

Registration number

11-1620000-000542-01

# Human Rights Guidelines on Migration



National Human Rights Commission of Korea

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## On the occasion of publication

The number of aliens living in Korea exceeded the 1.4 million mark, and they are from 180-plus countries. The number of migrant workers and migrants married to Koreans is increasing rapidly year after year; thus, the country has become a multicultural society.

We at NHRCK have paid meticulous attention to human rights issues associated with the country's emergence as a multicultural society and strived to find solutions to the issues. We have handled human rights-related complaints concerning migrants married to Koreans, migrant workers, migrant children, and refugees while making relevant recommendations and carrying out education and publicizing activities.

Nonetheless, our society have a long way to go with its view toward migrants' human rights, as well as the migrants-related policies formulated by various branches of the government appear to be performed overlapping each other, lacking integration as a whole. Considering such circumstances of society, we established Human Rights Guidelines on Migration in 2011 in the hopes of encouraging people to pay more attention to migrants' human rights and guiding the government's migrant-related policy, system, and laws in a proper way.

Human Rights Guidelines on Migration is based on status survey of the human rights situation of migrants in the country, analysis of migrants-related laws and social practices, and research on relevant international law and cases in major countries. We also listened to the opinions of policymakers and human rights activists both in and out of the country to make the Guidelines.

We sincerely hope that the Guidelines will be used positively in process of formulation of the government's migrants-related policies as well as promotion of various government programs, and that the Guidelines will play a part in the establishment of a mature multicultural society wherein the diversity of all people is duly respected.

January 2012

Hyun Byung-chul

Chairperson

National Human Rights Commission of Korea



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## I . Human Rights Guidelines on Migration—Purpose

The percentage of aliens in Republic of Korea is not that high, but society is going through globalization and door opening, and locals feel that aliens' presence is becoming stronger and stronger. The number of migrant workers and migrants married to Koreans is increasing rapidly, presenting new human rights challenges to Koreans; the situation demands locals' establishment of new policy agenda concerning aliens' human rights.

Note, however, that locals hardly have a sufficient level of recognition regarding migrants' human rights. The government ministries appear not to have an integrated view of aliens' human rights. Under such circumstances, migrants' human rights situation has not improved noticeably. We at the National Human Rights Commission (NHRCK) have established the Human Rights Guidelines to help people enhance their understanding of migrants' human rights situation and prevent human rights infringement in the course of the relevant policy formulation and legislation.

The Human Rights Guidelines on Migration (“Guidelines”) were established to contribute to our society’s smooth transition to a human rights-friendly multi-cultural society. The references and other contents of the Guidelines are expected to help migrants ascertain their universal human rights so that they may enjoy and help policymakers and migrants-related civic activists enact laws and formulate policies in a way that will minimize the gap between international human rights norms and country’s relevant policies based on adequate understanding of migrants’ human rights situation.



## II. Human Rights Guidelines on Migration—Basic Principles

The Guidelines were established based on the following five principles: first, guarantee of migrants' universal human rights and respect for the spirit stated in the Universal Declaration of Human Rights and international norms, such as the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on Economic, Social, and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention related to the Status of Refugees, Convention related to the Status of Stateless Persons, etc.; second, equal application to migrants of the freedom and social rights enjoyed by locals under domestic laws; third, systematic prevention of human rights infringement involving migrants due to improper laws; fourth, no discrimination against migrants based on differences in race, skin color, gender, language, religion, nationality, culture, and the like; fifth, respect for migrants' cultural identity and capabilities based on the recognition that migrants contribute to our society's transition to a multicultural welfare society.

### III. Human Rights Guidelines on Migration—Composition and Usage

The Guidelines were made based on status survey of migrants' human rights situation in the country, analysis of migrants-related laws and social practices, and survey of international laws and relevant cases in major countries. We also listened to the opinions of policymakers and human rights activists both in and out of the country to make said guidelines. The Guidelines are composed of two parts: outlines and details. The outlines part presents the following: purpose, basic principles, composition, and utilization methods of the Guidelines as well as how to improve major systems based on results of status surveys and what are the policy suggestions. The details part covers the need for the prevention of racial discrimination and respect for aliens along with status survey concerning migrants, i.e., migrant workers (including those hired under the Work Permit System, trainees dispatched by Korean businesses investing in foreign countries, those engaging in offshore fishing, art performers, etc.), migrants married to Koreans, migrant children, refugees/stateless persons, ethnic Korean migrants, and undocumented migrants.

The Guidelines present principles that the central/local governments and relevant organizations should observe to guarantee migrants' human rights, along with recommendable methods. Likewise, the Guidelines introduce human rights norms set up domestically and internationally and realistic cases adopted in major countries, which we at NHRCK hope will help policymakers formulate advanced forms of human rights policies.



## Human Rights Guidelines on Migration

The Guidelines cover the following groups of people who are major migrants in the country: migrant workers (including those hired under the Work Permit System, trainees dispatched by Korean businesses investing in foreign countries, those engaging in offshore fishing, art performers, etc.); migrants married to Koreans; migrant children; refugees/stateless persons; ethnic Korean migrants, and; undocumented migrants. The Guidelines apply to all migrants regardless of differences in gender, race, skin color, language, religion or beliefs, political/ethnic/social background, nationality, age, social and economic status, civil status, etc., unless specified otherwise. The Guidelines present methods of guaranteeing human rights for migrants and their families throughout the entire process of migration, including preparations for migration, departure for Republic of Korea, sojourn in Republic of Korea, return home, or permanent residence in Republic of Korea or naturalization.

### Part 1. Stronger protection of migrant workers' human rights

Article 22 (Prohibition against Discrimination) of the Act on the Employment, etc., of Foreign Workers stipulates that “No employer shall unfairly give discriminatory treatment to a foreign worker on the grounds that he/she is a foreign worker.” Domestic

courts have applied labor-related laws regardless of the status of sojourn in the case of aliens who provide labor to earn wage. In reality, however, many migrant workers do not enjoy the rights under labor laws, or they are discriminated from Korean workers. In other words, labor laws and policies are not applied properly to migrant workers.

Many migrant workers live in poor living conditions and have difficulty communicating with others or adapting to the new living environment. Many migrant workers engaging in agriculture, livestock industry, and fishery jobs or coastal fishing and trainees dispatched by Korean businesses investing in foreign countries are not protected adequately under the Labor Standards Act and the Minimum Wage Act. The international community has cited human rights issues associated with art performers and women migrant workers in the country who are exposed to human trafficking and gender discrimination.

In the 1990s and thereafter, international human rights organizations expressed concern or made the relevant recommendations about a total of 80 cases of migrants' human rights situation of the country. Such shows that they are serious issues that should be settled by our society.

The Guidelines indicate the desired direction of government policy formulated for the enhancement of migrant workers' human rights and present detailed principles of the efforts made to reduce the gap between the relevant laws and the reality based on international human rights norms.

## 1. Provision of pre-entry information

### A. Current status and problems

- Majority of migrant workers say that there is a gap between the details of their employment contract and the actual working conditions, e.g., work hours, salary,



meals, and nature of work. Migrant workers should be given sufficient information on their working conditions before their arrival in Republic of Korea. In reality, however, factors such as the relevant authorities' loose supervision, improper administrative procedure, language barrier, etc., stand in the way.

## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Regarding the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Concerning the obligation of providing information to migrant workers, please refer to Article 14 [this clause requires an employer to orient workers on the purport of the Act -- by posting or keeping it at a place readily accessible to workers -- and also applies to migrant workers; efforts should be made to improve the situation considering problems including language barrier] and Article 17 [employer's obligation to include working conditions, including wages, in an employment contract] of the Labor Standards Act.</li> <li>- For the stipulation of the obligation for the provision of information, please refer to Article 10 [this clause designates the form of marriage brokerage contract, along with the contents to be included in the contract; it also obligates a marriage broker to explain the contents of the contract to users in detail] and Article 10-2 [this clause designates the personal information to be provided to international marriage brokers] of the Marriage Brokerage Business Management Act.</li> <li>- Concerning the language barrier problem in the provision of personal information, please refer to Article 9-3 [this clause stipulates that, in the provision of interpretation/translation service to a migrant, international marriage brokers should use the migrant's mother tongues] of the Enforcement Rules of the Marriage Brokerage Business Management Act.</li> </ul>



	Contents
International norms	<ul style="list-style-type: none"> <li>- According to a report of the UN High Commissioner for Human Rights (UNHCHR) (A/HRC/14/30 para.74), new migrants should be provided with an opportunity to learn the language of the State of employment and information and advice concerning the relevant laws and systems in their mother tongues lest they experience difficulty in exercising their rights.</li> <li>- Article 33 (1) of Migrant Workers Convention stipulates that migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment, or the State of transit as the case may be concerning the ff.: (a) Their rights arising from the present Convention; (b) The conditions of their admission, their rights and obligation under the law and practice of the State concerned, and other matters that will enable them to comply with administrative or other formalities in that State. Article 37 of said Convention stipulates that, before their departure, or at the time of their admission to the State of employment at the latest, migrant workers and members of their families shall have the right to be informed fully by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission particularly those concerning their stay and the remunerated activities in which they may engage, including the requirements that they must satisfy in the State of employment and the authority to which they must subject themselves for any modification of such conditions.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- In Germany, documents concerning contracts for employment of migrant workers and contract cancellation are translated. In particular, matters concerning in-house education, regulations for the prevention of industrial disasters, and service rules are taught to migrant workers in their mother tongues.</li> </ul>

### C. Core agenda items for promotion

I –1–1. Migrant workers should be informed of the immigration system and labor laws as well as how to seek remedy before their arrival in the State of employment in their mother tongues.

I –1–2. Migrant workers should be provided with information on the work conditions, nature of work, industrial accident compensation insurance, health insurance, etc., at the time of signing an employment contract. For this, the Korean government should provide the government of the State of origin with the relevant information.

## 2. Transparency ensured in the process of dispatch

### A. Current status and problems

- During the process of dispatching migrant workers under the Work Permit System, which includes Korean proficiency test or skills test for certain types of industries, irregularities or cases of human rights infringement occur frequently; the Korean government needs to cooperate closely with the governments of the sending states to put an end to such undesirable practices and shorten the time required for dispatch.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of



	Contents
	<p>Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</p> <ul style="list-style-type: none"> <li>- Ref. Rules on surveys of human rights infringement cases and status surveys of detention and protection facilities</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Paragraph i, Article 65 of the Migrant Workers Convention stipulates that "State Parties shall maintain appropriate services to deal with questions concerning the international migration of workers and members of their families. Their functions shall include, inter alia: (a) formulation and implementation of policies regarding such migration; (b) exchange of information, consultation, and cooperation with the competent authorities of other States Parties involved in such migration; (c) provision of appropriate information particularly to employers, workers, and their organizations on policies, laws, and regulations related to migration and employment, agreements concluded with other States concerning migration, and other relevant matters; (d) provision of information and appropriate assistance to migrant workers and members of their families regarding requisite authorizations and formalities and arrangements for departure, travel, arrival, stay, remunerated activities, exit, and return as well as on the conditions of work and life in the State of employment and on customs, currency, tax, and other relevant laws and regulations.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- As for Germany, the Federal Employment Service (FES) takes charge of recruitment of migrant workers employed based on a standard contract and operates an FES office named German Committee in the State of origin. Migrant workers recruited by the German Committee sign an employment contract made in both their mother tongue and German. Intensive education is carried out on particular risk factors at the workplace -- along with industrial disaster regulations -- in their mother tongue. They see to it that migrant workers are informed of important regulations through an interpreter. Education on the danger of accidents and health hazards, methods of prevention of danger, and relevant facilities is also carried out in their mother tongue.</li> </ul>

### C. Core agenda items for promotion

I –2–1. There is a need to provide the relevant education basis to the State of origin for migrant workers-to-be to learn Korean without much financial burden.

## 3. Non-discrimination against, guarantee of human rights of migrant workers at workplaces

### A. Current status and problems

- Migrant workers are exposed to human rights infringement, including frequent harsh remarks or violence, at workplaces. They are discriminated from local workers in the nature of works assigned as well as in terms of pay (i.e., wage, bonus, allowance, etc.), recess hours, and other working conditions. Such matters require the government's positive involvement for remedial action.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Regarding the prohibition of employers' discrimination or violence against migrant workers, Article 6 (Equal Treatment) and Article 8 (Prohibition of Violence) of the Labor Standards Act apply. The legal basis for punishment of acts of discrimination is Article 49 (Punishment</li></ul>



	Contents
	<p>of Discriminatory Acts Under the Criminal Act) of the Act on the Prohibition of Discrimination of Disabled Persons, Remedy against Infringement of Their Rights, etc.</p> <ul style="list-style-type: none"> <li>- As for guaranteeing the minimum wage, please refer to Article 32 (1) (Minimum wage system) of the Constitution and Article 1 (Purpose: The purpose of the Act is to stabilize workers' life and to improve the quality of the labor force by guaranteeing a certain minimum level of wages for workers, thereby contributing to the sound development of the national economy) of the Minimum Wage Act.</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- The concluding observations of the UN Committee on Economic, Social, and Cultural Rights on the third periodic report of the Republic of Korea (E/C.12/KOR/CO/3, para.16) expressed concern regarding sexual violence at workplaces and recommended that the authorities take proper steps to stop such.</li> <li>- Article 7 (a) (ii) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides that the State Parties recognize the right of everyone to the enjoyment of just and favorable conditions of work, and that the remuneration provided should, at the minimum, be adequate to ensure decent living for workers and their families.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- Germany, for one, operates the Workplace Committee to promote understanding between migrant workers and employers.</li> </ul>

### C. Core agenda items for promotion

I –3–1. The government should carry out more stringent supervision of the following: working conditions (e.g., wage level and work hours) stated in employment contracts, adequate working environment, and payment of wages and retirement allowances.



I –3–2. Migrant workers should not be subject to discrimination in bonus, wage, allowance, recess hours, or other working conditions. They should be guaranteed a minimum wage. Their actual wage should not be reduced due to the deduction of excessive lodging and meal charges.

## 4. Stronger flexibility in job selection

### A. Current status and problems

- The government amended the Act on the Employment, etc., of Foreign Workers in December 2011 to solve the problem concerning restrictions put on migrant workers changing their workplaces. Under the amendment, a situation wherein a migrant worker changes his/her workplace for reasons other than those attributable to him/her is not counted in the number of changes in workplaces. Note, however, that workers who have difficulty continuing to work at their previous workplaces due to an industrial disaster or the like are still subject to the limit in the number of changes in workplaces. At present, the eligibility for simplification of the re-entry procedure applies only to the migrant workers who did not change their workplaces. This should also be improved.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	- Concerning the protection of aliens under domestic laws, the following laws apply: Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status), Article 15 (Freedom of Selection of Occupation), and Paragraph 3, Article 32 (Working Conditions Criteria)



	Contents
	of the Constitution; Article 5 (Fixing the Working Conditions) of the Labor Standards Act, and Article 4 (Application of the Law to Foreigners Residing in Republic of Korea) of the National Human Rights Commission Act.
Cases in major countries	<ul style="list-style-type: none"> <li>- Looking at Germany, considering the fact that migrant workers are not familiar with the legal procedure of the country, an employer may handle matters concerning employment contracts on their behalf under a separately made agreement. If an employer stands in the way of migrant workers' extension of an employment contract or work permit application, the employer becomes liable for reparation of damages. When intending to reduce the number of migrant workers employed by him/her, an employer is obligated to serve a notice in advance.</li> </ul>

### C. Core agenda items for promotion

I -4-1. Efforts should be made to allow migrant workers to select their jobs within a possible extent. Workers who find it hard to continue working at previous workplaces for reasons other than those attributable to them, including an injury, should not be subject to the limit on the number of changes of workplaces.

I -4-2. Concerning the eligibility for simplification of the re-entry procedure, which covers migrant workers whose status of stay is expired, it currently applies only to the migrant workers who did not change their workplaces. The following should be added to the list: “migrant workers who have observed domestic laws during their stay and obtained the consent of their existing employer.



## 5. Prevention of industrial disasters and improvement of the remedial system

### A. Current status and problems

- The Industrial Safety and Health Act stipulates the obligation of employers to conduct health checkup and industrial safety education for all workers, locals, and migrants alike, but some small-sized businesses, where a large portion of migrant workers work, sometimes fail to fulfill such obligations due to employers' ignorance or financial difficulty. Moreover, in some cases, migrant workers fail to get proper compensation for injuries due to the language barrier.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Please refer to Articles 4 and 5 (Duties of the Government and Business Owners) of the Industrial Safety and Health Act concerning industrial safety.</li><li>- Concerning the language barrier problem in the provision of personal information, please refer to Article 9-3 [this clause stipulates that, in the provision of interpretation/translation service to a migrant, international marriage brokers should use the migrant's mother tongue] of the Enforcement Rules of the Marriage Brokerage Business Management Act.</li></ul>
International norms	<ul style="list-style-type: none"><li>- Article 7 (b) of ICESCR stipulates "safe and healthy working conditions" among the rights of everyone to the enjoyment of just and favorable work conditions.</li></ul>
	<ul style="list-style-type: none"><li>- In Spain, the work conditions (e.g., wage, insurance, and work hours) set by the Labor-Employer-Government Commission apply to migrant</li></ul>



	Contents
Cases in major countries	<p>workers as well. The migrant workers' centers in local labor union confederations represent the rights of regular and irregular migrant workers.</p> <ul style="list-style-type: none"> <li>- In Japan, the basic system for guaranteeing workers' rights, such as Labor Standards Act, Labor Union Act, Minimum Wages Act, Industrial Safety and Health Act, Industrial Accident Compensation Insurance Act, etc., apply to regular and irregular migrant workers.</li> <li>- Looking at Germany, Article 107 of the country's Trade Act of 1869 stipulates the ff.: "Business owners shall install and operate the facilities needed to protect the lives of workers and avoid their health risks and have the obligation to strive to uphold the rights of workers within the scope of employment relations, provide protection and considerations for them, and refrain from engaging in any act that may do harm to their benefits.</li> </ul>

## C. Core agenda items for promotion

I-5-1. The government should carry out more stringent supervision of workplaces to see whether they observe industrial safety-related laws to guarantee migrant workers' right to work safely, including the installation of protection facilities for hazardous and dangerous machinery in small-sized workplaces where migrant workers are hired.

I-5-2. Concerning injured migrant workers, they should be provided with interpretation service in the application for industrial accident compensation insurance protection, including the relevant forms, using both Korean and their mother tongue. They should be given an opportunity for rehabilitation education and re-employment education.

I-5-3. Regulations should be overhauled to make it obligatory for employers to provide industrial safety/health education to migrant workers before and after their work commencement at workplaces.

## 6. Improvement of residence right

### A. Current status and problems

- According to a 2009 survey of migrant workers' residential environment, about 63% of them lived in spaces that could hardly be called spaces for humans, such as small room in the factory, steel container, or plastic-roofed greenhouse. Many employers deducted from their salaries an excessively large amount of lodging and meal charges, which is disproportionate to the actual facilities provided. Given the fact that majority of migrant workers are living in non-livable buildings and are facing problems such as overcrowding, hygiene, safety, workplace noise, and conflicts with those from other cultures, measures to guarantee workers' residence right should be taken immediately.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status), Article 10 (Right to Pursue Happiness), and Article 34 (1) (Right to Live as Decent Humans) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.



	Contents
International norms	- Article 43 of the Migrant Workers Convention stipulates that migrant workers have the right to equality of treatment with locals regarding the use of housing.
Cases in major countries	- In Germany, employee dormitories should meet the requirements set in the Minister of Labor and Social Affairs Regulation for migrant workers' dormitory in Germany. An employer should keep employee dormitories in safe conditions under Article 618 of the Trade Act and the Civil Law. In principle, migrant workers who are hired by a standard contract) in Germany should be accommodated in employee dormitories that meet the requirements set by the Minister of Labor and Social Affairs. The Federal Employment Agency provides loans or subsidies to build accommodations for migrant workers.

### C. Core agenda items for promotion

I –6–1. Migrant workers should be guaranteed the freedom of residence be able to live in a safe, pleasant place. Their group quarters such as dormitories should meet the criteria and conditions set by the relevant laws.

## 7. Guarantee of right to live as decent humans

### A. Current status and problems

- Many migrant workers are not familiar with the details of insurance policies for them. Many of them fail to receive insurance benefits due to their ignorance of the procedure. Many of them suffer loss or damage due to employers who, in bad faith, terminate employment contracts unilaterally or report employees' unauthorized departure from workplaces to take advantage of the regulation



stipulating that migrant workers only become eligible for comprehensive compensation with the completion of the employment contract period. Many migrant workers should leave the employer-provided lodgings, receiving no unemployment allowances if they have started looking for another workplace; this constitutes infringement of their right to live.

## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Ref. Article 15 (Freedom of Selection of Occupation) of the Constitution; Article 1 (Purpose), Article 4 (Insurance Programs, Including Unemployment Benefits), Article 40 (Eligibility Requirements for Job-seeking Benefits) of the Employment Insurance Act</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Article 43 of the Migrant Workers Convention stipulates that migrant workers have the right to equality of treatment with locals regarding the use of housing.</li> <li>- A report of UNHCHR (A/HRC/14/30 para.88) points to the need to provide shelter to migrant workers when necessary.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- In Spain, regular migrant workers who become unemployed are eligible for unemployment allowance in accordance with the period of regular employment and vocational training.</li> <li>- In Japan, the guidelines of the Ministry of Health, Labor, and Welfare stipulate that employers cope properly with the need for improvement of migrant workers' employment status, and that employment insurance should apply to migrant workers.</li> </ul>



### C. Core agenda items for promotion

I –7–1. The government should carry out more stringent management and supervision of employers who, in bad faith, default on the payment of migrant workers-related social security insurance premium, terminate employment contracts unilaterally, and report workers' unauthorized departure from workplaces. The government should improve the procedure for migrant workers' receipt of social insurance protection to guarantee workers' right to live as decent humans.

I –7–2. The government should ensure that the payment of migrant workers' retirement allowance and wage is not delayed, and that the relevant information is provided in multiple languages.

## 8. More stringent protection of women migrant workers' human rights

### A. Current status and problems

- Women migrant workers are more vulnerable to human rights infringement, including threat of dismissal when they intend to report sexual offense, difficulty in proving a case, uncertainty of reparation, longer time taken for investigation, instability of employment, etc. Especially in the case of undocumented migrants, they are a more vulnerable target because they are in a difficult situation to report a case of sexual offense, which eventually leads to their deportation once the case is closed. This further exacerbates the situation of human rights infringement.



## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status), Article 10 (Right to Pursue Happiness), Paragraph 4, Article 32 (Protection of and Non-discrimination Against Women Workers), and Paragraph 2, Article 36 (Maternity Protection) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Ref. Article 17-2 (Prevention, Etc., of Sexual Harassment), Article 18 (Reinforcement of Maternity Protection), Article 25 (Prevention of Sexual or Domestic Violence) of the Framework Act on Women's Development and Article 12 (Establishment and Operation of Protection Facilities) of the Act on the Prevention of Sexual Assault and Protection, etc., of Victims Thereof</li> <li>- Arrangement should be made to enable conducting statistical surveys among migrant workers by inserting a clause in the enforcement decree of the Gender Impact Analysis and Assessment Act to be implemented on March 16, 2012.</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- The concluding observations (7/29/2011) made by the Convention on the Elimination of All Forms of Discrimination Against Women on the 7<sup>th</sup> periodic report of the Republic of Korea expressed concern regarding the low number of reports made compared to the actual number of sexual violence cases.</li> </ul>
	<ul style="list-style-type: none"> <li>- ICESCR's concluding observations (9/20/2009) on the 3rd periodic report of the Republic of Korea expressed concern regarding the continued lack of understanding about sexual harassment at workplaces. According to a UNHCHR report (A/HRC/14/30 para.90), the government should carry out more stringent management and supervision of migrant workers' working conditions at workplaces.</li> </ul>



### C. Core agenda items for promotion

- I –8–1. The government should carry out continued management and supervision of workplaces and employee dormitories where there are women migrant workers to prevent sexual offense. In particular, women migrant workers should be guaranteed the use of dormitory spaces separate from those for men.
- I –8–2. Migrant women who have become victims of sexual offense should be allowed to access the shelter for migrant women, to attend programs for emotional and psychological treatment, and to stay in the country without concerns.
- I –8–3. All women migrant workers should be guaranteed substantial protection of their maternity.

## 9. Status survey of small-sized, remote workplaces

### A. Current status and problems

- Regarding migrant workers engaging in certain businesses which are usually small-sized or have remote workplaces with low accessibility from outsiders, such as coastal fishing, agriculture, livestock industry and fishery jobs, or warehouse business, there is a need to check their status and improve their situation since they are likely to be socially isolated and their employment/work conditions are likely to be poor.



## B. Domestic norms

	Contents
Domestic norms	- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.

## C. Core agenda items for promotion

I –9–1. Regarding migrant workers engaging in certain businesses that are usually small-sized or whose remote workplaces have low accessibility to outsiders, such as coastal fishing, agriculture, livestock industry, and fishery jobs or warehouse business, there is a need to check their status and improve their situation since they are likely to be isolated socially and their employment/work conditions are likely to be poor.

# 10. More stringent protection of human rights of migrant workers engaging in agriculture, livestock industry, and fishery jobs

## A. Current status and problems

- Ten thousand migrant workers engaging in agriculture, livestock industry, and fishery jobs -- who account for about 6% of those hired under the Work Permit System -- are said to be in harsh working conditions in an isolated job environment. They have become easy targets of multiple human rights infringements, such as long work hours, low wages, etc. In many cases, they



are likely to be hit by seasonal unemployment (for 3 months or more) due to the characteristics of the jobs. Compared to manufacturing jobs, these jobs display 2.5 ~ 6 times higher rate of undocumented migrant workers (ref. percentage of undocumented migrant workers: 6% in manufacturing; 14.8% in agriculture and livestock industry; 36.4% in fishery).

## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Regarding the prohibition of discrimination against migrant workers, please refer to Article 6 (Equal Treatment) of the Labor Standards Act. For the minimum wage guarantee, please refer to Article 32 (1) of the Constitution and the Minimum Wage Act.</li> <li>- Ref. Article 1 (Purpose) of the Minimum Wage Act. The Supreme Court (2009-Da-51158 dated 12/10/2009) ruled that a plant growing business whose Employment Rules have a clause on overtime pay should comply with it concerning migrant workers even though employers of plant growing businesses have no obligation to pay such under the Labor Standards Act.</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Article 25 (1) of the Migrant Workers Convention stipulates the following: Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment with respect to remuneration.               <ul style="list-style-type: none"> <li>(a) Other work conditions, i.e., overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of employment relationship, and any other work conditions that, according to national law and practice, are covered by these terms;</li> <li>(b) Other terms of employment, i.e., minimum age of employment, restriction on work, and any other matters that, according to national law and practice, are considered part of the terms of employment.</li> </ul> </li> </ul>

## C. Core agenda items for promotion

- I –10–1. Migrant workers engaging in agriculture, livestock industry, and fishery should enjoy equal treatment to locals engaging in the same type of work in terms of wage and working conditions under the Labor Standards Act and the Minimum Wage Act.
- I –10–2. The government should mitigate the restrictions on movement to other workplaces of migrant workers engaging in agriculture, livestock industry, and fishery, considering seasonal unemployment.

## 11. More stringent protection of human rights migrant workers engaging in fishing

### A. Current status and problems

- Migrant workers engaging in coastal fishing (total number: 7,764 in 2011; number of undocumented ones: 2,225 or 27.7% vs. 18.4% for undocumented migrant workers under the Work Permit System) are controlled by the Ministry of Land, Transportation, and Maritime Affairs (MLTM) rather than by the Ministry of Employment and Labor (MOEL). Migrant workers engaging in offshore fishing are not covered by the Work Permit System. Their workplace is a fishing boat, which means that they have to work long hours, their workplace is not separated from the place of residence, and they are isolated from the local community. Due to the special circumstances of their workplace, their labor rights are not recognized properly. They are governed by the Seafarers Act, but



even said Act does not apply to them sufficiently. There is a need to carry out a survey of the structure of their employment and human rights status about them to take steps for improvement urgently. Recently, migrant workers engaging in deep-sea fishing complained about the inhumane treatment they received (e.g., sexual harassment, abusive language, violence) on fishing boats. Proper steps should be taken for their situation, with a transparent management system adopted for them.

## B. Domestic norms

	Contents
Domestic norms	- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.

## C. Core agenda items for promotion

I –11–1. The country should join the Work in Fishing Convention (2007) in connection with the need to improve the human rights situation of migrant workers engaging in coastal fishing. The government should carry out more stringent management and supervision of the status of compliance with the relevant laws considering the special working conditions on fishing boats.

I –11–2. The government should ensure that the rights of migrant workers engaging in coastal fishing are maintained at the level of those hired under the Work Permit System.



I –11–3. Efforts should be made to check the human rights status of migrant workers engaging in deep-sea fishing. The relevant systems should be overhauled to ensure that their human rights are respected.

## 12. Guaranteeing the human rights of foreign trainees of Korean businesses investing in foreign countries

### A. Current status and problems

- In many cases, “foreign trainees of Korean businesses investing in foreign countries” are abused as a means of hiring migrant workers at low wages rather than training them as the original purpose of the policy. Trainees are managed inhumanely at workplaces and employee dormitories; they are not covered by the relevant domestic labor laws, such as the Labor Standards Act and the Minimum Wage Act. They are not able to exercise their basic rights as workers, although they are long-term hired workers in reality.

### B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens’ Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 32 (3) of the Constitution, which stipulates that Standards of working conditions shall be determined by the Act such that human dignity is guaranteed</li></ul>



### C. Core agenda items for promotion

I –12–1. The government should carry out more stringent management and supervision of the system lest it is abused as a means of hiring migrant workers at low wages rather than for the pure purpose of training them.

## 13. Prevention of human rights infringement involving art performers

### A. Current status and problems

- Art performers (4,721 people; 1,504 or 32% of them are undocumented) make up for the highest percentage of undocumented status among migrant workers. In 2011, the UN Committee on the Elimination of Discrimination against Women expressed concern about human trafficking and sexual exploitation concerning migrant women in Republic of Korea and who hold visas as art performers. They remain unprotected from human rights infringement, including delay in wage payment, passport seizure, violence, frequent change of workplaces, and mental pressure to attract more customers in addition to human trafficking and sexual exploitation.

### B. Domestic norms

	Contents
Domestic norms	<p>There is a need to include art performers in status surveys carried out under the following and formulate a policy concerning them:</p> <ul style="list-style-type: none"><li>- Article 6 (Guaranteeing Aliens' Status) and Article 10 (Guaranteeing the Fundamental Human Rights of Individuals) of the Constitution; Article</li></ul>



	Contents
	4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act; Article 3-2 (Survey on the Current Situation of Sexual Traffic) of the Act on the Prevention of Sexual Traffic and Protection, etc., of Victims Thereof.
International norms	- The concluding observations made by the UN Committee on the Elimination of Discrimination against Women on the 7 <sup>th</sup> periodic report of the Republic of Korea (CEDAW/C/KOR/CO/7) recommended the South Korean government's effective monitoring on the issuance of E-6 visas.

### C. Core agenda items for promotion

I –13–1. The government should carry out more stringent management and supervision of the system for issuance of art performance-related visas (E-6-2) in connection with the possibility of art performers engaging in sexual trafficking or ending up working as bar hostesses. The government should allow human trafficking victims to stay in the country.





## Part 2. Stronger protection of human rights of migrants married to Koreans

Although the government's multicultural policy is implemented with focus on migrants married to Koreans, international human rights organizations have expressed continuous concern about the human rights situation of migrants married to Koreans. At present, the number of migrants married to Koreans stands at 211,458, including those naturalized through marriage. This accounts for 16.7% of all aliens in the country. The marriage brokerage structure, which is prone to human rights infringement and problem of migrant women exposed to domestic violence, has emerged as a serious social issue.

The Multicultural Families Support Act leaves a lot to be desired concerning the guarantee of solid legal status (status of sojourn) for migrants married to Koreans, which is needed to improve their human rights situation. It has also been pointed out that said law does not cover many migrants since it defines its scope of coverage as a family consisting of an immigrant by marriage and a person who acquired Korean nationality.

In 2007, the UN Committee on the Elimination of Discrimination against Women expressed concern about the following situation in Republic of Korea: increase of international marriages prone to human rights infringement, widespread domestic violence, lack of practical remedies against spousal violence, instability with regard to the status of sojourn during the period of remedial procedure, etc. In 2011, said committee proposed the following to the South Korean government: measures taken to prevent domestic violence and removal of all discriminatory clauses regarding requirements for obtaining Korean nationality, such as identification reference from the Korean spouse

to extend the migrant spouse's stay and existence of children from the marriage.

The government has made considerable efforts to enhance the status of migrants married to Koreans and guarantee their human rights through the enactment of marriage brokerage-related laws and amendment to the existing laws to improve the aforesaid situations. Note, however, that the human rights situation of migrants married to Koreans still leaves a lot to be desired.

Said issue involves the following factors: instances of human rights infringement occurring in the course of marriage brokerage agencies' involvement; linkage of status of sojourn of migrants married to Koreans to continued marriage; requirements for the Korean spouse's identification reference and existence of children from the marriage for a migrant to obtain Korean nationality; domestic violence; human rights infringement stemming from Korea's patriarchal family culture, instability of status of sojourn and financial problem of divorced migrant women, locals' prejudice against migrants married to Koreans, etc.

NHRCK has cited on several occasions the need for the amendment of the Immigration Control Act (12/6/2007) and enactment of the Enforcement Decree and Enforcement Rules of the Marriage Brokerage Business Management Act (4/10/2008) in an effort to improve the relevant situation. Human Rights Guidelines on Migration present the principles and desired directions contained in international norms on the basic human rights of migrants married to Koreans.

## 1. Taking measures aimed at preventing marriages that infringe human rights

### A. Current status and problems

- In October 2010, the Ministry of Gender Equality and Family (MOGEF) and other relevant ministries started taking steps to foster an atmosphere conducive

for sound international marriage and protect the human rights of migrants married to Koreans. MOGEF has strived to lay the basis for sound international marriage by taking the following measures: making it mandatory to exchange detailed personal information on the other party to the marriage considered; operation of international marriage-based migration attachés in Korean embassies in the relevant countries; operation of the council of ambassadors of the relevant countries in Seoul; more stringent inspection of visa issuance, and; stringent control of marriage brokerage agencies. The risk of human rights infringement from hasty marriage still remains, however. As of October 2011, the number of registered international marriage brokerage agencies is 1,670. It has been pointed out that the Act on the Regulation of Marriage Brokerage Agency should be implemented more effectively through the adoption of punitive measures against the failure to exchange detailed personal information or provision of false information on the other party to the marriage considered and marriage brokerage agencies violating the laws of the relevant countries.

## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Article 36 (1) of the Constitution stipulates that "Marriage and family life shall be entered into and sustained on the basis of individual dignity and gender equality, and the State shall do everything in its power to achieve that goal."</li> <li>- Article 3 of the Multicultural Families Support Act stipulates that "The</li> </ul>



	Contents
	<p>State and local governments shall develop systems and conditions necessary to help multicultural family members enjoy stable family life and shall establish and implement policies therefor.”</p> <ul style="list-style-type: none"> <li>- The Act on the Regulation of Marriage Brokerage Agency (partially amended on 5/17/2010 (Act No. 10301 implemented on 11/18/2010) provides details designed to improve problems associated with the management of international marriage brokerage agencies by adopting clauses on the following: making it mandatory for international marriage brokerage agencies to arrange to have parties to the marriage exchange personal information with each other; making it mandatory to provide translation/interpretation services; making it mandatory to provide the business report/registration numbers in all advertisements concerning marriage brokerage agencies, and; making it mandatory to report/register a marriage brokerage agency with the head of the relevant local administration. Clauses of the Act on the Regulation of Marriage Brokerage associated with marriage partner-related information include Article 12 (2) (“No marriage broker shall provide false information to clients when arranging marriages”), Article 26 (2) 5 (“Any person engaging in the international marriage brokerage business in violation of prohibited acts is punishable by imprisonment for not more than 2 years or fine not exceeding 10 million won”), and Article 18 (1) 9 (“A marriage broker failing to provide personal information to a client and the other party shall have his/her registration revoked.”)</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- The concluding observations (8/17/2007) made by the UN Committee on the Elimination of Racial Discrimination on the 13<sup>th</sup> and 14<sup>th</sup> periodic reports of the Republic of Korea expressed concern regarding the problems about international marriage brokerage agencies and recommended regulation on them.</li> <li>- Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that “The State’s Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking and prostitution of women.</li> <li>- The concluding observations (7/29/2011) made by UN Committee on the Elimination of All Forms of Discrimination against Women on the 7<sup>th</sup></li> </ul>

	Contents
	periodic report of the Republic of Korea recommended the government's legislative efforts for the effective implementation of the Act on the Regulation of Marriage Brokerage Agency.

### C. Core agenda items for promotion

- II-1-1. The government should take legislative and other measures to guarantee the effective implementation of the Act on the Regulation of Marriage Brokerage Agency. The government should find a way to prevent human rights infringement occurring in association with migrants and put an end to the human trafficking controversy involving migrants married to Koreans.
- II-1-2. The government should carry out more stringent management and supervision of international marriage brokerage agencies so that they provide accurate personal information of marriage partners-to-be and guarantee the right of marriage partners-to-be to make decisions freely. Clear-cut regulations should be provided to enable punishing marriage brokers neglecting said duties. Measures for regulating marriage brokers should be explored in both countries. Victims should not be burdened with the responsibility of proving the marriage brokers' fault or intention.
- II-1-3. Officials of the relevant authorities should be made to attend education sessions designed to enhance their expertise in matters related to marriage brokerage agencies and human rights infringement.



## 2. Protection of migrants married to Koreans and guarantee of their right to enter and stay in Republic of Korea

### A. Current status and problems

- It has been pointed out that pre-entry education aimed at preventing migrant women's exposure to domestic violence and marriage brokerage prone to human trafficking is performed only perfunctorily. Some marriage brokers even perpetrate fraud like not making arrangements for an invitation letter for her to come to Republic of Korea after the on-site marriage. The government should come up with a way to guarantee the status of sojourn and legal status for migrants married to Koreans to ensure their right to marriage regardless of identification reference provided by their Korean spouses

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 11, (1) (Right to Equality) and Article 36 (1) (Marriage and Family Life) of the Constitution; Article 2 (3) (defining the term "discriminatory act of violating the right to equality") of the National Human Rights Commission Act; Article 3 (responsibilities of State and local governments to help multicultural family members enjoy stable family life) of the Multicultural Families Support Act</li></ul>
International norms	<ul style="list-style-type: none"><li>- The concluding observations (7/29/2011) made by the Convention on the Elimination of All Forms of Discrimination Against Women on the 7<sup>th</sup> periodic report of the Republic of Korea expressed concern regarding the requirements for the provision of verbal or written information in the</li></ul>

	Contents
	<p>application for Korean nationality made by migrants married to Koreans and the difficulty due to their reliance on their Korean spouses in the application for naturalization or due to the lack of children from the marriage. The convention recommended the deletion of discriminatory clauses.</p> <ul style="list-style-type: none"> <li>- In its Consideration of the 13<sup>th</sup> and 14<sup>th</sup> periodic reports of the Republic of Korea, the International Convention on the Elimination of All Forms of Racial Discrimination states (in Item 17) thus: “The Committee recommends that the State party adopt appropriate measures to strengthen the protection of the rights of foreign female spouses, inter alia by ensuring that their legal resident status in case of separation/divorce does not depend entirely on the proof that the end of the relationship is attributed to the Korean spouse’s fault. The Committee also recommends that the activities of international marriage agencies be regulated so as to avoid abuses such as excessive fees, withholding of essential information about the future Korean husband, and confiscation of identity and travel documents. The Committee further suggests the adoption of all appropriate measures -- including the provision of adequate information on the country and its traditions and the organization of Korean language courses -- to facilitate the integration of foreign female spouses in the society of the State party.”(CERD/C/KOR/CO/1. August 2007). A noteworthy part of this recommendation is that the government should ensure the legal resident status of foreign female spouses even if the end of the marriage is entirely attributable to the Korean spouse.</li> <li>- At its session held in Geneva, Switzerland on November 10 and 11, 2009, the UN Committee on Economic, Social, and Cultural Rights expressed its view as follows with regard to the human rights situation of migrants, particularly migrants women married to Koreans and trafficking of women and children: “The Committee remains concerned that foreign spouses married to Korean nationals are still dependent on the latter for their residency status (F-2). (Art. 2) The Committee recommends that the State party make further efforts to overcome the discrimination faced by foreign women married to Korean nationals by empowering them to acquire residency status or naturalization without having to rely on their husbands.”(E/C. 12/KOR/CO/3 September 2009).</li> </ul>



	Contents
Cases in major countries	- In Germany, migrants married to Germans enter Germany through the application for marriage visa. Based on the application from the local government of the area where the German spouse lives, the federal government grants status of sojourn. The migrant married to the German may then apply for work permit.

### C. Core agenda items for promotion

II-2-1. The current system for linking the pre-entry education of migrants married to Koreans with the issuance of visa should be improved in a human rights-friendly way.

II-2-2. The right to sojourn and permanent residence as well as obtaining Korean nationality should be guaranteed for migrants married to Koreans based on concrete clauses of the law. In said process, public officials' discretionary power should not be used arbitrarily.

## 3. More stringent protection of migrant workers from domestic violence

### A. Current status and problems

- There are migrants married to Koreans exposed to serious domestic violence due to the lack of measures for the protection of their marriage-related rights and right to sojourn. The government should formulate comprehensive programs to prevent domestic violence involving these migrants and for their adequate protection.



## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Concerning the State's protection of marriage life, please refer to Article 36 (1) (Marriage and Family Life) of the Constitution and Article 3 (Protection of Stable Family Life of Multicultural Families) of the Multicultural Families Support Act.</li> <li>- For the granting of the right to move into rental housing, please refer to Article 8-5 (Granting of Preferential Right to Live in Rental House) of the Act on the Prevention of Domestic Violence and Protection, etc., of Victims.</li> <li>- NHRCK expressed its view to the Minister of Gender Equality and Family as follows concerning the bill for the amendment of the Act on the Prevention of Domestic Violence and Protection, etc., of Victims: "We agree with the intention, but the special clause on the responsibility of proving as stated in Article 4-6 of said bill does not correspond to the current civil law system. Its application may make it difficult to clarify substantial facts. It may be viewed as discrimination based on the income of migrants married to Koreans and the people of their home country. Thus, it is more desirable to adopt a method for the provision of wider legal support than the special clause concerning the responsibility of proving.</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Paragraph 20 of the UN Committee on the Elimination of All Forms of Discrimination Against Women (Recommendation in 2011): The committee recommended that the Korean government carry out a campaign to improve the perception on women, to help women know their rights as well as how to get compensation in case of domestic violence, and to take measures for the prevention of domestic violence and protection of women from domestic violence.</li> </ul>



### C. Core agenda items for promotion

- II-3-1. The government should step up efforts for human rights protection against non-physical domestic violence such as abuse and threats rather than limited physical violence in accordance with the Prevention of Domestic Violence Act. If the marriage ends due to domestic violence, the non-Korean spouse should be allowed to stay in the country for a given period of time for economic activities and should be provided with legal support and right to residence.
- II-3-2. In the case of a migrant woman married to a Korean but who has become a victim of domestic violence and who is given child custody rights, the government should guarantee for such woman the freedom of selection of residence and the right to independent child care without the consent of the Korean spouse.
- II-3-3. The government should provide measures for ensuring that migrant women married to Koreans, who fled for safety to a shelter, receive living cost support.
- II-3-4. Shelters for migrant women who are victims of domestic violence should be operated considering the migrant women's languages, cultures, and family relations, including whether the migrant women can live on their own. The self-reliance of such shelter should be guaranteed even if it receives support from the government.

II-3-5. The government should improve the identification reference system, which requires the consent of the Korean spouse to extend the status of stay of his/her non-Korean spouse, to upgrade the current dependent standing of migrants married to Koreans and prevent domestic violence.

## 4. Social insurance benefit for migrants married to Koreans; establishment of social safety network

### A. Current status and problems

- As for a migrant woman married to a Korean, the National Basic Living Security Act protects only “the person him/herself or his pregnant spouse and who is raising a minor child with Korean nationality or sharing livelihood or dwelling with his/her spouse’s lineal ascendant with Korean nationality” (Article 5-2). As a result, said law does not protect certain married migrant women who have with no children or who fled to a shelter due to domestic violence. A migrant woman married to a Korean has difficulty opting for divorce despite problems with her Korean spouse. Even if she opts for divorce due to domestic violence, she has difficulty living on her own financially, which means she can hardly have her child custody right or right to access recognized. It is known that more than 40% of migrant women who considered divorce could not opt for divorce due to their children, showing that they are in a disadvantageous position in terms of child custody right and ability to earn a living. To provide migrants married to Koreans live as decent humans, the social security system should be revised with focus on the protection of individuals’ human rights.



## B. Domestic norms and cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- For the guarantee of the right to live as decent humans for migrants married to Koreans, please refer to Article 11 (1) (Right to Equality), Article 34 (1) (Right to Live as Decent Humans), and Article 36 (1) (Marriage and Family Life) of the Constitution and Article 2 (3) (defining the term “discriminatory act of violating the right to equality”) of the National Human Rights Commission Act.</li> <li>- Concerning the protection of migrants married to Koreans with no child to take care of, please refer to Article 5-2 (1) of the Single-Parent Family Support Act.</li> <li>- Ref. Article 5 (Enhancement of Understanding of Multicultural Families) and Article 13 (Education of Public Officials Engaged in Support Services for Multicultural Families) of the Multicultural Families Support Act; Article 10 (Safeguarding the Human Rights of Foreigners, etc., in Republic of Korea) and Article 18 (Enhancement of Understanding of Cultural Diversity) of the Framework Act on the Treatment of Foreigners Residing in the Republic of Korea</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- In Germany, all migrants enjoy social security benefits equal to those enjoyed by locals. No restrictions are put on migrants concerning becoming a member of the labor union. Their children have the right to receive vocational training and education.</li> </ul>

## C. Core agenda items for promotion

II-4-1. The basic information contained in the National Basic Living Security Act, Mother and Child Health Act, and Infant Care Act should be



provided to migrants married to Koreans. The social security network should be operated adequately so that they will not be placed in a disadvantageous position, through means such as providing an interpreter when they receive medical treatment to enable them to understand their own health status properly.

II-4-2. To protect the right to health of migrants married to Koreans, health insurance information should be provided to them; all possible social security benefits should be provided to those who have not subscribed to health insurance.

II-4-3. Multicultural family support centers, public health centers, local resident centers, etc., should provide migrants married to Koreans with information on the maternity protection system associated with pregnancy, childbirth, and child care.

II-4-4. Migrants married to Koreans should be given an opportunity for education and employment in a way that can help them make the best use of the experience they gained in their country of origin or their current abilities.





### Part 3. Stronger protection of immigrant children's human rights

As for migrant children's human rights situation, discussions on social rights such as education, medical service, welfare, etc., are underway. Recently, human rights concerning the children of undocumented migrants and the immigrant children are discussed as a core issue. Children of internationally married couples -- one of whom is a Korean -- are guaranteed all rights as Korean nationals under Article 2 (1) of the Nationality Act. Note, however, that undocumented immigrant children are not protected based on the fundamental human rights (such as the right to live with parents, right to medical service, education, or social security) which are stated in the Convention on the Rights of the Child. Children of migrant worker parents display a high level of zeal about their education, but the real situation is a far cry from their expectation.

NHRCK made a recommendation for the improvement of policy to guarantee migrant children's right to middle school education (12/3/2009) and recommendation of an improvement plan to guarantee the right to education of migrant children (2/16/2011). The contents of the latter consist of the following: greater access to public education; prevention of dropping out from public education, discrimination, and human rights infringement; and fostering of a stable education environment, etc.

Based on the results of a status survey among immigrant children, we could see that the children who failed to adapt early had difficulty following the school curriculum, but their level of academic achievement was raised through adaptation training programs provided by local multicultural centers and religious organizations. The case indicated the importance of initial adaptation programs for immigrant

children, who suffer from serious mental stress of having to live in a relatively new environment, problems related to admission to high school, disagreement with parents on future careers and unwillingness to study under the guidance of parents one of whom is a stepparent, etc.

The Guidelines present concrete directions and principles designed to bridge the current realistic gap in matters concerning the guarantee of immigrant children's human rights (including right to education, health, and life with family) based on international norms, principles, and recommendations.

## 1. Guaranteeing migrant children's right to education

### A. Current status and problems

- The country's education policy regarding children from multicultural families - implemented under the Multicultural Families Support Act -- focuses on children of migrants married to Koreans. Under said policy, the government concentrates on the prevention of deficiency of learning due to delayed language development for children under 12 years and provision of stronger support to help them adapt to school life. As for children of migrant worker parents, the percentage attending schools remains low since many of the parents are undocumented aliens. They have difficulty accessing basic social rights -- including attending schools -- due to the government's adoption of double standards in the form of provision of support for children and crackdown on parents. There is a need to reset the objective of the policy for migrant children as guarantee of the right to comprehensive education of all migrant children, including those of undocumented parents, and establish concrete criteria for the evaluation of the

level of achievement of such objective. Measures that can improve the prejudice against the minority and eliminate racial discrimination elements in the curricula adopted by regular school education should be taken. The direction of multicultural education should be set such that the languages and culture used by both parents are recognized, considering the fact that our society cannot escape from the vicious cycle of discrimination and exclusion unless we recognize the cultural and linguistic identity inherited by children of multicultural families from one of their parents.

## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- For the legal basis of migrant children receiving education without discrimination, please refer to the ff.: Article 11 (1) (Right to Equality) and Article 31 (1) and (2) (Right to Education) of the Constitution; Article 2 (3) (defining the term “discriminatory act of violating the right to equality”) of the National Human Rights Commission Act, and; Article 10 of the Multicultural Families Support Act. Concerning human rights education and propaganda, please refer to Article 26 of the National Human Rights Commission Act.</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- The concluding observations (8/17/2007) made by the International Convention on the Elimination of All Forms of Racial Discrimination on the 13<sup>th</sup> and 14<sup>th</sup> periodic reports of the Republic of Korea expressed concern regarding the discrimination against children from multicultural families and recommended that the government take remedial measures for such discrimination.</li> </ul>



	Contents
	<ul style="list-style-type: none"> <li>- Concluding observations (7/29/2011) made by the Convention on the Elimination of All Forms of Discrimination Against Women on the 7<sup>th</sup> periodic report of the Republic of Korea; special report on migrants' right to education (A/HRC/14/25). Article 30 of the Migrant Workers Convention stipulates that "each child of a migrant worker shall have the basic right to access to education based on equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited for reasons of the irregular situation with respect to stay or employment of either parent or for reasons of the irregularity of the child's stay in the State of employment."</li> <li>- Article 45 (4) of the Migrant Workers Convention stipulates that "States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary, in collaboration with the States of origin."</li> </ul>

### C. Core agenda items for promotion

#### III-1-1. Access to public education of migrant children should be strengthened.

Their parents should be provided with the following information in the languages understood by them: location of the relevant administrative agency in charge of the procedure for student admission or transfer; administrative procedures to follow and period required; how to prepare the necessary documents, and; general information on the country's education and welfare system.

#### III-1-2. To help migrant children adapt to the new school where they have been admitted or transferred, the criteria for assigning migrant students to proper years should be set up in a way that maximizes what they learned back in their home countries.



- III-1-3. Migrant children should be put under a program designed to help them adapt to the country's education system and to a Korean language education program designed to help them adapt to both school life and everyday life.
- III-1-4. The education contents and support system should be developed such that they meet migrant children's individual requirements. Programs should be developed to maximize the effects of cultural diversity and maintain their multiple cultural identities through the participation of migrant children.
- III-1-5. Multicultural human rights education for personnel such as principals and teachers and relevant public officials responsible for migrant children should be carried out to get rid of racial discrimination factors contained in textbooks and teaching materials.
- III-1-6. Education and training should be enhanced to prevent school-age migrant children from engaging in low-skill occupation.
- III-1-7. Multicultural education guidelines should be set up to guarantee the human rights of migrant children and carry out comprehensive multicultural education.



## 2. Guaranteeing the human rights of undocumented migrant children

### A. Current status and problems

- Undocumented migrant children are likely to be left unprotected and uneducated in an inadequate, unsanitary environment due to their parents' lack of proper status of sojourn. Even school-age children are not guaranteed the right to education due to the fear of crackdown and forced departure from the country. As they grow into teenagers, they work to earn a living for their family or borrow other person's ID; as a result, they contribute to social unrest.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 10 (Right to Pursue Happiness), Article 36 (1) (Marriage and Family Life), and Article 11 (1) (Right to Equality) of the Constitution; Article 2 (3) (defining the term "discriminatory act of violating the right to equality") the National Human Rights Commission Act</li><li>- Ref. Article 36 (3) (State's Obligation to Protect the Health of all Citizens) of the Constitution; Article 9 (Medical and Health Support) of the Multicultural Families Support Act</li></ul>
International norms	<ul style="list-style-type: none"><li>- The concluding observations (1/31/2003) made by the Committee on the Rights of the Child (CRC) on the 2<sup>nd</sup> periodic report of the Republic of Korea expressed concern regarding the lack of concrete clauses for migrant children in the country's social security-related laws.</li></ul>

	Contents
	<ul style="list-style-type: none"> <li>- Article 24 (1) of the Convention on the Rights of the Child stipulates that “The State’s Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to access facilities for the treatment of illness and rehabilitation of health. The State’s Parties shall strive to ensure that no child is deprived of his or her right to access such health care services.”</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- In Spain and Italy, undocumented migrants -- particularly children and expectant mothers -- are allowed to use the free public medical service system just like the locals.</li> </ul>

### C. Core agenda items for promotion

III–2–1. Migrant children should be guaranteed the right to live with their parents as well as to be protected and educated. When parents have difficulty taking care of their migrant children, the government should set up a social welfare system to provide child care and medical service for the children.

III–2–2. Migrant children, particularly undocumented ones, should be guaranteed basic human rights including sojourn without concern. Migrant children under 18 should not be subject to crackdown and detention.

III–2–3. The government should check migrant children’s health situation and implement a policy to guarantee their right to health. In particular, the country’s medical service support procedure should be improved to enable undocumented migrant children to receive such support. Measures should be taken to include them in the list of medical aid beneficiaries.



III-2-4. As for undocumented migrant children who are left unaccompanied in the country alone due to illness or their family member's forced deportation, measures should be taken to prevent the stoppage of their school life, including permit for sojourn for a given period of time and ensure their safety and right to education.

III-2-5. To guarantee undocumented migrant children their right to education and medical service, public officials should be relieved of the notification obligation as stipulated by the Immigration Control Act.



## Part 4. Stronger protection of human rights of refugees and stateless people

The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, Item 5 of said declaration stipulates that “it is the duty of States, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedom. Refugees and stateless people are more vulnerable as victims of human rights infringement than other types of victims since they are in countries that have the duty to promote and protect human rights or they do not have a home country where their fundamental rights are protected.

Note, however, that Republic of Korea has recorded a lower percentage of accepting refugees compared to other major countries; the country’s level of fairness or transparency with regard to the refugee status recognition procedure is said to be far from satisfactory. It has been pointed out that the social treatment of refugee applicants and admitted refugees in the country falls short of that stipulated by the Convention related to the Status of Refugees (CRSR) and other international human rights treaties. Moreover, even though the country ratified the Convention related to the Status of Stateless Persons, it still lacks the system and process for identifying legally stateless persons. Therefore, it is not aware of the scale and outline of their situation.

NHRCK has made recommendations on the need for improvement of the human rights situation of refugees and stateless people as follows: improvement of the policy for the protection of refugees’ human rights (2006); protection of human rights of people granted the status of sojourn on humanitarian grounds (2008); allowance for living/economic activities to those aliens with a pending case on appeal in court against

the administrative measure disapproving the refugee status (2011); need to enhance the human rights of stateless people associated with fake marriage (2011).

The Guidelines attempt to present matters to be improved in connection with the need to enhance the level of guaranteeing the human rights of refugees and refugee applicants based on the criteria of the international human rights norms and human rights criteria stipulated in the Constitution with focus on the refugee recognition procedure, reliable interpretation service, degree of proof with regard to refugee requirements, and protection of refugee applicants.

## 1. Improvement of procedure for refugee application and recognition

### A. Current status and problems

- The international community accuses the country of being unwilling to recognize refugees as well as of having a slow decision-making process for handling refugee applications. Thus, it is necessary to set up a system that facilitates access to procedure and information on the refugee application, provides information in the applicants' mother tongue, and provides credible translation/interpretation service. Refugees who are not able to prepare sufficient evidentiary materials reportedly fail to defend themselves adequately during the procedure for refugee application and recognition or suffer from human rights infringement for the following reasons: the country's refugee recognition system is not standardized; public officials who work at certain places such as immigration detention centers, airports, and ports, and judges who are responsible for hearings on the revocation of the administrative measure taken by the immigration authority refusing to recognize the refugee's status, lack sufficient

expertise or understanding with regard to refugee-related international rules and norms and socio-psychological vulnerability of refugees.

In conclusion, there is a need to prevent said structural infringement of human rights in the refugee application procedure by immediately ensuring the transparency and fairness of the refugee recognition procedure and minimizing long-term detention and difficulties in living.

## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Concerning the language barrier problem in the provision of personal information, please refer to Article 9-3 [this clause stipulates that, in the provision of interpretation/translation service to a migrant, international marriage brokers should use the migrant's mother tongue] of the Enforcement Rules of the Marriage Brokerage Business Management Act.</li> <li>- Ref. Article 26 (Education and Propaganda on Human Rights) of the National Human Rights Commission Act</li> <li>- Ref. Article 2 (3) (Definition of Refugees) of the Immigration Control Act</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Article 14 of the Universal Declaration of Human Rights stipulates that "Everyone has the right to seek and enjoy in other countries asylum from persecution."</li> <li>- Article 9 of the International Covenant on Civil and Political Rights (ICCPR) stipulates that "Everyone has the right to liberty of person; no one shall be subjected to arbitrary arrest or detention."</li> <li>- Article 1 of the Convention related to the Status of Refugees (CRSR) defines the term "refugees."</li> <li>- Ref. Concluding observations (9/20/2009) made by ICESCR on the 3<sup>rd</sup> periodic report of the Republic of Korea</li> </ul>



	Contents
Cases in major countries	<ul style="list-style-type: none"> <li>- Looking at Germany, the country makes it a rule to review diverse and detailed materials for the fair handling of refugee-related cases and collect materials published by the UN Refugee Agency, Amnesty International, and foreign governments. Germany also uses a wide variety of references and materials published by expert institutions and mass media as the basis for its determination of refugees' status. In addition, Germany fixes the maximum detention period for refugees at 18 months.</li> </ul>

### C. Core agenda items for promotion

IV–1–1. The Enforcement Decree and Rules of the Act on the Status of Refugees should be enacted such that the rights of refugees and refugee applicants are practically guaranteed.

IV–1–2. Access to information on the country's refugee recognition procedure should be guaranteed through means such as placing publicizing materials at airports, ports, immigration detention centers, and immigration office. At the time of submission of an application, the rights of refugee applicants should not be infringed due to the language barrier.

IV–1–3. Refugees should be allowed to submit an application at ports or airports.

IV–1–4. The presence of a person trusted by a refugee applicant and an interpreter should be guaranteed. An applicant should be allowed to access or make a copy of the contents of an interview with the relevant authorities. The interview process should be recorded in video and audio, and the

applicant should be allowed to access the contents of the recording.

IV-1-5. The degree of meeting the refugee requirements as demanded of refugee applicants should be adjusted to the degree of CRSR and international refugee-related court precedents.

IV-1-6. The public official in charge of refugee determination should have deep understanding of and specialization in refugee-related laws and regulations, human rights, and cultural diversity. The refugee recognition procedure should be followed in a fair, transparent manner without unreasonable delay. Care should be taken not to have the refugees spend too much time as detainees pending the decision on their applications. In particular, refugees should not be detained for too long while they wait for their refugee recognition case to be closed.

## 2. Guaranteeing the human rights of refugee applicants and refugees

### A. Current status and problems

- Currently, the scope of refugees -- which covers only those whose application is still pending, excluding those who are rejected and who have pending litigation seeking the revocation of the rejection - prevents many refugee applicants from leading a decent life. Even those whose application has been rejected should be guaranteed rights such as the right to live as decent humans concerning residence, job, subsidy for basic living, emergency medical services, etc., as



refugee applicants until the completion of the relevant procedure including court proceedings to reform the structural infringement of human rights in the refugee application procedure.

## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Ref. Article 10 (Right to Pursue Happiness) and Article 11 (1) (Right to Equality) of the Constitution; Article 2 (3) (defining the term "discriminatory act of violating the right to equality") of the National Human Rights Commission Act</li> <li>- Article 76-8 (Treatment of Refugees) and Article 76-9 (Support for Refugees, etc.) of the Immigration Control Act</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Article 22 of the Convention related to the Status of Refugees stipulates that "the Contracting States shall accord to refugees the same treatment accorded to nationals with respect to elementary education."</li> <li>- Article 23 of the Convention related to the Status of Refugees stipulates that "the Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as that accorded to their nationals." Article 11 (1) of the ICESCR stipulates that "the State's Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself/herself and his/her family -- including adequate food, clothing, and housing -- and to the continuous improvement of living conditions."</li> <li>- Article 3 (1) of the UN Convention against Torture stipulates that "no State Party shall expel, return ("refouler"), or extradite a person to another State where there are substantial reasons to believe that he/she would be in danger of being subjected to torture.</li> </ul>

	Contents
	<ul style="list-style-type: none"> <li>- The concluding observations (9/20/2009) made by ICESCR on the 3<sup>rd</sup> periodic report of the Republic of Korea expressed concern regarding the long and slow procedure required to be recognized as refugees and recommended that the country's relevant procedure be standardized.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- Germany allows refugee applicants to appeal the rejection made by the court of first instance to the appellate court, and then to the Constitution Court under Article 78 (2) and (3) of the Refugee Law. During said period, applicants are guaranteed their legal status, and they go through sessions of language and vocational education. Those recognized as refugees receive social welfare benefits equal to those enjoyed by locals. Refugee applicants receive 30% of social welfare benefits provided to locals, but it is expected to be upgraded with the enactment of the Refugee Applicants Welfare Law.</li> <li>- People who entered Germany may submit their refugee applications at the relevant government offices including the police. Prior to the submission of the applications, they are sent to a large-sized accommodation facility with police, medical staff, cafeteria, and quarters. Refugee applications are processed there, with the relevant government authority examining the grounds of their applications. The applicants are issued a permit of sojourn, which allows them to stay in Germany until determination is closed. Until they are to move to the decided country or region, they usually stay in the facility for 3 months.</li> </ul>

### C. Core agenda items for promotion

IV-2-1. The country should set the detailed scope of people requiring humanitarian protection and the procedure for recognizing them.

IV-2-2. In the case of a decision not to accept a refugee application, the current time limit for applying for appeal, 14 days, should be extended considering the language barrier and preparation of explanatory materials.



- IV-2-3. The Refugee Recognition Council should be composed of refugee issue experts. Applicants and their attorneys should be given an opportunity to present oral arguments before the Council.
- IV-2-4. Those recognized as refugees should be guaranteed the right to enjoy social security benefits equal to those enjoyed by the locals.
- IV-2-5. The refugee determination procedure should be carried out more fairly and efficiently. Measures should be taken for the refugee applicants to receive living support and education.
- IV-2-6. The refugee support center should be operated as a completely open place instead of imposing restrictions on the freedom of movement of its users. The support provided by the center should not require the beneficiary to have residence at the center as a precondition to provide the support.

### 3. Improvement of system requiring the temporary detention of refugee applicants

#### A. Current status and problems

- To be consistent with CSCR, there is a need to avoid detaining refugee applicants, in principle, to have them detained only for identity check and for as short a time as possible, and to prevent long-term detention by periodic judicial review.



## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 10 (Right to Pursue Happiness), Article 12 (Corporate Freedom), and Article 36 (2) (Maternity Protection) of the Constitution</li></ul>
International norms	<ul style="list-style-type: none"><li>- Principle of non-refoulement under the customary international law and Article 32 (1) of Convention related to the Status of Refugees provide that "the Contracting States shall not expel a refugee lawfully in their territory except on grounds of national security or public order." Article 33 (1) of said convention also stipulates that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership in a particular social group, or political opinion."</li></ul>

## C. Core agenda items for promotion

IV-3-1. If detention of a refugee applicant is inevitable, the period should be as short as possible, and periodic judicial reviews should be carried out with regard to the legality and necessity of the detention to prevent it from being an arbitrary detention.

IV-3-2. For refugee applicants who have been detained for a given period of time, the government should provide periodic health examinations at its cost.

IV-3-3. With regard to detention, more vulnerable refugee applicants such as children and people with disabilities should be subject to special consideration.



## 4. More stringent protection of human rights of stateless people

### A. Current status and problems

- The government should identify stateless people under the Convention related to the Status of Stateless Persons. It should establish laws and systems to protect stateless people based on the result of a status survey among them. Moreover, the government should see to it that children of refugee applicants and undocumented migrants born in the country should not become de facto stateless people due to the insufficiency of the systems and procedure.

### B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 10 (Right to Pursue Happiness) of the Constitution; Article 14-3 (Decision on Loss of Nationality) of the Nationality Act</li><li>- Ref. Article 11 (1) (Right to Equality) of the Constitution; Article 2 (3) (defining the term "discriminatory act of violating the right to equality") of the National Human Rights Commission Act</li></ul>
International norms	<ul style="list-style-type: none"><li>- Article 7 (1) of the Convention related to the Status of Stateless Persons stipulates that "Except where this Convention contains more favorable provisions, a Contracting State shall accord to stateless persons the same treatment accorded to aliens in general.</li><li>- Article 27 of the Convention related to the Status of Stateless Persons stipulates that "Upon request, Contracting States shall issue travel and</li></ul>

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	<p>identity documents to stateless persons within their territory.”</p> <ul style="list-style-type: none"> <li>- Ref. Convention on the Reduction of Statelessness</li> <li>- Article 7 (1) of the Convention on the Rights of the Child stipulates that “the child shall be registered immediately after birth, and he/she shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and to be cared for by his or her parents.”</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- In European countries, stateless people go through a determination process similar to that for refugees. The relevant system differs from country to country, but basically, the countries comply with the European Parliament Order 2004/83/EC (4/29/2004) concerning the protection of refugees and stateless people.</li> </ul>

### C. Core agenda items for promotion

IV-4-1. The government should overhaul the relevant laws and system to prevent human rights infringement by making persons stateless, through means such as decision of denationalization.

IV-4-2. Infants and children should be protected from becoming stateless.

IV-4-3. The government should ratify the Convention on the Reduction of Statelessness (1975) to provide comprehensive guarantee of stateless people’s human rights.





## Part 5. Stronger protection of overseas Koreans' human rights

Overseas Koreans staying in the country are the largest group of migrants in the country [the number being 620,000, including those naturalized (80,000) in 2011]. They are included in most of the following categories: migrant workers, migrants married to Koreans, migrant children, refugees, stateless people, undocumented migrants, etc. They are said to feel strongly that they are victims of human rights infringement and discrimination due to the confusion in the country's legal, systemic, and social aspect of their handling.

The Act on the Immigration and Legal Status of Overseas Koreans (“Overseas Koreans Act”) applies to ethnic Koreans emigrating to foreign countries, including both before and after the establishment of the Republic of Korea, but its enforcement decree and rules do not apply wholly to Korean Chinese and Koreans in CIS countries and who account for a majority of overseas Korean migrants staying in the country. Under the Working Visit System, these people are allowed to stay in the country for up to 5 years and engage in 36 designated categories of low-skilled labor, although the Overseas Koreans Act stipulates that they be allowed to stay in the country freely. Restrictions are also put on them concerning unemployment relief, welfare benefit, and right to live with their family.

Korean Chinese account for 87.3% of overseas Korean migrants staying in the country. Though they paid a lot of money and made considerable effort to enter the country, they do not enjoy the guaranteed right to stay in the country without worries, suffering from problems such as separation, dispersion, or breakup of their family.

As a result, problems such as education of their children who are left in China and crisis of social communities have emerged as well. Many of the Korean Chinese who are able to speak Korean work in the service industry, encountering many Koreans, experiencing discrimination and prejudice, and feeling a considerable sense of deprivation.

Although it has been pointed out that the Overseas Koreans Act is not consistent with the principle of national treatment, which is a general principle of international laws, such measures taken by said Act to consider the distinct and individual characteristics of an ethnic group -- which suffered the historical loss of its national sovereignty and ethnic oppression during such loss, thereby requiring restitution - are recognized by the international community. Ethnic Koreans in China or CIS countries who are suffering from restrictions of their rights guaranteed by the Overseas Korean Act are eligible to receive preferential treatment of historical restitution, and there is a need for a human rights-based review on policies and rules discriminating against them.

## 1. More stringent protection of human rights of overseas Koreans

### A. Current status and problems

- The February 9, 2004 amendment of the Overseas Koreans Act, which passed the National Assembly, stipulates that even those who left the country prior to 1948 (the year when the South Korean government was established) and their ascendants and descendants be viewed as overseas Koreans. Article 23 (3) of the Enforcement Decree of the Immigration Control Act stipulates that overseas Koreans shall not be granted preferential treatment as ethnic Korean if they

engage in “menial labor” (low-skilled labor) in the country. It has been pointed out that said clause discriminates against ethnic Koreans in China or CIS countries, many of whom are engaged in low-skilled labor activities. The government adopts policies designed to enhance the human rights of overseas Koreans from time to time, but the need to formulate a comprehensive policy for them has been raised. Thus, the government should conduct a status survey of the overall human rights situation concerning them.

According to a survey, the working visit (H-2 visa) system, which is aimed at promoting the rights of ethnic Koreans, restricts the period of stay to 5 years, permits only 36 types of low-skill occupations, and requires those from specific countries to take the Test on Proficiency in Korean.

## B. Domestic norms and cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Ref. Article 2 (2) (Obligation of the State to Protect its Citizens Abroad), Article 10 (Right to Pursue Happiness), and Article 11 (1) (Right to Equality) of the Constitution</li> <li>- Act on the Immigration and Legal Status of Overseas Koreans</li> <li>- Article 2 (3) (defining the term “discriminatory act of violating the right to equality”) of the National Human Rights Commission Act</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- Looking at Japan, the country enacted the Act on Measures for Expediting the Smooth Return of the Remaining Japanese in China and for Assistance in Self-Support after Their Permanent Return to Japan in 1994. Under the law, the Japanese government adopted a program for the return home of Japanese orphans left in China. Under the amendment of the Immigration Control Act in 1990, the second and third generations of Japanese Brazilians who left country voluntarily and their families were issued a visa for permanent resident in the country with no restrictions on jobs. Children of returning Japanese, such as the Japanese</li> </ul>



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	<p>remained in China and Sakhalin and the Japanese emigrants (“Nikkeijin”) in Brazil, are granted the privilege to enter a college in Japan as part of efforts for social integration.</p> <ul style="list-style-type: none"> <li>- As for Germany, the country approved the return of all those who have stayed in foreign countries as citizens of Imperial Germany since 12/31/1937 under Article 116 of the Basic Law, and treated them equally as German nationals promptly. The return includes their families and, in case of lack of German language skill, free German language education is offered.</li> </ul>

### C. Core agenda items for promotion

V-1-1. There is a need to conduct a status survey to guarantee the legal status of overseas Koreans pursuant to the Act on the Immigration and Legal Status of Overseas Koreans; policies should also be established to guarantee the basic rights stated in said law.

V-1-2. The Test of Proficiency in Korean (TOPIK), which is required only for overseas Koreans coming from a certain country in order to be granted their status of sojourn, should be reformed.

## Part 6. Stronger protection of undocumented immigrants' human rights

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (“Migrant Workers Convention”) contains clauses designed to protect the rights of undocumented migrant workers and their families. The country has not ratified said convention, and it has been pointed out that the country does not cope with undocumented migrants’ human rights positively. Thus, undocumented migrants are not protected under the country’s laws and systems, remaining vulnerable to labor exploitation and human trafficking.

Another problem is that there are undocumented migrants in the country due to the migrant policy and needs in the labor market, and the government turns a blind eye to such problem. Social integration encompassing migrants will remain a remote possibility under the current situation where a large number of migrants become undocumented due to structural causes and whose basic human rights are not guaranteed.

Human Rights Guidelines on Migration cite the need to protect undocumented migrants from human rights infringement and allow them to use public services and receive social security benefits.

### 1. Guaranteeing undocumented migrants’ social rights

#### A. Current status and problems

- Undocumented migrant workers are forced to engage in either “forced labor”

or “underground black work” and are constantly exposed to various human rights infringements such as sexual harassment, sexual violence, and discrimination in wages. The problem of human rights situation of undocumented migrants in this country is that many migrant workers who entered the country through a lawful procedure become undocumented, and that their status as undocumented ones is overlooked implicitly due to the migrant policy and the needs of the labor market. There is a need to form social consensus on legalizing undocumented migrants into documented ones considering the positive factors that will be brought about by the change, including protecting their human rights, putting an end to the underground economy, and increasing tax collection.

## B. Domestic/International norms and realistic cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Ref. Article 10 (Right to Pursue Happiness) and Article 11 (1) (Right to Equality) of the Constitution; Article 2 (3) (defining the term “discriminatory act of violating the right to equality”) of the National Human Rights Commission Act</li> </ul>
International norms	<ul style="list-style-type: none"> <li>- Article 69 of the Migrant Workers Convention stipulates that “The State’s Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such situation does not persist.”</li> <li>- Article 8 (1) and (2) of ILO’s Migrant Workers Convention (Supplementary Provisions) 1975 (No. 143)) stipulates that “On condition that he/she has resided legally in the territory for the purpose</li> </ul>

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	<p>of employment, the migrant worker shall not be regarded as being in an illegal or irregular situation by the mere fact of loss of employment, which shall not in itself imply the withdrawal of his/her authorization of residence or, as the case may be, work permit. Accordingly, he/she shall enjoy equality of treatment with nationals with respect in particular to the guarantee of security of employment, provision of alternative employment, relief work, and retraining.”</p> <ul style="list-style-type: none"> <li>- The concluding observations (4/7/1999) made by CERD on the 9<sup>th</sup> and 10<sup>th</sup> periodic report of the Republic of Korea recommended improvement of the situation of undocumented migrant workers.</li> </ul>
Cases in major countries	<ul style="list-style-type: none"> <li>- As for Spain, the country uses the term “irregular” aliens instead of “undocumented” or “illegal” aliens in an effort to turn them into a regular workforce. Once they are registered with the municipal authorities, irregular migrants can enjoy free education and medical service.</li> <li>- Looking at the cases in Spain and Italy, efforts to turn irregular migrant workers to regular ones can get them out of poor working conditions and reduce tax evasion associated with illegal employment. Thus, such efforts can bring about the positive effect of realizing a quality welfare system.</li> <li>- In Japan, even irregular migrant workers who are not granted permit to stay are allowed to register themselves as de facto migrants. Thanks to the entrustment of the duty of alien registration to municipal authorities, even irregular migrants can enjoy free education and medical services.</li> </ul>

### C. Core agenda items for promotion

VI–1–1. Undocumented migrant children should be guaranteed the right to education and medical services.

VI–1–2. The current social security system should be improved to enable the



undocumented migrants to receive industrial accident compensation and use public health services.

VI-1-3. An institutional strategy should be provided to protect undocumented migrants from financial disadvantages such as delay in the payment of wages and/or retirement allowances.

## 2. Prevention of human rights infringement involving undocumented migrants

### A. Current status and problems

- A recent survey revealed that the periodic crackdown on undocumented migrants by a joint team of the officials of the Ministry of Justice and the police is carried out on a large scale without identifying themselves (37.4%), forcefully entering facilities without prior consent (71.5%), in plain clothes (47.9%) at workplaces (43.0%) or places of residence (17.9%). At least 79.5% of the officials used handcuffs, with some of them using even other police equipment, electric shock batons or net guns. Their violation of the due process and use of violence constitutes a clear case of human rights infringement. Human rights-friendly methods should be used to prevent injury or death in the course of carrying out crackdown on undocumented migrants.



## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"> <li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li> <li>- Ref. regarding overhauling the regulation of requirement and procedure for crackdown: Article 10 (Right to Pursue Happiness) and Article 12 (Corporate Freedom) of the Constitution; Articles 73, 85, 87, 88, 200-2/3/5 (requirements for arrest and relevant procedures) of the Criminal Procedural Act; Article 3 (Requirements for Crackdown and Relevant Procedure) of the Act on the Performance of Duties by Police Officers</li> </ul>

## C. Core agenda items for promotion

VI-2-1. Crackdown and “protection” are grave restriction on the liberty and security of a person and are similar to arrest and detention of criminal procedure in essence. Their grounds and process should be regulated as with the criminal procedure, and judicial review on these should be strengthened.

VI-2-2. Night-time crackdown, crackdown carried out without prior consent from the employer, and crackdown carried out through residential trespassing should be stopped, and observance of due process and prevention of human rights infringement should be ensured.

VI-2-3. Periodic human rights education should be strengthened for immigration



officials to prevent human rights infringement in the course of crackdown.

VI-2-4. Practical first aid education should be carried out for immigration officials against any emergency situation that may occur during crackdown.

### 3. Mitigation of public officials' notification obligation

#### A. Current status and problems

- Public officials have the obligation of notifying the Immigration Office without delay upon discovering undocumented migrants. Such obligation gives rise to alien-related human rights infringement at the police or administrative agencies. Some of them are caught as undocumented migrants while trying to report a traffic accident or crime, or act as eyewitness of an accident or a crime at the police or other government offices, and such situation prevents them from receiving protection and support by law or system even when they become victims of human rights infringement or crime.

#### B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 19 (Freedom of Conscience) of the Constitution; Article 84 (1) (Notification Obligation) of the Immigration Control Act</li></ul>

### C. Core agenda items for promotion

VI-3-1. The relevant law or system should be improved such way that officials in charge of education, labor supervision, medical service, or welfare will be relieved of their obligation of notification under the Immigration Control Act, for the protection of migrants' human rights.

## 4. Improvement of system for the protection of undocumented migrants

### A. Current status and problems

- Aliens in immigration detention centers are not criminals, yet they are exposed to various human rights infringement situations such as overcrowding of the facilities; extended period of detention; improper accommodation; notification of rights during confinement or notification of the status of detention to outside people; physical examination and safekeeping of belongings during the procedure for listening to the objection to detention; conference with their attorney; letters and phone calls; facility and hygiene; food and health; exercise and religion-related matters; use of restraining devices and weapons, use of force and related safety measures; solitary confinement; etc.

It has been pointed out that the current practices adopted in the country do not meet the requirements stipulated in the UN Standard Minimum Rules for the Treatment of Prisoners (1955).



## B. Domestic norms and cases in major countries

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 63 (Protection) of the Immigration Control Act; Rules for the Protection of Aliens; Article 10 (Right to Pursue Happiness), Article 12 (Corporate Freedom), Article 36 (2) (Maternity Protection), Article 37 (2) (Restriction of Basic Rights) of the Constitution; Articles 92, 203, 205 (Restriction on Detention Period) of the Criminal Procedural Act</li></ul>
International norms	<ul style="list-style-type: none"><li>- UN Standard Minimum Rules for the Treatment of Prisoners</li></ul>

## C. Core agenda items for promotion

VI-4-1. In case of long-term, sustained detention of an alien who is issued a deportation order, extension of such detention should be restricted to prevent excessively long detention. Granting temporary release from detention without deposit should be considered more favorably on a case-to-case basis.

VI-4-2. "Protection," which is actually detention, is restriction on the liberty and security of a person. Therefore, it should safeguard rights as with any criminal procedure to realize the rule by law in the immigration area.

VI-4-3. Protection facilities should be equipped with adequate accommodation



spaces. Detainees should be allowed to live as decent humans from the perspectives of hygiene, food, and health. Special consideration should be given to women and children, ensuring that they enjoy the right to decent life and right to education.

VI-4-4. Detention facilities should be improved to make them human rights-friendly; prevention of human rights infringement should be ensured during their operation.

## 5. System for undocumented migrants subject to deportation

### A. Current status and problems

- Many undocumented migrants become subject to forced deportation from the country due to the government's policy related to crackdown and forced deportation targeting them. The number of undocumented migrants is expected to increase drastically by the deadline of period of stay of migrant workers who are covered by the current Work Permit System and the Working Visit System. There is a need to revise the relevant laws and regulations to improve the human rights infringement situation caused by law enforcement officials' arbitrary judgment due to vague and wide-ranging legal requirements for forced deportation.



## B. Domestic norms

	Contents
Domestic norms	<ul style="list-style-type: none"><li>- Concerning the protection of aliens under domestic laws, Article 6 (Effectuation of Treaties and International Laws and Guarantee of Aliens' Status) of the Constitution and Article 4 (About Foreigners in Republic of Korea) of the National Human Rights Commission Act apply.</li><li>- Ref. Article 10 (Right to Pursue Happiness) and Article 27 (1) (Right to Trial) (4) (presumption of innocence until conviction) of the Constitution</li></ul>

## C. Core agenda items for promotion

VI-5-1. There is a need to provide basic regulations that enable suspending the execution of the order for forced deportation from the country pending the decision on an objection raised or a lawsuit filed to cancel the order.

VI-5-2. The order for forced deportation from the country should be suspended during the period for handling a complaint on human rights infringement or delay in wage payment to guarantee undocumented migrants' right to raise a complaint.



## Part 7. Prevention of racial discrimination and more respect for foreigners

### 1. Prevention of racial discrimination and more respect for foreigners

#### A. Current status and problems

- As of September 2011, the number of aliens sojourning in the country is 1,418,149, including 996,607 documented aliens and 143,253 migrants married to Koreans. The number of aliens is expected to account for about 10% of the entire population by 2050, suggesting that the country is indeed rapidly becoming a multicultural society. Despite the demographic phenomena, disrespect for and discriminatory practice against aliens remain rampant; hence the need for a legal, systematic framework for strengthening education and promotion to prevent such situations.
- There are also concerns of emerging discrimination, hate, and insult based on factors such as races. Measures to prevent such issues are necessary.

#### A. Core agenda items for promotion

- VII-1-1. The legal basis for implementing policies, such as prevention of discrimination, hate, insult, and other degrading treatment of migrants and aliens and prohibition of racial discrimination, should be established.

- VII-1-2. Efforts should be made to improve the way locals perceive migrants.
- VII-1-3. Education should be carried out for public officials dealing with migrants concerning migrants' human rights.
- VII-1-4. Interpretation/Translation/Consulting-related support should be provide for migrants at the police station, court, immigration detention center, local labor offices, employment centers, and Korea Labor Welfare Corporation, etc.
- VII-1-5. The legal basis should be laid for policy concerning cultural support for migrants.
- VII-1-6. Service for the provision of educational sessions concerning Korean culture and language for migrant women, migrants married to Koreans, and migrant workers should be reinforced.