated that it is planning to submit new bills on reformation of criminal procedure act and criminal code which includes plea bargaining system. An officer from the Supreme Court evaluated that 'the new system might be able to improve efficiency of the investigation, but there is also a possibility to undermine the already vulnerable positions of suspects", "Current investigation practice may become more dependable on the written statement[107]". The Ministry of Justice submitted the bill to the National Assembly in 2011, but the bill was automatically repealed after termination of the National Assembly term had passed that it is inappropriate to deal investigation and trials, and there might be a possibility of presumption of innocence violation.[108]

31. Steps taken by the State party to prevent and reduce the number of deaths in detention facilities

150. N/A

32. Suicides and other sudden deaths in detention facilities and allegations of torture and ill-treatment.

Correctional facilities

151. The government has claimed that from 2006 to 2015, (in the correctional facilities) 98 people committed suicide and 183 people died from disease and that nobody among them died from torture or unfair treatment. [109]

152. But the prisoner's right to access to the appropriate medical services outside the prison is not guaranteed. From 2004 to July 2013, 85 of the 227 deaths in the correctional facilities (37.4%) were due to rejection or delay of the approval for suspension of custody. 9 people who chose to do the labor instead of paying fine died while staying in prison workshop. It is presumed that the correctional institutions allowed for those seriously ill prisoners to apply for suspension of custody only close to the imminent death, but they either died before the decision was made or died in the correctional facilities after the application was denied. [110]

[107] The Hankyoreh, 2009. 1. 7. <http://www.hani.co.kr/arti/society/society_general/331912.html>

[108] YTN 2016. 9. 24. <http://www.ytn.co.kr/_ln/0103_201609240611086196>

[109] CAT/C/KOR/3-5, para. 167, 168

[110] The document submitted to Seo Yeonggyu (member of the National Assembly) by the department of Justice during the 2013 parliamentary inspection of the administration.

153. In addition, the number of inmates who have died due to suicide has decreased in the past decade, but the number of inmates who die from diseases has increased. [111] Thus, it seems like there is a connection between death and unfair treatment - such as not being provided with appropriate medical services.

Immigration processing centers

154. From 2006 to 2015, there were two cases of suicide and sudden death in immigration processing center. One of them is the sudden death at Hwaseong Immigration Processing Center in 2012. And the government has claimed that the death was due to 'Alcohol withdrawal syndrome' and a damage suit has been filed against the center's employee at duty at the time of the death. [112]

155. However, the Mongolian victim came to Korea in 2006 and worked in a moving service center. Being an undocumented migrant, he was detained in August 2012 at Hwaseong Immigration Processing Center and died after three days.[113] He began to show signs of anomalies shortly after the detention. He continued to express symptoms screaming and knocking on the prison, but the center only gave him sedation at the time of the meal, and did not take any other medical measures and moved him to the solitary. He died that day in the solitary. [114]

156. The Hwaseong Immigration Processing Center and the Ministry of Justice have not officially apologized to the bereaved family until now, and even after the fire accident at the Yeosu Immigration Processing Center which killed 10 people in 2007, there has been no improvement in the treatment of detainees in Korea.

[111] (KR) 「Suicide rate is declining in correctional facility for 10 years」, 4 Oct 2016, Yonhap News, http://www.yonhapnews.co.kr/bulletin/2016/10/04/0200000000AKR20161004027900004.HTML

(In the correctional institution)	2006	2016
Number of suicide	17	4
Number of death due to disease	16	24

[112] CAT/C/KOR/3-5, para. 169

[113] (KR) 「One must apologize to the death of the Mongolian detainee」, 31 Oct 2012, Yonhap News http://www.yonhapnews.co.kr/bulletin/2012/10/31/0200000000AKR20121031151700372.HTML

[114] 'Unfair death – the death of an immigrant neglected by Hwaseong Immigration Processing Center', Attorney at Law Jang Seoyeon, http://withgonggam.tistory.com/971

33. Measures taken by the State party to prevent ill-treatment and abusive measures in the military, including the practice of hazing

157. Assaults and Abusive behaviors

158. 1) Current State: Although there is no statistic of total assaults and abusive behaviors, the number of cases that are reported and taken measure of shows that the assaults and abusive behaviors are prevalent at a very high frequency[115]. According to the current disciplinary situation, more than 5,000 assaults and abusive behaviors occur every year. In particular, it should be noted that this figure only concerns with the cases that took a 'formal action' and therefore it cannot represent the current situation when considering the cases that are concealed and neglected. According to a survey conducted by the Army, for example, 3,900 people were involved in assaults and abusive behaviors in April of 2014 alone[116].

159. 2) Punishment: In the past five years, the number of assaults, insults, abuses, abusive behaviors in the military have steadily increased over the years (see table below), while only 55 perpetrators were sentenced to prison sentenced and it is only 1.4%. Even if it is put together with the cases with imposition of fines, only 555 cases - 14% of the total. It shows a tendency not to make a proper punishment. [117]

(in Military)	Assaults	Insults and Abuses	Abusive behaviors
2012	649	20	83
2013	569	31	40
2014	947	53	65
2015	800	75	88
2016 (till 30 June)	349	37	40

160. In particular, in the case of abusive behaviors committed by military officers, between 2010 and 2013, 491 executive officers above the level of a novice officer were punished for assault and abusive behaviors, etc. [118], while the sentence was never taken once. There is an indication that the investigation and punishment are neither strictly nor properly handled.

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[115] (KR)「More than 5000~6000 cases of habitual assaults and abusive behaviors happen in military every year」, Daily Jungang, 11 Sep 2014. https://goo.gl/BmTbIP

[116] 2014 Human Rights Report of Korea by U.S. Department of Defense

[117] (KR)「The rate of assaults and abusive behaviors in military still increases」, Daily Economy, 13 Sep, 2013 http://www.kdpress.co.kr/news/articleView.html?idxno=51915

[118] (KR)「The 뉴스원, 2014. 8. 11. http://news1.kr/articles/?1810421

161. **Suicide**

162. **1) Current State:** Since 2008, the suicide has been known as the number one cause of death in the military in Korea.[119]Nevertheless, the Department of Defense(DOD) argues that the suicide in the army is rather well handled than the private suicide problem. As the OECD pointed out in 2011, the suicide rate in South Korea is increasing and it is most serious among the OECD countries.[120]Taking such an abnormal situation as a criterion interferes with implementation of the suicide prevention policy because it only distorts the current state. In addition, DOD's comparison is not accurate because the subject of comparison is not the male in his 20s to 30s (which is a similar group to the military) but the whole population.

163. **2) Punishment:** Overall, the attitude of transferring all responsibility to the deceased person is still prevailing. More than 200 bereaved families are asking for clarification of the death in the army.[121] From 2010 to 2014, only 118 executives (57.5%) were held responsible for suicide and even 90% of them were lightly punished.[122]In addition, in 2013, the non-commissioned officer (41%) were held responsible for the most of the suicide accidents in the past five years and there were only 8cases where a field-grade officer was held responsible.[123]

164. **Psychological and health services**

165. **1) Soldiers requiring extra care**: In 2005, the Ministry of Defense started to manage maladaptive soldiers in the army called 'soldiers requiring extra care'. However, even those who came from a defective family or even from an economic poverty family were designated as soldiers requiring

[119] From National Statistics Service of the ROK (https://goo.gl/Hw47u2). After a drastic decrease in 2014 (when the terrible death of late Private First Class Yoon occurred, the suicide cases seem to be tied up around 50s; however, notably, the proportion of suicide in the military personnel's death remains more than half.

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Sum
S*	77	80	75	81	82	97	72	79	67	57	54	821
DT**	121	134	113	129	128	143	111	117	101	93	81	1,271
%***	63.6	59.7	66.4	62.8	64.1	67.8	64.9	67.5	66.3	61.3	66.7	64.6

*S: suicide **DT: death toll ***%: proportion of suicide out of death toll in the military personnel

[120] OECD Factbook 2011-2012 Economic, Environmental and Social Statistics, Overview, (https://goo.gl/F0k1NM)

[121] (KR) 「The military hides the reality of the accidents occurred in the Army and blames victim's personality」, Weekly Kyunghyang no. 1214, 8 JUL 2014. https://goo.gl/FLoR8t

[122] (KR) 「Army officers do not take responsibility for the soldier's suicide」, The Segye Times, 15 DEC 2014, https://goo.gl/WuXnY9

[123] (KR) 「The suicide of the soldier continues, but the punishment to the responsible is insignificant」, Daily Jungang, 29 OCT 2013, https://goo.gl/yTz9G4

extra care.[124] In fact, it was confirmed that the designation as a soldier requiring extra care was conducted by arbitrary decision of the novice commanders, not by a professional opinion of a specialist. The bigger problem is that the designation of soldiers requiring extra care does not help the soldiers to adapt to the military, but rather causes a negative stigmatization.[125]Even the psychological consultation - the only means of managing soldiers' problem is conducted by non-experts. As a result, it turns out that 45.5% of soldiers requiring extra care did not have any interview experience by professional counselors.[126]

166. **2) Vision Camps, Green Camps:** Vision Camps are designed for the purpose of helping soldiers to adapt to military life and to prevent of suicide. However, only 12.3% of the maladjusted group answered that they are participating directly, and it seems like the commanders do neither lay hold on the numbers of maladjusted group nor encourage them to participate the camp. [127]

167. **Recommendation for the introduction of the ombudsperson (Human Rights Protection Officer):** 2014. 10. The National Assembly recommended 39 tasks to improve the military culture by launching the Special Commission on Improving Military Human Rights and Military Culture Innovation. Among them there was the ombudsperson - an organization that takes reports and handles human rights violations and illegal activities inside the military. But it still remains unrealized because of the disapproval of DOD. [128]

34. Instances of use of disciplinary confinement, including manacles, chains and face masks, or any resort to "stacking" 30-day periods of isolation.

168. Protective Devices and Disciplinary Punishment

169. The State says that relevant Acts prescribe the prohibition of protective equipment as a means

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[124] (KR)「One can be categorized as 'soldier requiring extra care' even by one complaint about his military life」, Hangkyoreh, 24 June 2014, http://www.hani.co.kr/arti/society/society_general/643945.html

[125] (KR)「Soldiers requiring extra care gets bullied」, Daily Jungang, 27 June 2016 http://news.jtbc.joins.com/article/article.aspx?news_id=NB10511499

[126] 「Survey on human rights situation and management of maladaptive soldiers」National Human Rights Commission of Korea, Nov 2012, p77

[127] 「Survey on human rights situation and management of maladaptive soldiers」National Human Rights Commission of Korea, Nov 2012, p80

[128] (KR) 「The offender being sentenced 40 years imprisonment – But the reality does not get better」, Hangkyoreh , 28 Aug 2016, http://www.hani.co.kr/arti/society/society_general/758672.html

of disciplinary punishment, in order to prevent ill-treatment related to its use.[129] However, the State only shows annual statistics[130] on the use of protective device, and does not present on its abuse. The protective devices are used in a cruel and inhumane way, which includes simultaneous use of more than two protective devices such as handcuffs and head protective equipment, and a long term use of protective devices which last more than one day. [131] The State argues that the use of protective devices is stopped when there is no more reason, but there is no legal protection to enforce this. It is completely up to the prison guard whether or not to use protective devices.[132] The purpose of using protective devices is to respond to imminent danger such as escape, assault, destruction, or self-injury, therefore, the nature of using such measures is temporary. If a protective device is being used on a prisoner for a certain period of time, the imminent danger disappears or remarkably diminishes. When there is no more need for further use, it should be stopped immediately. However protective devices are being repeatedly used for an unnecessarily long time. This casts serious doubts that protective devices are being abused as disciplinary measures.

170. In order to prevent unfair treatment and to impose more various types of disciplinary measures, the State added 9 new types of punishments including labor service. Unfortunately, most disciplinary measures are solitary confinement which is the harshest form of punishment, and its execution period is also long. It is based on Article 215 of the Enforcement Regulation of the Administration and Treatment of Correctional Institution Inmates Act, which allows solitary confinement to be given to many numbers of punishable actions. According to Article 215(5), only some punishable actions with minor violations are not regulated to be given solitary confinement, but for other actions, solitary confinement can be a punishment option. At the same time, the outside members of Disciplinary Committee, who make decisions on disciplinary actions, are appointed the warden. Therefore, disciplinary process is not independent and impartial.

171. **Torture Report Center**

172. The government claims that there are no cases related to 'the use of protective equipment and the execution of punishment in the prison' among the complaints filed to the National Human Rights Commission's torture report center. [133] In 2010, the National Human Rights Commission

[129] CAT/C/KOR/3-5, paras. 180-181; CCPR/C/KOR/2005/3, paras. 170-177; CCPR/C/KOR/4, para. 121

[130] CAT/C/KOR/3-5, para. 183

[131] Document submitted by the Ministry of Justice to MP Suh Gi-ho during parliamentary inspection in 2013: 1,204 cases (36.3% out of total 3,318 cases) of using protective devices for more than 1 day were reported between January and August 2013. Among these, 24 cases used protective device for more than 7 days. 938 cases(28.3%) were using more than two protective devices simultaneously.

[132] Article 99 of Administration and Treatment of Correctional Institution Inmates Act: (1) Each correctional officer shall use protective equipment within the minimum necessary extent and stop using protective equipment without delay upon termination of the relevant reason. (2) No protective equipment shall be used as means of disciplinary action.

[133] CAT/C/KOR/3-5, para. 185

operated a torture report center for a period of three months from June 2010 for a limited period. A total of 15 cases were filed, two cases were dismissed, and 12 cases were consulted.

173. Meanwhile, the National Human Rights Commission of Korea has been handling complaints (apart from the torture report center) related to the use of protective equipment and execution of punishment since 2001. And from 2012 to 2015, a total of 1026 complaints (related to 'the use of protective equipment and the execution of punishment in the prison) were made, of which only one case was acknowledged.[134]

174. In other words, the government should disclose the outcome of the investigation about 'the general complaint filed to the National Human Rights Commission', not just the complaint filed to torture report center that operated temporarily (only for three months).

35. Excessive use of force during the Candlelight protests of 2008

175. The number of people booked with regard to the candlelight vigils in 2008 amounted to 1,591. Among these persons, 46 were detained and indicted, 170 were indicted without detention, 1,061 were summarily indicted, and 211 were not prosecuted.[135] Out of the 46 who were detained and prosecuted, 3 were sentenced to imprisonment, 7 were sentenced to suspension of execution, 25 were sentenced to pecuniary punishment of 1~2 million KRW (about 884~1768 USD).[136]

176. The government said that only those who violated laws and committed violence were arrested and punished. However, the police labeled the entire candlelight protests as illegal based on violent acts committed by some of the participants. By doing so, the police committed abuse of power by delegitimizing the rest of the participants who protested in a legal manner.

177. Mr. Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and of association, made it clear that acts of sporadic violence or offences by some should not be used as grounds to restrict rights of others whose intentions and behaviour remain peaceful in nature.[137] Korean Institute of Criminology pointed out that the excessive and pre-emptive actions from the police such as using bas barricade made the participants unnecessarily sensitive and agitated, which increased the level of violence of the candlelight protests.[138]

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[134] CAT/C/KOR/3-5, Appendix [table 26]

[135] (KOR) Jung Eun-joo, "Candlelight in 2008 have suffered from trials for seven years", The Hankyoreh, December 21, 2016, available at http://www.hani.co.kr/arti/PRINT/775485.html, accessed Jan. 13, 2017.

[136] The Third, Fourth, and Fifth Periodic Reports of the Republic of Korea on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 187.

[137] A/HRC/31/66, para. 20.

[138] (KOR) Series of research in 2009, Korean Institute of Criminology.

178. Out of 24 complaints or accusations made by the victims of police brutality, prosecutors prosecuted only 2 cases, both of which resulted in final judgments of pecuniary punishment. In 18 out of 22 cases, the perpetrators could not be identified. That was an inevitable result because the police and riot police were wearing riot protection gear and outer jackets which do not bear any visible name badges, identification numbers or any other identifiable information.[139]The practice of not punishing police violence against protesters makes it even harder to eradicate abuse of state power.[140]

179. The misconducts of the police during the candlelight vigils can be categorized into two parts. One is committing acts of violence against participants while suppressing the protests and the other is committing illegal acts during arrest and detention.

180. The number of people injured by the police during the candlelight protests amounted to 2,500.[141] The police, aiming at the participants and firing water cannon and discharging fire extinguishers to disperse them, is a direct violation of the 'Police Equipment Regulation'. The police did not hesitate to use violent means to suppress the participants. This involved striking back of the head of the protesters who were running away with a baton and kicking a female university student who was shoved down to the ground with his combat boots.[142] According to the statistics provided by People's Committee for mad cow disease, 80% of the people who were injured suffered from facial or cephalic injuries and more than half of those cephalic injuries were the occipital region injuries, which meant the police struck the protesters who had no protective gear on their face or head with batons and shields. The police even attacked first aid volunteers who helped the injured protesters as well as the police and human rights defenders and lawyers who were monitoring the protests.[143]The police arrested human rights defenders for organizing 'illegal' protests and violating Assembly and Demonstration Act. The UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the special rapporteur on the situations of human rights defenders expressed their concerns about detaining human rights defenders for their non-violent actions.[144]

181. The police committed illegal activities while arresting and investigating the protesters. The police did not inform Miranda Rights to most of the participants who were arrested and arbitrarily detained them for 48 hours even after they were done with questioning. There was a case where

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[139] A/HRC/32/36, para. 43.

[140] Policing the candlelight protests in South Korea, P. 41, Amnesty International, Oct. 2008.

[141] (KOR) Report on police brutality and human rights violation at candlelight protests, p.1, People's solidarity for participatory democracy, Oct. 8, 2010.

[142] (KOR) Briefing on inspection result of police attack on candlelight female university student, Seoul Metropolitan Police Agency, June 5, 2008.

[143] (KOR) Report on police brutality and human rights violation at candlelight protests, p.5, People's solidarity for participatory democracy, Oct. 8, 2010.

[144] Letter of request from the special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the special rapporteur on the situations of human rights defenders, Oct. 7, 2008.

the police refused the request for medical care of a detainee.[145] When lawyers asked the police to contact the protesters who were caught in an act of crime, the police denied the request by giving several excuses and neutralized their rights by giving false information about locations of the suspects.[146]

182. National Human Rights Commission of Korea also acknowledged that the police used excessive means to suppress the protests. However, the Chief of the National Police Agency notified that he would fully accept the following recommendations: prohibiting throwing of items at the participants, prohibiting use of fire extinguishers and affidavit-related matter. The Chief would partially accept the recommendations made regarding putting identifiable information on police officers, and would not accept the recommendation regarding establishing legal justification for water cannon truck.[147]

36. Legal rights of persons deprived of their liberty in the context of psychiatric care

183. There are more than 80,000 people in Korean mental hospitals, and about 75% of them are involuntarily hospitalized. They spend an average of 190 days or more in a hospital or nursing home. However, the actual length of hospitalization period is much longer because one can be put in another hospital right after being discharged from one hospital. The Mental Health Act requires 'an evaluation to the continuation of hospitalization' in case of enforcing more than 6 months of hospitalization. Even if they decide to discharge the patient, it is possible to re-admit him/her to the hospital immediately after. The number of mental hospital beds rose from 50,810 in 2000 to 90,665 in 2013. [148]

184. A total of 2,789 complaints of human rights violations related to persons with mental disabilities were submitted to the National Human Rights Commission of Korea(NHRCK) in 2014. Among which, 354 cases (about 12.6%) were accounted for involving isolation and compulsory hospitalization in mental hospitals. [149]

185. According to the NHRCK's "2015 Mental Hospital Isolation and Compulsory Hospitalization Survey Research" (conducted on a total of 710 people including 424 patients who were isolated or compulsorily hospitalized and 286 staff including medical staff), isolation and

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[145] Amnesty International, Policing the candlelight protests in South Korea, P. 36, Oct. 2008.

[146] (KOR) "Asking candlelight our way again-Minbyun candlelight debate", p.45. Lawyers for a democratic society, May 11, 2010, available at http://minbyun.prizma.co.kr/wp-content/uploads/1/1063456119.pdf

[147] (KOR) "NHRCK, announcing the police's partial non-acceptance of the recommendations", National Human Rights Commission of Korea, Nov.18, 2009, available at http://www.humanrights.go.kr/hrletter/09121/pop02_1.htm

[148] 「75% of 80,000 people being compulsory hospitalized」 2017. 1. 3. Media Today http://www.mediatoday.co.kr/?mod=news&act=articleView&idxno=134205

[149] Mental Hospital Isolation and Compulsory Hospitalization Survey Research, Lee Hwayoung, 2015. NHRCK

compulsory hospitalization were excessive and too frequent. Four out of 10 respondents described it to be excessive. 21.8% of respondents suffered from physical injuries. Most of the patients suffered from injuries such as bruising on the wrists and ankles because they were tied up by judo and taekwondo bands which is used in most mental hospitals. 30.2% of the respondents said that isolation and compulsory hospitalization without any explanation was an unjustifiable human rights infringement.[150]

186. Amendment of the Mental Health Act and the Constitutional Court's ruling on Mandatory Admission

187. The Mental Health was revised on May 29, 2016 and will be implemented on May 30, 2017. The contents of the revised law can be regarded as a progressive law in that it was intended to ameliorate the problems of existing mental health law.
On the other hand on September 29, 2016, the Constitutional Court ruled unanimously that allowing the compulsory hospitalization by the consent of the two guardians and one psychiatrist was unconstitutional.

188. Improvement task

189. The revised law restricts the number of institutions that can establish the 'Admission Compliance Review Committee' to national and public mental institutions (revised Article 46 (1)). However, it is practically impossible to examine 100,000 hospital admissions per year in the committee, and it is not clear how many inadequate hospitalizations will be detected through this procedure (especially when the procedure is operated by written examination). Ultimately, it is urgently needed to improve the legislation that guarantees the Court (independent judicial institution) to examine admission on mental hospital and assures the right of representation of the patient him/herself. [151]

190. When mental hospital patients are admitted, the local government pays only 6 ~ 7% of the fee and the rest is covered by the central government's medical care budget. In 2014, 48.3% of hospitalized patients are hospitalized for more than 361 days, and the total cost of hospitalization for these patients is paid by the central government. Community services for the mentally handicapped are becoming the biggest factor promoting long - term hospitalization in mental hospitals. Therefore, it is urgently required for the central government to take charge of the community and social services for the mentally handicapped and to manage all steps of the process from admissions to discharge.

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[150] 「Hell without Human Rights – The face of mental hospital」, 2015. 11. 9. Able News
http://www.ablenews.co.kr/News/NewsContent.aspx?CategoryCode=0013&NewsCode=001320151119120728479198

[151] "The meaning of constitutional court's decision and legislative improvement task", Kim Seonhwa, Lee Manwoo, Issue and Point 1205, 2016. 10. 10., National Assembly Legislation Bureau

37. Measures to amend relevant legislation to expressly prohibit corporal punishment in schools and at home and to implement educational measures promoting positive and non-violent forms of discipline

191. Corporal punishment in Schools

192. In 2001, the amendment of 「Enforcement decree of the Elementary and Secondary Education Act」explicitly prohibits corporal punishment in schools. The government presented that education to ban corporal punishment in schools has been conducted on teachers during their training period. However, corporal punishment in schools continues to persist.[152]

193. According to the「Korean Social Situation 2016」 published by National Statistical Office, the proportion of students who were exposed to verbal and physical violence/punishment by teachers has declined. However, the incidence of verbal abuse increased with age, and higher grades: there were more in middle and high schools than in elementary schools. Students answered they suffered such infliction 1-2 times a month. As shown also in corporal punishment patterns, this demonstrates that both psychological and physical punishments are still frequently used as a mode to instruct and discipline students.

194. The National Human Rights Commission of Korea (NHRCK) has the authority to investigate violations of human rights in schools, and students can file a petition to NHRCK regarding the human rights violations in schools. However final decisions merely amount to issuing "warnings and cautionary measures or recommending human rights education."[153] Therefore, the role of the monitoring body on human rights violations is limited as the decision is restricted to giving recommendations.

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[152] 「Legally forbidden… yet 'corporal punishment' in schools never ends」 2016. 11. 23. Yonhap News Agency

[153] In one complaint where a teacher verbally abused a student, NHRCK "recommended that the principal of OO elementary school carry out a set of duty training to the defendant (elementary teacher) regarding general human rights of children and students." (2016.9.29. 15complaint1011100 regarding human rights violation of a teacher's verbal abuse), in one complaint where a teacher committed corporal punishment to a student, NHRCK "recommended that the principal of OO middle school give a warning to the defendant and carry out human right education classes in order to prevent reoccurrence." (2016.8.24. 16complaint0396900 regarding a teacher's corporal punishment to a student), in the other case where a teacher repeated verbal abuse to a student in public open areas, NHRCK "recommended that the principal of OO middle school give a warning to the defendant in order to prevent reoccurrence in similar cases in the future." (2015.11.10. 15compraint0336200 regarding human rights violations of a teacher's verbal abuse etc.)

195. Corporal punishment at home

196. There is no Act or subordinate statute that explicitly prohibits corporal punishment at home. However, if corporal punishment violates norms by lacking legitimate purpose or appropriate means for exercising parental authority, a perpetrator may be punished for crimes of violence or infliction of injuries. However, judicial precedent defined the following actions as socially acceptable: 'actions based on the spirit of the law and order, social ethics, or social norms'[154], 'actions recognized as very normal life style, and that are historically created in the category of social order'[155], or 'acceptable actions normally conducted under social life relations'[156].

197. In principle, corporal punishment is permitted as an exercise of parental rights, and it is banned only in exceptional situations. The 「Civil Act」 provides the parents with the rights and duties to protect and educate children and to take a disciplinary action[157]. The concept of 'socially accepted rules' which is the standard for rights is not clearly presented, which gives discretion to judge when interpreting vague or unclear terms in legislation[158]. The proportioning of severity of punishment to severity of crime has been at issue in regards to cases dealing with violence and emotional abuse in parental disciplinary cases[159].

198. The Ministry of Education, in response to educational neglect of children by parents, amended the Enforcement Decree of the Elementary and Secondary Education Act. This enables "the Administration Committee on Compulsory Education" at each schools to investigate matters concerning attendance issues for students who are absent on a long-term basis. However, the terms of the operation and management of the Committee are set as a part of school regulations without any official manual or guideline offered by the Ministry of Education. The effectiveness of the Committee is therefore questioned.

199. According to 「Act on the Special Cases Concerning the Punishment, etc. of Child Abuse Crimes」, persons with an obligation to report child abuse crimes (e.g. school teachers) only

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[154] Supreme Court, 3/27/2014, 2012Do11204

[155] Supreme Court, 6/30/2006, 2006Do2104

[156] Supreme Court, 11/11/1994 93Do3167

[157] Articles 913 and 915 of the Civil Act

[158] Park Chang-geol(2016)「The definition of 'action which does not violate the social rules' in Article 20 of the Criminal Act and its relation with other elements of justification defenses」Study on Criminology no.28(1), Korea Criminal Law Association

[159] ① the assailant kneeled the child victim and dragged his/her hair punching the face about 15 times claiming the child victim was not diligent with his/her study. After pushing him/her, the assailant stepped on the stomach of the victim and threatened him/her with a 17cm long kitchen knife while swearing. In this abuse case, the court decided the imprisonment of one year and the half, the probation of 2 years, 160 hours of social service volunteer and 40 hours of taking classes regarding preventing child abuse. (Ulsan District Court, 5/14/2015, 2015Godan777)

need to pay an administrative penalty that ranges from 1.5 to 5 million Korean won (equivalent to about 1,300 ~ 4,300 USD). In relation to mandatory reporting obligation, no particular disciplinary action can be taken against the school. In addition, this Act can be applied only in circumstances when the investigatory agency and the educational institution involved are aware of the situation. There exist no monitoring systems on each institution.

38. Rights of Migrant Workers

200. Procedural issues of crackdown on undocumented immigrants

201. Problems of crackdown on undocumented immigrants occur most frequently in its process itself. Human rights violations still exist in it while grabbing and dragging a person who seems to be a foreigner to demand a visa without its legitimate procedure. In December 2016, when a married immigrant woman from Thailand was crossing at the crosswalk, the two squad male officers in plain clothes simultaneously linked her arms in both sides and dragged her to demand her visa. She who had already obtained Korean citizenship was very upset and pointed out their inhumane action. They should have showed the notice. First to her according to Korean government response #199. However, they didn't so we can find out their concern was not their legitimate steps but only about her escape.

202. For the other actual cases seen in #141 above, moreover, 'some migrant workers were imprisoned in the car for an hour without knowing any reason'[160] and some are taken out during their meal in the restaurant.[161] As seen from the latter case crackdown movie clip, immigration officer did not show any notice to migrant workers. Rather, they cried out their enforcement was legitimate against Korean worker who complain of it. Through these cases, we can check out immigration officer does not follow #199 at all and the Korean government statement #199 is not being enforced legitimately. Therefore, Korean government response #199 is inadequate.

203. On February 10 in 2003, NHRCK (National Human Rights Commission of Korea) urged that during the process of crackdown the regulation related with random questioning must be followed as the same as the way to enforce to indigenous Koreans: human rights must be guaranteed even to undocumented migrant workers, the identity of the squads and the purpose of questioning must be revealed first in the future crackdowns, if a migrant is taken to some specific place he/she should be informed about it and given an opportunity to notify

[160] Kim et al. 「'Plastic Greenhouse Dormitory, Thicket Bathroom by the River', Foreign Workers Are Sad.」 Yonhap News, July 12, 2016. http://www.yonhapnews.co.kr/bulletin/2016/07/11/0200000000AKR20160711136900051.HTML.

[161] Kim, Heegon. "Rushing Criticism of Excessive Crackdown on Foreign Workers at Table" Gyeongnamdomin Daily News, February 16, 2017. http://www.idomin.com/?mod=news&act=articleView&idxno=530690

his/her family or relatives of it, and so on.

204. On November 19 in 2009, expressing its opinion on Immigration Control Act Revision Bill, NHRCK urged that a control guideline on immigration officer ‘s enforcement should be set up through referring to the Act on the Performance of Duties by Police Officers - on question in order to guarantee human rights and legitimate procedure to a migrant in the process of stop and question for checking out his/her status is documented or not. Korean government seemed to respond to these urgings from NHRCK, with the statement #199. However, this response does not show any sanctions against immigration officer of the level of NHRCK’s urgings. Until now, actually, the regulation immigration officer should strictly observe during their crackdown enforcement does not exist as the same level of the Act on the Performance of Duties by Police Officers - on question. Thus, we can see that Korean government say #199 but in the real field immigration officer does not follow it seriously. On this Korean government wordplay, we have many contradictable actual cases.

205. Human rights regulations not respected over the crackdown process

206. In the real field, it is highly doubtful for 'immigration officer' to "inform in advance" as the statement above. In the criminal procedure, the right to refuse to make statements and the right to designate counsel (are guaranteed by law and there is a confirmation procedure to confirm that the party has been informed of these rights but the immigration control procedure (does not seem to be the same. This is because, considering the cases[162][163] that migrant workers who are suffering from unpaid wages are forced to leave Korea because of their undocumented status, it is seriously hard to say that immigration officer "inform in advance" about the above matters in the process. Simply, moreover, because there is a huge language barrier to communication it is very difficult to 'inform in advance'.

207. Additionally, considering #199 together, therefore, in order to 'inform in advance', the written notice should be presented in advance. Besides, immigration officer should not insist that they have followed legitimate procedures, saying that “We have informed in advance or present the written notice in Korean.” It must be informed in a language the targeted migrants understand and confirmed that they have been informed of their rights in their language and understand about it. Even in confirming process, it should be confirmed not forcefully in the position of immigration but carefully in the position of migrants. This must be done even during the urgent situation like crackdown. Without this implementation, crackdown must not be enforced. Korean government ought to make over and release obvious details in what

[162] Kim, Boseong. "Migrant Worker Protection System? 'The Apple of Sodom' - Why was a Chinese Mr. Wang Detained?" Voice of the People. March 19, 2015.
http://www.vop.co.kr/A00000861757.html

[163] Gu, Jahwan. "A Migrant Worker Forced to Leave Korea After Reporting Overdue Wages." Voice of the People. October 25, 2016. http://www.vop.co.kr/A00001081401.html

point of the crackdown process the right to refuse to make statements and the right to designate counsel are informed "in advance".

208. The real condition of foreigner detention center

209. The government is presenting the number of foreigners who received services of the structure of legal aids. However, it was revealed at the Public Interest Human Lawyer Roundtable Discussion meeting in 2016[164] that this statistic was based only on the number of reception, regardless of whether or not the accepted case was resolved.

210. On 11 February 2017, the Internet news channel Oh My News reported that Mr. A form Nigeria was detained for more than four years on the grounds of refugee action by Hwaseong Immigration Processing Center, which is a foreign detention facility. Mr. A came to Korea with a visa related to the participation of the 2012 Yeosu Ocean Expo. Since then, he has been residing in Korea for a few months, but he was arrested for suspicion. And he has been confined in the detention center for 4 years and 2 months so far.[165]

211. The relevant report of Oh My News says that like Ms. A from Nigeria, there are hundreds of 'protected foreigners' who criminalized for reasons that they stayed beyond the period of administrative stay and are detained in foreigner detention centers in such as Hwaseong, Cheongju, and Yeosu. Dozens of them have continued to hold detention for more than one year. (Also, the news report said that there are three foreigners including Mr. A in Hwaseong detention center who have been staying for three years or more.) "Immigration Processing Center", this name itself does not show what kind of this place is like. It is practically a detention facility with cramped rooms. Many people are trapped and spend all day there. It is known that if inmates didn't obey the instructions or made a disturbance, they might be locked in a disciplinary room called "Dokgeosil (solitary confinement)". General prisoners in a general prison have at least hope of to be released if the term of "sentence" expires, but there are no such things in Immigration Processing Center. Although it is supposed to give permission after review by the Minister of Justice at every three months, since there are no criteria on examination and permission, it is only a formal procedure.

212. In 2015 a report of the "Survey on the status of foreigners' detention centers" issued by the Korea Bar Association pointed out that the administrative authority has shifted the foreign protection facility[166] to a facility where "detention" is being executed. "Detention" is the exercise of public power that constrains freedom of the body to the utmost degree. The

[164] Korea Legal Aid Corporation, Public Interest Human Lawyer Roundtable Discussion meeting, 2016.11.28

[165] Kim, Do-Gyun, 「Migrant detention in Hwaseong Immigration Detention for 4years and 2months」, Oh My News, 2017.2.11 http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002297237&CMPT_CD=P0001

[166] Immigration Control Act, Paragraph 51, Article 2 through Article 5

"report" says when a foreign national protection facility is transferred to a detention facility like this, 1. Treatment and its Improvement of Foreigners in the Detention Facilities and 2. How to minimize the illegal restrictions on basic rights based on the protection(detention) itself must be the topics as a matter of argument.

213. Considering that the "protection" under the Immigration Control Act has been shifted to "a system for restraining human beings", facility entrance process, in-facility treatment, investigation of detention rooms, treatment of officials, etc. must be clarified whether it is well observed. Also, it is necessary to make it clear that these procedures are well-functioning, for example, deportation, attorney's Assistance, refugee application process in facilities, and visiting procedures. Likewise, it is needed to clarify and disclose whether well-fitting medical facilities, problems of health rights of long-term detainees, actual supply situation, health right etc., and their suitability.

214. Temporary protection cancellation

215. The authority responded that a 'vulnerable group' such as patients could actively use temporary protection cancellation from among unregistered stayers, but there were cases of which some were unjustly exiled. A migrant worker from Uzbekistan who were protected in Hwaseong Immigration Processing Center even had a hunger strike and committed suicide attempt asking for treatment and compensation for his blindness developed during work in Korea. He was eventually forcibly repatriated by the Justice Department.

216. There are hundreds of 'protected foreigners' who are being detained for reasons that they stayed beyond the period of administrative stay and are detained in foreigner detention centers in such as Hwaseong, Cheongju, and Yeosu. Dozens of them have continued to hold detention for more than one year. Also, Oh My News reported that there are three foreigners including Mr. A in Hwaseong detention center who have been staying for three years or more.[167]

217. Current Immigration Control Law limits the term of detention of foreign inmates to 'within 10 days' and stipulates that 'if there are unavoidable reasons, extend once within 10 days' (Article 52 of the law). However, according to the law, "If a person who received a compulsory exit order can not be repatriated from the Republic of Korea immediately for reasons such as not possessing passport or uncertainty of arranged transportation, etc., and he or she can be protected at a protective facility until he or she can be repatriated." By doing the provision (article 63), Indefinite detention has been made to be practically possible.

218. For this reason, long-time detainees of more than 4 years were born like Mr. A. Still, the

[167] Kim, Do-Gyun, 「Migrant detention in Hwaseong Immigration Detention for 4years and 2months」, Oh My News, 2017.2.11 http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002297237&CMPT_CD=P0001

possibility of Mr. A being accepted as a refugee status and issuing it is almost sparse, and I have to endure the unfinished years until the final judgment. In order to prevent long-term detention of refugee application petitioner like Mr. A's case, it is pointed out that it is necessary to more flexibly operate the "temporary cancellation of protection" which can be requested by legal representative and guarantor or the "protection release system" which is possible with approval of the Minister of Justice than the current system.

219. According to the Immigration Control Law, in the case of "temporary cancellation of protection", it is required to deposit of 20 million won or less[168], and usually it is rare to even admit it. Therefore, it must be a pie in the sky for protected foreigners. Also, the Attorney General approves the extension of the shelter period every three months. It is hard to find a case where the extension has been disapproved and "cancellation of protection" has been made, though.

220. Bill-Gung (then 17 years old) attended the police station as a person for reference, trying to stop the fight between Korean students and Mongolian students. During the police investigation, even though he was just a person for reference, it was revealed that he is an unregistered person by background check, and it made him expelled to Mongolia on October 5, 2012. At that time, Bill-gung was a person under age, when he was detained at Seoul Immigration Office, he had to spend four days in a room with several adults. The blanket was dirty, spending time with strangers was scary for him. Also, Bill-gung was handcuffed when he was transferred to Seoul immigration office from the police station. Even when moved to the Hwaseong Immigration Processing Center was the same, and on the day of the deportation, Bill-gung needed to handcuffed with crossing the hands with adult purgees when they boarded the vehicle and moved to the airport. During the waiting time for boarding he was sitting in a cramped car with several adults, and had to walk along the long boarding pass with ordinary passengers. The Immigration Bureau finally released his handcuffs only after arriving at the plane. The immigration Bureau did not provide any food or water to prevent him using the toilet during the waiting time.

221. These cases also happen to adults. The National Police Agency has not expelled unregistered immigrants who suffered violence such as assault by not hand them over to the Ministry of Justice, but has excluded the eyewitness from the subjects for stay of deportation. In this way, due to the police "measures to protect only the victims", when the only witness of the incident is unregistered there arises a problem that important testimonies can not be secured. When the unregistered child is deported, data on how the child is handed over to a local family member is needed. Also, present immigration offices and detention centers should clarify how the space for protecting underage settlers is managed. In the case that it is operated, they must disclose the usage situation of the last five years and the present

[168] Immigration Control Act, Chapter 6, Section 6, Paragraph 65, Article 2

condition data of the minor who was imprisoned at the immigration office or foreign detention center like Bill-Gung. In addition, it should be clarified whether there is a plan to establish a legal ground for the clear implementation of the principle of exclusion of child imprisonment.

222. The authorities have guidelines on how to support learning rights for illegal students. In the private part of this guideline, there is a statement that children who are illegally residing in elementary and junior high schools should refrain from enforcement. Even if they are caught, it is also necessary to delay enforced withdrawal from students and parents, and to extend this to high school students so that they can continue their studies until they graduate from junior high school. These should be open and legalized.

223. Restrain of Workplace changing

224. Before 2009, we were able to change workplace 1time in a year when yearly contract was finished. However, according to new regulation by the law, yearly contract has been changed to 3years contract and after 3years of contract foreign workers able to extend the visa up to 1year and 10months only if foreign workers sign the contract saying that "I will continue the working contract with same company". In the result, foreign worker is not able to change the workplace if person willing to work further period. As today, foreign workers are able to work 4years and 10months without having right to change the workplace, in case of person selected as 'Sincere Worker' then the contract will be extended in total of 9years and 8months without changing workplace. It causes exploitation and force of labor. Hereby EPS system allows modern slavery working condition between owner and labor. According to 2009 research[169], 37% of foreign workers said they want to change workplace. Moreover, according to 2016 research, 62.8% of EPS foreign workers said they want to change workplace.[170] The result of more than 60% of foreign workers want to change workplace means pretty stunning. This indication also represents majority of foreign workers are not pleased on working condition and forced to work.

225. Our government council answered that foreign workers entitle to change workplace with any barrier if there is 'Human right abuse and unfairness'. However, the result of the government policy that legalize of force labor clearly shows daily 'Human right abuse and unfairness'. Current unfair policy is powerful violent to foreign workers who are the absolute majority. Therefore, the protection of foreign worker's basic right need to be guaranteed by implementing freedom of labor contract.

[169]Joint Committee with Migrants in Korea, "Research on Human Rights Situation of EPS Migrant Worker 5years after implementation of EPS", 2009, P30

[170] Chungcheong Southern Province, "Research on Human Rights Situation of ChungNam Migrant Worker", 2016, P83

226. The ministry of employment and labor offered job permit to foreign workers though EPS job center until 2012 august but it has been banned. Government said the reasons as foreign workers have language barrier, not familiar to location, taking advantage by agents. But there is no single legal case caused by agent was found and punished up to now. Furthermore, the system our government implemented is to refer the foreign workers to employer and it strictly restrain the choice of labor and provides benefit of selection of labor to employers. The job center introduces 11 employers during 3months only and if foreign worker become undocumented person if does not want to take these few recommendations.

227. Under the EPS system, changing workplace during 4years and 10months is not possible by labor's will. EPS system provides only 3months of job searching period but foreign worker does not have freedom to meet employers even when there is issues on current employers like bankrupt and so on.

228. Government points the finger to agents that taking commissions and they cause illegal status to foreign workers. But the system under the power of government creates more illegal status to foreign workers as thousands yearly. In 2014, there are 3,812 people became undocumented for not applying changing workplace (within 1month), and also 2014, there were 2,817 people became another undocumented because they did not found workplace within allowed period (3months).

229. Yearly more than 6,000 people become undocumented in duration of changing workplace. Application period(1month) must be eliminated and also duration of changing workplace(3months) must be eliminated. Korean government needs to realize the strict system is generating undocumented people for no reason. The immigration spends lots of budget to crackdown undocumented people but the ministry of employment and labor make thousands of undocumented people.

230. In total, those who not able to change workplace for more than 3months were 14,713people for 5years from 2010 to 2014. And those who not able to apply for changing workplace within 1month were 22,582people for 5years from 2010 to 2014.[171] As we can see from this research, there were 37,295 undocumented people for 5years (2010-2014).

[171] The National Assembly, Friendly Forum, "Seminar for the Improvement of Migrant Workers' Labor Rights", 2015, P58

<No. of undocumented by spent more than 3months to change workplace>

Year	2010	2011	2012	2013	2014	Total
No.	1,727	3,593	3,839	2,737	2,817	14,713

<No. of undocumented by not applied change workplace within 1month>

Year	2010	2011	2012	2013	2014	Total
No.	1,353	4,447	7,728	5,241	3,812	22,581

231. We have pointed that these people have been undocumented by extremely strict and force heavy responsible. Initially, this country has too suppressive towards foreign workers while changing workplace and weaken the rights to choose job with forcing regulation system. And also this system is only favorably set for employers.

232. There is minor reduce of undocumented in this research from 2012. But this is due to effort of being published this governmental matter to public not the government effort to reduce the matter. To overcome this matter, eliminate the duration of changing workplace, the limit of workplace suggestion and other related matters are necessary. In practical, the job centers' rolls need to be recovered by them to provide latest job opportunities from the registered employers.

233. Agriculture worker are in more serious. Government says 'Provide extra help for foreign workers if person about to reach 3months duration of changing workplace'. But this is not applicable to agriculture workers who were terminated during winter. In every year, many agriculture employers terminate the contract right after finishing harvest period and agriculture workers are not possible to transfer to manufacturing industry. They are only able to transfer to other agricultural industry but employers do not need during winter period. Eventually those who not able to be placed become undocumented. Those people are facing structural irrationality to be undocumented but crack down and deportation are only their future.

39. Ratification of the Optional Protocol to the Convention16 and the establishment of an effective national preventive mechanism

234. Although the Government of the Republic of Korea has already announced that it was considering a ratification of the Optional Protocol to the Convention Against Torture in 2006[172], 10 years after the first announcement the Government still holds the same position saying that it is reviewing the

[172] UN Torture Prevention Commission, Final View on Korea, UN Doc. CAT/C/KOR/CO/2, 25 July 2006, para. 22.

possible conflict with the domestic law.[173] It only shows that there is no serious review by the Government and they are rather trying to hide the intention of not to ratify it. If not, the Government should have presented the result of study which has been conducted for the past 10 years. The Government claims to have reviewed the international human rights convention and the International Labor Organization Convention which have not been ratified for several years and for many decades. Thus, the UN Torture Prevention Committee should take a firm stance on this inadequate attitude of the Government.

235. The Government also asserts that the National Human Rights Commission of Korea(NHRCK) is performing a corresponding role to the national preventive mechanisms only because the NHRCK is conducting a visiting investigation on detention and protection facilities.[174] However, there are fundamental differences between the NHRCK and the National Preventive Mechanisms. National preventive mechanisms in the Optional Protocol provide stringent standards than the NHRCK, including gender balance, appropriate representation of ethnic and ethnic minorities (Article 18 (2)). Whereas the NHRCK's visits to detention and protection facilities are subject to full consultation with the relevant authorities. After ratifying the Optional Protocol, those relevant authorities are obliged to allow unprecedented visits by national preventive mechanisms. There is a clear distinction that unprecedented visits is not based on the statement that there is a risk of torture (see Article 20).[175]

236. In addition, the venue of the Optional Protocol shall not be limited to prisons, detention centers, multi-prison shelters, or other places of detention or protection facilities under the NHRCK Act. It includes any place where the freedom of the individual may be deprived (Public or private custodial setting) of.[176] Therefore, places where detention is currently a problem in Republic of Korea, such as the North Korean Refugee Protection Center, places of isolation related to infectious diseases, places of detention for refugee applicants at ports and ports, are NOT the object of NHRCK’s visit. But the national preventive mechanism has the authority to visit these places of above. In order to prevent torture and similar infringements in advance, the national preventive mechanisms need to be achieved through the accession of the Optional Protocol.

40. Measures taken by the State party to respond to any threats

[173] Republic of Korea, 3rd to 5th Regular Country Reports on UN Torture Prevention Commission, UN Doc. CAT/C/KOR/3-5, para. 207.

[174] Republic of Korea, 3rd to 5th Regular Country Reports on UN Torture Prevention Commission, UN Doc. CAT/C/KOR/3-5, para. 207.

[175] Choi, Tae-hyun, Necessity for joining the Optional Protocol to the Torture Convention and Considerations for Joining, National Human Rights Commission, Korean International Law Society, Debate for seeking to join the Optional Protocol to Torture Prevention Convention, 2015. December 16, p. 19.

[176] Choi, Tae-hyun, Necessity for joining the Optional Protocol to the Torture Convention and Considerations for Joining, National Human Rights Commission, Korean International Law Society, Debate for seeking to join the Optional Protocol to Torture Prevention Convention, 2015. December 16, p. 33.

of terrorism

237. Despite the objections from Republic of Korea civil society members and the opposition party's marathon filibuster, the government enacted 'the Act on Anti-Terrorism for the Protection of Citizens and Public Security', (hereinafter, the Act) in March 3, 2016 and the implementation starts from August 4, 2016. The Act became affective after 15 years of National Intelligence Service's first attempt to legislate the Act in November 2001 despite the controversy over possibility of human rights violation. The Act uses vague concept such as 'terror', 'terrorist group' and numerous intrusive clauses are included, for example, personal details (sensitive information regarding ideology, conviction records, health records, etc.), data collection using local information, tracking immigration records and financial transactions.

238. Unlike other countries' national security agencies, the Act gathers data from both domestic and abroad, and has authority to investigate over certain crimes. The Act is highly likely to violate human rights as it involves private information for security coordination and reinforcing excessive NIS' authority. There was a news article that NIS was involved in drafting a 'blacklist of artist', which shows that NIS could violate human rights. The Act employed a human rights officer for anti-terrorism to prevent human rights violations. However, the validity of the system is questionable as a law professor who used to be a prosecutor was appointed as human rights officer. The activities of the human rights officer are unknown as there have not been any official briefings.

41. New developments on the legal and institutional framework within which human rights are promoted and protected at the national level

239. The government enacted 'Framework Act on Military Status and Service' in December 29, 2015 and implemented the Act since June 30, 2016. The Act has a 'Military Human Rights Officer' system, but its effectiveness is questionable as a series of cruel and inhuman treatments of soldiers still occur. For example, high-raking military officers broke their subordinate's nails[177], forced to finish a soup, or forced to eat 180 candy bars.[178] Placing a military personnel in guardhouse constitutes detainment as it is a form of punishment executed without warrant. NHRCK recommended reformation of the system.[179]

240. National Human Rights Commission Act was reformed in February 3, 2016, to ensure diversity in composition of NHRCK commissioners as it plays a critical role in terms of prevention of human rights violation. However, it failed to have diverse and human rights-friendly commissioners. The President

[177] SBS 2017. 3. 9. <http://news.sbs.co.kr/news/endPage.do?news_id=N1004085096&plink=ORI&cooper=NAVER>

[178] Donga.com 2017. 1. 24. <http://news.donga.com/3/all/20170124/82563344/2>

[179] Kyunghyang Daily, 2017. 3. 8. <http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201703081105001&code=940100>

recommended candidates without any human rights related experience and the process was not disclosed.[180] The Chief Justice in the Supreme Court nominated a NHRCK commissioner who decided to serve her consecutive term as a Justice at the Constitutional Court in March 6, 2017.[181] There is lack of diversity in the commissioner composition. Among three NHRCK President and standing commissioners, 2 people are from legal professions, one person used to be a politician. Among 7 non-standing commissioners, 5 people are from legal profession and 2 people are from religious institution.[182]

42. New political, administrative or other measures taken to promote and protect human rights at the national level since the second periodic report

241. National Human Rights Commission of Korea(NHRCK) recommended to establish the second NAP (2012-2016) and the third NAP (2017-2021) to the government. In its second NAP, NHRCK recommended the abolition of 'interrogatory written statement to prevent a closed-door investigation'.[183] However, the recommendation was not accepted and the written statement is still admissible provided that it is written according to the proper procedure and means, and that the suspect or the counsel of the suspect recognizes the contents of the statement. The second NAP pointed out that Ministry of Justice is planning to amend the criminal procedure act which contains reducing of punishment on the condition of confession, punishment of false testimonies.[184] This reformation is proposed for the convenience of investigation and likely to be in violation of human rights. In its third NAP, NHRCK recommended the reformation of criminal procedure act again to reinforce the rights of defense counsel's participation in the suspect interrogation.[185]

43. New measures and developments undertaken to implement the Convention, and the Committee's recommendations

242. N/A

[180] Ablenews 2016. 11. 30. <http://www.ablenews.co.kr/News/NewsContent.aspx?CategoryCode=0011&NewsCode=001120161130145631520027>

[181] gsrufp 2017. 3. 6. <http://www.hani.co.kr/arti/society/society_general/785372.html>

[182] NHRCK <http://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=00100500300 1001>

[183] 2012-2016 NAP Recommendations, 2012. 1, p. 115.

[184] 2012-2016 NAP Recommendations, 2012. 1, p. 109.

[185] 2017-2021 NAP Recommendations, 2016. 7, p. 114.

44. Report on South Korea's "Brothers Home" incident for the United Nations Committee Against Torture

243. Committee for the Truth Finding of the Brothers Home Incident

244. In 1975, South Korea's dictator President Park Chung-hee issued a directive[186] that allowed police and local government officials to grab people they deemed as "vagrants" off the streets and detain them at institutions without court-issued warrants. The largest of such institutions was Brothers Home, a massive mountainside compound in the port city of Busan, where inmates were forced to live in inhumane and horrific conditions and often exposed to slavery, sexual assault and beatings that were sometimes fatal. Brothers Home began as an orphanage in 1960 and former inmates say violence was rampant at the facility long before Park's 1975 directive. The number of people confined in vagrant facilities such as Brothers Home increased as the country began preparations for the 1986 Asian Games and the 1988 Summer Olympics in capital Seoul. Government officials stressed the need to "clean the streets" of undesirables before the start of these events, which they saw as the country's coming-out party to the world.

245. Remaining Brothers Home records show that 513 died[187] at the facility from 1975 to 1986, but the real number of deaths is thought to be larger. The death causes documented in the records have shown to be incomplete and frequently incorrect. Survivors say many inmates died from beatings or harsh labor conditions.[188] The bodies of the victims were often buried in the hills outside of the compound or sold to medical departments of universities to be used for experiments, former inmates say. There has been no effort as of 2017 to find or recover these bodies. Despite the size and severity of the incident, Brothers Home owner Park In-keun received a prison term of just two and a half years for embezzling government funds and other minor charges.[189] Prosecutors had faced intense pressure from the government of military strongman Chun Doo-hwan to curb their probe and push for lighter punishment for Park. After serving his term, Park returned as the head of the facility, which by then changed its name, and used it for personal business projects before he died in 2016.

246. South Korea's opposition lawmakers had proposed a draft law in 2014 to launch a truth-finding investigation into Brothers Home,[190] but the bill was discarded in 2016 at the end of the legislative session following opposition from the Ministry of the Interior. Former Vice Interior Minister Chung

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[186] Park Chung-hee: Internal Affairs Ministry Directive No. 410 (On the reporting, repression, accommodation, protection, release and post-release control of vagrants), Dec. 25, 1975

[187] New Democratic Party: New Democratic Party's 1st Report on Investigation of Brothers Home Incident (page 5), Feb. 4, 1987.

[188] Lee Sang-woo: Brothers Home Incident's Victims Testimonies (page 33), Oct. 10, 2013

[189] Mayor of Busan's Buk-gu District: Approval of Park In-keun as Representative Director of the Social Welfare Corporation "Job's Village," Dec. 10. 1994.

[190] "Draft Law on Truth Finding and Confirming Government Responsibility on Forced Detainment and Other Abuses at Brothers Home."

Chae Gun, currently the head of the U.N. Project Office on Governance, told South Korean lawmakers in 2015 that the government couldn't support the bill because a truth-finding investigation into Brothers Home would be seen as unfair to victims of the country's other human rights abuse incidents.[191] Chung also said it was unclear whether the bill had widespread public support. Ahn Jeong-tae, another ministry official, told a reporter that focusing on just one human rights incident would financially burden the government and set a bad precedent. This clearly shows that South Korea's government continues to oppose revisiting the case.

45. Report on human rights violations in illegal detention and corruption in Daegu Hope Center (a welfare center)

247. Daegu Hope Center (the Hope Center) was founded on Dec. 31, 1958 by Daegu city and was managed until Daegu Catholic Church was entrusted with management rights on Apr. 1, 1980. And Daegu Catholic Church has been running the Hope Center since. There are four housing facilities in the Hope Center for homeless and disabled people and about 1,150 people are living in groups.

248. The results showed that 309 people (26.9% of total, 46.9 people per year) died in the Hope Center during the period of 6 years and 7 months from January 2010 to August 2016[192]. It is 7.5 times the number of deaths per 1000 people in Korea in 2015((which is 5.4 people per year). Even compared to the number of death in 'Brothers Home'' (which is the largest human rights violation case ever conducted at homeless shelter – 531 deaths during 12 years (44.3 people per year)), it is a very problematic number. In addition, the cause of a large number of deaths being still undisclosed makes it more problematic[193].

249. According to the decision statement of the National Human Rights Commissions of Korea(NHRCK) in November 2016, at least 29 out of 309 deaths were questionable when it comes to the cause of deaths. And the NHRCK also stated that "the responsible party had the responsibility to observe closely the behavioral characteristics of the residents in order to prevent accidents and to take proper measures. But they failed to do so. The majority of these incidents are cause by accidents. However, this was treated as death by illness without any investigations and therefore, it was not possible to pinpoint the cause of death (such as suffocation, falls, or assault etc.)

250. **B. Unlawful confinement, unjust labor, violent acts such as assault and extortion against residents**

251. According to the results of the investigation by the NHRCK, one of the witnesses stated that "the residents were kept behind the iron bars, sometimes locked in a solitary cell to keep order. The caregivers were not the social welfare specialists, and they even chose one of the residents to be the 'Dongjang' to control other residents. They also conducted harsh acts such as committing assault,

[191] National Assembly: Security and Public Administration Committee's Law Review Meeting

[192] Kim Gwang soo (legislator) press release, NHRCK, Daegu District Prosecutor's Office

[193] Discrimination Remedy Committee's decision, (16직권0001700.16진정0246200)

and shouting insults to residents. There was a similar testimony that "it was like a human breeding farm".

252. According to the Daegu District Prosecutor's Office[194], a patient who was hospitalized for chronic obstructive pulmonary disease was assigned to a caregiver with schizophrenia. The patient was suffocated on his own vomit during sleep after being unable to receive emergency treatment.

253. It was confirmed that most of residents in the Hope Center were patients with schizophrenia and alcohol addiction[195]. Because of overtime work and low wages[196], the Hope Center had difficulty finding proper caregivers, so they recruited their very own residents who were hospitalized at the facility.

254. In addition, the Hope Center made an internal regulation for the purpose of controlling and managing the daily lives of residents (such as sexual life, gambling and money transaction) and those who violated the rule were put in a solitary for 11 days on average (up to 47 days) against their will, after going through its own "ethics committee". One resident was confined for 29 days for being out and drinking without permission and one was confined for 23 days because he/she broke a plate. Daegu District Public Prosecutor's Office confirmed that the Hope Center has been running non-official confinement facilities without any legal grounds[197].

255. The NHCRK confirmed the following activities in the Hope Center: (1) operation of a Dongjang system which promotes hierarchy between the residents, (2) illegal punitive system which puts residents who violated the internal regulation to solitary cell, (3) Labor exploitation which does not follow any occupational rehabilitation plan and which does not pay properly, and (4) violence and assault of the employees against residents with intellectual and mental disabilities.

256. C. Fundamental Problems: Social Welfare in Korea Without Choice of Accommodation Facilities

257. Another survey conducted by the NHRCK in 2012 shows that only 13.90% people in the facility answered that they decided to enter the facility on their own accord. It means that the rest 82.88%) was put into the facility against their will (such as by persuasions of families, acquaintances, and others) [198].

258. NGOs in South Korea view the Hope Center problem as a cruel, inhuman and non-moral institutional issue that is conducted by a particular religious party. But NGOs also consider the government and

[194] Investigation result on the Hope Center corruption case, Daegu District Prosecutor's Office press release, 9 Feb 2017

[195] Ibid. 614(56.3%) people with mental disorder, 182(16.7%) people with intellectual disability, 110(10.1%) people with physical disability, 100(9.2%) with alcohol addiction, 85(7.7%) people with hearing impairment or visual disturbance) - 2016.

[196] Ibid. In general, two caregivers work in two shifts receiving about 80,000 won per day. But the care giver who works in Hope Center received 50,000-10,000 won or 150,000won per month depends on what patients they are dealing with.

[197] Ibid

[198] Survey on residents' residency status and need for independent living, National Human Rights Commissions of Korea, 2012

Daegu City are to be blamed as they cause the fundamental problem. These kinds of facilities are decided as last resort for the people who have difficulties living on their own. The residents have difficulties reporting all sorts of unfair treatment in fear of being in exile, causing derogation of human rights. Close scrutiny must be practiced as such mechanism provides a ground for continuation of these facilities.

46. Military Prison System

259. Korean military operates a peculiar system of punishment called "Yeong-Chang (guardhouse)" Military Personnel Management Act regulates kinds of disciplinary measures to demotion, restriction on leave, and probation and 'detention in a guardhouse'. 'A guardhouse' is in a military unit or a ship, and detention period should not exceed 15 days. Persons with authority over disciplinary measures are company commander, who can detain enlisted personnel for degrading decency or neglecting his/her duties.[199]

260. There is a high probability that the guardhouse sentence might be abused because of the commanding officer makes subjective and arbitrary decision on the sentence, existence of the reasons, and the period of the sentence. The officer is not well equipped with knowledge of judicial process, awareness of human rights. After the problems of the guardhouse arose, there was an effort to improve the situation by implementing military judge advocate system with amendment of the Military Personnel Management Act, but the number of soldiers who were placed in the guardhouse is still increasing. According to the statistics from Ministry of National Defense, the number of soldiers placed in guardhouse increases every year, and out of 50,042 soldiers who were subjected to disciplinary actions due to misconduct, 15, 683 (31.3%) soldiers were placed in guardhouse in

[199] **Article 56 (Causes of Disciplinary Measures)**
When military personnel fall under any of the following subparagraphs, a person having authority for disciplinary measures under Article 58 shall request a disciplinary committee under Article 59 to pass a resolution on disciplinary measures and shall take disciplinary measures in accordance with the results of the resolution on disciplinary measures:
1. When a person violates this Act or an order issued pursuant to this Act;
2. When a person commits an act of degrading decency, whether in the scope of duties or not;
3. When a person breaches his/her duty in the scope of his/her duties or neglects his/her duties.
Article 57 (Kinds of Disciplinary Measures)
(2) Disciplinary measures for enlisted personnel shall be classified into demotion, detention in a guardhouse, restriction on leave, and probation, and each kind of disciplinary measures shall be defined in detail as follows:
2. The term "detention in a guardhouse" means detention in a guardhouse in a military unit, a ship or other detention facilities for a period shall not exceed 15 days;
Article 58 (Persons with Authority over Disciplinary Measures)
(1) The Minister of National Defense and the head of each military unit or agency shall have authority over disciplinary measures taken against subordinate military personnel under his/her command or supervision as classified in the following subparagraphs:
5. Disciplinary measures against enlisted personnel: Each company commander and the head of a similar military unit or agency.

2012.[200]

261. The guardhouse system is a form of confinement which restricts freedom of a person as it detains the military personnel for a certain period of time. Also, the system is no different from the 'detention' which is defined by ROK Criminal Code. In fact, it is known that the enlisted personnel who was sentenced to be placed in the guardhouse is detained in a same facility with those who were detained under criminal charges. The ROK Constitution Article 12 stipulates that 'Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search', but the guardhouse is operated by the commanding officer's sole decision without warrants, the Court's pre or post the fact intervention.

[TABLE 1] Current status of disciplinary action for recent 10 years (2003~2012)

disciplinary measures	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
demotion	37 (0.19)	0 (0)	0 (0)	0 (0)	5 (0.02)	3 (0.01)	5 (0.02)	9 (0.02)	19 (0.04)	14 (0.03)	92 (0.03)
detention in guardhouse	13,779 (69.4)	12,513 (62.0)	10,193 (47.8)	10,265 (42.3)	8,960 (35.9)	9,315 (31.6)	11,834 (33.3)	12,763 (33.1)	14,757 (33.0)	15,683 (31.3)	120,062 (39.8)
restriction on leave	5,463 (27.5)	6,680 (33.1)	8,269 (38.7)	10,505 (43.2)	12,377 (49.6)	16,175 (54.9)	19,292 (54.2)	21,416 (55.6)	25,376 (56.8)	29,078 (58.1)	154,631 (50.1)
probation	580 (2.9)	997 (4.9)	2,898 (13.5)	3,524 (14.5)	3,624 (14.5)	3,979 (13.5)	4,435 (12.5)	4,339 (11.3)	4,537 (10.2)	5,267 (10.5)	4,160 (11.1)
Total	19,859	20,190	21,340	24,294	24,966	29,472	35,566	38,527	44,689	50,042	308,945

262. Although issuance of guardhouse placement frequently occurs, appeal to the decision or filing a law suit to the Court is rare. It is difficult to expect the solider to argue his case in the Court due to the closed nature of the military which makes hard to get legal advice from legal experts and also due to the military's emphasis on strict obligation of orders from the superiors. It appears that the military is not providing the soldiers with proper information on the issuance of guardhouse sentence and its due process and rights of the detainees in the guardhouse as well.[201]

263. Also, the regulations regarding the establishment of guardhouse, legal status and treatment are inadequate and as a result, the treatment to the detainee in the guardhouse is worse than criminal suspects in custody. In November 29, 2013, regarding the treatment of the military detainees in guardhouse, National Human Rights Commission of ROK (NHRCK) recommended the Minister of National Defense to 1) improve current practice of prohibiting conversation in

[201] National Assembly Research Service (2013) "Issues regarding the Military guardhouse and measures to improve," Current issue report, 221, p 27.

common area and forcing to sit upright position and to make guidance on restriction of detainees' behavior, 2) improve the limitation on usage of telephone and visitation without established criteria, 3) guarantee enough outdoor exercise hours and be equipped with exercise facilities, 4) have facility or items to prevent physical exposure during medical check-up.[202]

264. Furthermore, a soldier who was sentenced to be placed in guardhouse has to serve more time as the time spent in guardhouse is not counted (Military Service Act).[203] This constitutes double jeopardy. Also, the guardhouse sentencing tends to be issued mostly to lower rank soldiers, not officers and this may be a violation of equal treatment.

265. The guardhouse system is against the principle of warrant and constitutes 'cruel, inhuman, or degrading treatment or punishment', defined in the UN Convention against Torture. Therefore, the guardhouse system should be abolished, or at least conducted according to the criminal procedure or similar process under the regulation of the Court and to improve current conditions, more researches should be conducted on the treatment of the guardhouse detainees.

47. Joint Interrogation Center

266. Central Joint Interrogation Center (The name is changed to 'Protection Center for North Korean Refugees' now, 'the Center' hereinafter.) is a place where the government of Republic of Korea(ROK) accommodates North Korean refugees who requested for their protection to ROK.

267. Legal Issues

268. There are no laws or regulations which regulate the operation of the center. According to Article 7 section 1 and 2 of 'North Korean Refugees Protection and Settlement Support Act ('The Act' hereinafter), the head of an overseas diplomatic or consular mission, etc. in receipt of application for protection shall promptly inform the Minister of Unification and the Director General of the National Intelligence Service. And Section 3 requires the notified Director of the National Intelligence Service to take provisional protective measures or other necessary steps and promptly inform the Minister of Unification of the result. The Act's enforcement decree Article 12 Section 3 stipulates that "the Director of NIS shall determine the contents and means to implement the 'protective measures and other necessary steps' and the establishment and operation of the Center. The Center appears to be established and have been operated under there regulations since there is no directly applicable law.

[202] NHRCK, 2013.6.12., 13-jinjung-0207100 Decision

[203] NHRCK, "Recommendations based on the on-site investigation of guardhouse in 2013," 2013. 11. 29

269. As stated above, it is unconstitutional to detain North Korean refugees at the Center under mere enforcement decrees, not directly applicable laws since North Korean refugees' external access at the Center is restricted during the protection period. This is against principles of ban on comprehensive authorization and statutory reservation.

270. Also, the Act's Article 7 and the Act's enforcement decree Article 12 regulate on the administrative investigation and yet there are no specific regulations regarding the procedure and means to conduct the investigation and the enforcement decree inclusively delegates the investigation to the Director of NIS. The basic right of due process of the person investigated is not guaranteed during this process.

271. Problems in Customary Practice

272. Based on the testimonies from North Korean refugees who resettled in ROK after being held at the Center and the people who were investigated for possible violation of National Security Act (NSA), the North Korean refugees had to submit every personal items including their cloths. And they had to go through a strip search. Detainees shared a room with others at first, and once the investigation started, they were placed in solitary confinement. Solitary confinement was between 10 to 15 days most of the time, but it could be extended up to 180 days since the enforcement decree stipulates that the investigation shall be conducted within 180 days.

273. Solitary confinement including the bathroom is under CCTV surveillance and cannot be opened from inside. While the detainee is in the solitary confinement, he or she is investigated for the reasons to escape North Korea and personal details. During the investigation period, the person is not allowed to have any external communication, to meet or to contact other detainees at the Center. The investigation is conducted from early in the morning until night time, proceeded by Q&A sessions. The detainee is asked to debrief in a form of written statement after the investigation is completed for the day.[204]

274. It is torture in effect that the investigator, who is a public officer, monitors the solitary confinement by CCTV and prohibits external communications to collect information regarding the North Korean refugee issues that can cause emotional distress of the detainee. This is not justifiable not for the National Security nor for the peculiarity of North-South relations, since the Convention Article 2 Section 2 states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

[204] Military Service Act Article 18 (Active Duty Service) Where an active duty serviceman is sentenced to imprisonment or imprisonment without prison labor, or detention, or is confined to a military detention facility, or walks away from his post in the military, the number of days during which the sentence is executed or he is confined to a military detention facility, or he walks away from his post, shall not be included in his period of active duty service.

48. Quarantine related to infectious disease – 2015 MERS

275. Since the first MERS (Middle East Respiratory Syndrome coronavirus) patient received a definite diagnosis in May 2015, as of 9 am on Oct. 30, 2015, of the 186 patients who received a definite diagnosis, 37 (19.9%) died, 4 were under treatment (2.2%), and 145 were discharged (78.0%), and the number of quarantined patients reached 16,752. [205] As of 6:00 am on June 18, 2015 when there were the most quarantined patients, the total number of quarantined patients was 6,729 including 5,857 home- quarantined patients and 872 hospital-quarantined patients. [206]

276. When the first MERS patient received a definite diagnosis in May 2015, there was not a single law where the MERS was regulated – not even in the 「Infectious Disease Control And Prevention Act」, 「Enforcement Decree of the Infectious Disease Control And Prevention Act」 nor the notice of the Ministry of Health and Welfare which regulates the designated infectious diseases. [207] The government claimed that MERS was included in the definition of other illness, [208] but it was only an afterthought because most people could not easily know that. On July 6, 2015, the government recognized the previous legal vacuum by defining the MERS as a separate infectious disease in Article 2, Item 5, of the 「Infectious Disease Control And Prevention Act」. In other words, all compulsory admissions and quarantine prior to the revision of the 「Infectious Disease Control And Prevention Act」 on July 6, 2015 were, in fact arbitrary detentions without any legal ground. Even though there was enough time to revise the relevant law before the occurrence of MERS and there was a proper way to deal with situation which was urgently required by the enact of the notice of the Ministry of Health and Welfare after the occurrence of the crisis, relevant authorities have placed significant restrictions on human rights under the legal vacuum and there was no evaluation of the illegality nor remedies for the victims.

277. The standard of quarantine in the former and the present 「Infectious Disease Control And Prevention Act」 is scattered in several provisions. “Infectious disease patient, etc.” (Infectious disease patients, suspected infectious disease patients invaded by infectious disease pathogens but still not confirmed as infectious disease patients, someone who has the infection pathogens without clinical symptoms) - Article 41 (1), (2), Article 42, “People who are

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[205] Seoul District Court 2014. 8. 26. 2014고합261, Report on the spot investigation.

[206] http://www.mers.go.kr/mers/html/jsp/main.jsp#, 2015. 10. 30. visit.

[207] the Ministry of Health and Welfare · the Disease Control Division, 『Press release: status on MERS confirmation and quarantine』 (2015. 6. 18.), p.5.

[208] The Young Doctor, “[special contribution] Why the MERS is not a disaster: Medical School of Chungnam University Professor You in Sul “MERS is not included in the legal definition of disaster nor infectious disease”, 2015. 6. 17.

infected with infectious diseases and who may be infected or be spread by contacting with infected patients"- Article 41 (3) 2, and "People suspected of being infected with an infectious disease pathogens) – Article 47 (2) are the standards. But there are so many questions such as - what happens when "suspected contacting with the infected patients", not "contacted with the infected patients"? What differs "suspected of being invaded by an infectious disease pathogen" from "suspected infection by an infectious disease pathogen"? How can "People who may be spread" be defined? The requirements for quarantine lack of this minimum clarity and predictability. One of the biggest problems is that, despite the absence of symptoms in latency period, quarantine for all asymptomatic close contacts has been collectively taken during latency period of 14 days.

278. According to the former and the present 「Infectious Disease Control And Prevention Act」, the presentation of the token (Article 42 (2)) and the notification of quarantine (Articles 41 and 43) are the only procedural rights guaranteed in quarantine. The subject of notification is the Head of the Disease Control Division based on Article 76 (1) of the Act, and Article 32 of the Enforcement Decree of the Act. According to the supplement page of the Enforcement Rules of the Act, one shall notify the potential quarantine of the basic law provisions and penalties for non-compliance, along with items such as name, resident registration number, hospitalized day, hospital stay, hospital treatment facility (clinic / home / facility address). There were cases where the basic rules have been ignored - the director of the hospital verbally notifies hospital quarantine for the close contacted people with the institutional quarantined personnel, and the spouse has received a home-quarantine notice, but the child has not been notified, etc. It should be considered that the humanitarian law also applies to the quarantine of facilities, but the all MERS quarantine related facilities were illegal which violate the explicit procedure of the law since the facility quarantined people were not informed that they could file remedies under the Habeas Corpus Act.

49. Sinan Salt Farm Slavery Case

279. Beginning of the Cases

280. In January 2014, a disabled person (with sight and development impairment) sent a letter to her/his mother in Seoul from an island in Sinan County, Jeollanam-do Province where he/she suffered from exploitation in labor, captivity and violence on a salt farm. The mother took the letter to the police station in Guro District in Seoul, which became the first lead to the case. The Guro-police station sent an investigator to the island as an undercover disguised as a distributor of salt. Upon rescuing the two victims from the island's salt farm the prevalent slave practice in the area started to reveal.

281. Development of the Cases

282. The victims were revealed to the world through media briefing at the Guro-police station and the slavery practice that was held in the area became known. Sinan County in Jeollanam-do Province is a remote countryside far from Seoul and is made up of many islands. The practice

of human trafficking and slavery had been prevalent in the area but was kept quiet for a long time. The Korean people were deeply shocked by this case and many media outlets continued to investigate and cover the cases of modern slavery and human trafficking across the area. The Jeollanam-do Police formed a special investigation bureau and investigated the Sinan County and the NGO Research Institute of the Differently abled person's Right in Korea (RIDRIK) shortly dispatched their staffs to work with the special investigation bureau for the inquiry.

283. **The Case and its Status Quo**

284. The police in Sinan County did conduct the investigation in the area but required the existence of actual victims to start investigating the assailants. The police had no collection of any data on the victims or collate any of its investigatory results. The only evidence or information of the case was that of RIDRIK, which the below content is based on.

285. The victims of the case which is called the Salt Farm Slavery were mostly disabled persons. According to the report by RIDRIK, the number of victims interviewed by RIDRIK was 63 and most were discovered in island it is an island with the largest number of salt farms in the Sinan County, with more than 500 salt farms). Out of the 63 victims 47 had disabilities among whom had multiple disabilities but mostly were intellectually disabled.

Types of Disabilities			**Number of the people**	**Percentage(%)**
Disabled	**Registered**	Intellectual disabilities	10	15.9
		Sight disabilities	3	4.8
		Hearing disabilities	2	3.2
		Brain damages	1	1.6
	Non-registered	Need to be diagnosed	31	49.2
Not-disabled			16	25.3
Total			63	100

286. Most victims had similar stories in that they had been tricked into coming into the island through brokers who told the them that they would find them jobs. The victims had either never received payment for their labor or received very little payment that was significantly below the minimum wage. Labor began from dawn until late into the evenings and the labor required for salt farms was harsh. The level of food and accommodation provided was poor, and verbal and physical

abuse were frequent. The people living in the villages, the civil servants and the police, despite being aware of this situation, cooperated with one another. They came up with a system where if anyone had seen a victim who would attempt to escape the island people would inform one another. For example, in a dock that only carries 4 boats a day, if a poorly-dressed person had attempted to get on the boat, someone would inform him/her that an assailant would come to collect him/her and would suffer a brutal punishment.

287. The length of labor would span usually from 1 year to 20 years in some cases. The type of living arrangement needed in this industry is in a state of servitude and most victims were living as a slave and owner type of arrangements. Most would leave the island during the winter when there is no production of salt and live in the mainland with very little money they received from the assailants. They would repeat the pattern of returning to the island following their brokers.

288. The Police revealed that it has persecuted 40 assailants among which 20 cases were being monitored by RIDRIK. The theory of proportionality requires that the level of punishment be scaled relative to the severity of the offending behavior. According to the RIDRIK, 1 of the 20 cases pleaded not guilty and 13 of the assailants were given probation. Only 6 cases pleaded guilty. The most severe term of punishment out of the 6 was a sentence for 5 years and this case involved attempted murder where the assailant had stabbed the victim in the abdomen for his/her insufficient work. Others were sentenced between 6months to maximum 3years but the feeble sentences given despite the gravity of the cases, resulted in much protest among human rights NGOs. There are reasons for such leniency in punishment. First, there is no legislation in Korea with provisions of punishing human tracking and modern forms of slavery. Second, the investigation was not properly conducted it lacked proper legal procedure that takes into consideration the disabilities of the victims. Last but not least, the local court ruled for the assailants, arguing that such treatment of the victims was just another local custom and tradition.

289. There was hardly any support for the victims. With no center for the victims there had to resolve to using homeless shelters and with inadequate support many of the victims went missing or in some cases returned to the salt farms. RIDRIK stands as the sole organization currently obtain materials on the victims and approximately 10 victims receive support from RIDRIK and live in families or welfare centers or work in other environments.

290. With lack of support system for the victims, they had to resort to using homeless shelters. Many went missing or in some cases, they returned to their salt farms. Still, RIDRIK stands as the only organization that garnishes information on the victims and it gives support to 10 victims who live in public welfare or family centers. Still, it is said that others live at their workplace.

291. Currently, RIDRIK, along with other organizations who advocate people with disabilities and other public lawyer groups, have filed a lawsuit against the government demanding for compensation. Amongst those involved in the demand for reparation includes a victim who has gone to the police 4 times where each time the victim was sent back to the assailant or the assailant was contacted to prevent the victim from attempting escape. This case is currently being held at Seoul Central District Court, where the state denies any responsibility and is delaying the lawsuit.

292. More victims are continued to be found to this day. There are no undergoing investigations like the ones in 2014 and the cases are revealed only through reports from victims or witnesses.

293. As a result, the number of victims found is low, and it is likely that there still remain more victims in the salt farms.

294. Causes of the Cases

295. The main influx of the victims starts at job agencies. Those job agencies hire brokers and target homeless people in large cities. Among the homeless they allude those who are able to participate in labor but who struggle to find work or sustain a stability in life due to their intellectual disabilities. These victims who have nowhere to go follow the brokers to Mokpo, Jeollanam-do Province where they are manipulated to spend money on food, accommodation and expenses in entertainment and bind them in debt bondage. It is this sum of debt that becomes their final price tag. Salt farmers take the victims to the salt farm paying the brokers the fee of the debt as well as a commission fee. Under the pretext of having paid off the victims' debt, the farmers pay very little or no fee for their labor.

<Table> The influx chart of the victims at sea salt farms, RIDRIK Report

Reasons of the influx	**Number of the victims**	Percentage (%)
Job agencies	**34**	**62.7**
Farm owners	7	13.0
Families or relatives of the victims	6	9.5
The victims themselves	5	7.9
Others	2	6.9
Total	54	100

50. Sex Slaves of Japanese Military Issues

296. On December 28, Foreign Minister of Republic of Korea(ROK) and Japan announced that both sides had reached a 'final and unequivocal' agreement on the Japanese military sexual slavery issue, with Japan admitting Japanese Military's involvement in sexual slavery, prime-minister Abe apologizing officially, and promising an $8.3 million payment that would provide care for the victims.[209]

297. The government of ROK said that they are not fully satisfied with the agreement but it was the best they could get, considering many victims pass away year after year.[210]

298. However, Korean government neglected demands of surviving victims and the organizations representing them, such as to ascertain the truth, to punish officials, to found the responsible, to have proper reparation, to prevent recurrence-. Also, surviving victims and the organizations were neither consulted nor guaranteed to participate in the preparation of this agreement.

299. Furthermore, Japanese government persistently denied or distorted the truth about Japanese Military's sexual slavery even after the agreement in 2015.12.28.[211]

300. While Japan strongly stipulates that the payment is not compensational, Korean government persuaded victims and their families to take the payment convincing that Japanese government have officially apologized and the payment is compensational.

301. Consistent demands of surviving victims and the organizations representing them are official apology of Japan based on ascertained truth, reparation as verification of apology, and action to prevent recurrence by educating proper history.[212] Though Korean government was well-acquainted with these demands, they did not only made an unwanted, inconsistent deal, but also urged victims and their families to take it. Korean Government is now violating the victims and their families' right to get a remedy. This causes elderly surviving victims and their families to suffer from secondary damages such as a psychological distress and from deterioration in health due to stress.

302. Surviving victims who did not approve the Dec 28 KOR-JPN agreement, are demanding Korean government to withdraw it and to put effort on making resolution based on their needs. Nevertheless, Korean government is not only ignoring these demands but also stopped offering

[209] Youn Jontae, "A look back about the tasks and legal influence after MERS crisis", 『Medical Jurisprudence』 16th (2015), pp.268, 272.

[210] http://news1.kr/articles/?2528305

[211] http://www.yonhapnews.co.kr/bulletin/2016/10/25/0200000000AKR20161025165700014.HTML

[212] http://heraldk.com/2017/02/26/그알-화해치유재단-위안부-할머니에-돈-받으라/

a financial support for the project to designate Japanese Military's sexual slavery as a UNESCO World Heritage List.[213]

51. Protective custody and probation

303. In 2005, protective custody system which violated human rights through arbitrary detention and double jeopardy was abolished by legislation of Social Protection Repeal Act. However, article 2 of the supplementary provisions made exception to the cases in which the defendant was sentenced to final and conclusive decision before the abolishment or already put under the custody before the abolishment. This exception made 677 protective custody cases after the abolishment of system, and 134 people are in protective custody at present. 102 cases of them are scheduled until 2020.

304. Furthermore, the government pre-announced the legislation of Protective Detention Act[214], which resembles abolished Social Protection Act. The Act stipulates that a person who has high propensity to re-offend can be isolated from society during up to 7 years by the Court with the request of a prosecutor. In November 2016, National Human Rights Commission of Korea (NHRCK) declared the revised Act to be problematic, because the protective detention can be a double jeopardy which deprives one's liberty and lacks clear and specific criteria on judgment.[215]

305. **Probation**

306. Probation system includes community service order, order to attend a lecture, and probation. Probation is ordered by criminal court along side with suspension of sentence. Also, in case of parole, person subject to probation should be observed under guidance and surveillance of the probation officers during a remaining prison time. Juvenile criminal who are sentenced short-term probation (6 months of probation) or probation (2 years of probation) by Juvenile department of Family Court is also subject to probation. And those who are paroled or provisionally released from Juvenile correctional institute are also subject to probation of 6 months to 2-year period.

307. The purpose of probation is to maintain criminal's relationship with their family, work place, and society so that second offense rate could be reduced by minimizing emotional, economical difficulties.

308. But recently probation system is used as a tool of political surveillance over the crimes concerning Assembly and Demonstration Act or National Security Act. Political prisoners who violated

[213] http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201602191800331&code=910100

[214] http://www.hani.co.kr/arti/politics/bluehouse/725704.html

[215] http://www.moleg.go.kr/lawinfo/lawNotice?ogLmPpSeq=35529&mappingLbicId=2000000177048&announceType=TYPE5

Assembly and Demonstration Act or National Security Act are double jeopardized since they are placed on probation after release.

52. Violations of the UN Convention against Torture: LGBTI Persons

309. In South Korea, LGBTI persons are subjected to conversion therapy. This is against the backdrop of the Government which expresses the view that homosexuality is "curable." Transgender women (transwomen) are forced to undergo irreversible surgeries for legal gender recognition or the determination of their exemption from mandatory military service. Intersex infants undergo unnecessary medical interventions or surgeries without their or their parents' informed consent. Transgender inmates of correctional facilities are not treated according to their gender identities and are even punished for their gender expressions. Such practices amount to torture or unjust treatment as reviewed by the UN Committee against Torture and other UN agencies and inflict physical and mental pain on LGBTI persons in South Korea.

310. **Conversion Therapy**

311. Many human rights-related UN agencies and the medical community alike have denounced the so-called "conversion therapy."[216] According to one recent South Korean survey of LGBTI people, however, 20.3% of the respondents have received unprofessional and human rights-violating counselling that teaches "homosexual desires can be cured."[217] Such comments have been made by professionals including psychological counselors, religious workers, physicians, and counselors.

312. Not stopping at counseling, "conversion therapy" has led to violence and hate crime as well. In 2016, the media covered an incident where a transwoman, who was forcibly committed to a religious conversion therapy facility by her family and was subjected to violence under the pretext of conversion therapy, escaped.[218]

313. In order to justify conversion therapy, certain religious communities have argued that "Dehomosexualization is a human right" and that sexual orientation is "curable." Neither the South Korean Ministry of Health and Welfare nor professional organizations have expressed any

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http://www.nhrc.go.kr/site/program/board/basicboard/view?&boardtypeid=24&currentpage=5&menuid=001004002001&pagesize=10&boardid=612930

217 CESCR, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 3/4/2016, E/C. 12/GC/22. At para. 23, "Likewise, regulations… or requiring that they be 'cured' by so-called 'treatment', are a clear violation of their right to sexual and reproductive health. State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health." In addition, at para. 88, "The Special Rapporteur calls upon all States to repeal any law allowing… 'reparative therapies' or 'conversion therapies', when enforced or administered without the free and informed consent of the person concerned."

218 "Depressed LGBT youth told by counselor, 'Choose not to be gay'," *Hankyoreh*, 2/24/2017. http://english.hani.co.kr/arti/english_edition/e_national/784066.html.

opinion on this. Although the UN Human Rights Committee recommended to the South Korean government that public buildings not be allowed for conversion therapy events in 2015,[219] events related to conversion therapy continued to be held in the National Assembly (South Korean legislature) building.[220] [221]

314. Transgender Persons' Legal Gender Change

315. The UN Special Rapporteur on Torture has discussed the problem of certain nations demanding unwanted sterilization surgeries as a precondition for guaranteeing transgender persons' right to recognition before the law.[222] In addition, in the latest review of its compliance with the International Covenant on Civil and Political Rights (ICCPR), the South Korean government was recommended to facilitate transgender persons' legal gender change and to submit a report on its implementation of the recommendations within one year.[223]

316. Since a 2006 decision of the Supreme Court,[224] matters to be investigated with respect to legal gender change have been presented according to the Supreme Court's established rules instead of laws in South Korea.[225] Despite the use of the expression "matters to be investigated," which connotes discretion, courts have accepted these rules as a de facto condition. According to the established rules, out of adults[226] who are non-married and without legally minor children, only those who have been diagnosed with transsexualism, received psychiatric/hormone therapy, and undergone sterilization surgeries are eligible for legal gender change. Other materials such as parents' written consent, too, are included in the "matters to be investigated." Meanwhile, although there is a ruling from a lower court that external genital modification surgeries are not mandatory, this judicial precedent applies only to a few cases and has yet to become general. In

[219] "Are transgender people cured if you beat them? Healing counseling by pastors without understanding of sexual minorities… Preposterous lectures given to exorcise evil spirits," *Newsnjoy*, 3/2/2016 (in Korean). http://www.newsnjoy.or.kr/news/articleView.html?idxno=202241.

[220] "15. The State Party should … avoid the usage of State-owned buildings by private organizations for so-called 'conversion therapies'…" CCPR/C/KOR/4, at para. 15.

[221] "South Korean government slammed for hosting 'conversion therapy' seminars," Gay Star News, 4/8/2015. http://www.gaystarnews.com/article/south-korea-government-slammed-hosting-conversion-therapy-seminars080415.

[222] OutRight Action International, "Outright Letter to Officials about State Endorsement of Conversion Therapy for Gays and Lesbians in South Korea," 4/7/2015. https://www.outrightinternational.org/content/outright-letter-officials-about-state-endorsement-conversion-therapy-gays-and-lesbians-south.

[223] UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2/1/2013, A/HRC/22/53 ("In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender").

[224] http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KOR/CCPR_C_KOR_CO_4_22217_E.doc.

[225] Supreme Court, 6/22/2006, 2004Seu42, full bench decision 【name change and family register correction】 [Jip54(1)Ga, 290; Gong2006. 8. 1 (255), 1341] (in Korean).

[226] Guidelines on the Clerical Processing of Cases of Transsexuals' Application for Legal Sex Reassignment (revised 1/8/2015 [Established Rules on Family Relationship Registration No. 435, implemented 2/1/2015]). http://annual.sogilaw.org/review/law_list_en.

particular, mandatory operation requirement forcing transgender persons to undergo such invasive surgeries for legal gender recognition, violates their right to self-determination, bodily integrity, and restricts their reproductive rights as well.

317. Forced Physical Invasions of Transgender Persons

318. The Military Manpower Administration, a South Korean government agency in charge of conscripting and managing soldiers customarily demands irreversible operations that violate transgender persons' bodily integrity when determining transwomen's military service dispositions. In South Korea, which implements mandatory military service for males, transwomen are classified as having gender identity disorder (GID; gender dysphoria) according to the Regulations on Examination Such as Draft Physical Examination. The degree of this disorder is classified into light/medium/severe according to the Global Assessment of Functioning (GAF).[227] In addition, transwomen are evaluated according to military physicians' individual judgments. Objective data can replace physical examinations in the case of transgender persons when visual confirmation is possible according to Article 7 (Partial Omission of Examination) and Article 8 (Examination Methods, Etc.) Clause 2 Sub para. 10 ("…in the case of transsexuals, these examinations are to be substituted by written court decisions, physical examination results indicating transsexuality, or radiological references") of the Regulations on Examination Such as Draft Physical Examination. Even though judgments on GID can thus be substituted by written psychiatric diagnoses, the GAF, which is deficient in objectivity, has been used.

319. In addition, the Military Manpower Administration has deferred the enlistment of transwomen for the reason of suspicions of undue exemption from mandatory military service[228] and demanded these people to undergo irreversible surgeries including orchiectomy (testicle removal) and gender reassignment surgeries, whose results are externally visible. Transwomen are thus forced to undergo surgeries for the determination of lawful exemption from military service regardless of their bodily integrity, autonomy, and right to self-determination.[229]

320. Treatment of Transgender Inmates

321. On December 21, 2007, the South Korean government revised in its entirety, the existing Criminal Administration Act to the Administration and Treatment of Correctional Institution Inmates Act.

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[227] This has already been ruled as unconstitutional in Germany. 1993 Federal Constitutional Court of Germany BVerf 88, 87 = NJW 1993, 1517.

[228] Neuropsychiatric item no. 102 in the degree of and judgment criteria for diseases and mental and physical disorders in the Regulations on Examination Such as Draft Physical Examination: Personality disorders and behavioral disorders (habit and impulse disorders), gender identity disorder, sexual preference disorder.

[229] Article 14 (Final Determination of Physical Grades) Clause 2. In the case of persons with grades 4, 5, or 6 who require verification of the history of their treatment of the relevant diseases or have received operations for reasons other than diseases or mental or physical disorders and require continued treatment, the determination of their physical grades may be deferred and their physical grades may be determined after verifying the history of their treatment of the diseases or through re-examination after the termination of the treatment.

Though it has added "sexual orientation" as a prohibited ground of discrimination, the extensively revised Administration and Treatment of Correctional Institution Inmates Act has no stipulation whatsoever on the treatment of individual LGBTI persons. Stating that, "In the case of transgenders, individuals are grasped as transgenders through medical officers' confirmation including their confinement history, genital removal surgeries, and drug administration," the South Korean government said that seven transgender persons were under confinement as of September 27, 2013. In addition, "When persons whose sex is unclear for reasons such as sex change surgery newly enter facilities, their cells are assigned after receiving precise sex discernment from medical officers and medical specialists. Safe protective custody measures such as single-celling and installation of partitions has been strengthened. Counselling services by demand has been implemented in order to prevent concerns such as sexual harassment and human rights violations."[230] In other words, transgender inmates are assigned to prison compounds based on the genders on their respective resident registrations (i. e., legal genders assigned at birth), are set apart from other inmates only through single-celling. Consequently, they suffer from stress and pain because they must engage in activities such as sports and showers/baths together with other inmates in the same compounds.

322. Transgender inmates have to live in the same cells, shower and change clothes in the presence of inmates of genders other than their chosen ones. This is a clear violation to individuals' physical autonomy. In relation to this, there was actually a case in 2006 where a transwoman attempted suicide after being incarcerated in an all-male correctional facility.[231] Although the state's responsibility to make compensations was acknowledged in this particular case, the South Korean government still has not established any guidelines on the confinement of transgender persons in correctional facilities in terms of how transgender inmates must be accommodated so that they can live in these facilities in a way that is appropriate for the genders of their wishes. Correctional facilities are operated according to uniform standards based on gender binarism so that transgender inmates' individual demands are not accepted. There was a case where a transwoman inmate was punished with confinement in a solitary cell for refusing to have her long hair cut forcibly.[232]

[230] SOGILAW, Human Rights Situation of LGBTI in South Korea 2014, "A transgender person files a petition to the National Human Rights Commission of Korea in response to the surgery requirement by the Military Manpower Administration." http://annual.sogilaw.org/review/review_2014_en/509.

[231] Data submitted by the Ministry of Justice to legislator Seo Giho (Justice Party) during the 2013 inspection of state administration.

[232] "Prison not considerate of transgender inmate… state responsible for compensation," Newsis, 1/4/2011 (in Korean). http://www.newsis.com/view/?id=NISX20110104_0007074879.

323. Intersex Persons

324. Children born with atypical sex characteristics are often subjected to irreversible sex assignment, involuntary sterilization, and/or involuntary genital normalizing surgeries, all performed without their or their parents' informed consent.[233]

325. In South Korean society, intersex persons remain largely hidden.[234] The number of newborns in the country statistically amounts to approximately 450,000 per year, 0.1% of whom, or over 450, are estimated to have Klinefelter syndrome.[235] When individuals counted as intersex are additionally included, this group amount to approximately 1.7% of the total population. Consequently, the number of intersex newborns is estimated to be 7,650 or above per year, but sufficient information or counseling regarding this is not provided. In 2014, the South Korean press covered an incident where a mother killed both her one-month-old baby and herself out of despair over the latter's Klinefelter syndrome.[236] [237]

326. In order to register the birth of a child, South Korean parents must select the legal gender of the child between male and female and record it in the reporting form in accordance with the Resident Registration Act. To correct this later, the persons involved must undergo legal gender change application procedures in law courts. In addition, it is a generally accepted practice for guardian figures such as parents and teachers to educate children on gender binarism even in socialization and public education processes. Due to such reasons, some parents decide infants' legal genders and unilaterally impose irreversible surgeries. In such cases, physical sex of children is to be "corrected" before 12 months for females and before school age for males, respectively.[238]

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[233] Gwangju District Court, 2014Guhap10493; Gwangju High Court 2014Nu6530 (in Korean).

[234] UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1/5/2016, A/HRC/31/57. At para. 50, "In many States, children born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization and genital normalizing surgery, which are performed without their informed consent or that of their parents, leaving them with permanent, irreversible infertility, causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants."

[235] Number of intersex persons who claimed medical expenses from the National Health Insurance Service in 2015 - Healthcare Bigdata [*sic*] Hub (operated by the Health Insurance Review and Assessment Service; in Korean). http://opendata.hira.or.kr/op/opc/olap3thDsInfo.do.

[236] Asan Medical Center, *An Encyclopedia of Diseases* (in Korean). http://www.amc.seoul.kr/asan/healthinfo/disease/diseaseDetail.do?contentId=32375.

[237] "Excessive punishment of transgender inmate for refusing to cut long hair," *Hankyoreh*, 3/11/2014 (in Korean). http://www.hani.co.kr/arti/society/rights/627842.html.

[238] "Incumbent police officer and month-old son found dead," Yonhap News, 12/23/2014 (in Korean). http://www.huffingtonpost.kr/2014/12/23/story_n_6370630.html.

53. State violence regarding assembly and demonstration

327. Arbitrary exercise of state power is an ongoing problem in Korea. It has been often observed that the government abuses its power in a situation where it cracks down strikes of workers or conflicting situations between the government and local residents regarding national projects. Yongsan tragedy, crackdown against auto workers at Ssangyong Motors plant, construction of navy base in Gangjeong, and construction of transmission towers in Miryang are some of the typical examples where the government abused its power and violated people's rights. The Yongsan tragedy involved forcible eviction where the evictee claimed the right to a housing and right to live. .[239] Workers at Ssangyong Motors exerted the right to strike in order to defend their right to work and to be protected from unjustifiable layoffs.[240] The residents of Gangjeong opposed the construction of navy base, claiming the right to live peacefully.[241] The residents of Miryang talked about a society free from nuclear power and asked the government to guarantee their right to live in a village where their ancestor had lived and farmed for generations.[242] However, the state did not respect those basic rights. It rather violated human rights of the victims by using public power in excessive and violent ways.

328. All of those incidents had one thing in common, which was massive deployment of police force. In the case of Yongsan tragedy in 2009, the police dispatched 1,600 police officers, with 20 units being mobilized, and 99 commandos in order to suppress 32 tenants who were doing a sit-in protest. In the same year, the police sent 100 commandos and 2,500 police officers to crack down striking workers of Ssangyong Motors workers. In the case of Gangjeong, the number of the police officers who were dispatched from the mainland to Jeju island during one-year period starting from August 2011 amounted 128,400. They were sent to enforce the construction of navy base against the will of the residents. About 3,000 police officers were sent to Miryang in October 2013 to resume the construction of transmission towers.[243] Those cases showed clear violation of the principles of proportionality and necessity.

329. The police took demonstrators as well as citizens and human rights defenders who supported them to police stations indiscriminately. After the strike at Ssangyong Motors plant, the police

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[239] "'Is it a boy or a girl?' What's the sex of [physically] ambiguous newborns?" *Medical Today*, 6/28/2007 (in Korean). http://www.mdtoday.co.kr/mdtoday/?no=26865&cate=0&sub=&key=&word=&page=9419.

[240] "Yongsan disaster revisited", The Korea Times, July 4, 2012, available at http://www.koreatimes.co.kr/www/news/opinon/2013/01/202_114439.html, accessed Mar. 5, 2017.

[241] Kim Tong-hyung, "SSangyong Motor closes main factory due to strike", The Korean Times, May 31, 2009, available at http://www.koreatimes.co.kr/www/news/biz/2009/06/123_45996.html, accessed Mar. 5, 2017.

[242] Heo Ho-joon, "With naval base, can Jeju remain an "Island of World Peace"?", The Hankyoreh, December 2, 2015, available at http://english.hani.co.kr/arti/english_edition/e_national/720051.html, accessed March 5, 2017.

[243] Choi Sang-Hun, "As power line grows, so does fight between ancient and modern Korea", The New York Times, October 29, 2013, available at http://www.nytimes.com/2013/10/30/world/asia/koreans-say-ower-line-plan-threatens-tradition.html, accessed Mar. 5, 2017.

made arrests of 303 union members and 322 "outsiders" and detained 64 of them.[244] In Gangjeong, 673 persons including the residents and human rights defenders were arrested and 550 persons including 38 restrainers (accumulated number) were prosecuted. Out of those 550 persons, 230 were found guilty in final judgments and received the sentence of imprisonment, suspended sentence or monetary penalty as of March 2014. The total amount of the fine that the residents in Ganjeong have to pay reached to approximately 400 million KRW (about 345,721 USD).[245]

330. The excessive suppression of the police often ended in serious violence against participants. Due to the dangerous repressive operation by the police which did not consider safety of people, 5 evictees and 1 police officer died and 23 persons were injured in Yongsan.[246] The police broke PVC pipes that female demonstrators used to connect their hands in the spirit of civil disobedience (Gangjeong) with hammers[247] and cut down trees that the elderly women were hugging with chainsaws (Miryang).[248] During the crackdown on Ssangyong Motors strike, the police used water cannon, tear gas canister, taser guns, multipurpose riot guns, iron clubs and baton guns. The police helicopter was used to spray tear gas on the plant. The police kept beating union members even after they gave up resisting and humiliated them by making them kneel down.[249]

331. Inhumane treatment by the police during sit-ins or after arrests was also problematic. In Yongsan, commandos beat evictees with batons and kicked them with their combat boots while taking them to a police station. The injured had to be questioned without getting any medical care.[250] NHRCK recommended that the police should refrain from conducting overnight interrogation and making suspect wait too long before investigation but the police did not perform them.[251] In Ssangyong Motors plant, the water, food, and medicine supplies were banned and electricity shut-off by the police.[252] In the case of Gangjeong, several foreign peace activists were deported

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[244] (KOR) "State Violence" para.5, A report on a conference of NGOs regarding the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2013, available at http://www.peoplepower21.org/International/1118702.

[245] (KOR) Seo Bo-mi, " 'Ssangyong Motors incident', investigating 52 persons additionally", The Korea Economic Daily, Aug. 11, 2009, available at http://www.hankyung.com/news/app/newsview.php?aid=2009081104931, accessed Jan. 13, 2017.

[246] (KOR) Park Song-yi, "187 Malgilro Seogwipo Jeju, this is my address and my tomb", 1137 issue of Weekly Kyunghyang, Aug. 4, 2015, available at

[247] (KOR) A report on a conference of NGOs regarding the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "State Violence" para.6, Dec. 18, 2013, available at http://www.peoplepower21.org/International/1118702.

[248] *Ibid.* "The true nature of the state violence in Gangjeong"

[249] *Ibid.* "Human rights were disappeared in Miryang"

[250] *Ibid.* "The situation in Ssangyong Motors"

[251] (KOR) A report on a conference of NGOs regarding the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Yongsan Tragedy", Dec. 18, 2013.

[252] "NHRCK says police crackdown during Yongsan Tragedy was illegal", The Hankyoreh, Feb. 10, 2010, available at

and two activists were denied entry to Korea.[253] In Miryang, the elderly women suffered from verbal abuse such as "You are cunt. I'm going to beat you to death." Or "Bitch" by the police.[254] Having exposed to constant threat and intimidation, Lee chi-woo, a farmer in his 70s burned himself to death in December 3, 2013. And in the following year, Yoo Han-sook, also a farmer in his 70s killed herself by taking poison.[255] The workers at Ssangyong Motors and their family members have complained of severe physical and mental pain from the layoffs and the brutal repression of the police. 28 persons including workers and their family members have died since the layoffs.[256]

332. There was a case where a protester died from violent and preemptive suppression by the police. At the People's rally in November 14, 2015, 69-year-old farmer Back Nam-gi was knocked to the ground by high-powered police water cannons. He was hospitalized and had a cerebral hemorrhage surgery. He had remained in a coma since then for 317 days and passed away on 25 September 2016.[257] In the first trial ruling of Han Sang-gyun, the president the Korean Confederation of Trade Unions(KCTU), the court did acknowledge water cannon use as illegal in the case of farmer Baek Nam-gi. However, Prosecutor's Office has not made much progress in terms of investigation until today and no one has offered sincere apology to the late Back's family.[258] Rather, those in charge of security and investigation on the People's Rally were promoted.[259]

333. Repression against human rights defenders still continues. Park Lae-goon and Kim Hye-gin, prominent human rights defender and members of the Coalition 4.16, which consists of families and supporters of the Sewol Ferry Disaster victims, were indicted in April 2015 on charges of organizing an unlawful. Han Sang-gyun, the president of KCTU, was also detained and charged with obstruction of public duty, injury to public officials, destruction of public goods and obstruction of traffic among other others. In the case of Park Lae-goon and Kim Hye-gin, the

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http://english.hani.co.kr/arti/english_edition/e_national/403987.html, accessed Jan. 13, 2017.

[253] "NHRCK asks police to stop crackdown at Ssangyong Motors plant", The Hankyoreh, August 6, 2009, available at http://english.hani.co.kr/arti/english_edition/e_national/369809.html, accessed January 13, 2017.

[254] A-HRC-25-55-Add1, para 81.

[255] (KOR) Report on human rights violation at transmission tower sites in Miryang, p.76, Investigating team of human rights violation in Miryang, July 13, 2013.

[256] Kim Jae-won, "Suicide aggravates conflict over pylons", The Korea Times, December 9, 2013, available at http://www.koreatimes.co.kr/www/news/nation/2016/10/116_147638.html, accessed January 13, 2017.

[257] Kim Min-kyung, "Six years after layoffs, Ssangyong workers keep passing away", The Hankyoreh, May 4, 2016 available at http://english.hani.co.kr/arti/english_edition/e_national/689678.html, accessed March 5, 2017

[258] Choe Sang-hun, "Activist in South Korea Dies of Injuries from Police Water Cannon", The New York Times, Sep. 9, 2016, available at https://www.nytimes.com/2016/09/26/world/asia/activist-in-south-korea-dies-of-injuries-from-police-water-cannon.html?_r=0, accessed Jan. 13, 2017.

[259] Go Yeong-deuk, "Baek Nam-gi dies, No apology from the police… the government dismissed responsibility and punishment" The Kyunghyang Shinmun, Sep. 25, 2016(in Korean), available at http://english.khan.co.kr/khan_art_view.html?artid=201609261700237&code=710100, accessed Jan. 13, 2017.

Appeal Court confirmed the Seoul District Court's first decision and sentenced Park to three years in prison, with four years of probation and Kim to two years in prison, with three years of probation.[260] In the case of Han Sang-gyun, the Appeal Court also found him guilty and handed down on a sentence of three years in prison and a 500,000 KRW (about 450 USD).[261] Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and of association, who visited South Korea in 2016 expressed his concern about charging assembly organizers and participants indiscriminately with certain criminal offenses, such as the general obstruction of traffic, which de facto criminalizes the right to peaceful assembly.[262]

54. The matter of Art Censorship and Blacklisting Artists

334. Current status

335. The truth about Park Geun-hye administration's involvement in blacklisting thousands of artists, including painters, photographers, singers, actors, writers, poets, cartoonists, traditional artists, theater companies, film producers, has been revealed by the Special Prosecution Team during the Park Geun-hye Gate of 2016.

336. With its own blacklist, the Park administration excluded artists from public support programs run by Arts Council Korea, Korean Film Council, and Korean Artists Welfare Foundation. The Park Administration put pressure on famous events such as Gwangju Biennale and Busan International Film Festival to ban works that are criticizes the government from their exhibitions or screening programs, and established policies that include a series of art censorship procedures.

337. The Special Prosecution Team arrested and charged Kim Ki-chun, a former Chief Presidential Secretary, and others for setting the blacklist for the art community.

338. President Park was mentioned 28 times on the indictment and the Special Prosecutor indicated Park, among others, as an accomplice. Kim and Cho Yoon-sun, the then Minister of Culture, and others were prosecuted on charges of abuse of authority, interference with the exercise of rights, coercion and violation of the act on testimony, appraisal etc. in the National Assembly. The list of crimes alone in the indictment, was 21 pages long, and the number of cases identified to be excluded from the support of the Culture and Arts was 374.

339. On December 12 2016, 12 Culture and Art groups (including Cultural Action, Korea National Artists General Federation, Artists Social Union, the Association of Korean Independent Film &

[260] (KOR) Choi-Jin, "Promotion of those in charge of security and investigation on the People's Rally", Catholic Press, Dec. 23, 2015, available at http://www.catholicpress.kr/news/view.php?idx=1919&mcode=m164ex3, accessed Jan. 13, 2017.

[261] (KOR), Kim Soo-jung,"Sewol Ferry protest, Park Lae-goon and Kim Hye-jin of the Coalition 4.16, on probation", Mediaus, Jan. 22, 2016, available at http://www.mediaus.co.kr/news/articleView.html?idxno=52069, accessed Jan. 13, 2017.

[262] Heo Jae-hyun,"Union leader gets stiffest sentence for rally organizer in S.Korea's post-democratization history", The Hankyoreh, July 5, 2016, available at http://english.hani.co.kr/arti/english_edition/e_national/751041.html, accessed Jan. 13, 2017.

Video and etc.) brought suit against Kim Ki-chun, the then Minister of Culture Cho Yoon-sun, and former Minister of Culture Kim Jong-deok. The Special Prosecutor handled the case.

340. Another class action civil lawsuit was filed by 461 artists over the blacklist scandal in February 9 2017. In addition, Cultural Action sued Kim Ki-chun, Cho Yoon-sun and Kim Jong-deok etc. for the violation of Personal Information Protection Act on the same day, alleging mishandling sensitive information of 9473 artists

341. The essential problem

342. Park Administration's black list scandal, which systematically enforced Culture and Art censorship, is a very serious crime against our current legal system and the Constitution of the Republic of Korea. The infringement of Freedom of Art, Freedom of Expression, Freedom of Conscience and Right to Privacy (protection on one's personal information and right to decide and manage one's information) is a crime not only against the artists, but against the whole population. This is a very serious social matter that needs to be corrected.

343. The blacklist scandal created by the Park Administration revealed violations on the people's fundamental human rights and is an ultimate betrayal of our democracy. Such humiliating treatment towards the artists is, in itself, an inhumane crime and is a state violence.

55. The Treatment of Correctional Facility Inmates with HIV/AIDS

344. According to institutions such as the World Health Organization (WHO), the compulsory HIV testing of inmates must be prohibited, and voluntary HIV tests must be conducted only with sufficient pre-test and post-test counseling and informed consent. Test results must be transmitted to inmates by the medical personnel who must guarantee medical confidentiality and must not be disclosed to correctional facility managers. Tags, labels, stamps, or other visible signs must not be attached to inmates' files, cells, or papers to indicate these individuals' HIV infection. In addition, inmates must not be subjected to restrictions on vocational activities, sports, and recreation and to segregation and isolation. Although protective isolation may be demanded for inmates with AIDS-related immunodeficiency, it must be implemented only with inmates' informed consent.[263]

345. However, the South Korean Ministry of Justice implements compulsory HIV testing on all new inmates of correctional facilities and segregated confinement (isolated confinement) for those with HIV. Article 16 (Confinement, Etc. of New Inmates) Clause 3 of the Administration and Treatment of Correctional Institution Inmates Act (Act No. 14281) stipulate that "New inmates shall undergo medical checkups conducted by a warden," thus making it impossible for new inmates to reject medical checkups. Article 3 (Medical Checkups of New Inmates) Clause 5 of the

[263] *WHO Guidelines on HIV Infection and AIDS in Prisons* (1999); *UNODC/WHO/UNAIDS Policy Brief: HIV Testing and Counselling in Prison and Other Closed Settings* (2009).

Guidelines on the Medical Management of Inmates (Ministry of Justice Established Rules No. 1109) stipulates that "syphilis and acquired immune deficiency syndrome tests are to be implemented" during medical checkups of new inmates in accordance with Article 16 of the above law. In addition, Article 11 (Management of Acquired Immune Deficiency Syndrome Patients) Clause 1 stipulates that "A warden must report to the community health center in the jurisdiction when there are inmates who have been definitively diagnosed with acquired immune deficiency syndrome," and Clause 2 stipulates that such inmates are to be subjected to segregated confinement (isolated confinement).

346. Consequently, inmates are subjected to HIV tests the results of which are notified not only to inmates themselves but also to wardens, and to segregated confinement immediately. Here, segregated confinement means not only solitary confinement but also separate engagement in activities such as sports, hairdressing, and showers/baths and exclusion from activities and gatherings such as religious assemblies, education, and vocational activities. This means that those living with HIV are segregated in all aspects of daily life. Consequently, these inmates have felt extreme isolation or humiliation and even attempted suicide.[264] Regarding this incident, the National Human Rights Commission of Korea (NHRCK) recommended to the Ministry of Justice on January 16, 2013 that Clause 2 of the Management of Acquired Immune Deficiency Syndrome Patients, which stipulates that "Infected or inmates suspected of infection are to be subjected to isolated confinement immediately," be revised. The Ministry of Justice then revised the clause as "After hearing medical officers' opinions, appropriate measures such as segregated confinement must be taken" on December 5, 2013.[265]

347. However, the reality remains unchanged. Furthermore, segregated confinement has resulted in the disclosure of HIV infection to other inmates. At D Correctional Institution, "HIV" was written next to infected' names on the inmate roster, visible even to visitors and interviewers. In addition, the health rights of inmates living with HIV are violated due to insufficient medical measures as well. On March 28, 2015, the South Korean press confirmed that a transgender woman (transwoman) living with HIV was arrested for violation of the Act on the Control of Narcotics. She had not been supplied with anti-retroviral drugs (ARVs) in a timely manner following her confinement at a detention center. Her immunity drastically weakened due to prolonged confinement so that her lawyer submitted a request for the suspension of the execution of penalty, but public prosecutors dismissed it. Although a written diagnosis from a medical specialist in infectious diseases stating that this inmate could no longer continue prison life due to ailments such as herpes zoster (shingles) and skin eruptions (rashes) and required immediate

[264] National Human Rights Commission of Korea, 11-Petition-0571300, "Isolation of HIV Infected in Correctional Facilities," 10/10/2011; National Human Rights Commission of Korea, 12-Petition-0094800, "Isolation of HIV Infected in Correctional Facilities," 2/15/2012 (in Korean).

[265] Article 11 (Management of Acquired Immune Deficiency Syndrome Patients) Clause 2, Chapter 3. Patient Management, Guidelines on the Medical Management of Inmates (in Korean). http://www.korealaw.go.kr/admRulLsInfoP.do;jsessionid=wxwFTOIY1MDm6U79RichhmFrdx4HhAwMuW47EY1JhQ5MxmWTqoXjBRsSa1t4eaKp.de_kl_a5_servlet_LSW2?admRulSeq=2000000026311.

hospitalization due to the danger of opportunistic infections and the side effects of medication was submitted, it was futile.[266] Moreover, Article 20 of the Guidelines on the Medical Management of Inmates (Hemodialysis Patients to Be Transported) excludes "persons who have contracted infectious diseases such as those infected with acquired immune deficiency syndrome" from hemodialysis patients who may be transported to institutions that operate hemodialysis rooms.

56. Repression on the Sewol Ferry Bereaved Families' Freedom of Assembly and Association

348. The police in Republic of Korea fired a water canon and capsaicin to the bereaved families who were attending a one year memorial assembly of the Sewol Ferry accident.[267] Mr. Maina Kiai, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, pointed out during his visit in Republic of Korea that the usage of water canon poses excessive threat to the person and violates the freedom of assembly and association.[268] In June 2016, police raided the bereaved families' protest site and demolished shading tents installed to avoid intense sunlight and arrested the family members who protested at the scene.[269] Also, the police did not grant permit to a one-person protestor in front of the Blue House as he had a picket saying '7 Hours of the President'.[270] As stated above, the ROK police acted in an inhuman manner which would constitute torture beyond a mere violation of freedom of assembly and association toward the bereaved families of Sewol Ferry accident.[271]

Manipulation of critical public opinion and blacklisted artists

349. Since June 2014, the ROK government planned and led pro-government protests mobilizing conservative groups to blame the Sewol Ferry bereaved families as public opinion turns unfavorable to the government's response to the accident. The conservative groups pressed charges against those who were criticizing the government regarding the Sewol Ferry accident, and wrote news articles supporting the government's policies to form public opinion against the bereaved families.

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[266] "Transgender dying in court 'for the sin of love…': Person A on 'drug charges' 'fighting AIDS, condition worsened… because detention center didn't give medicine at the right time'," *Money Today*, 8/25/2015 (in Korean). http://m.mt.co.kr/renew/view.html/?no=2015082413520830774&MVB&MVP.

[267] Lee Seung-joon, "UN Special Rapporteur criticizes S. Korean government on rights to assembly", The Hankyoreh, June 17, 2016, available at http://www.hani.co.kr/arti/english_edition/e_international/748622.html, accessed Jan. 13, 2017.

[268] In-ho Hwang, 「The amount of Capsaicin used during the Sewol Ferry protests increased 2.5 times compared to last year… Su-kyung Lim, "Far from healing the wound"」

[269] Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2

[270] Hani Lee, 「Police raided the Sewol protest site, arrested the bereaved families causing them to faint」

[271] Sujin Park, 「'Are '7 Hours' forbidden words in front of the Blue House? Police' excessive guard'」

350. Furthermore, one month after the accident, the ROK government internally drafted a 'black list' of the artists to block the unfavorable public opinion regarding the Sewol Ferry accident. To oppress the artists who were commemorating the accident, the government blacklisted those artists and excluded them from the government list of excellent books.[272]

351. It is unthinkable in a democratic society to consider the request for government's accountability and transparency as an attempt to undermine the government authority.[273] However, the ROK government accused the bereaved families of an anti-government group and oppressed their freedom of expression. This would constitute torture as it is inhuman to cause extreme emotional and physical distress of the bereaved families who are asking for the truth of the accident.

Interfere with the 4·16 Sewol Ferry Investigation Committee and Forced Dissolution of the Committee

352. The ROK government has been uncooperative and has interfered with the activities of the 4·16 Sewol Ferry Special Investigation Committee ('The Committee', hereinafter). The Committee members were appointed two months after the establishment, the Director of the Committee wasn't even appointed, and the Committee budget was cut without any justifiable grounds. Also, the government did not attend to the investigation hearings nor submit relevant documents, and systematically interfered with the Committees' investigation with a response manual.[274] This is in violation of 'Special Act on Investigating the Truth of the 16 Sewol Ferry Disaster and Building a Safe Society ('the Special Act', hereinafter), as Article 39 states that 'State agencies, etc. shall be obliged to actively cooperate with the Inquest as it performs its duties for investigating the truth.'[275]

353. The ROK government forcibly dissolved the Committee claiming that the further investigation was not allowed and that the Committee is only allowed to do a white paper publication activity during 3 months (from July 1 in 2016). The government's action was based on the arbitrary interpretation of Article 7 Section 1'[276]s 'the date when the Inquest is fully comprised' as a date of the Act's enactment, which was January 1, 2015. On the other hand, the Committee claimed that the August 4, 2016 is the date when the 'Inquest is fully comprised' since the Committee's personnel and budget matter were completed on that day. The government, however, did not allocate budget for the Committee and did not pay the Committee investigator's salary. 12 public officials out of 29 who were sent to the Committee were asked to come back to their original

[272] Youngji Seo, 「Yoonsun Cho, Led Parents' association to stage anti-Sewol protests」

[273] Heegon Yoo, 「Black list started from the Sewol accident」, Kyunghang Daily News

[274] Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2 para 84.

[275] Dahae Park, 「Ministry of Oceans and Fisheries " The ruling party's committee member will resign if the Blue House is investigated," … Response report was found」, Money Today, 2-15. 11. 19.

[276] Article 39 (Obligation of State Agencies, etc. to Cooperate) State agencies, etc. shall be obliged to actively cooperate with the Inquest as it performs its duties for investigating the truth.

positions and these made hard for the Committee to carry on its investigation.[277] The Committee staged hunger strike to request proper investigation period, but the government forced to dissolve the Committee.

354. As stated above, it is inhuman for the government to interfere with investigation activities and not to guarantee investigation which was clearly stipulated in the Act. As such, the government abandoned its responsibility to investigate the responsible for the accident and to press charges .[278]

[277] Article 7 (Operating Period of Inquest) The Inquest shall complete its activities within one year from the date the Inquest is fully comprised: Provided, that where it is impracticable to complete its activities within the aforesaid period, the Inquest may extend its operating period by up to six months on only one occasion, following a resolution by the Inquest.

[278] The Sewol Ferry Disaster Special Investigation Committee, Interim report, Office of the Committee Direct, pp 22-24.