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2021

National Human Rights
Commission of Korea

The Report on Human Rights Situation in the Republic of Korea

the World for all
National Human Rights Commission of Korea

National Human Rights Commission of Korea

Logo of the National Human Rights Commission of Korea

The logo's simplicity and formative beauty are intended to add to the reliable and authoritative image of the National Human Rights Commission of Korea as the nation's leading institution dedicated to the protection of human rights.

The logomark is rendered in blue, representing "creation," "life" and "spring" in accordance with the five elements theory, to communicate the identity of the Commission as a human rights institution committed to the well-being of people. The symbol also combines Korea's modernity and tradition: a dove and a hand standing for "peace" and "inclusiveness"; and a circle, the most fundamental shape, implying "centeredness and concentration," "diversity and positivity," "sun and brightness," "harmony and inclusiveness," and "justice and fairness,"

Preface

2021 is the 20th anniversary of the National Human Rights Commission of Korea.

Since its establishment in 2001, the Commission has strived to materialize human dignity and value by protecting and improving the level of the fundamental human rights that are sacred to all individuals. However, our society still has a blind spot regarding human rights, and there are pending issues concerning human rights that must be considered in the long term.

On the other hand, the prolonged COVID-19 pandemic served as a trigger to clearly show the many human rights issues that have not yet been revealed to society. We witnessed vulnerable people, such as immigrants, children, women, persons with disabilities, elderlies, people living in social welfare facilities and the inmates of detention facilities experiencing more difficulties from COVID-19.

Our sensitivity to human rights has become much greater, incomparable to the past, and human rights demands in many areas have increased. However, as members of our society apply different human rights perspectives on various individual and specific issues, such as controversy over the proposed amendment to the Act on Press Arbitration and Remedies for Damage Cause by Press Reports, the decriminalization of abortion, disease control and the freedom of assembly and protect, etc., conflict and discord occurred on human rights among the members.

Under these circumstances, when looking back at the human rights status of 2021 we tend to focus on the result of changing society over the past 20 years, as well as inspecting and verifying human rights issues that need improvements under the rapidly changing human rights environment. Therefore, the NHRCK is publishing the 'Report on Human Rights Situation in the Republic of Korea 2021.'

This report organized and assessed some of the major issues within our society during 2021 from the human rights perspective. We looked at the issues related to the fundamental freedom of the people, isolation and discrimination faced by social minorities, human rights violations at the workplaces, important human rights topics for the future, and North Korean human rights issues. Also, we looked at the difficulties faced by our society due to COVID-19, from the human rights perspective. By assessing the human rights situation of Korea and inspecting the newly raised human rights problems, we tried to present the most suitable direction of our human rights for the future.

There may be issues that were not fully dealt with in this report, and some areas may be assessed differently from the human rights perspective. We know that comprehensively describing and assessing a society' human rights issues is a very difficult and cautious task. However, we believe that trying to look at the major issues through the perspective of human rights and providing a direction for the future is extremely important and necessary.

I would like to thank all the people who helped in publishing this report. I hope this report will contribute in protecting and improving human rights in our society.

The Commission will remain committed to serving as the supporter of human rights and in creating a decent world for the people to live happily.

June 2022

Chairman of the National Human Rights Commission of Korea

Song, Doo-hwan

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Ⅰ. Introduction

Human Rights is connected to everyone's life issues. Therefore, it is important to look at major social issues from the human rights perspective and try to present a suitable direction. However, the awareness on the human rights issues may be different for individuals, depending on their circumstances and value, and comprehensively describing a society's human rights situation is a difficult task. Similarly, assessing whether a society's human rights level has improved or deteriorated since the previous year is also extremely difficult.

International organizations and NGOs create an annual index to compare the human rights level of countries around the world. However, these are insufficient to assess the degree of people's experience on human rights protection and the improvement and degree of development in the government's human rights policies. Collecting objective and reliable quantitative data on the human rights related cases and status each year is expensive, and there is a limit as to simply compare the countries, having different historical and social backgrounds, with quantitative indices.

Pursuant to Article 29(1) of the National Human Rights Commission of Korea Act,[1] this report is prepared to describe the human rights situation and improvement measures for 2021. We selected the major cases and issues during 2021 and they were described in terms of the status and assessment. Of course it is better to look at major human issues and cases, systematic efforts to protect

1) Article 29 (Preparation, etc. of Reports) ① The Commission shall prepare an annual report on its activities for the preceding year, the human rights situation and improvement measures and shall report thereon to the President of the Republic of Korea and the National Assembly.

human rights and international human rights status, etc. in detail for each area. However, due to the physical limitations of the report, the main topics were selected for each area and they were reviewed according to the major cases and their effects on the Korean human rights status.

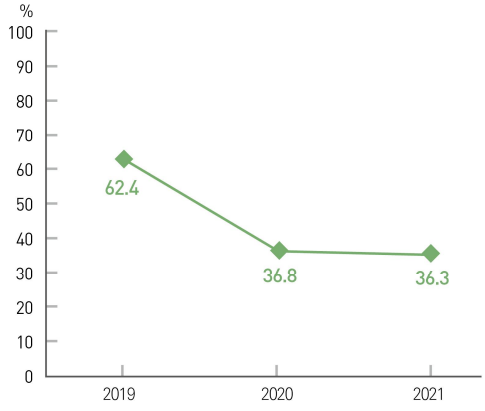
This report has been prepared to provide information on major human rights situations in Korea and for everyone to be able to access easily. Furthermore, the Commission's position and assessments are presented. However, this report has been prepared to generally present the many human rights topics, and therefore, some topics only present the general principles, rather than discussing the details. We expect to present more detailed discussions through individual recommendations, statements and investigations, etc.

Ⅱ. Korea's Human Rights Status 2021: Focusing on People's Awareness

The world experienced threats to life and safety and the social and economic crisis due to the spread of COVID-19. On the one hand, COVID-19 allowed the human rights problems that existed to show itself more clearly. It showed how weak the rights of social minorities could become under disaster situations, and the blind spots of human rights were exposed.

This was also confirmed by the survey related to the people's awareness and attitude on human rights. According to the result from the Korean National Human Rights Survey conducted by the NHRCK (Dec. 2021), 36.3% of the people responded that Korea's human rights conditions is improving as compared to the previous year, which is 0.5%p lower than 2020, and 26.1%p lower than 2019.[2)]

Graph Assessment of the Human Rights Status (2019-2021)



Statistics Assessment of the Human Rights Status (2019-2021)

(Unit: %)

Classification (Year)	2019	2020	2021
Ratio	62.4	36.8	36.3

Note: 1) Ratio of people who answered "slightly getting better," and "much better" to the question of " how is the human rights status in Korea when compared to previous year."
2) People over the age of 19.
Source: NHRCK, 「Korean National Human Rights Survey」, 2021.

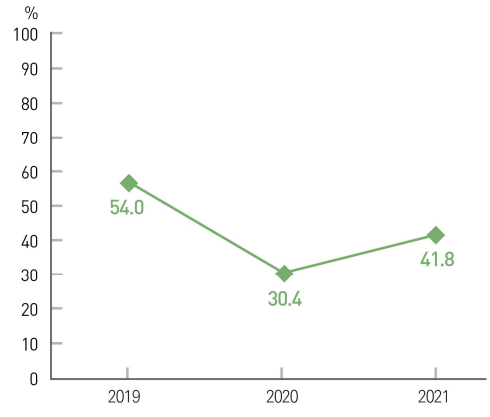
2) This includes "Very much" and "Slightly"

This result reflects the fact that people were unable to think that the human rights status has improved due to strict disease control measures taken to prevent the spread of COVID-19. Generally, national emergencies serve as a trigger to raise human rights issues, such as restricting freedom, the weakened protection of socially vulnerable people, inequality in labor, education, etc.

Some assess the human rights status as not much different or slightly improved. To the question on the seriousness of human rights violations in Korea,[3] 41.8% responded 'serious (very + slightly),' and 58.2% responded 'not serious (slightly + not at all).' The percentage of people who responded as 'serious' is lower than in 2019 (54%), but higher than in 2020 (30.4%).

Similarly, to the question of the seriousness of discrimination in Korea, 47.4% responded 'discrimination is severe (very + slightly)' and 52.6% answered 'discrimination is not severe (slightly + not at all).' The percentage of people who responded severe is lower than in 2019 (69.1%) but higher than in 2020 (36.7%).

Graph Awareness on the Seriousness of Human Rights Violations (2019–2021)



Statistics Awareness on the Seriousness of Human Rights Violations (2019–2021)

(Unit: %)

Classification (Year)	2019	2020	2021
Ratio	54.0	30.4	41.8

Note: 1) Ratio of people who responded 'slightly serious' and 'very serious' to the question on human rights violations in Korea.
2) People over the age of 19.
Source: NHRCK, 「Korean National Human Rights Survey」, 2021.

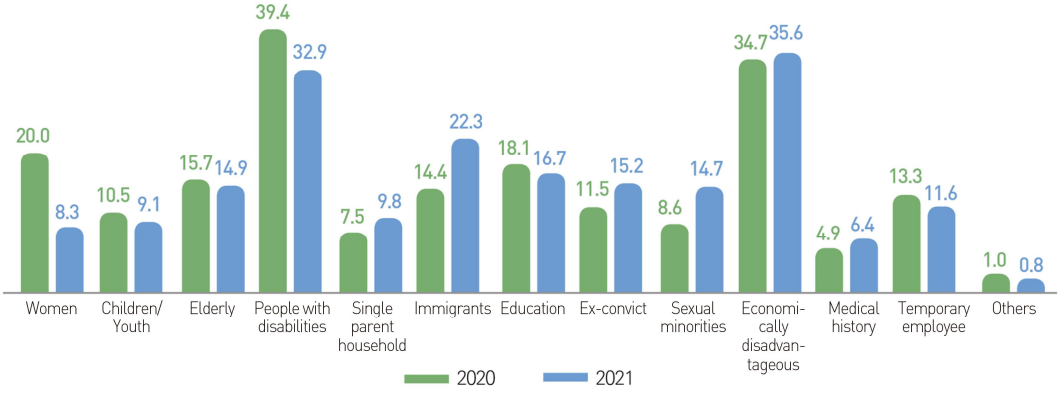
3) Human rights violation refers to restricting fundamental freedom and the rights to be enjoyed by people.

Thoughts and opinions on human rights and experience related to human rights show great differences based on the demographical background or socio-economic backgrounds. According to the Korean National Human Rights Survey by the NHRCK (Dec. 2021), younger generations tend to have more interest and knowledge on human rights. Furthermore, the younger generations tend to think that their human rights are being respected more. Men in their 20s and 30s had the highest percentage of people who answered that their human rights are being respected (84.8%), and men over the age of 60 had the lowest percentage of people who answered that their human rights are being respected (79.2%).

On the other hand, when asked "who is most vulnerable to human rights violations and discrimination," people responded economically disadvantaged (35.6%), people with disabilities (32.9%) and migrants (22.3%). This is different from 2020, where the responses were people with disabilities (39.4%), economically disadvantaged (34.7%) and women (20.0%).

Diagram 1-1 Group Vulnerable to Human Rights Violations and Discrimination

(Unit: %)



Note: 1) Showing the percentage of responses to the question 'who is most vulnerable to human rights violations and discrimination.' Added 1st and 2nd ranks.
2) People over the age of 19.

Source: NHRCK, 「Korean National Human Rights Survey」, 2021.

Experience with hate speeches is slightly decreasing, but more than half saw or heard the hate speeches. The target of hate speeches are wide spread, from gender issues to age, disabilities, refugee, religion, sexual orientation and migration, etc.[4] 55% of the people consider hate speeches to be serious and 45% of the people do not consider hate speeches to be serious, but more than 60% of the people agree with legally regulating hate speeches.

A 'sense of social distance' is an index that shows whether a person has prejudice or hatred towards the weak and minorities or a person has an inclusive and a tolerant perception. According to the survey on social distance[5] in 2020, uncomfortable social groups are sexual minorities(47.9%), refugees(44.9%), North Korean defectors(25.5%), migrant workers(21.6%), people with disabilities(9.6%), and marriage immigrants(9.5%).

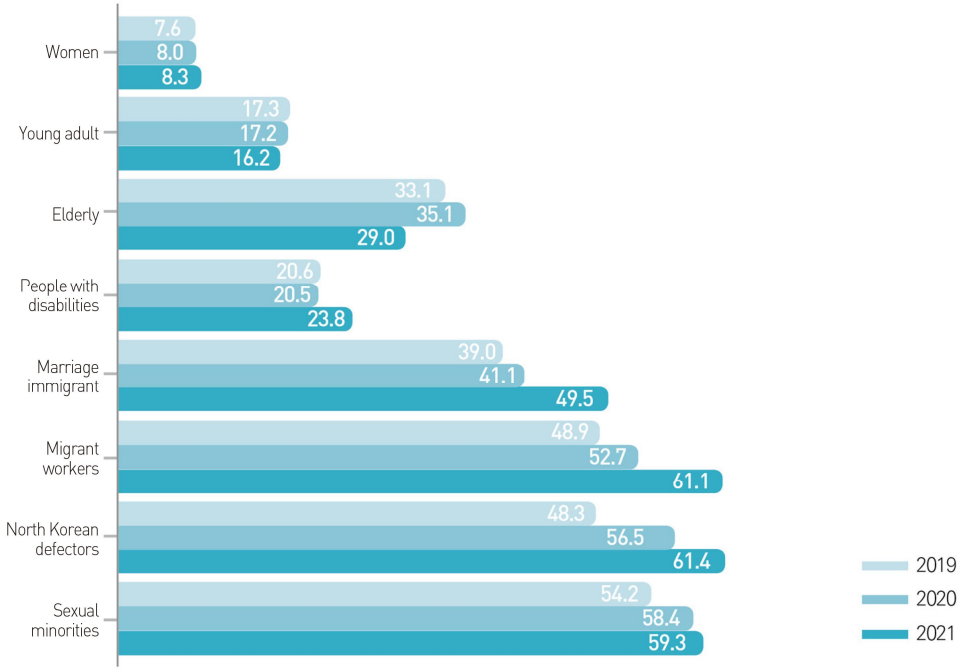
On the other hand, the group who you would feel uncomfortable being elected politicians are: North Korean defectors(61.4%), migrant workers(61.1%), sexual minorities(59.3%) and marriage immigrants(49.5%). However, women(8.3%) and young adults (16.2%) had low percentages, and people with disabilities(23.8%) and elderly(29.0%) were lower than average.

4) Problems with hate speeches will be considered in detail in Part 2..

5) Question to the group that you are uncomfortable being neighbors and being my friends.

Diagram 1-2 Time Series Trend on Social Distance for Elected Politicians

(Unit: %)



Note: 1) Percentage of responses to "uncomfortable (very + slightly)" to the question of which group do you feel uncomfortable being elected politicians.
2) People over the age of 19.
Source: NHRCK, 「Korean National Human Rights Survey」, 2021.

The people's perception shown from these statistics are measured from a subjective aspect and cannot explain all aspects of Korea's human rights status, but is an important piece of information on how the series of human rights programs are actually operating in daily lives. The specific meanings of these statistics will be analyzed in the future, and in Part II, we will describe the human rights status and topics in major areas.

Part 2

Main Human Rights Status and Assessment 2021

2021 National Human Rights Commission of Korea

Human Rights Status Report

Ⅰ. Guaranteeing the Fundamental Human Freedoms

1. Right to Life and Personal Liberty

A. Human Rights Status 2021

The right to life and personal liberty are the most fundamental and important human rights. Article 3 of the Universal Declaration of Human Rights declares that everyone has the right to life, liberty and security of a person. The UN Human Rights Committee (HRC) expressed that the right to life and personal liberty are very important to individuals and society as a whole as the first actual right protected under the Universal Declaration of Human Rights through its general comment No. 35 on the 'Liberty and Security of a Person' in 2014. Moreover, the liberty and security of a person are also important in that they were used as the main methods in impeding the enjoyment of the other rights.

The right to life is an absolute right that cannot be given away and is the key right to be protected. The right to life is most important in itself as the right innate to all humans, but it is also a prerequisite to enjoying all other human rights. On the other hand, personal liberty, traditionally, has been the right to be free from personal constraints by the government, and the Korean Constitution stipulates the principle of legality, the principle of due process, the right to remain silent and the right to an attorney as related to personal liberty.

Abolitionism, constitutionalism, pacifism and relief efforts by agencies to rid of poverty and diseases are all efforts to protect the right to life and personal liberty. Controversy on the abolition of the death penalty, abortion rights, euthanasia, the

over-crowding of detention facilities and the procedures to protect the undocumented aliens are some of the topics. However, the right to life and personal liberty are becoming a new form of problem in Korean society today.

The suicide rate per 100,000 is the highest among the OECD member countries in 2020,[6] and the cases of child abuse or 'violence in close relationships' became social issues. Above all, people demanded a government policy on the right to be safe from infectious diseases and to protect the right to life, under the COVID-19 pandemic, and these measures to prevent the disease resulted in limiting other rights.

In light of these diverse problems, it is important to discuss whether the government is properly implementing its role in protecting the people's lives and liberty from other threats, in addition to the issues of the government impeding on the people's lives and liberty. This seems to have become a trend, not just due to the special circumstances of 2021.

Many topics covered by this report are related to the right to life and personal liberty. However, other topics will be dealt with in other more relevant areas, and the section on 'right to life and personal liberty' will focus on the death penalty, detention, etc., which are traditionally classified under the right to life and personal liberty.

6) Ministry of Health and Welfare, "White Paper on Suicide Prevention 2021," July 2021.

B. Main Topics

1) Discussions on the Abolition of the Death Penalty

A) Korea Awaits the Third Constitutional Appeal on the Death Penalty

According to Amnesty International, 144 countries are listed as abolitionist[7] including 28 abolitionist de facto, and 55 countries are listed as retentionist. South Korea is classified as abolitionist de facto as the death penalty has not been executed for over 20 years since 1997. According to the '2021 Supreme Court Yearbook' published by the National Court Administration, no criminal cases resulted in death sentences in 2020. In addition, the 'Monthly Court Statistics' from the official website of the Supreme Court of Korea points out that no death sentence was imposed both in the High Court and Supreme Court in 2021. As of 2020, 56 prisoners are on death row.[8]

The appellate court upheld the life imprisonment sentence of an offender convicted of murdering three women from Nowon district in March 2021. The court states, 'while the case calls for the death penalty,' this court has no other option than to impose a life term in prison – South Korea is an abolitionist in practice in which capital punishment no longer has a practical effect as a punitive measure in the country." The court also insisted that the life sentence should be imposed without parole. This demonstrates that the judiciary clearly recognizes South Korea to be abolitionist de facto.

The Constitutional Court upheld the death penalty in its rulings on Nov. 28, 1996 (constitutionality of Article 250 of the Criminal Act, Case No. 1995HunBa1) and on Feb. 25, 2010 (constitutionality of Article 41, etc. of the Criminal Act, Case No.

7) According to Amnesty International, the abolitionist in practice refers to the countries which retain the death penalty for ordinary crimes but they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.

8) MOJ, "2021 Correctional Services Statistics Yearbook," July 2021.

2008HunGa23). However, the court must determine the faith of the death penalty again, as a trial (Case No. 2019HunBa59) is underway on the constitutionality of Article 41(1), etc. of the Criminal Act that prescribing the death penalty.

The international community has continuously recommended an abolition of the death penalty to the Korean government. Starting with an opinion on the abolition of the death penalty in 2005, the National Human Rights Commission of Korea has also made a recommendation to the prime minister, the Minister of Foreign Affairs and the Minister of Justice to join the 'Second Optional Protocol to the International Covenant on Civil and Political Rights' aiming at the abolition of the death penalty in 2018, and also submitted an opinion on the abolition of the death penalty to the Constitutional Court in February 2021 as related to the constitutionality of the death penalty. The Korean government agreed to the 'Moratorium on the Use of the Death Penalty' for the first time on Nov. 16, 2020 at the 75th UN General Assembly, 46th regular session.[9)]

However, the government is holding the position that abolishing the death penalty must be considered carefully by considering the controversy surrounding the issue, the criminal policy roles played by the death penalty, people's opinions and legal sentiments and domestic and international circumstances, etc., as it is an important issue related to the fundamentals of the state's punishment power. The Ministry of Justice also delivered its opinion on the constitutionality of the death penalty to the Constitutional Court on Jan. 14, 2021.

On the other hand, the National Assembly introduced a 'Special Act on the Abolition of the Death Penalty' at the Legislation and Judiciary Committee on Mar. 4, 2020, but was discarded at the end of the 20th National Assembly. The same law has been re-submitted to the Legislation and Judiciary Committee on Oct. 7, 2021, while the actions to abolish the death penalty are being implemented. On the other

9) Moratorium on the use of the death penalty refers to the temporary suspension of death penalty, and was adopted for the purpose abolition of the death penalty at the UN General Assembly.

hand, a bill was submitted on Jun. 30, 2020 to partially amend the 'Criminal Procedure act' to carry out the execution of death penalties within 6 months from sentencing in case of heinous crimes and crimes against humanity.

B) Long Debate Surrounding the Death Penalty

In its decision to uphold the death penalty in 2010, the Constitutional Court held that the death penalty is a justifiable retribution for heinous crimes, not against the principle of minimizing the damage, and is a proper method to achieve the legislative intent. This is in line with the results from a survey conducted by the National Human Rights Commission of Korea in 2018, the 'Survey on the Abolition of the Death Penalty and Alternative Punishments,' where the death penalty should be maintained but execution or sentencing should be done carefully (59.8%) and the death penalty must be maintained and/or strengthened (19.9%) outweighed the immediate abolition of the death penalty (4.4%) and should be abolished in the future (15.95%).

However, there are opinions that the state only has the obligations to protect and guarantee the right to life, not the authority to rid of the right to life. Human lives are noble, as acknowledged by the Constitutional Court, are irreplaceable and the right to life is the most fundamental right. The death penalty clearly is an inhumane punishment in that it is carried out after quite some time has elapsed since the crime by taking the life of a person in a defenseless state, and it causes extreme mental agony and fear with its execution method, as well as having a person await its execution. It is generally accepted by the international community through Article 3 of the Universal Declaration of Human Rights, Article 6 of the ICCPR[10], and the Second Optional Protocol to the ICCPR aiming at the Abolition of the Death Penalty, etc.

10) International Covenant on Civil and Political Rights (ICCPR)

A deterrent to crime is an issue often dealt with during the death penalty discussions. The Constitutional Court, in its decision to uphold the death penalty in 2010, acknowledged that the death penalty is a deterrence to crimes by stating that permanently blocking the possibility of the repeated crimes of a criminal who has committed heinous crimes is protecting society. In reality, the people for the death penalty emphasize that the death penalty can prevent violent crimes by instilling fear in the general public.

The death penalty being a deterrence to crimes can be seen in the result of the survey conducted by the NHRCK in 2018. People in favor of maintaining the death penalty responded that 'heinous crimes will increase once the death penalty is abolished (23.5%),' and that 'crimes can be deterred by instilling the fear of punishment to other criminals (23.3%).'

However, the death penalty's preventative or deterrent effect has not been verified, neither in Korea nor overseas. In the case of Korea, during the 10 years from 2009 to 2018, when the death penalty was not executed, murder was reduced by 41.3% and robbery by 87.3%. Moreover, according to the interviews of 32 people on death row by the Korean Institution of Criminology and Justice in 2019, most of the people on death row did not think about the punishment when committing the crime, and they were either drunk or extremely mad. Even those who thought about the punishment, did so only after they had committed the crime.

The last consideration is the death penalty sentenced due to a misjudgment. For example in Korea, the victims of the 'incident of the committee for the rebuilding of the People's Revolutionary Party,' who were sentenced to the death penalty by the Supreme Court in 1974 with the sentence being carried out in less than one day after the sentencing, were found innocent in a 2007 appeal, and the people who were executed for collaborating with the North Korean army during the early days of the Korean War in 1950 were found innocent 70 years after their execution. According to the data from the Death Penalty Information Center, 162 people on

death row were found innocent and released through appeals, etc. from 1973 to Aug. 31, 2018, and according to a report by the National Academy of Science in 2014, approximately 4% of the people on death row are innocent.

Of course, some assert that a possibility of misjudgment exists in all criminal procedures and can be minimized by the advancement of science and improving the legal procedures, and therefore, should not negate the entire system of the death penalty.

C) The Need to Consider the Abolition of the Death Penalty and the Introduction of Alternative Punishments

The survey by the NHRCK in 2018 showed the large number of people believing that the 'death penalty should be maintained but execution or sentencing should be done carefully (59.8%)' and the 'death penalty must be maintained and/or strengthened (19.9%).' However, when asked about the abolition of the death penalty premised on introducing proper alternative punishments, 66.9% agreed with the abolition of the death penalty. This shows that a consensus on the abolition of the death penalty can be formed by introducing alternative punishments.

The National Assembly continuously proposed the 'Special Act on the Abolition of the Death Penalty' since the 15th session and suggested imprisonment with labor for life (15th and 16th sessions) and absolute life imprisonment (17th~21th sessions) as alternative punishments for the death penalty. However, the Constitutional Court, in its decision to uphold the death penalty in 2010, stated that the absolute life imprisonment without the possibility of parole, where the prisoners are detained until their natural death, is punishment similar to that of the death penalty and is not free from criticism that the prisoners' connection to the community is permanently severed,

The NHRCK stated on Apr. 6, 2005 that, along with the abolition of the death penalty, life imprisonment without the possibility of a reduced sentence or parole,

imprisonment with labor for life without a reduced sentence or parole for a fixed period of time, maintaining the death penalty as an exception during the time of war, etc. can be considered, and whether to adopt these measures must be considered by the National Assembly during the legislative process.

Many countries that abolished the death penalty and maintain the life imprisonment have introduced a relative life imprisonment where the life imprisonment sentence can be reconsidered after a certain period of time has elapsed. The US, etc. are enforcing absolute life imprisonment without the possibility of parole, and Spain, etc. have adopted imprisonment for a definitive duration, not life imprisonment.

If we can consider methods to achieve the punitive purpose, instead of the death penalty, we need to prepare alternative punishments by comprehensively considering the Korean penal system, operating status, victims and people's legal sentiments, overseas examples, the Constitution and international human rights standards, etc.

2) Problems with the Use of Protective Gear at the Immigration Detention Center and Long-Term Detention

A) Use of Improper Protective Gear at Hwaseong Immigration Detention Center and Criticisms

Undocumented foreigners are held at the immigration detention centers until they leave the country. These foreigners are detained at the detention center for 10 days, on average, but some are held longer for reasons of applying for refugee status, disposal of assets, settlement of various contracts and settling affairs, etc. As of the end of July 2021, there are 55 foreigners detained for 2 months or longer, among the 394 foreigners detained at Hwaseong and Cheongju Immigration Detention Centers, and 12 are detained for more than 1 year.[11)]

11) Yonhap News, "1 in Every 2 Detained Foreigners are Long-Term Detainees ... Concern for Human Rights Violations," Oct. 31, 2021.

A Moroccan national was detained at Hwaseong Immigration Detention Center from March 2021 until early 2022. He required psychological treatment due to mental and emotional anxieties. He was held in solitary confinement 12 times between March ~ June 2021, for reasons of disturbance, insubordination and property damage, etc. Hwaseong Immigration Detention Center also used protective gears in response to his threatening actions.

On September 29, 2021, media reported CCTV footage showing him in protective gear and raised the controversy of 'cruel treatment' by a government employee. He was held in a shrimp's posture, tying his four limbs on his back, and the media also reported on the NHRCK's decision on a similar case as the human rights violation about a year earlier[12]. The Ministry of Justice distributed an explanation the following day, claiming that it was unavoidable to secure safety while responding to his problematic actions.[13] The MOJ's press release included CCTV footage showing his aggressive tendencies, including his actions prior to being detained and him destroying the facilities

His representative and human rights groups highly criticized the use of protective gear by Hwaseong Immigration Detention Center, use of solitary confinement and the MOJ responses, as 'Korean Guantanamo Bay,' 'torture,' and 'inciting xenophobia .'[14] On the other hand, NHRCK decided in October and December 2021 that the use of 'shrimp's posture' is outside the regulations to violate his human rights and the procedure of placing a detainee in solitary confinement also needed improvement. Also, a recommendation was made to the Minister of Justice to take necessary measures for him to receive psychological treatment in a stable environment, such as temporary release from the detention center, etc.[15]

12) NHRCK, Apr. 29, 2020 Decision No. 19JinJeong0360200

13) MOJ Press Release, Sept. 29, 2021.

14) Press Conference by the Joint Committee on Responding to a Case of Torture at the Immigration Detention Center (66 Civil Organizations and Groups), Sept. 29, 2021 and Dec. 23, 2021

15) NHRCK, Oct. 8, 2021 Decision No. 21JinJeong0451000·21JinJeong0477800 (Combined); NHRCK, Dec. 3, 2021 Decision No. 21JinJeong0520600

The MOJ acknowledged the use of protective gears that was not legally based, when it released the result of its investigation and means of improvement, in November 2021, and expressed its intent to improve the regulations on the use of protective gear and placement in solitary confinement.[16] However, the human rights groups continuously criticized until the end of 2021 for not temporarily releasing him.[17] The World Organization Against Torture (OMCT) also sent a letter to the Korean government to take measures for damage recovery and a proper investigation on the government employee.

B) Need to Refine the Immigration Act

The problems of using protective gear and solitary confinement at the immigration detention centers have been pointed out several times in the past. The use of the 'shrimp's posture' to hold down a person is an inhumane measure, not even having the minimum respect for a human. Also, placing the detainee in a solitary confinement by Hwaseong Immigration Detention Center and the explanation provided to the detainee was too simple and not complete, in light of the legal requirements. Moreover, the detainee was not given an opportunity to make a statement. These have been acknowledged by the MOJ after the decision by the NHRCK, but no other statements have been made thus far.

The existing Immigration Act, Regulation on the Protection of Foreigners and the Detailed Regulation on the Protection of Foreigners only list the method of using handcuffs, as related to the use of protective gears, and use of ropes to tie up detainees are not specifically prescribed, other than precautions. Moreover, the use of a solitary confinement as a measure against the obstruction of work or disobedience is punitive in nature. Therefore, it is necessary to provide a full explanation, opportunity to make a statement and procedure to raise any

16) MOJ Press Release, Nov. 1, 2021.

17) Press Conference by the Joint Committee on Responding to a Case of Torture at the Immigration Detention Center (66 Civil Organizations and Groups), Dec. 23, 2021.

objections, but they are not provided for in the current law. The law needs to be amended so as to avoid any similar problems in the future.

On the other hand, the NHRCK decided on whether he received proper medical treatment at the immigration detention center and whether he needed temporary release, etc., but the MOJ is still reviewing the decision as of the end of 2021.[18] Moreover, there were criticisms on the need to use the protective gear against the detainees and releasing too much information during the press conference by the MOJ, etc.[19]

C) Problems of Long-Term Detention at the Immigration Detention Centers

Other similar cases of human rights violations surfaced upon the release of the video showing the use of the protective gear, and strong criticisms on the operating method and purpose of the immigration detentions centers were raised by human rights groups, the National Assembly and media. The current regulations on the immigration detention centers are not proper standards for balancing the rights of the long-term detainees on access to medical care, outside travel and the settlement of relationships, etc. are not properly and maintained order, as the regulations are premised on temporary protection.

Foreigners subjected to deportation violated the Immigration Act but did not commit any crimes. Therefore, the administrative detention of these foreigners are different from being arrested under the Criminal Act, in that immigration government employees perform the procedure. Moreover, the immigration detention centers are managed to detain the foreigners, even though they are not strictly confinement facilities. The iron bars and CCTVs installed at the immigration detention centers symbolize the realities of these detention centers.[20]

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18) The MOJ temporarily released him on Feb. 9, 2022.

19) Hankyoreh, 'MOJ Instigating Xenophobia through Its Explanation of Shrimp's Posture,' Sept. 30, 2021.

20) NHRCK Press Release, Apr. 2, 2018.

The Constitutional Court reviewed the unconstitutionality of the detention facilities under the Immigration Act in 2016 and 2018. The Constitutional Court upheld the detention facilities under the Immigration Act as constitutional both times, but there were conflicting opinions among the justices on the unconstitutionality of the detention facilities under the Immigration Act in 2013HunBa196 decision in Apr. 28, 2016. In the case, 4 justices stated that it violated personal liberty and the principle of due process because the upper limit of the detention period is not established under the Immigration Act, asylum seekers are not excluded from the people subjected to detention, there is no control procedure by a third party independent institution or judicial authority in commencing or extending the detention and an opportunity for a hearing is not guaranteed.

A report on the 'result of an investigation on the human rights violations at Hwaseong Immigration Detention Center and plan for improvements,' by the Ministry of Justice in November 2021 included improving the regulations for procedures related to detaining foreigners, offering alternative detention centers that guarantee freedom of movement within the facilities and the use of protective gear, etc.

The NHRCK also stated that the repeated human rights violations at the immigration detention centers is not only from insufficient work skills of the employees or a lack of regulations, but partially from the fact that these foreigners are kept for the long-term at detention facilities that are designed for a temporary detention.[21] The human rights groups are asking to participate in the process of making the changes, and we need to pay attention to see if the basic paradigm of these immigration detention centers can change.

21) NHRCK Press Release, Nov. 16, 2021, Etc.

3) Police's Insufficient Crime Prevention and Victim Protection

A) Series of Cases of the Police's Insufficient Response During the End of 2021

Police's field responsiveness is a key to securing reliability on their investigative skills and the result of their investigation. It is directly related to the safety of the people, and the people's interest and expectations on the police's field responsiveness has increased, with the enactment of the 'Punishment of the Stalking Act." However, a series of cases showed problems with the police's prevention of crimes and protecting the victims in November 2021.

On Nov. 15, 2021, 3 family members were injured by a neighbor in Incheon. The attacker lived above the victims, and they were fighting over floor noise. During the incident, the police were already at the site in response to a floor noise report and were taking statements from the victims. However, 2 police officers witnessed the attacker injuring the victims using a deadly weapon but left the scene, without trying to stop the attacker or protect the victims. They did not take proper measures to protect the victims.

This case raised criticism on the improper responses of the police officers, and the two police officers at the scene were dismissed. The victims' families raised complaints on the police's response and the measures taken afterwards, and over 200,000 people agreed with the petition filed by the victims' families. The police apologized to the victims' families on Dec. 3, 2021, and also stated that they recognize this case as a structural and organizational issue, not just an issue for an individual police officer.

In Nov. 2021, a woman under police protection for dating abuse and stalking was killed. The woman had a restraining order within 100m and using the information communications network against the assailant, and was issued with a smart-watch on Nov. 7, 2021. However, the victim saw the assailant in her apartment building on Nov. 19, 2021, and reported to the police using the smart-watch. However, the

police failed to locate the victim and went to the wrong location. The victim made a report again, but was killed before the police arrived.

This case raised much criticism on the effectiveness of the protective custody system and the protection system. The victim filed 5 official reports to the police during a 11-month period, but she was not protected by the police, in the end. Moreover, the smart-watch issued by the police did not work properly. This is a criticism from failing to live up to the people's trust in police to respond properly under emergency situations. The Seoul Police Agency apologized to the victim, the victim's families and the people on Nov. 22, 2021, and stated they would establish a task force to improve responses to stalking crimes and prevent recurrence.

B) Police's Measures for On-Site Responsiveness and Raising Criticisms

The police is obligated to prevent crimes to protect the people's life and body, and must protect the crime victims upon the occurrence of a crime. This is the 'government's duty to protect the people's life and body through the use of the police.'However, as seen from the above cases, the police failed to properly perform their duties, and issues were exposed at every step, from responding to the scene, protecting the victims and the issues of concealing the case, etc.

The police has said to establish a systematic foundation to improve the responsiveness at the scene, through training and aligning a manual, etc. However, problems of the police's responsiveness at the scene has been raised continuously, and simply reinforcing the training cannot resolve the problem.[22)]

First is the problem with the number of police officers available. According to the National Police Agency, there are approximately 20,000 person-protection measures in a year, and the number is increasing each year. This means 1 police

22) Hankyoreh, "Insufficient Responses Seen by 10 Police Officers ... Rampage with the Deadly Weapon and the Murder of a Woman in Protective Custody," Nov. 28, 2021.

station must protect 80 people. However, field police work has become an undesired job for reasons of workload and promotion, etc., and some are mostly made up of inexperienced police officers, and some are not fully filled.

The second is the problem regarding the hiring method. Only the people who have completed the police academy can apply to become a police officer in the US, to weed out the unqualified people during the training process, but a score from a standardized test is an important factor in hiring a police officer in Korea. The floor noise case in Incheon raised opinions related to the process of selecting female police officers, but the problem regarding the hiring method is unrelated to the gender of the police officer.

Also, the police culture that tries not to use the proper level of physical force is also a problem. According to the 'Study on the Impact of the Characteristic of the Subject on the Police's Exercise of Physical Force' by the Korean Institute of Criminology and Justice (Dec. 5, 2021), the police typically respond with low-risk physical force when the other side resists violently. The study reasoned that the police action was due to criticism for the use of excessive force, a lack of support when injured while on the job, harsh personnel actions from on-the-spot judgment different from the manual, etc.

C) Amendment of the Act on the Performance of Duties by Police Officers and Concerns

The police faced people's criticism related to the above cases, and the amendment to the Act on the Performance of Duties by Police Officers was implemented as the police on the field said that they needed exemption provisions to respond more actively. The amendment to the "Act on the Performance of Duties by Police Officers" was approved in Jan. 2022, which included a provision on deducing or exempting the criminal liability of police officers if causing damage to others while performing his/her duties at a crime scene, if this is not done intentionally or with gross negligence.

Also, the Commissioner asked the police officers to 'boldly use physical force necessary for the actions that threaten the people's life and safety,' on Nov. 24. In the "Field Responsiveness Strengthening Plan" released by the National Police Agency on Dec. 30, the use of firearms (handguns and Tasers) by the police increased almost 2 times, from 35.2 cases to 68.9 cases, per month on average.

On the other hand, the police changed the term 'personal protection' to 'safety measures for the crime victims' in the "Field Responsiveness Strengthening Plan." The police stated that the "term personal protection can be understood as a close escort and do not include the diverse protective measures of the police." The police also included plans to introduce and develop additional equipment and the proactive execution of the laws, etc.

However, civic organizations raised criticism during the process of amending the 'Act on the Performance of Duties by Police Officers.'[23] The previous two cases were criticized for the polices' wrongful response, and it is improper to try to reduce the police officers' criminal liabilities.

D) Strengthening the Polices' Ability to "Protect the People"

The key duties of the police is to 'protect the people's life and body.' Moreover, human rights violation from police actions occur frequently, as well. Therefore, today's police are required to achieve both 'protecting the people's lives and body,' as well as 'minimize the human rights violations from the use of excessive police power.'

Preventing crimes is the best method of protecting the people's lives, body and property, and the police should try to minimize the loss through quick response if a crime has occurred already. However, the two cases at the end of 2021 showed a

23) People's Solidarity for Participatory Democracy (PSPD) Legislative Opinion, "Opinion on the Introduction of Exemption for Police Officers Duties," Dec. 29, 2021.

gap between the people's expectations on the police and the realities. It is necessary to come up with the measures to recover the people's trust in the police.

It is necessary to consider a comment that 'a vicious cycle of individuals becoming personally liable in a system where the problems are solved by a seasoned police officer and not by a rookie.' Responsiveness on the scene and protecting the victims in danger are skills needed by both the police officers individually and the police as an organization. Therefore, it is necessary to improve the capabilities through police selection, placement, education and training, etc.

In the end, strengthening the police capability to 'protect the people' cannot be achieved by reducing/exempting the police's criminal liabilities. The police performing his/her duties restricts the fundamental rights of the people, so must be performed minimally. It is necessary to not abuse the police's physical force or weaken the various legal requirements necessary to exercise law on site through the amendment of the 'Act on the Performance of Duties by Police Officers.'

4) Court Ruling on Japanese Military 'Comfort Women' and Controversy over Distorting History

A) Mixed ruling on lawsuits against the Japanese government and distorting history

Among 240 Japanese military 'comfort women,'[24] 13 are still living as of December 2021. In 2021, 3 Japanese military 'comfort women' died. Japanese Prime Minister Fumio Kishida answered that the Japanese military 'comfort women' issue is "finally and irreversibly" resolved and only a faithful implementation of the agreement between Korea and Japan is important.

In 2021, Seoul Central District Court held two contradicting rulings on sovereign

24) This report is using the term Japanese military 'comfort women' victims. This is a general usage and intended to express the victims' suffering and historical significance.

immunity[25] on a lawsuit raised by the victims of the Japanese military 'comfort women,' violating the international human rights during World War II.[26] There have been lawsuits raised by the Japanese military 'comfort women' in a Japanese court or the US courts against the Japanese corporations, but this was the first hearing in Korea related to the Japanese military 'comfort women' against the Japanese government.

In its ruling in Jan. 2021, Seoul Central District Court ruled that victims of international crimes must be guaranteed the right to justice in exceptional circumstances where there are no other means of relief, and it is proper to recognize the exceptions in applying the sovereign immunity. Therefore, the court ruled the Japanese government to pay 100,000 KRW each to the plaintiffs as part of its liability. On the other hand, in its ruling in Apr. 2021, the court dismissed the suit by stating that Japan signed the 2015 South Korean-Japanese Agreement includes the terms on the government measures and can be considered 'an alternative relief for the victims.'[27]

B) Criticism and Distortion Against the Japanese Military 'Comfort Women'

Harvard Law School professor J. Mark Ramseyer claimed sex slaves taken by the Imperial Japanese Army during World War II were actually recruited, contracted sex workers in the paper "Contracting for Sex in the Pacific War" published in the March 2021 issue of the International Review of Law and Economics. This claim has been repeated over a long period of time, but due to the fact that a Harvard University professor made such a claim, many researchers all over the world presented criticisms from several aspects.

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25) Principles of international law that exempts a state from jurisdiction of another country for acts vested to the state and the property of the state

26) Seoul Central District Court, Jan. 8, 2021, Case No. 2016GaHap505092; Seoul Central District Court, Apr. 21, 2021, Case No. 2016GaHap580239

27) However, the court did not deny that the comfort women victims have the actual legal right to compensation against the defendants, and that the rights of the comfort women victims have been disposed of or lapsed according to the South Korea–Japan Agreement of Dec. 28, 2015.

Professor Ramseyer's paper and the assertion was highly criticized in Korea, as well. The government maintained a position that the paper is not worth responding to, but the politicians, civic groups and media stated that Prof. Ramseyer's paper distorted history and violated the rights of the Japanese military 'comfort women.' However, people who made similar claims as Prof. Ramseyer asserted the freedom of academic and thoughts.

On the other hand, the "Wednesday Demonstration' (regular demonstration on Wednesday to resolve the Japanese military sex slavery issue) conducted in front of the Japanese Embassy continued for over 1,500 times since 1992, but the demonstration continued as a 1-person press conference due to COVID-19 restrictions. The Wednesday Demonstration resumed in Nov. 1, 2021, but the people against the Wednesday Demonstration ('Opposition Rally')'s opposition and insulting remarks, etc. became controversial. These people registered for a rally in the Wednesday Demonstration site in advance or held pickets nearby, with words including 'Instigating with Lies,' 'Stop the Comfort Women Sham,' or 'Dissolve the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan," etc.

The police were deployed to prevent any conflict between the Wednesday Demonstration and the Opposition Rally. However, the insulting remarks and sexual harrassment of some Youtubers and conservative groups have become problematic, and the NHRCK requested the police chief for assertive measures to protect the Japanese military 'comfort women' and people participating in the Wednesday Demonstration through an emergency relief decision of Jan. 13, 2022.[28)]

28) NHRCK, Jan. 13, 2022, Decision No. 22Emergency0000100

C) Marginalizing the Japanese Military 'Comfort Women'

Under these circumstances, the series of events in 2021 showed changes in the viewpoint of the Japanese military 'comfort women' issues.[29] According to this view, the issue of Japanese military 'comfort women' changed from the 'shameful' history oppressed by both Korean and Japanese cultures to showing ethical supremacy as victims (victimized country) of imperialism, with the changing status of Korea in the international community. Moreover, it became a political confrontation since the 2015 South Korea-Japan Agreement and the accounting fraud of the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan (KCRJMSSJ).

The Opposition Rally asserted maintaining the friendly relationship between Korea and Japan and denied the historical facts of the Japanese military 'comfort women' problem. This is not different from their assertions in the past, but they use the current issues, such as 'arrest of the congresswomen Yoon Mi-Hyang, the dissolution of KCRJMSSJ, returning the money to the survivors.' On the other hand, there were media reports to refrain from providing 'reasons' for the Japanese right-wing by raising issues against KCRJMSSJ and the House of Sharing, etc.[30]

Some point out ignoring or criticizing the activities and demonstrations of the Japanese military 'comfort women' because of the issues on the groups and facilities that support the Japanese military 'comfort women' is marginalizing the wartime sexual victims. This is posing a problem of classifying the wartime sexual victims into 'true victims or activists' and 'others,' or discussing the likes and/or dislikes of the politicians about the Wednesday Demonstration, etc.

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29) Women's Human Rights Institute of Korea, Research Institute on Japanese Military Sexual Slavery , "2021 Women's Human Rights and Peace International Conference Package," 2021.

30) Joongang Daily, Opinion, "Why condemn Lee Yong-soo as pro-Japanese," Jun. 1, 2020.

D) Urging Efforts to Protect the Japanese Military 'Comfort Women'

The illegal acts against the Japanese military 'comfort women' by the Japanese government and the military are the violations of international human rights laws and international customs applicable to the Japanese at the time, such as the 1907 Hague Convention IV, the International Convention for the Suppression of the Traffic in Women and Children (1921), 1926 Slavery Convention, ILO Forced Labor Convention (1930), etc.

The UN recommended the Japanese government to fulfill the legal liabilities for the Japanese military 'comfort women' issues, through Special Rapporteur on Violence Against Women, Committee on the Elimination of Discrimination against Women (CEDAW), Committee Against Torture (CAT) and the Human Rights Committee (HRC). At the UN Human Rights Council on May 30, 2008, a report of the working group on the Universal Periodic Review (A/HRC/8/44) that includes recommendations and questions from various countries on the issue of the Japanese military 'comfort women' was adopted. Also at the Universal Periodic Review of Japan on Oct. 22, 2012, representatives from South Korea, North Korea, China, Netherlands, Costa Rica, East Timor, Belarus, Malaysia, etc. recommended apologies and compensation to the Japanese military 'comfort women,' and urged the related education, etc.

Moreover, resolutions on the Japanese military 'comfort women' issue have been adopted by the US, the Netherlands, Canada and EU, etc., and the Korean National Assembly also adopted the resolution in 2008 and 2012. Additionally, the 2000 International Women's War Crimes Tribunal on Japan's Military Sexual Slavery, held in Tokyo, Japan, (citizens court participated by 10 countries), International Commission of Jurists (ICJ) report, Radhika Coomaraswamy report, Gay J. McDougall report, etc. clearly stipulated the Japanese military 'comfort women' as having violated the international laws and presented legal resolutions.

Nevertheless, the Japanese military 'comfort women' system is yet to be punished. The Japanese military 'comfort women' system clearly violated the human rights through the sexual slavery of Asian people during the World War II under the Japanese imperialism.

Moreover, the Wednesday Demonstration is a social movement that holds Japanese imperialism responsible for the crimes against humanity, which is unprecedented worldwide. It is the longest demonstration in the world, having been continued for over 30 years since January 1992. Protecting this longest demonstration that seeks justice and truth and demands responsibility for injustices corresponds with the basic principles of human rights.

The Japanese government and Korean government need to take proactive measures to protect the human rights of the Japanese military 'comfort women.' The Korean government must take various and assertive diplomatic measures for the human rights restoration of these victims, and needs to take measures to actively restrain and investigate any occurrences of defamation and insult to the Japanese military 'comfort women.'

5) Controversy of School Violence in Sports and 'Violent Control'

A) School Violence in Sports

It has been pointed out often that there was no proper protective system for the victims of human rights violation within the Korean sports community, as it focused solely on training elite athletes. The sports community has a human rights protection system to help the victims of human rights violations, such as violence and sexual violence, etc., including various sports associations, the processing of cases according to the 'Act on the Prevention of and Countermeasures Against Violence in Schools,' and Sports Ethics Center, etc. However, the reporting rate is low due to the structural nature of the sports community and the results from processing the cases are not trusted. As of 2020, the Sports Ethics Center directly

invested only 18 cases among the 30 reported cases during the 5-year period, and the Korean Sports & Olympic Committee only investigated 9 out of 100 cases.

Moreover, the violence and sexual violence of the members of the national team, professional athletes and within the sports associations continued, and since 2018, starting with ice sports, human rights issues within the sports community became a social issue. This paved the way to amend the 'National Sports Promotion Act' in Aug. 2020 to establish the Korea Sports Ethics Center under the Ministry of Culture, Sports and Tourism, and started the Sports Innovation Board. The special investigative group on sports human rights was established within the NHRCK, as well.

In Feb. 2021, a writing that exposed the past school violence by two female national volleyball team players were posted online. There were several victims, and actions of the perpetrators were seriously problematic, even considering the fact that both the perpetrators and the victims were minors. This case received much attention from the media and the politicians, as it was also related to a discord within the national team. The two perpetrators posted an apology online, and the team offered an official apology, as well as suspending both players. The Korea Volleyball Association disqualified the two players from being selected for the national team indefinitely.

Followed by the female volleyball players, there were victims of violence and sexual assault by professional and national athletes in baseball, basketball, archery, soccer, boxing, etc. Some of the athletes admitted and gave up their national team member status, but some raised lawsuits to determine the factual relations. Many of these accusations were made to the sports community and entertainment community, and the media named it 'school violence too,' after the 'me too' movement.

The Ministry of Culture, Sports and Tourism and the Ministry of Education established a 'plan to eradicate violence in the school sports teams and improve

the sports human rights protection system' on Feb. 24, 2021. This plan includes comprehensively managing the disciplinary action information of school athletes, obtaining the school records when selecting new professional athletes and restricting the athletes with disciplinary action for school violence from being selected to be on the national team, etc. Moreover, the Ministry of Education and each office of education conducted a survey on experiencing violence with the student athletes.

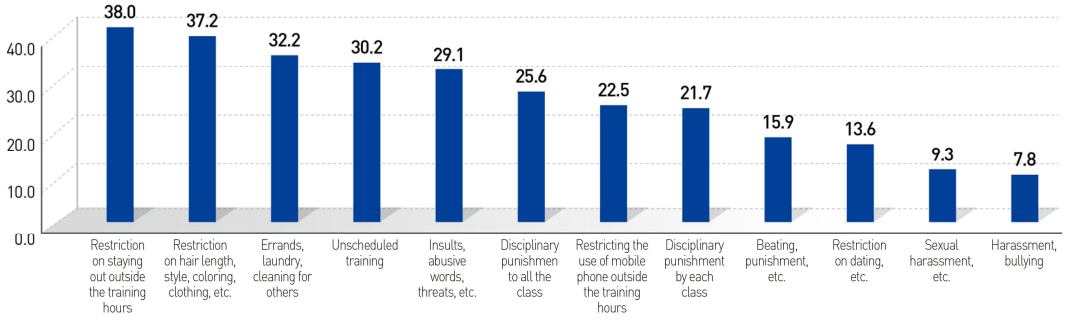
In Apr. 2021, the Korea Worker's Compensation & Welfare Service approved the worker's compensation for an athlete, Choi Suk-hyeon, who committed suicide after enduring years of abuse by the coaching staff. This is the first approval of worker's compensation in the case of the workplace harassment of an athlete. Also, the supreme court sentenced a ex-short track coach to 13-year imprisonment for violence and sexual violence in Dec. 2021.[31)]

B) Realities of the 'Violent Control' Culture

This controversy of violence within the sports community shows that many of Korea's best athletes may be the perpetrators of human rights violations for quite some time, and that many of the victims showed themselves in the process. The perpetrators are first responsible for these actions, but there were many discussions on the cause of these human rights violations in the sports community. The causes are generally believed to be the cultural evil of performance supremacy, the closed structure of adapting to violence and soft punishments, etc.

31) Supreme Court, Dec. 10, 2021. Sentencing 2021Do12998 Judgment

Graph Experience During College Sports Teams (Can Provide Multiple Answers)



Source: NHRCK, Jan. 27, 2021 20Direct001100 Decision

We need to focus on the culture of 'violent control' shared by the athletes. According to the direct investigation by the NHRCK[32], more than 30% of college athletes experience improper restrictions and running errands in daily lives, including restrictions on going out, hair length, clothing, laundry and cleaning, etc. Approx. 29% experienced insults, abusive words and threats, and approx. 21% answered that they experienced these almost every day. These were forced on to the athletes in lower grades, as part of the tradition and hierarchical culture, and occurred mostly in their living quarters led by the seniors.

The violent control negatively affects the athletes, similar to that of physical violence, and violates the human rights of individuals. However, these levels of violent control is based on the hierarchical culture and these athletes do not improve even after they leave the sports teams.

The violent control occurs based on the hierarchical culture and sports teams. Some leaders see the violent control as necessary to manage the sports teams and be effective in improving the athletes' abilities. The Korea Sports & Olympic Committee did not discipline properly even with a regulation that states the violent control as an 'infringement of basic rights.' These insufficient responses of relevant agencies effected the continuation of the violent control in college sports teams.

32) NHRCK, Jan. 27, 2021 20Direct0001100 Decision

C) Need to Improve the Culture Within the Daily Life of the Sports Community

It is important to note that the internalization of these levels of violent control can be the start of other violent acts. According to a survey conducted by the NHRCK,[33] when the college athletes violate or deny the 'violent control' shared within the group, they experienced the 'discipline' of assembly, prohibition on going out, physical and verbal abuse, etc. Moreover, the athletes did not recognize the seriousness of the 'discipline,' as well as the violent control, or thought of them as 'tradition, rule and regulation,' and not as a problem.

The National Collegiate Athletic Association (NCAA) regulates hazing systematically. In the US, hazing is not only recognized as systematic problems of each sports department at high schools and universities, but also problems for the association of education departments and sports teams, as well as related sports associations. Many lawsuits have been filed against the perpetrator students, coaches, head of school, supervising authorities, etc., and in many cases, the liabilities on the part of the supervising authorities have been recognized.

With a death of a high school basketball team captain in Okasa, Japan, at the end of 2012, Japan's Ministry of Education, Culture, Sports, Science and Technology released a statement 'aiming to eradiate violence in sports instruction.' Afterwards the Ministry recommended the relevant agencies to adopt a declaration on preventing violence, and ordered to strictly discipline any disciplinary punishments and physical punishments of seniors, colleagues, teachers and leaders.

The violent control occurs from the distorted operating method and hierarchical culture of sports teams, and it is premised on and/or includes violence. The Korean sports community must also come up with a specific regulation to objectify and eradicate the violent control. Also, a basis must be established to discipline the leaders who fail to manage and supervise the violent control in the name of rules, regulations and tradition, etc. within the sports teams.

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33) NHRCK, Jan. 27, 2021, 20Direct0001100 Decision Reference

2. Freedom of Expression

A. Human Rights Status 2021

Freedom of expression is indispensible for a person to maintain his/her dignity and value, pursue happiness and realize sovereignty, and it is universal and fundamental rights stipulated in the Constitution of Korea, the UN's Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Freedom of expression is one of the most important basic rights of people in a democratic society.

Korea has the highest level of freedom of the press among Asian countries, placing 42nd among 180 countries surveyed by the Reporters Without Borders (RSF) in the 2021 World Press Freedom Index. was placed 42nd among the 180 countries. On the other hand, according to the Digital News Report, published annually since 2012 by the Reuter Institute, Korea's trust in news[34] ranked 39 out of 46 countries. Korea ranks low in the 'trust in news' section since 2016, when Korea was first included, and in 2021, the rank improved slightly, but still remains low.

As the Korean society is experiencing rapid development in the communications technologies through the spread of various social media and Youtube, etc., and in the process, the assertions and opinions of diverse people can be obtained easier than ever. This is an ideal phenomena for the freedom of expression to materialize within the Korean society; however, unrefined or improper expressions that can harm society are also spreading faster than before.

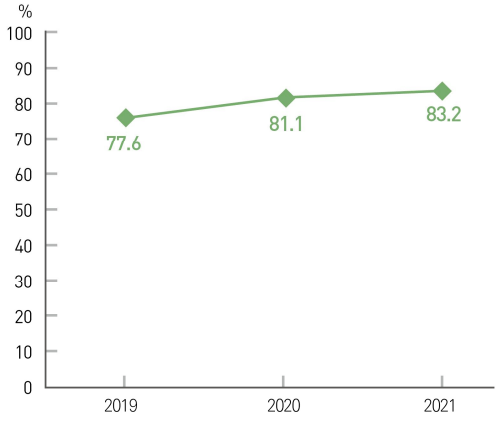
In the past, Korea's discussion on freedom of expression was a conflict between a view requiring more restrictions for the national security, in consideration of the

34) 'Trust in News' asks "trust in news overall' to the respondents on a 5-point scale, and calculates the ratio of people answering 'Agree' or 'Strongly Agree.'

fact that Korea is a divided nation, and a view asserting strong freedom of expression to increase an individual's political freedom and rights.

However, in 2021, except for the traditional issues of 'unconstitutionality of Article 7 (Praise, Incitement, etc.) of the National Security Act,' all issues are incited from 'excessive expression,' due to the development of communications technologies, such as 'the regulation of false news for the media, etc.,' 'penalties for distorting history,' 'penalties for defamation of high ranking officials,' 'controversy on the non-criminalization of contempt,' 'controversy on hate speech of AI Lee Luda,' etc.

Graph Respecting Opinion Presentation and Freedom of Expression (2019~2021)



Statistics Respecting Opinion Presentation and Freedom of Expression (2019~2021)

(Unit: %)

Classification (Year)	2019	2020	2021
Ratio	77.6	81.1	83.2

Note: 1) Ratio of people answering "Respected" or "Very Respected" to a question on how much the opinion presentation and freedom of expression are respected in Korea.
2) Adults over the age of 19.
Source: NHRCK, [Korean National Human Rights Survey], 2021.

Ultimately, these changes imply a need to carefully consider the conflict and harmony between other social factors in how to view the freedom of expression and whether to restrict the freedom of expression. Next, we will look at some of the freedom of expression issues during 2021 in more detail.

B. Main Topics

1) Discussion of the Abolition of Article 7 of the [National Security Act]

A) Persistent Controversy Over the Abolition and Unconstitutionality of the [National Security Act]

In September 2021, the head of a publishing company that published a memoir of Kim Il-Sung was charged by the prosecutors' office for violating Article 7 (Praise, Incitement) of the National Security Act. The book was determined to be a material benefiting the enemy by the court, and the police began an investigation by searching the publishing company and the home of the publisher. Many civic groups are criticizing the [National Security Act] as violating the freedom of press and publication guaranteed by the Constitution.[35)]

The [National Security Act] restricts fundamental personal rights, such as the freedom of conscience and expression to achieve 'national security,' and most provisions have heavy legal consequences. This law was enacted on Dec. 1, 1948, at the first National Assembly, and went through several changes; however, this law is still under controversy for violation of basic rights, etc. The NHRCK also recommended a full abolition of this law on Aug. 23, 2004, as 'the [National Security Act] is highly likely to harm a human value and dignity for violating the principle of legality, excessive infringement of basic rights, etc.'

North Korea made it clear in 2021 that it will resume its nuclear program and put the Korean peninsula back in a state of tension. As such, the public opinion that emphasizes the need for security and the abolition of the [National Security Act] is premature is being vocalized.

35) Statement from the People's Action on the Abolition of the National Security Act, "Publication of 'With the Century' is a Violation of the National Security Act? The Reasons to Abolish the National Security Act," Sept. 29, 2021.

On the other hand, 'the petition to abolish the National Security Act,' started by civil society groups on May 10, 2021 reached 100,000 signatories by the 19th to be submitted to the National Assembly's Legislation and Judiciary Committee. Also, some civil society groups asserted that Article 7 (Praise, Incitement) must first be abolished, prior to the complete abolition of the Act. Moreover, controversy surrounding unconstitutionality and the abolishment of the National Security Act still continues, including Congresswomen Gang Eunmi submitting an agenda to abolish the National Security Act, etc.

Article 7 (Praise, Incitement) of the National Security Act is subjected to more controversy and criticism for the possibility of an arbitrary application and the excessive regulation of individual conscience and expression due to its abstractness and vagueness. Article 7 of the National Security Act prescribes criminal penalty for any person who praises, incites or propagates the activities of an antigovernment organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the state, with the knowledge of the fact that it may endanger the existence and security of the state or democratic fundamental order (Paragraph 1) or any person who constitutes or joins an organization aiming at these acts (Paragraph 3), etc.

Article 7 of the National Security Act was amended after the ruling by the Constitutional Court on Apr. 2, 1990, Case No. 88HunGa113, and the Constitutional Court upheld the amended provision on Oct. 4, 1996, Case No. 95HunGa2 and on Jan. 16, 1997, Case No. 92HunBa6, etc. Nevertheless, there have been 11 cases for Article 7 filed with the Constitutional Court in 2021.

Recently, there was a case of determining the statements, such as "Drinking Dadong River Beer is heavenly," "People are excited about the young leader," "More than 2.5 mil. mobile phones are available and even young kids in Pyeongyang are checking text messages," etc., as being deemed to endangering the basic order of

Korea democracy and have deported the people who made these statements as having violated the [National Security Act].[36] This shows that the possibility of violating the freedom of expression pursuant to Article 7 of the [National Security Act] still exists and requires social attention.

Even though the importance of the national security cannot be denied, the controversy surrounding Article 7 of the [National Security Act] still persists in our society. As such, it is necessary for us to think about whether punishing an individual's freedom of expression, with only the slight possibility of harming the national security, is proper.

B) Article 7 of the [National Security Act] and the Freedom of Expression

Problems related to Article 7 of the [National Security Act] should not be regarded as an issue of conflict between the right and the left as related to the national security, and it must be approached as a problem on how to protect the freedom of expression as the basic principle of democracy.

Article 7 of the [National Security Act] has the characteristic of a political criminal law that punishes political expressions that are indispensible to democracy for the reason of national security. This is restricting a person's ideology or realization of conscience, and must be careful when restricting such, as it can infringe on the freedom of expression under the Constitution or the freedom of conscience or ideology, that are absolute basic rights.

Even for the purposes of the national security of protection of democracy, in order to penalize a person for a political expression based on the political criminal law, (1) the scope of the action subjected to punishment must be highly clear and

36) The prosecutors' office suspended the indictment in Jan. 2015, and the Constitutional Court, in Case No. 2015HunMa349, Sep. 30, 2021, determined that the concerned suspension of indictment was arbitrary exercise of right of prosecution, and it violated the petitioner's right of equality and right to pursue happiness to drop the charge.

(2) the act of expressing these, not only have the tendency of causing harmful results to the state or the society in the future, but also must have a causal relationship with the actual harm that may occur.

However, Article 7 of the [National Security Act] is still being criticized from this aspect. The requirement of "with the knowledge of the fact that it may endanger the existence and security of the state or democratic fundamental order," prescribes matters related to the actor's internal thoughts, and the standard for determining the internal thought is still unclear. There is a problem of determining the penalty for specific actions depending on how the investigative agencies or the courts evaluate the internal thoughts of the actors.

Also, the provision is unclear and ambiguous in that the terms used to determine the applicability, such as 'praise,' 'incite,' 'propagate,' and 'concert' are abstract and vague. Moreover, there is the possibility of penalizing these acts, even if they cause no harm and do not provide any benefits to the antigovernment organizations. Therefore, we can only question 'whether the scope of penalty under the article is limited to acts clearly endangering the existence and security of the State or democratic fundamental order.'

C) Actively Embracing the Principle of Clear and Current Danger

The most important concept used in relation to regulations on the freedom of expression is 'a clear and present danger' by the US Supreme Court. This principle was established by Justice Oliver W. Holmes in Schenck v. United States, stating that act of expression cannot be restricted with the possibility of an abstract harm that may cause harmful result to society or a country in the future, but must be proven with a clear and present danger test.

The importance of existence and the security of a state cannot be refuted in Korea, but for the act of expressing oneself, fully guaranteeing the freedom of expression according to the clear and present danger principle is necessary to realize the true value of democracy.

Therefore, even in the case of the [National Security Act], it is necessary to reduce the scope of penalty to a realizable possibility of physical harm by the act of active and threatening expression that threatens the existence, safety and democratic order of a country. However, the current provision is very unclear about these standards or the limitations, and it is necessary to either abolish the provision or at least make efforts to accept the clear and present danger principle by the investigative and judicial authorities in applying the [National Security Act].

2) Fake News and Controversy on the Proposed Amendment to the Act on Press Arbitration and Remedies for Damage Caused by Press Reports (Press Arbitration Act)

A) Controversy Triggered During the Process of Submitting an Amendment to the Press Arbitration Act

During the majority of the later part of the 2010s, Korea's Press Freedom Index (PFI) was high but the trust in press declined as time went on. Fake news became a serious social issue, and people pressed to improve the effectiveness of damage relief from press coverage and to increase the responsibilities of the press.

The ruling party tried to introduce a partial amendment to the Act on Press Arbitration and Remedies for Damage Caused by Press Reports (hereinafter referred to as the Proposed Amendment to the Press Arbitration Act) that combined and changed 16 proposed bills to implement 'press reform,' for the purpose of eradicating 'fake news.'

The proposed amendment to the Press Arbitration Act defined 'false or fabricated report' as 'the act of reporting or mediating false information or information fabricated to be misconceived as fact through press, internet news services, internet multimedia broadcasting' (Proposed Amendment Article 2(17-3)), and when causing property, personal or other mental damage due to the

false or fabricated report intentionally or with gross negligence, the court can determine damage within 5 times the amount of loss (Proposed Amendment Article 30-2 (1)). Moreover, it prescribed the matters that can be assumed as being intentional or with gross negligence (Proposed Amendment Article 30-2(2)) and included a provision on exempting punitive liability for press reports for the public benefit (Paragraph 4 of the same Article).

However, the proposed amendment to the Press Arbitration Act cause controversy due to a criticism that the provisions of the law violated the freedom of press and expression. Some experts, civil social organizations and Reporters Without Borders opposed the proposed amendment, and many press published critical reports. On the other hand, a survey on the introduction of punitive liability by Realmeter on Jul. 30, 2021 showed that 56.6% agreed.[37)]

UN Special Rapporteur for the Freedom of Opinion and Expression sent a written opinion to the Korean government on Aug. 27, 2021, indicating a concern over the Proposed Amendment to the Press Arbitration Act for seriously restricting the freedom of expression and needs to make changes to fit the international human rights standards. On the other hand, the NHRCK expressed its opinion on the partial amendment to the Press Arbitration Act on Sep. 13, 2021, indicating that it sympathizes with the intent of the proposed amendment, but some provisions may constrict the freedom of press guaranteed by the Constitution and must be carefully considered.

As the controversy continued, the proposed amendment was deferred and is still pending. The controversy related to the Proposed Amendment to the Press Arbitration Act is divided into opinion that the press must be responsible by increasing the effectiveness of the damage relief from fake news and opinion requiring the careful consideration for the concern of constricting the freedom of

37) Yonhap News, "'Punitive Liability' Press Law, 56.5% agree vs. 35.5% disagree'', Aug. 2, 2021.

expression and press guaranteed by the Constitution. This controversy had us think about the basic issues related to the scope of protecting the freedom of press.

B) 'Freedom of Press,' Responsibilities of the Press and the Proposed Amendment to the Press Arbitration Act

Article 21(1) of the Constitution stipulates that 'all citizens shall enjoy freedom of speech and the press, and freedom of assembly and association,' and stipulates the freedom of expression to include press, publication, assembly and association. Freedom of press, among the freedom of expression, refers to freedom to participate in creating opinions by expressing opinions and delivering facts through publications and media.

Freedom of press satisfies the people's right to know and contributes to creating opinion indispensible in democratic politics. It also plays the important functions of watching and controlling the state power and promoting national integration. Therefore, it is necessary to especially be careful in its restrictions.

On the other hand, as the environment surrounding the press has changed, it became the norm for the press to create online articles focusing on having higher views, without putting in a serious investigation. Under these circumstances, there have been much talk about asking higher responsibility to the press to improve the people's right to know and the real freedom of expression. The proposed amendment to the Press Arbitration Act reflected these opinions.

The controversy surrounding the proposed amendment to the Press Arbitration Act focused on the criticism of violating the freedom of press and criticism to that criticism, and the key criticisms are as follows:[38)]

38) NHRCK Press Release. Sept. 16, 2021, Cho, Soyeong, "Legislative Process of the Proposed Amendment to the Press Arbitration Act and Issues on the Terms", Press and Law, 2021.

First is the issue of ambiguity in the concept of 'false and fabricated reports' stipulated in the proposed amendment and the requirements for intentional or gross negligent acts. One of the main purpose of the press is surveillance and control of the power, and as such, raising suspicion or raising issues on certain items is sometimes necessary to create social opinion. However, in the proposed amendment, the concept of fake reports and the requirements of intentional and gross negligent acts are prescribed ambiguously, which may be used as a method to weaken unfavorable articles and critical opinions. Also, liability for compensation can also be at the subjective and arbitrary determination of the court.

Second is the excessive responsibility of the news portals, etc. According to the proposed amendment, comprehensive news portals, such as Naver and Daum, are subjected to punitive damages for mediating news that are assessed as false or fabricated reports. However, if these mediating activities are subjected to punitive damages, then these online news service operators may block all news reports that may be subjected to controversy in order to avoid any liability, and this in turn will lead to the chilling effect of the press reporting.

Third is the issue of excessive liability from introducing the punitive liabilities to the press. Korea already has in place a system to prevent violation of personal legal interests from defaming information from false information, illegal information, etc. Defamation from the distribution of fake news is punishable under the Criminal Act or Information Communication Network Act. Therefore, introducing an additional punitive liability system, having a semi-criminal law characteristics, is seen as having a double-penalty effect and being improper.

Fourth is an opinion of constricting the reporting function of the press by levying punitive liabilities only to the press activities, and not general illegal activities. Of course, other areas, such as subcontracting and privacy protection, have punitive liabilities, but the punitive liability attaches to the press, regardless of the area of reporting; thus weakening the reporting function of the press.

Other criticisms include the way the ruling party pushed ahead with the proposal and concerns for reduced reliability in the international community.

C) Need to Change and Supplement the Proposed Amendment to the Press Arbitration Act

Freedom of press is a right of citizens, not a freedom of publishers or reporters. However, there are cases of violating the rights of citizens through fake news, completely unrelated to criticizing the powerful. A decline in confidence in the news media has made the freedom of press into a hindrance in guaranteeing the citizens' right to know and democratic opinion formation. Therefore, it is necessary to come up with a method to require higher responsibility from the press, and the method and the topic requires a careful approach.

International organizations, such as the European Commission (EC), UNESCO, etc., stipulate the concept of specific disinformation, separate from simple mis-information. The Press Arbitration Act needs to seriously consider defining the fake news corresponding to the international standards.

Also, some reviews and supplementations are needed to clarify provisions on the assumption of intentional and/or gross negligence, and the deletion of certain expressions or provisions levying uncertain or excessive liability to online news service operators by being subjected to punitive liability, etc.

For example, the international organizations, including the UN, focus on autonomous and indirect measures, such as securing transparency in the media environment, rather than regulations that impose actual liability for the fake news or disinformation. On the other, strengthening the penalties directly, as an alternative to the sanction of the creation and distribution of fake news. It is noteworthy that in cases of Germany or France, where they have laws regulating expressions, they are limited to the specific types of hate speeches, such as glorifying Nazis, etc., and have the specific scope and target.

3) Controversy on the Decriminalization of Contempt

A) Controversy Began with an Investigation of a Leader of a Civil Organization

A leader of a civil organization distributed leaflets that slandered the President in front of the National Assembly Building in Jul. 2019, and the leader appeared at the police station for investigation. This became known when the police forwarded the case to the prosecutors' office in Apr. 2021, and the press and the politicians made critical comments to turn the case into a big issue.[39] Contempt is a crime prosecutable only upon complaint and cannot be investigated unless a complaint filed by the party, and the charges cannot be established unless the President himself or a representative files a complaint.

The spokesperson for the Blue House, at a daily briefing on May 4, 2021, stated that "the President Moon instructed to withdraw the contempt charges for the distribution of leaflets in 2019," and "that it was a response to the harm to North-South relationship, people's honor and national dignity, as the case was indiscriminately used by the Japanese right-wing magazines." Furthermore, "we accept the comments that a president needs to endure insulting expressions, as a person managing the country as delegated by the people."

On the other hand, solder who used insulting expressions for the president was sentenced to 6 months imprisonment. The soldier posted malicious comments, twice, on articles related to the president in Jun. 2021. This was not the first time a soldier who slandered the president being punished, and the Constitution court upheld the constitutionality in 2016.[40] The military court in August 2021 found a soldier not guilty for slandering the president in front of other soldiers. The court

39) Kyunghyang Shinmun, "'Anyone can criticize the President... Contempt charges should be dropped,' People's Solidarity for Participatory Democracy (PSPD),' May 3, 2021

40) Constitutional Court, Feb. 25, 2016, Sentence 2013HunBa111 Decision

stated that "if a crime of contempt for one's superior is applied to the president, who is both a constitutional institution and a politician, to even purely private conversation, it causes excessive restrictions on the freedom of expression guaranteed by the Constitution."

Article 311 of the Criminal Act provides penalty for publicly insulting another. From 2000s, the distribution of false information online and malicious comments have become social issues, and the [Act on Promotion of Information and Communications Network Utilization and Information Protection' was amended to more severely penalize insult or defamation using the internet. The Supreme Court determined that 'contempt' is established when damaging an external honor by making an abstract decision or contemptuous expressions that can reduce the social assessment of a person.[41)]

However, contempt became the topic of a dispute for a long time for decreasing the freedom of expression and unfit with the principles of democracy, and to decriminalize these.[42)] In fact, past presidents and high government officials have filed charges or lawsuits for defamation or contempt for expressions made by the people.[43)] The contempt charges under the Criminal Act have continuously been raised as violating the people's freedom of expression, and the investigation on the 'insulting expression of the president' has once again ignited a discussion surrounding the decriminalization of contempt.

41) Supreme Court, Nov. 28, 2003, Sentence 2003Do3972 Decision; Supreme Court, Oct. 30, 2018, Sentence 2014Da61654 Decision

42) Segye Ilbo, "How far the freedom of expression can be valid... reignition of the discussion on the abolition of contempt" May 14, 2018

43) PSPD, "(Issue Report) Status and Countermeasures on Lawsuits to Keep the People from Making Their Voices Heard, May 22, 2013.

B) Discussion on the Decriminalization of Contempt

President and the members of the National Assembly are state agencies stipulated by the Constitution, and they play the role of making decisions on and implementing various policies. If contempt is applied to these state agencies, then the contempt charges can be used to suppress the critical opinions using the public power. Meaning, if state agencies can become a subject of a crime related to honor, then the freedom of expression and freedom of press can be threatened.

There was the 'contempt of state' penalizing contempt or insulting the state or state agencies and the distribution of false information. It was abolished in Dec. 1988 after the June Democratic Struggle in 1987. The Supreme Court stated that the state and the local government are not the principal of the basic rights, not the beneficiary of the basic rights, and are subjected to wide surveillance and criticism from the people.[44] Contempt or defamation against the state agencies or the local governments cannot be established.

However, it is hard to discern whether the postings made in real life is insulting the state agency, the president or the head of the state agencies, and this uncertainty allows the investigative agencies to conduct investigations. Also, in such cases, the possibility of being investigated and penalized could weaken the liberal political criticisms and expression of opinions.

There are opinions for the decriminalization of contempt, not only for insults towards politicians or state agencies. From that perspective, people try to restrict critical expressions by using the uncertain 'contempt' charges by threatening criminal charges and civil liabilities. However, many surveys[45] related to malicious comments online show that many people believe improper expressions shown on online comments are serious problems and need to be regulated.

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44) Supreme Court Sep. 2, 2011 Sentence 2010Do17237 Decision; Supreme Court, Oct. 30, 2018 Sentence 2014Da61654 Decision

45) Jeong Gwancheol (Korea Research), Hankook Ilbo, "Malicious Comments... Are regulating and blocking the best option?", Jan. 16, 2021.

C) Democracy and Freedom of Expression

Free expression and the exchange of conscience and ideology is the most important factor of today's democracy. Meaning, the freedom of expression is an indispensible prerequisite of democracy, and a country that does not guarantee freedom of expression is not considered a democratic country.

Major international human rights organizations, including UNHRC, emphasizes the guarantee of freedom of expression stipulated in Article 19 of the ICCPR, and recommends the abolition of criminal penalty for contempt. Contempt that penalizes opinions and emotions, which cannot be verified, in itself is against the UN ICCPR.

In Korean society today, asserting the decriminalization of contempt is not easy, as there are cases of suicides by entertainers and ordinary people due to malicious and contemptuous comments online. Contempt clearly has elements of invading another's honor, even if they are opinions or an expression of emotions.

Contemptuous expressions have the function of making public his/her own opinions for not having any other countermeasures after being damaged due to the governmental authority, money or social influence beyond his/her own. Therefore, even if such expressions may be vulgar, they correspond to the degree of his/her emotions, and restricting an excessive expression is similar to censoring people sharing their feelings.[46] If fully abolishing contempt is difficult, then we must consider not overtly restricting the expression of opinions and emotions towards the president, politicians and high officials.

46) Cohen v. California, 403 US 15, 1971: the government cannot criminalize the display of profane words in public places

3. Privacy and the Right to Self-Determination of Personal Information

A. Human Rights Status 2021

Privacy refers to the right to not have his/her privacy made public, not to be hindered in creating and developing his/her privacy and to be able to manage and control the information related to him/herself. Article 12 of the Universal Declaration of Human Rights includes privacy as one of the human rights by stating that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ... [and] everyone has the right to the protection of the law against such interference." Article 17 of the ICCPR also stipulates the right to not be interfered with personal privacy, family, home or correspondence and to be protected by law against such interference or attacks.

Privacy in the US was understood as an issue of defamation under the criminal law or liability for an unlawful act under the civil law, but under the influence of 'The Rights to Privacy' written by Samuel D. Warren and Louis D. Brandeis in 1890, it became a constitutional right through a Supreme Court case in 1965. Privacy in France was also established through the case law, but in 1970, Article 9 of the Civil Code included a provision on privacy and is now recognized as a constitutional right.

Article 17 of the Constitution of the Republic of Korea guarantees privacy by stipulating that "[t]he privacy of no citizen shall be infringed." Moreover, the general human rights derived from the first sentence of Article 10 of the Constitution which stipulates that "[a]ll citizens shall be assured of human worth and dignity and have the right to pursuit of happiness," and the right to the self-determination of personal information derived from the guarantee of privacy stipulated in Article 17 are the rights for the data subject to make self-determination on when, to whom and the scope of the personal information being used and

allowed to be used. Meaning, constitutional protection related to personal information focuses on the 'autonomous control' of personal information, as well as the 'personal information' itself.

Traditionally, privacy and the right to the self-determination of personal information were understood to be in conflict with freedom of press or the development of the information industry, in nature. For example, when the press publishes private matter without permission, it can be seen as a violation of the right to the self-determination of personal information. However, privacy and the the right to self-determination of personal information are being impacted greatly by the spread of the internet, drastic development of information processing and development of and changes in the technologies, such as popularization of IoT, BigData, social media, etc.,

On the other hand, under the spread of COVID-19 in 2021, basic rights related to personal information was hidden under the goal of efficient prevention and treatment of the disease. Collection, disclosure and the surveillance of private information for the reason of prevention spread not within the government and the local governments, but also to workplace and private relationships, and there were cases of official announcements related to personal defamation, religious and sexual preferences, as well.

Moreover, in 2021, there were diverse attempts to create new value by using information, both in public and private sectors, and during the process, the issues related to basic information human rights were raised continuously during the process, including privacy and the right to the self-determination of personal information, We will look at the issues related to inquiring and providing telecommunications data by the investigative agencies, controversy on AI-based facial recognition technology and issues related to the right to move data and the MyData project.

B. Main Topics

1) Controversy over Providing Communications Data by Investigation Agencies Under the [Telecommunications Business Act]

A) Controversy Over the Excessive Request and Provision of Communications Data Under the [Telecommunications Business Act]

The criminal justice procedure is to reveal the actual truth of a crime, and is the process for the state to maintain order and realize social justice by responding to crimes. Therefore, a state collects and analyzes diverse information that may be related to a crime during the criminal justice procedure. Information is evidence for the investigation agencies and more information leads to the higher possibility of proving the case.

Crime is a social act of a criminal, and crime-related information are mostly considered personal information or communications related information that can identify the perpetrator or victim, etc. of a crime. The criminal investigation of an investigation agency is necessary to realize social and public justice, but is regulated when trying to collect and be provided with personal information for the investigative purposes, to protect the privacy of correspondence (Article 18), privacy (Article 17) and the right to the self-determination of personal information, guaranteed by the Constitution.

Specific procedures of providing personal information related to telecommunications during the criminal justice procedure is established in the [Telecommunications Business Act]. Article 83(3) of the Act stipulates the names, resident registration numbers, addresses, phone numbers, user identification and subscription and the termination dates of users as communications data, and allows the courts and the investigation agencies to request access to or the submission of communications data from the telecommunications business operators. However, the procedure for providing the communications data pursuant to the [Telecommunications Business

Act] is too broad and the procedures of control before and after the provision are insufficient.

The investigation agencies tend to request the communications data of multiple people at the same time, and the telecommunications business operators have provided the communications data without being regulated. According to a publication by the Ministry of Science and ICT (MSIT) on Dec. 24, 2021,[47] the number of communications data provided (based on the telephone number) are 5.48 million (2.92 mil. in 1H, 2.56 mil. in 2H) in 2020 and 2.56 mil. during the first half of 2021. This is approximately 1 in every 10 people's communications data being provided to the investigation agencies. Also, the number of requests per 1 request document amounts to 8.8 cases for the prosecutors' office, 4.8 cases for the police and 9.0 cases for the National Intelligence Service.

In December 2021, it was discovered that the Corruption Investigation Office for High-Ranking Officials (CIO) inquired and provided with the communications data of reporters and their families to cause social controversy. While the CIO investigated the chief prosecutor of the Seoul Central District Prosecutors' Office as related to an "allegation of the Prosecutor General behind the filing of a criminal complaint,' for being provided with an official car, etc., and the communications data of reporters, etc. were inquired and provided. The CIO explained that the inquiry was made while verifying the communications records of people related to breach of confidentiality, but refused to provide detailed information, as the case is still under investigation.[48]

There were a controversy over the press investigation and an invasion of privacy, etc. The reporters and the press subjected to the inquiry and provision of

47) MSIT Press Release, Dec. 24, 2021.

48) TVChosun, "CIO made 15 inquiries on the communications data of TV Chosun reporters··· Looked into the reporting line", Dec. 9, 2021.; TV Chosun, "Inquiry began after a report of press investigation... CIO claims it is related to breach of confidentiality case", Dec. 9, 2021.

communications data criticized the issue, and raised suspicion that at least 120 reporters' communications data were inquired and provided as of Dec. 29, 2021, through further reporting.[49] Civic groups once again raised concerns over the procedure for providing communications data, and the NHRCK expressed its opinion on Jan. 6, 2022 that the procedures for providing communications data under the [Telecommunications Business Act] must be improved.[50]

B) Guaranteeing Basic Rights During the Process of Providing Communications Data for Investigative Purposes

Korean law related to criminal justice clearly separates 'communications confirmation data' and 'communications data' as related to providing telecommunications data. Communications confirmation data refers to data related to the telecommunications facts, such as the subscriber's telecommunications dates, start and end time of telecommunications, sent/received telecommunications number, etc. Access to and request to submit telecommunications confirmation data requires warrants; meaning, prosecutor or a police can request the telecommunications business operator to access or submit data to confirm the telecommunications facts when necessary for an investigation or sentence execution. At such a time, the permission from the relevant district court or branch must be obtained in writing that includes the reason for the request, relevance to the concerned subscriber and the scope of the necessary data, etc. On the other hand, the communication data under the [Telecommunications Business Act] does not require warrants, and may be requested in writing.

49) News 1, "70 members of National Assembly from PPP subjected to communications inquiry... 67% of the total", Dec. 29, 2021, etc.

50) Statement by the Chairman of the NHRCK, "Statement by the Chairman of the NHRCK Urging to Improve the Procedure for Providing Communications Data under the [Telecommunications Business Act]", Jan. 6, 2022.

The relevant laws identify the communications confirmation data and the communications data separately and differentiates the procedure for provision because the level of protection depends on the scope and nature of the information being provided. Meaning, the communications data is a simple personal information at the start of an investigation to determine suspects or whether to proceed with the investigation, and the need for quick access of the information is more important, and thus requires simplified procedures.

However, the 'communications data' can also include important personal data, and the need to improve the current system of providing the communications data under the [Telecommunications Business Act] is being raised.[51] This is in consideration of the changing social environment, such as the development of the technology to a process large quantity of information, including BigData, and the vitalization of the combination/analysis of diverse data and creating new value by both the public and private sectors, etc.

The communications data are meta data, which are 'data within data' or 'data explaining the properties of data.'[52] Meta data may have been simply a personal information of a specific person in the past, but with the development of the technology to process large quantities of data, such as BigData and the changing environment where both the public and private sectors combine and analysis diverse data and creating new values thereof, the communications data has become the data that can determine and analyze the social relationships, activities and communications secrets of a data subject.

51) The Korean Legal News, "Controversy over the CIO's Dragnet-type Communications Inquiry ... Surge of Criticism from the Legal Community" Dec. 29, 2021.

52) Information Communications Dictionary (Refer to item 'Meta Data')

C) Direction to Improve the Communications Data Provision System Under the [Telecommunications Business Act]

The UN General Assembly adopted a resolution "Right to Privacy in the Digital Age" in 2013, and this resolution emphasized the need to strictly protect not only the contents of the communications, but also the personal information (meta data) of the communicating parties by stating that "certain types of metadata, when aggregated, can reveal personal information that can be no less sensitive than the actual content of communications and give an insight into an individual's behaviour, social relationships, private preferences and identity."[53)]

Under the current system of providing the telecommunications data, the investigating agencies can acquire the personal information of the telecommunications subscribers, without consent, but lacks any legal regulatory function before or after. This is the reason for frequent question into an invasion of privacy and highly likely to violate the right to the self-determination of personal information. The UN HRC, in the 4th Country Report in 2015, showed concern over the fact that the government can request user information, without warrant, to all telecommunications business operators for investigation purposes pursuant to Article 83(3) of the [Telecommunications Business Act].

Therefore, it is necessary to allow a request to be provided with communications data under Article 83(3) of the [Telecommunications Business Act] only when applicable under the supplementary and exception cases by reducing the reasons for allowing the provision. For example, it is necessary to consider the means of specifying the reason for the request, similar to that of Article 215 of the [Criminal Procedure Act] 'when there are circumstances where a criminal suspect is suspected of having committed a crime and the articles or persons to be seized, searched, or inspected are deemed to be connected with the relevant case.'

53) UN Human Rights Council, "The right to privacy in the digital age"(A/HRC/27/37), 2014.

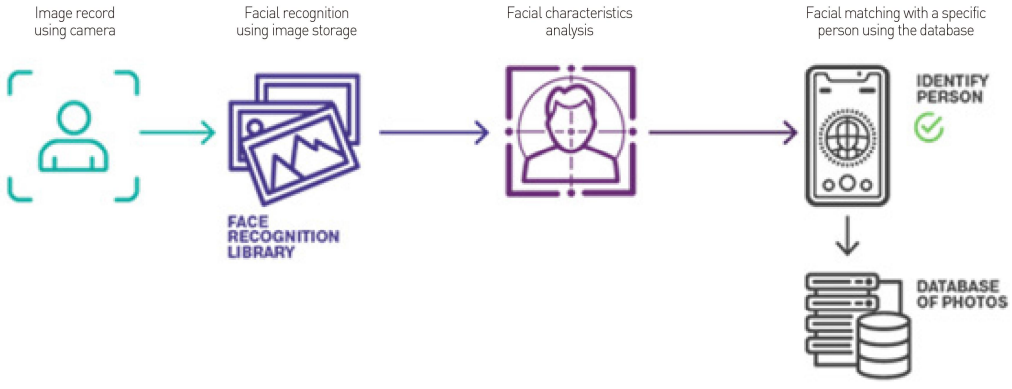
Moreover, other measures are necessary, such as the data subject receiving notice of the fact that the communications data has been provided, unless for exceptional cases. Amending Article 83 of the Telecommunications Business Act requiring the court's permission or allowing for separate pre- or post-control can also be considered. This could prevent the arbitrary and indiscriminate provision of communications data and protect the rights of the users, such as the right of self-defense, etc.

2) Human Rights Violations Controversy on Facial Recognition of CCTV in Public Locations

A) Introducing Facial Recognition of CCTV in Public Locations, Such as Central Administrative Agencies and Local Governments, etc.

Facial recognition technology allows a person's face to be automatically identified, compared or classified. Facial recognition technology makes possible non-contact individual identification, and unlike other bio-recognition technologies, allows the large quantity of individual identification or comparison without the data subjects becoming aware. Due to this technological characteristic, it can identify and classify a specific person at public locations, which a large number of people use, such as roads, squares, subways, airports and ports, etc.

Diagram 2-1 Basic Concept of Facial Recognition Technology



The facial recognition can process a massive quantity of data very quickly, incomparable to surveillance or monitoring by the naked eyes, and can confirm the identity of the subject quickly. Therefore, it can be used in crime investigations, etc. However, the facial recognition system collects and processes biometric information, and has the problem of processing 'sensitive information.' Moreover, it could lead to the mass surveillance of unspecified numbers. As such, it is highly possible to violate human rights, in nature, and must be careful in its introduction.[54]

Under the leadership of the government and local governments, several facial recognition systems have been established in 2021. MOJ and MSIT are implementing "AI identification tracking system project" to be completed by 2022. MOJ transfers the information, such as facial image, nationality, gender, age, etc. of Koreans and foreigners collected during the immigration review process to MSIT, and MIST transfers this sensitive information to private companies to research AI identification technology.

This project's purpose is to develop the immigration inspection, beyond a simple scanning of passports. The data of 57.6 mil. Koreans and 120 mil. foreigners are provided to a private company by the MOJ for this project. In Nov. 2021, the civic organizations point out that the development and use of facial recognition technology must be controlled legally, and urged to stop the "AI Identification Tracking System Project" implemented by the MOJ and MSIT.[55] Moreover, this project by the MOJ and MSIT was submitted to the Board of Audit and Inspection for a public interest audit in Jan. 2022.

MOJ and MSIT stated that there is a legal basis for collecting and using the information of Koreans and foreigners (biometrics), such as facial image, etc., for

54) Aju Business Daily, "BigTech Careful with Facial Recognition .. Multiple Hurdles from Privacy to AI Ethics", Dec. 20, 2021.

55) Public Interest Law Center Appeal, Minbyun, Lawyers for a Democratic Society Digital Information Committee, Institute for Digital Rights, Joint Committee with Migrants in Korea, Korean Progressive Network, PSPD Press Release, Nov. 9, 2021.

the immigration inspection, and the project is being implemented with private companies in accordance with the rules on the "outsourcing of personal information processing" pursuant to the [Personal Information Protection Act]. Also, the private companies are taking security measures, and plans to continue management and supervision in the future.[56)]

Local governments are implementing several facial recognition system projects. Bucheon-si in Gyeonggi province is developing an "AI History System" that can track confirmed COVID-19 cases' routes, wearing of masks, close contacts, etc. using CCTVs installed in the district and the facial recognition technology, with the goal of introducing it in early 2022. Ansan-si, also in Gyeonggi province is developing a system that can detect child-abuse in real time by automatically detecting negative emotions displayed or abuse, etc. captured through CCTV within the daycare centers in the district and notifying to the relevant agencies, and the goal is to introduce a pilot system during 2022. Jeju is also operating a pilot system that notifies 112 situation rooms, etc. when CCTV, with facial recognition technology, captures the specific person near homes or people under protective custody.

B) Biometric Information and the Possibility of "Mass Surveillance"

Information that analyzes the facial features of a specific person used in the facial recognition are biometric information, and it is combined with that person during his/her lifetime and the information that cannot be easily changed, unlike other personal information, such as name, address, identification number and passwords, etc. Biometric information has a strong personal nature[57)] that can be obtained from the body itself, and can be used as a connecting link to a database. However, the risk of danger to the data subject is great when the accumulated data are used improperly or leaked.

56) MOJ and MSIT Press Release, Oct. 21, 2021.

57) Refers to nature that is vested to a specific person only in law and cannot be transferred to another.

[Personal Information Protection Act] classifies biometric information as sensitive information and applies stronger protection standards as compared to general personal information. Sensitive information cannot be processed unless additional consent from the data subject is obtained as related to its processing, or as required or permitted by laws.

However, most of the personal information collected through facial recognition system are processed without giving a sufficient opportunity for the people to become aware of. The information is processed without giving the right to consent to the concerned individual and without freedom to select in advance or afterwards. The Council of Europe (CoE) and the EU Fundamental Rights Agency (FRA) define 'mass surveillance' as all surveillance not performed as targeted surveillance on specific individual (CoE) or "random surveillance without prior agreement" (FRA), and the facial recognition system corresponds to these definitions.

C) Direction of the Future Improvement of the Facial Recognition System Establishment Projects

Major international organizations and countries are actively discussing the danger and potential human rights violation of the facial recognition system. The major technology companies, such as Google, Amazon, IBM and Microsoft, are asserting the prohibition of the use of the facial recognition system or has declared the suspension of services.

[The Artificial Intelligence Act] under discussion by the EU stipulates the real time remote biometrics recognition system for the purpose of executing law in places publicly accessible as 'risks not to be permitted' or 'high-risk' artificial intelligence and requested prohibition in principle. Furthermore, the UN High Commissioner for Human Rights (UNHCHR), in 'the right to privacy in the digital age: report (2021)' in September 2021, urged each country to postpone the use of the high-risk artificial intelligence, including the facial recognition technology,

etc., because the real-time remote surveillance system using biometric information, such as the facial recognition, infringes on the basic rights greatly.

The establishment and operation of the facial recognition system that surveillances a large number of unspecified people based on artificial intelligence technology has the possibility of being used in ways to violate the basic rights. Therefore, when intending to install the facial recognition system, one must carefully compare the benefits and the degree of human rights violations, and must operate with a clear legal basis. The large quantity of facial information is necessary to teach the facial recognition artificial intelligence system, and the means of obtaining the clear consent of the data subject or specific and legal basis for collecting and using the facial information is necessary.

3) Controversy Over Using the Right to Data Portability

A) Introduction of Right to Data Portability

Europe is discussing the introduction of a new right, called 'the right to data portability,' to guarantee the data subject's right to control his/her personal information and to promote competition of the IT industry. When the digital platform companies are monopolizing the right to use data, the right to data portability promotes the market competition by allowing the data subjects to freely move his/her personal information based on the right of selection of the data subjects and to provide more control over the data subject's own personal information.

The EU established [General Data Protection Regulation] (GDPR) in 2018 to stipulate the right to data portability. According to this regulation, the data subjects have the right to systematically and ordinarily use his/her personal information provided to a controller,[58] and to transfer his/her personal information provided to a controller to another controller without any interference.

The right to data portability has the function of creating new types of services based on personal information. For example, if the personal information and financial transaction information owned separately by several financial companies are transferred to a single "data management company" (MyData Company). a new industry can emerge that analyzes the financial status of the data subject, including the credit rating, financial risks, consumption pattern, etc., and provides product or service recommendations that are customized individually.[59]

Introduction of the right to data portability is under discussion in Korea as well. The [Credit Information Use and Protection Act] (hereinafter referred to as the 'Credit Information Act'), amended on Feb. 4, 2020, added 'the right to request the transfer of personal credit information,' for the credit information administration company, etc. The Financial Services Commission is implementing the vitalization of the 'MyData Project,' based on this.

On the other hand, the Framework Act on Data, proposed on Dec. 8, 2020 and submitted to the National Assembly Science, Technology, Information, Broadcasting and Communications Committee on Feb. 1, 2021 stipulates the 'right to data portability,' and the 'partial amendment to the Personal Information Protection Act,' (hereinafter referred to as the 'Personal Information Protection Law'), advanced the announcement of legislation on Jan. 6, 2021, also stipulates the 'request to transmit personal information.'

B) Right to Data Portability and Human Rights Violations

Some view the introduction of the right to data portability will help vitalize the economy. Also, there are positive aspects in that the right for the data subject's personal information will increase. The OECD Secretariat pointed to an increased

58) Meaning public agencies, companies, groups, etc. processing the personal information, and same concept as the personal information controller under Korea's Personal Information Protection Act.

59) Financial Services Commission, "Plan to Introduce MyData Industry for the Financial Sector for Consumer-Centered Financial Innovation", 2018.

selection for consumers through competition, innovation of data products and services, more data flow and sharing and strengthening the data subjects' right to the self-determination of personal information as the main advantages of the right to data portability during the right to portability workshop in Apr. 2000.

On the other hand, it must be carefully considered on whether there is any conflict with the existing legal system related to personal information protection, and there must be a discussion among the entire community. There is a criticism that the discussion on introducing the right to data portability in Korea focuses on the commercialization of personal information, not on the protection of the right of the data subject.[60] In consideration of Korea's realities on consent to processing personal information, it may become a mere formality or used by the companies as justifications for using personal information,

Currently, Korean companies obtain proper consent individually from data subjects when processing the personal information, but in reality, the consent is induced with additional services or discounts, or consent is, in fact, coerced by not providing services without consent, or obtaining consent in a non-voluntary or simply as a formality. Therefore, if the data subject cannot provide consent at his/her own free will but is coerced into requesting data transfer, sensitive information, such as medical records, may be transferred to a third party, without any restrictions, and may be abused in the name of economic and industrial value creation.

Data transfer occurs with a request and consent of the data subject, but the 'consent or request of the data subject' should not simply be an external expression of intent, but must follow the clear explanation on all conditions to processing the personal information and provided voluntarily. EU GDPR provides a clear standard that the consent on the personal information processing must be from a

60) Citizens' Coalition for Economic Justice, Etc., "FSC must discard the Enforcement Decree on the provision of consumer order information for the MyData project". 2020.

completely voluntary consent,[61] and the National Assembly Research Service clearly pointed out that each individual can only provide passive consent as related to the right to data portability and the MyData project.[62]

C) Tasks for the Right to Data Portability to Function Properly

The right to data portability may be desirable in that it expands the personal information right of the data subject, but when considering the realities of Korea's personal information processing consent, etc., it may become a mere formality with a concern for violating the right to the self-determination of personal information.

Therefore, it is necessary to clarify the exercise method and procedure of the right to data portability, such as obtaining clear consent (request) in writing and providing notice and explanation on any disadvantages from exercising the right to data portability, etc.

It is improper to prevent the introduction of the right to data portability itself, when considering the need for economic and social development, along with the development of the data industry; however, further consideration must be made to come up with methods to use 'data' properly and guarantee the rights of data subjects by providing sufficient provisions to prevent the misuse and abuse of the right to data portability.

61) 「EU GDPR」 Recital 42: Consent should not be regarded as freely given if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.

62) Cho Yeongeun, Choi Jeongmin, "Issues and Tasks on the Right to Personal Data Portability and MyData", Issues and Arguments (National Assembly Research Service), 2020.

Ⅱ. Respecting the Dignity and Value of Diverse Members of Society

1. Efforts in Responding to Hatred and Discrimination

A. Human Rights Status 2021

The case of Chatbot Lee Luda's expression of discrimination and hatred during the early 2021 was problematic in that an artificial intelligence learned and reproduced the social prejudice and hatred towards women, LGBT, people with disabilities, etc. However, what's more problematic was that the Korean society's inhumane discrimination and hate speeches towards the minority are so prominent that even an artificial intelligence can learn easily.

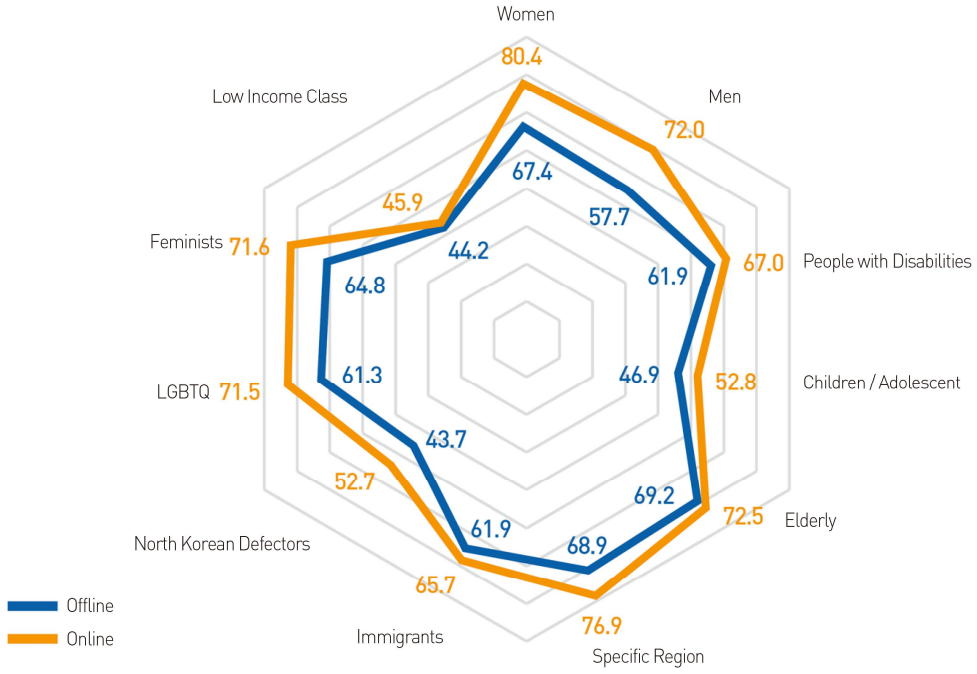
According to a survey on the awareness of hate speech online that was conducted by the NHRCK in Mary 2021, 70.3% responded that they have experience seeing or hearing people expressing hatred either online or offline – meaning 7 in 10 Koreans experienced hate speeches in one form or another during the past 1 year.

Hate speech became a social issue since 2010, and has since become one of the most important social issues in Korea. An expression of hatred violates the dignity of the social minorities and has the effect of increasing hatred towards the targeted minority group. Hate speech is aimed at a specific group that has been continuously and structurally discriminated against, and causes fear, withdrawn feeling, frustration and self-denial for the members. It also distributes distorted facts relates to the targeted group members. In the end, the spread of hate speech promotes and instigates discrimination, hatred and violence towards the targeted

group and may lead to justifying the discrimination against the targeted group, unless the civil society cleanses itself.

Graph Target of Hate Speech Experienced Online and Offline

(Unit: %)



Note: 1) Analyzed based on answers to a question "How often did you experience hate speech against the following target, both online and offline?"
2) Mobile survey on 1,200 people, over the age of 15, residing in Korea
Source: NHRCK, "Online Hate Speech Awareness Survey", May, 2021.

Consensus on the need to respond and regulate hatred and discrimination that are prevalent in Korean society has been building for some time. The National Assembly proposed an equality act this year as well, after proposing the anti-discrimination act in 2020. 100,000 people agreed with a legislative petition urging the enactment of the anti-discrimination act and the equality act. However, issues of hatred and discrimination surrounding the minorities, such as LGBTQ, immigrants and people with disabilities are receiving attention again.

B. Efforts to Resolve Discrimination against LGBTQ

The chairman of the NHRCK released a statement titled "Transgender are our neighbors" on Mar. 31, 2021, the International Transgender Day of Visibility (TDOV). In Oct. 2021, Human Rights Watch, an international human rights organization, released a report that interviewed the realities of Korean LGBTQ students, experiencing hatred, discrimination and harassment, etc.[63] Similarly, being aware of the fact that LGBTQ are living among us and that looking into the problems faced by them are matters that need to precede in order to guarantee the human rights of LGBTQ and respond to discrimination.[64]

When COVID-19 spread from clubs located in Itaewon around May 2020, related media reports continued, and sensationalizing reports that presumed the sexual orientation of the people who visited the club over flowed.[65] The Citizens' Coalition for Democratic Media monitored the articles on the Itaewon club from May 7~11, 2020 (including online news reports, and using Naver), and found a total of 1,175 articles with keywords 'gay club,' 'homosexual,' 'gay,' 'black sleeping room,' 'steamed room,' and stated that these are reports, unrelated to COVID-19 prevention, that incite discrimination against LGBTQ.

Byun Hui-su, a staff sergeant in the Korean army, petitioned to continue serving in the army after a gender reassignment surgery. However, on Jan. 22, 2020, the army discharged Byun for disability. This case received criticism from civil

63) Human Rights Watch, "I thought I was the problem," – Korean schools ignoring the rights of LGBTQ students, Oct. 2021.

64) Human Rights Watch stated that LGBTQ students are experiencing extreme isolation due to harassment, discrimination, invisibility and inaccurate information from the curriculum, and strict gender segregation custom, etc. and desperately need support. Also, harassment and discrimination experienced by adolescent LGBTQ are not problematic due to the government's inaction, but is an outcome of the current policy that encourages discrimination and isolation. Also, it pointed out that the Korean government has not taken any action to guarantee the right to the equal treatment of LGBTQ, with strong opposition by religious organizations and conservative groups as an excuse.

65) NHRCK, Aug. 27, 2021 20JinJeong0314600 Decision, Releasing too much information on the confirmed cases of COVID-19 by local governments

organizations, media, international community and the NHRCK. This case showed the realities of the Korean army, where LGBTQ soldiers have been consciously and systematically excluded and ignored.

Seoul Metropolitan Office of Education released '2nd Student Human Rights Plan (2021-2023') in Apr. 2021, that included the 'protection and support of LGBTQ students' and 'reinforcing sexual equality monitoring,' in the 'School without Discrimination and Hatred' section. The Ministry of Gender Equality and Family stated in April that the 'Framework Act on Healthy Families need to be amended to fit the changing families,' and the National Assembly need to pass the pending partial amendment to the [Framework Act on Healthy Families]. The amendment expands the definition of a family, to change the term 'healthy family' to a value-neutral term 'family.'

Some civic groups, led by religious groups, oppose the two matters above. They argue that the student human rights plan encourages homosexuality, and amending the Framework Act on Healthy Families will cause the legalization of same-sex marriage.[66][67] After much controversy, Seoul Metropolitan Office of Education's student human rights plan includes support for LGBTQ students, but the amendment to the Framework Act on Healthy Families is still pending in the National Assembly, as of the end of 2021.[68]

Even though the cases related to sexual minorities have gathered the attention of the society since 2020, hostility towards sexual minorities did not stop, lacked serious social discussion and rarely led to system changes. Moreover, government

66) Money Today, "'Student Human Rights Plan is encouraging homosexuality? Never-ending conflict", Jan. 8, 2022.

67) Joongang Ilbo, "16-Year War on Healthy Family Act 'Discriminatory Law' vs 'Conspiracy to Legalize Same-Sex Marriage'", Aug. 22, 2021.

68) On Dec. 23, 2021, NHRCK made a recommendation to the Chairman of the National Assembly to enact a law to protect the right of LGBTQ for family union and review and resolve the partial amendment to the Framework Act on Healthy Families.

policy, academic research, statistical data, main administrative agencies, groups and public support for the human rights of LGBTQ is very insufficient in Korea. The government department responsible for LGBTQ-related policies is unclear, and there are no official statistics or data. This indicates difficulty in improving the human rights condition of LGBTQ in the short-term.[69]

However, there are social activities to protect the human rights of LGBTQ. Civic groups are urging the National Assembly to enact the comprehensive anti-discrimination law and equality law still pending in the National Assembly, and are conducting assemblies, a campaign to obtain signatures and press conferences. Daejeon District Court held that the army's decision to discharge Byun Hui-su for underdoing gender confirmation (reassignment) surgery could not be legally justified and cancelled the dismissal. Also, the NHRCK expressed opinion and released a statement requesting the National Assembly to pass the pending equality act,[70] and recommended to provide a guideline to determine the existence of LGBTQ in the national statistics in order to submit the problems with the human rights of LGBTQ for policy consideration.[71]

Laws and policies related to the human rights of LGBTQ are still lacking, and only a few LBGTQ publicly disclose or inform the people around them on their sexual identity. Therefore, a road to protecting the human rights of LGBTQ will be long and difficult, requiring people's continued attention and effort. No one should suffer from discrimination, stigma and negative stereo-type for their sexual identity, and allowing everyone to play their roles in the society as a dignified person through the equal treatment and proactive support should be the direction the human rights system and policy must pursue.[72]

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69) Korean Bar Association, 2020 Human Rights Report, 2021

70) Statement by the Chairman of the NHRCK on Nov. 10, 2021

71) NHRCK, Dec. 2021, Recommendation for the policy to improve the human rights condition of transgender

72) Human rights of LGBTQ are presented as an issue of abolishing discrimination and is closely related to the topics in this area. Of course, the topics related to the human rights of LGBTQ need not only be written from the context of discrimination and hatred, and may consider the issues of school education and harassment of

C. Main Topics

1) Efforts to Enact the Comprehensive Anti-Discrimination Act

A) Awareness on Hatred and Discrimination and the Motion for the Equality Act

Discrimination not only impedes individual's enjoyment and exercise of the basic rights but is a main factor that causes social conflicts. Therefore, regulating discrimination is a mechanism for respecting the diversity of the members of the society and in resolving social conflicts from discrimination. The Korean Constitution also states that the principle of equality is the key to guaranteeing the basic rights.

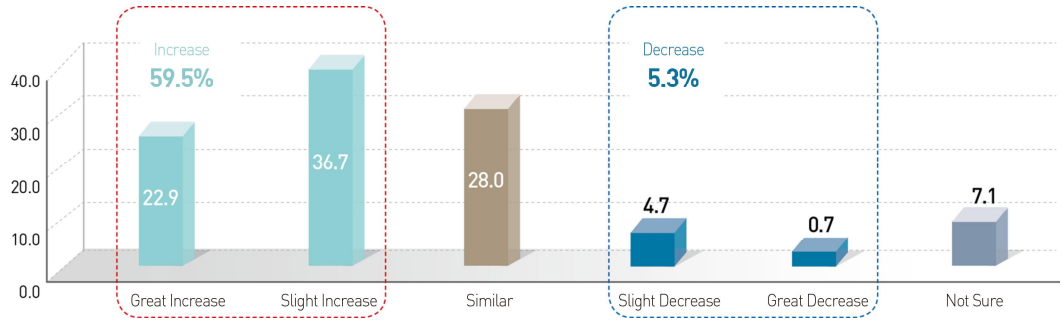
However, according to the online hate speech survey conducted in May 2021,[73] 59.5% of the respondents thought that hatred and discrimination in Korean society had 'increased' since COVID-19 (great increase 22.9%, slight increase 36.7%), which is 10 times the respondents who thought they had 'decreased,' at 5.3% (slight decrease 4.7%, great decrease 0.7%). Also, 90.2% responded that the actual social conflict will intensify depending on the result of the hate speech used in Korean society. Only 26.1% of the respondents agreed with the opinion that 'the discrimination phenomenon will resolve itself naturally.'

adolescent LGBTQ. However, we hope to deal with it in more detail in the following 『the Report on Human Rights Situation in the Republic of Korea, and the issues of human rights of LGBTQ in 2021 will be dealt with in the areas related to discrimination and hatred and human rights in the army.

73) NHRCK, 'Online Hate Speech Survey", May 2021.

Graph Awareness on Hatred and Discrimination Since COVID-19

[N=1,200, %]



Note: 1) Responses to a question 'How do you think the Korean society's hatred and discrimination has changed before and after COVID-19?'

2) Mobile survey using structured questionnaire on 1,200 people, over the age of 15, residing in Korea

Source: NHRCK, 'Online Hate Speech Awareness Survey", May 2021.

Attempts to establish a law to become the basis to prevent discrimination and for the effective relief of damages in all areas of every life have continued. The NHRCK made a recommendation to the prime minister to implement the legislation of the [Recommended Bill to the Anti-Discrimination] presented by the NHRCK in Jul. 2006, and also expressed its opinion to the 21st National Assembly on Jun. 30, 2020 on the need for a quick legislation based on the [Act on Equality and Anti-Discrimination] (hereinafter referred to as the 'Equality Act') draft. The bill was submitted to the National Assembly several times, but the comprehensive anti-discrimination act or the Equality Act has yet to be legislated. The UN's HRC, CESCR, CEDAW, CED and CRC have recommended the Korean government to enact the Equality Act (anti-discrimination act) continuously.

On Jun. 29, 2020, 10 members of the National Assembly submitted the Anti-Discrimination Act draft, and in 2021, Lee, Sang-min, Park, Ju-min and Kwon, In-suk, each submitted the Equality Act drafts. 100,000 people agreed to the legislative petition for the enactment of the Anti-Discrimination Act and the Equality Act. The NHRCK released statements urging the 21st National Assembly to enact the Equality Act on Jun. 21, 2021 and Nov. 10, 2021.

On the other hand, some media and groups argue that the comprehensive anti-discrimination act and the Equality Act currently under discussion can overly restrict the freedom of expression, and the provisions related to sexual orientation needs 'social consensus.' Also, more than 100,000 people agreed with the petition to oppose the legislation of the Equality Act.

B) Need to Enact the Equality Act

Currently in Korea, different laws regulate discrimination based on disability, gender, age and the specific types of employment. However, individual laws cannot improve the realities of diverse discriminations. Individual identities are composed of diverse properties, including gender, age and disabilities, etc., and they overlap in real life. Therefore, a law that can comprehensively interpret this diverse discrimination is needed.

The integration of laws that regulate discrimination is a worldwide trend. Most of the OECD member countries already have the Equality Act. The UK enacted the [Equality Act] in 2006 to more effectively respond to the problems of discrimination, when it had different laws and agencies dealing with different types of discriminations.

Some argue that the Equality Act will violate the individual's freedom of expression or religion and may cause reverse discrimination. However, the Equality Act is legislation to materialize the concept of equality in the Constitution and does not go against the individual's freedom of expression or religion. We can fully enjoy the freedom of expression when we can express our identity or opinion without the fear of being isolated or excluded from the most important spaces in our lives.

The proposed Anti-Discrimination Act and the Equality Act do not intend to intervene in people's private lives, and the proposed Equality Act by the NHRCK does not prescribe criminal penalty for acts of discrimination. Religious activities, such as worship service, mass, Buddhist ceremony and evangelism are not dealt

with in the Equality Act. It stipulates activities that are necessary in everyday life and requires state's intervention, such as employment, education, goods, services and administrative services, etc., and provides rules for correction.

As related to the issue of reverse discrimination, one must pay attention to the fact that as an individual's identity is not composed the same for everyone, everyone and anyone can experience discrimination at various circumstances. Trying to correct discrimination and materialize equality do not take away another's share and only function as the process of enlarging it. Moreover, with the worldwide spread of COVID-19 recently, we experienced that the problems of discrimination is relevant to everyone.

C) Task of Establishing Standards to Respond to Hatred and Discrimination

In order to heal the custom of discrimination and hatred structured within Korean society, pan-societal efforts and responses are desperately needed. It cannot be handled by the [National Human Rights Commission of Korea Act] or individual anti-discrimination laws. Therefore, it is necessary to establish a comprehensive standard towards creating an equal society by enacting the Equality Act.

The National Assembly must fulfill its role as the democratic leader for Korean society to advance the value of equality. Of course, problems with the proposed laws, and any expected reverse effects during its implementation, etc. must be fully considered and corrected.

Moreover, follow-up measures for the effective implementation of the Equality Act must also be performed even after its enactment. As it is a comprehensive law, the law by itself cannot be an effective guideline for individual items. With the enactment of this law, the government must take the measures to establish more detailed and actionable standards in each area.

2) Hate Speech Towards LGBTQ

A) Controversy Related to LGBTQ by Media, Officials and Politicians

According to a survey on people's perception by numerous survey agencies,[74] perception on the rights of LGBTQ has improved, although slightly, in various areas, including the legalization of same-sex marriage, being fired due to sexual orientation, individual impression on LGBTQ, etc. However, hate speech itself has increased, mostly online, and the hate speech towards LGBTQ is also at a level to cause concern.

Most people in Korea encounter LGBTQ through media reports and video, such as TV dramas and movies. The spread of COVID-19 from Itaewon clubs during May 2020 is an example. At the time, the media focused its reports on the sexual orientation of the visitors to the Itaewon clubs. Many civic groups assessed these reports as inciting discrimination against LGBTQ, unrelated to COVID-19 prevention.[75]

On Feb. 13, 2021, SBS aired the movie "Bohemian Rhapsody" and deleted or blurred the scenes where the main character kisses his same-sex partner. SBS explained that it did not intend any opposition to homosexuality, and stated that It only referenced a case where the Korea Communications Standards Commission sanctioned a TV drama 〈Seonam Girls' High School Investigation Team〉 for airing a close-up of two high school girls kissing in 2015. However, civic groups and domestic and overseas media criticized it as discrimination and censorship.[76]

A candidate for the 4/7 election for the mayor of Seoul, when asked 'whether he has any intent of attending the queer festival?' during a TV debate on Feb. 18, 2021, answered that 'a person's human rights must be respected,' but 'the right to

74) Gallup Korea, Gallup Report (May 2021), Regular Survey of Hankook Research (Jul. 2021), etc.

75) CCDM, "Reports on Itaewon Clubs, Is Media a Cradle of Hatred?", May 14, 2020.

76) Hankook Ilbo, ""SBS Deleting Scenes from Bohemian Rhapsody Becomes an International News... Foreign press dubbing 'China-like Censorship'", Feb. 18, 2021.

refuse those must also be respected.' Also, 17 government employees of Seoul released a statement asking the candidates to 'clearly state their position on hosting a queer festival at Seoul Square.' on Mar. 16, 2021.

There were controversy as to whether these statements made by public officials and politicians are an acceptable expression of opinions or statements that cause prejudice against LGBTQ. The NHRCK urged the government to make efforts by pointing out the problems of hate speech towards LGBTQ, as related to these cases.

B) Standards on Hate Speech Towards LGBTQ

According to Article 20(2) of the UN's ICCPR, Article 4 of the ICERD and other international rules, interpretative guidelines and legislations, the 'hate speech' can be defined as expressions having justifying, inciting and reinforcing effects on discrimination by (1) insults, disparage, contempt, threat, etc. or (2) by propagating or inciting discrimination or violence on certain individuals or groups for the reason of gender, disability, religion, age, region of origin, race, sexual orientation, etc.

The people from the aforementioned cases do not oppose LBGTQ itself, but assert that they are opposing certain actions (same-sex kissing, queer festival at Seoul Square) to protect the sensibility of adolescents, and therefore, are giving a proper expression of an opinion. Moreover, there are a substantial number of people who agree.

However, these civic groups accept the general body exposure or display of affection between the sexes, but only oppose similar actions by LGBTQ, in the name of ethics and morality, and this is pointed out as being an act of discrimination and prejudice.[77)]

77) Comments on Rainbow Action Against Discriminating LGBTQ, Feb. 15, 2021.

Seoul Citizens' Human Rights Violation Relief Committee determined the statement made by a Seoul government employee on Dec. 20, 2019[78] to be hate speech.[79] According to the decision, the concerned statement did not simply express an opinion opposing the queer festival, but used expressions that emphasized obscenity, for the general public to recognize the "queer festivals to be obscene" and to further recognize the "LGBTQ community to be obscene."

There are opinions that specific objects, exhibitions, sales activities and acts of exposure and expression from the queer festival may be 'suggestive' or 'harmful' to adolescents, but they are not 'obscene' as prohibited by the Criminal Act.[80] These opinions are clearly not the reasons to exclude the queer festivals from allowing to use the Seoul Square, but trying to stipulate them as worthless acts or disorderly conducts to be subjected to legal prohibition is, in itself, a social prejudice against the LGBTQ community. It is making a conclusion that the principal of the festival is the LGBTQ community and such fact leads to obscene or decadent acts, not based on the contents of the queer festival.

C) Adverse Effects of Hate Speeches and Need to Establish Countermeasures

Hate speeches' impact and the degree of an adverse influence may differ depending on the position and status of the speaker. The visibility of minorities through media, etc. plays an important role for the people to recognize the LGBTQ community as members of the society. On the other hand, hate speeches of public officials and politicians can spread fast and cause more fear among the members of the targeted group, and the acceptability of the idea encompassed in the hate speech will increase among other members.

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78) 17 Seoul government employees released similar statement in 2019.

79) Recommendation for Correction by Seoul Citizens' Human Rights Violations Relief Committee on Dec. 20, 2019 (19-Application-47)

80) Seoul, 'Casebook of Human Rights Violations by the Seoul Citizens' Human Rights Officer (2019)' referencing expert opinions, 2021.

Hate speeches by the media, politicians and public officials infringe on the dignity of the members of the group subjected to the hate speech and stipulates the members of the specific group as inferior or dangerous. Moreover, the distortion of the public opinion accelerates inequality in policy and system or to avoid any corrections on the inequality. This will lead to a society where discrimination and exclusion is systemized. On the other hand, it will lead the members of the targeted group to feel weakened, afraid, frustrated, and ultimately to self-contempt and self-denial.

According to the [Transgender Hatred and Discrimination Survey] released by the NHRCK in Feb. 2021, 337 transgender (57.1%) have depression, 143 (24.4%) are diagnosed or treated for a panic attack. In 2018, researchers from Korea University Health Science School conducted a survey on 278 transgender for their health. The result showed that 40% attempted suicide, which is much higher as compared to adults (0.5%) and adolescents (3.1%) in the same year.

	Transgender	Adults over the age of 19
Depression	57.1%	3.9%
Panic Attack	24.4%	0.2%

Note: 1) Ratio of transgender respondents who answered that they have been diagnosed or treated for depression ora panic attack in 2019
2) For adults over the age of 19, statistics on chronic illness from the webpage of Korea Disease Control and Prevention Agency for 2018 and results from the survey of mental illness in 2016 and 2017 by Samsung Seoul Hospital were used
Source: NHRCK, [National Human Rights Status Survey], 2021.

Byun Hui-su, a transgender soldier, who 'wanted to become a good soldier, regardless of sexual identity,' (press conference on Jan. 22, 2020) died on Mar. 3, 2021. Staff sergeant Byun underwent a gender reassignment surgery while serving in the army was discharged for disability. On Feb. 8, 2021, transgender writer L and on Feb. 24, 2021, a transgender activist K died. The transgender activist K wrote "I'm exhausted... from life, hatred and hate towards me... it has been building for a long time ... I'm sorry" on social media one day prior to the death.

Many international human rights rules adopted a principle that guarantees the dignity and equality of all people and prohibiting discrimination, and emphasizes that restricting hate speeches is not violating the freedom of expression. The UN Committee on the Elimination of Racial Discrimination (CERD) through its general recommendation No. 35 in 2013, confirmed that hate speeches 'denies the key human rights principle of dignity and the equality of the human,' and freedom of expression is not unlimited and may be limited to a degree. The right to be equal and be free from discrimination, the right to be free and the freedom of expression are mutually supporting human rights items.

Statements by the media and public officials have large impact on the human rights of LGBTQ, and therefore, it is necessary to establish measures, including creating laws and system to guarantee the rights of LGBTQ, including the Anti-Discrimination Act, the implementation of 'comprehensive sex education,' that considers diverse sexual orientation and sexual identity, monitoring and responding to media's use of hate speeches towards LGBTQ, supplementing and distributing the guideline on the media reporting of LGBTQ, and including provisions on prevention and the prohibition of hate speeches in the ethics code of political parties, etc.

3) Opposition and Hatred of Islam Mosques and Residential Facilities for the Disabled People

A) Controversy Over Opposition to Establishing a Local Community Facility

Muslim students studying at University K obtained a building permit from the district office to build an annex to the house, used as a prayer room, to be used as an Islam mosque, and began construction in Dec. 2020. However, the district office ordered the suspension of construction against the building owner in Feb. 2021, as they were faced with local residents' opposition to building an Islam mosque. The court ordered preliminary injunction for the district office's suspension

of the construction order on Jul. 19, 2021, and confirmed the illegality by cancelling the suspension of construction on Dec. 1 of the same year.

During the process, the civic groups condemning the district office's order to suspend construction and the residents opposing the construction of Islam mosque each held press conferences, assemblies, released statements and submitted petitions continuously. Some residents displayed the banners and pickets around the construction area that included contents with racial and religious hatred.[81] Some pickets were attached to the windows of Muslim students' homes.

Residents of a village opposed the transfer of a facility for the severely disabled since 2020. The city and the facility foundation purchased the building to relocate the facility and tore down the existing building on the land. However, the some residents entered the construction site and damaged the facilities and equipment, blocked the construction workers from entering the site, interfered with the construction by suing force, such as attacking the foundation employees, etc., and conducted the opposition assembly in front of the city hall.

During the process, some residents displayed banners and pickets opposing the construction of the facility and shouted slogans. They include "How can you build a facility for severely disabled people near a town with lots of female college students," "Absolutely opposing the relocation of a facility for severely disabled people that will kill all the villagers," etc. Moreover, the petition stated that "if a facility for severely disabled people is located at the center of a village, many female college students will feel disgusted," "Female college students will not move

81) Confirmed contents include "absolutely opposing the construction of the Islam mosque that will kill the residents," "Construction of the Islam mosque that began with a lie... we will not be tricked twice," "Absolutely no Islam mosque that is the cradle of terror." Moreover, expressions included the exclusion of other cultures, such as "Islam that does not assimilate with our culture will not be permitted," and shows hostility based on negative notion and prejudice against the religion and believers, such as "Muslims who deceive and threaten their neighbors leave your country immediately," "Muslims who kill people brutally and behead them get out of this area. Terrorists! right now," and "Islam is an evil religion that kills people."

into the town for a concern for sexual crimes, etc.," and that "it will threaten the right to live of the residents and the students' right to safety."

The NHRCK determined that the residents' words are racial discrimination and discriminatory acts prohibited by the Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights and the Act on Welfare of Persons With Disabilities for both cases on Sep. 2, 2021 and Nov. 3, 2021.[82] Afterwards, banners with racial discrimination and discrimination against disabled people some what disappeared, but the construction of the Islam mosque is still being delayed as of the end of 2021, notwithstanding the decision of the court.

B) Discrimination and Slander Exposed During the Process of Opposing the Incorporation into the Local Communities

In Korea, there are many cases where the facilities for the disadvantaged, such as disabled people, etc., are concluded as unpleasant facilities and opposing them for the reason of decline in house prices, etc. According to an analysis by the Alternative Dispute Resolution Center of Korea on complaints related to unwanted facilities among the group complaints received by Seoul between 2013 and 2016, the most complaints related to recycling facilities, waste facilities, etc., and the second most complaints related to daycare and disabled welfare facilities, etc.[83] However, according to the survey by the Ministry of Education in 2017, there was no meaningful difference in the real estate price near 167 special schools for the disabled people located nationwide.[84] Assertions that the Islam mosque will cause the neighborhood to become a slum or that disabled people may commit crimes resulted from prejudice and distorted assumptions.

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82) NHRCK, Sep. 2, 2021, 21JinJeong0426300 Decision; NHRCK, Nov. 3, 2021. 21JinJeong0568200 Decision

83) Hankyoreh, "NYMBY society... avoiding even public and welfare facilities'", Oct. 11, 2017

84) Ministry of Education Press Release and "Policy Study to Seek Progressive Direction to Establish Special Schools", Apr. 4, 2017.

Muslims residing in Korea are well aware of the main elements of conflict that could occur during services, and muslim services are quitely conducted. Also, there is no basis in assuming that the gathering of many foreigners in the area will cause safety issues. The area is not turning into a slum because Muslims are moving into the area, but it is more likely that Muslims are moving into the area that has already become a slum due to its low rent, etc.

It is hard to find cases where disabled people residing in a facility for the disabled committing crimes in the local community, especially sexual crimes. Considering the physical conditions of the users of residential facilities for the severely disabled people, it is highly unlikely for them to commit sexual crimes against adult females. Calling the facilities for the disabled people as unpleasant facilities based on these prejudices and the act of denying the facilities for the disabled people to move to the community are considered improper discrimination.

C) “Freedom of Expression” and the “Right to be Free from Discrimination”

One of the characteristics of the two aforementioned cases is that the residents did not simply express their opinion opposing the construction of the facilities, but actively expressed opinions that insult the disadvantaged and maliciously slandered and derogated them.

Muslim students and their families were exposed to banners that included phrases that were hostile towards them for 6 months. Being isolated due to linguistic and cultural differences and being exposed to an environment that is intentionally hostile towards you for a long term is fatal to a person. These circumstances can cause serious damage to the mental health of these students and their families, especially the children.

On the other hand, in the past the disabled persons were considered inferior and needed to be segregated, but this case is seen as peculiar in that the disabled people are also considered dangerous and threatening the safety of others – to be

removed from the local community. This type of hate speech can act more actively in excluding the disabled people from our neighborhood.

Freedom of expression is an important fundamental right guaranteed by the Constitution of Korea. However, even a fundamental right guaranteed by the Constitution is not unlimited. The Constitution provides that all freedom and the rights of the people may be restricted with laws when necessary for the public welfare, and although the freedom of expression is guaranteed, it cannot violate the other's honor or rights.

According to the UN's ICCPR that prohibits advocacy of national and racial hatred, and the United Nations Strategy and Plan of Action on Hate Speech that defines, and prohibits, the hate speech as a discriminatory language against an individual or a group due to other identity factors, such as religion, nationality, citizenship, race, etc., the banners and pickets that covered the site of the Islam mosque construction can be considered hate speech. Moreover, the Council of Europe (CoE) considers Islamophobia, a phenomena of discriminating Islam, to be racism, not just a religious discrimination.

Article 8 of the Convention on the Rights of Persons with Disabilities adopted by Korea stipulates "to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life," and requests the concerned countries to "adopt immediate, effective and proper measures" for this purpose. The Committee on the Rights of Persons with Disabilities (CRPD), in its first country report of Korea, expressed concern for a lack of sufficient measures to integrate the people with disabilities into the local communities.

D) Danger of Hate Speech as a Method of Expressing Intentions and Need for Regulations

Hate speech refers to expressing discrimination or hostility against a certain group through words and symbols. Hate speeches towards minorities can provide opportunities to incite and justify discrimination, and therefore, is more serious than ordinary insults. Hate speech, in itself, is a form of discrimination and a precursor to an act of discrimination.

The cases of opposing the Islam mosque and facilities for the disabled people are cause for a deep concern in that they are acts and expressions of refusing and excluding the socially disadvantaged people, not protecting and supporting the disadvantages within the local communities. Moreover, the use of hate speech as a means of showing their intent of accomplishing their wishes is a cause for more concern.

The local governments play an important role in resolving the above two cases. Earlier, the district office ordered a suspension of construction due to the complaints filed by the local residents, and did not follow the legal procedures. Also, when the banners and pickets that included hate speech towards Muslims were displayed, measures were taken according to the [Act on the Management of Outdoor Advertisements and Promotion of Outdoor Advertisement Industry], but no special measures were taken to protect the victims.

The local governments must make the efforts to resolve the problems to protect the human rights of minorities, such as actively persuading the residents, etc. Of course, there is no clear regulation allowing the local governments to directly regulate hate speeches. As such, it is only proper to quickly enact the pending Equality Act in order to create a legal basis to actively regulate various forms of hatred and discrimination.

2. Persons with Disabilities

A. Human Rights Status 2021

The UN, in the Declaration on the Rights of Disabled Persons in 1975, emphasized that people with disabilities have the right to dignity, value and liberty and receive corresponding treatment, similar to people without disabilities. Afterwards, the UN continued the discussions related to the rights of disabled persons, such as defining fundamental concept and terms, providing guideline in establishing disability policies, etc., and the Convention on the Rights of Persons with Disabilities (CRPD) was adopted unanimously by 192 countries at the UN General Assembly on Dec. 13, 2006. The Declaration on the Rights of Disabled Persons became the foundation for the policy on people with disabilities in many countries, and Korea ratified it in 2009.

The human rights of persons with disabilities in Korea is developing around the groups for the persons with disabilities participated by the persons with disabilities, their families and the general public. Recently, the movements for the human rights of persons with disabilities are becoming specialized in many areas, and national groups are emerging. Specific results are being achieved, such as the enactment, the amendment of laws related to the human rights of persons with disabilities and systems improvement by making public the issues related to the human rights of persons with disabilities as a social issue, either individually or jointly.

The year 2021 showed advancement related to the issues asserted by the persons with disabilities and relevant groups, but also showed its limits. Also, many cases of abuse were reported to show unsolved issues. On the other hand, the lives of persons with disabilities were also restricted due to COVID-19.

Issues related to COVID-19 will be dealt with in a separate section. We will look at 5 topics receiving attention during 2021: (1) detailed look into the cases of abuse within the facilities for the disabled persons; (2) flow of system related to the deinstitutionalization of persons with disabilities; (3) detailed look at discussion on expanding the abolition of medical benefits to people obligated to support the disabled persons and the abolition of the grading system for persons with disabilities; (4) analysis on the right of mobility of disabled persons and the right to digital access; and lastly (5) human rights violations and discrimination continuing in Korean society by focusing on the cases of labor exploitation of persons with a developmental disability. We will look at the status of the human rights of disabled persons in 2021 and will propose tasks and directions for the future.

B. Main Topics

1) Repeated Cases of Abuse of Persons with Disabilities within Facilities

A) Abuse of Persons with Disabilities within the Facilities in 2021

According to the "2020 Report on the Status of Abuse of Persons with Disabilities" jointly published by the Ministry of Health and Welfare and the National Advocacy Agency for Persons with Disabilities, the abuse of persons with disabilities occur at home (39.1%) and the residential facilities for the persons with disabilities (14.9%), and 26.4% of the abusers are employees of these facilities. Forms of abuse are diverse, including physical, emotional, financial and neglect. Abuse of persons with disabilities cases that occur at the facilities among all abuse cases account for 21.9% (195 cases) in 2018, 23.5% (222 cases) in 2019 and 14.9% (150 cases) in 2020. Abuse within the facilities decreased by 32.4% in 2020, as compared to the previous year, but it requires a further review to determine whether the number of abuses actually declined or whether it was due to COVID-19, when access was restricted and temporarily closed.

According to the Seoul office of the National Advocacy Agency for Persons with Disabilities, 20 facilities were investigated on site for the reports of abuse of persons with disabilities, which is the most number of cases during the past 3 years. Physical and emotional abuse by employees account for a large portion of the abuses reported, and vocational rehabilitation facilities also combined problems of labor exploitation and unpaid wages.

One of the most noteworthy physical abuse case within the facilities in 2021 is a case where an employee and the facility manager were arrested and charged for abuse resulting in death and violation of the [Act on Welfare of Persons with Disabilities] in Jun. 2021. Here employee of a daycare center for persons with disabilities forcefully fed kimbap and rice cake to the victim and the victim died. In the same month, another person with disabilities died at a facility in Hwasun,

Jeollanam-do, and the media reports suggested a possible abuse, and a facility in Yeongdeok-gun, Gyeongsangbuk-do was closed down through administrative disposition after a case of abuse was confirmed.

There were other abuse cases confirmed through media reports or an investigation by the NHRCK. However, many abuse cases within the facilities become known through reports by the employees, and therefore, we presume that there are many other abuse cases that are not known.

B) Reason for Repeated Abuse Cases

It is hard to consider the abuse cases within the facilities as a personal problem of the abuser. We must consider the reason as a combination of various causes, including complacent responses and a lack of will to make improvements of the facilities and corporations, passive guidance and the supervision of local governments, delayed investigation and insufficient penalties, etc.

The most prominent problem for the majority of the abuse cases is the lack of awareness on the disabilities. Most of the employees at the facilities are trained personnel, but some employees give rise to circumstances for abuse, due to a lack of understanding of the characteristic of the users, insufficient response, etc. Abuse occurs when employees believe that they need to instruct the persons with disabilities forcefully when communication is difficult, or employees use violence to control the persons with disabilities and the degree of violence escalates. Also, there are cases of witnessing another employee abusing the persons with disabilities, such as violence, verbal abuse, emotional abuse, etc., when failing to restrain or keep quiet because they do not know that they must report such incidents.

There are situations where the abuse cases are not resolved early due to lukewarm measures during the reporting and processing stages after the abuse has occurred. Due to the nature of the facilities for persons with disabilities as being closed, unless the abused person reports directly, the only way for the abuse cases

to become known is through reports by other employees. However, it is difficult for the internal employees to report abuse cases, as they are labelled as a whistle-blower and will have a difficult time finding another job, and must testify at a trial, etc.

The employees who witness abuse often report to the facility manager, rather than reporting to the police or other advocacy agencies, and typically in such a case, the human rights keepers within the facility first investigate the case and proceed with penalties through personnel committee, etc. However, some facilities abuse this procedure, and when the abuser voluntarily resigns, they deem the problem to have been resolved and fail to take other follow-up measures, including protecting the victims, etc.

When abuse or human rights violation occurs at the welfare facilities, the local government implements administrative disposition pursuant to the Social Welfare Services Act or the [Act on Welfare of Persons with Disabilities], and they are the order of improvement for the first time, changing the head of the facility for the second time and the closure of the facility for the third time. For serious violation of human rights, one strike out policy is possible, and if a person obligated to report conceals the abuse or do not cooperate with the investigation, etc., then the person may be fined for the violation of the obligation to report. However, in some cases, administrative disposition on abuse cases, with clear evidence, have been delayed or passive, for reasons of not having been recommended by the NHRCK or the advocacy agency for persons with disabilities.

C) Tasks to Improve the Issues of the Human Rights Violations of Persons with Disabilities within the Facilities

The Constitution stipulates the right to 'a life worthy of human beings' (Article 34(1)), the State's 'duty to endeavor to promote social security and welfare' (Article 34(2)) and 'citizens who are incapable of earning a livelihood due to physical disability ... shall be protected by the State' (Article 34(5)). Moreover, the State and

the local governments establish and operate welfare facilities for persons with disabilities to guarantee a basic livelihood to persons with disabilities difficult to live at home, pursuant to Article 34(1) of the [Social Welfare Services Act] and Articles 58(1) and 59 of the [Act on Welfare of Persons with Disabilities].

In the end, the purpose of establishing residential facilities for persons with disabilities is supporting the residence and basic livelihood of the users, and health management, etc. Therefore, faithfully performing these are work obligations of the facility managers and employees, and neglecting these duties are against the purpose of establishing the facilities. Especially for severely disabled persons, who are unable to defend him/herself, the responsibilities of the persons obligated to protect these persons with disabilities are heavier, as these obligations are directly connected to the life of the users.

It is important to improve the human rights awareness of the employees in order to improve the human rights violations of the persons with disabilities within the facilities. For this, it is important to make reports upon the occurrence of human rights violations, so the issue can be processed fairly without being delayed. The cases recognized as the human rights violations of the persons with disabilities by the courts and the NHRCK, etc. should be spread to each facility, and professional education on mediating the actions of persons with disabilities during the refresher education of the employees.

Moreover, it is important to recognize the fact that the reporting persons are stigmatized as a betrayer in reality, even though any disadvantageous treatment of a reporting person is prohibited by the [Act on Welfare of Persons with Disabilities]. In response to this, it is necessary to consider introducing additional systematic safety guards to protect the reporting person, including support for employment, mental health and a lawsuit, etc.

Upon the occurrence of human rights violations to the facilities users, it is necessary for the facility and/or the corporation to verify the facts, objectively

and transparently, and to take measures to protect the victims. Supervising agencies must shorten the time to collect evidence related to the human rights violations, and when evidences are collected, an administrative disposition must be placed immediately to warn the facilities. It is necessary to strictly handle the case through proper penalties for the abuser and applying consistent standards.

2) Process of Implementing the Deinstitutionalization of Persons with Disabilities

A) Preparing and Implementing the Deinstitutionalization Roadmap

Residential facilities for persons with disabilities began with the purpose of providing care to people having difficulties with employment and daily lives due to physical and/or mental disabilities. According to a survey on residential facilities by the Korea Disabled People's Development Institute and the Ministry of Health and Welfare in 2020, 29,086 people live in 1,539 residential facilities for persons with disabilities, as of December 2020.

However, if a disabled person enters the residential facility involuntarily, the residential facility has elements of human rights violations, structurally, because the individual's intent and urges are restricted, privacy is controlled and individualized access for the opportunity of human development and individual quality of live is difficult. Limitations on these protective facilities are shown by the fact that the abuse and human rights violations of persons with disabilities have occurred consistently within the residential facilities.

According to the results from a survey of residents at residential facilities for the severely disabled persons,[85] 42.6% of the residents answered that 'they want to live

85) NHRCK, "Condition Survey on Persons Living in Facilities for Severely Disabled Persons and Persons with Mental Disabilities", 2017.

outside the facility,' and among them, 54.8% (approx. 24% of the total) answered that 'they want to leave immediately.' Many of the facility residents can live in the local community, once the problems of living expenses, residence and job, etc. are solved. Therefore, it is necessary to guarantee their right to live in the local communities through the active policy support for them. Based on these condition surveys, the NHRCK made a 'policy recommendation to establish a roadmap for the deinstitutionalization of disabled persons' to the prime minister on Aug. 22, 2019, and the government deliberated and confirmed the 'Roadmap to Support Deinstitutionalized Persons with Disabilities to Live Independently in the Local Community' (hereinafter referred to as the 'Deinstitutionalization Roadmap') on Aug. 2, 2021.

According to the Deinstitutionalization Roadmap, the government will implement an amendment of laws and establishing infrastructure as a test project for 3 years, from 2022 to 2024, support 740 people, each year from 2025, for their settlement in the local community, and transition to the local community will be completed by 2041. For this end, a path to independence will be established by using a trial home, considered an interim stage, establishing new residential facilities for persons with disabilities will be prohibited and the existing facilities will be converted into institutions providing residential services.

Local governments have also established, and are implementing, their own Deinstitutionalization Roadmap. Seoul has implemented the deinstitutionalization project for the past 10 years, and Gyeonggi, Daegu, Jeju, Busan and Incheon, etc. have established and are implementing deinstitutionalization ordinances and project plans. However, due to a lack of budget, problems of cooperation between the residential facility corporations, lack of services within the local communities, concern for the families of persons with disabilities, etc., the deinstitutionalization projects are still at the trial stages.

B) Critical Opinions on the Government's Deinstitutionalization Roadmap

The presentation of the government's Deinstitutionalization Roadmap seems to be the start of the disabled persons' deinstitutionalization policy. However, some disabled persons human rights organizations critize the policy as a policy of smaller facilities, and some oppose the deinstitutionalization policy itself.

Disabled persons' human rights organizations that have requested the government for a policy on the deinstitutionalization of persons with disabilities for a long time point out that the concept of 'deinstitutionalization' from the Deinstitutionalization Roadmap is ambiguous and unclear.[86] Human rights groups forecast that the 'communal residences,' and 'individual residences' mentioned in the Deinstitutionalization Roadmap will be operated similar to that of the existing facilities, with only the name and the size being different. Some other issues are a lack of legal basis and specific plan for the budget.

On the other hand, there are arguments against the government's deinstitutionalization policy, and that the government is putting the disabled persons, who require constant care, and their families into a corner.[87] Some users of the residential facilities for persons with disabilities and their families are not open to the deinstitutionalization. Some organizations speaking on behalf of the parents of the users assert that the deinstitutionalization plan only adds burden on the parents, when the local community is not yet ready.

According to the survey on the residential facilities for persons with disabilities conducted in 2020 by the Ministry of Health and Welfare, the main reasons the users did not want to leave the facility were (59.2% of the persons who can communicate) 'I like living here (69.5%)', 'Don't know how to live outside (21.9%)' and 'I don't think I can be economically independent (14.7%)'.

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86) Be Minor, "'Deinstitutionalization Roadmap', Moon Jaein Government's Mimicking of Developed Countries", Aug. 10, 2021.

87) Joongang Ilbo, "Unconditional Deinstitutionalization will Cause Different Type of Human Rights Problems for the Persons with Disabilities"(Interview), Oct. 7, 2021.

C) Need to Establish a Deinstitutionalization Basis by Prioritizing Human Rights and the Welfare of Persons with Disabilities

The convention on the Rights of Persons with Disabilities (CRPD) ratified by Korea and that became effective as of May 3, 2008 stipulates in Article 19 (Living Independently and Being Included in the Community) that all persons with disabilities have the equal right to live in the community, without being excluded or isolated, and the State must take effective and appropriate measures to facilitate full enjoyment of this right and their full inclusion and participation in the community, including access to a range of in-home, residential and other community support services.

The independence of persons with disabilities must be implemented from the aspect of rights, rather than the benefits. It is only natural for the disabled persons in the protective facilities to become independent and move out into the local community. Rather than continuing conflict and hostility, it is necessary for all members to empathize with the deinstitutionalization and discuss the direction of implementing the deinstitutionalization in the future. Currently, there is a lack of awareness on the deinstitutionalization and a foundation for living in the local communities; however, all members of the society must put in efforts to implement the deinstitutionalization by supplementing insufficiencies through active discussion and seeking improvements.

Also, it is necessary to establish a legal basis for a comprehensive and systematic support of deinstitutionalization, obtain a stable budget from the national level, establishing diverse housing types in consideration of the type of disabilities, create a delivery system for independent living and expanding the community infrastructure for deinstitutionalization and independent living, etc.

3) Discussion on Expanding the Abolition of Medical Benefits for the Obligatory Providers and de Facto Abolition of the Disabilities Grading System

A) The Abolition of the Standards for the Obligatory Providers of Livelihood Benefits

According to the results from the condition survey on persons with disabilities in 2020 released in April 2021 by the Ministry of Health and Welfare, 69.4% of disabled persons are deemed low economic class, which is a 7.9%p increase from the 2017 survey (61.5%). This is comparable to 39.1%, which is the ratio of a national household who recognize themselves as low class. The ratio of receiving basic livelihood security among persons with disabilities increased from 15.0% to 19.0% for livelihood benefits, 16.2% to 25.8% for medical benefits and 14.4% to 14.8% for housing benefits, as compared to 2017.

The economic conditions of persons with disabilities continues to deteriorate since the spread of COVID-19, and the persons with disabilities under economic hardships must depend on the public assistance system. However, in order to become a recipient of the national basic living security, and receive support in livelihood, medicine, housing, education and other goods, etc. a certain standard must be met. Among the standard, the standard of the obligatory provider has been criticized for creating a welfare blind spot.[88)]

The obligatory provider standard has been used as a standard for selecting recipients since 1961, when the Living Protection Act was enacted, before the implementation of the basic living security program in 2000. The recipient must not have an obligatory provider, or have an obligatory provider who is incapable

88) NHRCK also presented its opinion to the Chairman of the National Assembly on Dec. 28, 2020, to swiftly deliberate 'partial amendment to the National Basic Living Security Act,' that includes the abolition of the obligatory provider standard, so that the low-income vulnerable class to obtain minimum living standards through the social safety network.

or unable to provide, in order to satisfy the obligatory provider standard. There are cases where the recipient status is not recognized even though the person is not contact with the obligatory provider or the obligatory provider is unemployed and cannot provide.

There was a case at the end of 2020, where a 60-year old woman, who lived with a son with a developmental disability, was discovered 5 months after her death. At the time, the mother and son did not receive benefits, other than the housing benefits (approx. 280,000 KRW for monthly rent subsidy), pursuant to the obligatory provider system. Their obligatory providers were an ex-husband, divorced 30 years ago, and a daughter, whom they lost contact with.

In October 2021, after 60 years, the government abolished the obligatory provider standard of the 'livelihood benefits' for the low-income and vulnerable class, such as the elderly, persons with disabilities, single-parent households, etc. This took approximately 4 years, since its gradual relaxation from November 2017. The government abolished the obligatory provider standard for education benefits and housing benefits in 2015 and 2018, respectively.

Although the obligatory provider standard for livelihood benefits is abolished, one is still excluded from livelihood benefits if the parents' or children's household annual income is over 100,000 KRW or has property over 900,000 KRW. Even if you are not in contact with the parents or children, you are unable to receive livelihood benefits, if they own property over 900,000 KRW, including debts.

Also, the obligatory provider standard for medical benefits has been relaxed since Jan. 2022, such as not applying the standard, if the obligatory provider's household has an elderly person receiving a basic pension, etc., but is still being maintained. Access to medicine is an important issue for the vulnerable class, similar to that of the livelihood benefits, and therefore, there is a continuous assertion on abolishing the obligatory provider standard for the medical benefits

as well. However, the budget, etc. remains to be solved when the obligatory provider standard is abolished.

B) Abolition of the Disabilities Grading System and Criticisms

On the other hand, the disabilities grading system that is the basis for the disabilities pension, etc. have been criticized continuously. The disabilities grading system that classifies the persons with disabilities into Grade 1~6 based on a medical examination was introduced in 1988, and it has been the basis in determining eligibility for pension and benefits (disabilities pension, disabilities benefits), activity support services, public charges discount, tax benefits (exemptions and deductions), etc. The disabilities were classified into Grades 1~6, depending on the severity of disability by disability type, and the type and scope of welfare services were determined depending on the grade.

However, this disabilities grading system has been subjected to criticism for not considering the individual desires of persons with disabilities, such as only the grade 1 severely disabled persons are eligible for an activity support system, etc., and the human rights groups continuously asserted the abolition of the disabilities grading system. As such, the government decided to abolish the disabilities grading system in stages, starting from Jul. 1, 2019, and the 'disabilities grade' was simplified into severe disabilities for Grades 1~3 and mild disabilities for Grades 4~6, and the support system for persons with disabilities was reorganized to provide comprehensive services.

Some point out that this only complicated the application method and increased the stages.[89] The disabled persons' human rights groups argued for the abolition of the disabilities grading system in order to improve the quality of life of the persons with disabilities by creating a support system customized to the type and

89) Solidarity Against Disability Discrimination Press Release, Jul. 14, 2020, etc.

degree of each individual person with disabilities, rather than providing the same service through the grading system. However, the new policy only simplified the disabilities grading system, into severe and mild. Criticism continued for the activity support service because when all persons with disabilities became eligible, some recipients began receiving less benefits than before, etc.

C) Emphasis on the Role of the Public Assistance

Article 28 of CPRD stipulates the States' recognition of the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and to take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of the disability.

Through 'General Comments No. 5 (2017) on Living Independently and Being Included in the Community,' the UN Committee on the Rights of Persons with Disabilities (CRPD) pointed out that the States have the obligation to guarantee access to appropriate and affordable services, devices and other assistance, and obligated to increase accessibility for persons with disabilities living in poverty. Moreover, support for persons with disabilities should be evaluated according to the individualized approach and must be adjusted according to the specific activities related to the community inclusion and actual barriers faced by persons with disabilities.

Thus far, families tend to be the first to support persons with disabilities in Korea. However, due to changes in the family structures from an aging society, decrease in birth rate, increase in non-marriages and late marriages, and an increase in the divorce rate, etc., the role of the state is being emphasized in order to maintain living without depending on the families for support.

We need to expand medical benefits to improve access to medical treatment for the aging persons with disabilities, and the need to abolish the obligatory provider

standard for medical benefits. Along with this, the disabilities grading system, that is closely related to disabilities pension and disabilities benefits, etc., needs to be abolished completely in order to provide support without regards to the grade or type of disability and to create an income guarantee system by expanding the public pension eligibility.

4) Right to Mobility and the Right to the Digital Access of Persons with Disabilities

A) Problems with 'Right to Access of Persons with Disabilities' and the Enactment and Amendment of Laws

Persons with Disabilities are likely to face uncomfortable situations in physical movement, use of facilities, access to information, etc. in everyday life. This is a problem of 'right to movement' and 'right to digital access' among the persons with disabilities' right to access. In order to be guaranteed of the right to dignity, the value and pursuit of happiness, persons with disabilities have the right of free access, without an assistance from others, the information accessible by people without disabilities.

The key to guaranteeing the right to movement of persons with disabilities is a low floor bus and special transportation methods. As of the end of September 2021, only 30.4% of the buses nationwide are low floor buses, and even this depends on the location. The government intended to supply more low floor buses through the 'plan to improve the convenience of the mobility disadvantaged persons,' in 5-year terms starting from 2007, but the current rate of the low floor bus is lower than the target value of 31.5% for the first plan implemented between 2007 and 2011. In case of the special transportation methods, as of September 2020, taxis for the disabled persons is running at 93% of the legal standard, but the regional gap is great, where the highest is at 146% and lowest at 53%. Also, the transfer between cities is difficult due to different targets, charges and operating agent, etc.

The partial amendment to the [Act on Promotion of the Transportation Convenience of Mobility Disadvantaged Persons] (hereinafter referred to as the 'Mobility Disadvantaged Persons Act') passed the National Assembly on Dec. 31, 2021 and proclaimed on Jan. 18, 2022, to protect the right to mobility of persons with disabilities. The provisions of the proposed law include: ① obligation to introduce the low floor bus for city buses; ② obligation to install a support center for wide-area mobility for the special means of transportation; and ③ establish a basis to provide operating expenses for the special means of the transportation mobility support center and support center for wide-area mobility.

On the other hand, as related to the right to access information, the partial amendment to the [Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights] (hereinafter 'Prohibition on Discrimination Against Persons with Disabilities Act') was announced on Jul. 27, 2021, that provides for the obligation to improve the accessibility of persons with disabilities for kiosks and mobile applications. Until now, only the accessibility of persons with disabilities was guaranteed only to webpages pursuant to Article 21(1) of the Act and Article 14 of the Enforcement Decree of the Act.

The number of kiosks installed in the private sector increased 3 folds, from 8,589 in 2019 to 26,574 in 2021, and the actual size of unmanned stores are not determined.[90] According to a status survey conducted by the National Information Society Agency on 800 kiosks installed in public and private institutions in 2019 showed that only 27.8% of the kiosks provided voice guidance for the visually-impaired persons.[91]

90) Data released by Congressman Kim Sang-hui of the National Assembly Science, Technology, Information, Broadcasting and Communications Committee, 2021.

91) Data released by Congressman Cho, Seung-rae of the National Assembly Science, Technology, Information, Broadcasting and Communications Committee, 2020.

However, notwithstanding the above amendments of the law, civic groups assert that the government must exert efforts to protect the persons with disabilities' right to access. Protests demanding the guarantee of persons with disabilities' right to mobility were especially active in 2021, and in December, 6 protests within subway stations in Seoul were held. The Mobility Disadvantaged Persons Act was amended at the end of last year, but the human rights group for persons with disabilities protested because the obligation to introduce the low-floor bus is limited to only certain targets, and problems with the budget for the special means of transportation for persons with disabilities, etc.[92] The protest was conducted during the morning rush-hour to cause a delay in subway trains, and both the voices supporting and opposing the protest were heard at the protest site.

B) Limitations of the Related Legal System

Many problems were improved through the amendment of the Mobility Disadvantaged Persons Act, but the civil society pointed out the limitations still remaining. First, the types of city buses that required the introduction of low-floor buses were delegated to the Enforcement Decree, and the Enforcement Decree being prepared by the government only included city buses of the general type[93], rural area buses of the general type and shuttle buses, and excluded inter-city express buses and intercity (long-distance) buses.[94]

The amended Prohibition on Discrimination Against Persons with Disabilities Act included provisions on kiosks and mobile applications, as related to the right to access information, but are still insufficient in that it did not include smart appliances, wall pads, digital textbooks, e-learning contents, media streaming services and a metaverse, etc.

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92) Be Minor, "The amendments to the Mobility Disadvantaged Persons Act passed, but the budget is left to the Ministry of Economy and Finance ... Persons with disabilities are 'fighting in subways' again..." Dec. 31, 2021.

93) City bus and rural bus are classified into ① inter-city express type ② direct seated type ③ seated type and ④ general type.

94) Kyunghyang Shinmun "'Mobility Disadvantaged Persons Act' passed... Reason why persons with disabilities are still fighting'", Jan. 3, 2022.

Also, amending the law does not solve the problem immediately, and continuous efforts to make improvements are necessary. Even though the obligation on the accessibility of webpages for persons with disabilities began from Apr. 11, 2013, many online retailers fail to provide proper alternative texts and claims for damages against these retailers have been filed.

C) Requiring Efforts to Protect the Accessibility for the Disadvantaged

Article 9 of CRPD stipulates for the States to take appropriate measures to enable persons with disabilities to live independently and participate fully in all aspects of life, to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures include identification and the elimination of obstacles and barriers to accessibility.

The rapid development of technology in modern society provides convenience. However, the process of technological development tends to focus on commercial value, rather than consideration for all, including the disadvantaged, and therefore, consideration for the diverse users, especially persons with disabilities and disadvantaged, is insufficient. Ultimately, capital and efforts are invested to solve the problems only after the relevant technologies are distributed and call to make improvements on discrimination is made. Therefore, these demands are seen as additional efforts, and when persons with disabilities demand for their proper rights, they are seen disapprovingly.

According to Article 508 of the Rehabilitation Act, in the US, the service provider must prove that their electronic appliances, ICT products and services are not discriminating against persons with disabilities. In this way, the specific system is established where the institutions or companies must provide evidence, on a regular basis, that they are not discriminating against persons with disabilities as

related to their services, even without the filing of the reports of user inconvenience and discrimination. Similarly, it is necessary to improve the system to induce the service providers to first consider protecting the human rights and other interests of the users when providing services.

5) Human Rights Violations and Discrimination in the Case of Labor Exploitation of Persons with Developmental Disabilities

A) Labor Exploitation by Abusing the Characteristics of Persons with Developmental Disabilities

A case of labor exploitation of persons with disabilities at a salt pond in Sinan, Jeollanamdo created great social controversy in 2014, but similar cases continue even now. According to the "Status Report on the Abuse of Persons with Disabilities" published by the Ministry of Health and Welfare in July 2021, during the year 2020, among 1,008 confirmed cases of abuse, 88 cases (8.7%) are labor exploitation cases, and this is 27.4% of the 321 economic exploitation cases. Persons with mental disabilities accounted for the largest share, at 59.1% (52 people).

In 2021, there were several cases of labor exploitations of persons with disabilities which were reported, including a couple who enslaved a person with mental disability for 12 years at an orchard, without any payment of wages, were sentenced to imprisonment, and cases of new forms of labor exploitation, where persons with disabilities appear in internet broadcasting and abusive acts are filmed for profit, etc. Among these, in October 2021, a case of an unregistered person with a mental disability was enslaved for 7 years at a salt pond in Sinan, Jeollanamdo, was reported by the media, and it was called the 'second salt pond slavery case.'

The victim in this case got help from the family and reported to the Mokpo branch of the Ministry of Employment and Labor, but was settled for 4 million

KRW. However, during this process, the issues of insufficient investigation by the employment inspector, advising settlement, no providing assistance to persons with disabilities, etc., and the human rights groups for the disabled persons reported the business operator to the police. As a result of the police investigation, the concerned owner of the salt pond was arrested and charged, and the Ministry of Employment and Labor re-investigated the case and issued a confirmation of unpaid wages, in the amount of 87 mil. KRW. The perpetrator was sentenced to imprisonment and served in 2014 for the labor exploitation of persons with disabilities in the same area.

As the cases of labor exploitation of persons with developmental disabilities continue, human rights groups are criticizing the fact the investigation of the cases are conducted without considering the circumstances of the victims and their disabilities and that the penalties are insufficient.[95]

B) Insufficient Operation of the Relevant Systems

Labor exploitation of persons with developmental disabilities occur from environmental elements, including a lack of learning opportunity, low self-esteem, unstable family environment, lack of information and access to the social support system and information to obtain proper care, etc. However, the victims are unable to recognize that they are being abused, and tend to depend on the abusers for living with them for a long time. Sometimes they state they were not abused. Also, even if they become aware of being victimized, they have difficulty asking for help, and even after an investigation is underway, they have difficulty in specifying the facts and making detailed statements.

It is necessary to take proper measures by considering the characteristics of the persons with developmental disabilities during the relief process. Currently,

95) The Korean Legal News, "Similar case of labor exploitation of persons with disabilities, but under different charges", Mar. 2, 2021

several systems are being established. The system of assigning prosecutors and police exclusively responsible for persons with developmental disabilities are being implemented pursuant to Article 13 of the [Act on Guarantee of Rights of and Support for Persons with Developmental Disabilities], and Article 12 of the said Act, Articles 221(3) and 163-2 of the [Criminal Procedure Act] and Article 84-3 of the [Regulations on Criminal Procedure] stipulate a person who has a reliable relationship must accompany the persons with developmental disabilities. However, human rights groups point out that the concerned provisions are not being utilized and that there are problems with the common investigation practices.[96)]

First, during the investigation process, prosecutors and police exclusively responsible for persons with developmental disabilities is not allocated, sometimes, and a person with a reliable relationship does not always accompany the person with disabilities during the victim interview. In cases where the victim is a person with developmental disabilities, sometimes, they are not recognized as developmentally disabled, or due to insufficient manpower, it is investigated by a team for general cases or economic cases. In such cases, basic communications with the victim may be difficult, for a lack of understanding of the characteristics of the disabilities.

It is also pointed out that integrated approach is unavailable during the investigation process. In case of a general labor exploitation, a labor inspector applies the labor-related laws and investigates the case. However, in case of the labor exploitation of persons with developmental disabilities, it is necessary to process the case comprehensively, with the possibility of confinement, violence, etc.

Also, investigative agencies tend to proceed with the investigation, without considering the characteristics of the persons with developmental disabilities. In some cases, the victim's intelligence is determined favorably towards the abuser,

96) Research Institute of the Differently Abled Person's Right in Korea, "Analysis Report on the Criminal Cases of Labor Exploitation of Disabled Persons", Nov. 2020.

such as recognizing an agreement with the abuser, but not recognizing a lawsuit filed by the victim against his brother, etc. Moreover, there is much criticism for the insufficient punishment of abusers by not considering the vulnerability of persons with disabilities, such as the abuser providing lodging to the victim and took care of the victim, so it was not an employee-employer relationship, or that it was a common local practice, etc., to provide weak sentences.

C) Need to Realign the Relief System for Victims who are Persons with Developmental Disabilities

Article 27 of the CRPD stipulates the right of persons with disabilities to work as the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities. To this end, the States must safeguard and promote the realization of the right to work by taking the appropriate steps, including through legislation, and ensure that persons with disabilities are not held in slavery or compulsory labor.

In case of the persons with developmental disabilities, it is important to provide support during the legal processes to bu fully guaranteed of their rights. Measures to ensure the regular operation of the system of allocating prosecutors and police exclusively for victims who are persons with developmental disabilities are necessary, and persons with developmental disabilities must be guaranteed opportunities to have a person with a reliable relationship accompany them to exercise their rights. For this, the government employees, including the labor inspector, must properly understand the human rights of persons with disabilities, and it is necessary for labor inspectors and police to cooperate in labor exploitation cases, so the effective investigation and victim support can be implemented.

Fundamentally, it is necessary to prevent the situation where persons with developmental disabilities from being exposed to an environment vulnerable to exploitation. Labor exploitation of persons with disabilities occur over a long

period of time and the damages are repeated, but they are known to be hidden often, without going through the criminal procedures. It is necessary to provide more support services to persons with a developmental disability to maintain proper living standards, such as guaranteeing income, stable residences, participating in local community activities, etc., and to make improvements to prevent any blind spots of support.

3. Migrants and Refugees

A. Human Rights Status 2021

With the increase in the number of migrants in Korean society, establishing a policy direction from the aspect of social integration between migrants has become a social discussion. Recently, the lifestyles of migrants have become diverse, and the ratio of migrants residing with family members has been increasing rapidly. As such, the issues related to the human rights of migrants are expanding from improving the employment conditions to the entire spectrum of social security, including access to children's education and childcare services, the application of health insurance, etc.

UN Human Rights Treaty Bodies emphasize the States to comply with the 'principle of priority on human rights' in establishing and implementing policies for migrants, who are in danger of being left behind. The NHRCK established the '2nd Migrant Human Rights Guideline' in August 2019 to present policy tasks and recommended the related matters. The government has established a plan to implement foreigner and multi-cultural policies and built a support infrastructure, but most of the government projects focus on marriage immigrants and their children. There are relatively few policies that focus on supporting refugees or humanitarian sojourners.

Moreover, Korea has an international responsibility to protect the refugees and accept the victims of political persecution based on the international refugee conventions and protocols, but the ratio of recognizing refugee remains low among the major countries. There were problems of violating the refugee applicants' 'right to be screened fairly' during the screening process due to a lack of manpower related to refugee screening or the interview reports being fabricated, etc. As such, the Ministry of Justice, in 2021, implemented a certification system for refugee translators in order to improve the fairness in refugee screening, and

certified 160 translators for 30 languages. However, it is necessary to make improvements because many refugee applicants, recognized refugees and humanitarian sojourners have difficulty accessing information and remain socially and economically unstable.

With the worldwide pandemic of COVID-19 in 2020, countries around the world implemented strong border control policies. Entry from certain countries were blocked to protect the citizens from COVID-19, and people residing overseas moved back to their own country to feel safe. As a reflection of this trend, the number of immigrants residing in Korea decreased by approx. 500,000 people in 2020 to approx. 2 million people.

The Office of the UN High Commissioner for Human Rights (OHCHR) released 'COVID-19 and the Human Rights of Migrants: Guideline' in April 2020 that stated that all people, including migrants, must be considered in response to public health and the recovery response to COVID-19. However, it was confirmed that immigrants residing in Korea were excluded from the COVID-19 response system and policy, such as public mask provision, disaster support subsidy, etc., and had difficulty in acquiring information to prevent COVID-19 due to linguistic, social and cultural barriers. Some local governments ordered compulsive PCR testing on some migrant workers, which became an issue both in Korea and overseas. This was assessed as a clear indication of prejudice against foreigners and systematic discrimination exposed due to COVID-19.

The human rights issues of migrant workers can be found in the workplace. According to the factual report on foreign workers in 2020 by the Korea Institute for Health and Social Affairs, the wage level of migrant workers are increasing and their work hours are decreasing, overall, but they still work under poor conditions and violence and human rights violations are still continuing. Especially in 2021, the housing situation of migrant workers[97] and human rights violations of fishery migrant workers[98] received attention.

On the other hand, there were improvements in efforts to protect the human rights of migrants and refugees. The government took measures to protect the 'undocumented migrant children' and 'Afghan special sojourners.' Next, we will review some of the main issues in 2021 related to migrants and refugees.

97) According to the status survey on housing conditions of migrant workers in 2021 conducted by MOEL, 99% of migrant workers in farming and fishery are living in employer provided housing, and 69.6% among them are living in temporary buildings, such as prefabricated panel housing, container, vinyl covered house, etc.

98) International communities, such as ILO, etc., continuously point out that migrant workers in Korean fishing boats are facing the risks of forced labor, due to excessive dispatch fees, deferred or unpaid wages, confiscation of IDs, housing in islands, prohibited from going out, etc., and demand that the government make plans to resolve these issues.

B. Main Topics

1) Entry of Afghan Refugees and Limitations on the Supporting Process

A) Afghans Who Assisted Korea Entered Korea as 'Special Contributors,' not Refugees

On Aug. 15, 20221, the Taliban entered Afghanistan's capital city of Kabul and captured control of the country 3 months after the US army pulled out of Afghanistan. The Taliban was expected to govern Afghanistan under strict Sharia law,[99] including stoning and dismemberment, etc. In June 2021, the Taliban made a statement that 'supporting foreign army is clearly a treason against Islam and the nation,' and there were signs of retaliation against Afghans and foreigners who collaborated with the previous Afghan government.

There were 2 million refugees from the Afghan government change, and many countries around the world took the measures to protect them. It was humanitarian measures for the Afghans who cooperated with the previous Afghan government or foreigners to avoid retaliation. The Office of the UN High Commissioner for Human Rights, at the UN Human Rights Council special session on Aug. 24, expressed concern over human rights violations since the Taliban have seized power in Afghanistan, and urged to protect the human rights of women and children. The Global Alliance of National Human Rights Institutions also released a statement to urge the international community's involvement to respect the human rights.

Afghans who collaborated with Korea also requested for evacuation to Korea. The Korean government, after many discussions, transported 378 Afghans who collaborated with Korea and their families to Korea as 'special contributors' on

99) Islam religious law, with strict punishments, including beheading, amputation of hands and feet, stoning and lashing for adultery and homosexuality, etc., and criticized for gender discrimination and infringing on freedom of religion, etc.

Aug. 24~26, 2021 through "Operation Miracle." Also, the MOJ amended, and implemented from Oct. 26, the Enforcement Decree of the Immigration Act to support these people. The amended Enforcement Decree of the Immigration allows the people who specially contributed to Korea by working or collaborating with the Korean government or agencies overseas by granting residential (F-2) status[100].

Furthermore, the MOJ provided temporary lodging for these special contributors while they adapt to Korean society and receive education. However, they were restricted from going out, staying out and in-person visitations due to COVID-19[101], and criticized for being excessive restrictions without legal basis.

The National Assembly proposed an amendment to the [Framework Act on Treatment of Foreigners in the Republic of Korea] on Oct. 28, in order to treat these Afghan special contributors similar to refugees and to support early settlement and employment. According to the proposed amendment, these special contributors will receive support in ① education and medicine, ② guarantee of social security, basic living and education, ③ recognition in education and qualification, and ④ early settlement expenses and employment support, etc., and the regulation on the treatment of people recognized as refugees under the Refugee Act will apply.

The NHRCK and the civic groups, etc. the proposed amendment to the [Framework Act on Treatment of Foreigners Residing in the Republic of Korea] intends to establish a legal basis to support the Afghan special contributors, and that these humanitarian legislation is welcoming; however, contrary to the legislative intent, these special contributors may end up receiving treatment

100) 'F-2' visa is issued to people recognized as refugees, does not restrict employment, and the period of residence is 5-years, which can be renewed continuously.

101) MOJ Press Release, 'Afghan Special Contributors began activities within the facility as of Sep. 10," Sep. 9, 2021.

inferior to that of people recognized as refugees. The proposed amendment was passed in Jan. 2022, as originally submitted.

B) Raising Issues with the Use of the Term 'Special Contributor'

The civil society continuously argue that these Afghans should be called and treated as 'refugees,' not 'special contributors.'[102] The so-called 'special contributors' are people who will be persecuted by the Afghan government due to their political opinions, and therefore, they are applicable as refugees as defined in the Refugee Convention.

According to an international convention on the status of a refugee, refugees are 'someone who is unable to unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.' The status and rights being granted to the 'special contributor' by the government is not much different from that of the people recognized as refugees.

Protecting the Afghan 'special contributors' pursuant to laws is fulfilling the obligations of a country that ratified the Refugee Convention. Nevertheless, the government is using the term 'special contributors' to these Afghans, not as refugees, in order to persuade the Korean public opinion that is adverse towards accepting refugees. However, in the end, it carried a message that their entry into Korea is a consideration for their contribution, which is against the spirit of the Refugee Convention, but may become a hurdle in the government's refugee relief activities in the future.

102) Civil society groups' commentary on the refugee human rights network, Aug. 25, 2021, etc.

C) Need to Improve the Perception of Refugees

Korea is country that ratified the Refugee Convention and is the first country in Asia to enact a Refugee Act. Also, as a member of the international community and a country that ratified the Refugee Convention, Korea has an obligation to recognize and protect the rights of refugees, without regards to individual contributions and capabilities. However, the Korean government is asked to change its refugee policy from the international community and the civic groups due to the low refugee recognition rate and insufficient treatment of refugees.

Among 72,217 people applied for refugee status from Korea, from 1994 to Jun. 2021, only 1,112 people were recognized as refugees. Statistically, this is less than 3%, and is the second lowest rate, after Japan, among the G20. Also, Korean people have an adverse opinion towards refugee, as well. According to a survey on the changes in the awareness of refugees in Korea that was conducted by UNHCR in 2020, 33% of adults agree with accepting refugees, and 53% are opposed. This is a slight increase of agreements and a slight decrease of opposition, as compared to the Yemen refugees entering Jeju in 2018 (24% agree, 56% oppose).

When Yemen refugees entered Jeju in Jun. 2018 and applied for the refugee status, the Korean society asserted that they are fake refugees or that they may be potential terrorists, as the Korean society was unfamiliar with the Islamic culture. However, unlike the many criticisms when the Yemen refugees arrived in Jeju, they have settled well and are living as part of the society. The people's worries were never materialized.

Sympathizing and accepting these people who left their country with the hope of staying alive and live properly are promises made with the international community and building human value. The government's efforts to protect these Afghans correspond to this, but the method still needs improvements.

Moreover, even though they are stipulated as 'special contributors,' not 'refugees,' they still need continuous attention and efforts to settle in Korea stably. Most of them will reside in Ulsan, as of 2022, and more than 180 people are children under the age of 10, requiring special protection in education and medical assistance, etc. Also, it is necessary to make the efforts to improve Korean society's perception of refugee, when 'refugees,' not another 'special contributors,' need assistance in the future and to establish a system that allows the refugees to settle in Korea stably.

2) Issues with the Employment Permit System and Restricting the Migrant Workers From the Changing Workplace

A) Inadequate Treatment of Migrant Workers

As of Dec. 2021, 57,067 workplaces employ foreign workers, and 159,463 foreign workers work under the 'employment permit system.'[103] The Employment Permit System refers to a system that when the government permits the hiring of foreigners for industry having difficulty hiring Koreans,[104] migrant workers can enter Korea and work premised on executing an employment contract with a specific workplace.

Many types of businesses in Korea depend on migrant workers, but they receive inadequate treatment, with many human rights violations being reported. On Dec. 20, 2020, a migrant worker, a Cambodian national, was found dead in Pocheon, Gyeonggi-do. The dead migrant worker lived in a housing made of vinyl covering during the harsh winter season. This case shed a new light on the inadequate living and working conditions of migrant workers.

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103) Statistics from the Korea Employment Information Service.

104) Industry permitted to hire migrant workers are manufacturing, construction, farming, livestock, fishing, and processing of construction waste, etc., and manufacturing companies with less than 300 full time employees or less than 8 bil. KRW in capital.

The inadequate work conditions of migrant workers in the fishing industry became an issue during the National Assembly inspection in Sep. 2020. According to the results of monitoring the human rights conditions of migrant workers in the fishing industry in 2020 by the NHRCK, migrant workers (E-9) under the Employment Permit System of the island regions of the west coast were forced into labor for a long time, with verbal abuse and unpaid wages, and they were unable to leave outside the island freely because the employer took away their passports and foreigner registration cards.

Human rights groups have pointed out the problems of the Employment Permit System as one of the main causes of the employer's human rights violations of migrant workers, violation of labor laws, etc. Migrant workers entering Korea through the Employment Permit System are prohibited from changing employer pursuant to Article 25(1) of the [Act on the Employment of Foreign Workers], and even for exceptional cases, there are limits on the reason for changing the workplace and the number of changes. Therefore, even when there are problems with work conditions and environment, the migrant workers have no other choice but to continue working, similar to forced labor.

International human rights organizations are also critical of the restrictions on changing the employer under the Employment Permit System. The UN CERD (2012, 2018), HRC (2015) and CESCR (2017) continuously recommended the Korean government to abolish the restricting the change of workplace under the Employment Permit System. On Aug. 19, 2019, the NHRCK also recommended to consider abolishing the principle of prohibiting changes to the workplace of migrant workers entering Korea under the Employment Permit System.[105)]

On Dec. 23, 2021, the Constitutional Court upheld the provision that limits the reason for changing the workplace of foreign workers and held that it did not

105) NHRCK, Aug. 19, 2019. 2nd Migrant Human Rights Guideline Policy Recommendations

violate the foreign workers' basic rights.[106] Therefore, the human rights groups are criticizing the decision of the Constitutional Court as violating the international human rights regulations. Next, we will take a closer look at the issues related to this problem, and the opinions of the human rights groups, government, the Constitutional Court and the international human rights organizations.

B) Controversy Surrounding the Restriction on Changing the Place of The The Work of Migrant Workers Under the Employment Permit System

Issues with restricting the place of work of migrant workers have continued since the introduction of the employment permit system in 2005. The MOEL responded that allowing the free movement of workplaces to migrant workers under the employment permit system will cause the problems of small businesses having difficulty finding workers and the infringement of the domestic labor market, and therefore, restricting the changes in the place of work for migrant workers is necessary. Moreover, it stated that improvements are made with the system to allow unlimited changes in the place of work upon reasons not attributable to the migrant workers, such as the business's violation of work conditions, sexual harassment, assault and habitual verbal abuse, etc.

The Constitutional Court also held, with opinions of 7 out of 9 justices, that not permitting the free change of workplace to migrant workers did not violate the foreign workers' right to occupational freedom, for reasons of obtaining a stable workforce for small and medium-sized enterprises, protecting the jobs of Korean workers, efficient employment management of foreign workers, etc.

On the other hand, human rights groups raised the issue that restricting the change of workplace to obtain a stable workforce, in reality, made the workers become dependent on the employers, and the employers have no need to improve work conditions and the environment, etc.[107] Moreover, as the migrant workers

106) Constitutional Court, Dec. 23, 2021, Sentence 2020HunMa395 Decision

107) Statement by the Group Implementing Constitutional Appeal of Employment Permit System, Dec. 24, 2021, Etc.

are unfamiliar with Korean culture and administrative proceedings, it is difficult for them to prove that unfair treatments are subjected to reasons to change the workplace; therefore, the problems can intensify.

The minority opinion of the Constitutional Court's ruling stated that because the foreign workers are unable to know the exact working conditions prior to being hired, the restriction of the workplace changes is a very important factor for the workers, and excessively restricting the change of workplace is irrational.

C) Need to Reconsider the Provision Restricting the Change of Workplace

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) states to guarantee the right of everyone, without distinction as to race or nationality in the enjoyment of the right to economic, social, cultural rights, in particular: the right to work, to free the choice of employment, to the just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration, etc., and the States are obligated to prohibit and eliminate these acts of discrimination. In 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) made a recommendation to the Korean government to abolish rules related to restricting the change of workplace by migrant workers from the employment permit system.

Migrant workers hold a substantial portion of the Korean economy by providing labor in areas avoided by Koreans. Improving the working environment and conditions of migrant workers is necessary, not only from the human rights perspective, but to reinforce the integrity of the Korean industrial structure, in the long-term economic perspective.

Especially the problem of restricting the change of workplace by migrant workers under the employment permit system is one of the key factors that cause the human rights violations of the migrant workers. Placing a party at a dependent position in a contractual relationship and having them endure discrimination in

their daily lives that cannot be filtered through legal provisions does not correspond with the principles of human rights. Everyone, including the migrant workers, must be given the possibility of working under better conditions, and must be able to exercise his/her rights to create a better work environment.

No logical estimation or analysis has been presented that predicts the job conflict with the jobs for Koreans by allowing the migrant workers under the employment permit system to change the workplace. A significant portion of migrant workers in Korea are working under other systems, such as overseas Korean, working visa and permanent residents, etc. More than half of the migrant workers can change jobs and seek employment freely.

The National Assembly Research Service, in introducing the Constitutional Court's decision in Jan. 2022, presented a research analysis result that showed that the Constitutional Court upholding the system did not fully resolve the conflict in the Korean society, and the legislators must find the ways to consider the inadequate management conditions of small and medium-sized enterprises and, at the same time, foreigner employment policy that can improve the fundamental rights of foreign workers, who are also members of Korean society.

3) Unstable Status of Undocumented Migrant Children and Granting of the Sojourn Status

A) Institutional Gap for the Undocumented Migrant Children and Efforts to Cover the Gap

'Undocumented migrant children' refers to foreign children living in Korea without a proper sojourn status. Children who entered Korea with foreign parents but lost their sojourn status once they arrived in Korea or children born to parents without their sojourn status are undocumented migrant children. Most of them were unable to acquire a legal sojourn status due to the parent's intent or circumstances, and although they are estimated to be around 20,000 in Korea, but an accurate estimation is difficult due to the nature of their status.[108)]

These undocumented migrant children live in Korea, without a proper visa, but deportation is deferred until they graduate from high school, along with their parents, pursuant to the MOJ guideline 'Supporting the Right to the Education of Illegal Students.' However, they live in an unstable condition, as they worry about being separated from their parents, and they may be deported once they graduate from high school.

They are excluded from basic social services, such as medical care, education, welfare, etc., for not having an alien registration number, and not protected from child abuse, etc. For example, on Apr. 22, 2021, an undocumented foreigner reported his/her child with developmental disability missing and found the child in the custody of the immigration office due to visa issues. The conditions of these undocumented migrant children have become an issue since 2010, known as "children who are here but not here," or "shadow children."

108) Gyeonggido Foreigner Support Center, 'Status Survey Report to Support Undocumented Migrant Children's Right to Health', 2019.

In March 2020, the NHRCK recommended to the Minister of Justice to establish a system to grant proper sojourn status to the undocumented migrant children.[109] As such, the MOJ announced a plan to introduce 'Foreign Children Birth Registration System'[110] on Feb. 15, 2021, and a 'Plan for the Conditional Relief of Undocumented Children Born in Korea,' to grant temporary sojourn status to long-term undocumented migrant children on Apr. 19, 2021.[111] The MOJ's relief plan grants temporary sojourn status, from Apr. 19, 2021 to Feb. 28, 2025, to the undocumented migrant children satisfying certain requirements (① born in Korea, ② lived in Korea for 15 years or longer, and ③attending middle or high school in Korea or graduated from high school as of the application date), and allow their parents to live in Korea until the children become adults after graduating from high school.

On the other hand, at the 21st Meeting of Social Relations Ministers held on Nov. 24, 2021, the Minister of Education announced the "means of guaranteeing the social fundamental rights of undocumented migrant children" was established jointly by relevant departments to fulfill the basic obligations as the signatory to the Convention on the Rights of the Child (CRC), such as guaranteeing the right to education of undocumented migrant children and improving the human rights blind spots, etc.[112] This includes expanding the subjects exempted from notifying undocumented sojourn, use of the temporary identification number, Enforcement Decree of the Elementary and Secondary Education Act, introducing the 'birth registration system' for foreign children born in Korea, etc.[113]

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109) NHRCK, Mar. 31, 2020. 19JinJeong070310 Decision

110) MOJ Press Release, Feb. 15, 2021.

111) MOJ Press Release, Apr. 19, 2021.

112) MOE PRess Release, Nov. 24, 2021.

113) The method of guarantee states that the children (foreign-born child, young children, etc.) who do not meet the requirements under the MOJ's Apr. 2021 relief measures will be guaranteed of fundamental rights pursuant to the Convention on the Rights of the Child.

The NHRCK and human rights groups welcomed the guaranteeing of the social fundamental rights of migrant children and trying to introduce a birth registration system[114], but also stated some needed improvements, such as narrow qualification and temporary duration, etc.[115] As a result, the MOJ, on Jan. 20, 2022, the people permitted to stay in Korea were expanded, from children attending elementary, middle and high school or high school graduates who have lived in Korea for 15 years or longer to 6 years or longer for foreign-born young migrant children (under the age of 6) and 7 years or longer for children entering Korea beyond early childhood and have completed public education in Korea.[116]

B) Limitations of the MOJ Relief Measures

The MOJ's policy related to the sojourn status of undocumented migrant children and their parents is meaningful in that it improves their instability and that they can receive protection within the system. Moreover, the improve relief measure is expected to include 3,000 undocumented migrant children attending elementary, middle and high schools without alien registration numbers.

However, the improved relief measure is scheduled to be implemented for 3 years only, and afterwards, there will be children without the proper sojourn status. Moreover, families with multiple children would have children with a different sojourn status, and the children who become adults but do not go on to college or find jobs, they would only be granted a temporary visa for 1 year.

On the other hand, granting sojourn status to undocumented migrant children is beyond the scope of CRC, and some people assert that it may cause the trend of disregarding laws and may damage the immigration management order as parents may use their children to stay in Korea.

114) NHRCK Press Release, Feb. 18, 2021.
115) NHRCK Press Release, Jul. 28, 2021.
116) MOJ Press Release, Jan. 20, 2022.

C) Need to Protect the Extended Stay Undocumented Migrant Children

Each undocumented migrant children will have different backgrounds. However, most of the children cannot fully understand the impact of their status and make decisions, and therefore, the children may not be responsible for being undocumented. Also, many undocumented migrant children who stayed in Korea for a long time were either born in Korea or received education for a long time, to such an extent that even their closest friends would think of them as Korean. Some of them do not even speak their mother language and are unfamiliar with that culture.[117)]

Leaving the possibility of being deported after the grace period may be too harsh for them. The court stated that having people, who were born in Korea and lived only in Korea, deported to another country is against the spirit of the Constitution that protects the human dignity and protects the right to life.[118)]

Moreover, according to the CRC and the general comments adopted by the Committee on the Protection of the Rights of All Migrant Workers (CMW) in 2017, the deportation of migrant children and their families must be protected even when considered an arbitrary interference on the right to live privately with their families and recommended the countries to consider providing opportunities to acquire the sojourn status to the families, if deporting the children back to the country of their parents violates the best interest of the children. For example, UK, Japan and Germany have a system that grants sojourn status to undocumented migrant children by considering the completion of compulsory education, long-term residence, educational level, social integration, etc.

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117) Eun Yoo, "Children Who Are Here But Not Here: Story of Undocumented Migrant Children," Aug. 10, 2021, Dot Space, "Story of 20 Ghost Children in Korea/ Story of Undocumented Migrant Children," Nov. 23, 2021.

118) Cheongju District Court May 17, 2018. Sentence 2017GuHap2276 Decision

Children must be protected from all forms of abuse and violence, grow safe and healthy by receiving proper education, receive medical and social security, and these principles should not change depending on their sojourn status. It is necessary to have in place a system that provides proper sojourn status to these children, so that they are not excluded from social services and not be subjected to deportation after finishing schools.

4. Women

A. Human Rights Status 2021

Women's human rights are often related to materializing equality and abolishing violence against women. Women's human rights have developed with the Universal Declaration of Human Rights, the ILO Convention on Employment, UNESCO Convention on Education, etc. The Convention on the Elimination of All Forms of Discrimination Against Women is one of the most important and basic international human rights convention on women's rights, and it was adopted at the General Assembly in Dec. 1979, became effective in Sep. 1981, and Korea signed in 1984.

The UN tries to realize the expansion of the right of self-determination, economic independence, freedom from violence and increase political influence through prohibition on discrimination and achieve equality in the women's rights area and is expanding from civic and political human rights to social, economic and cultural human rights. The Constitution of Korea also stipulates that all people are not discriminated based on gender. However, notwithstanding the provision on equality under the Constitution, there still exists discrimination on women in Korean society, from employment, education, politics and administration, and the sexual norms have different expectations on men and women.

Women in their 20s have become interested in women's rights due to the murder case at Gangnam Station in 2016 and the Me Too movement in 2018. They have expressed their opinions on illegal filming, digital sexual violence, abortion and sexual violence from authority, etc. Also, new types of problems began to emerge, such as the digital sexual crime problem, represented by the "Nth Room Case," and women's job crisis from economic downturn caused by COVID-19.

These changes in the environment demands policies related to women in diverse areas and classes. However, there are much controversy related to gender equality in the internet communities. Here, we will consider topics related to the 'stigma of being a feminist and decline in women's rights,' the establishment and implementation of the Stalking Prevention Act, and gender discrimination at the workplace.

B. Main Topics

1) Stigma of Being a Feminist and Decline in Women's Rights

A) Spreading of Hate Speech Towards Feminism

According to the 'Online Hate Speech Awareness Survey' conducted by the NHRCK in 2021, the subject of hate speech online are women (80.4%), specific region (76.9%) and feminists (76.8%). Feminist (76.8% and 86.2%, respectively) and women (69.7% and 82.9%, respectively) had the highest answers among people in their teens (15~19 years old) and young adults (20~30s). In the same survey, elderly people (69.2%) was the number one subject of hate speech offline, and women (67.4%) and feminists (64.8%) were ranked 3rd and 4th.

Feminism is defined as "a view to eliminate political, economic, social and cultural discrimination based on gender."[119] However, the term 'feminist' is used in diverse usage in Korean society, and is often becomes controversial over various meanings. Controversy surrounding 'feminism' occurred online between people in their teens and young adults in 2021, and now, it is also occurring in media and politicians. We will look at the types and characteristics of issues related to feminism in 2021.

First is the issue of calling and criticising certain athletes, entertainers, politicians as feminists due to their short hair and statements made on social media. These all began from online communities, and in some cases, the term 'feminist' itself had a negative connotation. Some call these trends 'attacking,' 'online abuse' and 'hatred,' using the expressions of foreign press.

There was also an issue stemming from the media and politicians. People who criticize women's groups and the women's rights groups are all focusing on the controversy over the 'abolition of Ministry of Gender Equality and Family.' As such

119) National Institute of Korean Language, Standard Korean Language Dictionary

the Ministry of Gender Equality and Family stated that 'they accept the concerns and criticisms from the people on their insufficiencies and will try to make improvement,' and responded actively.[120] However, this controversy will continue in 2022.

Many articles analyze and comment on the perspective of men in their 20s, who see feminism in a negative light. Generally, they discuss the cause and the effect of negative perspective on feminism by men in their 20s and 30s, and there are opinions that diverse discussions are underway, and the media and the politicians are over-representing these.[121]

B) Negative Perception of 'Feminism' and Gender Equality Policies

Some media and women's rights groups find the cause of 10~30 year old men's negative perspective on feminism from the anger stemming from economic inequality between the generations. 10~30 year old men think of themselves as victims of reverse-discrimination, and even though these are not due to gender equality policies, media and the politicians are encouraging this.

Also, this phenomena is assessed as a backlash to feminism, that attacks feminism. However, this way of framing 'anti-feminism' as gender conflict only degenerates the gender equality policies and can cause actual discrimination and damage.

On the other hand, some argue that 10~30 year old men having a negative perspective on feminism are only opposing the feminism movement for damaging the value of fairness by giving preference to women, and they are not opposing the realization of gender equality in Korean society.[122] This is also true in that they use the term 'feminism' differently to have a negative connotation.

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120) Ministry of Gender Equality and Family Press Release, Jul. 15, 2021.

121) Hankyoreh21, 'Stupid, the problem is not the men in their 20s,' Apr. 16, 2021.

122) Joongang Ilbo, "Gender Equality is Good, but Not Feminists? Foreign press is looking closely at Korean men in their 20s ", Feb. 16, 2022.

However, it is wrong to think of men in their 20s and women in their 20s, as groups, and generalize an individual person's values, and the difference in awareness between gender is exaggerated.[123] Men in their 20s tend to be a little more anti-feminist than men in other age groups, but the gender equality awareness of men in their 20s is slightly higher or similar to men in other age groups.[124]

As such, in order to discuss whether the individual gender equality policy is needed or not, we need to first analyze the objective facts related to the realities and the impact of the gender equality policy, etc.,[125] but emotionally approaching the entire gender equality policy as related to the negative perspective on feminism by men in their 20s with the word 'fairness' can be a factor that prevents progressive discussions.

C) Establishing a Basis For Improving Women's Rights and Abolishing Discrimination

According to the 'Online Hate Speech Awareness Survey' conducted by the NHRCK in 2021, 90.2% responded that social conflict will intensify as a result of hatred and discrimination used in Korean society. This is in contrast to 26.1% of the respondents who answered that 'the discrimination will be resolved naturally.' There are more people who believed that hate speech towards feminism will intensify the actual social conflict and discrimination.

Therefore, it is necessary to not exaggerate the 'men in their 20s' phenomenon, so that it does not negatively impact the individual policies for protecting and improving women's rights. This type of approach simplifies the problem by seeing

123) Media Today, "'2030·Gender', Pick and choosing even surveys, Jan. 25, 2022.

124) Choi, Jong-suk, "'Looking at 20s Men Phenomenon: Focusing on Ideology and Gender Awareness Between 20s and 30-40s", Mar. 2020.

125) 'Women allocation system' seen as reverse-discrimination by some, is actually an affirmative action to relieve women's under-representation, and in reality, from 2011 to 2021, the number of additional persons employed under gender equality policy, are 1,799 men and 682 women.

it as conflict between genders, rather than discussing why the specific policy is needed or what part is excessive, etc.

In its final opinion (2018) on the 8th country report of the Korean government, the UN CEDAW presented 53 concerns and recommendations in 23 areas. There are still many problems that exist in Korean society that require a resolution, from online sexual violence, family violence and to discrimination in employment, etc.

2) Implementation of the Act on the Punishment of Stalking Crimes

A) Implementation of the Act on the Punishment of Stalking Crimes and Contents

3 women were killed in their home in Nowon district in March 2021. The suspect in this case stalked the victim, whom he met while playing online game. In Nov. 2021, a woman was killed while under police protection from the suspect due to dating abuse and stalking. The victim, in this case, sent an emergency signal to the police but the police failed to locate the victim.

In the past, the Punishment of Minor Offenses Act applied to a person 'who requests to meet or date by consistently attempting approaches any third person or watches, follows, or secretly waits for any third person against the explicit will of the person.' However, as stalking cases, where the victims have difficulty living a normal life and suffering from mental and physical damages, increased greatly, people began discussing regulating and preventing stalking crimes. As discussed earlier, stalking, sometimes, leads to violent crimes. In 2021, the police released the identity of 8 suspects, which is the most, since the identity release system was introduced in 2010, and among those, 7 committed crimes against women and the vulnerable, whom they were stalking.

The National Assembly clearly stipulated stalking as a crime and enacted the 'Act on the Punishment of Stalking Crimes' (hereinafter referred to as the 'Stalking

Act'), implemented on Oct. 21, 2021, to strengthen the penalty for the assailant and protect the victims. It was 22 years since first proposed in 1999.

The Stalking Act defines the act of stalking and stalking crimes (Article 2(1) and (2) of the Act), and provided a basis to strongly punish stalking crimes, for up to 5 years in imprisonment or up to 50 million KRW in fines (Article 18). Also, it includes provisions allowing the police to restrain the act of stalking at the scene (Article 3), prohibit access using physical or telecommunications, when urgently requested to prevent stalking crimes and obtain approval afterwards from the prosecutor and the court (Articles 4 and 5).

After the implementation of the Stalking Act, the number of reports made to the police under this law increased more than 4 times on average per day. On Dec. 6, 2021, the Seoul Metropolitan Police Agency released the 'measures to strengthen the on-site responsiveness for stalking crimes,' that includes a 3-step response system to stalking crimes.

However, some people argue that simply enacting and implementing the Stalking Act is insufficient to rid of the stalking crimes. The murder case in Nov. 2021 above, for example, occurred after the implementation of the Stalking Act. Some argue that it is necessary to supplement the law, response method and capability of the investigation agencies.

B) Limitations and Criticisms of the Stalking Act

'Stalking' is not a new form of violence that just appeared recently, but it has been around for some time without being recognized as violence. The damage from stalking is now being recognized as serious. Related researches show that more women are victims of stalking than men, (Korean Institute of Criminology and Justice, [Study on the Realities of Stalking and Countermeasures', 2010], and the act of stalking usually includes sexual meaning.

Enacting the Stalking Act is meaningful in that it is clearly stipulated as a crime, rather than a misdemeanor, gave heavier penalties and stipulated the victim protection procedure. It reflects social consensus on the need for more strict rules, rather than seeing stalking as problems between individuals or consider it non-threatening, However, some argue that even this law is insufficient to abolish the stalking crimes.[126)]

First is a problem related to the provision of the Stalking Act that stipulates that the suspect cannot be punished if the victim does not want the suspect punished. (Article 18). However, stalking crimes typically occur between acquaintances, and the victim may not want the suspect punished for fear of retaliation.

The second problem with the Stalking Act is its insufficient procedure to protect the victims. Even when the stalker fails to fulfill the emergency and temporary measures taken by the investigative agencies and the court, the penalties are relatively minor to be effective. Some propose that the investigative agencies need to verify the location of the assailants by installing the location applications on the assailants' phone and for the police to be dispatched if the assailant is near the victim.

Third is a comment related to the investigative agencies' response to stalking crimes. Until now, the investigative agencies underestimated the danger of stalking crimes, to not accept the case or failed to take proper protective measures. Also, even after the Stalking Act became effective, a close response may be difficult due to the budget and personnel problems of the police. According to the National Police Agency, there are 20,000 cases of protective measures taken per year, and it is increasing each year. 1 police station needs to protect 80 people, and it is difficult to provide protection at all times, as a result.

126) Korea Policy Briefing, Won, Se-yeon, "Details and Shortfalls of the Stalking Punishment Act," Apr. 21, 2021.

On the contrary, there is also an assertion that the Stalking Act focuses too much on punishment, and that as a result, the human rights of the person suspected as the assailant may be violated. This is because the 'continuous and repetitive' that becomes the basis for distinguishing the act of stalking from the stalking crimes is difficult to determine. Also, there is an argument for a feature to prevent the indiscriminate expansion of acts subjected to punishment.

C) Need for a Proactive Response to Stalking

Stalking is like a 'prelude' to a greater crime. As the stalking crime is repeated, the assailant's aggression and retaliation increases, and may eventually lead to a violent crime. According to a study that analyzed the court's ruling from 2013 to 2020[127], among 148 cases that use the expression 'stalking', half also included other crimes, such as rape, assault, threat, home invasion, obstruction of business, etc.

On the other hand, even if serious criminal offense is not accompanied, the stalking victims suffer from substantial mental damage and have difficulty in their daily lives. Stalking is recognized as a threatening act, because it ignores the opinions of the subject, and causes the serious fear of safety during daily lives. A criminal psychology research team's 'Result from the Study on the Stalking-Prevention Legislative Policy,' 226 of the 256 stalking victims (88.4%) suffered from severe fear of safety. 206 (80.4%) people felt 'hatred or distrust of others.' There were some victims who left school or job and moved to another region.

Protecting the victims from crimes is a very important human rights role a government must fulfill. It is necessary to be proactive in responding to and preventing violence, rather than considering the act of stalking as problems between man and woman or personal problems. The enactment and implementation of the

127) Han, Min-kyeong, "Stalking in Court: Types of Stalking from the Sentencing and Penalties", Mar. 2021

Stalking Act is meaningful, somewhat, but it is difficult to abolish the stalking crime with this Act alone. It is necessary to improve and update the law and for the investigative agencies to exert efforts, as new types and forms of stalking is occurring through the internet, social media and messenger, etc. Also, establishing a detailed protection and support system for the victims of stalking is necessary for the victims to recover from stalking and live healthy normal lives.

3) Workplace Sexual Harassments and Sexist Hiring Practice

A) Job Structure that is Disadvantageous to Women

The result of a survey on 473 companies by Saramin on Jul. 14, 2021 show that 32.8% of the companies have a preferential gender in hiring employees, and men (74.2%) are preferred over women (25.85). According to the data released by a civil society group, 'Workplace Gapjil 119' on Mar. 14, 2021, out of 559 violations reported with the MOEL since the amendment of the 'Fair Hiring Procedure Act' in July 2019, 338 violations (60.5%) were related to physical conditions, such as attractiveness, height, etc., marital status and place of origin, etc.

Notwithstanding the improvements made with the laws and system to prevent discrimination in hiring, female workers are experiencing discrimination. According to the result from a survey on 'wage gap between genders 2020,' by the Ministry of Gender Equality and Family on Sep. 1, 2021, the average wage of a woman is 51 mil. KRW, where as that of a man is 79.8 mil. KRW. This is due to the fact that women tend to quit their job for marriage, childbirth and childcare and therefore, men's continuous years of employment is longer.

Also, gender discriminating language is used against more women than men. According to the 'report on the realities of the workplace gender discriminating harassment and study on improving the system' (Jul. 2021) by the Korean Women's Development Institute, among the 2,000 workers surveyed, 35.7% of them

experienced gender discriminating harassment, and women accounted for 42.4% and men 29.1%. Many women workers experienced stereotype related to the work capability between genders and being excluded from certain types of work. Women were excluded from important duties and promotions due to marriage, pregnancy, childbirth, and odd jobs and errands, such as cleaning, making coffee, etc. were considered 'women's work.'

On the other hand, women are having more difficulty at work because they also had to take care of family due to COVID-19. According to the result from the 'Survey on the Realities of Gender Equality Culture Within Workplace in 2021' released by the Federation of Korean Trade Unions in March 2021, both men and women cared for family due to COVID-19, but more women (70%) were worried about any disadvantages at the workplace if the family care continued than men (53.8%). Experts explained that 'women, who have relatively stable position, experience less disadvantages, but more women worry about being discriminated.'

Also, women work more at home than men, as compared to before COVID-19. The study result released by the Federation of Korean Trade Unions in November showed that both men and women recognized women as the main caregiver since COVID-19, and women feel more burden to care for children while working. This in turn causes more conflict at home. Also, more women used the child care system, such as childcare leave, etc. However, the use of these care system, sometimes, leads to actual disadvantages at work, such as being discriminated against in the performance review and promotion, etc. As such, women end up being placed in a lower position, which in turn leads to lower wages.[128)]

128) Federation of Korean Trade Unions Press Release, "Effect of COVID-19 on Women Workers", Nov. 9, 2021.

B) System to Prevent Gender Discrimination in the Workplace and Limitations

There are legal regulations that prohibit gender discrimination related to employment, including the 'Labor Standards Act,' 'Equal Employment Opportunity and Work-Family Balance Assistance Act,' 'Framework Act on Employment Policy' and 'National Human Rights Commission of Korea Act,' etc. Since 2019, the Ministry of Gender Equality and Family is distributing the 'Guideline on Gender Equality in Hiring' that includes specific standards to inspect the gender discriminating hiring factors at each stage of hiring and questions not to ask during interviews, to prevent gender discrimination in hiring. Also, after the enactment of the 'Fair Hiring Procedure Act' in 2014, it is encouraged to change the personnel management into a job performance and capability-centered system and the use of the standard resume format.

However, some point out that these laws and the system are not effective in reality. Some prefer a certain gender, without providing a logical reason, and some request information unrelated to the job on the application, such as physical conditions, family relations and education, etc. The MOEL conducts monitoring each year, but the survey period is short, the standard is too simple and the penalties are only minor to be effective.

There are arguments that the standards for determining the gender discrimination in hiring is unclear under the current law. 'Gender discrimination in hiring' is recognized only when the relationship between gender discriminating questions and not being hired. However, the employers have the exclusive possession of the information during the hiring process, and the job applicants do not have access to it. Also, it is difficult to raise issues as a job applicant and they worry about any disadvantageous aspects during employment. Also, there is no case law in Korea that recognized gender discriminating questions itself as gender discrimination.

C) Tasks to Resolve Gender Discrimination in Hiring

'COVID-19 and Women's Human Rights' released by OHCHR on Apr. 15, 2020 pointed out that more women parents or guardians are expected to be responsible for childcare due to gender stereotypes due to the close of schools and childcare facilities and experience restrictions in career and economic opportunities.

CEDAW also continuously recommended that the states must guarantee actual and formal equality to abolish discrimination against women in its general comments no. 29 in 2013 (Marriage, Family Relationships and Economic Outcome of Such Relief). It further pointed out that discrimination in education and hiring, compatibility of work conditions and family needs, gender stereotypes related to women's economic capabilities and the effect of gender-roles must be dealt with through the actual equality approach.

For actual changes in the hiring area, it is necessary to present a clear standard to determine gender discriminating acts and specific countermeasures guidelines. Clear standards will be able to provide information to the employers on the types of language and acts that result in gender discriminating effects during the hiring and work performance processes. Moreover, the main reason for the gap in wages between men and women is the women's career disruption, and therefore, policy efforts to maintain the women's career is necessary. There is a need to expand maternity and the paternity protection system, including guaranteeing childcare leave, etc.

Changes in the organizational culture and the fundamental awareness of the members are the most important factors. Discrimination in hiring is not just an act of individuals, but is a structural problem from prejudice related to work performance based on gender. It is necessary to continuously exert efforts to create a realizable gender-sensitive education and the process of dealing with gender discrimination, with the help of experts.

5. Children and Adolescents

A. Human Rights Status 2021

Childhood and adolescent period[129] are early stages of physical and emotional development, and the lifestyle during this period is important. In that light, the human rights of children and adolescents are viewed from a slightly different perspective than that of adults. Forward looking growth and development is important, and the discussions on the human rights of children are expressed from the perspectives of both protection and autonomy.

The UN Convention on the Rights of the Child (CRC) presents a basic framework to protect the human rights of children and adolescents. The Convention stipulates the principles of nondiscrimination and best interest, and presents 4 major human rights areas of right to life, right to be protected, right to develop and the right to participate.

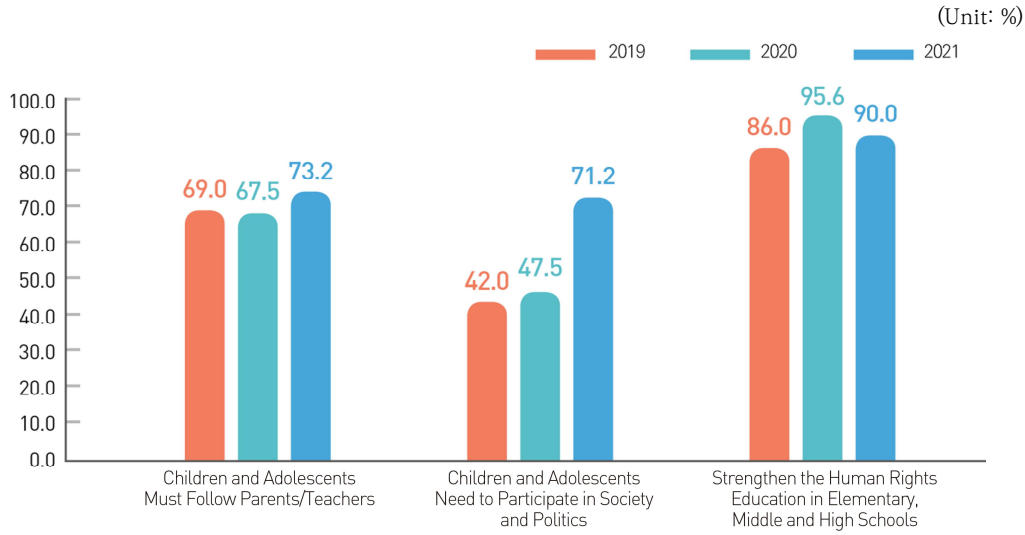
The year 2021 marks the 30th anniversary of Korea becoming a signatory to the CRC. In Korea, children and adolescents have been considered a subject to be guided by parents or adults, rather than being recognized as an independent being. The human rights of children and adolescents, who have difficulty voicing his/her own opinions, are more likely to be violated by parents, schools and the society. According to the 'National Human Rights Status Survey 2021' of the NHRCK, opinion that children and adolescents 'must follow parents and teachers intent' (73.2%) increased as compared to the year before (67.5%).

However, more recognize that 'human rights must be guaranteed generally,' in recent years, and the interest and efforts to protect the human rights of children and adolescents are increasing, as well. Legally, the right to punish his/her own

129) Classifying children and adolescents can be difficult, but generally, children are up to 12 year olds, and adolescents are 13~20 year olds.

child was abolished in Jan. 2021, after 63 years (Article 915 of the Civil Act). Also, the Public Official Election Act was amended in December to lower the voting age to 18 years. These legal systems changes can be seen as efforts to protect the human rights of children and adolescents.

Graph Time Series Trend of the Human Rights of Children and Adolescents



Source: NHRCK, 「National Human Rights Survey」, 2021.

On the other hand, the human rights problems of children and adolescents that are continuing under COVID-19 and new tasks present the question of how to protect the rights of children and adolescents to the Korean society. Due to COVID-19, elementary, middle and high schools conducted remote learning for a substantial period of time, and the problems of academic gap, social development and caring for children and adolescents will impact Korean society in the long term. The effect of caring for children and adolescents will be separately considered in the part related to COVID-19.

We will analyze, in detail, the children and adolescents' human rights related issues that grabbed the attention of society in 2021. Issues of child abuse, practical training, law breaching minor, etc. have been topics under discussion over several years, but are especially noteworthy in 2021. The Constitutional Court held the parts of Article 30(6) of the 'Act on Special Cases Concerning the Punishment of Sexual Crimes' unconstitutional in Dec. 2021, and we will review the court testimony of sexual violence victims.

B. Main Topics

1) Child Abuse Cases and the Immediate Separation System

A) Repetition of Major Child Abuse Cases and Changes in the Public Protection System

Child abuse is not abolished. According to the 'Major Statistics on Child Abuse in 2020' (Aug. 2021) by the Ministry of Health and Welfare, the number of child abuse reported has increased steadily since 2016, and reached 42,251 cases in 2020. Changes in the lifestyle due to COVID-19 and improving awareness on abuse, etc. are some of the reasons for the increase in cases of abuse being reported.

Child abuses cases reported by the media, such as the death of an adopted child in Oct. 2020 and a child abuse death case in Gumi in Feb. 2021, caught the attention of the society and created a public opinion urging the government for harsher punishments to the assailants and government measures to prevent repetition. The government is in the process of restructuring the public protective system for child abuse since Oct. 2020, and the aforementioned cases only accelerated the changes in the system.

Article 4 of the 'Act on Special Cases Concerning the Punishment of Child Abuse Crimes' (hereinafter referred to as the 'Child Abuse Punishment Act') was amended in Feb. 20212 to punish the person who commits the act of killing or causes death by child abuse to the death penalty, imprisonment for life or for 7 years or longer. The Supreme Court's sentencing panel also stated to adjust the sentencing standards for child abuse crimes, as per requests to strengthen punishments for child abuse cases.[130)]

130) According to the Supreme Court's sentencing panel (Jan. 24, 2022), most of the opinions submitted to the sentencing panel in 2021 requested strong punishment for the child abuse cases, and as of Jun. 2021, it was 1,500 cases, which is more than the number of cases received in 2020.

With the amendment of the 'Child Welfare Act,' receiving and investing child abuse reports that were the responsibilities of the specialized child protection agencies was transferred to the child welfare officials at the local governments, starting from Oct. 1, 2020. 539 child welfare officials were placed at local governments nationwide, between 2020~Jul. 2021, and 669 child abuse police officers were placed, as of Aug. 2021. Also, the Ministry of Health and Welfare is implementing 'Plans to Strengthen the Response System to Child Abuse' in Jan. 2021. The plan includes the ways to strengthen the officer's expertise and understanding, early discovery of children at risk and secure the positioning of the immediate separation system, etc.

B) Implementation of 'Immediate Separation System' and Controversy

Most of the recent deaths by child abuse cases are perpetrated by parents[131], and occurred while the state and the local governments were informed of the child abuse. As such, people are asserting that the children should have been more actively separated from the family.

The government explained that the principle of protecting the family is a hurdle to stopping the repetitive child abuse, and will introduce an immediate separation system to overcome this. As such, the 'Child Welfare Act' was amended in Dec. 2020, and came into force on Mar. 30, 2021.

According to the amended 'Child Welfare Act,' if 2 or more child abuse reports have been received within 1 year, and the abuse is strongly suspected during a field investigation, (Article 15(6) of the 'Child Welfare Act'),[132] the child can be

131) According to the 'Annual Report on Child Abuse 2020' by the Ministry of Health and Welfare (Aug. 2021), 82.1 % of 'the relationship between the abuser and the victimized children' are the parent-child relationship for child abuse cases.

132) Article 15(6) of the Child Welfare Act
(1) Where it is found in the course of an on-site investigation of a child for whom child abuse reports have been filed at least twice within one year that abuse is highly suspected and likely to recur;
(2) Where an emergency measure under Article 12 of the Act on Special Cases concerning the Punishment,

immediately separated and be protected by the temporary child protection facility or an abused children's shelter until a protective measure is taken.

The immediate separation system is similar to the emergency measures stipulated in Article 12 (1) of the Child Abuse Punishment Act, but the emergency measures has a time restriction of 72 hours, whereas the immediate separation system does not have such limitations. The Ministry of Health and Welfare stated that during the 1st week of implementing the immediate separation system, there were 9 cases of emergency measures and 1 case of immediate separation.

This amendment is seen as a reconsideration of the principle of original family protection.[133] Some are critical of the 'immediate separation system' in that the expertise of child welfare officers are not guaranteed to make proper determination and the separated children are neglected.[134] Some experts show concern in damaging the principle of protecting the child's family due to the tendency towards severe punishments and the current immediate separation system must be abolished.[135]

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etc. of Crimes of Child Abuse or an urgent ad hoc measure under Article 13 of the same Act expires with respect to a child, but no request is made for an ad hoc measure under Article 15 of the same Act by the time a decision to take protective measures is made under paragraph (1);

(3) Where a child's protector refuses, evades an answer, makes a false answer, or obstructs such answer in the course of an on-site investigation;

(4) Where a Mayor/Do Governor or the head of a Si/Gun/Gu deems it necessary to temporarily protect a child until protective measures prescribed in paragraph (1) 3 through 6 are taken.

133) Original family refers to the family that cared for the child, and is not limited to the family the child is born into. It is a family with the main caregiver and includes various types of households.

134) Only 76 abused children's shelters are in operation nationwide, as of Mar. 2021. They are established and managed by local governments or non-profit organizations, but there are insufficient shelters for children with disabilities or early childhood care, etc.

135) Law Times, "Need to reconsider the 'immediate separation of the victimized child' in child abuse cases", Dec. 3, 2021.

C) Efforts to Protect the 'Best Interest of a Child'

In reality, not all parents can provide safe environments to their children. Also, separating the child from the abusive environment is the most concrete means of guaranteeing the safety of a child. However, the UN CRC and an alternative childcare guideline emphasize that this may not be in the best interest of a child. The final opinion (2019) by the UN CRC on the 5th~6th country report of Korea emphasized the support and promotion of family-based care for all children, if possible, and strengthened to support the reunion of families.

For most children, leaving home is very shocking, in itself, and the children must live separated from the most important support system, if assistance in returning to his/her original family is not provided. Numerous overseas research results show that a lot of costs were invested to separate the child from a 'bad original family' and raise the child in a 'good foster family/facility,' but these efforts created even bigger problems.

However, leaving the child in the original family, without any confidence in the child's safety or providing any support to preserve the original family, is leaving the child for being abused again, if the original family is not strictly evaluated and the follow-management is not conducted. The principle of protecting the original family does not place the return to the original family at the highest priority, and it refers to the fact that the society must support and protect the child by turning the original family into an optimal condition for the child to grow and develop.

The authority of the US child protection officers and civil protection orders, and Germany's children/adolescent temporary protective system are recognized to have wide discretion and administrative authority. However, they require clear legal standards and evidence to separate the children and procedures to obtain determination from the judiciary.

The amended Child Welfare Act should not be used to separate the child and create disconnection with the family and abused to give up childcare. In order to

do this, there must be procedures for judiciary determination, means of supporting a return to the original family and requirements to return to the family, etc. Moreover, a procedure must comprehensively determine the cause of such severe abuse cases and the function of the public support system, etc.

2) Death of a Student During Practical Training and the Practical Training System

A) Deaths of Vocational High School Students During Practical Training

A high school senior died while working underwater during a practical training program in October 2021. At the time, the student wore a 12-kg lead belt, went underwater to clean the bottom of a yacht. It was only 10 days since he started the practical training.

The MOEL conducted an accident investigation and industrial safety supervision for the workplace where the accident occurred. On Oct. 18, 2021, it announced that the employer was arrested under several counts of violating the 'Occupational Safety and Health Act.'[136] According to the MOEL, the employer ordered underwater work, even when the student did not have a license, experience or ability to work underwater, and failed to comply with basic safety rules, including working in groups of 2, providing safety equipment and placing a watchman, etc. The prosecutors' office sought 7 years of imprisonment to the business owner for manslaughter and 20 mil. KRW in fines to the company.

The MOE and relevant agencies released a 'plan to improve the vocational high schools' practical training to secure safety and rights' on Dec. 23, 2021. The improvement plan ordered an overall restructuring of the practical training, from preparation, implementation to inspection, etc. for the school and companies, while maintaining the basic framework of the learning-based practical training.

136) 고용노동부 보도참고자료, 2021. 10. 18.

The deaths of students during practical training continues, and as the accidents that lead to death continued, the government release many measures, including 'plan to improve the practical training system of vocational high schools' in Aug. 2017, a 'plan for a stable settlement of learning-based practical training' in Feb. 2018, and a 'plan to supplement the practical training of vocational high schools' in Jan. 2019. However, notwithstanding these measures by the government, the students participating in the practical training are not protected properly. There are other issues with the practical training program as well, such as not receiving proper treatment, while performing work similar to that of the regular employees of the company, and some argue to abolish the practical training system itself.[137)]

B) Changes to the Practical Training System and Abolitionism

The practical training system was introduced in 1963 as a 'short-term industrial education.' After becoming mandatory in 1973, vocational high school students were required to participate in practical training, until the Vocational Education and Training Promotion Act was amended on Mar. 27, 2018. Even after the practical training became optional, approx. 24,000 students participated in the practical training, as of 2020.[138)]

The purpose of the practical training is employment and to acquire the knowledge necessary for the job performance by applying the knowledge acquired from school on the field. However, the practical training system has been criticized for being used to supply manpower to the 3D (dirty, dangerous and difficult) industry. Also, the practical training is being recognized by the students and teachers as an early-employment program, rather than the educational program.

137) Kim, Gyeong-yeop, Hankyoeh Column, 'Abolition of the Practical Training: Need to Normalize Vocational Education Rather than Labor Exploitation,' Nov. 3, 2021.

138) Joint Press Release, 'Implementing 10 Central Tasks for the Safe Practical Training Programs of Vocational High Schools,' Dec. 23, 2021.

Since 2000, the government released several plans to improve the practical training program. They include the partial recognition of students in practical training program as workers (2012), mandatory execution of 'standard contract for practical training students' (2016), and subjecting the students under mandatory industrial safety and health protection measures, same as the workers, by amending the 'Occupational Safety and Health Act' (2020).

However, notwithstanding these government measures, the death accidents of students in training are repeated, and people continuously assert the abolition of the program itself. Using the practical training of vocational high school seniors as cheap labor, rather than a learning process, has been pointed out as the fundamental problem. The problems with the practical training system has been raised for 50 years, but the government repeated strengthening regulations and relaxing regulations, from time to time, depending on the needs of the schools and the industry.

Moreover, the students are not placed at industries related to their specialties, but dispatched to places where the long-hours of labor, low wage and harmful/dangerous work are prevalent and exposed to human rights violations. In reality, the facilities or teachers are not prepared to conduct the practical training education, and the system lacks proper apparatus to protect the government plans for support or a budget.

On the other hand, there are arguments for maintaining the practical training system. Many of the vocational high school students' goal is employment, and the practical training is one of the few opportunities for them to acquire hands on experience. According to a study by the National Youth Policy Institute, 77.4% said that the practical training experience is helpful.

C) Need to Supplement with a 'Safe Practical Training System'

Participating in labor activities pursuant to international standards can be helpful to the development of adolescents, and is an important curriculum for the vocational high school students to gain experience that will help them in selecting jobs in the future. However, this benefit must be obtained within the scope that does not infringe on their health, safety and education, etc.

Through the final opinion (2019) on the 5th~6th country report of Korea, the UN CRC showed concern about having too many working children and that their rights are often violated, and emphasized the need to take immediate and effective measures to protect their rights.

Schools perform important roles in adolescents' learning, development and socialization. Also, the international human rights standards require the curriculum for the children and adolescents to be based on the best interest of a child principle. As such, diverse efforts must be exerted to prevent the deaths of students during practical training and to protect the rights of the students at both the schools and the field.

In order to resolve the issues related to the practical training system, we need to gravely accept the criticism that the Korean society has treated these students as cheap labor, not as students, and neglected their safety and human rights. Moreover, we need to establish a legal and systematic protective system for these students to be protected of their right to learn, as well as protected as workers.

3) Law Breaching Minors and Juvenile Justice System

A) Criminal Punishment of Young Offenders and 'Law Breaching Minors'

Under the Criminal Act of Korea, 'criminal minors' are people who committed crimes but are not criminally liable for having no reproach, and the age is stipulated as 'under fourteen years.' Also, the Juvenile Act stipulates children between the age of 10 and 14 as 'law breaching minors,' and they are criminally punishable (Article 9 of the Criminal Act), and are subjected to 10 protective detentions under Article 32 of the Juvenile Act.

The world trend is to have a special procedure, independent from the general criminal procedures, for misconducts and juvenile crimes. However, a controversy over the age limit for the 'law breaching minors' and criminal minors have continued for some time, especially upon media reporting of a serious crime or school violence by these minors.

In Jul. 2021, 3 middle school students in Yangsan attacked another middle school student from a migrant family, and 2 students were transferred to the prosectors' office for group violence, but one student was sent to the juvenile court for being a law breaching minor. In the same month, 5 elementary and middle school students stole 3 bikes and 2 cars and drove without licenses. They knew that they were law breaching minors and will not be criminally punished. They dragged the police officer for 1km, swore at the police officer and did not cooperate with the police investigation.

A parent of a victim of a school violence filed a national petition in Dec. 2020. The parent asked for help in punishing the attackers and to be rid of school violence. 370,000 people agreed to the petition and the Blue House released an answer to the petition on Feb. 10, 2021. The Blue House answered the they are reviewing strengthening the criminal penalties of young offenders, but also said that heavy penalty is not the only solution for juveniles.

From 18th to the 21st National Assembly, several amendments related to lower the age of a criminal minor were presented. Most of the proposed amendments include lowering the age of the law breaching minors and strengthening the criminal sanction or penalty of young offenders.

B) Two Positions Related to Lowering the Age Limit of Law Breaching Minors

The argument for lowering the age limit of law breaching minors, from 14 to 13 or even lower, is based on the physical and mental development of adolescents. They argue that the age limit has not changed since the enactment of the Juvenile Act in 1958, that today's adolescents are more mature, both physically and mentally, than before and that violent crimes committed by adolescents have been increasing recently.

On the other hand, the argument against lowering the age limit of law breaching minors assert that criminal penalties are improper from the perspective of correction and reform of these young offenders. The juvenile offenders who will be imprisoned at juvenile correctional facilities may create a nationwide personal network. Also, they will be isolated from society even earlier to have a bad effect.

C) Need for a Juvenile Justice System that Considers the Distinct Characteristics of Child Development

In the general comment no. 10 (Children's rights under the juvenile justice, 2007), the UN CRC urged the states to not set the minimum age for criminal liability too low. The UN CRC proposed the absolute minimum age for criminal liability as 12 years, and encouraged to raise the age. The criminally liable age differ by each country. For Germany, Japan and Italy is 14 years, same as Korea. Each state in the US has a different age, from 7 to 18.

Childhood is when a person is establishing value and judgment ability, and children are under these special development stage. The criminal punishment of a child can have a negative impact on the child, rather than the effects of correction

and reformation. Moreover, unless the complex socio-environmental factor that impacted a child's commission of a crime is not improved, the child will be exposed to more misconduct once he/she returns to society.

On the other hand, lower the age limit for criminal minors and law breaching minors cannot be an effective alternative to preventing juvenile crimes. First, there is insufficient evidence to assume that more younger children commit juvenile crimes or that they became more violent. There is no comprehensive statistics to determine the status of juvenile crimes, but according to some studies,[139] the total number of young offenders have decreased 25.1% during the past 10 years, and violent crimes (violent: murder, arson, robbery, rape) account for the lowest ratio among the type of juvenile crimes, with the ratio fluctuating repeatedly.

Moreover, it is difficult to assume that lowering the age limit of criminal minors will prevent crimes, and it may stigmatize the young offenders even more to reduce their chances of returning to society for recovery and grow as healthy adults.

Both arguments have in common that they are trying to prevent these juvenile crimes. As such, we need to exert the efforts to lower the repeat offense ratio. Often, juvenile cases reach the juvenile justice system after initial misconducts are accumulated, so it is necessary to strength educational programs to be involved actively from the initial stages of misconduct. Guardian or family programs are also needed to be involved with, not only the individuals, but also the families. It is necessary to conduct systematic education by analyzing the cause of juvenile misconduct and manage/supervise according to the characteristics of the juvenile, etc.

Juvenile crimes cannot be resolved by simply punishing the young offenders heavily, and the need to consider the distinct characteristics of juvenile misconducts,

139) Lee, Seung-hyeon and Park, Seong-hun, "Study on the Overseas Response Trends for the Juvenile Violent Crimes and Policy Implications," Korean Institute of Criminology and Justice, 2017

such as cause, diversity and the development process, etc. Moreover, integrated involvement is necessary to analyze the problems, establishing responsive measures and the child's diverse environment, including family, school, society, etc.

4) Decision to Not Recognize the Admissibility of Evidence for the Recorded Statements Made by a Sexual Violence Victim Under the Age of 19

A) Unconstitutionality of Article 30(6) of the Act on Special Cases Concerning the Punishment of Sexual Crimes

The Constitutional Court held part of Article 30(6) of the Act on Special Cases Concerning the Punishment of Sexual Crimes as unconstitutional.[140] The provision grants admissibility of evidence for video recorded statements of victims, without statement at the court, when the victim of sexual crime is under the age of 19 or unable to identify objects or make decisions due to adisability.[141] This provision has been used to prevent secondary damage by minimizing the victim investigation and questioning in court.

The Constitutional Court upheld this clause in 2013.[142] At the time, the court upheld this clause by recognizing the legitimacy of protecting the victimized child from psychological and mental shock that may occur to the victim from repeating the victimized experience at court and that the accused party's right to defend him/herself is not infringed upon. However, in 2021, the Constitutional Court reversed its ruling because in many cases, the recorded statement of a minor victim is key evidence, and that there are ways to harmonize protecting the victim

140) Constitutional Court, Dec. 23, 2021, Sentence 2018HunBa524 Decision

141) Unlike other criminal procedures, the Sexual Crimes Punishment Act permitted a submission of a video recording of a victim statement of a minor victim, under the age of 19, if the victim, the trusted person in attendance at the investigation or a statement facilitator acknowledges the truthfulness of the statement in court.

142) Constitutional Court, Dec. 26, 2013, Sentence 2011HunBa108 Decision

and guaranteeing the accused party's right to question, such as evidence preservation procedure, etc.

Legal community and human rights groups are criticizing the Constitutional Court's decision as not considering the realities.[143] Now, the minor victim must appear in court to make statements, if the accused or the attorney do not consent to the evidence. The evidence preservation procedure presented by the Constitutional Court has the advantage of implementing the witness questioning procedure during the entire investigative process, but is conducted similarly to the witness questioning during a trial and the agony of the minor victims cannot be resolved if several witness questioning procedures are needed.

In case of sexual crimes trials, aggressive questioning, such as questioning the behavior of the victim or holding victim responsible, etc., occur sometimes, and this could cause severe stress to minors. Also, children are unable to properly understand the intent of the questions or legal or social ramifications, and are open to making false statements depending on the accused's leading questions, etc.

B) Effect of the Constitutional Court's Decision

By deciding the provision as unconstitutional, the concern provision became invalid immediately. However, the decision applies only to the admissibility of evidence, and the video recording of the victim statement can continue to be used during the investigation process. The video recording can be admissible in court by the victim appearing in court.

However, for cases under trial at the time of the court's decision, the evidence will become illegal if the admissibility of evidence was granted with acknowledgement of the attending trusted person pursuant to the concerned provision. Therefore,

143) Hereunder, Child Fund Korea Statement, Jan. 18, 2022, et., al.

the cases under trial must summon the victims for testimony, and the cases in the appellate court will be remanded after reversal. This is actually happening in the courts, where victims are summoned as witnesses.

People are urging supplementary legislation to protect the minor victims, who may need to testify in court. The MOJ is discussing plans to amend the Sexual Crimes Punishment Act, and is known to consider the Nordic Model, where a professional investigator is conducting the cross-examination through the trial. The model is called Barnahus, and here the judges, prosecutors, accused (attorney) and the victim's attorney gather to decide on the investigation, and a video recording is made, where the professional investigator is listening to the victim's statements. This guarantees the accused's right to cross-examination, and at the same time relieves the minor victim from the repeated testimonies.

In response to the Constitutional Court's ruling, the National Assembly also submitted a proposed amendment to the Sexual Crimes Punishment Act in Jan. 2022. It includes a provision that requires a testimony assistance to participate in the witness examination for minors or people with mental or physical disabilities, and the court, the prosecution, attorneys and the testimony assistance to discuss the examination method to not damage the victim's personality or honor prior to the trial.

C) Need to Establish a Protective Measures in Consideration of the Characteristics of Children

Article 3 of the UN CRC emphasizes that all activities related to children implemented by the courts, etc., must first consider the best interest of a child. Through the general comments adopted by the UN Committee on the Rights of the Child in 2009, children who are victims of a crime must be provided with opportunities to fully exercise his/her opinions freely. Efforts must be made for the children to freely express his/her opinions and concerns when being involved in the judicial procedures. Moreover, the rights of a child who is a criminal victim

are connected with the right to know about medicine, psychological treatment, provision of social services, support system for the children participating in investigation or trial procedures or raising issues on the role of a child, questioning method, lawsuit, etc., providing protective measures, possibility of compensation and rules related to a lawsuit, etc.

The MOJ stated that it is preparing an amendment to protect the rights of the children who are victims. However, the most important is establishing legal or systematic measures to avoid the children from being exposed to assertive cross-examination, without any protective measures. It is necessary to design a system for the sexual crimes victims who are also minors, for them to make statements without being exposed to secondary damage. This can be made possible with the development of various non-face-to-face relay technology.

Moreover, it is important for the courts to recognize that the attorney's cross-examination is the key to the secondary damage. The courts need to establish an actual alternative to be prepared for cases that may cause secondary damage to a child.

6. Elderly

A. Human Rights Status 2021

The concept of the elderly may be different depending on the region, generation and social culture. The International Association of Gerontology and Geriatrics (1951) defined the elderly as persons in the process of the complex interaction of biological, psychological and environmental changes with behavioral changes expressed during the aging process. Elderly are people with reduced physical, social and psychological functions.

The age group considered to be elderly are typically 65 years or older, although the age is continuously under discussion as the Korean society is becoming older each year. According to the population estimation by the National Statistical Office, people under the age of 14 are considered the youth population, between 15 and 64 are considered the working age population and 65 years and older are considered the elderly population. The 'Welfare of Senior Citizens Act' defines the elderly as 65 years or older, and the 'National Pension Act' defines the elderly as 60 years or older.

Korea is experiencing the fastest aging society among the 37 OECD member states, and Korea's aging speed (4.4%) is 2 times faster than the OECD average (2.6%) during the past 10 years (2011~2020) (Korea Economic Research Institute, KERI, 2021). According to the National Statistical Office's [2021 Elderly Statistics], the elderly population of over 65 years old account for 16.5% (8.537 mil.) of the total population, and are expected to enter super-aged society by 2025 (20.3%).[144] Moreover, there are more than 1.66 mil. elderly people living alone, in 2020, and

144) The UN classifies society as 'aging' if the share of people aged 65 years or more is more than 7%, an 'aged society' if the share of people aged 65 years or more is more than 14% and a 'super-aged society' if this share is 20% or higher.

this is 1/3 of the total number of elderly households (35.1%) (National Statistical Office, 2021).

The elderly living in poverty is also a problem that is continuing, along with the aging problem, and the government is abolishing the 'obligatory provider' standard, in stages and expanding the elderly job programs. However, the isolation of the elderly intensified due to COVID-19 and the poverty issue, as well as elderly care and abuse issues worsened.

The importance of caring for the elderly under the responsibility of the state is being emphasized more than ever under the circumstances. Next, we will discuss the situations and major issues related to elderly human rights problems during 2021.

B. Main Topics

1) Elderly Poverty and Elderly Employment Programs

A) Human Rights Issues for the Elderly in Poverty and Efforts for Resolution

According to the '2021 Elderly Statistics' released by the National Statistical Office in Sep. 29, 2021, the income distribution index of the retired group (66 years or older) with a relative poverty rate of 43.2%, Gini's coefficient of 0.389 and the income quintile share ratio of 7.21.[145] The income distribution is improving since 2016, but the elderly poverty rate of Korea (43.4%),[146] as of 2018, is still the highest among the member states. If we take into account assets and other residential elements, the result may be slightly different, but even if we adjust the real property assets to the income, the poverty rate of elderly people is still higher than the OECD average.

When looking at the elderly poverty, not as a numerical concept, but from the perspective from the 'people in poverty,' you can see the issue more specifically. According to the human rights status survey by the NHRCK,[147] the economic vulnerability of the elderly in poverty continues throughout the life cyle and tends to deteriorate, rather than improve. They were born to a family in poverty, did not receive proper education and endured labor since youth.

After the currency crisis, they experienced economic difficulty from career discontinuation, failed businesses and restructuring, etc., which is impacting their later lives, as well. Some even receive public assistance. Especially the elderly people in the socially disadvantaged class rarely receive economic support from their children, and often they need to help their children economically.

145) National Statistical Office, '2021 Elderly Statistics,' Sep. 29, 2021.

146) Ratio of elderly below 50% of median income among the total elderly population

147) NHRCK, 'Survey of Human Rights Conditions Through the Lifecycle of Elderly,' Dec. 2021.

Elderly people in poverty often experience difficulty and isolation in their daily lives, as their social network is weakened and they are harmed from psychological withering and discrimination and hatred. Sometimes they have to care for their grandchildren, and are often unable to enjoy their 'right to be sick.' Moreover, they sometimes are seen as people depending on the working population and of no use, and they endure hatred and discrimination from the younger generation.

The economic vulnerability sometimes leads to vulnerability in social relationships, and sometimes they maintain or rationalize their isolation for being unable to afford the costs involved in maintaining social relationships. Their isolation and disconnection intensified during COVID-19 pandemic.

The government raised the basic pension from 200,000 KRW to 300,000 KRW in 2021 to resolve the poverty of elderly people[148], and the obligatory provider standard under the basic livelihood security program is being abolished in stages.[149] Recently, an elderly job program is being implemented as a way to supplement the income of elderly people in poverty. The Ministry of Health and Welfare announced the plan for the 'elderly job and social activities support project' on Nov. 28, 2021. According to this, the government planned 845,000 jobs for elderly people in 2022.

However, the National Assembly and the media are criticizing the elderly job program as short-term part-time jobs, far removed from improving the labor productivity, and many are giving up the job in the short-term. The National Assembly Research Service criticized the program as being a welfare program, rather than an employment program, and this will distort the realities.[150] On the

148) Article 5(3), Basic Pension Act

149) Ministry of Health and Welfare Press Release, "Abolishing the Obligatory Provider Standard for the Livelihood Benefits After 60 Years", Sep. 30, 2021.

150) National Assembly Research Service, "Analysis on the Issues from the 2021 Government Inspection", Aug. 2021.

other hand, the civil society groups argued that the elderly job program should maintain the current basis and expand the program gradually.[151)]

B) Criticism and Controversy Over the Elderly Job Program

Even with the government policy on expanding the basic pension, etc., the poverty rate of elderly people did not improve much, and maintain a high level among the OECD nations due to the rapidly aging stage, vulnerable income source, lack of preparedness, insufficient public pension, etc. However, Korea has the highest ratio of elderly people in poverty among the OECD nations, as well as the highest ratio of elderly people who are employed. Some of the main issues on whether the government's elderly job program can positively effect the human rights of elderly people or not are discussed below.

First is the criticism on the effectiveness of the elderly job program. Most of these jobs are short-term and many participate but drop out in the middle. The program distorts the employment statistics and people who do not need the job are participating. However, the Ministry of Health and Welfare argues that the positive effects of the program is being proven from the facts that the poverty is reduced for the elderly people who participated in the program, and it has positive aspects, including improved health, psycho-social effect, satisfaction with social relationships, etc., and the reason why people drop out in the middle are due to unavoidable reasons, such as health problems, etc.[152)]

Second, the elderly job program may cause a reduction in non-public jobs. As related to this, the Ministry of Health and Welfare points out that the elderly job program focuses on older elderly people, having difficulty finding employment in the private sector, and plays the role of supplementing the blind spot of the private

151) 100 Year Generation, "The Korea Senior Citizens Association Releases a Statement Refuting Some Media's Criticism of 'Wasting Tax Money'", "Job for the Elderly is the Best Welfare... Why Denounce It?", Apr. 2, 2021.

152) Ministry of Health and Welfare Press Release, Nov. 29, 2021, etc.

labor market. The program is a welfare program that contributes to the elderly people's self-realization and relieving depression, while considering the elderly people's work capabilities and work hours.

On the other hand, there is an argument for the program to decide whether to strengthen the social activity programs or expand into improving job conditions. However, the argument that the jobs are too simple to contribute neither to social contribution nor the elderly people's self-realization is also plausible.[153]

C) Tasks to Solve the Elderly People in Poverty Problem

Article 25 of the Charter of Fundamental Rights of the EU stipulates that the "elderly people's right to live a dignified and independent life and to participate in social and cultural life are recognized and respected." Article 2(1) of the Welfare of Senior Citizens Act provides that senior citizens shall be respected as those who have contributed to the upbringing of descendants and the development of the State and society, and their sound stable lives shall be ensured.

However, Korean elderly have a hard time maintaining their dignity due to poverty, suicide and abuse, etc. To guarantee the basic life in the later years requires the minimum economic capacity, but many elderly people have difficulty maintaining their livelihood without working and need to help the family. This also indicates that there is a structural risk for them to become the low-income class once they are unable to work, due to health reasons, etc.

Most agree that diverse approaches are necessary to resolve the elderly people in poverty problem. It is necessary to consider connecting improving the segmented basic pension and other policies, and need to reinforce the basic livelihood guarantee program from the public aid perspective. Therefore, in order to create a safety net for the elderly people in poverty and those that are unseen, it is necessary to design so that many programs can work together.

153) Park, Kyeong-ha, "Diagnosis on the Elderly Jobs and Improvements to be Made", Jul. 1, 2021. 7. 1.

Moreover, vitalizing the elderly job program can help to improve the poverty rate of elderly people, as participants want long-term and continuous participation in the program. It is necessary to secure a basis for the program by enacting a separate law related to the elderly jobs or through amending the Welfare of Senior Citizens Act so that the elderly job program can be implemented effectively. Increasing the elderly job allowance can be considered to relieve the elderly people in poverty, and differentiated payment is needed by segmenting participating hours and the intensity of the job. Moreover, it is necessary to establish and comply with the code of conduct related to the human rights protection while performing the elderly job program, so that the fundamental human rights of elderly participants can be guaranteed.

2) Public Nature of Caring for the Elderly People

A) Changes in the Main Caretaker of Elderly People

'Caring for the elderly people' usually occurred within the family, and women or the children typically were the main caregivers. However, due to changes in the family structure, an increase in the number of elderly population, more women entering the job market, etc., how to care for the elderly people became a main task for the state, government, local communications and families. Currently 8.7% of the elderly people over the age of 65 have limited 'capability to perform daily activities'[154] and approx. 24% have limited 'ability to perform daily activities using tools'[155] and need caregivers.[156]

154) ADL(Activities of Daily Living): dressing, washing, brushing teeth, shampooing, control bowel movements, etc.

155) IADL (instrumental ADLs): household chores, preparing meals, laundry, purchases, telephone calls, using public transportation, etc.

156) NHRCK, "Survey of Elderly Caring for Elderly People Status", 2018.

The long-term care insurance program was introduced in 2008 and is a social insurance program that provides services to the older elderly people or with senile diseases. The key to the government responsible for the dementia program is that the state, not the individuals or the families, will be responsible for the dementia problems. Dementia Care Centers were established in 256 cities and provinces around the country, and 470,000 patients used the center for examination, counseling, shelter care and a cognitive enhancement program, etc. as of Sep. 2021. Also, according to the survey on the citizens in August 2021, 83% answered that the government responsible for dementia program helped the dementia patients and their families.[157)]

However, there are blind spots still. A 22-year old son discharged his father, who was being hospitalized for a stroke in Apr. 2021, and neglected his father, who was unable to live without the help of another, to die.[158)] During the investigation, the son testified about hopeless poverty, burden and sympathy when he left his father to die. The trial court sentenced the son to 4 years in prison, but when the civil society groups, media and politicians learned of his story, they asked for leniency and support.

According to a survey by the National Police Agency, since the reports of missing dementia patients reached 10,000 for the first time in 2017 (10,308 cases), over 10,000 cases of missing dementia patients were reported in each of the following years, and reached the highest number in 2021, with 12,577 cases.[159)] With the introduction of location tracking devices and a text message system, the ratio of finding the missing persons has increased and the time it takes to find them has decreased, but the number of reports of missing persons has not decreased.

157) Ministry of Health and Welfare Press Release, Sep. 16, 2021.

158) Daegu High Court, Nov. 10, 2021, Sentence 2021No351 Decision

159) K-Index, "Missing Children Reports and Status on Processing," As of Jan. 19, 2022.

As such, even though the expenditure on caretaking as a percentage of GDP is not low, as compared to other OECD members, but some point to the fact that it is not effective.

B) Family Care – A Welfare Blind spot

Even though the state and society is taking on more elderly care roles, taking care of elderly people by family members is still meaningful because elderly people prefer family or relatives, rather than a stranger. Also, some refuse the welfare services provided by the state or the local government because they are unable to make logical decisions due to dementia or because of personal preferences.

Nursing murder that is becoming more of a social problem in Korea usually occur while an elderly person is caring for an elderly person, within a family, and the victim is usually an elderly person.[160] Elderly people suffering from dementia usually refuses to enter care facilities, and except for 3~4 hours per day visited by a professional caregivers, their spouse or family must be responsible for caregiving. As such, the caregivers suffer from health deterioration for not being able to rest, and their economic hardship increases. Sometimes it leads to suicide, murder or abuse.

Moreover, with the increase of divorce at later ages and not providing for the parents, etc. this leads to an increased number of elderly people living alone, and they are exposed to more safety accidents, etc. However, education and information to prevent safety accidents are not being provided sufficiently. Also, there is lack of convenient and safe environment for the elderly people to use, and the programs for the elderly people safety, such as 119 safety call, gas safety valve, etc. are not being fully utilized due to a lack of information.

160) NHRCK, Aug. 28, 2020, Decision, Recommendation to Improve the Short-Term Care Program to Strengthen the Publicness of Caring for Elderly People

C) Need to Strengthen the Public Nature of Elderly Care Services

The short-term protection program can be used to relieve the burden of caring for elderly people at home, when entering a long-term care facility is unavailable. Short-term care can provide care services to elderly people, when necessary, while living at home within the community. This is an essential service to secure the continuity of residence within the community for elderly people needing care but wishes to live at home. The elderly people can use the short-term protection facilities, where he/she is familiar with, and the families can have rest and recovery needed.

However, these short-term protection facilities are decreasing each year, from 681 in 2008 to on 163 by Mar. 2020. Even these small numbers are concentrated in the metropolitan area, 49 in Seoul and 37 in Gyeonggi province, etc. Also, these short-term facilities are established by the following groups: 5 by local governments, 36 by corporations and 121 by individuals, as of the end of 2019.[161)]

As such, in Aug. 2020, the NHRCK recommended to the Minister of Health and Welfare and local government heads to strengthen the public nature of elderly care services to guarantee the short-term protection of the elderly people who need caregiving. The Ministry of Health and Welfare and the local government replied with a plan to implement the recommendation by the NHRCK.

In the end, we need to establish the conditions for elderly people to become independent and live within the local communities through the establishment of the local community integrated care system that the government is promoting. The local community integrated care plan includes providing a customized care safety house, house repair program for independent living and preventing fall accidents, expanding a community health center to visit and manage the health of elderly people and expanding at-home long-term treatment and care services, etc.

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161) National Health Insurance Corporation, "2019 Annual report on the elderly long-term care insurance statistics", 2020.

3) Sharp Increase of Elderly Abuse

A) Trend in the Increase of Elderly Abuse

According to the 'Elderly Abuse Status Report' (2021) released by the Ministry of Health and Welfare and the Korea Elderly Protection Agency, elderly abuse increased 207.1% from 2,038 cases in 2005 to 6,259 cases in 2020. The average rate of increase of elderly abuse is 7.9%, each year, since COVID-19 in 2020, the rate of increase jumped to 19.5% (5.243 cases in 2019 to 6.259 cases in 2020).

Some view the 7.9% increase as connected to the increase in the elderly population and accessibility to discover such abuse. Then, the sharp increase of 19.5% in 2020 can be interpreted as a social issue against the vulnerable under the worldwide pandemic.

According to the 'Status and Measures on the Elderly Abuse Within Facilities' (Aug. 2021) by the Korea Institute for Health and Social Affairs, the abuse cases reported at living facilities has increased 9 times over the past 10 years. On Aug. 11, 2021, a caregiver repeated assaulted the 80 year old hospitalized at a nursing hospital in Seoul, and the police is investigating the case. Experts point out that even though elderly abuse within the facilities are reported by the employees discovering the abuse is difficult, and that has become even more difficult to discover the abuse due to access from the outside becoming even more restricted due to COVID-19.

Approx. 70% of the perpetrator of elderly abuse are family members. Generally, elderly abuse is not exposed to the outside due to the relationship between the perpetrator and the victim, so the actual number will be much greater than the official accounts. Recently, due to COVID-19, abuse cases between parent-child have increased.

The unprovoked attacks of elderly people are also frequent. In Jan. 2021, a middle school student insulted and assaulted a 70 year old elderly person for no

apparent reason. In Aug. 2021, 4 teenagers had a 60 year old elderly person to buy cigarettes for them and attacked her with flowers. Both cases became public through videos recorded with smartphones, and the perpetrators filmed themselves assaulting the victims and sent the file to their friends.

B) Social Isolation and Hatred of Elderly People

Social distancing is a necessary measure to prevent COVID-19, but can be a harsh realities for the vulnerable class. Facilities for the elderly people were closed and the elderly job program was suspended, which threatened the basic livelihood of elderly people.

Social isolation is well known as a risk factor of elderly abuse, and maintaining close and diverse social relationships can protect the elderly people from abuse. According to studies overseas, during COVID-19, elderly people who participated in social activities often had a lower risk of abuse. In the untact society, the risk of elderly abuse increases, as well as the abuses not becoming known to the outside

Also, social distancing cause economic uncertainty to the families who cared for the elderly people, and any assets owned by the elderly people became a target of exploitation by families and others. Moreover, time restraints from caring for the elderly people and the stress that followed are elements of elderly abuse. Elderly people who already experienced abuse within the family were exposed to more abuse because time spent with the family has increased and greater burden was created between them.

COVID-19 caused the human rights issues of the vulnerable class to the forefront worldwide. During the early 2020, a new term 'Boomer Remover' was created and spread through the social media in the US. This is a term used for COVID-19 to mean an 'infectious disease that kills older people.'[162] Due to the nature of

162) Kang, Yang-gu, Young Doctor's Column, "Boomer Remover", Mar. 17, 2020.

COVID-19 having a different possibility of leading to a serious case by different age groups, conflicts between generations and age groups are increasing.

Some politicians and leaders from certain countries emphasized the elderly people to sacrifice for the social benefits, and some assess it as giving legitimacy to social discrimination and prejudice against elderly people.[163] According to the online hate speech awareness survey released by the NHRCK in May 2021, elderly people was ranked the highest (69.2%) when asked about the subject of hate speech experienced in real life.

C) Need for technical and systematic efforts to prevent elderly abuse

The World Health Organization (WHO) defines 'ageism' as a stereotype, prejudice and discrimination based on the age of a person. Also, the problem with the age discrimination is that 'unlike gender discrimination or racial discrimination, it is most accepted by society.[164] Ageism and elderly discrimination are new problems, but must pay attention to it as they are intensifying with COVID-19.

"Policy Brief: The Impact of COVID-19 and Older Persons'[165](May 1, 2020) points out that discrimination against elderly people is intensifying, such as age discrimination and stigmatizing elderly people, etc. due to COVID-19. Hate speeches against elderly people in public places and on social media are increasing, as part of expressing anger between generations, and it is important to show the undistorted effect of an infectious disease on elderly people through policy, program and communications, and to not stigmatize elderly people.

The problems of prejudice and preconception, such as age discrimination, needs an improved perception. It is possible for these issues of age discrimination

163) Seoul, West Regional Elder Protection Agency, Lee, Hyeon-min, Advisory Opinion on the Report on Human Rights Situation in the Republic of Korea, 2022.

164) WHO, "World report on ageing and health", 2015.

165) UN, "Policy Brief: The Impact of COVID-19 on older persons", 2021. 5. 1.

to become fixed in society, even after the end of COVID-19, to become the main factors of elderly human rights problems, such as the elderly people becoming the target of hate crimes and abuse, etc. The baby boomers and the MZ generation have different backgrounds and experiences, and their ideology and thoughts are different as well. We need a window to accept the differences, share the values and communicate; however, we can easily find mutual criticism online. We need to emphasize human rights sensibility to fight the hate speeches.

It is also important to prevent the actual violent acts. Digital technologies, such as IoT and ICT, can be used for elderly care. The government must consider AI robots and applications for seniors that can be used to provide care services to elderly people without economic means. Also, it is necessary to diversify the window to report abuse cases, such as the community service center, etc., to improve the ability to discover elderly abuse cases early.

All people are born equal and with dignity, and such value should not be damaged or derogated for being old. More importantly, it is important to view elderly people as the agent of rights, from the perspective of human rights and sensibility, rather than seeing them as the subject of policy.

7. Soldiers

A. Human Rights Status 2021

Korean society was not interested in the human rights of soldiers until recently, and efforts to make improvements began not too long ago. It was hard to connect 'military' and 'human rights.' In the 2000s, people's interest in human rights increased and the human rights issues in the army came to the forefront, with the incidents such as the Nonsan Training Center incident and the GP firearm case, etc. The army was criticized for over-emphasizing the special nature of the military, and for down-playing the human rights of the soldiers.

Recently, the army has emphasized the policy to improve human rights within the army. The human rights department was established within the Ministry of Defence and each army, and conducted a human rights education. In 2016, the Framework Act on Military Status and Service was enacted. Facilities were constructed to protect the human rights of the soldiers, and the military confinement system was abolished, and from Jul. 2020, soldiers are permitted to use mobile phones after all duties are completed.

In 2021, some of the major human rights issues in Korea occurred within the army. A transgender soldier was dismissed and a soldier who was a victim of sexual violence took their own lives. These events had a huge impact on establishing laws and system within the army, such as amending the Military Court Act and establishing a military human rights protector from amending the National Human Rights Commission of Korea Act.

There were also many human rights issues with soldiers. Diverse restrictions were put in place to prevent the spread of COVID-19. Also, death cases within the army almost doubled in 2021 to 103 cases, from 55 cases in 2020, which is the largest number since 2014.

Soldiers are citizens in uniform, and the State has the obligation to protect their fundamental human rights, and rights to life and health. Although the situation has improved recently with legal and systematic measures taken to protect the human rights of the soldiers, the human rights violations that occurred in 2021 presents doubts about these improvements. We will review the topics that were especially problematic and the legislative changes.

B. Main Topics

1) Death of Soldiers Who were Victims of Sexual Crimes

A) Sexual Harassment Cases that Received Attention from the Deaths of Female Soldiers

After being sexually molested by a senior officer on Mar. 2, 2021, a sergeant killed herself on May 22. The sergeant reported the incident to a senior and an investigation commenced, but during the process she suffered mental agony from the superiors' conciliation, pressure and concealment, etc.

Once her death and the circumstances were reported, there were several allegations of conciliation, secondary damage, concealment of the case, attempt to destroy evidence, etc. by the assailant and the military. The Ministry of Defense began investigating the case on May 31, with the President and the Minister ordering a strict investigation. The Ministry arrested the assailant on Jun.2, but the families and human rights groups continued to raise the suspicion of an organized attempt at concealing the case. The military human rights groups made specific accusations on the military police's attempt as down-scaling the case and concealment by referencing the reports and documents from the involved persons on Jun. 30.[166]

There were many incidents and controversy during the Ministry of the Defense' investigation, but the joint investigation team released the result on Jul. 9,[167] and released the final results on Oct. 7.[168] A total of 25 suspects were criminally charged and 15 were indicted. The Ministry of Defense stated that a disciplinary procedure will proceed after the trial for the 14 indicted (1 died after the indictment), and of 10 non-indicted people, 8 will be disciplined and 2 are

166) Human Rights Group Military Human Rights Center Press Release, Jun. 30, 2021.
167) Ministry of Defense Press Release, Jul. 9, 2021.
168) Ministry of Defense Press Release, Oct. 7, 2021.

subjected to a warning. There were others who were neither criminally charged nor indicted but subjected to the Ministry of Defense's reprimand, so a total of 38 people were subjected to a reprimand by the Ministry. Sexual harassment, secondary harm, conciliation, threat, destroying evidence, dereliction of duty, military police's insufficient investigation, false or delayed reports, etc. were some of the charges.

Before the above case was completed, another sergeant, from navy, killed herself on Aug. 13, 2021. She was sexually harassed by a superior from the same unit in May and reported to an officer on the same day, but no measures were taken to separate them. She asked the commanding officer to formally submit the sexual harassment case on Aug. 7, and the military police initiated an investigation of the case. This was another similar case that highlighted the level of sexual harassment in the military.

The politicians and the media criticized the military's insufficient investigation on the two cases, and it led to a discussion on amending the Military Court Act and establishing a military human rights protector. The civic society groups also paid attention to this case, and presented a strong complaint on the result of the investigation. The NHRCK also urged the introduction of the military human rights protector to protect the victims and for a strong external control of the military, as the system to protect the victims did not operate properly.[169)]

B) Problems with the System to Protect the Human Rights of Female Soldiers Shown from the Two Cases

The two cases occurred around the same time, and provoked outrage. They were controversial, and the problems with the system of protecting the human rights within the military were shown with just the matters confirmed by the result of the investigation.

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169) Statement by the Chairman of the NHRCK, "Expressing concern for the continuous occurrence of human rights violations within the military and urging the introduction of the military human rights protector to protect the victims and active external control," Jun. 8, 2021.

First, in both cases, sexual crimes occurred against female soldiers by the superiors. Within the military, female soldiers who are petty officers or sergeants are especially vulnerable to sexual crimes by their superiors. Victims of sexual violence in the military have difficulty reporting the case or to make statements actively during the investigation due to the top-down and closed military cultures. Also, if the victim wants to maintain long-term service, on occasion he/she may choose to not inform others of the sexual violence they have been subjected to.

Second, in both cases, the chain of command tried to conceal the sexual crimes reported. This was the main reason why the victims killed themselves during the investigation. The victims reported the crimes to their chain of command, but the assailants were not segregated. In the first case, the unit superiors tried to conciliate the victim and the victim's husband and pressured about the disadvantages the she will receive for reporting the case. Also, for the second case, because the victim requested to not disclose of the assault to the outside world, the case was closed with just a warning to the assailant by the superior.

Third, the military investigative unit was strongly criticized for being lukewarm in processing the sexual crimes. The Ministry of Defense expressed its intent to strictly investigate the case. However, the media and the human rights groups asserted that the military police and the military prosecutors became aware of the attempts to destroy evidence by the assailants, but conducted investigations favorable to the assailants. In fact, when the airforce military police became aware of the first victim's death and made a written report to the Ministry of Defense investigative unit, they neglected to report that she was a victim of sexual violence. As such, the Ministry of Defense explained that it is true that the initial investigation of the military police and the response by the military prosecutors were insufficient, not subjected to criminal punishments.

Lastly, the victims of sexual crimes were bullied within the organization. Other people in the unit were well aware of the situation of the first victim because the

unit chiefs disclosed the case to others. They were indicted for defamation. It is necessary to look closely into "why the victims of sexual crimes within the military are not protected, and be abandoned by the group," as the victim wrote right after the case.

C) Need for Efforts to Prevent the Repeated Occurrences of Human Rights Violations Within the Military

Soldiers are citizens in uniform, and the State has the obligation to protect their human rights. The recent sexual violence issues show that the system to protect the victims did not operate properly. It shows that weak penalties and punishments to the assailants of sexual violence, attempt to conceal the case by colleagues and superiors, lack of awareness on protecting the victim, etc. are still prevalent.

The UN Committee Against Torture (CAT) and the Committee on the Elimination of Discrimination against Women(CEDAW) recommended strengthening the measures to eradiate violence within the military, including sexual violence, guarantee immediate, fair and thorough investigation, the strict penalty of assailants of sexual crimes, measures to prevent the assailants from returning to their job, and strengthening the confidentiality obligation for easier access to consultation and reporting on their final opinion related to the Korean government's country report in 2017 and 2018.

Serious human rights violations occur continuously in the military due to the problems of awareness and structure. We need to improve the people's perception of recognizing sexual violence within the military as the individuals' problems, and the structure that fails to operate properly, even with the system and a manual. The civic society groups and the politicians conducted discussions on introducing the military human rights protector and amending the Military Court Act to prevent any more victims. It is necessary to design the system in detail so the system can function as a measure to prevent the recurrence.

2) Dismissal and the Death of a Transgender Soldier

A) Death of a Transgender Soldier and a Judgment to Cancel the Dismissal

Currently, Korea does not officially produce and manage a survey or statistics related to sexual minorities. Sexual minorities are often not recognized or intentionally ignored. They only grab the attention of the people when exceptional accidents or incidents occur. The case of a soldier, Byun Hui-su, is an exceptional case for having received attention for over 1 year related to her lawsuit to cancel the dismissal.

On Mar. 3, 2021, Byun was found dead at her home. On Jan. 22, 2020, the military dismissed her for disabilities in the 3rd degree, and in July of the same year, the military committee dismissed her suit to cancel the dismissal, followed by administrative proceedings. Byun underwent a gender reassignment surgery after making reports according to the chain of command, before being dismissed. At a press conference, she expressed that 'she wanted to show that she can be a good soldier, regardless of her sexual identity.'

After her death, the family members continued the adminsitrative proceeding to cancel the dismissal. On Oct. 7, 2021, Daejeon District Court held the dismissal illegal and cancelled the dismissal.[170] The MOJ did not appeal the case and the judgment was finalized on the 27th of the same month. The army corrected the ground for dismissal from 'disabilities dismissal' to the 'completed service discharge,' on Dec. 15.

Byun's dismissal grabbed the world's attention. The media and the politicians criticized the army's decision, and many civic society groups also expressed their support for Byun. The NHRCK also recommended cancelling the army's decision to dismiss Byun. Also, the media around the world, including AP, Reuter, CNN,

170) Daejeon District Cour, Oct. 7, 2021, Sentence 2020GuHap104810

WSJ, WP, NPR, SCMP, BBC, DW, etc., also covered the story in depth, as it was also related to a case in the US about transgenders in the military.

B) Criticism on the Dismissal of Sergeant Byun

The court ruled that it is appropriate to consider Byun as a woman at the time of the disposition. Therefore, when the army ruled that Byun was disabled for the loss of a penis, it was unlawful, as Byun should have been considered a woman.

Additionally, the decision to dismiss Byun was criticized in may ways.[171] First, the army's dismissal is premised on 'mental and physical disability,' but a soldier who had undergone a gender reassignment surgery cannot be seen as 'mentally and/or physically disabled' under Article 37(1)(1) of the Military Personnel Management Act, and physical changes from the surgery cannot be seen as a "physical damage" or "functional disorder."

This does not conform with the international human rights regulations. The UN OHCHR sent an opinion to the Korean government stating that in relation to the army's disposition on Jul. 29, 2020, considering removing the penis as a 'mental or physical disability' under Article 37(1) of the Military Personnel Management Act is considering gender diversity as pathology, and violates the 11th edition of the International Classification of Diseases.

Second is an issue related to whether a transgender serving in the army impedes on the military's readiness or not. For a soldier to be incompetent for active service refers to the 'loss of combat power,' unless for the disqualifications under the Military Personnel Management Act, but the army is only making excuses about the distinct characteristic of the army and social consensus, etc., and unable to present any reason as to how Byun lost her combat power. Moreover, several female officers already serve in the same position as Byun.

171) Statement from the joint committee for the reinstatement of a transgender soldier Byun Hui-soo, Jul. 3, 2020

The army does not specific quotas for male soldiers from female soldiers and places the most appropriate person to the position, without gender classification. In light of this, dividing men and women in the army is not important. Therefore, Byun's continued service would not have had any negative effect on female soldiers, as Byun would not be taking another female officer's place.

C) Perspective on the Military Service of Transgender Soldiers

Prior to Byun's case, transgender in military service often focused on people trying to avoid the military service. At the same time, the army has been operating under the premise that transgender serving in the military is impossible, for whatever reason. As such, in a small number of cases, when a man becomes a woman, the transgender's exemption from military service became an issue. However, Byun was the first case in which a transgender wanted to continue their service.

The issues that cause controversy with Byun's case were ① is it fair to allow a person to serve as a woman when enlisted or commissioned as a man (when the competition rate for the female is higher than that of the male); ② does a transgender serving as a female soldier cause discomfort to other female soldiers; and ③ do the above reasons negatively effect the army's combat power, etc. This is contrary to the earlier trend of suspecting transgender as avoiding the military service. In the end, military service of a transgender is based on competition and hatred, instead of a serious understanding of an individual's human rights and fundamental rights.

According to a report from RAND Corporation (Assessing the implications of allowing transgender personnel to serve openly), transgender serving openly in the military has almost no effect on the military power or the national finances. The report estimated that the medical expenses may increase by 0.13%, for an extreme case, for the US military. Moreover, as for the potential effect on the military readiness and combat power, there may be some situations where the transgender

is unable to serve due to individual medical needs (hormone treatment, recovery after surgery, etc.); however, only 0.0015% of the current and reserve forces will be restricted for such reasons.

This report also stated that there is no research or data to support that the so called 'unit unity' maybe reduced. In a study conducted in the US, people who had experience interacting with transgender have a more tolerant and inclusive attitude. The cases outside the US (Australia, Israel, UK) also show no negative effect on unity, effectiveness and readiness, etc., and some officers reported that the readiness and mission achievement actually improved. Some people were resistant to the inclusive policy, but such resistance did not impede on the overall unity.

D) Need to Establish a Plan to Prevent Recurrence

One of the reasons for the military to dismiss Byun was a lack of legislation related to the military service of a transgender. Byun was the first person to have gone through a gender reassignment surgery while serving in the military, and the military never considered such a situation. It is necessary to align the system so that the same damage would not occur in the future.

More importantly, the perspective that considers sexual minorities as mental disease must be corrected. The American Psychiatric Association removed homosexuality as a mental disease in 1973, and changed to 'when sexual identity is not congruent with sexual orientation.' The WHO also decided not to classify transgender as a mental disease in Jun. 2018.

Some overseas cases are: US, UK, Germany, Australia, Canada, Israel, Austria, Belgium, Bolivia, Brazil, Denmark, Estonia, Finland, Ireland, Iran, Netherlands, New Zealand, Norway, Spain, Sweden, Thailand, etc. recognized transgender to serve in the military, and Germany had a transgender officer. The UK, Canada and Israel, etc. provides surgery and treatment expenses, etc.

The case of Sergeant Byun should be understood as an unfortunate case showing that the society can no longer defer being ready to include sexual minorities and sexual diversity.

3) Providing Inadequate Meals at the Army Training Centers and Excessive Restrictions on Daily Lives

A) Reporting the Human Rights Violations of Soldiers through Social Media

Around Apr. 2021, the human rights violations of soldiers returning after vacations and trainees entering the training center were reported through social media. They were living in very inadequate facilities while being isolated within the unit to prevent the spread of COVID-19, and were even controlled on using the shower and bathrooms. They asserted that even the meals were inadequate. Moreover, similar issues were also found at other units, and they received the attention of the media.

First, the human rights groups strongly criticized the military's measures as an 'irrational response to COVID-19 and human rights violations.' Among the issues that became known through human rights groups were that once the trainees enter the training center, the PCR test is conducted the following day, but they cannot wash or brush their teeth until the results are given (3 days), they can use the bathroom only at certain hours, once the PCR test results are in, they can wash their faces, but not take a shower for 10 days, and they had to wear masks while sleeping, etc.[172)]

The army held a meeting for an interim inspection on the preventive management system on May 2, 2021, and posted a written apology on the social media page of the Ministry of Defense. The head of the army training center

172) Military Human Rights Center, "Statement on Irrational COVID-19 Response and Human Rights Violations at the Army Training Center," Apr. 26, 2021.

apologized for the human rights violations of the trainee during the process of COVID-19 prevention and said to correct the issues raised.

The issue related to meals also occurred at other units, not just the training center, but such as other military, air force unit, marine, etc. The Ministry of Defense explained that the meals provided to soldiers in quarantine were no different than the meals of other soldiers, and that there was a problem with the distribution process, not the meals themselves. However, there was criticism towards the military for trying to cover up the inadequate meal problem because during the process, the investigators from the Ministry of Defense inquired about the identity of the reporting person and had the quarantined people return their mobile phones.

As the criticism on inadequate meals continued, the Ministry of Defense increased the cost of basic meals in 2022 by 25.1% (8,790 KRW in 2021 to 11,000 KRW in 2022), hired 900 more cooks and implemented a pilot program where 5 private companies provided meals to soldiers in 10 units.

B) Human Rights Situation Faced by Trainees

According to the survey conducted by the NHRCK in Aug. 2021,[173] the trainees were inconvenient with a bathroom (25.3%), meals (20.4%), shower (18.9%), washing face (3.3%), and others, including the restricted use of the mobile phone, cigarette, TV, etc. (32.1%). As related to the COVID-19 protocols, many answered that the responses were proper (32.5%), mostly proper (48.9%), and responded that the media reporting of human rights violations was slightly exaggerated(33.3%) and very exaggerated (20.1%).

The head of the army training center asserted in Apr. 2021 that the use of bathrooms and shower were restricted as per the guideline of the health office.

173) NHRCK, "2021 – Survey of Human Rights Situation at the Military Training Center," Nov. 30, 2021.

However, there was a strong criticism for not considering other alternative means so that the human rights of trainees can be respected.[174]

Once an infected patient is found at a unit, the infectious patients must be segregated and use separate bedrooms, dining room, shower, bathroom, etc. However, in reality, there is no separate location or facility that can quarantine the infected patients at the army training center and some units. Moreover, bathrooms are often the most problematic because there is an insufficient number of toilets, and the number of working toilets are even less. As such, the army training center and the military units are not adequate when preparing for the pandemic situation.

Moreover, the superior's sensitivity to human rights is also an issue. This is a criticism for restricting facial washing and shower, without considering other alternatives. In other countries, restricting the daily lives of trainees are minimized, unless the trainee has COVID-19 symptoms. In Japan, the temperature is taken 2 weeks prior to enlisting and must complete and submit a health monitoring sheet related to COVID-19 symptoms. France requires PCR negative results to enlist, and the UK allows the enlistees to return home on weekends.

On the other hand, as related to providing inadequate meals to quarantined soldiers, the meals themselves were not insufficient, but the method of delivery was problematic. However, some improvements must be made, such as the insufficient amount of menus that the soldiers prefer or bad tasting food, etc. The survey by the NHRCK showed that many trainees were hungry for the insufficient quantity of meals, and therefore, the standard quantity of meals should be increased for these trainees.

174) Military Human Rights Center, "Statement on Irrational COVID-19 Response and Human Rights Violations at the Army Training Center," Apr. 26, 2021.

C) Task of Protecting the Human Rights of Trainees

The trainees entering the training center must be guaranteed of the fundamental rights according with the Constitution of the Republic of Korea. However, the training center is where a civilian is trained to become a soldier, and therefore, certain restrictions and some discrimination are permitted.

As the interest on human rights and the urge for the guarantee of human rights are increasing in Korean society after the 2000s, the expectations of the trainees have been set very high. The guarantee of the human rights of the soldiers has improved somewhat, but the overall situation at the training center fails to meet these expectations.

The Ministry of Defense is releasing plans for improvements, as the society's interest on the human rights of the trainees have increased from excessive measures taken at the army training center. However, the trainees must be able to rest in a comfortable environment at the end of a day, but they live in an inadequate environment because investments were not made. The military facilities, such as living quarters and bathrooms, etc., must be improved to meet the minimum standard and the quality and quantity of the meals at the army training center must be improved. These are the most basic levels to protect the human rights of the soldiers, and the improvements must be made continuously.

4) Amendment of the Military Court Act and the Modification of Jurisdiction

A) Process of Amending the Military Court Act

The discussions related to the military legal system reform has been continued prior to the 21st National Assembly, as part of guaranteeing the human rights of the soldiers and improving the military culture. Discussions on improving the overall military legal system were conducted in 2021, with the deaths of female petty officers from sexual violence within the military and improper work performance by the military investigative agency and the victim's public defender.

The Ministry of Defense established a 'private, public and military joint committee' in Jun. 2021 to demand a recommendation for the 'military to become strong and trusted founded on justice and human rights.' The private, public and military joint committee proposed a recommendation for strengthening the protection of sexual violence victims under the military criminal procedure, improving the legal support system for victims, and improving and strengthening the surveillance of military legal institutions, and made the strongest recommendation for 'abolishing the military court during the time of peace.

The amendment to the Military Court Act passed by the National Assembly on Aug. 31, 2021, and the National Assembly agreed on transferring the jurisdiction over crimes unrelated to the military to civilian court, but was not able to agree on the overall abolition of the military court during the time of peace.

In the past, the military court had exclusive jurisdiction on all crimes of soldiers (including quasi-soldiers, such as reserves, etc.). However, with the amendment of the Military Court Act, sexual crimes, crimes related to death cases and the crimes committed prior to becoming a soldier were excluded from the jurisdiction of the military court and the civilian court will have jurisdiction.

Moreover, the high military court was abolished, so the civilian court will have the jurisdiction on appeals. Meanwhile, the military court will be established under the Minister of Defense, and the prosecutors will be established under the Minister of Defense and the Chief of Staff of each military branch. The convening authority and adjudicators are abolished, as well as the system of obtaining approval of the unit when the military prosecutors request the warrant of detention.

The Ministry of Defense stated that the amendment of the Military Court Act is significant in that it is a military legal reform that guarantees the fundamental rights of the soldiers by establishing a fair and transparent military legal system.[175] However, the civic society groups criticized the amendment as a 'half-reform' for not including the 'full abolition of the military court during the time of peace,' and is an amendment that only considered the position of the Ministry of Defense, that is the subject of reform.

B) Critical Opinions on the Amended Military Court

The military legal system of Korea has changed continuously, and the amended Military Court Act of 2021 can be the most ground-breaking change. Diverse proposed amendments were submitted to the National Assembly, and there was a meeting of minds in reducing the superior's involvement with the trial to reinforce the independence of the military court, and the final amendment reflects this. However, the abolition of the military court during the time of peace was not reflected in this amendment. The amended Military Court Act had the following limitations and criticisms thereof.[176]

First is that the abolition of the military court during the time of peace was not included. The current military legal system allows the superiors to minimize or

175) Ministry of Defense Policy Briefing, Aug. 31, 2021.

176) Joint Statement by Military Human Rights Center, Minbyun-Laywers for a Democratic Society Legal Center, Catholic Human Rights Committee, PSPD, Korea Sexual Violence Relief Center, Aug. 24, 2021.

conceal the cases and insufficient in practicing judicial justice and human rights protection. The amendment transfers the jurisdiction on sexual crimes, crimes where a soldier is dead, and crimes committed prior to enlisting to the private court. However, there are questions as to the crimes that are transferred and that are not, and harsh treatments within the army were not considered. The military court can be established pursuant to Article 110(1) of the Constitution, but this is included in the judicial area; therefore, having the court under the administrative branch can be seen as a direct violation of the separation of the three powers.

Second is the insufficiency in the means of securing the independence of the military investigative agency. The fact that the military investigative agency tried to minimize or conceal the case or that proper protective measures for the victims have not been taken were some of the important issues. Sexual crimes in the military, which triggered the amendment of the Military Court Act, raised issues with the procedures prior to the trial, where the investigative agencies conducted inadequate investigation, etc. The amended Military Court Act only changed the supervising authority of the military prosecutors, from the units under the command of general-grade officers to the Minister of Defense and the Chief of Staff of each military branch.

Meanwhile, people who oppose the abolition of the military court during the time of peace asserted that the amendment is a 'legislation that is focused too much on the public opinion.' They argue that the law was amended from the people's anger towards the recent cases and the army's conduct, but it may be excessive restrictions in operating the military court during the time of war, as well as performing the military's innate functions, for establishing the military's discipline and under the unique situation of armistice.

C) Tasks for Operating a Fair Military Court

The military legal system, including the military court, has been recognized for its uniqueness, separate from the general criminal legal procedures, to increase the combat power and establish a command system in consideration of the realities of Korea, in armistice, and the characteristic of the military. However, although the soldiers should be guaranteed of the right to a fair trial by a judge under the Constitution, there were many negative effects with the military legal procedures due to arbitrary and closed operations, such as the excessive involvement of superiors and the exercise of unfair influence, etc.

This latest amended Military Court Act has positive aspects in that it is an effort to protect the fundamental rights of the soldiers during the trial, but is limited in that measures on insufficiencies in independence and the expertise of the military investigative agencies and inadequate protection of the victims within the unit are unclear.

Meanwhile, the military court remains during the time of peace, and efforts must be exerted for the independence of the military court and to protect the victim's right to a fair trail, etc. For example, to guarantee a fair trial, outsiders must be able to attend the military trial, but under the current system of the military court, the general public cannot obtain information easily and some times are asked to leave for military security, etc.

Moreover, private court has jurisdiction on sexual crimes, crimes related to the death of the soldiers and crimes prior to joining the army; however, the cases where both the above three types of crimes and a military crime are involved are unclear as to the jurisdiction and needs to be resolved. For example, if sexual crime and another crime are involved in the same case, or when the victim and the perpetrator both filed lawsuits against each other for sexual crime and defamation, etc., the case cannot be intentionally separated and tried at private court and military court separately, there may be significant issues with the fairness and efficiency of the trials. However, there is no provision on these, and therefore,

problems related to jurisdiction cannot be avoided and needs improvement through legislation.

5) Establishing the Military Human Rights Protector

A) Process of Establishing the Military Human Rights Protector

The 'Special Committee on the Military Human Rights Improvement and Military Culture Innovation' was established due to a case of death by beating in 2014 (so called 'private first class Yoon case'), and diverse methods to resolve the issues of human rights violations within the military were discussed. As a result, the parties agreed to establish a Military Human Rights Protector within the NHRCK, and the'Framework Act on Military Status and Service' (Military Service Act) was enacted.

There were human rights violations within the military, such as violence, harsh treatments, sexual crimes, and weapons accidents, death and suicides continued. Also, there were rights that were not protected during the process, and there were limits with the relief procedures within the military due to the unique nature of the military for being closed. Everytime issues with the human rights violations within the military has been seriously raised, the need for a military human rights protector was proposed. During the 19th and 20th National Assembly, an act to establish a military human rights protector was proposed but unable to reach an agreement as to the human rights protector's affiliation and authority.

In 2021, two consecutive cases of sexual crime victims committing suicides occurred and people raised issues with the fact the system to protect the victims was not in place during the process. The civic society groups asserted that an independent 'military human rights protector' is needed to establish systematic countermeasures, and the chairman of the NHRCK also urged to establish a military human rights protector to protect the victims and exhibit strong external control.[177]

177) Statement by the Chairman of the NHRCK, "Urging to Introduce a Military Human Rights Protector to Protect

Eventually, at the end of 2021, through the plenary sessions of the Steering Committee of the National Assembly and the Legislation and Judiciary Committee, the amended 'National Human Rights Commission of Korea Act' was proclaimed on Jan. 4, 2022, and scheduled to become effective on Jul. 1, 2022. Pursuant to the amended National Human Rights Commission of Korea Act, the military human rights protector will be under the NHRCK and served by the standing commissioner designated by the president (Article 16(1), Article 50-2), and has the authority to visit and investigate (Article 50-4), the right to submit documents, right to participate in death cases (Article 50-6), etc.

However, the civic society groups criticized the fact that the military human rights protector was not granted with the authority necessary to investigate and relieve the victims. The civic society groups raised issues with the NHRCK for not actively refuting, and accepting, these issues and during the discussion process.

B) Criticism Related to Establishing the Military Human Rights Protector

The amended 'National Human Rights Committee of Korea Act' will become effective soon, but whether such an establishment and operating methods guarantee an effective operation of the military human rights protector or not is being questioned continuously.[178] The main contents include the existing permanent commission to hold the position of the military human rights protector as well (designated by the President), restricting the authority to visit and investigate at random, and the granting of the right to request the suspension of investigation by the Minister of Defense, and they are discussed as follows.

First, it is pointed out that if the existing standing commissioner also serves as the military human rights protector, then it will be difficult to secure independence, and it will be an added work to an already over-loaded work, to restrict the actual

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the Victims and Strong External Control," Jun. 8, 2021.

178) Hankyoreh, "Military Human Rights Protector, Compromised Human Rights," Dec. 6, 2021.

work performance. In order to resolve the human rights cases within the military, a unique and closed organization, the person requires expertise, with a substantial understanding of the military organization and experience in military-related cases. However, the existing standing commissioner may not have the expertise required in performing the duties of the military human rights protector.

Second, the provision that restricts a random visit and investigation may cause a grave impediment in performing the duties of the military human rights protector. Under the amended law, the military human rights protector may visit and investigate the unit at random when it is 'urgent or recognized to not be able to achieve the purpose if notified before,' but even in such a case, a notice must be made to the Minister of Defense. Most of the countries with the military human rights protector system recognizes the protector's authority to visit and investigate at random times, and considering the purpose of having the military human rights protector system is to guarantee the actual investigation of the human rights violations within the military, this would reduce the importance of having the military human rights protector.

Third, the amended law provides the Minister of Defense with the authority to demand the suspension of the investigation of the military human rights protector 'in cases with the substantial effect on the national security, national emergency or impedes military operations, etc.' This provision is being criticized for restricting the military human rights protector from performing his/her duties. 'Military operation' is such a comprehensive concept that can be abused to restrict the right to investigation by the military human rights officer. Moreover, the military and the Ministry of Defense is subjected to investigation by the military human rights protector, but they can demand the suspension of investigation, and if the commission must immediately suspend the investigation when the reason is explained, then the investigation by the military human rights protector is limited to that permitted by the military.

C) Establishment of the Military Human Rights Protector and the Tasks

In explaining its proposed amendment to the regular session, the Steering Committee stated to consider increasing the number of protectors after assessing the prevention of military human rights violation and the status of projects implemented by the NHRCK related to protecting the military human rights 1 year after the implementation of the law. This is due to the fact that there is a room for re-discussion, as objections have been raised by the families, human rights and civic society groups, as well as the National Assembly, during the discussion process.

The controversy surrounding the establishment of the military human rights protector through amending the National Human Rights Commission of Korea Act is related to the effectiveness of the investigation and relief functions of the NHRCK. The petitioners assess the NHRCK's processing of petitions relatively poorly, in terms of initiative and speed.[179] This also stems from the fact that the investigator and 1 standing commissioner has to process many cases. If the existing standing commission also plays the role of the military human rights protector, this same problem will intensify, so we must be considering increasing the number of standing commissioners, so serve exclusively as the military human rights protector.

Meanwhile, the criticism related to the authority of the military human rights protector can be understood as a process of completing the tools to protect the human rights of soldiers. The military human rights protector has the authority to investigate ex officio and request the submission of materials, etc. and these authorities can be used, when necessary. Moreover, other methods can be considered to protect the military human rights. To satisfy the people's expectations on the military human rights protector, detailed plans must be established so that these authorities can be used to achieve the purpose.

179) NHRCK, "Survey on the Degree of Satisfaction with the NHRCK, 2021," Oct. 2021.

Ⅲ. A World That Protects Labor

1. Changes and Limitations of Labor Laws

A. Human Rights Status 2021

Although the labor conditions in Korea have improved significantly, it is still criticized for being inadequate when compared to the developed OECD nations. The temporary worker problem has become an important social issue, and we need countermeasures on various problems, from long work hours, to the treatment of female low-income workers and industrial accidents, etc.

Changes in the perception through education at companies and organizations is needed to guarantee and improve the human rights of the workers, but sometimes, changes in the law and the system promote changes in the perception and awareness throughout society. In 2021, major laws were passed and implemented that will improve the 3 rights of labor. The Serious Accidents Punishment Act was enacted. Also, the ILO's Fundamental Conventions was ratified, and the labor laws were amended premised on the ratification of the convention. The Labor Standards Act was amended, as related to the workplace harassment.

However, these laws are different than the expectations of the civil society groups. Many civil society groups that participated in the legislative movements criticize the fact that the initial legislative intent was not reflected. Also, there were no clear legislative outcome as related to the issues of protecting the special-type of workers or platform worker, or issues related to the outsourcing of dangerous jobs, etc.

On the other hand, many workers lost jobs and experienced a reduction in income due to COVID-19. Work-from-home changed the workers' work format, and some are faced with new human rights issues. The hardships were concentrated on workers in unstable employment relationships, such as low-income workers at small-sized workplaces, special-type of workers and platform workers, etc. We will consider some of the main issues in 2021 as related to labor laws below.

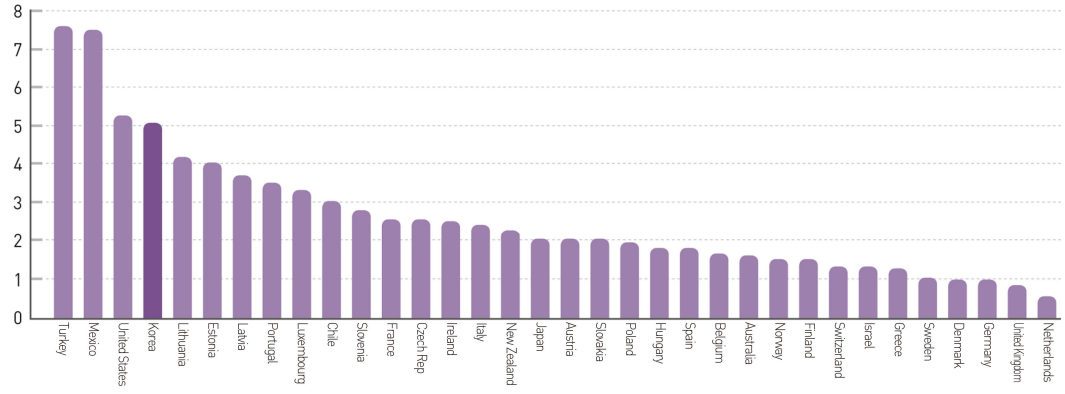
B. Main Topics

1) Enactment and Limitations of the Serious Accidents Punishment Act

A) Process of Enacting the Serious Accidents Punishment Act

As of 2020, 2,062 people died from industrial accidents in Korea, and that is 5.6 people per day on average.[180] This is the highest level among the OECD members. The labor human rights groups, etc. asserted the need for a law that can strictly sanction not properly preventing and managing danger in order to prevent serious accidents. Since 2006, the need to enact laws that stipulate the companies' social responsibilities on industrial accidents have been discussed.

Graph No. of Deaths from Industrial Accidents per 100,000 Workers by Country



Note: 1) Record date may differ by each country. 2016: Greece, Lithuania, USA, Sweden, Spain, Slovakia, Estonia, Austria, Turkey, Hungary; 2017: Mexico, Australia; 2018: Israel, Japan, Chile, Korea; 2015: Rest of the countries

Source: ILO, ilostat.ilo.org

180) Statement by the Chairman of the NHRCK, "Statement of the Chairman of the NHRCK on the Implementation of the Serious Accidents Punishment Act," Jan. 26, 2022.

The social responsibilities of corporations on safety, and the workers' safety and health became main issues in Korean society from experiencing industrial accidents and civil disasters, such as the accident at Taean Power Plant that resulted in the death of a young temporary worker and the Sewol ferry accident on April 16. The NHRCK recommended a strict penalty for industrial accidents to protect the workers' lives and to ensure safety.[181] By September 2020, over 100,000 people agreed with the petition to legislate the serious accidents punishment act, but by the end of 2020, when the law was still not enacted, the mother of the victim of the Taean Power Plant accident urged the attention and efforts of the politicians through a hunger strike.

In the end, there were many opposing opinions, the Serious Accidents Punishment Act was enacted on Jan. 26, 2021 and came into force from Jan. 27, 2022. The Serious Accidents Punishment Act stipulates penalty provisions for the business owners, chief executives and corporations, etc. for 'serious industrial accidents' occurring at the workplace and 'serious civil disasters' that leads to fatal accidents from violating the mandatory safety and health measures while operating public facilities or transportation, or while handling dangerous materials or products. It also includes punitive damages (Article 15) of up to 5 times the civil liabilities.

However, both the civil society groups demanded such laws and the business groups that demanded to stop the legislation expressed criticisms on the same terms. The labor-related civil society groups criticized the provisions giving a 3-year grace period to business with less than 50 employees and the law not being applicable to businesses with less than 5 employees – for making the law less effective.[182] On the other hand, the business groups asserted that the duties and the scope for the chief executive are unclear and ineffective, and it impedes on the industry development.[183]

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181) NHRCK, "Recommendation on Improving the System to Enhance the Labor Human Rights of Indirectly Hired Workers," Aug. 30, 2019

182) KBS, "[Media Focus]② Blindspots of the Serious Accident Punishment Act still remains... the laws needs to be amended," Jan. 26, 2022.

As such, the MOEL plans on providing support for the safety prevention system required by the law to be well established by preparing and distributing a manual on the Serious Accidents Punishment Act, etc. and also expressed an opinion that the effects are already showing just from the notice of implementation, including a reduction in fatal industrial accidents, etc.[184]

B) Criticisms from the Labor Groups and the Business Groups on the Serious Accidents Punishment Act

Workplaces have a mixture of physical danger and potentially dangerous elements, and protecting the workers from harm and danger is an obligation under the labor laws, as well as a right that must be guaranteed to the workers. Moreover, the actual elements of danger have been transferred to the outsourced workers, as the outsourcing of non-core duties, that began with cleaning, security, facilities management, etc., have spread throughout the entire industry areas, including construction, automobile, ship building, and distribution and service businesses, etc. Segregating the ability to control safety systems and facilities to the contractors through the outsourcing of labor is an element that increases the possibility of safety accidents.

One of the characteristics of serious accidents that leads to fatality is that the people who die in these accidents are outsourced workers, who are also low-income young workers. As work are being outsourced through several layers, the contractors are hiring low-income workers, with the minimum level of skills. This is one of the reasons why younger people suffer from industrial accidents, and exists in the blind spot of labor relations laws.

183) Park, Jung-hun, Contributor to Korea Economy, "Industrial Safety... Penalty is not the answer." Aug. 29, 2021.

184) MOEL Explanation on Media Reports, Dec. 24, 2021.

The Serious Accidents Punishment Act reinforces the responsibility of the original company and the chief executives as related to safety accidents. The existing Occupational Safety and Health Act holds the site manager liable, not the chief executives, and the penalties were very low, due to the difficulty of providing evidence, etc.[185] However, the following are the criticisms surrounding the Serious Accidents Punishment Act.

Small business are excluded or exempted from the current Serious Accidents Punishment Act, but there are arguments that there should be no exceptions to the applicability of the law when considering the realities of industrial accidents in Korea. According to the MOEL's 'Status on the Occurrence of Industrial Accidents,'[186] the number of victims of accidents [187]from businesses with less than 50 employees accounted for 72.4% (65,744 people) of the total number of victims of accidents (90,789 people), between Jan. ~ Sep. of 2021. There were more deaths for small businesses, and in case of businesses with less than 50 employees, 1,076 died during the same period of time, which accounts for 65.8% of total deaths (1,635 people).

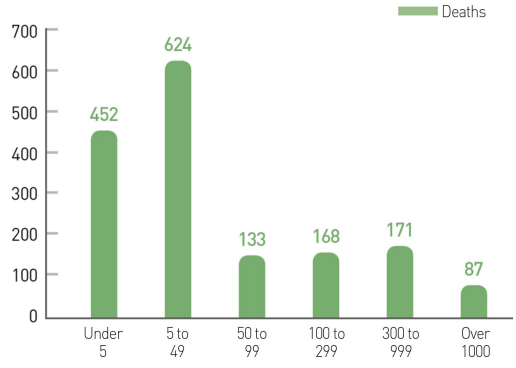
For example, according to the current Serious Accidents Punishment Act, the accidents that occurred at the yacht marina in Oct. 2021 that led to the death of a student in practical training or the collapse of a building being dismantled in Jan. 2022 is not subjected to the law. There are other criticisms with the law, including the fact that the scope of occupational disease is too narrow, the core safety measures demanded by the labor civil society are not stipulated and allowing the outsourcing of the managerial safety and health measures.

185) MOEL Explanation on Media Reports, Dec. 17, 2021.

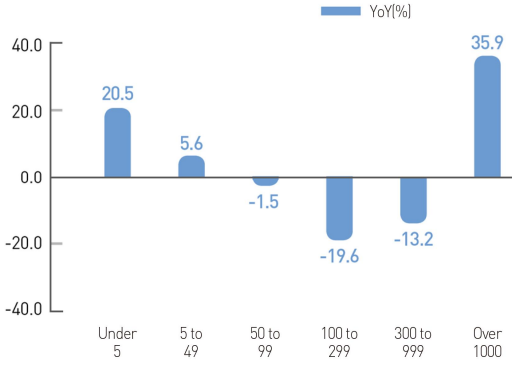
186) MOEL, "Status of Industrial Accidents, as of Sept. 2021," Nov. 2021.

187) People who died, injured or became ill due to work-related accidents or diseases

Graph No. of Deaths from Industrial Accidents by Size



Graph Rate of Change in the No. of Deaths from Industrial Accidents by Size



Note: 1) As of the end of Sep. 2021, the number of deaths from industrial accidents are classified by the size of the businesses, and calculated the rate of change as compared to the previous year.
Source: MOEL, 'Status of Industrial Accidents, as of Sep. 2021," Nov. 2021.

Also, there is a criticism with the Serious Accidents Punishment Act for not providing the specific scope and standard for those who are subjected to punishment, even though strong penalties are stipulated. Because industrial accidents occur from many complex factors, criminal penalties cannot always be the measures to improve safety and health, and therefore, a support plan is needed to manage safety or prevent accidents in advance. On the other hand, there are also arguments that when companies are burdened too much, the smaller companies may be impacted harder and could impede on industrial development.

C) The Significance of the Serious Accidents Punishment Act and the Need for Improvements

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[188] stipulates that all people have the right to the enjoyment of 'safe and healthy working conditions' (b). The general comment 23 adopted by the Committee on Economic, Social and Cultural Rights in 2016 on the 'right to just and favourable

188) International Covenant on Economic, Social and Cultural Rights (hereinafter the 'Social Rights Covenant')

conditions of work' states that preventing occupational accidents and disease is a fundamental element of the right to just and favorable conditions of work, and is closely related to other rights under the covenant, especially the right to the highest attainable standard of physical and mental health.

The Serious Accidents Punishment Act is an outcome of consideration by diverse members of Korean society from experiencing industrial accidents and serious civil disasters. Unlike the Occupational Safety and Health Act, the Serious Accidents Punishment Act is significant for holding the business owners and chief executives liable for serious accidents, and stipulating the liabilities and penalties of the original businesses, in response to industrial accidents concentrating on contracted workers from the outsourcing of duties. Also, some people expects this law to serve as a turning point in upgrading the safety level of Korean society.

Life and safety are the most basic and core value of human rights. The government and the corporations must exert their best efforts to prevent serious accidents through more stringent management, supervision and all possible measures for the Serious Accidents Punishment Act to operate properly as a safeguard for the workers' and the people's life and safety. Also, it is important to obtain the effectiveness of the law through strict application upon the occurrence of accidents.

However, when considering the realities of the Korean industrial sites, the need for preventing accidents and protection pursuant to the Serious Accidents Punishment Act is urgent for businesses with less than 5 employees and less than 50 employees. Smaller businesses have been excluded or deferred from being applicable under the law in consideration of their economic vulnerabilities, but more deaths occur in small businesses, and as of Sep. 2021, the number of deaths increased for businesses with less than 50 employees, even while the total deaths from industrial accidents declined. The law and the system needs supplementation to not have any exceptions or delay the application in the future.

2) Ratification of the ILO's Core Conventions and Limitations on Amending the Labor Laws

A) Process of Ratifying the ILO's Core Conventions

The ILO conventions are the international labor standards stipulated by the International Labor Organization (ILO). Each member State ratifies the ILO conventions according to their domestic procedures. The member states have freedom in ratifying the Conventions, but the ratified conventions have legal force within the State. The core ILO conventions, recommended for ratification to all member states, are composed of 8 conventions in 4 areas of △freedom of association, △prohibition on forced labor, △prohibition on discrimination, and △ prohibition on child labor.

Korea became a 152th member state of ILO on Dec. 9, 1991, and became a non-permanent member in 1996, and a permanent member in 2014. Korea ratified 4 of the 8 core conventions, and promised the international community on ratifying additional core conventions by joining the OECD in 1996, an election to serve on the UN Human Rights Council in 2006 and at the 2019 ILO conference, etc.[189)]

However, 4 core conventions (No. 29 and 105 related to prohibition on forced labor, and No. 87 and 98 on the freedom of association and protection of the right to organize) have not been ratified because the labor groups and the business groups cannot come to an agreement and are at odds with Korean realities. As such, Korea has been criticized by the international communities for having less advanced labor standards, as compared to the size of the economy, and has been pressured by international organizations, including the ILO and OECD, for ratification.[190)]

189) MOEL Promotional Materials, "ILO Core Conventions at a Glance," Oct. 13, 2020.

190) Approx. 76% of the ILO member states ratified all 8 conventions, and 85% ratified either 7 or 8 conventions

The NHRCK made a recommendation to the Minister of Employment and Labor to ratify ILO no. 87 (Freedom of association and protection of the right to organize) and no. 98 (Right to organize and collective bargaining) on Dec. 10, 2018.[191] Also, the international trade rules require a higher level of labor and environmental provisions through the FTA, etc. and the EU commenced a Korea-EU FTA conflict resolution procedure because Korea has yet to ratify the core conventions of ILO.

Under these circumstances, the government selected and implemented the ratification of the ILO's core conventions and amending the related laws as major government projects, and on Feb. 26, 2021, the ratification of the ILO's core conventions no. 29, 87 and 98 passed the National Assembly. It was proclaimed on Jan. 5, 2021 and the government deposited the ratified instruments with the ILO on Apr. 20, 2021. The ratified conventions will come into force on Apr. 20, 2022, one year after. However, the government will try to ratify no. 105 (abolition of forced labor) in the future due to Korean laws implementing imprisonment with forced labor sentences for certain crimes under the National Security Act.

B) Amending of Korean Laws to Ratify the Convention

The ILO's core conventions stipulate the most basic obligations of the member states. Once the ILO's core conventions become effective, they have the same validity as Korean laws. The government tried to remove any unnecessary confusion by first amending the laws that violate the ILO standard, and amended the "Trade Union and Labor Relations Adjustment Act "(Trade Union Act), the "Act on the Establishment and Operation of Public Officials' Unions" (Public Officials Union Act), and the "Act on the Establishment and Operation of Teachers' Unions (Teachers Union Act).

191) NHRCK, Decision on Dec. 10, 2018, "Recommendation on ratifying ILO's convention no. 87 and 98 on freedom of association"

Trade unions' right to organize was reinforced according to the amended laws, such as permitting discharged and unemployed persons to join the trade unions, etc. Also, the scope of public officials' permitted to join the trade unions was widened, by removing the qualification of below the grade 6. The provision of the Trade Union Act that (Article 9(2)) that nullified the teachers union for having 9 discharged persons was removed following the Supreme Court's ruling to nullify the clause.

However, both the labor groups and the business groups expressed criticisms on the ratification of the core conventions of the ILO and the amendment of labor relations laws. The labor groups criticized the amended labor relations laws for still not meeting the international labor standards and includes clauses that represents the position of the business groups, unrelated to the ratification.

According to the amended laws, if a person who is not a worker is permitted to join the labor union, then the union will not be deemed a labor union still remains (Article 2(4)(d) of the Labor Union Act), and therefore, workers such as delivery/messenger/dispatch personnel, visiting sales persons, after-school instructors, freight truck owner-driver, etc. may be restricted from joining the union. Also, they also point out that further discussions are needed on whether restricting the public officials from joining the union depending on the position, restriction on collective bargaining on matters related to laws and budget and the prohibition on the right to strike correspond to the ILO standards.

On the other hand, the business groups expressed that they do not reflect the special characteristics of Korea and are too pro-labor groups.[192] They assert that the power of the labor unions has been reinforced too much by not reflecting the requests of the business groups to prohibit taking over major facilities within the place of business and to allow substitute workers during strikes. They contend that

192) Asia Economy, "Business Associations are Concerned with the Ratification of the ILO Core Conventions," Feb. 20, 2021.

the Korean labor movements have a strong tendency towards being militant and uncompromising, and expect chaos in the industrial sites and a decrease in investment.

C) The Significance of the Ratification and Future Tasks

Article 23 of the Universal Declaration of Human Rights, Article 22 of the ICCPR and Article 8 of the ICESCR all specify the freedom of association and the right to organize of all people. The ratification of the core ILO conventions on the freedom of association signifies a full guarantee of the right to organize, right to collective bargaining and the right to collective action. This is not different from the provisions of Article 33 (1) of the Constitution of the Republic of Korea. By ratifying the core ILO conventions on the freedom of association, we are protecting the constitutional values guaranteed by the Constitution and creating a labor environment corresponding to the international human rights standards.

The amendments of the labor relations acts were prerequisites in ratifying the core ILO conventions and are the results of the policy that legislated the amendments assessed as requiring an urgent resolution to comply with the core conventions, However, these amendments are not sufficient to resolve various issues raised by the labor and academic groups, including expanding the concept of the worker/employer, expanding the subject of bargaining and striking, fundamental improvement of the simplification of bargaining windows system, vitalization of the centralized bargaining, abolishing criminal penalties for strikes etc. Nonetheless, the amended labor relations laws can be considered a positive change for realigning the Korean laws to correspond closer to the international labor standards and improving the fundamental labor rights.

However, restrictions on public officials joining the unions depending on their positions, restricting collective bargaining on matters related to laws and budget and prohibition on strikes are still intact. Moreover, the Abolition of Forced Labor Convention (No. 105) was excluded from being subjected to ratification because it

does not correspond with the Korean penalty system, such as the Criminal Act and the National Security Act, and we need to continue to exert efforts to ratify other conventions, including No. 105.

3) Platform Workers and Legal Blind Spots

A) Increase in the Platform Workers and the Legal Blind Spots

The Fourth Industrial Revolution and the advancement of digital technology allowed the transactions of digital labor[193] through smart-phone applications. Also, non-face-to-face and untact lifestyle, from COVID-19, expanded the delivery industry and the workers were moved to the platform area. According to the result of surveys conducted by MOEL and Korea employment Information Services (KEIS),[194] 2.2 million people are platform workers, 8.5% of the employed people in the 15~69 age group.

Despite the changes in labor and the expansion of platform work, they are in a blind spot, not protected by the current labor relations laws. A substantial number of platform workers have experienced unpaid wages, added work without pay, abusive languages and assault by the service users. Many workers involved in the transportation area, such as a chauffeur service, messenger service, food delivery and freight transportation, etc., have experienced paying for treatment on their own for industrial accidents. However, upon these experiences, they have difficulty using the procedures of mediation and resolution provided by the platform companies.[195]

193) 'Platform Labor/Work' is a term used for finding and providing work based on digital platforms, such as applications and social media, etc. They include 'web-based' platform work conducted only online, without actual contact, such as design and translation, etc., and 'location-based' platform work, such as food delivery and chauffeur service, etc.

194) MOEL and KEIS, 'Number of Platform Workers and Their Work Conditions for 2021,' Nov. 2021.

195) NHRCK, "Survey on the Human Rights Conditions of Platform Workers," Nov. 2019.

Table Types of Difficulties Experienced by Platform Workers and Experience with Arbitration or Mediation

Types of Difficulty	Have Experience (%)	
		Experience with Arbitration or Mediation* (%)
Not being paid for the job performed	22.0	41.7
Work outside the contract	15.2	45.9
Reduction of wages, without prior discussion	16.0	45.4
Temporary suspension or blockage on application/web use	15.2	48.8
Forced contract/registration cancellation	8.2	65.8
Insults, including abusive languages and actions	12.8	42.3
Sexual harassment/ sexual assault	5.9	61.6
Unfair bearing of expenses/loss	18.1	50.8

Note: 1) Ratio of people having the experience of arbitration or mediation among the people who answered as having difficulties(100)

Source: MOEL and KEIS, "Number of Platform Workers and Their Work Conditions for 2021," Nov. 2021.

The problem comes from the confusion on how to classify the platform workers, as individual businesses providing services to customers acquired through platform applications or as workers. The platform work is seen as a new form of employment, not completely corresponding to the traditional concept of labor, as they are able to freely participate or withdraw from providing labor and are directly instructed and/or supervised by the users. However, as some platform companies are able to exert more influence in the market than individuals and they sometimes make demands on the platform workers for service quality, it is hard to decide on the legal status of the platform workers.

The National Union of Chauffeurs requested a collective bargaining with Company K in Aug. 2020. The application released by the Company K is a cab and public transportation application used by 91.7% of chauffeurs nationwide. However, they refused the collective bargaining request, by stating that it is a company that operates a chauffeurs relaying platform and is unsure whether it has the status to be able to complete a collective bargaining with the union. The

parties' differing positions led to a lawsuit, but the Company K changed its position and the collective bargaining was carried out in Oct. 2021. The above example shows that it will be difficult for the platform workers to be recognized as employees in a group work relationship.

B) Legislative Efforts to Protect the Platform Workers

The platform workers take a form of individual businesses, but often lacks the actual status as independent businesses. Also, most of the surveys on the condition of the platform workers show that they are unable to be on the same position as the other parties to a transaction contract. They need legal protection, but there are different views as to the means of such legal protections.

One is to expand the concent of employees under the existing labor laws to include the platform workers, and another is that the platform workers need to be protected, preferably under the existing labor laws, but if not, then through other individual laws. The platform workers became the center of the dispute on expanding the application of the existing labor laws.

In 2021, a proposed amendment to the Labor Standards Act was submitted and the Employment Insurance Act has been partially amended. to protect the platform workers. From 2019, the employment committee and the economy, society and labor committee have been conducting social conversations, between employees, employers, government, academic and civil society groups, etc., to establishment plans to protect the platform workers. The government released a 'plan to protect the platform workers,' on Dec. 21, 2020, and submitted a proposed enactment of the 'Act on Protecting and Supporting the Platform Workers' on Mar. 18, 2021 (agenda no. 8908, led by Jang Cheol-min). This proposed law is being actively discussed.

The key to this proposed law is to create a third type of employment, as platform workers, separate from employees and individual businesses, and to provide a

protection at a level lower than that of labor laws. If the platform workers are employees, then the current labor related laws would apply first, but if the platform worker is considered an 'employee' through the procedure to determine the nature of employment, then this new law would apply. However, all the parties involved, including the politicians, labor groups and business groups, had different positions on establishing a separate law to protect the platform workers, including the above proposed law, and as of the end of 2021, the aforementioned law was not enacted.

C) The Need to Protect as Employees

The ILO's "World Employment and Social Outlook – Trends in 2021" recognized the platform service as one of the major jobs for the modern society and pointed out the need to improve the treatment of the employees and guarantee safety. Also, the ILO Centenary Declaration for the Future of Work, 2019 stated that all working people must be properly protected on ① fundamental right to labor, ② proper minimum wage pursuant to laws or collective bargaining, ③ limitations on maximum work hours, and ④ safety and health, etc., and the freedom of association must be guaranteed without regards to employment relationships.

The worldwide trend, including the international organizations (ILO, EU, OECD) and other countries, for protecting the platform workers is to include them within the existing labor law system, not establishing a separate law or system, just for the platform workers. For example, in Germany and the USA, the companies have the burden of proof verify the status of the platform workers under the labor laws, to make the status verification more convenient.

With the technological advancement and changes in the society and labor, now is the time to change the fundamentals of protecting the employees through expanding the concept of employee-employer and relaxing the criteria in determining the employee status. Dependency is necessary to be an employee under the labor laws, and refers to whether the employee provided work under the

supervision and instruction of the employers to receive wages. From this perspective, many workers involved in platform services can be recognized as employees.

This proposed law has the potential for misclassifying a platform worker, who actually is an employee but only looks like an individual business operator, and 'not an employee.' In such a case, the platform worker cannot be protected and the company can avoid the liabilities as an employer under the labor related laws. It is necessary to protect the platform workers who can be included within the labor related laws should be protected under the labor related laws, as a rule.

Moreover, a special consideration is needed to protect and support the platform workers, as a response to the changes in the labor market from the trend of the wide-use of the platform. It is necessary to contribute to improving the working conditions of the platform workers by stipulating a joint liability by the businesses using platform and the platform operators to protect the rights and interests of the platform workers, and establishing minimum work standards through stipulating the collective rights of the platform workers and social bargaining.

4) Outsourcing the Risks and Repeated Industrial Accidents of Contract Workers

A) Repeated Fatal Accidents of Contract Workers

The fatal accidents of contract workers in 2016 and 2018 brought the attention of the people on the issue of outsourcing the dangerous jobs. These fatal accidents cause the overall amendment of the Occupational Safety and Health Act in 2020 and an enactment of the Serious Accidents Punishment Act in 2021. However, the contract workers are still exposed to dangerous work environments.

Moreover, one of the common characteristics of these fatal accidents are that the dead workers were not only contract workers, but they were young, low-paid workers. As the duties get contracted out several times, the pressure to reduce expenses is getting greater, and the contractors end up hiring young, low-income workers, with just the minimum basic skills. The employees are getting younger for this reason.

On Apr. 22, 2011, a 23-year old contract worker was killed at Pyeongtaek Port, crushed by a container wing, while cleaning. According to the MOEL investigatio n,[196] the accident was caused by the fact that ① the safety device to prevent overturning was not used, ② when several people work on handling heavy lift cargo, proper signals or information must have been used, which did not happen, and ③ use of a forklift was improper, etc. Also, the contracting company A did not complete the written work plan for the concerned work, and did not provide protective gear to the victim.

Along with the accident investigation, the MOEL conducted occupational safety and health supervision on Company A. The MOEL uncovered 17 cases of violations and levied 19.3 mil. KRW in fines. The court sentenced the head of the branch of

196) MOEL Briefings and Press Releases, Jun. 7, 2021.

the contracting company to 1 year of imprisonment and 2 years of stay of execution for manslaughter, and Company A was sentenced to 20 mil. KRW in fines for violating the Occupational Safety and Health Act.

In Nov. 2021, a sub-contracted worker of KEPCO had an electric shock accident while working on a telephone pole alone and died while receiving medical treatment. The media reported that the safety equipment waw not available on the day of the accident but the worker was sent to the job, and the job location was not even the place he was responsible for. Moreover, KEPCO knew of this but neglected to take any action. KEPCO took responsibility for insufficient safety management and officially apologized in Jan. 2022.

B) 'Outsourcing the Risks' and Legal Efforts

The so called 'outsourcing of risks' involves the companies outsourcing the risky and dangerous jobs to contractors to avoid legal liabilities. Typically, the dangerous jobs or jobs with bad working conditions, that are avoided by the workers are outsourced to contractors. Also, accidents are more likely to occur when the contracted workers perform potentially or actually dangerous work but the contracting companies have control over the safety systems and facilities.

For example, collaboration and information sharing are very important when outsourcing that are naturally connected with the works performed by the contracting companies, such as operations and the maintenance of generators, etc. However, the contracting companies cannot directly order work to the subcontractors, for the fear of being seen as illegal dispatch, and this could cause a communications error. In such a case, the injury or death of the subcontracted workers may occur because taking immediate actions may be difficult even if a risky situation is expected.

Legal and systematic efforts to prevent problems and accidents from the outsourcing of risks continued. After the fatal accident at Taean in Dec. 2018, the

Occupational Safety and Health Act was wholly amended, and implemented from Jan. 16, 2020. It can be assessed positively for recognizing the contracting parties as liable parties in preventing industrial accidents in order to prevent the outsourcing of risks, but may point out that it is limited in the fundamental improvements of the problem.[197] Some jobs that threaten the safety of workers were prohibited from being subcontracted, but the core of the criticism is that it fails to fully reflect the realities of the Korea's industrial accidents for limiting to chemical elements only.

On the other hand, the Serious Accidents Punishment Act is significant for stipulating the obligations of the person in charge at the contracting company when serious accidents occur from the outsourcing of the risks. This could be understood as modifying the incentive system for not protecting the subcontracted workers in the process of maximizing the profits of the contracting companies. However, this does not apply to businesses with less than 5 employees and exempts the businesses with less than 50 employees for 3 years.

C) Need to Change the Structure of Outsourcing

The subcontracted workers are more exposed to industrial accidents as compared to the contracting company's employees throughout the world. This is due to the fact that outsourcing is, in nature, cost-cutting method, and the efforts to prevent and protect the safety of the subcontracted workers are minimized for being seen as expenses. It is necessary for the working people to provide labor under safe environments, and we must change the structure where profits are sought at the expense of the lives and safety of the workers.

During the ILO general meeting in 1997, a discussion on contract work began to protect the unprotected workers due to the diversification of employment forms.

197) Park, Se-min, Labor Safety and Health Officer, Korean Metal Workers' Union, "This is the problem with the Occupational Accidents Act, Amended After 28 Years," Nov. 21, 2019.

In 2000, it was pointed through 'the joint statement by the committee of experts on the workers who need protection,' that 'the laws stipulating the worker protection and employment relationship are not sufficient in protecting the workers when the nature of labor is changing rapidly worldwide, and law and policy must be established to protect the workers through a transparent and proper review process by labor, corporations and the government of each country.'

In 2006, after 10 years of discussions, ILO recommended to 'establish legal procedures and measures to resolve the issues of increasing the number of unprotected workers for being outside the scope of labor laws and of the disguised employment relationships that disguises the employment relationships through contracts under civil or commercial laws, in order to avoid the employers' legal liabilities.

The ILO's freedom of association committee recommended the Korean government to take all measures to prevent the recurrence of anti-labor discriminations for cancelling the outsourcing contract due to establishing a labor union by the subcontractor workers (Report No. 350, 2008), that the Korean government take measures to strengthen the protection of the right to organize and the right to collective bargaining by expressing its concern on the contracting companies continue to use the outsourcing to avoid exercising the rights by the labor unions (Report No.363, 2012), and pointed out that the outsourcing contract itself is becoming a hurdle in exercising the right to organize and the right to collective bargaining, such as the pressure to withdraw from labor unions, avoid collective bargaining, etc., and therefore the Korean government should establish legal and systematic measures to guarantee all workers, without regards to the employment form, on their rights to organize and collective bargaining (Report No.381, 2017).

The causes of the industrial accidents that often occur to subcontracted workers are not simply the worker's negligence, but due to the employment structure that allows the subcontracted workers to work alone under a dangerous situation, and

the fact that the subcontracted workers do not have the authority to prevent or resolve the risks of industrial accidents, etc.

Work related to life and safety are often permanent and continuous, has a characteristic of endangering the safety and daily lives of the people's life, health and body if the work is suspended fully and often causes danger to the safety and health of a worker upon accident occurrences. Therefore, a job related to life and safety must be specifically stipulated and must have a worker with employment security to perform this job. Work related to life and safety must be restricted from being outsourced and must be under direct employment. Moreover, the contracting company's liability on safety must be expanded. The amended Occupational Safety and Health Act and the Serious Accidents Punishment Act are significant. However, efforts must be made to minimize any blind spots and for a firm settlement of the laws.

2. Human Rights Violations Within Workplaces

A. Human Rights Status 2021

Generally, the human rights of workers who are vulnerable are less protected. Temporary employees have more employment insecurity, less wages and less benefits as compared to permanent employees, and female employees receive lower wages than male employees. Adolescent, young and old workers work in worse conditions than middle-aged workers. People with disabilities and immigrant workers receive poor treatment.

Individual workers within a company cannot raise objections or demand improvements to the employer even when their human rights are violated. Therefore, the issues within the workplace sometimes become social issues, beyond simply being issues to be resolved between the employee and employer. Since the ILO included the freedom of association in the ILO constitution in 1919, diverse standards related to the workers' human rights have been established in the form of ILO conventions.

Ignoring safety within the workplace, long-hours of labor, workplace harassment, electronic labor monitoring, etc. are topics that need to be discussed by society.

These issues have been under discussion continuously, not just in 2021. However, new characteristics are emerging due to substantial social changes, such as changes in the working environment from COVID-19 and the enactment of the Serious Accidents Punishment Act, etc.

B. Main Topics

1) Ignoring Safety at Workplaces

A) Successive Accidents and Deaths in Workplaces

On Jun. 17, 2021, a fire occurred at a warehouse located in Icheon, Gyeonggi-do. All 248 employees safely evacuated the fire, but a fire-fighter died from the fire. The fire was fully extinguished after 129 hours, and neighbors suffered from smoke and dust inhalation. Moreover approx. 1,800 fishes were killed between Jun. 19~20 due to the boiling water. More than 1,200 reports of indirect damages were received.

On Jun. 9, 2021, a building being dismantled collapsed and struck a bus driving by. The workers evacuated after becoming aware of the signs of collapse, but 9 people died and 7 people were injured from this accident. The bus driver was not responsible for the accident, but after he learned of the losses, he is suffering from mental agony.

The two accidents occurred around the same time and gained the attention of the people. The government is investigating the accidents to find out the cause of the accident and the liabilities. The companies related to the two accidents promised quick compensation and to release future plans; however, they face criticism and liability as the media interviews of the insiders and neighbors became known.

The government established plans, including 'plans to reinforce safety during dismantling construction,' 'plans to block illegal subcontracting in construction,' and a 'comprehensive plan for fire safety of warehouses.' The two cases were severely criticized as examples of 'ignoring safety' in workplaces.

B) Cause of the Two Accidents and 'Ignoring Safety'

'Ignoring safety' refers to not thinking or recognizing danger for being insensitive or too accustomed. The two accidents occurred from 'ignoring safety,' and threatened the safety of third parties, a fire-fighter and regular people.

As related to the warehouse fire, the employees were unable to report the fire because the company prohibits mobile phones inside, and the employees had to inform the manager first. Also, an evacuation broadcast was not made immediately when the manager was informed of the fire.

Also, the police reported that the fire became bigger because the emergency bell from the smoke detector was stopped 6 times and the operation of some sprinklers was delayed for 10 minutes or longer.

As related to the building collapse accident, the police stated that the cause of the accident was unreasonable illegal demolition. The collapse of the building blocks stacked for demolition and the collapse of the 1st floor (slab) were the specific causes of the accident. Also, the project was first contracted for 5 bil. KRW, but reduced to 1/4 through several stages of outsourcing.

The case was criticized because the workers evacuated the site early but did not inform the other people of the danger, and the neighbors raise complaints for insufficient safety measures, prior to the accident, but no improvements were made.

C) Tasks to Prevent a Recurrence

Ignoring safety comes from the culture that chooses productivity over compliance with safety rules, an attempt to reduce time and costs and negligent supervision, etc. Although many studies were conducted to stipulate the cause of accidents and remove these causes to prevent safety accidents, the safety accidents at the workplace are still prevalent. Of course, there were several reasons for the safety

accidents, but the two aforementioned cases are problematic in that many signs of potential danger were found, but no measures were taken to remove these dangerous elements that led to huge damages.

According to MOEL on Dec. 7, 2021, 15,108 workplaces (64.4%), out of 23,474 workplaces performed with the safety measures site inspection between Jul. ~ Nov. of the same year, violated safety measures. 10,808 workers did not wear personal protective gear, such as a safety helmet, etc., and 9,873 were in construction and 971 were in manufacturing.

The Serious Accidents Punishment Act becomes effective from Jan. 27, 2022 to prevent fatal accidents at workplaces. Setting aside the significance and limitations of this law, some expect the law to be a turning point in advancing Korea's safety. However, enacting and implementing laws can cause a big change in social awareness, but this can only be possible when accompanied by policies and efforts.

The safety accidents will continue, even with the systematic device, if there is no change in perception. Therefore, it is necessary for the government, corporations and workers to continuously pay attention and try to create a system to reinforce accident prevention education and eradication.

2) Long Working Hours and the Problem of Death Caused by Overwork

A) 'Overworked Society' and a Decline in the Workers' Quality of Life

Work hours is an important element that determines the quality of life of workers and labor productivity. Long working hours[198] can be seen as a general phenomenon of East Asian countries. 'Karoshi (death caused by overwork)' registered on the Oxford dictionary comes from Japan. Korea's Labor Standards Act stipulates 'cerebrovascular diseases and heart diseases from overwork' as 'disease arising out of work.'

Under the Labor Standards Act, a worker's average weekly work hours cannot exceed 40 hours (Article 50), and extended work of up to 12 hours is permitted (Article 53). However, many are still exposed to long working hours by applying special clauses or as special-type employees, not applicable under the Labor Standards Act. The monthly working hours of Korean employees have been decreasing continuously for 10 years, except for 2008 and 2015, but the monthly working hours were 163.6 hours in 2020, which is 11.2 hours increase from the previous year, and this is the highest among OECD states.[199][200]

A senior researcher from the N research institute committed suicide in Sep. 2020. The families assert that he suffered from overwork, pressure and workplace harassment. In Jan. 2022, the media reports focused on issues and examples of 'overwork suicides,' and the internet communities demanded punishment and apologies from the chief of the N research institute. In Jan. 2022, the president of

198) 'Overwork' can be defined as long work hours of 52 hours or more per week, and night work of over 15 hours between 22~06 o'clock. On the other hand, the ILO and EU defines long working hours as 'over 48 hours on average per week.' Under the 'Enforcement Decree of the Industrial Accident Compensation Insurance Act, overwork of 60 hours per week on average is used as a natural recognition standard for diseases arising out of work.

199) OECD, "Labour Force Statistics", Jul. 2021.

200) Even with the overall OECD, the average annual work hours of Korean workers were 1,908 hours in 2020, which is the third longest among 36 countries, only after Mexico (2,124 hours) and Costa Rica (1,913 hours). This is 200 hours more than the average work hours of all OECD members (1,687 hours).

the N research institute sent an email to the employees with apologies and statements related to the media reports.

The delivery and logistics industry is a representative 'overwork industry' since the COVID-19 pandemic. According to the Commission on Delivery and Logistics Workers's Death from Overwork, 21 delivery workers died from overwork from 2020~Jun. 3, 2021 ('Status on the Death from Overwork of Delivery Workers,' Jun. 2021). The National Delivery Labor Union conducted several strikes to demand countermeasures for these problems, and the civil society groups also released statements demanding government plans. In Oct. 29, 2020, the NHRCK also expressed its opinion that a plan is needed to improve the long work hours problems and laws to protect the special-type workers as related to the death of delivery workers.[201] There were labor, corporate and government discussions through a social consensus organization, participated by the government and released 'plans to prevent the overwork of delivery workers,' in Nov. 2020, etc., but this issue will continue in 2022.

Public officials and medical personnel suffered from overwork during COVID-19. In Jan. 2021, a public health doctor in his 30s died while supporting COVID-19 efforts. The families assert that he suffered from overwork. Since 2020, several public officials on jobs related to COVID-19 died, and the accident compensation review board determined some cases to be death on the job. Some had overworked by more than 200 hours in a month.

201) Statement by the Chairman of the NHRCK, 'Statement of the Chairman of the NHRCK on the Death of a Delivery Worker,' Oct. 29, 2020.

B) 'Overwork' as a Problem that Threatens the Lives of the Workers

In Korea, 'death from overwork'[202] occurs to anyone. There are cases that did not become known. Working long hours create many problems, including the workers' mental and physical health issues.

According to the Korea Workers' Compensation and Welfare Service, the rate of approving overwork suicide as an industrial accident increased by more than two times, from 37.3% in 2015 to 70.1% in 2020. This is a reflection of change in the disease determination committee's internal value, the court's judgment trend and society's attitude towards industrial accidents, that the cause of suicide lies more with the working conditions of the worker rather than the individual's characteristic or genetic make-up, etc.

Many believe that Korean workers work long hours and deaths from overwork or overwork suicides occur frequently due to authoritarian labor control from 'family-like company culture.' Other reasons include, culture that emphasizes performance, insufficient personnel and excessive workload.

Research results show, relatively consistently, that working long hours can negatively effect the workers' mental health.[203] Also, the researchers and the civil society groups that emphasize the seriousness of death from overwork or overwork suicide point out that it is not an individual's problem, but is a sign that other colleagues have also reached a threshold. Cardiovascular diseases do not occur at once but occur over a long period of time, and we need to pay attention that sick leave, leave of absence and psychiatric counseling are increasing in each industry. From this perspective, several methods are being proposed to resolve the problem of working long hours.[204]

202) From hereunder 'death from overwork' includes death from brain cardiovascular diseases related to overwork and overwork suicides related to work-related stress from overwork.

203) Jeong, Yeon and Kim, Su-jeong, "Effect of Working Long Hours on the Workers' Depression: Focused on Middle Aged and Older Wage Workers," Oct. 2020, etc.

The most fundamental alternative to prevent health problems from overwork is to reduce overwork. They include, expanding the scope of upper limit of working hours and overtime work according to the Labor Standards Act and establishing laws to protect the special-type workers.

Also, some people point out that shift work, including night work, should be limited to the public sector or equipment industry, etc. The International Agency for Research on Cancer (IARC) designates night work as group 2 carcinogen. Continuous night work causes brain, cardiovascular diseases and sleep disorder and increases the possibility of accidents. Currently, night work is not restricted in Korea, but the 'bullet delivery,' 'same day delivery' policies of Korean delivery companies are not unrelated to the deaths of workers in warehouses and delivery.

On the other hand, if working long hours is necessary, the minimum plan is needed to protect the health of the workers. Currently, various guidelines and policies are available by the Occupational Safety and Health Research Institute (OSHRI), it is necessary to supplement the fact that the employers are given too much autonomy in protecting the health of the workers and implementing the preventative measures and that the results of the diagnosis are simply followed by improving the personal lifestyle or drug treatments, rather than improving the working conditions.

C) Need for Efforts Through Continuous Policies

Life and safety is the most fundamental and key value of human rights, and the safe and healthy working condition is the most fundamental and basic rights to be enjoyed by all workers, as guaranteed by the international human rights conventions and international labor standards, etc. The state and the companies must be careful for the issues that threaten the right to health and the life of workers do not continue.

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204) Occupational Safety and Health Research Institute Research Report, "Policy Study on Preventing Death from Overwork (Overwork Suicides) (2)," Oct. 2018, etc.

The ILO ratified a convention to limit the working hours to 8 hours per day and 48 hours per week, as the convention no. 1 in 1919, at the first International Labor Conference. Working long hours threatens the life and safety of the workers and increases the risk of industrial accidents. Also, the 'UN Guiding Principles on Business and Human Rights (2011)' emphasizes that the state has an obligation to protect human rights and the businesses have a responsibility to respect human rights in business activities.

However, some of the 2021 cases showed that the working hours demanded from workers in Korea fails to meet the international standards from 100 years ago and fatally affected the life of the workers. Also, the overwork problem is significantly shown in industry that are not restricted by work hours under the Labor Standards Act and the industry with a sudden increase of workload from COVID-19.

As COVID-19 is prolonged, the mental health of the entire Korean society is at risk. If the severance of social exchanges and changes in the work environment leads to work burden and stress, then it can affect the mental health of the workers. The number of suicides in 2020 is 13,018, and a slight decrease from 2019, but some forecast an increase of suicides in 2~3 years, when the economic and social effects of COVID-19 will be in full swing.

The policy must be involved for the issue of overwork on the labor's custom and awareness that has continued for a long time, and needs continuous involvement over a long time. In 2014, the 'Act on Promoting Prevention of Death from Overwork, Etc.' was established in Japan. A special office for preventing the death from overwork was established within the Ministry to achieve the goal of the act, and established a basic direction for the plan. They are trying to refine the government's involvement by establishing a legal basis to be involved in eradicating long work hours by publishing 'Death by Overwork White Paper' each year.

3) Workplace Harassment

A) Changes After the Implementation of the Act on Prohibition of Workplace Harassment

Since 2018, a social consensus on the seriousness of, and the need to eradicate workplace harassment was created. The National Assembly amended the Labor Standards Act to include workplace harassment in Article 76-2 and 76-3 (hereinafter referred to as the "Act on Prohibition of Workplace Harassment") and stipulated the employers' duty to take immediate action. On Apr. 13, 2021, the Labor Standards Act was amended to include cases where the perpetrator is the employer or the employer's family or relatives, and the penalty for violating obligations to investigate/take measures on the reported cases.[205)]

Studies indicate that the amended laws show positive effects 2 years after the implementation of the Act on Prohibition of Workplace Harassment. According to a report, 'the Effect of the Act on Prohibition on Workplace Harassment on Hiring,' released by the Korea Labor Institute in Dec. 2020, the workers who had been victims will be more likely to maintain stable employment with the Act on Prohibition of Workplace Harassment. Moreover, according to the civil society group, Workplace Gapjil 119, the percentage of people who experienced workplace harassment was reduced by 16%p, from 44.5% to 28.5% during the 2 years, and 57.6% of the people responded that the harassment was 'reduced' since the implementation of the law.

However, notwithstanding the positive effects, there were cases of people pleading for mental suffering or taking their own lives due to workplace harassment in 2021.

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205) Earlier, on Jul. 2, 2020, the NHRCK recommended to the Minister of Employment and Labor to introduce appropriate penalty provisions for the perpetrator and for violating the obligation of investigation and measures of the business operator.

In May 2021, an employee of a large IT company committed suicide. A few days later, it was asserted that he committed suicide because of the superior's harassment to cause social upheaval. The MOEL conducted a special investigation on this particular company, and stated that the employee was in fact harassed by a superior and the company knew of such a fact but did not conduct any investigation.[206)]

In Jun. 2021, a 50-year old cleaning worker was found dead in the dormitory of a national university. It was first presumed that the worker died from cardiac infarction, but later, there were reports of harassment by a superior and overwork. The MOEL in Jul. 2021, released that there were written exams conducted, that were unrelated to work and demands and assessments related to attire, and stated that these amounts to workplace harassment.

B) Significance of the Act on Prohibition of Workplace Harassment and the Effectiveness Issues

Workplace harassment is a serious problem that can leave long-term and fatal damage to the work and life of individuals. They become a social issue when a person resigns from work due to mental problems from experiencing harassment and even commit suicide. However, it was difficult to regulate the diverse types of harassment with the existing laws, from placing a desk in front of a bathroom, standing while facing the wall, holding up one's arms while kneeling, not providing a telephone or computer necessary to perform work, blocking intra-company network access, forcing a person to drink, bullying, etc.

The legislation of the Act on Prohibition of Workplace Harassment allowed the society to recognize what is workplace harassment and that every aspect of it is illegal. Furthermore, by mandating the employers to take appropriate actions, it seeks to protect the victims and improve the group culture. The problems that had

206) MOEL Press Release Materials, Jul. 27, 2021.

been hidden are beginning to surface through petitions with the NHRCK.[207] However, there are still improvements to be made, including protecting the workers from harassment by a third party, not applying the laws to businesses with less than 5 employees and inadequate penalty provisions for the perpetrator.

Meanwhile, one of the characteristics of 2021 as related to workplace harassment centers on the effectiveness of the Act on Prohibition of Workplace Harassment. Many surveys show that the victims of workplace harassment tend to endure the harassment or leave the company, rather than reporting the harassment. This is due to the fact that even if a report is made, it is hard to recognize harassment, costs related to the process and distrusting protective measures for the victims, etc.

The common comments made on the above cases are the problems of responses by the employer or agencies. In case of the large IT company, the investigation by the MOEL showed that there were several other cases of workplace harassment reported to the employer, but the investigations were either insufficient or the reporters were treated disadvantageously. Also, the case of a cleaning worker at a national university, the employees of the university made comments through social media, and they are considered secondary victimization.

C) Labor Standards Act and the Direction of Amending the Enforcement Decree

The Constitution stipulates that the workers' personal rights should not be infringed upon pursuant to the provision of 'human worth and dignity' under Article 10 and 'standards of working conditions shall guarantee human dignity,' in Article 32(3). Moreover, the employers have the obligation to take measures to protect the safety and health of the workers, and this includes passive obligations

207) NHRCK, Oct. 8, 2021, 21JinJeong042990 Decision, Human Rights Violations from Not Accepting a Recommendation to Correct Workplace Harassment

to not infringe on the workers' life, body and health, as well as active obligations of taking appropriate measures to protect the safety of the workers from various risks.

Supplementing through amending the laws and efforts are continuously needed to eradicate workplace harassment. At the same time, the employers and heads of agencies must also exert efforts to establish a workplace culture of respecting human rights in order to eradicate workplace harassment. There are instances where the reporting of workplace harassment as malicious complaints based on the victims' work attitude, or conclude as a case that no longer applies based on the statements made by some senior employees, etc.[208)]

Moreover, there are cases where intra-company procedures are insufficient to resolve the problem, such as not investigating or taking measures on the reported harassment incidents, not being determined as harassment after proceeding with the intra-company procedures, or when the victim objects to the disciplinary measures taken by the employer, etc., and therefore, it is necessary to establish a relief measure outside the workplace to fully guarantee the procedural rights.

Also, we need to pay attention to the criticism that the victims have difficulty using procedures to relieve their rights because the MOEL and the prosecutors' office tend to interpret the disadvantages experienced by the reporting person narrowly and demands a strict causal relationship. It is necessary for the relevant agencies to take a proactive attitude by implementing special work supervision on businesses with repeated or serious workplace harassment and to hold the businesses responsible for any disadvantages on the reporting persons.

208) NHRCK, Jun. 29, 2020, Decision, 19JinJeong0656700 Opinion to Improve the Custom of Workplace Harassment Investigations

4) Problem of Electronic Surveillance of the Workplace

A) Spread of 'Electronic Surveillance of the Workplace'

Employer and workers can be said to have conflicting interests in labor relations. The employers want the workers to do their best during the work hours. However, the workers have their personal desires and each worker can have different work procedures and drive. Therefore, the employers become tempted to control the workers' actions and work performance during the work hours, and with the development of technology, the employers are now able to conduct 'surveillance' of the workplace with electronic devices.

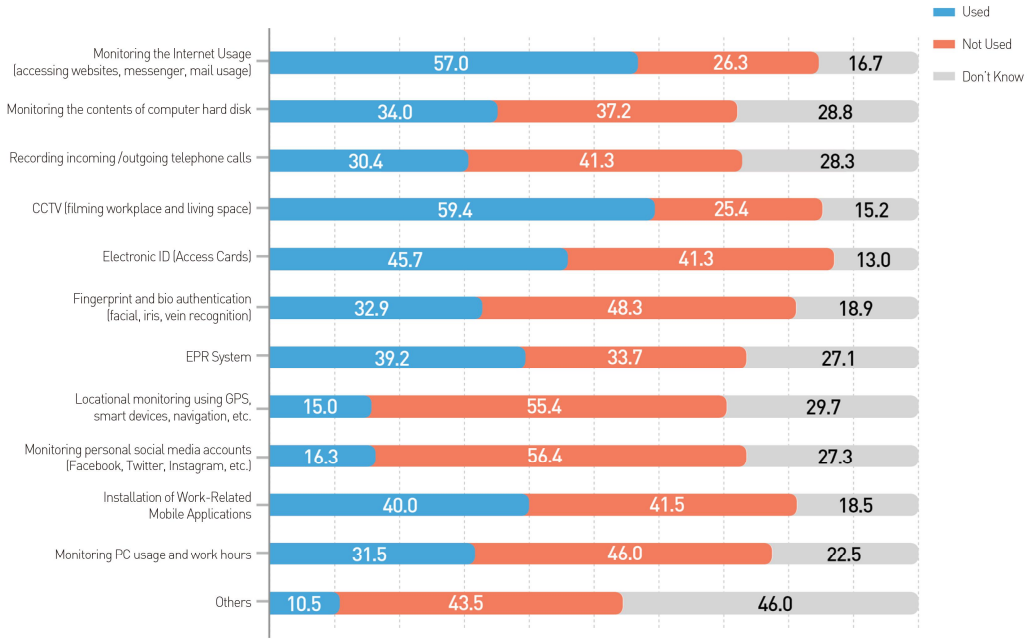
Some of the common types of electronic surveillance systems are video processing equipment, such as CCTVs, etc., location processing equipment, such as GPS (global positioning system), etc., bio-information processing equipment, such as fingerprints, iris or vein recognition, etc., and surveillance using ERP (enterprise resources planning), etc. Every time an incident at daycare or medical accidents occur, CCTV installation is expanded, and attendance records are managed using fingerprint to prevent any improper overtime payments, etc.

According to a research report by a human rights group,[209] more workplaces are using electronic technologies to manage and supervise employees in 2021. The existing technologies are being used continuously, as well as new technologies being introduced, such as monitoring personal social media accounts, installation of a mobile application related to work, monitoring of computer work hours both online and offline, etc. Still the most used electronic technology is CCTV (workplace and living spaces), with 59.4%, followed by internet usage monitoring (57%, accessing websites, messenger usage and mail usage, etc.) and electronic IDs (45.7%, access cards).

209) Solidarity Fund and Progressive Network, "Survey of Digital Work Surveillance and Plans to Improve the Legal System," 2021.

As more people are working from home due to COVID-19, the scope of electronic surveillance has expanded to the worker's living spaces. There are cases where the workers had to work while sharing his/her computer screen, having to turn on the cameras on the monitor and using the GPS function to authenticate job performance, etc. to confirm that they are working diligently. Moreover, the workers feel burdened by the demands of the employers, but they were unable to completely refuse these demands.[210]

Graph Types of Digital Electronic Technologies Used at Workplaces



Note: 1) Online survey using structured questionnaire
Source: Solidarity Fund and Progressive Network, "Survey of Digital Work Surveillance and Plans to Improve the Legal System," 2021

210) Refer to the consultation received by the NHRCK

Meanwhile, some raise issues with the new method of monitoring labor using new technologies, such as AI and the platform, etc. The Delivery Workers' Union released the result of verifying the AI of delivery platforms on Jun. 29, 2021 and asserted that the AI algorithm are being used to control the delivery workers. If the allocation made by the AI algorithm is refused even partially, then they are disadvantaged, so therefore, they must accept all allocations made by the AI algorithm. Company C uses the 'UPH (number processed per hour)' system using AI. This system measures the worker's productivity in real time, and therefore, the workers are excessively competing and leading to death from overwork.

B) Legal Regulations of the Electronic Surveillance of the Workplace

The most basic law to regulate the work surveillance using electronic devices is the Personal Information Protection Act. Workers' personal information are collected and processed using the surveillance equipment, so the Personal Information Protection Act can be applied. If the surveillance technology includes telecommunications, then the 'Protection of Communications Secrets Act' can be applied and if locational information is collected, then the 'Act on the Protection and Use of Location and Information' would apply.

However, these laws are not specific to the employer-employee relationship, and therefore, may be limited when applied to a labor relationship, where the parties are not at the equal position. For example, if the collection and use of personal information for the surveillance device during work from home is based on the 'consent' of the worker, then an approach using the Personal Information Protection Act may not be proper. Even if the consent was not forced using power, it is hard for the employees to refuse consent, for the fear of being fired, etc.

The EU does not generally recognize consent under the General Data Protection Regulation (GDPR) in employer-employee relationships. Instead, the employer can process the personal information of workers based on 'proper benefits,' and in such a case, the employer must prove that the proper benefits of the employer is

greater than the rights of the workers. The ILO's "Guidance on the Protection of Workers' Personal Data' stipulates that the personal data of a worker must be processed only for legal reasons that are directly related to the hiring of the worker, and when the workplace electronic surveillance is being introduced, it must be informed and discussed with the representative of the workers.

In Korea, a proposed amendment to the Labor Standards Act that prohibits the installation and operation of an electronic device for the purpose of monitoring the workers was submitted in Sep. 2021, but it has not yet been legislated. The only law that stipulates the surveillance of work is Article 20(1)(14) of the Act on the Promotion of Employees' Participation and Cooperation that stipulates the 'installation of surveillance equipment for workers within a workplace' as a matter requiring consultation between the employer and employee representative. However, there is no penalty provisions, and it is nearly ineffective for not being applicable to the workplaces with less than 30 employees.

C) Need for Regulations Through Labor Laws

Employers exercise instruction and supervision rights, such as monitoring and taking necessary measures on the workers' work status, within the scope necessary to operate the business. As such, introducing electronic technologies within the workplace has been understood as an efficient and effective method to manage the workplace.

However, with the development of technologies, including wearable devices, IoT, drone, etc., electronic surveillance can have a huge impact on the human rights of the workers. However, the workers are not fully aware of the type of electronic technologies is being used at workplace for what purpose and how the information collected is being used. Moreover, the workers are unaware of the fact that they have the right to refuse the introduction of electronic technologies, or are unable to express their opinions freely.

However, it is difficult to set a clear line of labor surveillance, as it is hard to deny the need for collecting the personal information of workers, manage attendance and monitor work performance within workplaces. Surveillance devices may be installed for security or confidentiality reasons. However, at the same time, the workers' privacy should not be excluded. The MOEL considers 'monitoring work performance or rest' as workplace harassment in its manual, and this indicates that doing 'other things' during work hours cannot be considered wrong, so long as it does not interfere with the workers' performance.

If the legitimacy of installing the surveillance devices depends on whether it was installed within the scope necessary for a proper purpose and in a way that minimizes the violation of the workers' rights, then it is important to regulate such requirements and procedures. Therefore, it is necessary to specifically stipulate the terms related to the requirements, the procedures of processing personal information by each major type and the protection of the workers' rights, etc. by considering the international standards. These rules must reflect the characteristic of the labor relations and need to be regulated through labor laws.

Ⅳ. Establishing a Foundation for a Better Society in the Future

1. Artificial Intelligence (AI) and Human Rights

A. Human Rights Status 2021

There are diverse opinions as to the concept of artificial intelligence (AI), but it is generally referred to as 'technology that learns the pattern through mechanically processed information, performs the given tasks in a way that is very similar to humans' knowledge or determination based on such processed information, and supports to resolve problems.'[211] It can simply be defined as 'technology that demonstrates the humans' intellectual capacity through a machine.'[212]

The term, 'artificial intelligence' and the basic concept was introduced in the 1950s, but the technology did not develop greatly until the 2000s and used in diverse areas. Recently, there are cases of AI being used in many areas that directly affect the human lives and human rights, such as interviewing employee candidates, criminal prosecution, refugee screening, determining recommitted crimes, etc.

Artificial intelligence is expected to lead the economic and social innovations by making accurate inferences and judgments based on massive data analysis and learning, and ultimately enrich human lives; however, some are concerned about violating basic human rights with the spread of AI. The types of human rights

211) NHRCK, 'Survey to Protect the Information Human Rights in the Age of the Fourth Industrial Revolution,' 2018.

212) Ministry of Science and ICT Press Release, Dec. 17, 2019.

violations related to AI are: ① bias and discrimination from AI; ② surveillance and personality infringement using AI-based video recognition and synthesis technologies; and ③ opacity of AI's determination process.

During the early part of 2021, chatbot Lee Luda's hate and discriminating messages caused controversy. AI is being used during recruitment, such as AI interviews and AI evaluating documents, etc. With the amendment of the Act on Special Cases Concerning the Punishment of Sexual Crimes in Jun. 2020, deepfakes that edits a specific person's body to cause sexual stimulus or shame can be punished, but the controversy over related crimes still remains. We will now look at some of the major topics related to AI in 2021.

B. Main Topics

1) Actualization of Discrimination and Hatred by Artificial Intelligence, Such as the Chatbot 'Lee Luda Incident'

A) Release of Chatbot 'Lee Luda' and the Suspension of Service

One of the concerns as related to the development and use of artificial intelligence is hatred and discrimination by the artificial intelligence. This is an outcome that reflects the society's hatred and discrimination, as artificial intelligence is the result of learning based on real data. Most of the current artificial intelligence are known to be the result of collecting data from the real society.

ScatterLab released a conversation AI chatbot[213] 'Lee Luda' on Dec. 23, 2020. ScatterLab had Lee Luda learn the conversations between couples using the deep learning method, and Lee Luda was created as a 20-year old female college student. It was a huge success with approx. 400,000 people using, but the service was suspended on Jan. 15, 2021 for the following controversy.

A problem was first raised with Lee Luda sending messages of hatred against women, homosexuality or people with disabilities or racial discrimination. According to the media reports, there were instances of Lee Luda answering that she hates 'gay' or 'lesbian' or that disabled people are inconvenient and the she wants to push them if the bus starts late because of them, or that 'she does not like black people because they are like mosquitos.'

Another problem was that ScatterLab violated the Personal Information Protection Act when it processed a massive quantity of personal information, including sensitive information, while developing Lee Luda. ScatterLab posted

213) Chatbot is a program developed to perform specific work through conversation with humans using voice or text. There are diverse types of chatbots, from outputting simple answers or having a conversation similar to AI.

approx. 1,700 cases of KakaoTalk conversations, without taking the de-identification measures of the individual's real name, etc., on an open-source platform, and the employees improperly shared the conversations between couples that were collected.

ScatterLab officially apologized for Lee Luda's hatred and discriminating messages and for the improper use of personal information on Jan. 11, 2021 and suspended the service. Later the Personal Information Protection Commission levied a fine of 100,000 KRW to ScatterLab for the improper collection and management of personal information.

Artificial intelligence is already being used in diverse fields, such as legal, administration, welfare, employment, etc., and is applied indirectly to our lives. It is being developed rapidly and will impact our lives even more in the future. We expect similar issues to continue in the future.

B) Controversy on Establishing a Human Rights Standards for the AI Technology

Lee Luda's hatred and discriminating messages is seen as the leading case that shows the result of hatred and discrimination that can occur in the AI generation. There are diverse problems of AI's hatred and discrimination worldwide. For example, AI determined that blacks have a higher rate of committing crimes again, or that students from wealthy areas were given higher scores, or AI unable to distinguish the faces of blacks or Asians and arresting a wrong person, or AI preferring males over females in hiring, etc.

Some assert that we need to establish human rights standards related to AI in order to prevent hatred and discrimination from using the AI technology. Of course, some argue that making a standard and regulating AI is an overreaction. As related to this, in Apr. 2021, the European Commission (EC) announced that it will establish an 'Artificial Intelligence Act.'

There are two conflicting arguments related to human rights standards for AI technology. One side argues that technology and industry development must be preferred, rather than establishing a human rights standard, and the other side argues that it is more vital to establish a human rights standards to prevent hatred and discrimination as related to the use of AI. This dispute boils down to whether the companies should have freedom in managing the AI technology or whether to establish a formal regulation that is more strict.

First, it is necessary to determine whether precensorship is possible for AI technology, as this relates to the effectiveness of human rights standards or legal regulations. The controversial Lee Luda is a simple form of a conversational agent, and a complete precensorship seems impossible currently. Creating a completely ethical deep learning technology may be impossible. However, the experts agree that the outcome derived by AI can be made so that an error or prejudice is at a socially acceptable level.

Some people are against the strict regulation of AI technology. They argue against the excessive personification of AI and assert the need to understand the unique nature of AI technology. Also, they trust the social convenience acquired from AI and emphasize the need for the autonomous regulation of corporations and government education. On the other hand, the people who want AI-related regulations assert that it is necessary to stipulate the requirements in verifying the safety of AI in advance and the liability of damage caused by AI-applied products, etc. in order to apply the AI technology, and further asserts that it cannot be achieved through autonomous regulations by the corporations.

The Ministry of Science and ICT (MSIT) proposed 'AI Ethics Standards,' as a self-regulatory guide in 2020, and the Korea Communications Commission and the Korea information Society Development Institute presented the 'Principles for the User-Centered Intelligent Information Society,' in Nov. 2019. However, AI-related cases are approached individually according to individual laws, system

and departments, and it is difficult to resolve problems from the overall approach or present a standard on the entire artificial intelligence areas.

C) Principles of Preventing Discrimination Related to Artificial Intelligence

The UN OHCHR stated that artificial intelligent that conflicts with the prevention of discrimination should not be permitted and an artificial intelligence system should not classify individuals into groups according to discriminatory standards. Also, in the 'Report on the Role of New Technologies for the Realization of Economic, Social and Cultural Rights (2020),' the development and use of new technologies, and when approaching products or services necessary in enjoying economic, social and cultural rights, discrimination and prejudice must be resolved.

No one argues with the need to establish laws to support new technologies, such as artificial intelligence. However, when establishing laws related to AI, it is necessary to emphasize the principle of respecting human rights during the development stages. Human rights, respecting the dignity of people and the prevention of discrimination can be reflected, and plans to guarantee the effectiveness must also be established.[214)]

214) NHRCK, Apr. 2, 2020, Decision, Opinion on the Proposed 'Act on Promotion of Artificial Intelligence Industry'

2) Controversy on Fairness and the Transparency of Using AI for Interviews

A) Companies and Administration Using AI Technologies

Companies are using AI to conduct recruitment and interviews, both in Korea and overseas. According to a data by KERI in 2019, 11.4% of the companies use AI in recruiting, and 10.7% of the companies are planning to use AI.[215] In Finland, AI was used in the hiring of approx. 40,000 cases in 2017 alone. This trend is expected to increase even more rapidly worldwide.

The processes of an AI interview or capacity tests are conducted online video interviews, and some processes add personnel and aptitude tests made into games. Candidates' facial information, such as facial expression, eye movements, etc. and voice information, such as loud, speed, tone, etc. are extracted to analyze external characteristics, including likability and expressiveness. Game-type personnel and aptitude tests evaluate and analyze correct/incorrect answers, answer speed, decision-making and learning speed, etc.[216]

AI document evaluation analyzes the candidates' resume, cover letter, etc. It reviews the basics, such as sentence and spelling errors, plagiarism, summary of main contents, etc., as well as scoring the documents submitted and evaluating the job fitness, etc. The recruiting documents are evaluated by AI in terms of the use of words and sentences in the cover letter, and determines whether the characteristics classified into ability, experience, belief, value, aspiration, reason for applying, etc. are similar to the characteristics of high performer or low performer, etc.

AI is being used more in administration. In Mar. 2021, the General Act on Public Administration was enacted to serve as the execution principle and standards in

215) Korea Economic Research Institute Press Release, Sep. 16, 2019.

216) Hankyoreh21(Vol.1335), "Transparency, Fairness, Reliability, Can We Trust AI Interviews?," Oct. 23, 2020.

the administrative area, and Article 20 allows disposition by systems in which artificial intelligence technologies are employed. Specific terms and procedures will be included in individual laws, but tax or traffic fines can be levied without the public officials' involvement.

However, artificial intelligence learns from accumulated data, and this data already reflects discrimination over a long time based on gender, sexual orientation, sexual identity, age, disability, race, nationality, education, region, etc., and the artificial intelligence can learn these data that reflects inequality and discrimination. Some assert that introducing AI technologies that may present discriminatory results can be very dangerous.

B) Rise of 'Explainable Artificial Intelligence'

Machine learning or deep learning artificial intelligence is sometimes called 'blackbox artificial intelligence,' because even the developers do not know the actual operating principles. For artificial intelligence, such as 'Alpha Go,' with a simple goal of winning games, not being able to explain how the result was derived is not a big problem. However, when artificial intelligence is making determinations that are closely related to people's lives and fundamental rights, such as hiring and employment, it is important to explain how such decisions were made.

It is necessary to verify whether the hiring process that uses AI reflects the Korea laws that stipulate fair employment without discrimination based on gender, age, physical appearance, region, etc. However, even the public institutions that must guarantee a fair and transparent employment process are using artificial intelligence hiring tools, indiscriminately.

Therefore, some assert that transparency and fairness must be secured by explaining AI's determination process and logic, and as a way to improve transparency and fairness, explainable AI (XAI) is emerging.[217] The users and the interested parties can establish trust with this, and a person can make a final

decision based on the basis and reason for the AI's decision.[218] It was difficult in the past due to technical limitations, but now, explaining and improving an inclination is possible with the technological development.

C) Need for Systematic Efforts

To increase the transparency and fairness of AI, responsibility through systematic regulation, along with the technological advancement, is important. Generally, increasing the transparency and fairness is associated with who is responsible for the decision and the outcome. If someone needs to be responsible for AI hiring and the interview, then transparency and fairness issues cannot be passed over lightly, as they can become controversial. Transparency and fairness can be obtained when the main agent to be responsible for and the procedures for AI's decision is clearly established, and when the legal and systematic basis are in place.

Diverse regulations are being drawn up around the world to guarantee AI's transparency and fairness. The USA, Australia, EU, etc. established laws to reinforce the transparency and fairness of artificial intelligence and stipulated to make public and explain the data used by the artificial intelligence and the main elements of the algorithm. The UK stipulated to refuse bidding by artificial intelligence that cannot provide an explanation during the procurement process. Spain, through the 'Act on Employment Status of Individuals Involved in Digital Platform Distribution,' mandated to disclose algorithm and data on the artificial intelligence related to work placement and evaluation that can effect the platform worker's work condition, hiring and termination decision, etc.

In Korea, several proposed laws have been submitted that can directly regulate artificial intelligence. However, most of the proposed laws' purpose is the foundation of the artificial intelligence industry or promoting technology development.

217) Hankyung Business (Vol. 1243), "Fast Approaching AI Generation, Why We Need Explainable AI", Sep. 23, 2019.

218) Choi, Jae-sik, "Trend on Explainable AI Research," Materials for Legislative Hearing on the Proposed Act on Promotion of Trust-Based Artificial Intelligence, 2021.

Detailed regulations also tend to focus on promoting industry, and specific terms related to the principles of transparency and fairness of artificial intelligence is hard to find.

Until now, the responsibility from a causal relationship between the actor (person) and the result of the action has been vested with the actor. However, with the emergence of artificial intelligence, determining the responsible party is becoming difficult. Therefore, when discussing the transparency and fairness from artificial intelligence, we also need to discuss the legal and systematic responsibility of AI's actions.

3) Artificial Intelligence Related Laws, Regulations and Guidelines

A) International Status of AI Related Laws

Recently the international community is demanding specific laws and regulations related to the development of artificial intelligence, as well securing social trust related to artificial intelligence. The UN Secretary-General[219] emphasized that the nations must take legislative measures to guarantee the human rights of emerging new technology (i.e., artificial intelligence) and demanded to establish responsibility, proper supervision and relief measures for the new technology with legislation. Also, the UN Human Rights Council demanded a new legal system to solve the artificial intelligence issue with the rights respecting method in the 2021 report[220]. The Council of Europe demanded effective and predictable legislation that prevents, supervises, prohibit and relieve human rights violations to each member state, and emphasized that public and private actors not fulfilling its legal obligations should take responsibilities.[221]

219) Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights. (A/HRC/43/29, 2020. 3. 4.). In the report, the new emerging technology was presented as a concept that includes artificial intelligence, big data and IoT, etc.

220) Human Rights Council, New and emerging digital technologies and human rights(A/HRC/47/L.12/Rev.1.), 2021.

The EU's General Data Protection Regulation (GDPR) reinforced the rights of the data subjects with the right to delete personal information, etc., reinforced the responsibility by introducing the privacy officer system and stipulated judicial relief in case of personal information breach. Furthermore, the EU established an 'Artificial Intelligence Act,'[222] composed of 85 articles in Apr. 2020. The Act classified the AI system according to the risk based approach, and the AI system classified into 4 categories of prohibited risk, high-risk, restricted risk and minimum risk and gave different levels of regulations.

The US Congress proposed an "Algorithmic Accountability Act,' in Apr. 2019 that regulates AI technologies and algorithm, and this act includes a provision that requires companies, over a certain size, to assess the AI system. Also, in Illinois, a law that regulates conducting video interviews using AI during the hiring process became effective in Jan. 2020.

B) Status in Korea and Discussions

Attempts to introduce the legislative regulations of AI began with the fact the reliability, safety and responsibility of AI cannot be guaranteed with the corporate and developer's self-efforts. AI are actually applied in many areas of the society and causing unexpected human rights violations and discrimination issues. On the other hand, there are negative perspectives on the legal or compulsory regulations of AI. Some argue that complying with all the regulations would be difficult at the beginning stage of AI development, and most of the developers are small sized companies, where only large corporations have the ability to comply with the relevant regulations. They argue that the regulatory sandbox should be introduced to business related to AI.

221) Council of Europe Commissioner for Human Rights, Unboxing artificial intelligence: 10 steps to protect human rights, 2019.

222) The 'EU regulatory framework on artificial intelligence (hereinafter referred to as the 'AI Act') released on Apr. 21, 2021 by the European Commission, is a proposed law that specifies the terms related to the high risk AI area included in the 'EU Whitepaper on AI.'

The Framework Act on Intelligent Informatization is the most well-known laws related to AI, and most of the provisions are allocated to policies that promote intelligent informatization technology and related industries. On the other hand, regulations that requires safety, reliability and the fairness of AI technology by the developers and levying liabilities and duties to respond to inequality and changing the labor environment are insufficient. Moreover, these regulations only provide 'obligation to exert efforts.'[223]

In Korea, rather than laws, autonomous regulations with ethical standards and principles are being discussed with the government agencies. The MSIT proposed 3 basic principles and 10 key requirements through 'AI Ethical Standards,' in 2020, and presented a 'Roadmap to Realign the AI Legislation,' to realign the AI related laws by 2023. The Korea Communications Commission and the Korea Information Society Development Institute presented the 'Principles for a User-Centered Intelligent Information Society,' in Nov. 2019 after collecting the opinions of major companies and experts, and the Personal Information Protection Commission released a personal information protection standards that the AI developers and operators can inspect autonomously by preparing an 'Autonomous Inspection Table for the AI Related Personal Information Protection' in May 2021. In Jul. 2021, the Financial Services Commission presented an 'AI Operating Guideline for the Financial Industry,' where the financial companies manage and inspect autonomously for the purpose of vitalizing AI in the financial sector and improving reliability.

As seen above, there are different opinions as to the method and level of AI regulations, but a consensus has been formed on fundamental standards and the need for regulation. They share the need to secure social reliability and establish

223) For example, Article 70(2) of the Framework Act on Intelligent Informatization allows administrative fines of not more than 5 million KRW, but the concerned provision only applies to the cases of violating the standard announced by the Minister of Science and ICT, and cannot be seen as effective as it is an administrative fine of a small amount.

standards for human rights protection as related to development and the use of AI in order to prevent any problems that may occur.

The National Assembly Research Service pointed out the need for recommendations in the development and use of AI. For the ethical use of AI, the introduction of the monitoring and supervision system, the hiring of the ethics expert, establishing the AI code of ethics and plan to compensate damages from AI, etc. are needed, and the liability system for damages from AI needs to be supplemented to protect consumers.[224)]

C) Need for Legal Regulations

Korea needs to prepare a compulsory law related to AI, in line with the international trend. Ethical standards and autonomous regulations can cause differing interpretations and conflicts, and is not an approach appropriate to guarantee human rights, as the developers or the businesses can pick and choose the protective measures at their convenience. We need to express the principle to protect the people's safety and human rights from the development and use of AI, establish detailed regulations and a supervisory system to comply with such principles and prepare the means of relieving the damage by having a responsible system.

224) Lee, Sun-gi (2020), "Recommendations for the Ethical Use of Artificial Intelligence", Issue and Argument (National Assembly Research Service)

2. Corporations and Human Rights

A. Human Rights Status 2021

Demands for the companies to protect and respect human rights are increasing throughout the world as the interest in human rights management is increasing. Also, each country is systemizing human rights-based corporate management to improve the national image and corporate competitiveness based on sharing the universal value of protecting and respecting human rights and the need to manage human rights risks. Major companies have declared to practice human rights management and established its own plans.

2021 marks the tenth anniversary of approving the 'Guiding Principles on Business and Human Rights (hereinafter referred to as the "Guiding Principles")' by the UN Human Rights Council. In Jun. 2011, the UN Human Rights Council adopted this Guiding Principles based on the three pillars of protect, respect and remedy. This Guiding Principles established a new turning point for the companies to materialize human rights management and remedy human rights violations.

There were many changes both within Korea and overseas. In 2016, the NHRCK recommended to establish a National Human Rights Plan of Action (NAP) related to companies and human rights, and a place for human rights management was newly established with the 3rd NAP. In 2017, a 'recommendation on public institutions' human rights management assessment' was presented, and afterwards, human rights management was reflected in the management assessment of public corporations and public institutions. In 2018, after the 'recommendation to introduce human rights management manual for the public institutions,' 1,200 institutions introduced a human rights management manual, and currently, most of the public corporations and public institutions conduct human rights impact assessment.

The European Parliament adopted a resolution on corporate due diligence and accountability in 2021, and the US passed a related law after an administrative order on the environment, social and corporate governance. Moreover, Korean government is encouraging the spread of ESG management (environment, social, governance), and most of the teams that dealt with compliance or social responsibility were promoted to the ESG committee within the company.

Nevertheless, many instances of human rights violations were reported in 2021. As such, effective measures to securely establish the human rights management of companies are needed. Next, we will look closely at some of the main issues of controversy in the areas of corporation and human rights in 2021.

B. Main Topics

1) Expanding the Introduction of ESG and Its Limitations

A) Rapid Growth of ESG in 2021

ESG stands for the environment, social and governance, meaning companies should be operated by considering its impact on the environment and society, and the governance should be composed correspondingly. It began with Larry Fink (CEO of BlackRock, one of the largest asset management companies in the world)'s annual letter to the CEOs stating that he will "put sustainability at the center of how we invest."

ESG considers the environmental right to be important, which is closely related to the human rights issues, and therefore, the goal of ESG is similar to that of human rights management. The human rights management is a concept that demands the human rights management system of practicing human rights respecting management. However, ESG is different from human rights management in that ESG is an approach that meets the demands of the investors, and the human rights management meets the demands of the victims of human rights violations.

The international trend that stresses ESG is spreading in Korea as well. President Moon Jae-in declared 2021 the year of expanding ESG management on Mar. 31, 2021, and more companies are encouraged to participate in ESG management. According to this policy, the Ministry of Trade, Industry and Energy began standardizing the 'K-ESG' index from Apr. 2021 and released a guideline in December. The Financial Services Commission and the Korea Exchange released the 'ESG Information Disclosure Guidance' and participated in the discussion. The National Assembly also submitted several laws related to mandating the ESG information disclosure.

The National Pension Service, the most important institutional investor related to ESG, stated that it will improve the assessment system by expanding the evaluation standard of ESG and will expand the asset group applied with ESG strategies. The National Pension Service has supported ESG and implemented systems innovation and organizational restructuring for several years.

ESG investment has increased also. According to an asset management company's report,[225] the net asset of the ESG fund in 2021 was 7,532.4 bil. KRW, which is a 6.5 times increase from the previous year. Major corporations have an ESG committee under the board of directors and use the term ESG to support ESG management.

B) Problem of the Reliability of ESG Performance

Although ESG is spreading, the ESG assessment is performed by 600 assessment institutions both in Korea and overseas, and the reliability of the assessment results are questionable as the company's actions can be exaggerated or reduced depending on the assessment index used. The ESG grading cannot assess the companies properly, and a high ESG grade does not necessarily mean model human rights management. For example, Company P received the highest rating of A+ on the ESG assessment by a Korean ESG assessment agency, but it was criticized for, and suspected of, being connected with Myanmar's military leaders.

Some assert that ESG could be used as a means of 'green-washing.'[226] Green-washing refers to taking benefits by exaggerating the eco-friendly image, while the company is actually effecting the environment negatively. Similarly, some companies classify products that are not ESG products as ESG products or exaggerating or falsely promoting ESG performances. ESG could be used as a tool to hide human rights violations.

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225) Shinhan Asset Management, "2022 ESG Investment Market Forecast and the Roles of the Asset Management Companies," Dec. 2021.

226) Hankyoreh, "Why are the top businesses suspected of 'ESG -Washing'?" Jul. 18, 2021.

These problems leads to questions related to the sincerity of ESG. Companies should not use ESG simply as a marketing method, but should manage based on environmental and social responsibilities.

C) Future Prospects

ESG is expected to expand even more throughout the world, and is expected to become a key element for a company's survival and growth. The government plans to mandate ESG information disclosure by 2030 and is trying to establish the related laws.

It is necessary to design the ESG disclosure system so that it can be used as a tool for human rights management and present/potential victims, not just as a tool for the long-term benefit of investors. One of possible consideration is to include the human rights management system, human rights due diligence result and remedy records in the ESG disclosure standard. Some argue for the transparent disclosure of the assessment standards and basis for the rating, as diverse agencies are conducting ESG assessment.

Companies should not only focus on scores and marketing while implementing ESG management, but also establish long-term plans to maintain their sincerity. Consumers who support 'ethical consumption' are not few in numbers. As such, the companies will not be able to deceive consumers and investors by only claiming to support ESG management or attempt 'green washing.'

2) Human Rights Violations of Korean Companies Overseas

A) Myanmar's Military Coup and Korean Companies

With more Korean companies expanding overseas, more human rights violations by Korean companies are occurring. They stem from the labor exploitation of local workers and environmental pollution during the business implementation, etc. In 2021, Korean companies related to Myanmar's military became a subject of controversy.

The military coup occurred in Myanmar on Feb. 1, 2021, and over 1,000 people died with 10,000 people being arrested. The international community criticized the Myanmar military, and the criticism continued with the companies connected with the Myanmar military. The concerned companies provided benefits to the military in various methods and actually supported the military coup.

Many Korean companies in Myanmar were subjected to such criticisms. Company P participated in a gas project which was considered to be one of the major funding sources for the military, with a 51% stake in it. Kogas also has an 8.5% interest. Additionally, Company P and Kogas each have 25% and 4% interest in the gas transportation pipeline business. Also, the National Pension service is the largest shareholder of Company P, with an 11.36% interest.

This is not the first time a Korean company has been involved with the Myanmar military. In 2017, over 10,000 died and 700,000 fled the country due to a violent suppression of Rohingya, an ethnic minority group. The UN report disclosed companies that contributed to the Myanmar military, and they included companies from Hong Kong, Japan, China, Vietnam, Singapore, as well as Korean companies.

The Korean civil society groups filed objections to Korean companies' acts of cooperating with Myanmar military. The National Contact Point (NCP) is an office established to implement the 'OECD multinational company guideline' established in 1976 to prevent and remedy human rights violations by multinational companies.

However, on Jul. 14, 2021, the Korean NCP ended the objection process for reasons that Korean companies' actions are not directly connected with the massacre of Rohingya.

The Korean civil societies are still urging the Company P to sever the relationship with the people behind the coup and establish effective measures, such as depositing the profits from gas in an escrow account (a third-party account), suspend payment of dividends from the gas transportation pipeline business, etc.

B) Insufficient Prevention and Sanction for Human Rights Violations by Multi-National Companies

Human rights respect responsibilities became a basic obligation of companies, as the companies became larger and more influential, especially as it became clear that corporate activities affected the human rights of many people. However, there are no standards to determine the human rights violations of multi-national companies and means of sanctions. When a company's actions are illegal, sanctions could be implemented through the judicial system, but is problematic when a company's actions are unethical, but not illegal.

In such a case, it could be submitted to NCP's specific instances procedure.[227] Specific instances are the conflict resolution procedure surrounding the multi-national company's violation of the guideline, and the NCP is responsible for this process. The NCP receives the case, investigates and tries to resolve the issue as a moderator. If the parties are unable to reach an agreement, they pressure the companies by announcing statements or recommendations.

However, Korea NCP's procedure is not binding and cannot be seen as an effective method when the company did not directly contribute to the human

227) Song, Se-ryeon, 'Companies, Human Rights NAP Meaning and Tasks,' Materials from the 2nd Corporate and Human Rights Forum, 2021.; Na, Hyeon-pil, 'Non-judicial remedies in Korea,' Materials from the 2nd Corporate and Human Rights Forum, 2021.

rights violations. In the earlier case with the Myanmar military, the Korean NCP did not operate the mediation system because the actions of Korean companies cannot be seen as being directly connected to the human rights violations.

On the other hand, the UN's guiding principles could apply as an international standard. According to the guiding principles, companies are responsible for respecting human rights, and the responsibility for respecting human rights does not directly cause human rights violations, contribute to another's human rights violations and not be directly involved with human rights violations through business relationships. If a company is connected to human rights violations as above, the company must take the corresponding measures.

Just a fact that a company conducting business while the military coup occurred in Myanmar is insufficient to conclude that the company violated human rights. However, conducting business in these conflict regions may lead to being involved with human rights violations, and as such, the guiding principles demands the companies to identify human rights risks through exceedingly strict human rights due diligence[228] and implement the countermeasures. However, it has limitations in that human rights due diligence is not the duty of a company.

C) Preventing Human Rights Violations Through Mandatory Human Rights Due Diligence

A company's responsibility of respecting human rights is not an individual ethical problems of a company, but is an obligation to be implemented as a world community. The European Commission announced a proposal to mandate human rights due diligence to prevent human rights violations and environmental destruction in the corporate supply network (hereinafter referred to as the 'Supply Network Due Diligence Act'). The EU states, including the UK and France, already have laws that

228) Company's human rights due diligence refers to a continuous management process of determining human rights risks that could occur in the company's business activities and business relationships and to fulfill its duty of care.

mandate the companies to perform human rights due diligence. Creating a legal obligation to implement human rights due diligence shows that changes in the paradigm of corporate regulations are necessary for the future society.

According to this trend, the civil society group argue for making the human rights due diligence mandatory in Korea by introducing the Supply Network Due Diligence Act. It is necessary for the companies to fulfill its responsibilities by respecting the human rights, but also needed to improve the competitiveness of Korean companies in the global society.

Currently, discussions on human rights due diligence and social management responsibilities are not active in Korea. Interest regarding the companies' implementing human rights management have increased in recent years, but how to levy responsibility for human rights due diligence continues to remain at an insufficient level. However, organizations that represent the global community, such as the UN and EU, etc., continues to emphasize the importance of human rights management, and these are the paradigm of corporate changes that the Korean companies must follow.

What is most needed by Korean companies is the attitude of looking at the human rights management from the perspective of diverse interested parties. Also, it is necessary to legislate the mandatory human rights due diligence and related information to be able to materialize in the current corporate systems.

We need to move away from the current method of focusing on post-procedures during reinforcing the human rights violations determination standards and the method of sanctioning the multi-national companies. It must be changed to a preventative system that determines the corporate management method by considering the diverse stakeholders throughout the decision-making process. In this way, the human rights due diligence obligations can be placed with the multi-national companies, even if not directly involved with the human rights violations.

3. Local Governments and Human Rights Organizations

A. Human Rights System of Local Governments

The NHRCK recommended the local governments to establish ordinances, basic plans, human rights departments and operate a human rights guarantee/improvement committee, etc. in order to materialize human rights protection in the local community.

The NHRCK verified the status of the human rights system of local governments (243 locations) by 2021 as related to establishing human rights ordinances, designating a human rights department or manager, human rights violation remedy system (human rights ombudsman or human rights protector) and operating a human rights committee, etc.

※ As of Dec. 31, 2021

Classification	No.	Ordinance		Human Rights Manager		Protector		Committee	
Metropolitan	17	17	100%	17	100%	13	76%	17	100%
Local Government (By Region)	No.	Ordinance		Human Rights Manager		Protector		Committee	
Seoul	25	21	84%	4	16%	5	20%	15	60%
Busan	16	10	62.5%	0	0%	0	0%	5	31%
Daegu	8	5	63%	0	0%	0	0%	1	13%
Incheon	10	5	50%	1	10%	0	0%	3	30%
Gwangju	5	5	100%	1	20%	0	0%	5	100%
Daejeon	5	4	80%	0	0%	0	0%	2	40%
Ulsan	5	5	100%	0	0%	0	0%	5	100%
Gyeonggido	31	13	42%	4	13%	2	11%	5	16%
Gangwondo	18	5	28%	0	0%	0	0%	1	6%
Chungcheongbukdo	11	1	9%	0	0%	0	0%	0	0%
Chungcheongnamdo	15	15	100%	0	0%	1	7%	2	13%
Jeollabukdo	14	3	21%	1	7%	1	7%	1	7%
Jeollanamdo	22	9	41%	0	0%	0	0%	0	0%
Gyeongsangbukdo	23	3	13%	0	0%	0	0%	0	0%
Gyeongsangnamdo	18	7	39%	0	0%	0	0%	2	11%
Sub-Total	226	111	49%	11	5%	9	4%	47	21%
Total (Nationwide)	243	128	53%	28	12%	22	9%	64	26%

B. Status of the Enactment and Amendment of Human Rights Ordinances in 2021

During 2021, a total of 26 local government enacted or amended (either partially or entirely). A significant number among them were redefining the terms according to an enactment or amendment of other ordinances. Other amendments are, establishing human rights impact assessment, creating human rights keepers, composition of the human rights committee and specifics of operations. Local governments that enacted the human rights ordinance used the model ordinance, without making any changes. This shows insufficiencies for the individual considerations of human rights in local governments.

There were cases that are worth our attention, such as Sinan-gun in Jeollanamdo, where the human rights ordinance was established to establish and implement a human rights program as a countermeasure against the human rights violations that occurred at some businesses within its jurisdiction. Sinan-gun expanded the scope of 'residents' to be protected under the human rights ordinance to include, not only the people who reside in the area, but also people who are staying in the region for the purpose of establishing a residency and people working for the businesses located in the area. With the ordinance people, such as migrant workers, residents of other areas and people with disabilities, etc., were able to be protected under the human rights ordinance. Also, the ordinance established an 'island village human rights center,' reflected the regional characteristics of having 1,004 islands.

Also, there is a case of wholly amending the human rights ordinance to substantiate the human rights administration. Gyeongsangnamdo established the human rights ordinance in 2013, but other programs were not in place. It began to implement human rights tasks recently by establishing a department exclusively for human rights administration in 2019. As part of this, the program was supplemented by establishing human rights policy meetings, human rights assessment

program and a citizens' human rights monitoring group, publishing a human rights white paper, creating a standard for rewarding the people who contributed to the advancement of human rights, etc.

Also, in Busan, the human rights ordinance was amended to expand the effect of the ordinance. An 'ordinance on guaranteeing the human rights of athletes,'(Dec. 2021) was enacted in Busan to protect the human rights of athletes and create a fair sporting environment. The ordinance provides for a basic direction in guaranteeing the human rights of athletes, policies to guarantee and improve human rights, a survey on the status of human rights violations, establishing and implementing plans to guarantee and improve the human rights of athletes, including human rights violations prevention education and promotion, etc. (Article 5), and establishing an athletes' human rights charter (Article 7), etc. It is noteworthy that the matters related to establishing an improvement plan, athletes' human rights charter and human rights education and promotion need to obtain a review by the human rights committee in connection with the human rights ordinance, and the human rights ordinance was amended to reflect these. This indicates that the work related to human rights is not restricted to the human rights departments, but expanded to include other related areas. However, another city that implemented a similar program improvement changed its direction by changing the name of the ordinance from 'Ordinance on Guaranteeing the Human Rights of Athletes' to 'Sports Promotion Ordinance,' and deleted the provision on review by the human rights committee when a new mayor was elected.

C. Tasks to Promote the Institutionalization of Human Rights Programs in Local Governments

As mentioned above in the case of 'Sports Promotion Ordinance,' the human rights ordinance of local governments are effected by the inclination of the head of the local government. Also, there are some residents against the human rights ordinances. A metropolitan city tried to amend the human rights ordinance in 2020 to expand the work scope to include the human rights effect assessment, creating citizens' human rights improvement group, human rights protector program, etc., but it was not submitted to the city council due to opposition by the residents. On the other hand, there are cases similar to Gyeonggi-do, where the human rights ordinance was enacted through a continuous discussion with the opposing side.

There are 64 local governments that have enacted the ordinance but did not establish any other human rights programs. In such cases, it is likely that no further administration will be implemented as related to human rights. It is necessary to determine and analyze why the human rights programs are not actually established after enacting the ordinance so that the human rights programs can become institutionalized to protect and promote human rights.

On the other hand, 19 local governments have a full human rights program (enacting the ordinance and operating responsible department, human rights violations remedy program and human rights committee). Most are local governments within the metropolitan area, and metropolitan area and larger cities have a higher ratio of having human rights ordinances, and the rural cities tend to not have human rights ordinances. This trend must be considered as well when analyzing the institutionalization of the human rights programs.

4. Human Rights Education

A. Increased Demand for Human Rights Education and Quantitative Expansion

Everyone has the 'right to know' his/her fundamental rights, and therefore, the right to receive human rights education is a fundamental right of everyone. Internationally, the human rights education is established as one of the human rights and the institutionalization of human rights education is being implemented rapidly.

Human rights education is necessary for the people involved in national institutions, educational institutions and social welfare facilities with the obligations to protect human rights. It is important for these people to obtain the ability to apply and perform work from the human rights perspective. Also, it is important for the victims and vulnerable class to be educated on their human rights and the laws and programs that can protect their human rights. It is better to teach the people to be human rights friendly rather than changing the laws and programs after the human rights violations have occurred.

The NHRCK has been important in providing human rights education since its establishment in 2001. However, the National Human Rights Commission of Korea Act only stipulates the minimum terms to conduct human rights education and a discussion with relevant agencies, and does not include the target and contents of human rights education nor any support thereof. This is a limitation in conducting high-quality human rights education to the whole society.[229)]

229) In order to overcome these limitations, the 20th National Assembly proposed 'Act to Support the Human Rights Education,' and the NHRCK stated the need to enact the law in order to prevent human rights violations and the realization of the human dignity; however, the was not enacted.

The human rights education is being expanded with the enactment of human rights ordinances by the local government. Local governments are establishing human rights organizations and human rights departments, and the human rights education is becoming a mandatory program. Some of the leading metropolitan cities and offices of education are publishing independent human rights textbooks and nurturing the human rights instructors.[230]

Also, the demand for human rights education is increasing[231], and the human rights education is becoming compulsory education. Diverse institutions, such as the Korean Institute for Gender Equality Promotion and Education, Korea Human Resources Development Institute for Health & Welfare, and various social welfare associations, etc., are implementing human rights education, and educational programs that include human rights education, without using the term 'human rights,' are being conducted widely.

Around Jul. 2021, politicians and academics proposed to include labor human rights issues in the elementary, middle and high schools' regular curriculum and by establishing the 'labor education' subject. The key to this assertion is that systematic labor human rights education can prevent human rights violations and occupational accidents, etc. at the workplace.

This shows that Korean society has a large demand for human rights education, and the contents and the format are becoming diverse. However, the human rights education is expanding in terms of quantity, but still needs quality improvements through the integrated management of the educational contents and the instructor qualities.

230) NHRCK, " Survey of Human Rights Education for the Public Officials in Local Governments," Dec. 2021. 12.

231) The results from the NHRCK's "Survey of Human Rights Education for the Public Officials in Local Governments," 93% of the respondents agreed with the need for human rights education and 70% responded that it is related to their job.

Statistics Percentage of People with Human Rights Education Experience and an Awareness on the Need (2019~2021)

(%)

Classification		Percentage of People with Human Rights Education Experience			Awareness on the Need for Human Rights Education		
		2019	2020	2021	2019	2020	2021
Total		14.6	19.4	13.1	91.8	92.6	84.4
Gender	Man	16.6	20.4	14.7	91.0	92.0	83.7
	Woman	12.6	18.4	11.6	92.6	93.2	85.1
Age	Under 20 Years Old	19.4	25.9	20.1	90.6	93.0	86.1
	30s	18.1	25.8	19.4	92.9	94.4	87.8
	40s	18.4	25.1	17.0	93.8	94.1	87.1
	50s	15.1	20.5	11.9	92.3	92.5	84.0
	Over 60	5.7	6.8	3.7	89.8	90.3	80.1
Education	Less than Middle School	4.4	5.0	2.4	88.2	88.8	78.3
	High School Graduate	12.8	16.7	9.9	91.8	92.6	85.0
	College Graduate	19.1	26.8	18.7	93.3	94.3	86.3
	Graduate School	37.7	46.1	44.9	93.5	94.0	90.4
Region	Urban	15.3	20.2	14.0	92.2	92.9	85.2
	Rural	11.7	15.9	9.0	90.2	91.1	81.1

Note: 1) Percentage of people with human rights education experience is the ratio of people who received human rights education during the past year.
2) Awareness on the need for human rights education is the ratio of respondents who answered 'needed' and 'very needed' to the question of whether human rights education is needed.
3) People over the age of 19.

Source: NHRCK, [Survey on the National Human Rights Status], 2021.

B. Concerns on the Formalization of Human Rights Education

Currently, the Korean society is favorable towards human rights education due to a high interest in the human rights area. However, there are concerns with the quality of the human rights education and the education is provided as a one-time formality.

Only 67.4% of the elementary and middle school teachers attended human rights education as of 2020. The teachers have a tendency to be negative towards human rights education because the contents are composed mostly of knowledge, lack of human rights educational contents that can be applied in classes and programs that are routinely repeated, etc. According to another survey, 66.3% of the parents did not receive parenting education, such as preventing child abuse, etc. Similarly, public employees, such as government employees, must complete education on preventing violence, child abuse and improving disabilities awareness, etc., but they were criticized for being formalities.

Human rights education improves human rights sensitivity on diverse social issues and provides a direction on approaching the problems; however, it has been pointed out that without a consensus on the need and significance of human rights education, it could just be a formality. These cursory educations could lead to skepticism on human rights education.

On the other hand, there is no department that manages human rights education at central administrative agencies and educational training institutions for government employees. All metropolitan city offices have departments responsible for human rights, with 5 city offices having a division and 12 offices having a team within a division. Typically, only 1 government employee is responsible for human rights education, and even that employee has other functions as well.

Moreover, various human rights education do not have sufficient classroom hours allocated. Having hundreds of people in a large room for a 1-hour education

session cannot be effective in delivering various concepts of human rights. Moreover, due to COVID-19, many human rights education were provided online in 2021, which is less effective than the in-person classes.

Also, there were the instances of the instructor making inappropriate comments during class or the educational materials produced and distributed by the state agency or the public institutions containing materials inappropriate as educational materials. In 2021, inappropriate materials related to gender equality were included, so the Ministry of Gender Equality and Family and the Korean Institute for Gender Equality Promotion and Education stated that they will seek to clarify the information being delivered.[232)]

232) Korean Institute for Gender Equality Promotion and Education Mobile Contents Explanation Materials, Apr. 13, 2021.

C. Tasks for the Future

Due to the diverse and wide topics included in human rights, the perspective and approaches to human rights education may different depending on the context and the principal agent of the human rights education. People conducting human rights education from the context of labor movements try to seek the concept of human rights from the perspective of labor education, and the people conducting human rights education from the context of school education would do so from the perspective of education.

What's important is to prevent unnecessary repetition and the lowering of quality even when the perspective and approach to the human rights education is different by each educational institution depending on their goals and roles. It is important to establish the human rights education as a professional area, without creating educational contents that are so comprehensive that it is indiscriminate.

The following have been discussed to improve the quality of human rights education. The contents of human rights education must be diverse and the need to develop educational contents that can increase participation and utility. Also, the quality of education must be managed by comprehensively monitoring the human rights education by many institutions.

As such, it is necessary to realign the relevant laws to stipulate the definition and the principles of human rights education, as well as the rights of the people and the duties of the state, etc. If a regulation that can serve as the basis for establishing a basic plan to connect the central administrative agencies, local governments and educational fields, we will be able to implement the recommendations by the international communities and the National Human Rights Plans of Action.

Moreover, we need to consider establishing the roles of each institution that conducts human rights education and a management system. Without an institution that can comprehensively manage the human rights education, the human rights

education will remain a superficial formality and ultimately impede on the development of human rights education in the long term. We need a system that can establish plans and manage the high-quality curriculum by recognizing the status and problems of the human rights education.

V. COVID-19 and Human Rights

1. Human Rights Status 2021

In Jan. 2020, the first case of COVID-19 occurred in Korea, and since the WHO declared the COVID-19 pandemic in Mar. 2020, the entire world is affected by this infectious disease. The Korean government focused on preventing the spread of the disease, with social distancing, etc. Several reorganizations of the social distancing levels had occurred, and since the later part of 2021, a 4-level system had been in place.

The COVID-19 status of Korea in 2021 can be expressed as ① end of 2020~ Jan. 2021 (3rd pandemic), ② Jul. ~ Oct. 2021 (4th pandemic), ③ Nov. 2021(5th pandemic) after transitioning into 'with COVID-19.' Since Nov. 2021, the daily confirmed cases reached 5,000, and there were 462,555 accumulated confirmed cases as of Dec. 3, 2021. The incidence rate per 1 mil. is approx. 9,022, and the fatality rate is 0.81%. The worldwide accumulated confirmed cases is 265 mil. people in 223 countries (as of Dec. 3, 2021), accumulated deaths are 5,256,365 people, and the fatality rate is 1.98%. Over 80% have completed the vaccination as of Dec. 3, 2021 and this is increasing.

During this process, our society experienced labor insecurity, income reduction, lack of care-taking, isolation, depression, hatred and discrimination and experienced many social issues. From the perspective of human rights, some of the government responses to COVID-19 caused damage concentrating on certain classes.

The UN's OHCHR investigated the risk factors of COVID-19 on the vulnerable class through the COVID-19 Guidance in Apr. 2020, and urged the member states to establish and implement plans to protect human rights. The UN Committee on Social Rights paid attention to the negative effect of COVID-19 on the vulnerable classes' right to health, and demanded the member states to not neglect the vulnerable classes in the prevention and treatment of COVID-19.

However, the negative effects of COVID-19 concentrated on the traditionally vulnerable class, such as elderly, women, people with disabilities, children, migrants, etc., and unstable workers, etc., and the government policy on the COVID-19 response was criticized for violating a person's fundamental rights and cause other acts of discrimination. First, there were issues with breach of privacy and discrimination on vaccination. Moreover, freedom of assembly and freedom of expression, etc. were restricted. On the other hand, the social issues of the medical vacuum and isolation of the vulnerable class were newly discovered to show that COVID-19 effected discriminately depending on the social class. Also, the cases of the cluster infection at prison, social welfare facilities and mental health institutions, etc. highlighted the problems with the rights of people residing in group facilities.

The Korean society is experiencing difficulty during the COVID-19 pandemic with social, economic and human rights issues. We will review some of the main topics that caught the attention of society.

2. Main Topics

A. K-Quarantine and Personal Information Protection

1) Collection and Publication of Personal Information for the Reason of Disease Prevention

Since the first occurrence of COVID-19 in 2020 until the end of 2020, prior to the 3rd wave of pandemic, COVID-19 occurred mostly in large clusters. The government implemented a model of '①test/ confirmation→②epidemiological investigation/ tracking→③ isolation/ treatment.' During this process a massive amount of personal information was collected, processed and disclosed, and 8 personal information processing systems[233] were managed at each stage of the disease prevention.

During the early days of the pandemic, the government used a credit card and mobile telephone records and CCTV data to track the movements of the confirmed cases and found people exposed to the disease. When a confirmed case lied about his/her routes during the investigation, he/she was subjected to a criminal penalty according to the Infectious Disease Control and Prevention Act. Their routes were disclosed in detail and spread through the media and the internet, without any guidance on the information disclosure. When such personal information are reported by the media, the personal information continues to be exposed through the news articles, regardless of the information being destroyed by the government.

To manage the people in self-isolation, the 'self-isolation safety management app' was introduced in Mar. 7, 2020, and the people in self-isolation had to enter their location and health status using the application. The government introduced

233) COOV Application, Self-check mobile application, Self-isolation safety protection application, COVID-19 information management system, Epidemiological investigation support system, Vaccination system, Screening system, Medicine Safe Use System

a 'safety band' to be worn by the people who violate the self-isolation guidelines in Apr. 2020.[234] The restaurants, etc. were obligated to complete an entrance ledger to effectively manage the routes of the confirmed cases and close contacts, and introduced a digital customer register based on the QR code (Jun. 10, 2020).

There were much concerns and controversy during this process for violating the right to self-determination of personal information. When the routes and personal information of confirmed cases were disclosed, criticisms of the confirmed cases and baseless speculations were spread nationwide. Especially in May 2020 when cases of COVID-19 spreading from a club located in Itaewon were known, there were many sensational new reports related to the sexual orientation of the confirmed cases and they became the subject of social criticism.

2) Continuing Issue of the Right to Self-Determination of Personal Information

As of the end of 2020, the number of confirmed cases increased greatly, as well as the vaccination rate. Also, clustered infections of unspecified groups occurred sporadically and the chain of transmission could not be determined. Under these circumstances, there were many changes related to the epidemiological investigation and personal information, including the disclosure of the routes of the confirmed cases and close contacts in 2021.

The Personal Information Protection Commission (PIPC) released the results from the COVID-19 personal information processing status and systems inspection on Nov. 11, 2021.[235] The PIPC stated that the digital customer register was automatically destroyed every 4 weeks, disclosure of the routes of the confirmed cases were mostly in compliance with the guidelines, and the personal

234) NHRCK and the human rights groups pointed out that wearing the safety band may violate human rights.

235) Personal Information Protection Commission, 'Results from COVID-19 Personal Information Processing Status Inspection and Improvements,' Nov. 11, 2021.

information collected from the personal information processing system are collected with the consent of the data subject or processed legally pursuant to the legal basis. Through these, the processing of personal information for disease prevention has decreased and the procedures and requirements have been reinforced.

Nevertheless, there are problems still. Some information collected by the disease control authorities will be destroyed once COVID-19 comes to an end, and some human rights groups point out that a clear standard on determining the end of COVID-19 has not been provided.[236] Depending on how the standard is set, the point of the 'end of COVID-19' changes, and the government could, technically, retain the personal information even if a very few number of infections occur. Even if the need to retain personal information for health policy reasons is recognized, we need to specify such a purpose, the scope of personal information needed and the duration.

Also, we need to look at the problem of restricting the personal information related rights of not only the patients, but of people suspected of being infected pursuant to the "Infectious Disease Control and Prevention Act" (hereinafter referred to as the "Infectious Disease Prevention Act"). Once you are classified as a person suspected of being infected, the disease control authorities can verify a massive amount of personal information, including name, resident registration number, medical records, immigration records, etc. However, the law does not specify the scope of 'persons suspected of being infected.' According to Article 2 of the Act, the persons suspected of being patients of an infectious disease are defined as 'a person suspected of contact' or 'a person who may have contracted an infectious disease,' and under this definition, too many unnecessary people may be classified as persons suspected of being infected.

236) Young Doctors, "Permanent Retention of Personal Information of 2.32 mil. People as Related to COVID-19? ... There is No Legal Basis," Oct. 23, 2020.

In fact, when a large number of confirmed cases occurred from a club in Itaewon in May 2020, the city of Seoul and the disease control authorities requested records of the base station access from the mobile telephone companies and received the information of 10,905 people. It was criticizes for requesting personal information of over 10,000 people as people who may have contracted an infectious disease lack the epidemiological basis.[237]

3) Harmonizing the Purpose of Disease Control and Protecting the Right to the Self-Determination of Personal Information

According to the international standards on public health, including the Siracusa Principles,[238] restricting the fundamental rights for public health must have legal basis, should be the minimum necessary for the public interest and should have a fixed duration. The COVID-10 Guidelines released by the UN OHCHR includes the opinion that 'effective and overall tests, tracking and isolation of specific targets can reduce the need for indiscriminate restrictions.'

Unlike many European countries, Korea was able to not have to implement a lockdown because of active tracking and the testing of close contacts. However, the Korean model includes a risk of personal information infringement and the risks of government surveillance, as collecting and processing a mass quantity of personal information was necessary for the infected patients and potential patients.

The disease control authorities can collect diverse information when necessary to prevent an infectious disease and block the spread of infection pursuant to Article 76-2 of the Infectious Disease Prevention Act. However, restricting human rights was justified for preventing the spread of an infectious disease that we knew

237) Progressive Network, "COVID-19 and Information Human Rights," Dec. 2020.

238) International Commission of Jurists, "The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Right", 1984

nothing about, and the human rights violation was especially noticeable in collecting and disclosing personal information.

As the pandemic continued, the awareness on the personal information infringement also increased, and now, we need to manage the collected personal information under the principles of privacy protection. The purpose must be clearly stipulated and the information must be destroyed once the purpose is achieved. Moreover, any insufficiencies in the law must be amended specifically.

B. Controversy Over Discrimination and Coercion in PCR Tests and Vaccination

1) Implementing Extensive PCR Tests and Vaccination

The key element of 'K-Quarantine' can be summed up as 'Test, Trace and Treat,' from the start of COVID-19 in 2020 until the plans for the step-by-step recovery is released in Nov. 2021.[239] Tests were conducted extensively, the routes of confirmed cases were traced quickly and the confirmed cases were quickly isolated and treated.

The government and the local governments tried to discover the confirmed cases early by testing the specific groups. People in elderly medical welfare facilities, restaurant business, daycare teachers, migrant workers, temporary workers and people in private educational institutions were requested to be tested proactively, but some argue this to be discrimination and hatred.

The compulsory PCR testing of migrant workers caused controversy in both Korea and overseas. Around Feb. 2021, many migrant workers living in dormitories were infected, and the metropolitan government ordered a mandatory PCR testing for migrant workers on Feb. 22. Afterwards, similar administrative orders were released by Gyeonggi-do, Gyeongsangbuk-do, Incheon, Seoul, etc. until March.[240]

Major universities, including Seoul National University, began to raise objections as these measures are discrimination against foreigners, and many European countries complained to the local government or the Ministry of Foreign Affairs as these are racially discriminating measures. The NHRCK determined that the administrative orders mandating PCR testing to migrant workers as discriminating

239) Joint Press Release, Jun. 11, 2020.

240) NHRCK, Mar. 22, 2021, Decision, Policy Recommendation on the Local Governments' Administrative Order of COVID-19 Testing to Migrant Workers

against foreigners without rational reason, and recommended to suspend the administrative order, etc. Afterwards, most of the local governments withdrew the administrative order or changed the subject of the order to 'Korean nationals or foreigners from the same workplace.'[241]

On the other hand, controversy over the vaccination occurred throughout 2021. The vaccination first began in the UK on Dec. 8, 2020, and Korea began the vaccination on Feb. 26, 2021 for the medical personnel. During the beginning of the vaccination, criticism for a delay in supplying the vaccine were prevalent, and people raised issues related to the right to access vaccination information by vulnerable classes. However, these issues were resolved quickly as 70% of the population completed vaccination by Sep. 17, 20219[242]; however, there were other issues for not giving the right to choose the type of vaccine and the issues of compensation for the side effects of the vaccination.[243]

When more than 80% of the people had received the 2nd vaccination by the end of 2021, controversy over the 'vaccine pass.' Despite a high vaccination rate, studies have concluded that 'herd immunity' cannot be achieved, and there were opinions that people who chose not to be vaccinated should be respected.

However, as the government implemented the step-by-step recovery for the 1st major reorganization of quarantine rules on Nov. 1, 2021, the government decided to implement the 'vaccine pass' policy[244], and in Dec. 2021, it was expanded to restaurants, cafes and private educational institutions, etc. People who were unable to be vaccinated due to medical reasons, people who recovered from COVID-19 and children under the age of 12 were exempted, but children and

241) NHRCK Press Release, Nov. 30, 2021.

242) Korea Disease Control and Prevention Agency's Card News, "COVID-19 Vaccination in 2021 was Conducted Like This," Dec. 31, 2021.

243) Statement of the President of the Korean Bar Association, Dec. 8, 2021.

244) "Vaccine pass' is a system that allows people who are vaccinated or who receive a negative result from PCR test to use certain facilities.

adolescents between the ages of 12~18 and pregnant women were subjected to the vaccine pass.

After Nov. 2021, small business owners, human rights groups and parent groups held an assembly protesting the vaccine pass, and the parent groups filed administrative proceedings and the suspension of execution as related to the vaccine pass. The Seoul Administrative Court suspended the vaccine pass at stores, markets and department stores, etc. and for young children aged between 12~18 on Jan. 4, 2022.[245)]

2) Measures to Prevent Infectious Disease vs. Coercion and Discrimination

The controversy surrounding compulsory PRC testing and vaccination is a question of whether preemptive measures to prevent the spread of an infectious disease are excessively restricting the fundamental rights or not. Some view that demanding PCR testing and encouraging the vaccination for the safety of the people are legitimate, and some argue that the series of measures implemented by the government has no scientific basis and results in isolating certain groups.

However, as can be seen from the case of the compulsory PCR testing of migrant workers, classifying an entire group as high-risk, while individual circumstances differ, can result in stigmatizing the individuals in that group as a 'potentially infected person requiring COVID-19 testing' and is an unfair measure.

The problem with the vaccine pass is similar. An individual's right to choose may be restricted to protect the individual and the community through a vaccination, but these restrictions should be made harmoniously based on the principle of minimizing the damage according to a scientific basis.

245) Seoul Administrative Court, Jan. 4, 2022, Sentence, 2021Ah13365 Decision

3) Principle of Restricting Human Rights During the Time of an Infectious Disease

The Siracusa principles states a possibility of restricting human rights when an infectious disease is spreading. According to this principle, restriction of human rights while responding to infectious diseases should be absolutely necessary to achieve the purpose, and should be the minimum or restrictive to achieve the purpose. Also, restricting the human rights should 'not be applied arbitrarily or discriminately and must be based on scientific evidence.' If the same effects can be achieved by using an alternative that does not restrict human rights, then such an alternative should be preferred, and restricting human rights should be the last resort.

The Constitution of the Republic of Korea has similar provisions. The people's freedom and rights may be restricted when necessary for the public welfare, but the basic terms of the freedom and rights cannot be violated. Furthermore, even if the public interest that can be achieved from restricting the fundamental rights is greater than the fundamental rights being restricted, the fundamental rights cannot be taken away completely.

The mandatory testing of certain groups and encouraging vaccination through a vaccine pass are issues of how much human rights can be restricted to prevent the spread of an infectious disease. The key to the courts' ruling on the stay of execution related to the vaccine pass is the comparison of the public interest achieved through the vaccine pass and the fundamental rights being violated with the vaccine pass. All agreed that there is public interest to be achieved through the vaccine pass and that the fundamental rights are being violated therefrom. However, the issue lies with the degree of comparison and whether there are other methods of achieving the purpose without violating the fundamental rights.

The coercive and excessive restriction of fundamental rights cannot help with establishing a sustainable disease control system when the COVID-19 pandemic is

being prolonged. Restricting the fundamental rights and compulsory measures that cause discrimination and prejudice should be the last resort. A quick decision-making based on expert opinions is necessary in consideration of the speed of COVID-19 transmission and the ratio of serious cases.

However, the importance of social communication does not disappear during such a process. Diverse and effective information delivery, education and communication that consider social and cultural conditions must be provided.

C. Overload of the Public Medical System and Medical Vacuum

1) The Public Medical System In Response to COVID-19

Public health institutions and public medical institutions played important roles during the COVID-19 pandemic, from diagnosis, transportation and treatment, etc. The public health centers were turned into screening centers and a large-scale PCR testing and epidemiological investigation were made possible, and the public hospitals provided places to isolate the confirmed cases. Under the urgent COVID-19 pandemic situation, it was inevitable for the public medical system to place these responses as top priorities. However, there were several problems within the public medical system as the COVID-19 situation continued to 2021.

The government and the local governments managed the hospital beds allocated to COVID-19, but from time to time and region by region, it exceeded the capacity of the public medical institutions. The government designated hospitals exclusively for infectious diseases to secure the hospital beds of COVID-19 patients and an administrative order was placed to secure hospital beds from private hospitals. To secure personnel, temporary and permanent employees were hired. However, there were fatalities of the people who were unable to be hospitalized. Also, the medical personnel on site were pleading of difficulties in performing disease control duties due to a lack of personnel and overwork.

On the other hand, as the public medical system focused on responding to the infectious disease, treatment of the vulnerable class, unrelated to the infectious disease, was practically suspended. For example, when 4 hospitals, including the National Medical Center, were turned into COVID-19 exclusive hospitals under the government's plan to secure and manage additional hospital beds for COVID-19 on Dec. 22, 2012, 86 patients from the vulnerable classes (medical benefits recipients, near-poverty class, homeless, migrant workers) who were hospitalized were reduced to 7 patients in 15 days. They were discharged without any special measures taken.

The public health centers also reduced or suspended their existing work to focus on screening center duties, epidemiological investigation duties, etc. Issuance of certificates and pneumococcal vaccination to people aged 65 or older were contracted out to private medical institutions, and the national immunization program for undocumented children (NIP) was suspended for 2 years and later contracted to private medical institutions in Jan. 2022. A free HIV test, dementia screening and other health programs were either reduced or suspended.

Under these circumstances, there were conflicting opinions on the private medical institutions providing hospital beds for COVID-19 patients and general patients must be considered as much as COVID-19 patients. Also, it was pointed out that Korea's public medical system needs to be expanded.

2) Controversy Surrounding the Number of Hospital Beds for Serious COVID-19 Patients

"Stopping the collapse of the medical system from COVID-19" was the government's utmost disease control goal in 2021. Specifically, the goal was to stably maintain the public health centers' testing and epidemiological investigation functions, emergency resources and emergency room functions and functions to manage serious patients. Diverse measures were implemented to expand the medical system and to prevent large-scale confirmed cases.

Generally, the medical system mentioned as related to COVID-19 is the number of hospital beds for serious COVID-19 patients. The share of serious patient hospital beds was an important index in discussing a step-by-step return to daily lives (Oct. 2021). However, hospital beds for serious COVID-19 patients have been provided mostly by public hospitals. Public hospital beds account for only 10% of the total hospital beds, but they handled 90% of COVID-19 patients, and this number causes great controversy.[246]

246) Hereunder, Young Doctors, "'There are plenty vs. must empty,' ... Different Views on COVID-19 Public Hospitals," Dec. 13, 2021

First is a criticism that the government and private hospitals are not active in securing hospital beds for serious COVID-19 patients. There are approx. 640,000 hospital beds in Korea, but as of Dec. 2021, approx. 6% of the beds were used to care for the COVID-19 patients. It is a low ratio as compared to the European nations using 21%. The people with a negative perspective about these situations assert that the government and the private hospitals should secure hospital beds and equipment and establish the plans to recruit more people.

On the other hand, there are arguments against the above assertions. The hospital beds for COVID-19 requires equipment to spread the disease and experienced personnel, and they cannot be obtained in the short-term. Moreover, once hospital beds for COVID-19 patients are secured, then the space and personnel to take care of the general serious patients will be reduced. Therefore, they assert that while the government should try to secure more COVID-19 hospital beds, but should not relax the disease control policies too quickly.

In addition to the problem of securing hospital beds for COVID-19, there are opinions that criticize the suspension of work performed by the public medical system. The risk and suffering from COVID-19 concentrates on vulnerable classes, and the public medical system that plays a central role must be considered.

3) Efforts to Protect the Right to Health From Social Risks

Evaluating whether Korea's public medical system's response to COVID-19 was proper or not is not a simple issue. It is premised on the Korean medical realities and discussion on expanding the public medicine, and is also related to the direction of the disease control policy. This problem is more real as we have faced a new form of social risk from COVID-19.

However, it is clear that the medical personnel and caretakers took care of the patients under the environment that threatens their lives and health. Nevertheless, access to medical services was even more difficult in regions that lack medical

facilities for the vulnerable classes due to COVID-19, and they were exposed to more danger.

Right to health is the most fundamental rights that everyone needs to have a dignified life, and the government has a duty to protect the health of the people according to the Constitution. The UN ICESCR stipulates all member states to take measures to create conditions to be able to prevent, treat and control diseases, as well as provide medical services and care to everyone upon the occurrence of diseases.

It is important to note that the hardships faced at the medical sites continued to aggravate while responding to COVID-19. The government needs to reinforce the medical measures for the members of our society to withstand this hardship successfully and is responsible to provide treatments to people suffering with other diseases. Defending the people's life and health is the duty of a state, as well as the joint responsibility of our society. Therefore, it is important to emphasize the cooperation and roles of medical institutions, not only the public hospitals.

D. Restricting the Assemblies on the Grounds of Disease Control

1) Measures to Restrict Assemblies and Disobedience

Since 2020, various meetings and events have been restricted to prevent people from gathering in a single location, and assembly was no exception. The government stipulated the maximum number of people allowed for meetings and events through the disease control guidelines, and the local governments notified of places that restrict assemblies or placed an administrative order prohibiting certain types of assemblies. The police notified of prohibiting assemblies within the locations stipulated by the local governments as prohibited of holding assemblies pursuant to the Assembly and Demonstration Act (hereinafter referred to as the Assembly Act) and the Infectious Disease Prevention Act.

As COVID-19 continued, people began raising criticism on the uniform restriction of assemblies for uncertain danger, and objecting to the disposition of prohibiting assemblies continued. In 2020, the court decided to suspend the disposition of prohibiting assembly at Gwanghwamun on Aug. 15, and in 2021, the ratio of suspending the disposition of prohibiting assemblies increased, as 'with COVID-19' discussions are being conducted. When the court cited a suspension on the disposition of prohibiting assemblies, the court added conditions, including specific disease control measures, etc.[247)]

On the other hand, after Jul. 2021, small businesses held a 'drive-by assembly' around Seoul demanding changes in the COVID-19 disease control guidelines, and there was controversy over whether 'drive-by assemblies' can be applied with the Infectious Disease Prevention Act. At the time, the 4th level social distancing was in place in Seoul, and all assemblies and protests were prohibited, except for 1-person protests. The police stated that it will apply the violation of the Assembly Act and the Infectious Disease Prevention Act to the drive-by assembly.

247) Incheon District Court, Sep. 20, 2020, 2020Ma5319 Decision, Seoul Administrative Court, Oct. 2, 2020, 2020Ah12845 Decision, etc.

There were criticisms for conducting assemblies and protests while violating the disease control guidelines. However, the civil society groups express their opinions criticizing the measures that restrict the freedom of assembly and protest in the name of disease control, without regards to being conservative or progressive. The NHRCK also stated that uniform prohibition on assemblies in the name of disease control may infringe on fundamental rights.[248]

2) Criticisms on Measures Restricting Assemblies

Many problems were raised on the measures that restrict assemblies for disease control reasons by civil society groups.[249] The first criticism is a lack of legal system and principles. Article 49(1) of the Infectious Disease Prevention Act only stipulates that the Commissioner of the Korea Disease Control and Prevention Agency and the heads of local governments can restrict assembly, etc. to prevent the spread of infectious diseases, but does not stipulate the specific standards on placing the measures, etc. The heads of local governments exercised comprehensive authority to restrict assemblies, but the basis for such measures were not consistent and there is no standards for evaluating the measures to leave a room for the misuse of the authority.

Moreover, some argue that restricting assembly completely is improper when the disease can be prevented somewhat by complying with the general disease control guidelines. The court also agreed that the balance between preventing and managing the infectious disease and exercise of fundamental rights can be achieved by specifically stipulating the guidelines for each level of COVID-19. Therefore, the court held that prohibiting the assemblies throughout Seoul, without regards to the time, duration, size and method of the assembly, compliance

248) NHRCK, Dec. 24, 2020, Decision, Opinion on partial amendments to the Assembly and Demonstration Act; NHRCK, Dec. 17, 2021, 20JinJeong0191900 and 6 other (combined) decisions

249) Hereunder, Human Rights Foundation, "Report on COVID-19 and Freedom of Assembly and Protest," Sep. 2021.

with the disease control guidelines and vaccination, etc. is violating the freedom of assembly.[250)]

On the other hand, for 4th level social distancing, movie theaters and concert halls were allowed to operate under certain conditions, but assemblies, other than 1-person protests, were prohibited. Some argued that these measures are being used to prevent the people from raising objections and criticisms against the government and local governments.

3) Need to Allow Assemblies that Comply with Disease Control Guidelines

Freedom of assembly is not only a right that allows you to express your opinions freely, but is seen as a key right that plays a fundamental role in contributing to an individual's self-determination and realizing democracy by the NHRCK, international human rights organizations and courts. Article 20 of the Universal Declaration of Human Rights and Article 21 of the ICCPR stipulates the freedom of assembly, and the Special Rapporteur on the rights to freedom of peaceful assembly and the association's 'Joint Report on the Proper Management of Assemblies' (2016) states that restricting assemblies should correspond to achieving such a purpose and prohibition of assembly should be the last resort.

The UN Office of the High Commissioner for Human Rights (OHCHR) also stated that a restriction on physical gathering is necessary under public health emergencies, such as COVID-19, but must be based on laws, unavoidable and proportional to the purpose.[251)] According to this, the government must guarantee the exercise of rights on assembly and protest under public health emergencies, and must restrict such rights only when absolutely necessary. Moreover, such restrictions must be continuously evaluated as to the necessity and appropriateness.

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250) Seoul Administrative Court, Sep. 24, 2021, Sentence 2021Ah12380 Decision

251) OHCHR, "Civic Space and COVID-19: Guidance," 2020.; NHRCK, "Collection of COVID-19 Related International Human Rights Regulations," 2020.

There are expert opinions on the higher possibility of COVID-19 infection when many people are gathered in proximity for a long time, and it is hard to deny the need to restrict the freedom of assembly to protect the people's right to health. Countries, such as the UK, USA, Germany, France, etc. introduced strengthened regulations for assemblies due to COVID-19 and there were cases of the complete prohibition of assembly, as well.

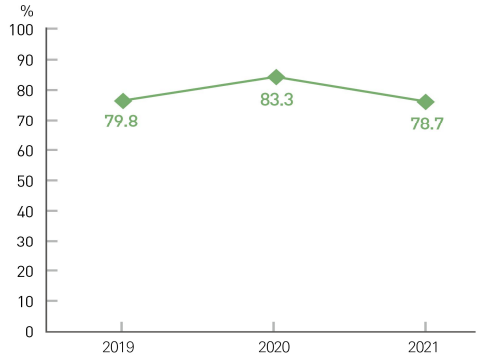
However, even when the measures to restrict the fundamental rights for the public health reasons, such measures must be the minimum needed to achieve the greater interest of the public, and must be individualized and specific based on a reasonable basis. Prohibiting assemblies in certain regions, without specifying durational restrictions and considering the size or participants, can have excessive restrictions on the freedom of assembly.

According to the NHRCK's 'National Human Rights Status Survey' (Dec. 2021), the percentage of people who believe that the freedom of assembly and association must be respected has decreased 4.6%p[252] as compared to the previous year, but the percentage of people who agree with guaranteeing the freedom of assembly and protest has increased by 6.2%p.[253] These two values can be interpreted as people awareness on the freedom of assembly and protest has changed to needing greater guarantees on the freedom in 2021.

252) Ratio of people responding 'very respected' and somewhat respected' on the question of how much the freedom of assembly and association is being respected in Korea.

253) Ratio of people responding 'must guarantee' to the question of guaranteeing or restricting the freedom of assembly and protest.

Graph Respect for Freedom of Assembly and Association (2019~2021)



Statistics Respect on Freedom of Assembly and Association (2019~2021)

(Unit: %)

Classification (Year)	2019	2020	2021
Total	79.8	83.3	78.7

Note: 1) Ratio of people responding 'very respected' and 'somewhat respect' on the question of how much the freedom of assembly and association are being respected in Korea.
2) Adults over the age of 19.
Source: NHRCK, 'National Human Rights Status Survey,' 2021.

The government and the local governments must consider the specifics of each risk situation from assemblies, even if it requires significant administrative efforts. Determining whether to allow or prohibit assemblies based on individual circumstances, such as time, location, persons attending, method, etc. corresponds to the purpose protecting the freedom of assembly pursuant to the Constitution and the international human rights standards.

Moreover, rather than taking measures to prohibit all assemblies, the government should present a specific disease control guideline related to assemblies and communicate with the assembly hosts and participants to comply with these rules. Furthermore, permitting assemblies premised on restricting the number of participants, compliance with the disease control guidelines and maintaining order, etc. will be a realistic alternative.

E. Isolation of Vulnerable Classes Under COVID-19

1) Reduction and Untact Social Care Services

The government implemented a disease control measures that minimizes face-to-face contact in response to the large-scale spread of COVID-19 since Feb. 2020. Accordingly, social welfare facilities and daycare facilities, etc. suspended its services, and the schools delayed the start of the school year. Essential care services resumed for disabled and elderly, and schools started in stages, as well as in-person learning. However, care services in many areas were suspended and a gap in care services became a social issue.

As the COVID-19 pandemic continued for nearly 1 year, on Nov. 27, 2020, the government released 'a plan to improve the sustainable care system in the age of COVID-19.' This plan provided customized disease control measures by each care service facility and by each region, and the facilities will be operating for up to 3rd level of social distancing. However, despite such plans of improvements, many social service institutions suspended service temporarily, elongated the suspension of service or switched to a non-face-to-face service until 2021.

In 2021, the government began the 'social services emergency care program,' to minimize the gap in care services. The program provides care service personnel, such as care helpers to households, social welfare facilities and medical facilities in response to the gap in the care service due to COVID-19 isolation and confirmation, etc. However, there were limitations due to a lack of personnel, such as placing a care helper to disabled persons, instead of a disabilities care helper.

2) Accelerating the Isolation of Vulnerable Classes

A) Persons with Disabilities

Social care services[254] for the persons with disabilities are activities supporting services, daycare service, errands center, domestic support service, domestic and nursing service, etc. An in-person service is necessary for these care services, but social distancing was implemented without having established a safe disease control system, so the isolation intensified. Emergency care services and non-face-to-face services were implemented later, but the people who can receive such services were limited and the ability to provide the services as well; therefore, it was entirely insufficient to provide care to all persons with disabilities needing the service.

According to a study conducted by the National Rehabilitation Center in Jun. 2021, 18.2% of the people with disabilities who received care services experienced a suspension of the service due to COVID-19. The difficulties they experienced from a suspension of the care services were 'more of a burden to the families' (58.7%), 'difficulty going out' (36.4%), 'difficulty preparing meals,' (25.9%), etc. This shows that the suspension of care services caused problems with the basic daily lives, not only social difficulties.

In case of developmentally disabled persons, care service is a very important means of adopting to the local communities and learning to become independent. Therefore, for them, the reduced care services have more impact than just simply being inconvenienced. In 2020, there were incidents where persons with developmental disabilities and their mothers committing suicides in Jeju and Gwangju.

254) Some disabilities groups view the use of the term 'care' as inappropriate, and the term 'support' is used instead. However, the term 'care service' is used hereunder, as it is the term used in legislation, and need to maintain consistency with care services for elderly, children and the homeless.

Moreover, there were issues of exclusion from gap in information as convenience was not provided to persons with disabilities when acquiring COVID-19 related information. The substantial number of contents related to COVID-19 did not provide sign language interpretation, and there were no sign language interpreters or text interpretation at the public health centers and screening centers. According to the aforementioned study by the National Rehabilitation Center, the reason for experiencing difficulties in acquiring COVID-19 related information are 'not knowing how to find the information' (46.1%), 'lack of information services using diagrams and videos for easy understanding' (35.0%), and a 'lack of sign language and descriptive video service' (23.2%).

B) Children

As daycare facilities and schools were suspended or went online, the children remained at home longer, and more children were facing the risk of child abuse, such as physical violence and neglect. According to the 'Annual Report on Child Abuse 2020' published by the Ministry of Health and Welfare in Aug. 2021, there were a total of 42,251 reports of child abuse in 2020, which is a 2.1% increase from the previous year, and the perpetrators were parents, 25,380 cases, and 82.1% of the total, which is a 11.8% increase from the previous year. However, reports by the school teachers decreased 35.5% as compared to the previous year, from 5,901 cases to 3.805 cases in 2020), and the reports by daycare workers also decreased 59.4%, from 448 cases to 182 cases in 2020.

In Jun. 2020, a 9 year old child died after being put in a travel bag for over 7 hours, and while the child was inside the bag, the child was recorded as attending remote learning. Experts presume that there are many cases of child abuse that were not reported while the children stayed home because the teachers, etc. cannot become aware of the abuse in reality.[255] Therefore, some argue that the

255) Hankyoreh, "Death of a 3-year old from abuse ... did not go to childcare for a year," Nov. 29, 2021.

government must get involved actively, but there are difficulties in conducting home-visiting investigations because the families refuse the investigation by child protection agencies, using COVID-19 as an excuse.

Also, online learning cause a gap in the learning of children from low-income families. According to the 'Survey of Remote Learning Experience and Awareness in Response to COVID-19' conducted by the Korea Education and Research Information Service in Sep. 2020, 79% of the teachers thought the learning gap increased between students. This is due to diverse reasons, such as children from low-income households experiencing difficulty receiving help from parents or private educational institutions and they are unfamiliar with the smart devices, etc.

C) Elderly People

Elderly people are especially vulnerable to COVID-19. According to the Korea Disease Control and Prevention Agency (KDCA), people over the age of 60 accounts for approx. 20% of the COVID-19 confirmed cases, as of Aug. 26, 2021. Moreover, 60~69 year olds account for 13% of the deaths from COVID-19, 70~79 year olds account for 28% and over 80 years old account for 52% of the deaths from COVID-19.

In Mar. 2020, the government prohibited visitations to living facilities, such as nursing hospitals and nursing homes, because infections at such places can fatal. From November of the same year, it was allowed to manage visitations flexibly, but many facilities prohibited visitations until Mar. 2021, when the government fully allowed non-face-to-face visitations. There were also concerns of elderly abuse from prohibiting visitations for a long time.[256]

256) Hankook Ilbo, "Father who came home from nursing hospital was covered in bruises and scars ... elderly abuse hidden by COVID-19," Aug. 11, 2021.

Elderly people not living in the facilities were not free from isolation as well. According to the government guideline in May 2021, the social welfare facilities and community centers can operate programs by complying with the disease control guideline, but many facilities did not operate programs. Senior welfare centers can operate, but 42% did not open, and 67% of the senior citizens centers are closed.

Also, elderly people are more depressed and isolated, as overall disease control system and various non-face-to-face services, including vaccination reservation, vaccine pass, etc. are using digital technology, but seniors are not accustomed to it. The average depression score of elderly people as of Mar. 2021 was 5.7 points, which is a two fold increase from 2018, at 2.3 point, and suicidal thoughts are continuously increasing at 16.3%.

3) Tasks to Minimize the Gap in Care Services

The blind spot of care services must be reduced by establishing a specific direction of services, so that the care services can be provided while the facilities are closed due to COVID-19. It is necessary to exert efforts to establish the continuity of services, and identify the group in danger for not being able to use the non-face-to-face services and provide concentrated management to these people.

A close monitoring is necessary for the possibility of violence, abuse or neglect towards the vulnerable classes due to intensified social isolation and the burden of care giving. We could consider mandating analysis on the effect of disease control measures on the vulnerable classes when establishing a disease control guideline in the future.

Most of all, we need to pay attention to the opinion on improving the care service system that focuses on group facilities.[257] The gap in the care service can

257) Choi, Hye-ji (Professor of Social Welfare at Seoul Women's University), The Public News, "Tasks of Care

be minimized when the large group facilities are made smaller and changed to a one-on-one care services system.

Also, it is necessary to improve the treatment of care workers to stably provide high-quality care services.[258] Care workers are paid low wages and work long hours, and they were responsible for disease control during the pandemic. Therefore, it was difficult to find care workers for emergency care, etc. So, in order to improve the care system, reinforcing the public nature of the care services must be implemented first.

Service For a Return to Daily Life and Comprehensive Strategy," 2022.

258) Hong, Yu-jeong (Public Transportation Union, Medical Solidarity Center, Head of Organization), Maeil Labor News, "[Medical Care Service Policy That Will Protect Me ③] Non-Stop Care Service Work, Demands of the Care Workers", 2022.

F. Human Rights of COVID-19 Decedents and Their Families

1) The Dying Process of COVID-19 Patients and the Principle of Cremation Before Funeral

Since the first confirmed case of COVID-19 occurred in Korea in Jan. 2020, our society is still living under the danger of the infectious disease. When deaths from COVID-19 increased rapidly many social problems occurred overseas. Due to a lack of crematories and cemeteries, corps were temporarily placed in refrigerated trucks, in some countries.

The government tried to avoid the rapid spread of COVID-19 through the early identification of infected persons and quick isolation. As of Dec. 31, 2021, 635,253 were infected in Korea, and 5,625 have died.[259] However, the valuable lives of our families and neighbors are hidden under the figures of confirmed cases, deaths and fatality rate announced each day. Some assert that the human rights of the COVID-19 decedents and their families have been ignored because there were relatively few deaths from COVID-19.[260]

Statistics No. of Deaths by Age and Gender

Classifi-cation		Men	Women	Over 80 Years Old	70s	60s	50s	40s	30s	20s	10s	0~9
Aggregate	5,625	2,896	2,729	2,837	1,521	863	277	77	35	12	0	3
(%)	100	51.48	48.52	50.44	27.04	15.34	4.92	1.37	0.62	0.21	0.00	0.05
Fatality Rate (%)	0.89	0.88	0.90	13.76	3.94	0.95	0.30	0.08	0.04	0.01	0.00	0.01

Note: 1) Fatality Rate (%) = No. of Deaths / No. of Confirmed Cases × 100
2) 635,253 accumulated confirmed cases
Source: KDCA Press Release Data, "COVID-19 Vaccination and Occurrences (As of 0 o'clock)", Jan. 1, 2022.

259) KDCA Press Release Data, Jan. 1, 2022.
260) SBS, "[Behind COVID-19] 2 Years of COVID-19, Are Human Deaths Being Respected?", 2022.

The Ministry of Health and Welfare established a 'guideline on the funeral management of deaths from COVID-19' based on the 'white paper on MERS' in Feb. 2020. This guideline provides for the 'cremation before funeral' principle, under the consent of the families to prevent the spread of the disease.

Generally, when infected with COVID-19 and classed as a critically ill patient, they are hospitalized and unable to see their families. When the patients are nearing death, the families are notified, and 1~2 immediate family members are allowed to visit while wearing individual protective gears. However, if the family members are classified as close contacts and are under self-isolation, then they don't even get such a chance. There were many cases of family transmission for COVID-19, and in many cases, when a patient dies, the other families were under self-isolation.

When a COVID-19 patient dies, a medical personnel wearing anti-contamination clothing seals the body in a medical pack, without detaching needles, tapes, etc. attached to the patient's body. Afterwards, the body is cremated, with the consent of the family. The funeral procedures and size were also restricted to prevent people gathering and increasing the possibility of transmission.

However, after Apr. 2021, the medical groups raised an assertion that the 'cremation before funeral' policy is not in line with the international standards and has no scientific basis.[261] As the issue continued through the media reports and inspections of administration, the government changed the guideline to allow 'cremation after funeral' by complying with the disease control measures by amending the 'Notice on the Funeral Method and Procedure for the COVID-19 Bodies' on Jan. 27, 2022.

261) Hereunder, Heo, Yun-jeong, 'Opinion on cremation and funeral of patients who died of COVID-19,' Apr. 2021, etc.

The government stated that it amended the notice and the guideline after fully reviewing the recommendations of international organizations and overseas cases. However, despite the amended guidelines, some raised issues with cremating the COVID-19 decedents as a rule.

2) Criticism of Medical Groups on the Government Guidelines

The World Health Organization (WHO) released a guideline related to COVID-19 on Mar. 24, 2020. This guideline contains information related to the transmission of COVID-19. First, COVID-19 is typically transmitted through droplets, close contact or through a mediator. Second, except for viral hemorrhagic fevers, including Ebola, etc., and cholera, dead bodies are not infectious, generally. Thirdly, cremating the dead body of a person who died from an infectious disease is a common myth.

The WHO stated that there is no evidence that the dead body can transmit COVID-19 and burial is possible. The CDC also determined that COVID-19 will most likely not be transmitted from a dead person. The CDC's guideline emphasizes that COVID-19 should have no effect on a decision between burial and cremation, and the families wishes must be respected.

The medical groups criticized the 'cremation before funeral' guideline of the government by presenting the WHO guideline and overseas examples. Restricting the rights of the families to mourn the death, while not presenting any scientific basis, is unfair. Furthermore, there is no report of COVID-19 transmission from the dead body of a COVID-19 decedent around the world.

The government stated that the guideline was first established to minimize the risk of infection when there were insufficient information related to the disease during the early days of COVID-19.[262)]

262) KDCA Press Release Data, Jan. 27, 2022.

3) Need for an 'Evidence Based Disease Control Policy'

The right to life is the right of a living person, but is also related to the rights of the mourning families. The family relationship is the most basic and close relationship between people, and mourning the death of a family member is a natural sentiment. Protecting these sentiments and actions are important to protect the family's dignity and pursuit of happiness.

Since the beginning of COVID-19 until the early 2021, the Korean society tended to blame the patients for being infected. According to the National Statistical Office, the fear of being stigmatized was at a higher level than the fear of being infected, until the end of 2020.[263] Moreover, the situation where information on the new infectious disease is insufficient had more effect on the patients and their families. The government principles under insufficient information work as important social standards.

Under these circumstances, the fear and agony felt by the critically ill patients of COVID-19 and their families and the social pressure to cooperate with the government's guidelines are tremendous. They trusted that complying with the 'cremation before funeral' guideline is the best way to prevent the spread of disease and did not consider selecting other options.

The experiences and sorrows of the people who died from COVID-19 and their families are hard to imagine by others. This is why we cannot claim the changing the guideline from 'cremation before funeral' to 'cremation after funeral under strict disease control measures' is a big improvement after 2 years has passed.

Dead people are often the target of hatred, rather than mourning. There is still no social mourning for the COVID-19 deaths in Korea. A governor of New Jersey placed an administrative order to hang a flag at half-mast to show mourning for

263) National Statistical Office, "Korean Social Trend 2020," Dec. 11, 2020.

the COVID-19 deaths. In Italy, flag is hung at half-mast and 1 minute's silent tribute is paid at city halls nationwide and local papers published the photos and names of the COVID-19 victims. .[264)]

264) Park, Gyeong-jun, et. al., 'COVID-19 Blue, Comfort of Philosophy," Knowledge Workshop, 2020.

G. Damage to Small Business Owners From the Measures Restricting Business Operations

1) Measures Restricting Business Operations and the Loss Incurred by Small Business Owners

According to the social distancing guidelines, measures that restrict the number of people who able to meet at once and the business operations were in place throughout 2021. Small business owners were hugely affected by the social distancing, and many experienced difficulties. Private gathering over a certain number of people were prohibited. Clubs, social clubs, etc. were considered high-risk entertainment facilities (Group 1) and were prohibited from operating.

Restaurants, cafes, karaoke, indoor sports facilities (Group 2) had their operating hours restricted for a significant portion of 2021. Private educational institutions, movie theaters, concert halls, libraries, study cafe, etc. (Group 3) had their operating hours restricted and the number of people being able to use the facility were limited. Lodging facilities, kids cafe, party rooms, etc (other facilities) could only operate with the minimum number of customers.

Under these measures, the small business owners suffered with reduced sales and fixed expenses, such as rent, tax, social insurance, etc. The government, in order to make up for their losses, provided disaster allowances and disease control allowances 5 times by Aug. 2021. However, the restrictions on business operations have elongated in 2021, and issues were raised regarding the prohibition on assembly and restrictive measures being focused on small business owners and whether they are practical or perhaps are discriminating and excessive regulations.

The small business owner groups conducted drive-by protests several times since Jul. 2021 around Jongno-gu area. Also, they filed a constitutional appeal and action for damages on several occasions. The civil society groups also presented

examples of small business owners' suffering and loss and urged legislation for proper compensation through press conferences and releasing statements.[265]

2) Processing of Discussing Compensations and Controversy

The Infectious Disease Prevention Act does not stipulate the compensation of losses incurred from restricting the business operating hours or prohibiting assembly to prevent the infectious disease. A private business owner can obtain compensation related to business restrictions through the Infectious Disease Prevention Act only for business restrictions due to the occurrence of an infected person or contaminated with infectious pathogens (measures pursuant to Article 47(1) of the Infectious Disease Prevention Act).

The small business owners asserted that they incurred business loss due to the disease control measures of the government, and compensating for such a loss is a duty of the state as stipulated in Article 23 of the Constitution. This discussion was continued with a discussion on a specific loss compensation that corresponds to the loss incurred from the disease control measures, not a temporary support, such as the disaster allowances and disease control allowances, etc.

The government agencies and the majority party had different opinions on the need for compensation and the problems of financial stability in order to legislate the loss compensation system. Also, diverse proposals were submitted as to the scope and size of the loss compensation. Finally, on Jul. 7, 2021, a partial amendment to the "Act on the Protection of and Support for Micro Enterprises," passed the National Assembly. The government stated that "the loss compensation system for the small businesses is a very progressive example to compensate the losses incurred by small business owners from the disease control measures."[266]

265) Hereunder, PSPD, People's Hope, "〈Summary〉 Overcoming COVID-19, with PSPD," 2021, etc.
266) Ministry of SMEs and Startups Press Release, Sep. 17, 2021.

Article 12-2 of the Act on the Protection of and Support for Micro Enterprises stipulates loss compensation caused by measures under the Infectious Disease Prevention Act. One of the issues was the retrospective application of the compensation, and due to financial burden, only micro enterprises[267] are eligible and will not apply retrospectively.

The loss compensation clause stipulates the state's obligation to compensate the micro enterprises for the losses they incurred from the disease control measures, and the subject and the procedure were delegated to the Enforcement Decree. Moreover, the basis, amount and time, etc. of the loss compensation will be determined by the Minister of SMEs and Startups after a review by the loss compensation deliberation committee.

After the loss compensation clause was established, the issue of deciding the standard of 'loss' being subjected to compensation became a social issue. When complete support is difficult, as funding for the loss compensation leads to financial integrity, the subject and scope of compensation must be decided. Therefore, medium sized enterprises and large corporations were excluded from compensation, and a discussion was conducted by keeping in mind the fairness in not considering the workers.

In the end, through amending the Enforcement Decree, the subject of loss compensation and the quick payment procedure, etc. were established. The scope of loss compensation was based on the government's prohibition on assembly and restricting the operating hours, and the application for loss compensation were received from Oct. 27.

However, even after the implementation of the loss compensation system, there are still many problems related to this. Travel business, lodging business and some

267) Micro enterprises refer to small businesses with less than 10 employees (manufacturing) or less than 5 employees (service business).

sports facilities are not eligible for loss compensation, even though they incurred an indirect loss from social distancing. Moreover, the basis for 'loss' is 'how much the revenue has decreased' in 2021, as compared to 2019, and the micro enterprises that began after 2019 are seen as not having incurred any loss.

Some argue that the compensation amount from the loss compensation system is too low as compared to the actual loss incurred.

3) Significance of the Loss Compensation Clause and Tasks

When the government demands a special sacrifice to individual citizens for public interest, it is liable for corresponding compensation. Article 23(3) of the Constitution stipulates that 'expropriation, use or restriction of private property from public necessity and compensation therefore shall be governed by the Act; provided that in such a case, just compensation shall be paid.' Compensation must be made as a consideration for the special loss incurred by the people, from giving up his/her right for the public.

OECD member states pay a substantial amount of subsidy to small businesses and business owners with a great decrease in revenue, but this is known to be similar to general disaster measures. Under these circumstances, legislating the loss compensation system that could be applied to other disasters is meaningful. The general public recognizes the effects of the disease control guidelines on the reduction of revenue of small businesses and sympathizes with the need for loss compensation.

However, the amount of such compensation may not be sufficient for the micro enterprises who incurred loss over a long period of time, and may have diverse objections to the scope of such compensation and calculating the amount, etc. The restriction on the freedom of business operation pursuant to the administrative order of the government is restricting the property rights of the business operator. When the government can no longer control the pandemic situation, then the

interest of the public may have priority over the interest of the property owner. Nevertheless, the government should always try to maintain the balance between the fundamental rights and property rights, and when restricting the fundamental rights is unavoidable, such restrictions should be at the minimum level necessary.

H. Issues of Overcrowding and Crisis Responses from the Mass Infections at Detention Facilities

1) Mass Infection of Prisoners

An employee of Gyeongbuk Northern Correctional Institution 2 was the first confirmed case related to detention facilities in Feb. 2020, and there were sporadic COVID-19 infections of employees and prisoners within the detention facilities. The MOJ established a response plan and implemented preventative measures, such as isolating new inmates, etc. There were no large outbreak of COVID-19 cases within the detention facilities in Korea by the end of 2020.

On Nov. 27, 2020, when an employee at Seoul Eastern Correctional Institution was confirmed to have COVID-19, 11 additional confirmed cases were found among the employees. On Dec. 14, an inmate was confirmed to have COVID-19. Seoul Eastern Correctional Institution conducted a complete testing of 425 employees and 2,419 inmates on Dec. 18, 2020, and 184 inmates were tested positive for COVID-19.[268] After more complete testing was performed, 286 inmates were additionally confirmed on Dec. 24, and 233 inmates on the 28th of the same month.

MOJ raised the distancing within all correctional facilities to level 3 as of Dec. 31, 2020, and transported 876 inmates who were not infected and 345 infected inmates to 6 institutions by Jan. 10, 2021, as an attempt to lower the density. Despite these efforts, as of Jan. 6, more than 40% of Seoul Eastern Correctional Institution were confirmed,[269] 3 inmates died from COVID-19.

When these circumstances caught the attention of the media, the inadequate situations within the detention facilities were also reported.[270] The families of the

268) MOJ Press Release Data, Dec. 19, 2020.

269) COVID-19, National Disaster and Safety Status Control Center Press Release Data, Jan. 6, 2021.

prisoners assert that they were unable to receive any answers when they inquired about the current situation and whether the inmates were confirmed, etc., and the officials from the detention facilities stated that they are having a hard time maintain control inside the facilities. Some inmates threw memos, saying that '8 confirmed cases are in a single room, and are prohibited from sending letters to the outside,' and 'save me,' to inform the situation inside the correctional institutions.

Many media and human rights groups criticized the inadequate circumstances of detention facilities and the MOJ's insufficient response, and the prime minister and the Minister of Justice made apologies. However, the civil society groups and the inmates filed lawsuits and reports, etc. The NHRCK released a statement on Jan. 6, 2021, demanding active measures to resolve the problem of mass infections and that protecting the life and health should be provided without discrimination under any conditions.[271] Moreover, when making decisions on 4 cases,[272] advised the Minister of Justice to warn Seoul Eastern Correctional Institution and Seoul Correctional Institution, and to improve the medical and management system of inmates infected with COVID-19.

The mass infection at detention facilities was relieved when the isolated persons at Seoul Eastern Correctional Institution are all released on Mar. 5, 2021. However, the MOJ has yet to make any statements regarding this case, including responsibilities, result of the audit, etc. This case was the second largest case after the Daegu Sincheonji mass infection in Feb. 2020, and is the largest size for a single institution. The case made people to consider responsibilities of the government as related to the right to health, the most fundamental rights of a person.

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270) KBS, "Seoul Eastern Correctional Institute on the Night of Dec. 19 Through the Letters of the Inmates," Dec. 30, 2020, etc.

271) Chairman of the NHRCK Statement, "Statement of the Chairman of the NHRCK on the Mass Infections at Correctional Institutions," Jan. 6, 2021.

272) NHRCK Press Release, Jun. 16, 2021.

2) '3 Conditions' and Insufficient Early Response

UN's OHCHR pointed out, in its COVID-19 Guidance on Apr. 27, 2020, that people stripped of freedom cannot achieve physical distancing upon the occurrence of an infectious disease and are placed at the most dangerous position, and their status must be especially paid attention to during managing and responding to risks. Article 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)[273] stipulates that providing health and medical services to the prisoners is a duty of a nation. Moreover, the right to health from Article 10 of the Constitution is the most universal right that must be enjoyed by everyone, including prisoners.

The mass infection case at Seoul Eastern Correctional Institution was the largest of its kind, amounting to 95% of COVID-19 cases in correctional institutions (1,173 people out of 1,224 people), especially when considering the fact that the total confirmed cases in Korea during the same time was 900 people on average per day. This case highlighted the inadequate environment of detention facilities and the problems of an initial response by the government agencies.

The Korean correctional facilities has a characteristic of 3Cs: closed, closeness and concentrated. Seoul Eastern Correctional Institution was overcrowded at 116.6% of capacity (as of Dec. 7, 2020, Capacity of 2,070; Currently holding 2,413 people), and most of the inmates lived in a single living room.[274]

Lack of medical personnel within the correctional facilities have been pointed out continuously, and under the special circumstances of COVID-19, there could be mass infections within a short period of time. Since 2011, doctors, pharmacists and nurses were never at 100% capacity, and as of Sep. 2021, the medical personnel is at around 75% capacity. These factors made mass infection within the correctional facilities even more dangerous.

273) United Nations Standard Minimum Rules for the Treatment of Prisoners

274) MOJ Press Release Data, Dec. 29, 2020.

The case of mass infection at Seoul Eastern Correctional Institution exposed the problems with structure, as seen above, as well as initial responses by the MOJ and the correctional institution.[275] Seoul Eastern Correctional Institution conducted a full testing 3 weeks after the first confirmed case, and during the 1st testing, 180 were confirmed, and an additional 300 cases were confirmed during the 2nd testing conducted within 1 week of the 1st testing. However, measures to lower the density was not made.

Moreover, after becoming aware of mass infection, the correctional institution assembled 185 close contacts at the auditorium, to separate them immediately from the confirmed cases, and had them wait for 4 hours. However, the assembled inmates did not distance themselves, and 98% of those assembled were confirmed within 2 weeks.

For quite some time afterwards, the close contacts were living with other close contacts from other locations. It was clearly inappropriate to have close contacts from different transmission routes to live in the same closed space, and some inmates made reports of other inmates showing symptoms of COVID-19, they were not segregated.

There were also insufficiencies in measures taken with the confirmed inmates. The COVID-19 guidance of the correctional institution did not stipulate any special measures for inmates with an underlying illness. The inmate who died at Seoul Correctional Institution had an underlying illness but was not hospitalized, and the inmate's health conditions were not sufficiently identified. When the patient watched through CCTV became unconscious, Seoul Correctional Facility became aware of abnormal signs after 41 minutes had passed, and emergency measures were taken 36 minutes thereafter.

275) NHRCK, Decision on petition, Decision (20JinJeong0914100, 20JinJeong0915200, 21JinJeong0072200, 21JinJeong0037701)

The employees were unaware of the guideline that stipulated transferring the confirmed cases in an emergency situation to a hospital dedicated to infectious diseases, and the patient died while transferring to a hospital was being discussed.

3) Need to Improve the Infectious Disease Risk Management System of Detention Facilities

The problems of overcrowded detention facilities and a lack of medical personnel are common to all detention facilities nationwide and have continued for a long time. Also, the problems themselves are a serious human rights violations that infringe on the dignity and value as humans. These two problems are the basic reason for the massive infections at detention facilities. These two problems need to be resolved quickly.

Also, it is necessary to analyze the cause and the problems from the massive infections at Seoul Eastern Correctional Institution and make improvements thereupon to prevent any recurrence of such incidents. The inmates who are stripped of freedom are very vulnerable to rapidly spreading viruses. There were reports of cases of massive jailbreak and a riot at overcrowded prisons in other countries. However, the MOJ was not able to prepare any plans during the emergency situation, other than preventing the spread of COVID-19 within the detention facilities, until the mass infection at Seoul Eastern Correctional Institution.

Infectious disease within the group-living facilities cannot be blocked. However, the insufficient initial responses of correctional facilities were confirmed as important tasks to be improved upon. To prepare for similar cases in the future, it is necessary to establish an emergency plan for different circumstances to comply with the disease control rules. Moreover, it is important to exert efforts for the basic COVID-19 response system to operate properly and inspect and prepare all matters to allow the proper management of confirmed cases within the correctional facilities.

I. Cohort Isolation of Social Welfare Facilities and Mental Health Institutions

1) Damage of Social Welfare Facilities and Mental Health Institutions with COVID-19

Social welfare facilities, such as nursing homes, nursing hospitals, mental hospitals and child care institutions, etc., and mental health institutions were more damaged by COVID-19 because many people were gathered at closed space. Congresswomen Jang Hye-yeong stated that among 1,486 people who died from COVID-19 until Feb. 19, 2021, 777 people resided in social welfare facilities, which is 52.3% of the total deaths, and the persons with disabilities who live in the housing facilities for persons with disabilities have 4 times the rate of infection, as compared to the total population.

Since the first case of COVID-19 in Jan. 2020, the government classified social welfare facilities as group facilities vulnerable to infection and responded accordingly. This guideline stipulates the social welfare facilities to segregate the confirmed cases to a single person room, or made possible cohort isolation. However, this guideline states that 'cohort isolation is not typically recommended in infection prevention and management.'

After a mass infection at a mental health institution located in Cheongdo in Feb. 2020, the local governments implemented cohort isolation for elderly nursing facilities and residential facilities for people with disabilities. Gyeonggi-do implemented preventative cohort isolation with 824 facilities, and Gyeongbuk with 573 social welfare facilities. According to the NHRCK's human rights status survey,[276] there were 446 elderly nursing facilities that implemented (preventative) cohort isolation, which is 11.6% of the total elderly nursing facilities.

276) NHRCK Status Survey, "Survey of Status on the Human Rights Situation at Elderly Nursing Facilities related to COVID-19," Jan. 2022.

When mass infection at nursing facilities, etc. continued, the government, in Dec. 2021, designated and operated 11 dedicated nursing hospitals. However, some were negative towards the government's responsive measures because blocking the chain of infection is difficult because the transferring speed of confirmed cases was slow and the hospitals dedicated to infectious diseases were not sufficient, to handle all confirmed cases.

Statistics No. of Facilities that Implement Cohort Isolation by Region[277)]

(Unit: No., %)

Region	Cohort Isolation	Preventative Cohort Isolation	Cohort Isolation and Preventative Cohort Isolation[1)]	Sum	No. of Elderly Nursing Facilities in 2021	Isolation Implementing Facilities vs. Elderly Nursing Facilities (%)
Seoul	10	1	0	11	212	5.2%
Busan	6	0	0	6	94	6.4%
Daegu	1	29	0	30	121	24.8%
Incheon	18	4	0	22	323	6.8%
Gwangju	5	1	0	6	78	7.7%
Daejeon	1	0	0	1	92	1.1%
Ulsan	0	0	0	0	36	0.0%
Sejong	0	0	0	0	11	0.0%
Gyeonggi	49	9	1	59	1,315	4.5%
Gangwon	8	1	0	9	213	4.2%
Chungbuk	7	1	0	8	204	3.9%
Chungnam	5	1	1	7	212	3.3%
Jeonbuk	0	1	0	1	173	0.6%
Jeonnam	3	1	0	4	221	1.8%

277) NHRCK Status Survey, "Survey of Status on the Human Rights Situation at Elderly Nursing Facilities related to COVID-19," Jan. 2022.

Region	Cohort Isolation	Preventative Cohort Isolation	Cohort Isolation and Preventative Cohort Isolation[1)]	Sum	No. of Elderly Nursing Facilities in 2021	Isolation Implementing Facilities vs. Elderly Nursing Facilities (%)
Gyeongbuk	11	261[2)]	5	277	286	96.9%
Gyeongnam	2	3	0	5	195	2.6%
Jeju	0	0	0	0	58	0.0%
Sum	126	313	7	446	3,844	11.6%

Note: 1) Facilities that implemented preventative cohort isolation, other than cohort isolation at least 1 time or more
2) According to the Gyeongbuk provincial government, a total of 382 elder medical welfare facilities (elderly nursing facilities and elderly medical treatment and community living homes) that participated in preventative cohort, and did not count separately for the participating elderly nursing facilities. In 2020, there are 269 elderly nursing facilities and 121 elderly medical treatment and community living homes, for a total of 390. By assuming that all 8 non-participating facilities are elderly nursing facilities, 261 facilities participated in the preventative cohort.

Data: 1) Internal data by each local government.
2) Ministry of Health and Welfare, 2020 Elderly Welfare Facilities Status
3) Ministry of Health and Welfare, 2021 Elderly Welfare Facilities Status

2) Problems with Cohort Isolation

Some local governments preferred cohort isolation for social welfare facilities and mental health institutions to prevent COVID-19. However, many human rights violations issues were raised from cohort isolation, including disclosing the infection information of residents, etc., insufficient emergency medical support and care services, right to life and the health of elderly people with underlying diseases who are vulnerable to infectious diseases, etc.[278)] The problems with the effectiveness of cohort isolation in preventing the spread of infectious diseases and a lack of legal basis for these measures have been asserted continuously.

278) NHRCK Status Survey Report, "Survey on the Human Rights Situation at Elderly Nursing Facilities," Dec. 2021.

First is the issue of the effectiveness of cohort isolation. Living facilities among the social welfare facilities are mostly operating in a group residence form, and it is difficult to segregate the individual living areas. Therefore, group isolation could lead to the indiscriminate expansion of the infectious disease. There are cases of increased aggregate patients and deaths from nursing hospitals that implemented cohort isolation.

Second is the problems occurring at the concerned facilities after the cohort isolation. Once cohort isolation starts at nursing homes, nursing hospitals, mental hospitals, etc., there were many cases where patients who are not infected demanded to leave the isolation or hospital or the caregivers leaving the facilities. According to the report on the interviews of nursing hospital employees,[279] it was difficult for the small number of employees to care for the patients, day and night, when no one can leave the isolated hospital ward.

Some assert the lack of legal basis related to cohort isolation.[280] Cohort isolation is a measure that restricts the movement of employees and residents within the facilities, and it is restricting the freedom of residence/relocation and freedom of body under the Constitution. Therefore, a minimum legal basis must be present to implement this measure. However, there is no specific provision in the "Framework Act on the Management of Disasters and Safety" for the cohort isolation.

Furthermore, the so-called 'preventative cohort isolation' is even more problematic. The preventative cohort isolation is an isolation implemented without confirmed cases, and has an unclear legal basis.[281] When comparing the local governments

279) Korean Convalescent Hospital Association, 'Field Report of Nursing Hospitals Fighting COVID-19," Apr. 2021.

280) NHRCK Status Survey Report, "Survey on the Human Rights Situation at Elderly Nursing Facilities,' Dec. 2021

281) Gyeonggi-do first implemented preventative cohort isolation for social welfare facilities without COVID-19 patients on Mar. 1, 2020, and presented Article 46 of the "Framework Act on the Management of Disasters and Safety," and Article 48 of the "Administrative Procedures Act," as legal basis. Jeollanamdo, Gyeongsangnamdo and Gangwondo presented the "Infectious Disease Control and Prevention Act," as legal basis. However, these laws cannot be seen as legal basis for the preventative cohort isolation for social welfare facilities without COVID-19 patients, and are not in accord with the conditions for the administrative

that implemented preventative cohort isolation and the ones that did not, it is hard to assess the preventative cohort isolation as being effective in preventing COVID-19.

3) Plans to Minimize Cohort Isolation

The WHO recommends to take measures to isolate infected persons, non-infected persons, close contacts, simple contacts, etc. through screening tests, when each person cannot be isolated in a room separately.[282] However, there are instances, similar to Korea, of not having such procedures and isolating the entire residents of the facilities as a single group. Having everyone isolated in a single location creates an environment prone to mass infections.

Originally, the purpose of cohort isolation was to isolate the high-risk group from the danger of the COVID-19 infection. However, the cohort isolation measures under situations where the internal personnel resources are insufficient could lead to potential problems, including abuse, etc. Therefore, it is proper to minimize cohort isolation for the entire facilities, unless the facility must be isolated due to confirmed cases or close contacts.

When cohort isolation is implemented on a facility due to the positive case of COVID-19, the local government and the public health center must provide guidance so that the facility can determine the size of the isolation to be minimum, whether to isolate the entire facility or just part of the facility. When implementing the cohort isolation, the size and the duration may be minimized by trying to relocate some residents to a temporary residential facility or living treatment centers, etc. In the long term, the National Assembly and the government should establish detailed provisions in the Enforcement Decree and Rules to the Infectious Disease Prevention Act, including measures to be taken depending on

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compulsory disposition.

282) WHO, "2020; Centers for Disease Control and Prevention", 2021.

the degree of risk by each facility, establishing step-by-step restriction duration, procedures to raise objections, etc.

It is especially necessary to stipulate in the guideline not to implement 'preventative cohort isolation' at facilities without confirmed cases. Preventative cohort isolation lacks legal or scientific basis and could violate the autonomy of the users and the employees. Also, even if consent is obtained from the residents and employees, they may be unable to express their intent to refuse.

Lastly, during the cohort isolation process, a flexible attitude fitting the characteristic of social welfare facility is needed. This is more so for the case of child care facilities because strict disease control measures cannot be applied due to the nature of the facility. Therefore, it is necessary to provide a separate detailed guideline that could allow these facilities to continue the function as living facilities and provide educational programs.

J. Restricting the Rights Within Social Welfare Facilities and Mental Health Institutions for Disease Control Reasons

1) Changes in the Operation of Social Welfare Facilities and Mental Health Institutions Due to COVID-19

With the spread of COVID-19, social welfare facilities, such as nursing homes, nursing hospitals and mental hospitals, etc., and mental health institutions placed disease control principles at the foremost importance. These changes cause new tasks and issues to be resolved from clinical and human rights perspectives.

People who live in nursing homes, nursing hospitals and the closed wards of mental hospitals were prohibited from family visitations and going outside since early 2020, and these restrictions repeated from being relaxed to being reinforced again and again, depending on the status of COVID-19. Most of these people are in high-risk groups who could potentially suffer serious illnesses if become infected. Most of them accept the unavoidability of prohibiting visitations, but it caused a great mental difficulty for both the patients and their families from being disconnected from their families.

Nursing hospitals, with a relatively higher interest of families, attempted to overcome these disconnections by establishing non-face-to-face visiting rooms to support video visitation, etc., but these took some time. On the other hand, the mental hospitals rarely provided these types of facilities or services, except a few.

Since COVID-19, most of the social welfare facilities and mental health institutions reduced in-person services. Religious activities for the seniors at nursing homes and programs for serious mental patients were mostly suspended. Non-face-to-face programs could be implemented, but it was difficult for the seniors and persons with disabilities to get used to smart devices. According to the 'Survey on the Human Rights Status of Elderly Nursing Facilities Under COVID-19'

conducted by the NHRCK in 2021 showed that most residents experienced significant psychological agony from being unable to interact with the outside.

Child protection facilities also took measures to restrict going outside the facilities and visitations of outsiders.[283] Visitation from parents or other relatives were fully suspended and outside educational programs or educational support from instructors were also disconnected. They also had to live in an environment with the heightened application of personal disease control measures. The children living in the facilities lost connection with their original family due to COVID-19 and experienced serious psychological difficulties. Some children became worried and unstable because they thought that their parents deserted them.[284]

On the other hand, the rights of the workers were also threatened. Many social welfare facilities and mental health institutions required the workers to complete a 'daily log of movements' that records the date, time, activity details, movements, etc. They were per requests of the local governments and the Ministry of Health and Welfare, but it was criticized as being excessive interference with personal freedom. Moreover, Suwon was criticized for prohibiting social welfare facility workers from going to restaurants and cafes in Nov. 2020. Moreover, caretakers at elderly nursing facilities had to obtain PCR testing on a regular basis. According to the Caretakers Union, 31.5% of the respondents were tested 3 or more times per week, 38.8% of the responded 2 times per week, and 23.4% responded 1 time per week, as of Dec. 2021.

283) Child care institutions restricted going out, meeting families and visitations by outsiders and strictly controlled the freedom of the children, and it lasted for 3 months to 1 year, on average.

284) Kyeonghyang Newspaper, "Children in protection facilities are restricted from going out, and they can't prepare for employment … Children tied down by Ministry's COVID-19 response guidelines," Jul. 21, 2021

2) Issues From the Intensified Suffering of Vulnerable Classes

Since the spread of COVID-19, changing the operating method of social welfare facilities and mental health institutions was unavoidable to prevent serious circumstances, such as mass infections, etc. However, people raised issues with the circumstance where the vulnerable classes, such as elderly, persons with disabilities and children, are placed at a more vulnerable life.

According to the National Assembly Research Service's 'Future Tasks of Social Welfare Facilities From Prolonged COVID-19' (Apr. 2021), the government had amended the guideline for the social welfare facilities 7 times, but a systematic response system is insufficient for the subject of mandatory care services, such as persons with disabilities, and the guideline related to the role of the social welfare facilities was insufficient in preparation for the prolonged COVID-19. This report explained that it is necessary to establish an underlying regulation to support the social welfare facilities upon the occurrence of infectious diseases because, currently, they cannot receive government support due to a lack of provision in the Social Welfare Services Act.

Petitions received by the NHRCK includes an appeal on the operating method of nursing hospitals and the guidelines of the disease control authorities for the petitioner's inability to see the mother who is living in a nursing hospital for several months. There are many cases of inability to see the family members living in these facilities. Many elderlies living in nursing homes or nursing hospitals have difficult communicating through the telephone, so non-face-to-face method has its limitation to replace communications.

Employees at social welfare facilities and mental health institutions raise issues with the government support in responding to COVID-19. According to the [Field Report of Nursing Hospitals Against COVID-19] (Apr. 2021) published by the Korean Convalescent Hospital Association, 'KDCA, city hall and public health centers, etc. demand data but no experts are present to supervise or provide

support,' and the 'epidemic intelligence officer and the disease control authorities had no understanding of the nature of the facilities.'

At the child care facilities, there were insufficient educational materials and programs for the facility workers to use, when outside educational personnel were not allowed. Moreover, there were no detailed guidelines on living under the disease control measures that the children and the workers could reference, so they had to establish disease control measures by relying on unofficial information obtained through communicating with other facilities.

3) Tasks to Protect the Vulnerable Classes During a Pandemic

There were shocking events at elderly nursing facilities in other countries since COVID-19. For example, according to the 'Policy Brief: The Impact of COVID-19 on Older Persons' (May 1, 2020),[285] 4,260 people living in nursing facilities died during the month of March 2020 in a single region in Spain. 1/3 and 1/5 of the deaths from COVID-19 were nursing facility residents in France and the USA, respectively.

The UN OHCHR's COVID-19 Guidance points out that restricting the contact with the families of persons with disabilities and elderly people living in facilities can be justified as part of the emergency health measures, but it could result in additional neglect or abuse. Also, it added that local community support and accessible violence prevention measures are needed.

The UK established a separate guideline to protect the rights of the children in implementing the disease control measures in response to COVID-19. It provides a detailed guideline on how to support child care and fill the gap created by the suspended social welfare services, etc. It also includes response guidance that could be used in the child protection facilities.

285) UN, "Policy Brief: The Impact of COVID-19 on older persons", 2021. 5. 1.

The means of responding to COVID-19 by the social welfare facilities and mental health institutions are expected to change again depending on the vaccination rate and the characteristic of variant viruses. However, we need to pay attention to the fact that the vulnerable classes suffered more agony and risk during the 2 years of the pandemic. There were problems with supporting non-face-to-face visitations, the development and distribution of non-face-to-face programs and reducing the patient concentration within the facility/hospital, etc. These problems could recur under other disaster circumstances, and it is necessary to establish a plan to make improvements to protect the vulnerable classes.

VI. Human Rights in North Korea

1. The Concept of Human Rights in North Korea and the Approaches

The realities of North Korea, experiencing serious economic difficulties since the mid 1990s became known to the outside world through various routes, and the human rights conditions of North Korea became of interest to many, both within and outside of Korea. The poor conditions of North Koreans were confirmed during the humanitarian support process by international communities, including Korea, and serious human rights violations became known, including public execution, political prisoner camps, disposition of repatriated defectors, etc. As such, the UN General Assembly adopted the North Korean Human Rights Resolution every year since 2005 and expressed serious concern of the international communities.

The 'report on the situation of human rights in the Democratic People's Republic of Korea' submitted to the 76th UN General Assembly by the UN Special Rapporteur (Tomas Ojea Quintana) questions the liability of the North Korean government for human rights suppression and emphasized the need to relax the sanctions for the North Korean residents facing humanitarian risks. The resolution adopted by the UN General Assembly on Dec. 16, 'situation of human rights in the Democratic People's Republic of Korea,' also condemned North Korea's systematic human rights violations and showed concerns on the North Korea's humanitarian situation, such as a lack of food, etc. Futhermore, it urged the North Korean government to collaborate with the international aid organizations to take appropriate measures.

With the changing inter-Korea relationships, the North Korean human rights issues are being discussed in diverse forms in Korea. Interests and discussions on the North Korean human rights are a positive phenomenon from the perspective of the universality of human rights, peace in the Korean peninsula and expanding the capacity of Korean civil society. However, on the other hand, these discussions may cause social and diplomatic conflicts.

'North Korean human rights' is not a political interest or ideological issue, but is a concept to seek the realistic and rational means of improving the human rights in North Korea. The NHRCK considers human rights of North Korean residents in North Korea, human rights of North Korean defectors and humanitarian concerns between North and South Korea, such as separated families, abductees and prisoners of war, etc., to be within the scope of "North Korean human rights."[286)]

286) Dec. 11, 2006, NHRCK, 'Statement of the NHRCK on the Human Rights of North Korea' (Resolved by the Plenary Committee)

2. Main Topics

A. COVID-19 and the Human Rights Status of North Korean Residents

1) Reinforced Border Closure Due to COVID-19

The North Korean government blocked the North Korea-China border in Jan. 2020, at the beginning of COVID-19, and suspended the flights and international trains to and from China and Russia. Also, many diplomats and employees of international organizations returned to North Korea, and the employees of the WHO and other international organizations returned to their home countries. Therefore, obtaining accurate information on the human rights status of North Korean residents is difficult.

North Korea maintain its official stance that no has been confirmed of COVID-19 as of Dec. 2021. The WHO also states that no COVID-19 case has been reported from North Korea. Also, North Korea has yet to begin the vaccination program, and as of Dec. 2021, only North Korea and Eritrea are the only two countries in the world that had not started the vaccination program.

Since the spread of COVID-19, North Korea's disease control policy has been based on blockade. North Korea controls movements between regions, except for official business or with a prior permission, and implemented a strong policy of sealing off the entire city if a border region had interchange with the outside without disease control measures. North Korean residents cannot move to another region, except for the deaths and marriage of a family. North Korea is also refusing a vaccine from international organizations for disease control reasons.[287)]

287) Report to the 46th UN Human Rights Commission by the Special Rapporteur, Mar. 2021.

Internally, strong control measures were taken in 2021, such as masks are mandatory when going outside, private gatherings were prohibited except for national events, a restriction in issuing passes and curfew hours. Any violations will result in penalties. The North Korean state's newspaper, Rodong Sinmun emphasized that the 'emergency disease control project is the most preemptive and important task,' and that 'all workers in all regions must continue to strengthen the emergency disease control project.'

On the other hand, North Korea claims a 'free treatment system,' but all the North Korean defectors testify that the realities are different. The Russian Embassy in North Korea professed the difficulty of living in Pyeongyang due to COVID-19 disease control measures on its Facebook page in Apr. 2021. The difficulties were insufficient daily necessities, including medicine, lack of plans to resolve health problems, and many diplomats and employees of international organizations are leaving the country.

North Korea was able to avoid health risks from COVID-19 due to its strict disease control policy. However, it incurred more economic loss than other surrounding countries. Reduced movements lead to the reduction in the amount of goods being circulated and market transactions. As a result, the circulation of funds was also unstable, and most people's income and consumption decreased as well. These suffering residents were often mobilized for large political events to aggravate their economic difficulties. The closing of the borders led to a sharp increase in the price of imported goods, as well, and the number of households suffering from an unstable food supply increased.[288)]

288) Food and Agriculture Organization of the UN, State of Food and Agriculture, Crop Prospects and Food Situation Quarterly, 2021

2) Strengthened Social Control

As social control and crackdown continued for over a year, the people's exhaustion piled up, along with staggering economic and social problems. Some North Koreans were taken to political prisoner camps for openly criticizing the government's disease control policies, and petty thefts are increasing.

However, the North Korean government continues strong internal control premised on disease control and ideology crackdown. North Korea enacted the "Reactionary Ideology and Culture Rejection Act" in Dec. 2020 and the "Youth Education Security Act" in Sep. 2021 to crackdown on the people's anti-socialist and non-socialist actions. Up to the death penalty is possible for taking in and distributing videos from South Korea, and watching the videos result in 15 years of imprisonment, an increase from the 5-year sentence in the past. Also, possessing videos, books, songs and photos is subjected to punishment, and a new clause was added that provides for the 'imprisonment of 2 years for using South Korean way of speaking and singing.'

On Aug. 23, 2021, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter to North Korea stating that the Reactionary Ideology and Culture Rejection Act can violate the freedom of opinion and expression.

3) Concerns of the International Community on the Human Rights of North Korean Residents

North Korea's strict response to COVID-19 seriously restricts the ability of the international communities to deliver aids. The international community has created a consensus that no country should be excluded from vaccination and sanctions, etc. should not cause difficulty in responding to COVID-19. However, North Korea is refusing the international communities' help for disease control reasons, and therefore, all forms of humanitarian aid to the vulnerable classes have been suspended.

North Korean residents want to return to normal lives through vaccination, but the government continues with strong control and a crackdown and returning to normal will take some time. Foreign press and human rights groups express concern that the North Korea's disease control measures focusing on strict control is negatively effecting the human rights of the people.

Humanitarian support programs, including the vaccine, need to be implemented, separate from political matters. Serious threats to peace, such as missile and nuclear testing, etc. should be handled strictly by the government, but such measures should not be premised on the right to life of North Korean residents. However, the government must establish proper measures to dispel any concerns on the transparency of the government's allocation, such as monitoring programs, etc., as well as strongly demand North Korea's responsible actions.

B. Regulating the Distribution of Propaganda Leaflets to North Korea and Collision of Perspectives

1) Amendment of the Development of the Inter-Korean Relations Act

North and South Korea agreed to suspend mutual slander and prohibit the distribution of leaflets, starting with [7.4 Joint Communique (1972)], followed by the [Inter-Korean Agreements (1992)] and [Panmunjom Declaration (2018)]. However, some private groups distributed leaflets that include slandering the North Korean government, using a balloon in the border regions. The North Korean government has criticized our government and threatened fire provocation (Oct. 2014) and the bombing of the Inter-Korean liaison office (Jun. 2020).

The National Assembly passed the amendment to the "Development of the Inter-Korean Relations Act" that regulates the distribution of leaflets to North Korea in Dec. 2020. Specifically, broadcasting, the posting of a visual medium and the distributing of leaflets are prohibited near the military demarcation line (Article 24(1)) and any violations will result in imprisonment for 3 years or less or a fine of up to 30 mil. KRW (Article 25(1)).

Amending to the Development of Inter-Korean Relations Act created controversy over the violation of freedom of expression, both within and outside Korea. Some human rights groups filed a constitutional petition stating to completely block the distribution of leaflets is excessive control. Major international human rights groups, including Human Rights Watch, International Amnesty, etc., criticized the amended Development of Inter-Korean Relations Act as violating the freedom of expression. The Tom Lantos Human Rights Commission held a hearing on Apr. 15, 2021 on freedom of expression on the Korean peninsula. The US Department of State's annual country reports on human rights practices 2020 dealt with the controversy surrounding Korea's regulation on the distribution of leaflets to North Korea in its section on Korea's freedom of expression.[289)]

289) US Department of State, "2020 Country Reports on Human Rights Practices", Mar. 30, 2021.

On the other hand, residents of the border region, such as Yeoncheon and Incheon, etc. expressed their opposition to the distribution of leaflets to North Korea. They assert that the leaflets made by these private groups are not verified as psychological warfare, only incites anger and threatens the life and safety of residents, and they held assemblies protesting the distribution of leaflets to North Korea. The Ministry of Unification stated that it will exert the best efforts to protect the life, body and safety of residence of the people in the bordering regions, which is the basic goal of the amended law.[290]

After the amended law became effective, a civil society group sent 10 large balloons that contained the leaflets and other materials, in Gyeonggi and Gangwon regions in Apr. 2021. The prosecutors' office charged the head of the group in Jan. 2022 for the attempted violation of the Development of Inter-Korean Relations Act.[291] International human rights groups, Human Rights Watch, etc. again criticized the Development of Inter-Korean Relations Act.

2) Controversy Surrounding the Regulation on the Distribution of Leaflets to North Korea

Article 21(1) of the Constitution provides for freedom of expression by stipulating that "all citizens shall enjoy freedom of speech and the press, and freedom of assembly and association." This is a concept that encompasses freedoms of speech, press, assembly and association. On the other hand, the state has the constitutional obligation to protect the life and safety of the people in the bordering region, as well as from the threat of violating the right to property. The arguments for and against regulating the distribution of leaflets are expressed differently surrounding the freedom of expression and the rights of the people in the bordering regions, and the interest of the community.[292]

290) Ministry of Unification Press Release, Dec. 22, 2020.

291) The attempt charge was applied because this case did not cause serious harm to people's life and body and it is difficult to confirm whether the leaflets actually arrived in North Korea, etc.

However, the controversy surrounding the amended law is more detailed. The conflicting opinions are: ① regulating the distribution of leaflets to North Korea should be completely abolished as it violates the freedom of expression, as is; ②the current regulation is not problematic from the perspective of freedom of expression; and ③ regulating the distribution of leaflets to North Korea is unavoidable, but the current regulation has problems and needs improvements.[293]

First, the opinion that regulating the distribution of leaflets to North Korea violates the freedom of expression(①) and the opinion that it does not(②) is not much different from the past discussions. On the other hand, regulating the distribution of leaflets to North Korean seems to be unavoidable until the risks from North Korea's strong response is relieved; however, the current regulation is unclear as to the penalty provisions, and the imprisonment of less than 3 years is excessive in light of the international standards.

On the other hand, it is noteworthy, that internationally, the distribution of leaflets to North Korea is also being discussed from the point of view of North Korean residents' right to know.[294] The North Korean residents cannot posses printouts or audiovisual materials produced by another country, without a prior approval of the government, and the distribution of leaflets to North Korea could potentially protect the North Korean residents' right to know and can be used to improve the Inter-Korean relations and communications.

292) Yonhap News, "Threat to Safety vs. Freedom of Expression, 'Controversy over Distribution of Leaflets to North Korea," Jun. 22, 2020.

293) Lee, Hui-hun, Law Times, "Constitutional Assessment of the Act Prohibiting Distribution of Leaflets to North Korea and Legislative Improvements," Mar. 29, 2021.

294) Refer to the statement released by the Amnesty International in May 2021 (Controversy Surrounding the Ban on Leaflets to North Korea – Amnesty International Approach)

3) Need for a Resolution Through the Discreet Application of the Law and Improving the Inter-Korean Communications

Regulating the distribution of leaflets to North Korea by private groups and individuals are often discussed from the freedom of expression aspect. According to the rule of clear and present danger, expression can be restricted legal when a clear and present danger is proven, not just an abstract harm that may be incurred by the state or society in the future.

Prior to the amendment, the distribution of leaflets to North Korea was restrained based on Article 5(1) of the Act on the Performance of Duties by Police Officers.[295] However, this provision is not on the distribution of leaflets to North Korea, but provides for the police authority to take action to prevent general danger. Therefore, the amended law could be understood as clarifying the provision to regulate the people's fundamental rights.

However, it is necessary to carefully review whether the purpose of regulating the distribution of leaflets to North Korea is considered clear and present danger. Military threats against South Korea because of the distribution of leaflets to North Korea is a clear violation of international laws, but the inter-Korean relations change, from relaxation to deterioration, from time to time, and the demands of the people near the border regions, that they are exposed to danger due to the distribution of leaflets, cannot be ignored.

When two fundamental rights are at odds with a single law, it must be resolved through the balancing of the two conflicting interests and an interpretation that attempts to balance the two fundamental rights.

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295) Article 5 of the Act on the Performance of Duties by Police Officers (Prevention of Occurrence of Danger) ① A police officer may take the following measures if natural disasters, incidents, destruction or collapse of artificial structures, traffic accidents, explosion of a dangerous object, appearance of a dangerous animal, chaotic congestion or other dangerous situation, likely to inflict harm on the life or body of people, or grave damage to property, occur.

On the one hand, even if there is a need to regulate the distribution of leaflets, a careful application of the law is demanded in consideration of the fact that some expressions and clauses are unclear or provides excessive responsibility.

More fundamentally, we need to try to create conditions and an environment where North and South Koreans can share information and communicate freely. The international community continues to demand the Korean government to play a role in guaranteeing the freedom of expression to improve the communication of North Koreans with outsiders.

C. North Korean Human Rights Act and Laws and Systems Related to North Korean Human Rights

1) Problems of Implementing the North Korean Human Rights Act

According to the reports of many groups on North Korean human rights, the North Koreans are not guaranteed of the most basic fundamental rights. Moreover, their health and lives are also being threatened, with a lack of food and medicine for children and elderlies. The Korean government established the North Korean Human Rights Act in 2016 to elicit human rights protection and the improvement of the North Korean residents through various systems and devices to protect the fundamental rights to the liberty and life of North Korean residents.

However, even with the enactment of the "North Korean Human Rights Act,' the North Korean Human Rights Foundation[296] did not begin until 2021, and the Ambassador for North Korean Human Rights Issues[297] has remained vacant since Sep. 2017. The North Korean Human Rights Advisory Committee[298] that provides advice on the North Korean human rights policies, such as the Master Plans and Action Plans to Improve Human Rights in North Korea[299] has not been composed as of 2021. The members of the advisory committee are appointed by recommendations of the parties, but since the expiration of the term for the 1st North Korean Human Rights Advisory Committee, the 2nd committee has not been composed.[300]

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296) North Korean Human Rights Act Article 10 (Establishment of North Korean Human Rights Foundation)

297) North Korean Human Rights Act Article 9 (International Cooperation for Improvement of Human Rights in North Korea)

298) North Korean Human Rights Act Article 5 (North Korean Human Rights Advisory Committee)

299) North Korean Human Rights Act Article 6 (Master Plans and Action Plans to Improve Human Rights in North Korea)

300) The Ministry of Unification requested for recommendations of 2nd advisory committee by sending 5 official letters, from Nov. 2018 to Mar. 2020, and it amended the operating rules of the advisory committee in Nov. 2019, so that when the terms have expired, it can respond to the advise of the Minister of Unification as related to the Master Plan and the Action Plan. The advisory committee were held in Jan. and May of 2020. (Press Release of Congressman Ji, Seong-ho, Nov. 11, 2011).

Pursuant to the North Korean Human Rights Act, the government must establish the Master Plan to Improve Human Rights in North Korea every three years and the Action Plans are to be established each year. The 1st master plan (2017~2019) and the 2nd master plan have been established and reported to the National Assembly. The Ministry of Unification disclosed the 1st Master Plan through its homepage, but the 2nd Master Plan has not been disclosed as of 2021.

2) Improving the North Korean Human Rights and the Inter-Korean Relations, and Establishing Peace on the Korean Peninsula

Article 2(1) of the North Korean Human Rights Act stipulates that "the state shall endeavor to protect and promote the human rights of North Koreans," and that (2) "in addition to efforts to improve human rights in North Korea, the State shall also endeavor to establish peace on the Korean Peninsula." Moreover, Article 1 of the North Korean Human Rights stipulates that the "purpose of the Act is to contribute to the protection and improvement of the human rights of North Koreans by pursuing the right to liberty and right to life prescribed in the Universal Declaration of Human Rights and other international conventions on human rights."

However, North Korea asserted for the abolition of the North Korean Human Rights Act in the 3rd Universal Period Review in 2017. On the other hand, Tomas Ojea Quintana, Special Rapporteur recommended the implementation of the North Korean Human Rights Act, including the establishment of the North Korean Human Rights Foundation, in the report submitted to the 46th UN Human Rights Council.

Everyone agrees that the human rights situation in North Korea is poor and improvements must be made, but different opinions exist as to how to make such improvements.[301] People who are critical of the North Korean Human Rights Act argue that the use of the Act is ineffective in protecting the human rights of North

301) National Assembly Research Service, 2021 Government Inspection Issue Analysis II, Aug. 2021

Koreans and may even impede the inter-Korean relations. In 2021, the implementation of the North Korean Human Rights Act has been delayed due to the difference in opinions on the method and direction of implementing the act. The controversy continues as a civil society group filed a lawsuit to confirm the illegality of not recommending and appointing directors for the North Korean Human Rights Foundation, etc.[302)]

3) Realigning the Implementation System of the North Korean Human Rights Policy and Empowerment

To protect and improve the human rights of North Koreans, it is necessary to create a consensus that protects and improves the human rights of North Koreans is the responsibility of the government pursuant to the purpose and the basic principles stipulated in the North Korean Human Rights Act and that the efforts to improve North Korean human rights can be simultaneously done with the efforts to improve inter-Korean relations and establishing peace on the Korean peninsula. Moreover, it is important to create an atmosphere so that the North Korean human rights issues can be considered a collaborative agenda. The 2nd Master Plan stipulates a comprehensive approach of liberty and social rights for the actual improvement of North Korean human rights.

It is also important to create an atmosphere for the North Korean government to fulfill the obligations stipulated in major human rights conventions as the principal agent to protect the human rights of its people. Strengthening the collaboration for improving the rights of specific groups, such as children, women, people with disabilities and elderly people, etc. may be a realistic alternative to the human rights policy. Moreover, the inter-Korean collaboration can be expanded by considering the policy recommendations accepted in the universal period review and the details

302) Maeil News, "Hanbyun files administrative lawsuit to urge recommendation of directors for the North Korean Human Rights Foundation," Mar. 22, 2021.

from the voluntary national report (VNR) related to sustainable development goals (SDGs).[303] During this process, the government's inter-Korean cooperation fund support project should establish a 'human rights based approach' as its main principle, and it is necessary to support inter-Korean cooperation programs by private groups, as well.

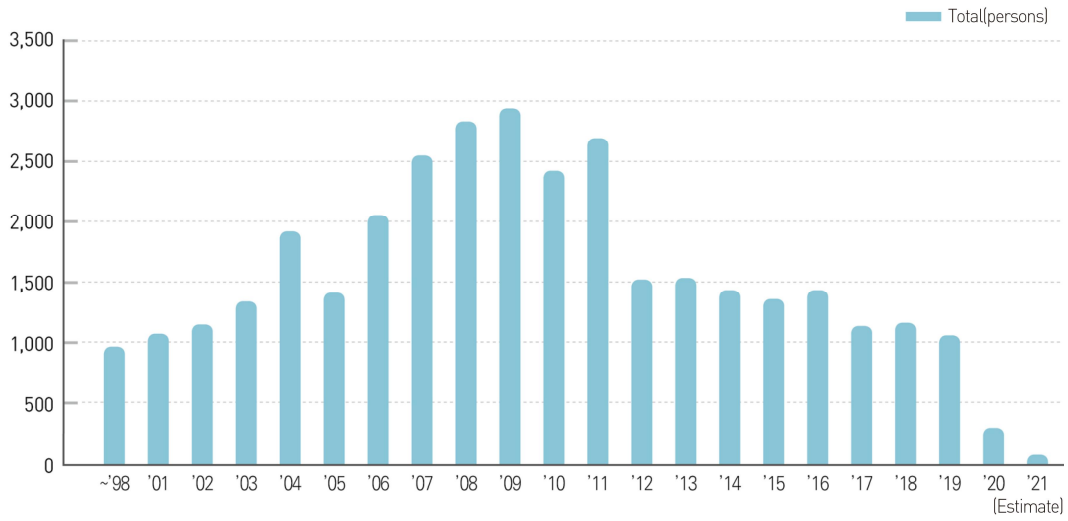
303) Lee, Geum-sun, "Peace and Human Rights on the Korean Peninsula," 2021.

D. Status and Limitations of North Korean Defectors Support Programs

1) Status of North Korean Defectors Entering Korea

North Korean defector refers to a person who has residence, lineal ascendants and descendants, spouses, workplaces, etc. in the area north of the Military Demarcation Line, and who has not acquired any foreign nationality after escaping from North Korea, as stipulated in Article 2 of the North Korean Defectors Protection and Settlement Support Act. According to the Ministry of Unification, as of the end of 2021, there are a total of 33,815 North Korean defectors in Korea.

Graph No. of North Korean Defectors Entering Korea by Year



Source“ Data from homepage of the Ministry of Unification

The people who escaped from North Korea and entered Korea has increased rapidly since roughly the year 2000, and has been recently maintaining at the level of 1,000~1,500 per year recently. However, since 2020, the number of defectors has decreased significantly due to the COVID-19 lockdown. On the other hand, the ratio of female defectors in 2001 was 45.8% but increased steadily to reach 80.3% by

2015. Due to stricter border control in 2021, the number of North Korean defectors who entered Korea has decreased and women accounted for 36.5%.

2) North Korean Defectors Settlement Support Program

North Korean defectors residing in Korea are living as Korean citizens and members of our society. Since the government enacted the North Korean Defectors Protection and Settlement Support Act in 1997, the government is operating various settlement support programs through Hana Center, regional Hana Centers and local governments.

From the perspective of the North Korean defectors support program, absolutely necessary devices have been endowed. However, the support system does not work properly when relevant issues arise. The most well known incident related to the settlement support program is the case of a death of a mother and child from starvation in Gwanak-gu, and cases of people returning to North Korea.

In Aug. 2019, North Korean defector H and her son were found dead in their apartment in Gwanak-gu, Through this case, the North Korean defectors settlement support program was criticized for not being able to provide the assistance when needed.[304]

Afterwards, the Ministry of Unification and the Korea Hana Foundation tried to establish realistic countermeasures. In Gwanak-gu, during the month of Sep. 2019, a 'period of identifying families at risk' activity was conducted to identify residents who needed welfare assistance, and they were connected to the customized welfare services.[305]

304) Hankyereh, "30,000 North Korean Defectors, Prejudice and Discrimination Remains," Oct. 29, 2019.

305) Hankyung.Com, "Gwanak-gu to investigate families at risk until Sept. from the deaths of North Korean defector mother and son," Aug. 27, 2019.

On Jan. 1, 2022, a North Korean defector crossed the military demarcation line to return to North Korea one year after defecting to Korea. The motive for returning to North Korea was never confirmed, but there are cases of North Korean defectors not adjusting to Korean society and moving overseas or back to North Korea. There are North Korean defectors who leave Korea for other countries, such as the UK, USA, Canada and the Netherlands, etc., and they are approximately 700 in numbers. Some return to North Korea based on economic hardship, difficulty adjusting to Korean society due to discrimination and prejudice and an uncertain future, etc.

According to the 2021 North Korean Defectors Socio-Economic Survey published by the Data Center for North Korean Human Rights, North Korean defectors think about re-migrating to USA, China or UK, etc. 'sometimes, often or frequently' (26.3%), and the reasons are 'discrimination against North Korean defectors in Korean society,' 'difficulty with the Korean culture of competitiveness,' and 'want to experience more.'[306] This result indicates that the policy support system is established for the North Korean defectors, but they have a high level of mental and psychological stress. According to a survey result, the North Korean defectors experience stress in daily life (59%), school (58.4%) and at work (58%).[307]

On the other hand, according to the 2020 North Korean Refugees Social Integration Survey, 18.5% of the respondents "thought about returning to North Korea."[308] They want to return to North Korea because they miss their home town and family, they have difficulty adjusting to Korean society, economic hardship from educating their children, and having no confidence. About 30 people returned to North Korea from 2012 to 2020, and this shows that the North Korean defectors are experiencing difficulties in establishing themselves in Korean society.

306) Data Center for North Korean Human Rights, "2021 North Korean Defectors Socio-Economic Status," Dec. 2021.
307) North Korean Refugees Foundation, "2020 North Korean Refugees Social Integration Survey," Jul. 2021.
308) Data Center for North Korean Human Rights, "2021 North Korean Defectors Socio-Economic Status," Dec. 2021.

3) Implications and the Direction of Improvements Related to the North Korean Defectors Support Program

Settlement support programs for North Korean defectors were implemented from the perspective of assimilation, to accept the main stream culture of South Korean society. There are plenty of positive cases of North Korean defectors establishing themselves in Korean society, but Korean society still views North Korean defectors as beneficiaries.

However, according to the North Korean Refugee Social Integration Survey[309] and the North Korean Defectors Socio-Economic Status[310] survey conducted each year by the North Korean Refugees Foundation and Data Center for North Korean Human Rights, respectively, along with the positive aspects of South Korean society, they have a relatively high level of suffering from a sense of deprivation, economic inequality, discrimination and prejudice, etc.

We must remember that the human rights status of North Korean defectors is not something that is newly created after they enter Korea. Their experiences in North Korea and in other countries before entering Korea are all elements that create various phenomenon related to human rights. In that sense, when reviewing the supporting program for North Korean defectors, it is important to try to improve their human rights situation by observing every aspect of their lives.

309) North Korean Refugees Foundation, "2020 North Korean Refugees Social Integration Survey," Jul. 2021.
310) Data Center for North Korean Human Rights, "2021 North Korean Defectors Socio-Economic Status," Dec. 2021.

Part 3

Looking Back to the Principles of Human Rights in 2021

2021 National Human Rights Commission of Korea

Human Rights Status Report

Basic Principles of Human Rights: Principle of Equality and Non-Discrimination

Michelle Bachelet, the United Nations High Commissioner for Human Rights, released a statement on Dec. 10, 2021, celebrating the Human Rights Day, emphasizing 'equality' as the key value of human rights. Also, 'equality is embracing our diversity and demand that we are all treated without any kind of discrimination. Equality is about empathy and solidarity and about understanding that, as a common humanity, our only way forward is to work together for the common good.' On the same day, the chairman of the NHRCK stated that 'the spirit of the Universal Declaration of Human Rights, equality and nondiscrimination, is the key to overcoming the COVID-19 crisis.'[311)]

We must remember to emphasize equality and nondiscrimination, which are the basic principles of human rights. Human rights must be guaranteed and realized as the universal value under any circumstances, and especially under the COVID-19 pandemic, we must always think about whether the principles of equality and nondiscrimination are forgotten or damaged in establishing and implementing health policies.

Although equality is the basic elements of human rights, along with freedom, its status as the key value of human rights is often forgotten. Therefore, it is important to always emphasize and remember the value and the significance of equality. It is especially important to remember that equality is not a mechanical and formalized equality that treats all objects equally all the time, but is a relative and de facto equality where different objects are treated differently. In that way, differentiated treatments are given to socially vulnerable people, such as people with disabilities, etc., to create complete equality.

311) Article 1 of the Universal Declaration of Human Rights: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.

During 2021, Korean society was exposed to the COVID-19 pandemic, and each and every area of our society was effected by the disease control measures in response to COVID-19. During this process, everyone tried to maintain normal lives, but the effects of COVID-19 concentrated on elderly people, women, people with disabilities, migrants, unstable workers and small business owners, and the government policies in response to COVID-19 often violated the fundamental rights of certain groups and created discrimination against certain groups.

Disaster from the disease effected more to the socially and/or economically vulnerable classes, and economic inequality and social discrimination intensified. The isolation of migrants and people in facilities intensified in many places, and people with disabilities, children and elderly people had a harder time from restrictions on face-to-face contact with others. Many cases described in the Report on Human Rights Situation in the Republic of Korea related to COVID-19 require us to think whether the principles of equality and nondiscrimination had been properly realized in overcoming the COVID-19 pandemic.

Conflicts Surrounding Human Rights

One of the characteristics of human rights issues that occurred in 2021 was the prominence of the problems of mediation and determination on how to harmonize the conflicts surrounding human rights. They is controversy surrounding the Press Arbitration Act that tried to regulate fake news, a dispute on the legality of abortion, restricting the freedom of assembly and business for disease control, regulating hate speech against minorities, the effect of freedom of business guaranteed to small businesses due to the guarantee of human rights of platform workers, etc. Human rights in today's society is composed of diverse cases and issues that cannot be embraced simply as conflict between authority and resistance or regulation against non-regulation, etc.

People from all social standings demand the application of different human rights for each specific and practical problem in Korean society today. This is due to the fact that sensitivity to human rights has been reinforced, and such a demand not only increased quantitatively but also has been diversified. Human rights in today's society is a universal value applicable to everyone, but at the same time, it requires interpretation on the terms and applicable scope of human rights under diverse circumstances. This can be interpreted as the society being dynamic. Therefore, the conflict of human rights is not something that needs to be removed completely, but should be understood as a necessity during the process of creating a community among diverse people.

When human rights is in conflict, a uniform standard or principle cannot solve all problems. Human rights can be prioritized differently depending on the specific circumstances and conditions, and we need to consider strengthening our abilities to mediate and moderate these conflicts and find the rational standards. For human rights to operate in real life, beyond being just a declaration, we need to adopt a multi-dimensional approach to regulate and mediate different interests.

However, we need to keep in mind that the government has the responsibility to respect and protect everyone's human rights. With the COVID-19 pandemic, the government's interference on human rights has been strengthened, but the government's ability to guarantee human rights by mediating 'social conflict' on human rights is insufficient. As can be seen from the cases of hate speeches and the isolation of vulnerable classes from social distance, 'social conflict' and 'exclusion' were caused by discrimination that already existed or is existing. Therefore, the government should take a proactive attitude to protect human rights, rather than take a luke-warm attitude to create a society without discrimination.

Human Rights as a Universal Value

Lastly, we must point out to not deny the value of human rights depending on the political tendencies or ideologies. Diverse interpretation on the significance and application of human rights is possible, but there are certain human rights that must be protected and realized under any circumstances. To guarantee the freedom of expression of someone's assertions, another person's personal rights or right not to be discriminated against cannot be completely denied. While analyzing and assessing Korea's human rights status in 2021, we must once again confirm that denying the existence of human rights cannot be permitted under any political inclinations or ideologies whatsoever.

2021
National Human Rights Commission of Korea

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