

The Report on Human Rights Situation in the Republic of Korea 2022



National Human Rights Commission of Korea

**2022 National Human Rights Commission of Korea
The Report on Human Rights Situation in the Republic 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

2022 was a prominent year for human rights issues under disaster and catastrophe situations. Natural disasters and deaths caused by climate change have sparked discussions on disaster safety issues for the vulnerable class and their impact on human rights, and during the course of Itaewon crowd crush on Oct. 29 and the follow-up measures, issues of secondary harm, such as the government's disaster prevention and response system and hate speeches against victims, emerged. Industrial disasters, such as the death of a worker at a bakery factory and the collapse of the Bonghwa Mine, have received attention of the society.

There were other human rights issues that have not been resolved for a long time or newly emerging. The subway protests surrounding the budget for the rights of persons with disabilities, which have continued since 2021, and the controversy over the abolition of the Ministry of Gender Equality and Family are still ongoing. Moreover, there were issues raised on the changing of the perception of the 'family suicides' as a 'filicide-suicide' and attempting to abolish the local human rights ordinance.

When human rights demands in various fields are increasing, it is of paramount importance to continue to ensure basic human rights and to protect the rights of the most vulnerable members of our society, especially children, women, the elderly, the disabled and migrants. Our society has improved human rights violation practices through the efforts of many people for a long time, and human rights sensitivity has improved tremendously. However, we must continue to exert efforts to keep such accomplishment — otherwise, the human rights situation may deteriorate any time.

As part of this effort, the NHRCK is publishing the report on human rights situation in Korea since 2021 that discusses the overall human rights situation in our society. It was necessary to review the human rights situation of the year and think about how to proceed in order to actively respond to the newly emerging human rights issues.

This report discusses some of the main human rights issues in 2022. The report examines the issues related to basic human freedom, alienation and discrimination faced by social minorities, human rights violations occurring at workplaces, human rights topics important to the future society and the issues related to North Korean human rights, and also addressed human rights issues under disaster. Above all, the report tried to present the direction for our society by describing the improvement plans on each topic from the human rights perspective.

Comprehensively describing and making appropriate assessments on human rights issues in Korea over a period of one year is a very difficult and careful task. However, in a rapidly changing society, it is an important and necessary task to publish a report that can inspect the individual human rights issues and comprehensively track the changing circumstances of human rights.

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

Human rights are the foundation that sustain our lives and society. The National Human Rights Commission of Korea will continue to strive in protecting the human rights value of our society.

April 2023

Chairperson of the National Human Rights Commission of Korea

Song, Doo-hwan

Contents

Part 1.

Status of Korea's Human Rights in 2022 1

I. Introduction 2

II. Korea's Human Rights Status 2022: Focusing on People's Awareness 4

Part 2.

Main Human Rights Status and Assessment 2022

I. Guaranteeing the Fundamental Human Freedoms

1. Human Dignity, Value and Right to Life

A. Human Rights Status 2022 12

B. Main Topics

- 1) The Itaewon Crowd Crush on October 29 — Social Disasters and the Duties of the State 14
- 2) Truth Investigation of the State Violence Cases and Future Tasks 19
- 3) Issues of Lonely Deaths in Welfare Blind Spots 24
- 4) Trends in Suicide Rates and Problems with the Suicide Prevention System 28

2. Right to Self-Determination

A. Human Rights Status 2022 34

B. Main Topics

- 1) Proposal for the Assisted Death with Dignity Act and Discussion on the Physician-Assisted Suicide System 36

2022 National Human Rights Commission of Korea
The Report on Human Rights Situation
in the Republic of Korea

2) Safe Abortion and Reproductive Rights for Women	41
3) Implementation and Abolition of COVID-19 Related Quarantine Pass Policies	45

3. Freedom of Expression, Freedom of Assembly and Demonstration

A. Human Rights Status 2022	51
B. Main Topics	
1) Controversy Related to Reports on the Satirical Works of the Bucheon International Comics Festival and Overseas Travel	53
2) Unconstitutionality of Article 103(3) of the Public Official Election Act and Freedom of Expression of Voters	57
3) No Assembly Zone and the Current Status of the Amendment to the “Assembly and Demonstration Act”	62

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

1. Persons with Disabilities

A. Human Rights Status 2022	68
B. Main Topics	
1) Protests to Secure Budget for the Rights of the Persons with Disabilities and Deinstitutionalization	70
2) Issues with the System that Protects the Rights of the People with Developmental Disabilities	74
3) Providing Voting Assistance for the Persons with Developmental Disabilities and Suffrage	79
4) Status and Challenges of Abuse of the Persons with Disabilities	83

Contents

2. Migrants and Refugees

A. Human Rights Status 2022	87
B. Main Topics	
1) Russia-Ukraine War and the Issues of Accepting and Protecting the War Refugees	89
2) Poor Living Conditions for Migrant Agricultural Workers and Countermeasures	94
3) Changes and Limitations Related to Protective Equipment and Treatment at Immigration Detention Centers	100

3. Women

A. Human Rights Status 2022	106
B. Main Topics	
1) Controversy Over the Abolition of the Ministry of Gender Equality and Family	107
2) ‘Sindang Station Murder Case,’ Stalking Damages and Act on the Punishment of Stalking Crimes	110
3) Implementation and Limitations of the Act on the Employment Improvement of Domestic Workers	114

4. Children and Adolescents

A. Human Rights Status 2022	119
B. Main Topics	
1) “Filicide-Suicide” From the Perspective of Child Abuse	121
2) Law Breaching Minors and the Issues of Lowering the Age of Criminal Liability	125

2022 National Human Rights Commission of Korea
The Report on Human Rights Situation
in the Republic of Korea

3) Protection Policies and Realities of Youths Preparing for Independence (Children Discharged from Out-of-Home Care)	129
4) ‘Case of L,’ Sexual Crimes Against Children and Adolescents in the Digital Age	134
5) Raising the Problem of Human Rights Violations of Children During the Process of Overseas Adoption and the Direction of Improvements	139

5. Elderly

A. Human Rights Status 2022	143
B. Main Topics	
1) Status of Elder Abuse and Elder Abuse by Families	146
2) The Issue of Elderly Digital Divide in a Digital Society	150
3) Elderly Traffic Accident Prevention System and Elderly Protection Zones	154

6. Soldiers

A. Human Rights Status 2022	159
B. Main Topics	
1) Status and the Cause of Irregularities in the Army	161
2) Status and Measures Against Suicides in the Military	165
3) Discussions on Improving the System to Protect the Diversity and Human Rights in the Military	170
4) Military Medical Accidents and the Conditions of the Military Medical System	175

Contents

7. LGBTI

A. Human Rights Status 2022	180
B. Main Topics	
1) Changes in the Supreme Court Precedent and Challenges On Article 92-6 of the Military Criminal Act	182
2) Discriminatory Administration Related to LGBTI Events	187
3) Discussion of Transgender Gender Recognition Criteria	192

8. Responding to Hatred and Discrimination Against Diverse Members of the Society

A. Human Rights Status 2022	196
B. Main Topics	
1) Diversity in Family Types: Problems and Controversy over the Framework Act on Healthy Families	198
2) Stigma and Discrimination Against People Living with HIV	203
3) Hate Speeches During the Election Process	207

III. A World That Protects Labor

1. Protecting the Right to Labor

A. Human Rights Status 2022	212
B. Main Topics	
1) Initiatives and Issues on the Proposed Amendment to the Trade Union Act (Yellow Envelope Act)	214
2) Controversy Over Orders for Commencement of Business Operations Under the Trucking Transport Business Act	220

2022 National Human Rights Commission of Korea
The Report on Human Rights Situation
in the Republic of Korea

3) Significance of the Supreme Court Ruling on the Wage Peak System	225
4) The Right to Rest When Sick: Introduction of a Pilot Korean Sickness Allowance	230

2. Human Rights Violations in the Workplace

A. Human Rights Status 2022	236
B. Main Topics	
1) Human Rights of Nurses Under COVID-19 Situation	237
2) College Student's Lawsuit Against Labor Dispute of College Cleaning Workers	241
3) Problems with Night Work of Workers at Logistics Centers	246
4) Restrictions on Toilet Use at Work for Construction Workers, Etc.	250

IV. Establishing a Foundation for a Better Society in the Future

1. Criminal Justice System and Human Rights

A. Human Rights Status 2022	254
B. Main Topics	
1) Controversy Over Adjustment of Investigative Powers and Problems with Investigation Procedures for Human Rights Protection	256
2) 'War on Drugs' and the Rehabilitation and Treatment of Drug Addicts	262
3) Conditions and Problems of Overcrowding in Prisons	266

2. Human Rights Protection System

A. Human Rights Status 2022	271
B. Main Topics	
1) Issues with the Shrinking Regional Human Rights System	273

Contents

2) Student Human Rights Ordinance and Issue of Discrimination in the New Curriculum	278
3. Information and Communication Technology and Human Rights	
A. Human Rights Status 2022	283
B. Main Topics	
1) Problems of Customized Advertising from the Information and Communication Technology and Human Rights Perspectives	285
2) Proposed Amendment to the Protection of Communications Secrets Act, and the Issue of Prohibiting Recording of Conversations Without Consent of the Parties	290
3) AI Technology and Human Rights Issues, and Face Recognition CCTV Installation and Utilization	294
V. Human Rights During Disasters and Catastrophes	
1. Human Rights Status 2022	299
2. Main Topics	
A. Issues of Disaster Prevention and Response System Revealed from Itaewon Crowd Crush	301
B. Preventing Hate Speeches in Response to Disasters and the Victim Recovery Issues	306
C. Status and Issues of Industrial Accidents — Death of a Bakery Worker and the Collapse of Bonghwa Mining	311
D. Case of Death of Sillim-dong Family by Flood — Safety Issues for Housing Vulnerable Class	316
E. Climate Crisis as a Human Rights Issue	321

2022 National Human Rights Commission of Korea
The Report on Human Rights Situation
in the Republic of Korea

VI. Human Rights in North Korea

1. Human Rights Status 2022 326

2. Main Topics

- A. Status of North Korea-Related Cases: Death of a Public Official
in the West Sea, and the Repatriation of North Korean Fishermen** 328
- B. Blind Spot in Support for North Korean Youths Born
in a Third Country** 333
- C. Incidents of North Korean Defectors Going Back to North Korea,
and the System to Support Adaptation of North Korean Defectors** 337
- D. Status and Significance of Legal, Institutional and International
Organization Recommendations on North Korean Human Rights** 342

Part 3

Looking Back to the Principles of Human Rights in 2022 349

Part 1.

Status of Korea's Human Rights in 2022

I. Introduction

II. Korea's Human Rights Status 2022: Focusing on People's Awareness

I. Introduction

A state has a duty and a responsibility to confirm the protection of and guarantee the fundamental human rights. Article 10 of the 「Constitution of the Republic of Korea」 stipulates that the duty of the State is “to confirm and guarantee the fundamental and inviolable human rights of individuals.” The perception of human rights issues may differ depending on the individual’s circumstances and value, but no one would deny that everyone has human rights to be protected and that the State has the obligation to protect people’s human rights.

It is very important to try to look at the details of human rights and the duties of the State, and to try to present a direction for the future. However, comprehensively describing a society’s human rights situation is a difficult task because it is closely related to all the issues related to the people’s lives. 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⁾ the goal of preparing this report is to describe the human rights situation and improvement measures for 2022. The report in 2022 has the same purpose as the first Report on Human Rights Situation in Korea in 2021. We selected the major cases and issues during 2022 and they were described in terms of the status and assessment. Of course it is better to look at major human rights issues and cases, systematic efforts to protect 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 perspective 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.

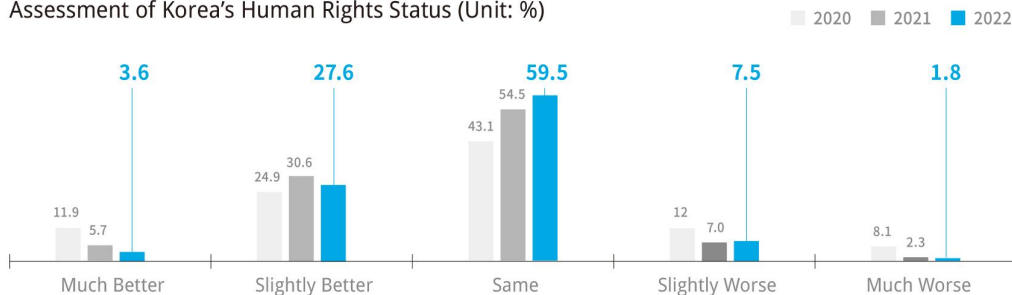
1) Article 29 (Preparation, etc. of Reports) ① The Commission shall prepare an annual report on its activities for the preceding year, the human rights situation and improvement measures and shall report thereon to the President of the Republic of Korea and the National Assembly. In such cases, the report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

II. Korea's Human Rights Status 2022: Focusing on People's Awareness

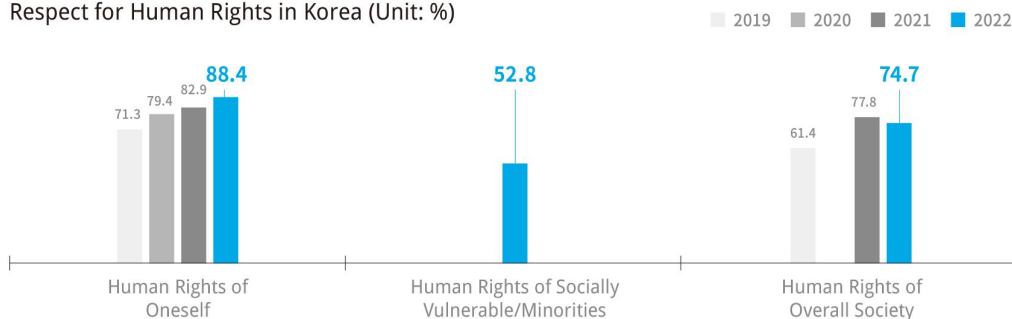
As COVID-19 pandemic continued throughout the world, the Korean society began to return to normal as the social distancing was lifted in April 2022. The two elections during this time were opportunities to discuss general social agendas to resolve issues from COVID-19 pandemic and to respond to the changes. However, various human rights issues confirmed during this process showed the need to improve the human rights situations in Korean society.

The Korean National Human Rights Survey conducted by the NHRCK in 2022 shows that many people view Korea's human rights situation as similar to before. To a question on whether Korea's human rights situation is improving, 31.2% responded "getting better (much better and slightly)," which is 5.1%p lower than 2021, but 58.5% responded "same as before," which is 5.0%p increase from 2021 and 16.4%p increase from 2020. Ultimately, only 9.3% responded that Korea's human rights situation is deteriorating.

Assessment of Korea's Human Rights Status (Unit: %)



Respect for Human Rights in Korea (Unit: %)



Moreover, as for the perception on respecting human rights in Korea, 88.4% responded that their human rights are being “respected,” which has increased continuously since 2019 (71.3%), but 74.7% responded that human rights of the overall society is being respected, which is a slight decrease as compared to 2021 (77.8%). Approximately half of the people responded positively on a question whether the human rights of the vulnerable social classes and minorities are being respected, and specifically, the responses indicated women (84.6%), children/youth (81%), elderly (71%), people with disabilities (50.4%) and immigrants (36.2%).²⁾

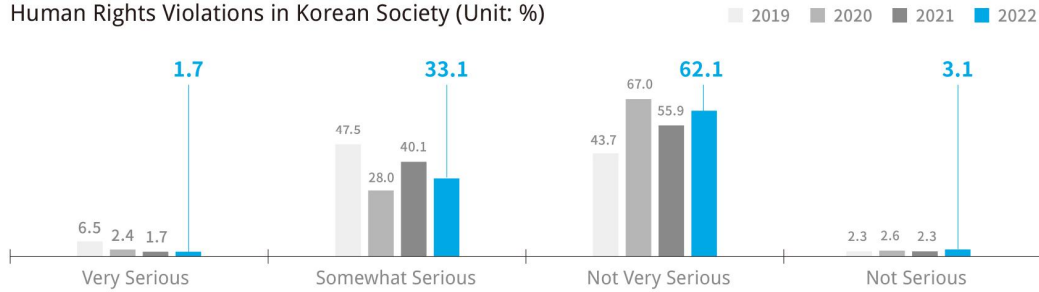
The frequency of encountering the term ‘human rights’ is a criterion that can determine the degree of interest on human rights and the opportunity to come across the human rights concept. The number of people who encounter the term ‘human rights’ (almost daily, relatively often and sometimes) remains at 80%. However, the ratio of people who encounter frequently continues to decrease since 2020, from 36.7% to 28.9%, but the ratio of people who encounter sometimes continues to increase, from 43.2% to 51.5%. It shows that the frequency of encountering the term ‘human rights’ is decreasing overall. Specifically, the responses differed depending on the individual backgrounds—women, people over the age of 60 and people with lower educational level tend to encounter the term less frequently.

However, when looking at the time series trend on people’s awareness of human rights violations and discrimination in Korea, Korea’s human rights situation has somewhat improved. People who responded that Korea’s human rights violation is “serious (very and slightly)” decreased 7.0%p from 2021 (41.8%) to 34.8%, and “serious (very and slightly)” discrimination also decreased 9.9%p from 2021 (47.4%) to 37.6%. Except for 2021, the year that showed large increase in seriousness of human rights violations and discrimination, they are gradually decreasing since 2019.

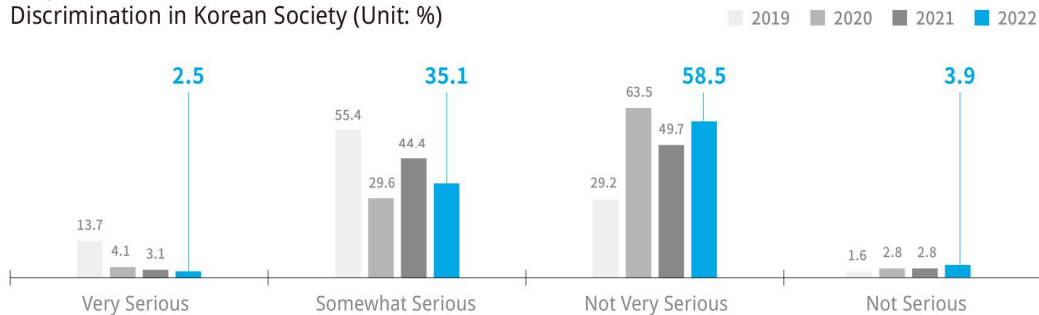
The ratio of people who had experienced human rights violations and discrimination have also decreased. In case of human rights violations, civic and political rights violation is less than 4% and economic and social rights violation is less than 7%. For discrimination, 14.3% of the people experienced discrimination, for whatever reason, during the past 1 year, which is higher than the experience of human rights violation, but is a decrease from the past – 2019 (28.2%), 2020 (29.5%), and 2021 (19.6%).

2) The time series graph for all items are not same due to the difference in the questions for each year.

Ratio of Responses on the Seriousness of Human Rights Violations in Korean Society (Unit: %)

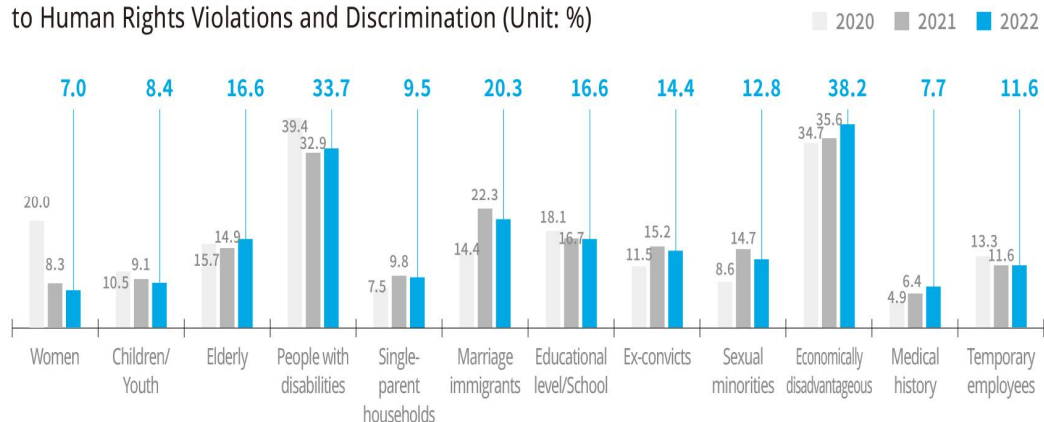


Responses on the Seriousness of Discrimination in Korean Society (Unit: %)



When looking at the perception on socially vulnerable and minority groups, the groups that are perceived as being subjected to most human rights violations and discrimination are economically disadvantaged (38.2%), people with disabilities (33.7%), and marriage immigrants (20.3%), and there were no changes in the order as compared to 2021. The groups

Responses on Groups Vulnerable to Human Rights Violations and Discrimination (Unit: %)

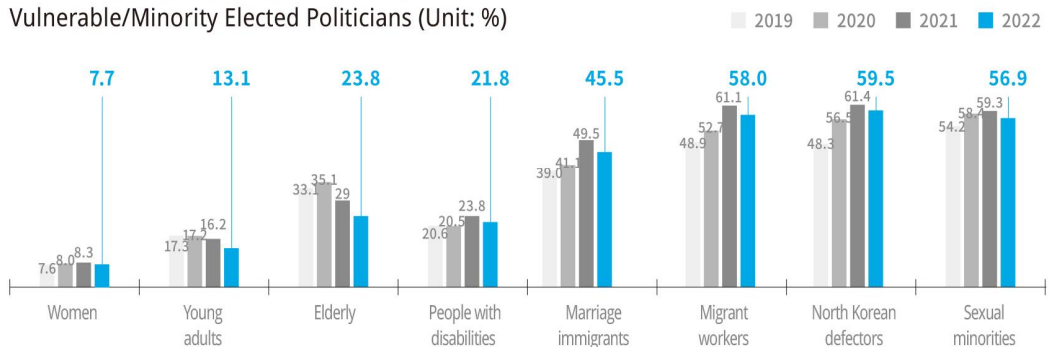


with higher responses, as compared to 2021, are economically disadvantaged, people with disabilities and elderly, and as compared to 2021, economically disadvantaged, immigrants, ex-convicts and sexual minorities increased, with women, children, people with disabilities, elderly, low education/schooling, and temporary employees decreased.

Experience with hate speeches decreased slightly, and the people who had ‘no experience’ (43.5%) with hate speeches decreased continuously since 2019 (48.3%). The targets of hate speeches are wide spread and are effected by social issues and discussions. As compared to 2021, hate speeches against people with disabilities, people from specific region and politicians have increased. On the other hand, the ratio of people who consider hate speeches to be “serious” and “not serious” are similar. However, 68.7% of the people agree with legally regulating hate speeches, which is a slightly increase from 2021, and more than two times higher than people who disagree at 31.3%.

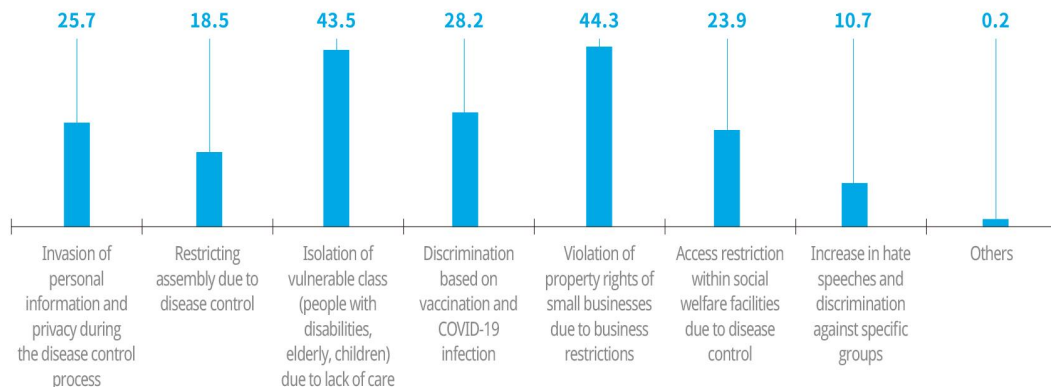
The result of a sense of social distance that indicates tolerance and acceptability of socially vulnerable and minorities shows that people are ‘uncomfortable (very and slightly)’ with North Korean defectors (59.5%), migrant workers (58.0%), sexual minorities (56.9%), and marriage immigrants (45.5%) being elected as politicians, which is similar to the ranking in 2021. However, between 2019 and 2021, the sense of social distance with vulnerable and minorities increased, with women, adolescents and elderly as exceptions, but began to decrease overall in 2022.

Time Series Trend on Social Distance for Vulnerable/Minority Elected Politicians (Unit: %)



During the past 3 years, 56.4% of the people responded that COVID-19 “impacted (very and mostly)” human rights, which was higher than “not impacted (not at all and slightly)” with 43.6%. The most serious human rights issues were violation of property rights of small businesses (44.3%), isolation of vulnerable class from lack of care (43.5%), discrimination depending on COVID-19 vaccination (28.2%), and violation of personal information privacy from disease control (25.7%). Individuals show difference depending on the characteristics of the groups that they belong, but people perceive the difficulties in their livelihood from restrictions in economic and social activities due to COVID-19 as the biggest human rights issue.

Serious Human Rights Issues from COVID-19 (Unit: %)



People’s perception and attitude towards human rights situation do not fully reflect the actual human rights situations, but they are important for having a huge impact on recognizing and improving the human situation. The details on the human rights status and topics in major areas will be presented in Part II.

Part 2.

Main Human Rights Status and Assessment 2022

- I. Guaranteeing the Fundamental Human Freedom**
- II. Respecting the Dignity and Value of Diverse Members of Society**
- III. A World That Protects Labor**
- IV. Establishing a Foundation for a Better Society in the Future**
- V. Disaster, Catastrophe and Human Rights**
- VI. Human Rights in North Korea**

I. Guaranteeing the Fundamental Human Freedom

1. Human Dignity, Value and Right to Life

A. Human Rights Status 2022

Article 10 of the Constitution of the Republic of Korea stipulate that “all citizens shall be assured of human worth and dignity and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.” Human worth and dignity under the Constitution is the core value of the fundamental right and is the basic spirit of the international human rights norms. Preamble to the Charter of the United Nations, Article 1 of the Universal Declaration of Human Rights, and Preambles to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also stipulate human dignity.

Right to life is one of the fundamental rights from Article 10 of the Constitution,³⁾ and is the basis for all individual fundamental rights. Recognizing other fundamental rights, without guaranteeing the right to life is meaningless. The international human rights norms stipulate the right to life first among many specific rights. Article 3 of the Universal Declaration of Human Rights stipulates the right to life by stating that “everyone has the right to life, liberty and security of person,” along with the right to bodily freedom and safety. Article 6(1) of the International Covenant on Civil and Political Rights stipulates that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

3) There is a controversy with the basis of the right to life under the Constitution, but the Constitutional Court stated that the right to life is guaranteed under Article 10 through Article 37(1) of the Constitution, even without a provision that specifically stipulates the right to life (95HunBa1, Nov. 28, 1996, Constitutional Court).

Traditionally, human dignity and right to life were subject of discussion in various topics, including abolition of slavery, abolition of death penalty, the State's duties to eliminate poverty and disease, use of force during execution of law by public officials, protection from violence, protection from disease, accidents and disasters threatening life and safety, etc. 2021 Report on Human Rights Situation in the Republic of Korea included topics, such as death penalty, death resulting from insufficient crime prevention and victim protection by the police, situation related to Japanese Military Sexual Slavery, etc.⁴⁾

In 2022, there were much discussion on the responsibility of a State related to human dignity and the right to life. Seoul Halloween crowd crush that occurred in Itaewon in October 2022 reminded us of the obligations of the State to protect people's lives and promote security from disasters. Ascertaining truths and reparation on past violences, such as the Brothers Home and Seongam Hagwon, etc., the realities of the people who are suffering from poverty and isolation, such as a mother and two daughters in Suwon, and the high rate of suicide, etc. have become the center of attention by the media and the civic society.

These problems are not specific only to 2022 but they show the problems and social inconsistencies at the core. This report will look at some of the major situations and their meaning as related to the duties and the roles of the State to protect the fundamental rights of the people, and will consider the future tasks.

4) These topics are still very important, but this report will provide cases that were especially more significant in 2022.

B. Main Topics

1) The Itaewon Crowd Crush on October 29 – Social Disasters and the Duties of the State

A) Disaster in Itaewon on October 29

On the night of October 29, 2022, a crowd crush occurred during a Halloween festival in the narrow alleyway on the west-side of the Hamilton Hotel located at 173-7, Itaewon-dong in Seoul. Each year, a large crowd gather for the Halloween festival in Itaewon, and more than 100,000 people gathered for the first Halloween festival since the start of the COVID-19 pandemic without social distancing. The streets of Itaewon are narrow and on an incline, and this cause the people to be packed and pushed downward along the narrow segment. People at the top of the slope fell onto those below.⁵⁾

This was not an accident caused by an intentional pushing, but people were crushed and killed from crowd gathering and pushing and falling down.⁶⁾ The street where the disaster occurred is cone-shaped, where the widths of the upper alley and the lower alley are different, and the greatest number of deaths occurred in the middle of the alley. During the accident, 6~10 people were standing in a space of 1m², and the people at the location received approx. 224~560kg force on average.

158 people died at the scene or after being taken to a hospital, and 1 person committed suicide shortly after due to trauma. The victims were mostly young adults between 10~30, and among the 159 people who were killed, 113 people were Korean and 25 people were foreigners. There were 196 people who were injured immediately after the accident, and 124 additional injuries were reported afterwards.⁷⁾ Immediately after the accident, the casualties

5) Report on the Outcome of the Special Parliamentary Committee on Investigation into the Itaewon Crowd Crush, Jan. 2023.

6) The KNPA special investigation team concluded that the allegations on specific persons pushing and spraying slippery substance on the floor, and nearby stores locked the door and did not allow people to enter were not directly related to the cause of the accident. According to the outcome of the investigation, as the density of people increased, people were unable to move freely and several people fell during the process. For about 10m from where people began to fall, intense pressure was applied to the people and deaths resulted. The causes of death were suffocation or brain swelling.

7) Joonggang Ilbo, Different number of casualties reported by different agencies... 196, 294 and 320, Jan. 20, 2023.

were taken to 20 hospitals in Seoul, and it took approximately 2 days to identify all the victims.⁸⁾

This was the largest disaster since the sinking of MV Sewol in 2014, and became the most tragic accident receiving the most attention in 2022. It became known as ‘Itaewon Crowd Crush (or “Oct. 29 Disaster”⁹⁾). The government administration, including the president, politicians, media, academics, religious groups, civic society, the UN and various countries expressed their condolences to the victims, and the government declared Yongsan-gu as a special disaster area, and a week of national mourning was declared until November 5.

After the accident, many called for a thorough investigation of those responsible and to prevent any recidivism. A special investigation team was established by the KNPA on November 1 to begin the investigation,¹⁰⁾ and a parliamentary inquiry on the responsible party and to prepare measures to prevent recurrence began on November 24.¹¹⁾

B) The Seoul Halloween Crowd Crush as a Social Disaster and Raising Issues in Various Layers

Disasters and tragic accidents threaten the human dignity and enjoyment of human values by threatening the life and safety of the people and damaging the foundation of life. The state and the local governments must establish and implement policies to protect the basic human rights of the victims and their families, but the issues of concern for human rights violations, prolonged recovery of victims, hatred and discrimination against the socially vulnerable continue. Many issues were brought to light as related to the Seoul Halloween Crowd Crush in 2022 at every stage.¹²⁾

8) Hankyoreh, “Police confirmed the identity of all 154 people who were killed in Seoul crowd crush,” Oct. 31, 2022.

9) It is sometimes referred to as the October 29 disaster to prevent the side effects of stigmatizing it as a dangerous area by linking the name of a specific area to the disaster, and to prevent damage to the residents and merchants in the area. In the following of this report, the widely used abbreviation 'Itaewon Crowd Crush' will be used.

10) The investigation by the KNPA special investigation team ended on January 13, 2023, when 17 people, including the Seoul Metropolitan Police Agency chief, Yongsan chief, and Yongsan-gu chief, were sent to the prosecution.

11) On January 17, 2023, the National Assembly's Special Committee for Government Investigation on the Truth About Yongsan and Itaewon disaster prepared a final report requiring a presidential apology, voluntarily resignation of the heads of the agencies, personnel measures for the managers, preparation of measures to prevent recurrence and remembrance of the victims, and establishment of an independent investigation body, etc. The ruling party opposed the adoption of the report, but it was adopted by a vote at the plenary session of the National Assembly on January 30.

First, during the prevention stage, the relevant authorities did not establish a safety management measures to control the crowd, even when it was expected that a large crowd would gather at the Halloween festival.¹³⁾ Also, 11 calls were made to 112 between 18:34 and 22:11, reporting concerns for a large accident from people falling and being crushed, and the first casualty was reported after 10 p.m., but no quick measures were taken.¹⁴⁾ This issue became a key subject of controversy and responsibility related to the Seoul Halloween Crowd Crush.

During the occurrence and handling of disasters and accidents, the issues were failure to respond to the scene through information sharing between the agencies for not using the disaster and safety communications network,¹⁵⁾ invasion of privacy and trauma caused by failing to transport the injured people to the nearest hospitals and broadcasting the scenes of the accident by the media and 1-person media,¹⁶⁾ and failing to provide quick and humanitarian verification and delivery of the deceased and the victims clothing and other items.¹⁷⁾ There was a controversy of a member of the National Assembly riding a doctor car responding to the scene and delayed the response time¹⁸⁾, and allegations on the whereabouts of Yongsan police chief, head of Yongsan-gu district and the manager¹⁹⁾.

During the investigation and recovery, issues were punishing the people responsible, mourning that does not respect the victims and their families, and hate speeches and secondary victimization. Immediately after the incident, when the personal information of the deceased was not disclosed and concerns about reduction or concealment were raised, a media company released the list of the deceased without the consent of the bereaved family,

12) The prevention system of the Itaewon crowd crush and the problems related to hate speech and recovery of victims after the accident are discussed as a separate topic in 'V. Disaster and Human Rights.'

13) Sisa Week, 'Homework' left to us by the Itaewon crowd crush, Nov. 1, 2022.

14) BBC News Korea, Itaewon Crowd Crush: No Precautions were Taken Even After 112 Calls, Nov. 2, 2022.

15) MBC News, [Exclusive] The 'Disaster Safety Communications Network,' Which Cost 1.5 Trillion Won to Prevent the Sinking of MV Sewol, Did Not Work, Nov. 3, 2022.

16) Doctors Times, Emergency Medicine Doctors "Many Problems with the Scene Management at Itaewon Crowd Crush," Oct. 30, 2022.

17) Final Report by the Itaewon Crowd Crush Truth Investigation Special Committee of the National Assembly, Jan. 2023.

18) YTN, [Exclusive] 'Dr. Car Controversy' Representative Shin Hyun-young of Democratic Party Appeared at the Police Today, Jan. 20, 2023.

19) Chosun Ilbo, [Exclusive] "Yongsan-gu mayor lied about her whereabouts and the safety manager was drinking on the day of the Itaewon crowd crush," Dec. 2, 2022.

causing controversy.²⁰⁾ Hate speeches toward the victims of the Itaewon crowd crush and bereaved families were circulated both online and offline, by politicians and at opposing rallies. There was also a case in which high school student, a survivor of the Itaewon crowd crush suffering from trauma, took his own life on December 12. Even as early as 2023, demands to punish the perpetrators, for the perpetrators to apologize, and to protect the right to mourn the bereaved continue.

C) Duties of the State Under Disasters and Catastrophes

Article 3 of the Universal Declaration of Human Rights stipulates that “everyone has the right to life and to liberty and security of person.” The right to security is not explicitly stipulated in the Constitution, but it can be said to be an unwritten fundamental right.²¹⁾ Disasters and catastrophic situations pose a risk of infringing the various rights, including the people's right to safety, human dignity and value, the right to life, privacy and freedom, and the right to honor. Therefore, the duty of the State to protect the people's fundamental rights in the event of a disaster or catastrophe is very special, and the Constitution guarantees and stipulates the State's duty to protect the people's fundamental human rights, such as human dignity and the right to life, prevents disasters, and protects the people from the dangers.

The European Court of Human Rights has made a decision to recognize the responsibility of the State for the right to life and property rights of victims, stating that failure to take measures to prevent foreseeable disasters or mitigate damage constitutes a violation of human rights by the State.²²⁾ The United Nations General Assembly also adopted the 「Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law」 (hereinafter referred to as the “Victims Bill of Rights”)²³⁾ to its specified

20) Media Today, Press Arbitration Commission, “Disclosure of the list of victims of the Itaewon crowd crush violates fundamental rights,” Dec. 5, 2022.

21) Lee, Buha, A Constitutional Study on the Right to Life and Personal Safety, 2019.

22) Forced Migration Review (FMR), Disaster risk mitigation – why human rights matter, 2008. 10.

23) UN General Assembly. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147), 2006.

the right to justice, the right to truth, and the right to recovery of damage,²⁴⁾ which are the rights of the state, and presented procedures for fulfilling the state's legal obligations.

Korean society has experienced social disasters such as the collapse of Sampoong Department Store in 1995, the Daegu subway fire disaster in 2003, and the sinking of MV Sewol in 2014. Also, the opinion has been that a social system should be established to view disasters from the perspective of human rights and to prevent similar disasters from recurring. However, despite the people's demand that the life and safety of the people before and after the sinking of MV Sewol must be different, the disaster safety management and prevention system of Korean society and the national leadership's sense of responsibility for public safety have not been changed fundamentally through the Itaewon crowd crush.

Building a safe society is a challenge of the times, and it is necessary for the government to clearly acknowledge the responsibility of the state for failing to properly respond to foreseeable risks and protect the people, and mourn the victims and their bereaved families in a respectful manner. Moreover, necessary measures such as thorough fact-finding, appropriate measures against those in charge, and establishment of measures to prevent recurrence are required promptly. Additionally, guaranteeing the participation of disaster victims and bereaved families in the entire process, providing full explanation, and providing appropriate psychological support and compensation for disaster victims are also important issues.

24) 'Recovery of damage' is an expression that implies 'recovery of mental, physical and damage to honor, etc. to the original state.'

2) Truth Investigation of the State Violence Cases and Future Tasks

A) Truth-Finding Decision on Major State Violence Cases and the Rulings on the Claims for State Compensation

The Truth and Reconciliation Commission of the Republic of Korea (hereinafter referred to as the “TRCK”) made a decision to determine the truth about the ‘Brothers Home’ case²⁵⁾ and the ‘Seongam Hagwon’ case,²⁶⁾ acknowledging the damage caused by human rights violations in August and October of 2022, respectively. Regarding the Brothers Home case, it was confirmed that the state did not fulfill its management and supervision duties, and the case was reduced or distorted, and it was recommended to overhaul the budget, regulations, and organization of the city of Busan for the state's official apology, damage recovery, damage investigation, and support work.²⁷⁾ As for the Seongam Hagwon case, it was acknowledged that 167 applicants were forcibly confined without legal procedures and the children's rights were violated.²⁸⁾

The Brothers Home victim groups demanded an apology from the state, compensation and prevention of recurrence,²⁹⁾ and the Prime Minister expressed the view that it is proper for the state to fulfill its responsibilities for a thorough investigation of the truth and restoration of the honor of the victims at the National Assembly on September 19.³⁰⁾ Moreover, on October 20, the Governor of Gyeonggi-do attended a press conference announcing the truth-finding decision of the TRCK and announced that he would make an official apology to the victims and their bereaved families of the Seongam Hagwon case, and prepare comprehensive measures, including support for living and medical services for the victims.

25) Case in which human rights violations such as violence, intimidation, confinement, forced labor, and abuse of disabled people and orphans found on the streets were forcibly confined to Brothers Home in the name of leading vagrants through direct and indirect exercise of public power, during the '70s and '80s.

26) Seongam Hagwon, established in 1942 in Seongam Island, Ansan, Gyeonggi-do, forcibly detained a total of 4,691 children under the pretext of reforming boys who committed or were at risk of misbehavior, since the liberation until it was closed in 1982. The children were subjected to forced labor, violence, cruelty, sexual violence, disappearances and deaths, etc.

27) TRCK Press Release, Aug. 24, 2022.

28) TRCK Press Release, Oct. 20, 2022.

29) Busan Ilbo, “Victims of Brothers Home Demanded an Apology from the President,” Oct. 14, 2022.

30) However, the Ministry of the Interior and Safety announced on August 19 through explanatory materials that the recommendations of the TRCK, which are based on related laws, will only manage the recommendations included in the comprehensive report prepared within six months when the TRCK activities are terminated.

The chairperson of the National Human Rights Commission of Korea (NHRCK) expressed his opinion that it is necessary to enact a special law for active victim relief in relation to the above two decisions.³¹⁾

On August 30, the Supreme Court changed the previous precedent³²⁾ regarding the state's liability for compensation to victims³³⁾ of the 'Presidential Emergency Measures for the Protection of National Safety and Public Order' (hereinafter referred to as 'Emergency Measure No. 9')³⁴⁾ and determined that the state was liable for damages suffered by the victims from the Emergency Measure No. 9. Moreover, the judgment of the Seoul High Court was reversed and remanded with the intention of acknowledging the state's liability for compensation for the 70 people who claimed compensation.³⁵⁾ On the other hand, on September 29, in a lawsuit against the state for damages filed by a woman who engaged in prostitution in a military base town in the area where the US military was stationed,³⁶⁾ the Supreme Court held that the application of the long-term extinctive prescription was excluded because the damage suffered by the victims can be seen as an act corresponding to a serious human rights violation case under the Framework Act on Settling the Past for Truth and Reconciliation.

On November 28, the 'Special Act on the Prescription of Anti-Human Rights State Crimes' was proposed in the National Assembly.³⁷⁾ This bill is to exclude the application of the statute of limitations on the State for anti-human rights state crimes and the statute of

31) Statement by the Chairperson of the National Human Rights Commission, Aug. 26, 2022 and Oct. 26, 2022.

32) Supreme Court, Decided on Apr. 18, 2013, 2011ChoGi689, Decided on Oct. 27, 2014 2013Da217962, etc.

33) According to the TRCK, over 1,000 people were prosecuted and more than 900 were convicted for violating Emergency Measure No. 9 during the four years of its application, and about 80% were retried (As of July 2021).

34) Emergency Measure No. 9 was issued on May 13, 1975 pursuant to the Yusin Constitution, and it allowed punishment for 'acts of denying, opposing, distorting the constitution, or asserting and instigating the revision or abolition of the constitution,' 'acts of political involvement in assembly/demonstration by students,' and 'acts of misconduct of emergency measures,' etc. and the violators can be arrested, detained, confiscated, and searched without a warrant from a judge. Emergency Measure No. 9 was confirmed, through the Constitutional Court (decided on Mar. 2, 2013, 2010HunBa70) and the Supreme Court, to violate the freedom of assembly and demonstration, academic freedom, and freedom of expression.

35) Supreme Court, Decided on Aug. 30, 2022, 2018Da212610

36) Supreme Court, Decided on Sept. 29, 2022, 2018Da224408: Between '50s~'70s, the government promoted prostitution for US soldiers while managing US military base towns, and a lawsuit was filed against the state claiming damages caused therefrom

37) Co-sponsored by Congressman Park, Hong-geun and 168 others, "Special Act on the Prescription of Anti-Human Rights State Crimes," Bill No. 2118497, Nov. 28, 2022.

limitations for the victim's right to claim compensation from the State (applying a special rule to the starting point of the statute of limitations for survivors, etc.).³⁸⁾ On December 8, the motion to ratify the 'International Convention for the Protection of All Persons from Enforced Disappearance' passed the plenary session of the National Assembly. This Convention, one of the nine core human rights instruments of the United Nations, consists of the definition of enforced disappearance,³⁹⁾ the victim's right to know the truth, the right to compensation, the right to form support organizations and groups, the duty of the state for criminal legislation, and the duty to investigate.

B) Meaning and Characteristics of State Violence

State violence refers to an act in which the state restricts or violates the people's fundamental rights under the Constitution the illegal exercise of public power.⁴⁰⁾ It can be seen as a concept that includes serious human rights violations, such as civilian massacre, death, torture, injury, disappearances, etc., and the state's acquiescence, involvement, concealment, and reduction of human rights violations not committed by state agencies

State violence is different from general violence or crime in terms of the main agent and the substance in that the public authority, which should have protected civil liberties and rights, actually violated the rights of the people. Moreover, state violence that occurred in the contemporary history of Korea, from colonial rule, war and division to dictatorship, is different from recent state violence in that as it went through an ideological justification process, the victims became criminals instead and their rights and honor were violated.

In some cases, separate legislative grounds have been established for recovery from state violence, such as a special law that stipulates compensation or compensation for victims of individual cases such as the 5.18 Gwangju Democratic Uprising, but in other cases, the

38) In 2005, the NHRCK expressed its opinion to the National Assembly to the effect that it would be desirable to exclude the application of the statute of limitations for serious state crimes against human rights, and to have a fairly long statute of limitations for the right to claim compensation from the State.

39) Arrest, detention, abduction or other deprivation of liberty by a State agency or by individual or group of individuals acting with the permission, assistance or acquiescence of the State, and concealing whether the missing person is alive or dead or whereabouts, and placing the missing person outside the protection of the law

40) See Article 2 of the 「Act on Establishment and Operation of National Violence Trauma Healing Center」

victims and bereaved families can file claims for damages against the state through individual lawsuits or seek criminal compensation according to the ‘Act on Criminal Compensation and Restoration of Impaired Reputation’ (hereinafter referred to as the “Criminal Compensation Act”).⁴¹⁾

However, it is not easy for a victim of state violence to receive reparation and compensation for the damage and escape from mental pain. It is not easy for victims to decide to apply for a retrial due to the uncertainty of the retrial results, anxiety about confronting the perpetrator, and negative views around them. Moreover, it takes a very long time to for the criminal compensation and civil lawsuits against the state after a court's retrial and acquittal.⁴²⁾

Also, as special laws related to state violence cases are enacted centering on individual cases and depending on the social atmosphere and the organization of victims and bereaved groups, there are problems with equity and consistency, or victims and bereaved families who are excluded from the damage recovery measures. As such, some assert that it is necessary to enact a comprehensive law on compensation for victims of state violence by separating the provisions related to reparation and compensation scattered in relevant special laws, and to stipulate the scope of victims, proof of damage and special rules on extinctive prescriptions, etc.⁴³⁾

C) State Responsibilities and Duties on the Past State Violence Cases

It is often found that victims of state violence become targets of social stigma and experience trauma. In some cases, the victims had difficulty verifying the facts of the damage because they could not find a place to appeal the damage, and the truth had been manipulated and covered up for a long time. Thus far, the government has been passive in establishing accountability and compensation, such as granting only limited powers temporarily even if it had a state violence investigation agency in the past, and the legislative

41) Yu Jin, et al., Study on State Violence to Settle the Past (II), Korean Institute of Criminology and Justice, December 2021.

42) Institute for Medicine & Human Rights, Kim Keun Tae Memorial Healing Center, Follow-Up investigation on the Status of Torture Victims, January 2020.

43) Yu Jin, et al., *Ibid.*, December 2021.

branch only responded in a limited way through special laws in some cases. Moreover, the process of being recognized as a victim of state violence through retrial and lawsuit in court often caused additional pain for the elderly victims.

However, it is the responsibility and duty of the state that committed human rights violations to verify the truth about state violence, take responsibility, compensate the victims, and promise to prevent recurrences. Article 29 of the Constitution also stipulates the right to claim compensation for torts committed by the state, and the Victims Bill of Rights adopted by the UN General Assembly in 2005 also provides that reparations must be adequate, effective, immediate, complete and effective.

Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,⁴⁴⁾ during a visit to Korea in June 2022, investigated past history issues in Korea, and evaluated that although some government-level measures have been taken to respond to the past in the process of democratization in Korea, a comprehensive or continuous approach has not been explicitly made and urged to guarantee the right to truth, justice, compensation, and prevention of recurrence.⁴⁵⁾

The damage caused by state violence must be remedied and corrected in order for the grave human rights violations of the past to not be repeated. It is necessary to exclude the application of the statute of limitations, at least for organized and premeditated grave human rights violations involving the state, and to prepare legislative, administrative and judicial alternatives for the victims to not face more difficulties while fighting in court to receive compensation, at least for the cases where the damage has been recognized.

44) Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

45) Special Rapporteur is expected to submit the final report on the visit to Korea to the UN Human Rights Council in Sept. 2023.

3) Issues of Lonely Deaths in Welfare Blind Spots

A) Cases of Mother and Daughter in Suwon and Death of North Korean Defector, and Social Controversy

On August 21, 2022, the police received a report of a bad smell coming from a multi-family house in Suwon, Gyeonggi-do, and identified three bodies who died in the room behind the locked door. They were A, in her 60s, and her two daughters. A mother and a daughter were suffering from cancer and rare incurable disease.⁴⁶⁾ The police estimated that they committed suicide through the mother's will, and the case became known as the 'death of a mother and two daughters in Suwon.' It was sad case because they had no one to help them, even though they were suffering from illness and debt, and they were unable receive welfare services because they did not make the moving-in report with the community service center, etc.

The government held an emergency meeting of related ministries on August 23 and announced plans to investigate and supplement the system to identify and support people in the welfare blind spots. In a Q&A session with reporters on the way to work the same day, the president also said that special measures are needed for those whose welfare information systems are not functioning properly.⁴⁷⁾ Many civil society organizations expressed their opinion that a welfare system to support the poor is needed,⁴⁸⁾ and the media also published reports criticizing the welfare system based on blind spots and requests.⁴⁹⁾

On the other hand, a North Korean defector was also found dead on Oct. 19, in a rental apartment in Seoul where she lived alone. The police said that they found her when Seoul Urban Housing Corporation (SH) forcibly opened the front door to execute forced eviction procedures because she did not pay her rent for over 1 year and could not be reached.⁵⁰⁾ It seems that she died a lonely death after living disconnected from society for a long time, from the fact that she was wearing winter clothes.⁵¹⁾

46) Hankyoreh, "No Friends on the Last Journey for Mother and Two Daughters in Suwon", Aug. 27, 2022.

47) Chosun Ilbo, "President Yoon calls for special measures for the vulnerable", Aug. 23, 2022.

48) Joint Act on Correcting the National Basic Living Security Act, Etc., Aug. 24, 2022.

49) E-Korea, "Comparing Editorials on Mother and Two Daughters in Suwon by Major Press," Aug. 26, 2022.

50) The National Forensic Service conducted an autopsy, but concluded that the cause of death was unknown.

She worked as a counseling at Seoul Southern Hana Center, but after the end of protection in 2019, she defaulted on rent and management fees from December 2020 and were unreachable for renewal in January 2021. The Ministry of Health and Welfare selected her as a household in crisis for five times from May 2021 because she failed to pay her telephone and health insurance fees,⁵²⁾ but the local social welfare manager could not find her contact information and unable to see her in person. The Ministry of Unification expressed regret over this incident and announced that it would make efforts to prevent a recurrence.⁵³⁾

In March 2020, the ‘Act on the Prevention and Management of Lonely Deaths’ (hereinafter referred to as the ‘Lonely Death Prevention Act’) was enacted and implemented from April 2021. Since August 2022, the Ministry of Health and Welfare has developed a pilot project to prevent and manage lonely deaths in nine metropolitan municipalities, identified people at risk of lonely deaths based on the result, and planned on finding a prevention project model that can be applied nationwide.⁵⁴⁾ On Nov. 24, the government released a ‘Plan to Improve the System to Identify and Support Welfare Blind Spots,’ consisting of 12 tasks in 3 areas, in order to quickly and closely support the households at risk through careful identification.⁵⁵⁾

B) Issues on the Limitations of Welfare by Request and the Current System of Identifying At-Risk Households

Considering the economic situations of the mother and two daughters in Suwon, they were eligible for basic livelihood security, including living wages of 1.25 million won per month and housing benefits of 420,000 won per month, right to receive class 1 medical benefits, and up to 50 million won per year for the treatment of incurable diseases for low-income families. Moreover, according to the Ministry of Health and Welfare’s ‘Survey on the Lonely Deaths’ (Dec. 2022), cases that can be regarded as lonely deaths have continuously increased over the past five year (2017-2021), except for 2019.

51) Newsis, Lonely Death of a North Korean Defector–Found Dead After Forcibly Opening the Door, Oct. 26, 2022.

52) The government selects at-risk households by collecting information revealing the signs of crisis, such as arrears in rent, management fees, telephone bills, etc. and water and electricity outages, etc.

53) Yonhap News, “The Ministry of Unification to Re-Inspect the Risk Management System for the North Korean Defectors,” Nov. 10, 2022.

54) Ministry of Health and Welfare Press Release, Jul. 29, 2022.

55) Ministry of Health and Welfare Press Release, Nov. 24, 2022.

Cases of experiencing difficulties while being cut off from the national welfare network and relationships with people around them are often found, such as the ‘Songpa mother and daughter incident’ in 2014.⁵⁶⁾ However, it is also suggested that their failure to use the welfare system is not simply because they are not active, but rather as a result of the psychological trauma of experiencing long-term frustration and abandonment due to unstable labor and low wages. There are repeated cases of giving up on their own due to strict selection criteria, low level of guarantee, suspicion of being illegal recipients, cold eyes toward recipients, and difficult system operation methods, and therefore, the welfare system based on request need to be modified.⁵⁷⁾

On the other hand, questions are raised as to whether it is reasonable to collect more information suggesting a crisis in order to identify the poor class at risk that requires state intervention. The government collects 34 types of information, including information on rent and utility bill arrears, and is considering amending the law to allow tracking of personal locations, which can only be collected in exceptional cases, for at-risk households as well. However, there are also concerns over sensitive information being managed at once, and even if the amount of information collected is increased, it is difficult to clarify “whose poverty is more serious.” The UN also published a report in 2019 warning of the dangers that automated decision-making structures through extensive information gathering could turn welfare systems into a new “digital dystopia.”

These views assert the following efforts must be preceded, under the presumption of granting discretionary power to public officials in charge of welfare: means of identifying welfare blind spots by increasing or relocating the number of public officials in charge of welfare, along with the help of local leaders, postal workers, meter readers, etc.; complete abolition of the obligatory support standard; and structural and continuous efforts to eradicate poverty, such as measures to significantly increase the standard median income, etc.

56) Mother and two daughters committing suicide due to economic hardship in 2014.

57) Statement by the Korean People's Solidarity Against Poverty, Aug. 24, 2022.

C) The State's Social Security Obligations to Protect Human Dignity and Value

The Universal Declaration of Human Rights stipulates that everyone has the right to social security as a member of society. The ICESCR also stipulates that States parties recognize the right to social security for everyone. Social rights or the right to live a humane life means the right to a healthy and cultural life commensurate with human dignity. and the fundamental value of the welfare system is that all human beings have dignity and value as human beings.

The World Health Organization (WHO) defines health as “physical, mental and social well-being,” and explains that social integration through social relationships an individual has with others is also an important aspect of health. However, in Korean society, an increasing number of individuals are severed from social relationships due to various factors, such as the spread of economic problems, aging, dismantling of the traditional concept of family and community due to diversification of values, and the care gap caused by COVID-19. Being at risk of experiencing social isolation is not a problem limited to a particular group.⁵⁸⁾

The role of the state to fill the vacuum is required more according to the changed social environment. The government has been striving to secure the public's social safety net in order to fulfill its social security obligations pursuant to the Constitution and international human rights standards, such as establishing the ‘Framework Act on Social Security’ and the ‘National Basic Livelihood Security Act,’ and operating welfare service delivery system, etc. However, the tragic incidents due to hardships in livelihood continues in 2022. As the minimum standard of living must be immediately guaranteed to those who are facing difficulties in their lives, the fulfillment of the state's duty to protect them is urgently required, and it is necessary to thoroughly review whether various social security systems are operating effectively.

To this end, it is necessary to understand the situation of the poor in more diverse ways. Factors that cannot be confirmed with personal information, such as the stigma and humiliation that arises in the process of applying for and receiving welfare, and the trauma resulting from such experiences, are also important factors to consider when designing a

58) Park, Chang-won, Kim, No-eul, Yu, Bu-won, Yoon, Min-ji, Social Isolation and Socio-demographic Characteristics of Korean Society, 2020.

system. Although the people's demand for welfare is gradually expanding, it is necessary to increase the level of welfare by examining whether various welfare systems to protect the socially underprivileged are working.

4) Trends in Suicide Rates and Problems with the Suicide Prevention System

A) Trends in Suicide Rate in Korea and the National Suicide Prevention Policy

For 20 years, from 2000 to 2021, a total of 275,027 people died by suicide in Korea. Korea's suicide rate in 2020⁵⁹⁾ is 25.7 (4.4% decrease from the previous year), which is a decrease from 2011 (31.7), when the suicide rate was at its peak. However, the suicide rate in 2021 increased slightly to 26.0, and compared to the age-standardized suicide rate among member countries of the OECD,⁶⁰⁾ it is still the highest at 23.6 (OECD average of 11.1).⁶¹⁾ The Korea Foundation for Suicide Prevention published the '2022 Suicide Prevention White Paper,' and added that "it is premature to make positive predictions regarding the achievement of reducing the suicide rate in 2020."⁶²⁾

Korea's suicide rate was one of the lowest among OECD member countries in the '80s and '90s, but it has more than doubled in the 10 years since 2000.⁶³⁾ After 2011, when the suicide rate was the highest, the 'Act on the Prevention of Suicide and the Creation of Culture of Respect for Life' (Suicide Prevention Act for short) was enacted, and the Central Suicide Prevention Center in 2012 and the Suicide Prevention Policy Committee were established in 2019. A national suicide prevention plan has also been established in the form of a five-year plan since 2004. Social measures are also being implemented, such as research to identify high-risk groups for suicide, establishment of public-private networks, dissemination of "suicide reporting guideline" by the media, and suicide prevention campaigns. In 2022, the Suicide Prevention Act was amended to allow police and firefighters to provide the

59) Suicide Rate: Number of deaths from intentional self-harm (suicide) per 100,000 people

60) Suicide rate calculated by standardization with the standard population of OECD member countries by removing differences in age structure between countries or over time for international comparison

61) Ministry of Health and Welfare, Korea Foundation for Suicide Prevention, '2022 Suicide Prevention White Paper,' See Statistics Korea, 2021 Result of Cause of Death Statistics, Sept. 2022.

62) Ministry of Health and Welfare Press Release, Jun. 14, 2022.

63) No, Jin-seop, What happened to Korea, where the suicide rate increased by 100% in 10 years?, Sisa Journal, No. 1773, May 2022.

information of the suicide attempters to suicide prevention centers, etc., without their consent upon identification.

However, the suicide rate is still high, even though it decreased since 2011. As of 2021, the number one cause of death among teens, 20s and 30s is death by suicide,⁶⁴⁾ and The suicide rate increased from the previous year in teenagers (10.1%) and 20s (8.5%). Korea still has high suicide rate among the elderly,⁶⁵⁾ and the suicide rate has increased noticeably in women in their 20s and 30s and in the teenage group since 2019.⁶⁶⁾

Suicide rates vary greatly by region. Looking at the mortality rate⁶⁷⁾ by region by major cause of death, the suicide rate is highest in Gangwon (27.3) and lowest in Sejong (17.8). The suicide rate in the county/provincial region is relatively higher than the suicide rate in the metropolitan areas. Gangwon Goseong-gun (55.9 people) and Jeongseon-gun (55.8 people), Jeonnam Gokseong-gun (54.3 people) and Gangjin-gun (50.0 people) have suicide rates of over 50, and 49 regions have a suicide rate of over 30 among 82 counties (administrative districts).

B) Limitations and Problems of the Current Suicide Prevention Policy

Korea's high suicide rate has received social attention since 2010 for being considerably higher than the average of OECD member countries, and the national and local governments have released various measures to reduce the suicide rate.⁶⁸⁾ However, as of 2022, the suicide rate in Korea is still significantly higher than that of other countries. In recent years, the suicide rate has not fallen to a sufficient level and has not improved, and therefore, the limitations and problems of the suicide prevention policies implemented by the government over the past few years are also being raised.

64) Based on all age groups, suicide ranks fifth as the leading cause of death in 2021, following cancer, heart disease, pneumonia, and cerebrovascular disease.

65) Korea's high suicide rate appears in all age groups, but the suicide rate of the elderly is remarkably high compared to the current suicide rate by age group in OECD member countries. As of 2020, the suicide rate generally increased with age, with those over 80 (62.6) being the highest.

66) The suicide rate in Korea is higher for men (35.9) than for women (16.2) (as of 2021). However, the rate of self-harm and self-harm attempts is higher in women than men, and especially among women in their 20s, suicide attempts are the highest among all age groups (as of 2020).

67) Age-standardized mortality rate per 100,000 standard population

68) Ministry of Health and Welfare Press Release, Jan. 23, 2018, City of Seoul Press Release, Apr. 4, 2013, etc.

In a 2021 report,⁶⁹⁾ the National Assembly Futures Institute suggested “the failure to approach suicide as a social problem” as one of the main reasons for the Korea’s suicide prevention policy not being effective. Most of the discussions related to suicide are conducted in a way to identify the cause of suicide, but it is not easy to explain the reasons why a person decides to commit suicide,⁷⁰⁾ and excessive attempts to determine the cause of suicide make it appear as a private issue. In fact, most suicide prevention measures are limited to policies that identify and block individual risk factors for suicide, and as a result, there is a view that the social atmosphere that implicitly blames the bereaved has not improved.⁷¹⁾

Many more people attempt or contemplate suicide than the number shown in statistics. The view that ‘suicide should be approached as a social problem’ focuses on the fact that a person goes through several stages before deciding to commit suicide, and emphasizes that the suicide rate is related to changes in the social environment. For example, the recent increase in adolescent suicide rates may be the result of a combination of social factors, such as increased depression due to excessive competition and unemployment, weakened social support networks, and increased access to suicide-inducing information through SNS. Therefore, in order to improve the suicide rate, social and economic policies, such as the expansion of the social safety net and the improvement of unfair labor markets, must go hand in hand, as well as individual mental and psychological treatment and support, and such a macro approach should also be addressed as a suicide prevention policy.

There are also concerns on the lack of suicide prevention infrastructure and regional imbalance.⁷²⁾ South Korea has prepared a national suicide prevention policy and laws to

69) National Assembly Futures Institute, High suicide rate. What is a problem and what is not a problem? Korea’s suicide rate from the perspective of national unity, Jul. 8, 2021.

70) The motive for suicide is classified into 10 categories by aggregating information from the National Police Agency’s accident data, and most of the time, it is confirmed by asking the bereaved family about the motive. From this method, the three main motives (about 75%) of suicides in 2018 are mental and psychiatric problems, economic hardships, and physical disease problems. However, many researchers say that the unique characteristic of suicide is the fact that ‘the cause of death is unknown, and all suggested causes are hypotheses and conjectures.’

71) According to the Central Psychological Autopsy Center (2021), 71.2% of the bereaved families of suicides said that there was a subject who could not inform the truth of the death due to prejudice and fear of criticism. It is known that 90% experience changes in their daily lives, maintain adverse psychological effects for at least 10 to 15 years, and have a suicide rate 6 to 8 times higher than other groups.

72) Park, Ji-young, 2022, Do social safety nets deal with individual suicide? Minority and inequality, 2022 Human Rights Policy Forum.

serve as the basis but has been passive in preparing manpower and financial resources to enable the system to operate in practice. Korea's budget related to suicide prevention is 1/160 of Japan's as of 2020,⁷³⁾ and there are media reports stating that the problems are appearing in the implementation of basic suicide prevention policies, such as the poor working conditions and lack of staff at the suicide prevention hotline (1393), with the response rate dropping from 64% in 2019 to 42% in 2020.⁷⁴⁾

Rural areas have higher suicide rates than cities,⁷⁵⁾ but local resources and capacities to prevent and address suicide among local residents are lacking. According to the 'National Mental Health Status Report 2019' (National Center for Mental Health, 2019), there are 37 cities, counties, and districts without mental health institutions, and these regions have difficulty securing psychiatrists and mental health specialists. Even if there are specialists, it will be difficult for a small number of experts to identify and support high-risk groups in a wide area. They have to support the transfer of suicide attempters to hospitals located in other regions for outpatient treatment, and problems may arise during the follow-up care and with the regional connection of the suicide attempters after being discharged.

C) Suicide Prevention Policy Evaluation and Need for Efforts

Although the national suicide prevention strategy has been implemented for nearly 20 years since the five-year basic plan for suicide prevention in 2004, the suicide rate in Korea, as of 2022, has not reached the level targeted by the central and local governments. There are already reference-worthy overseas cases, such as Denmark, Japan, Finland, UK, etc., in which the suicide rate was significantly lowered by national policies, suicide prevention laws are being implemented, and various projects are being carried out by the central and local governments, civil society and the media; however, it is necessary to carefully evaluate whether such efforts are sufficiently effective, and if not, what is the reason.

73) Maeil Business News, Japan's suicide prevention budget is 160 times that of Korea... "Must be tripled every year," Jul. 6, 2021.

74) Kukmin Ilbo, "Suicide Prevention Helpline Lack of Counselors, and Early Resignation Continues," Oct. 5, 2022.

75) The reason why the suicide rate is high in rural areas, urban-rural complexes, and regions where small and medium-sized cities are concentrated is due to the high proportion of the elderly and the high suicide rate of the elderly.

In this regard, the cases of international organizations that evaluated the effectiveness of suicide prevention policies and Korea's suicide prevention policies can be referred to. WHO stressed the importance of a national suicide prevention strategy, and expressed that in order for a country's suicide prevention policy to be effectively implemented, an approach tailored to the culture and social context of each country is needed across all areas of society, including health, education, labor, and welfare,⁷⁶⁾ and the local community must play a pivotal role.⁷⁷⁾ In 2017, the UN Committee on Economic, Social and Cultural Rights expressed regret to the South Korean government for the lack of information about measures being taken to address the social root causes of the high suicide rate. It has recommended that suicide prevention efforts be strengthened, including addressing social root causes such as excessive stress in education and work and discrimination and hatred experienced by certain groups, such as the elderly in poverty and LGBTI people.

It is difficult to say that Korean society is fully equipped with suicide prevention and response organizations considering the imbalance of regional capacities for suicide prevention and the fact that the infrastructure for suicide prevention is not working effectively. County regions, with heavy concentration of agricultural and fishing areas, are the areas that most urgently need suicide prevention and response, but it is difficult to have sufficient capacity without special interest from the community leaders. It is necessary to establish infrastructure, such as extensive budget investment at the local level to provide mental health professionals and stable maintenance, efforts to improve the awareness of local government leaders, and the central government's support system.

While it is important to devise and implement specific suicide prevention policies that can be handled by a single agency or a department, it is also important to look at and respond to suicide problems from the long-term perspective at social and economic level. Korea's suicide rate shows large fluctuations over time both in total and in subgroups, suggesting that a significant number of suicide cases in Korea are closely linked to socio-economic changes. Therefore, it is necessary to have social and economic stability so that such a system can operate effectively, as well as having an institutional and administrative systems. In order to

76) WHO, National suicide prevention strategies: progress, examples, and indicators, 2018

77) WHO, Preventing suicide: A global imperative, 2014

lead such social perspectives and perspectives, the wording of Article 1 (Purpose), Article 2 (Basic Policy), and Article 4 (Responsibilities of State and Local Governments) of the Suicide Prevention Act can be amended⁷⁸⁾ to emphasize socio-economic elements contained in the law.

78) There are criticisms that the measures that can be derived from the current Suicide Prevention Act are limited to personal and psychological approaches, and that cultural and psychological factors are emphasized in the direction of basic policies.

2. Right to Self-Determination

A. Human Rights Status 2022

The right to self-determination, protected by the Constitution, refers to the individual's right to decide for him/herself on important private matters without being interfered by public authorities. Depending on the circumstances, this includes the right to discover one's own identity. While deriving the 'general personality rights' and the 'right to pursue happiness' from Article 10 of the Constitution, the Constitutional Court explained that "the right to decide one's own destiny is premised on the individual's right to personality⁷⁹⁾ and the right to pursue happiness."⁸⁰⁾⁸¹⁾

In fact, all right to liberty includes the ability to decide one's own actions or status without external interference or obstruction. Therefore, the right to self-determination is inherently included in the foundation of all freedoms under the Constitution. The scholars see that the matters of self-determination, which are not included in the protection of individual fundamental rights, are primarily regarded as a matter of the 'right to self-determination,'⁸²⁾ and the matters that can be classified as areas of protection inherent in the right to self-determination include issues related to life planning, life and death, sexual decisions, and the ability to choose and pursue a lifestyle, etc.

The right to self-determination is also a fundamental right under the Constitution and can be limited by law to the minimum extent necessary according to the principle of proportionality pursuant to Article 37(2) of the Constitution, if necessary for national security, maintenance of order, and public welfare. However, the principles of self-responsibility and guardianship are especially problematic in the limitation of the right to self-determination.

79) Here, 'general personality rights' refers to the general protection of the basic conditions related to personal identity and autonomy, which are the prerequisites for the free expression of personality.

80) According to the Constitutional Court, (Decided on Jun. 1, 2000, 98HunMa216; Constitutional Court, Decided on Mar. 29, 2007, 2004HunMa207) the 'right to pursue happiness' protects as a fundamental right the possibility of acting freely in order to obtain what each person considers happiness. In other words, "it refers to the right to freedom in the comprehensive sense that citizens can freely pursue happiness without interference from state power."

81) Constitutional Court, Decided on Sep. 10, 1990, 89HunMa82.

82) Lee, Geum-ok, Analysis of Constitutional Court precedents on the right to self-determination, North East Asia Legal Studies, Vol. 15, No. 2, 2021.

The Constitutional Court has explained that the ‘principle of self-responsibility,’ as a constitutional principle, is the limiting logic of the right to self-determination and at the same time the principle to limit responsibilities.⁸³⁾ In other words, while respecting the decisions and choices of rational and responsible people regarding their own destiny, it is premised that they bear the responsibility themselves. On the other hand, ‘guardianship’ refers to the state intervening as a guardian in the self-determination of an individual’s freedom for the protection or the benefit of the individual. It contains the idea that the state can identify and decide on the best interest of each individual, and that it is justifiable for the state to force such decisions on each individual accordingly.

2022 was a special year for discussions on the right to self-determination. Discussions on women's right to self-determination regarding pregnancy and childbirth have recently been relatively easy to access, but the issue of death with dignity, which has not been discussed much in Korean society, and the issue of vaccination choice in the context of the COVID-19 epidemic were newly highlighted. Of course, ‘initiation of the Assisted Death with Dignity Act and discussion on the introduction of the physician-assisted suicide system,’ ‘safe termination of pregnancy and reproductive rights of women,’ and ‘implementation and abolition of the quarantine pass policy related to COVID-19’ are not the topics that deal only with the individual's right to self-determination. It is necessary to look at the culture of respect for life, the right to life of the fetus or the right to health of women, and the need for quarantine measures to prevent the spread of infectious diseases from the perspective of public interests or other individuals fundamental rights. However, the specific discussions on the above three topics seem to have been specially discussed in terms of the right to self-determination on important matters for an individual.

There may be other topics, such as the issue of vegetarianism in meal services at schools or correctional facilities and the basis for enabling elderly people with dementia to make decisions about their own situation, etc., but in the following, we will look at the above three topics that were specifically discussed in 2022.

83) Constitutional Court, Decided on Jun. 24, 2004, 2002HunGa27.

B. Main Topics

1) Proposal for the Assisted Death with Dignity Act and Discussion on the Physician-Assisted Suicide System

A) First Proposal for the Assisted Death with Dignity Act

In June 2022, the ‘Act on Hospice and Palliative Care and Decisions on Life-Sustaining Treatment for Patients at the End of Life’ (Decision on Life-Sustaining Treatment Act) amendment was proposed in the National Assembly.⁸⁴⁾ The current Decision on Life-Sustaining Treatment Act was enacted in 2016 following the Supreme Court ruling in relation to the so-called “Grandma Kim case”⁸⁵⁾ in which an application for the removal of meaningless life-sustaining treatment devices was filed in 2009 and the recommendation of the National Bioethics Review Committee to enact a death-with-dignity bill. The law stipulates the procedures and provisions that allow a patient in the process of dying⁸⁶⁾ to suspend (termination of life-sustaining treatment or cessation of life-sustaining treatment) treatment, such as CPR, hemodialysis, or wearing a ventilator, which only prolongs the duration of the end-of-life process without any therapeutic effect, at the patient's own will.

The main substance of the proposed amendment in 2022 is to establish procedures and provisions so that even terminally ill patients who are not in the end-of-life process⁸⁷⁾ can end their lives on their own through the assistance of the doctor in charge, if they wish. Newly established the target of the assisted death with dignity and the definition of the assisted death with dignity⁸⁸⁾ (newly established draft Article 2(10), (11)). The persons

84) Co-sponsored by Representative An, Gyu-baek and 12 members, Bill No. 2115986, Jun. 15, 2022. The revised bill was submitted to the Health and Welfare Committee of the National Assembly and is pending as of the end of 2022.

85) Supreme Court, Decided on May 21, 2009, 2009Da17417

86) Under Article 2(1) of the Decision on Life-Sustaining Treatment Act, the term “end-of-life process” means a state of imminent death, in which there is no possibility of revitalization or recovery despite treatment, and symptoms worsen rapidly.

87) According to Article 2(3) of the Decision on Life-Sustaining Treatment Act, the term “terminal patient” means a patient who has been diagnosed as expected to die within a few months from the doctor in charge and one medical specialist in the relevant field in accordance with the procedures and guidelines prescribed by Ordinance of the Ministry of Health and Welfare, because there is no possibility of a fundamental recovery, and the symptoms gradually worsen despite proactive treatment.

88) “Persons subjected to assisted death with dignity” are those who are “terminal patients” under the same Act and whose application has been recognized by the Assisted Death with Dignity Review Committee, and “assisted death with dignity” means that a person subjected to assisted death with dignity ends his or her own life with the help of

wishing for assisted death with dignity should apply to the review committee, and it is stipulated that the assisted death with dignity review committee be established to deliberate and decide (draft Articles 20-2 and 20-3).

The review committee determines the eligibility of the applicant for an assisted death with dignity if the applicant meets certain requirements.⁸⁹⁾ The assisted death with dignity can be implemented when one month has elapsed from the date of the decision, and the applicant expressed his/her intention to the doctor in charge and two specialists to request an assisted death with dignity (draft Article 20-4). The application of the crime of aiding and abetting suicide under the Criminal Act is excluded for doctors in charge of assisting death with dignity (draft Article 20-7), and matters necessary for the method of assisting death with dignity will be prescribed by Presidential Decree.

This proposed amendment is known as the first bill to stipulate “assisted death with dignity.”⁹⁰⁾ Since the amendment was proposed, there have been concerns and problems raised in the religious and medical groups.⁹¹⁾ Religious circles opposed the amendment mainly on the grounds of promoting a trend of contempt for life and the possibility of abuse due to the subjectivity of “unacceptable suffering.” The Korean Society for Hospice and Palliative Care proposed that care support to help patients spend the end of their lives with dignity should take precedence over assisted death legislation. On the other hand, the Ministry of Health and Welfare is of the opinion that sufficient social consensus should be reached prior to introducing assisted death with dignity.⁹²⁾

Public opinion on the amendment appears to be generally positive. According to a regular survey conducted by Korea Research in July 2022,⁹³⁾ the opinion in favor of assisted death legislation was as high as 82%, and in a 2021 survey conducted by Professor Yoon Young-ho's team at Seoul National University Hospital,⁹⁴⁾ which studied the attitudes

the doctor in charge.

89) 1) Considered a terminally ill patient, 2) experiencing unacceptable suffering, and 3) the applicant must wish for assisted death with dignity according to his/her will.

90) KBS, First bill in Korea on “Assisted Death with Dignity Act,” How far has ‘death with dignity’ has come?, Jun. 16, 2022.

91) Christian Today, “Assisted Death with Dignity Act? ‘Right to die’ turning into ‘obligation to die,’ Jul. 22, 2022.

92) Health and Welfare Committee of the National Assembly, Specialist Review Report, Nov. 2022.

93) Korea Research Weekly Report (No. 188-2) Inside public opinion: the right to choose death with dignity. The people’s opinion on the legislation and support of death with dignity, Jul. 12, 2022.

toward euthanasia or physician-assisted suicide,⁹⁵⁾ 76.3% of the survey participants favored euthanasia or physician-assisted suicide.

B) Past and Current Discussions on Euthanasia

In general, euthanasia refers to the act of artificially ending the life of a patient in order to relieve suffering, and death with dignity refers to the act of allowing the dying person to die with dignity. Although the meaning of the terms is somewhat similar, euthanasia or death with dignity can be conceptually distinguished in that the discontinuation of life-sustaining treatment under the Decision on Life-Sustaining Treatment Act limits the subject, method, and timing of life-sustaining treatment. Although the related discussion has been on-going for a long time, there is a view⁹⁶⁾ that the concept of passive euthanasia, active euthanasia, and death with dignity are not clear, and the perception is changing as the medicine develops.

If the suspension of life-sustaining treatment under the current law is related to the conditions and procedures for allowing passive euthanasia, the amendment can be seen as a form of physician-assisted suicide, which is a kind of active euthanasia in concept. The target is limited to “patients suffering from unacceptable suffering as a terminally ill patient,” and a separate committee is established to directly verify the wishes of the patient through the selection procedure and method, and a grace period is provided for the implementation.

Nevertheless, there are opinions that oppose based on the fact that there is a possibility of misjudgment by doctors and family members about the patient's terminal condition, possibility of the patient's family subtly encouraging the patient to make an assisted death decision for reasons such as the financial burden of medical expenses or care problems may occur, and the fact that patients themselves may make wrong judgments about their lives. On the other hand, there are also opinions that emphasize the patient's right to self-determination

94) Yun YH, Sim J-A, Choi Y, Yoon H. Attitudes toward the Legalization of Euthanasia or Physician-Assisted Suicide in South Korea: A Cross-Sectional Survey. *International Journal of Environmental Research and Public Health*. 2022

95) In general, the term 'doctor-assisted suicide' is used worldwide, but this proposed amendment uses the term 'assisted death with dignity.' Therefore, this report uses both terms accordingly.

96) Current Issues Report by the National Assembly Legislative Research Service, Issues and Tasks of Legislation of Death with Dignity, Aug. 2009.

and that the assisted death with dignity is necessary to protect the dignity of severely ill patients who are suffering.⁹⁷⁾

The debate on euthanasia has been discussed for a long time internationally. As related to the physician-assisted suicide, in particular, euthanasia is legally prohibited in most countries abroad, with the exception of Oregon, Switzerland, Belgium, and the Netherlands. However, in February 2022, the German Federal Constitutional Court determined that Article 216 of the German Criminal Code (*Geschäftsmäßige Förderung der Selbsttötung*), which was used in penalizing individuals or civic groups that helped a German for physician-assisted suicide in Switzerland, was unconstitutional by emphasizing the right to self-determination over death.

Regarding self-determination regarding the shortening of life, the Constitutional Court of Korea has held that ‘life-sustaining treatment for a patient nearing death can be said to be a continuous act of bodily harm that has lost the purpose of treatment in a medical sense.’ Specifically, because it can be seen as artificially prolonging death that has already begun naturally, rather than preventing the process of death from starting, the decision to discontinue life-sustaining treatment and its execution shortens the patient's life cannot be evaluated as suicide, and rather, it is guaranteed as the right to self-determination under the Constitution, if it conforms to human dignity and value.⁹⁸⁾

C) Efforts to Protect Human Dignity and Value

Article 10 of the Constitution stipulates that “all citizens shall be assured of human worth and dignity and have the right to pursuit of happiness.” Human worth, dignity and the right to pursuit of happiness are the highest value pursued by the Constitution, and are the ideological premise of all fundamental rights and the purpose of guaranteeing the fundamental rights. The right to life, which is the right to human life, and the right to self-determination, which is the right for individuals to make their own decisions regarding important private matters, are both constitutional rights derived from human worth, dignity,

97) National Assembly Legislative Research Service, Issues and Discussions (No. 1973), Issues and Tasks with the Discussion on ‘Death with Dignity,’ Jul. 21, 2022.

98) Constitutional Court, Nov. 26, 2009, 2008HunBa385.

and the right to pursue happiness.

The ‘right to die’ has been a subject of debate for a long time in terms of bioethics and religion, and at the same time, it is a current issue. With the development of medical technology, humans are facing a life that has not been expected, and Korea has social characteristics, including a longer life expectancy as compared to the average OECD member states, a higher proportion of the elderly, a poverty rate among the elderly, and a suicide rate.

The subject of assisted death with dignity proposed in this proposed amendment is terminally ill patients who have a desire to end their lives on their own, but having difficulty finding a way to do so. Introducing the assisted death with dignity or physician-assisted suicide as a way for them to choose a dignified death based on their right to self-determination, so-called well-dying, will require in-depth discussions. This proposed amendment is significant in that it has led social discussion on the topic of death, which has been taboo in Korean society.

However, we need to think about how we can reach a ‘social consensus’ on whether to allow assisted death with dignity or physician-assisted suicide.⁹⁹⁾ Moreover, if assisted death with dignity or physician-assisted suicide is to be introduced, we must first consider whether it is necessary to review the age standard, the need to prepare clear requirements in making determinations, and whether it is necessary to prepare provisions for withdrawal of the expression of intent to assisted dying with dignity, etc. by looking at foreign legislative precedents.

99) Health and Welfare Committee of the National Assembly, Specialist Review Report (Nov. 2022) discussed the process of discussion at social consultative body composed of legal, medical, religious, related public officials and civil groups, and the recommendation to enact small law by the National Bioethics Review Committee Special Commission (Jul. 2013), etc. until the enactment of the Decision on Life-Sustaining Treatment Act.

2) Safe Abortion and Reproductive Rights for Women

A) Loss of Effectiveness of the Crime of Abortion Under the Criminal Law and Delay in Follow-up Legislation

On June 24, 2022, the US Supreme Court, in the decision of ‘Dobbs v. Jackson Women's Health Organization,’ overturned the decision of Roe v. Wade, which said that women's right to abortion is protected as a fundamental right under the US Constitution. Then, the Director-General of WHO expressed regret over the decision of the Supreme Court, and there were much controversies in many countries. In Korea, this ruling shed light on the legal situation that remained in a vacuum after the loss of the effectiveness of the abortion law in the Criminal Act.

On April 11, 2019, the Constitutional Court made a decision of constitutional nonconformity¹⁰⁰⁾ on Article 269(1) (Self-abortion) and Article 270(1) (Abortion by Doctor) of the Criminal Act, which prohibit and punish women to have an abortion by themselves or through medical personnel. It urged the National Assembly to revise the legislation by December 31, 2020.¹⁰¹⁾ At the time, the Constitutional Court saw that these provisions completely and uniformly banned and punished all abortions without considering various circumstances and excessively limiting the self-determination of pregnant women.

However, the National Assembly did not prepare new regulations to replace these Criminal Act provisions, and as of January 1, 2021, the provisions punishing abortion in the Criminal Act became invalid. However, Article 14 of the ‘Mother and Child Health Act’ and Article 15 of the ‘Enforcement Decree of the Mother and Child Health Act,’ which prescribe five reasons for allowing abortion, such as genetic disorders, contagious diseases, and pregnancy due to rape, remained.¹⁰²⁾ As such, the reasons for artificial abortion are limited in Korea, but there is no provision for punishment even if artificial abortion is performed for other reasons.

100) A decision of constitutional nonconformity refers to a decision of the Constitutional Court that, although the relevant law is unconstitutional, it temporarily remains in existence until the law is revised in order to avoid a vacuum in the law and social confusion due to immediate invalidation.

101) Constitutional Court, Decided on Apr. 11, 2019, 2017HunBa127 En Banc Decision.

102) Article 28 of the ‘Mother and Child Health Act’ is also a provision that excludes the application of the ‘Criminal Act’ if it falls under Article 14 of the same Act, but the abortion crime provision in the Criminal Act was abolished and lost its effect.

After the decision of the Constitutional Court, amendments to the Criminal Act and the Mother and Child Health Act were proposed several times in the 21st National Assembly, but there is a sharp difference of opinion on each issue. Due to the failure to reach a social consensus in a situation where different demands and criticisms from all different groups continue, amendments to abortion and artificial abortion are all pending in the National Assembly as of the end of 2022.

The United Nations Committee on the Elimination of Discrimination against Women recommended the Korean government to decriminalize abortion and provide services to manage complications from unsafe abortion (2011),¹⁰³⁾ and called for a review of policies related to women's sexual and reproductive health (2018),¹⁰⁴⁾ even before the abolition of the crime of abortion in Korea. The NHRCK also mentioned the right to safe termination of pregnancy is threatened due to a legislative vacuum in the 4th National Human Rights Policy Framework Plan (2023-2027) in July 2022, and it included the need for the government to take necessary measures for safe termination of pregnancy.

B) Conflicting Opinions Over Legislation for the Crime of Abortion and Legal and Institutional Vacuum

While the crime of abortion under the Criminal Act has been determined to be unconstitutional and has lost its effect, the issue surrounding the substance of the alternative legislation is how to determine the period and reason for abortion or termination of pregnancy. The government draft¹⁰⁵⁾ submitted by the Ministry of Justice to the National Assembly in November 2020 states that abortion is fully permitted until the 14th week of pregnancy, and allowed between 15th~24th weeks only for social and economic reasons. On the other hand, some of the ruling party lawmakers have proposed a bill to allow abortions up to six weeks of pregnancy and extend abortions for social and economic reasons to 10 to 20 weeks,¹⁰⁶⁾ and some members of the opposition party have proposed an amendment to the

103) Final opinion of the committee on the elimination of discrimination against women on the 7th report of Korea (2011)

104) Final opinion of the committee on the elimination of discrimination against women on the 8th report of Korea (2018)

105) Draft submitted by the government, Bill No. 2105733, Nov. 25, 2020.

106) Co-sponsored by Rep. Cho, Hae-jin and 16 others, Bill No. 2105295, Nov. 13, 2020.

Criminal Code to delete the provision before the abortion law becomes ineffective¹⁰⁷⁾ for complete abolition of the crime of abortion.

The women's community expressed the opinion that abortion should be completely decriminalized and the abortion issue should be approached as an area of reproductive health, public health service, and application of social security system. They are demanding the application of health insurance to medical practices related to abortion, the introduction of a prompt abortion induction system,¹⁰⁸⁾ and creating a legal system to establish a health care system for safe termination of pregnancy.¹⁰⁹⁾ On the other hand, some in the medical community have presented the view that abortion without restrictions should be allowed only up to 10 weeks of pregnancy¹¹⁰⁾ in response to the government legislation allowing abortion up to 14 weeks. They have also asserted to recognize medical personnel's right to refuse surgery and opposing the full application of health insurance.

On the other hand, the provisions of the Criminal Act and the Mother and Child Health Act related to abortion or termination of pregnancy are sometimes expressed as a “legislative or policy vacuum.” Due to the lack of guidelines in practice, various important matters, such as refusal of artificial abortion, operable pregnancy period, whether consent of the other party is required, and policy on the cost of operations, etc., are left to the private hospitals to make autonomously decisions. As a result, there is an opinion that among women, social minorities, such as teenagers and the disabled, are placed in an unequal situation when accessing medical services and information.

As a result, some argue that the government should first take possible measures to protect women who choose to terminate pregnancy,¹¹¹⁾ policies that include the application of health insurance, the introduction of an abortion inducer, and the creation of medical guidelines for safe procedures. However, the government authorities, such as the Ministry of Health and Welfare and the National Health Insurance Service, have expressed their

107) Co-sponsored by Rep. Park, Ju-min and 11 others, Bill No. 2105847, Nov. 27, 2020.

108) Abortion pill is a drug that can stop pregnancy at a relatively low cost without worrying about special side effects.

109) Network to Guarantee the Right to End Pregnancy Safely, Aug. 17, 2022.

110) Joongang Ilbo, Korean Society of Obstetrics and Gynecology refutes the amended Abortion Act – Abortion should be allowed within 10 weeks of pregnancy, Oct. 19, 2020.

111) MBC, Self-search to end pregnancy — still chaos in the dark, Jun. 30, 2022.

opinions that the revision of the law must become first because it is difficult to provide systemized support due to lack of legal basis.

C) Safe Abortion for Women and Guarantee of Sexual and Reproductive Rights

Today, women's termination of pregnancy is considered in terms of 'sexual and reproductive health and rights' (hereinafter referred to as SRHR), along with the 'right to self-determination.' SRHR means that everyone has the right to self-determination regarding their body and sexuality, and the right to be guaranteed of physical, mental and social well-being during all related processes (pregnancy, childbirth, child rearing, contraception, termination of pregnancy, etc.), without violence, coercion, discrimination or stigma.

Article 12 of the UN Covenant on Economic, Social and Cultural Rights recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The UN Committee on Economic, Social and Cultural Rights, in its General Comments No. 14 (2000) and No. 22 (2016), stated that the above provisions impose a direct obligation on States to ensure that everyone enjoys and guarantees the right to sexual and reproductive health. WHO's 'Abortion Safe Guideline' (March 2022) recommends removing unnecessary policy obstacles to ensure complete decriminalization of abortion and access to safe abortion.

Although there are institutional differences from country to country, the trend worldwide is to ensure safe termination of pregnancy as an essential element for guaranteeing women's right to self-determination and SRHR. Since 1994, 58 countries have eased or decriminalized abortion restrictions,¹¹²⁾ and countries around the world, such as Canada, the UK, and France, are taking measures to ease the prescription requirements of abortion pills out of concern about reduced access to abortion amid the COVID-19 epidemic.¹¹³⁾

It is also argued that the right to life of the fetus should be protected against a woman's

112) Center for reproductive rights, "Global Trends: Abortion Rights", 2022. 9. 14.

113) Center for Sexual Rights and Reproductive Justice SHARE, "Changing the international standards for safe abortion: Complete decriminalization and expanded access to abortion pills," Apr. 4, 2022.

abortion. However, it needs to be emphasized that the impact of penal sanctions on termination of pregnancy is limited, and that there are significant social and economic reasons for choosing abortion. Rather, it would be reasonable to consider supporting institutional support so that all women can safely conceive, give birth and raise a fetus within the official health care system as a preferred means of solving this problem.

Therefore, the National Assembly needs to provide a legal basis for the government to establish and implement a health care system for abortion through prompt revision of the law, and the government needs to actively promote possible policies and to establish a health care system and social security system for potential problems that could occur during the entire process of women's reproduction. Various policies can be considered during this process, including application of health insurance and adjustment of medical fees, provision of education for safe abortion and production of medical guidelines, provision of necessary information pre and post abortion process, improvement of access to professional counseling, comprehensive sex education and contraception education, etc.

3) Implementation and Abolition of COVID-19 Related Quarantine Pass Policies

A) Social Distancing for Step-by-Step Recovery, 'Inoculation Proof and Negative Confirmation System'

Since the outbreak of COVID-19 in Korea in 2020, the national and local governments have implemented intensive social distancing, and various restrictions were placed with social activities, such as the imposition of mandatory masks, prohibition on gatherings of more than 5 people, expansion of online learning, and encouragement of work from home, etc. As these quarantine measures continued for two years, people's fatigue and social and economic damage accumulated, and when the vaccination rate reached 70%, the Central Disaster and Safety Countermeasure Headquarters (CDSCHQ) announced the implementation of a phased daily recovery plan that partially eases the quarantine policy, starting from November 2021.¹¹⁴⁾

114) Ministry of Health and Welfare Press Release, Oct. 29, 2021.

The CDSCHQ eased restrictions on business hours of movie theaters and cafes following the reorganization of social distancing, and intended to introduce a quarantine pass or vaccine pass that allows use of the facility for those who have completed the COVID-19 vaccination or those who have been confirmed not to be infected. The CDSCHQ announced that this measure is in the direction of deviating from the existing regulations to suppress the occurrence of confirmed cases, and focusing on increasing the vaccination rate to suppress serious cases and death and blocking the transmission to unvaccinated and vulnerable groups.

The quarantine pass was a measure that required confirmation of COVID-19 vaccination or PCR negative confirmation¹¹⁵⁾ when entering or using multi-use facilities, and fines of 1.5 million won for the first violation and 3 million won for the second violation has been charged to the business owners.¹¹⁶⁾ A PCR negative confirmation procedure was required in order for those who had not been vaccinated to enter and use facilities that required quarantine passes, and since PCR negative confirmation is valid only within two days from the notification date, it could cause considerable difficulties in using facilities that require the confirmation.

Since the end of 2021, as the number of patients with COVID-19 has soared, the applicability of the quarantine pass system has changed, and in December 2021, restaurants, cafes, academies and libraries, etc. required quarantine pass. Moreover, people who cannot be vaccinated for medical reasons, those who have recovered from COVID-19, and children under the age of 12 were not required to have the quarantine pass, but children and adolescents between the ages of 12 and 18 and pregnant women needed quarantine passes.

Some criticized that the introduction of the quarantine pass policy excessively restricts individual freedom of unvaccinated people, etc. In particular, there was great opposition to the quarantine pass targeting teenagers. After November 2021, civic groups, such as small business owners and parent groups held rallies against the quarantine pass, and filed a lawsuit to cancel and suspend the enforcement of the quarantine pass.¹¹⁷⁾

115) In principle, the operator or user of a multi-use facility used an electronic access list (QR check-in) or made a safety call.

116) Korea Disease Control and Prevention Agency Press Release, Dec. 10, 2021.

117) JoongAng Ilbo, Continuous rallies in the city to 'criticize the quarantine policy,' 'Government creates anxiety' Jan. 8, 2022.

There were many constitutional petitions and administrative lawsuits and applications for suspension of execution regarding the implementation of the quarantine pass, and the Seoul Administrative Court released its decision on four applications for the suspension of enforcement around January 2022, amidst the controversy over the quarantine pass.¹¹⁸⁾ It received much attention for the decisions were both to recognize and dismissed to suspend execution depending on the subject and purpose of the request for suspension of execution and the judgment of the court.¹¹⁹⁾¹²⁰⁾

Meanwhile, the results of the public opinion poll on the introduction of the quarantine pass showed a wide range of fluctuations depending on the spread of COVID-19, the subjected industry, social events, and investigation agencies, and in general, opinions in support of the quarantine pass were greater than those for abolition.¹²¹⁾ After much controversy and lawsuits, the government repeatedly delayed the implementation of the quarantine pass for adolescents, but from March, the quarantine pass, including adults, was completely suspended. The CDSCHQ announced that it had considered regional confusion following the court ruling and raising issues from the political world and the media.¹²²⁾

B) Controversy Over the Quarantine Pass

Immediately after the first outbreak of COVID-19 in 2019, countries took measures to block the borders, and it became common to require vaccination confirmation or PCR negative confirmation for cross-border movements. However, the key reasons for these measures to become a problem when they were introduced under the name of a quarantine pass is that the targets were expanded to teenagers, and the targeted facilities included

118) Seoul Administrative Court, Decided on Jan. 4, 2022, 2021Ah13365, Seoul Administrative Court, Decided on Jan. 14, 2022, 2021Ah13539, Seoul Administrative Court, Decided on Jan. 14, 2022, 2022Ah10052, Seoul Administrative Court, Decided on Jan. 18, 2022, 2022Ah10088

119) The court suspended the execution of quarantine passes for academies, study rooms and study cafes implemented by the Minister of Health and Welfare, quarantine passes for shops, markets, and department stores implemented by the mayor of Seoul, and quarantine passes for teenagers aged 12 to 18 implemented by the mayor of Seoul. On the other hand, the court rejected the application for suspension of quarantine passes for large stores of 3,000 m² or larger.

120) SBS, Comparing the Court's Decision on Quarantine Pass – Reason for Different Decisions?, Jan. 17, 2022.

121) Korea Research, Inside public opinion, [COVID-19] Public opinion on quarantine pass and vaccination of minors, Jan. 5, 2022.

122) Korea Policy Briefing, No more 'QR Check-in'... All quarantine pass temporarily suspended from March, Feb. 28, 2022.

essential facilities for daily life, such as hospitals, markets, and academies.¹²³⁾ In other words, the quarantine pass has become a subject of controversy for violating basic human rights despite its purpose of safe step-by-step recovery to daily life and prevention of outbreaks and epidemics.

Critics of the quarantine pass argued that even though COVID-19 vaccination should be an individual choice, introducing the quarantine pass is similar to mandating the vaccination.¹²⁴⁾ In particular, some people do not want to be vaccinated due to insufficient reliability on its safety for being developed in a short period of time, and those opinions must be protected. However, since obtaining a PCR testing every other day is unrealistic, a person have no choice but to be vaccinated.

In addition, there are opinions that requiring quarantine passes for adolescent educational facilities, such as academies and reading rooms, is a measure that violates the right to education of young people,¹²⁵⁾ and that it does not fall under any of the exceptions to restrict the fundamental rights, as there is no provision to require quarantine passes under the Infectious Disease Prevention Act.¹²⁶⁾

On the other hand, there was also a great opinion that the quarantine pass policy should be implemented and maintained. As the Omicron variant was spreading worldwide and deaths continue to occur, vaccination has a great advantage in reducing the risk of infection and death; so, a policy to encourage vaccination and prevent the infection of unvaccinated people is necessary.¹²⁷⁾

In the case of public facilities, there is a high risk of infection for unvaccinated people, and some assert that it is not an excessive regulation in that similar measures have been taken in many countries abroad.¹²⁸⁾

123) Baek, Su-won, A study on state's obligation of safety and the appropriateness of limiting fundamental rights under the Constitution – Focusing on the administrative measures under COVID-19 situation, Apr. 2022.

124) Yonhap News, Parents object to adolescent quarantine pass... "Effectively a mandatory vaccination," Dec. 3, 2022.

125) Kyunghyang Shinmun, Quarantine pass controversy, Between quarantine and fundamental rights... Courts and experts order persuasion, Jan. 5, 2022.

126) Um, Ju-hee and Kim, Jan-di, A Constitutional and Ethical Study on Vaccine policy: From Immunity Passport to Quarantine Pass, Apr. 2022.

127) Yonhap News, [Fact Check] Effectiveness of Quarantine Pass when Vaccination Rate is Over 90%?, Jan. 4, 2022.

128) Digital Vaccination Certificate in Australia, Green Pass in Israel, Excelsior Pass in NY, USA, Health Pass in France

C) Policy to Protect the Public Safety and Personal Choice In Disasters

The right to self-determination, protected by Article 10 of the Constitution, refers to the individual's right to decide for him/herself on important private matters without interference from public authorities. The individual's right to personality and the right to pursue happiness presuppose the individual's right to self-determination, and the right to self-determination includes the right to make decisions about one's own body. Therefore, everyone can voluntarily decide whether to receive medical treatment or preventive measures against diseases.¹²⁹⁾

Moreover, international human rights standards, such as the UN Committee on Economic, Social and Cultural Rights Committee General Comment No. 14 (The right to the highest attainable standard of health) and the Emergency Measures and COVID-19 Guidelines announced by the Office of the UNHCHR in April 2020,¹³⁰⁾ stipulate that the restrictions on fundamental rights in a disaster situation should be limited for a legitimate purpose and should not be imposed arbitrarily or in a discriminatory way.

The right to choose the COVID-19 vaccination is within the scope of protection of the right to self-determination, and under related laws, such as the Infectious Disease Prevention Act, the state does not have the authority to force the public to receive the vaccination. On the other hand, COVID-19 vaccination can also be recognized as needed to be socially recommended for the safe daily recovery of the people to escape from the prolonged crisis. Therefore, it was important to make a plan to encourage voluntary vaccination.

It seems that the controversy over the introduction of the quarantine pass between the end of 2021 and early 2022 was largely due to concerns over the safety and side effects of the vaccine. Moreover, these concerns were not unreasonable because vaccines did not have sufficient time for research, development and approval. Nevertheless, the government has taken measures to restrict access to most essential facilities for a wide range of people as a way to indirectly encourage vaccination, and this is not a desirable method in that it was significantly disadvantageous for those who have not been vaccinated. Moreover, it can be

and Vaccine Pass in Korea.

129) Seoul Administrative Court, Decided on Jan. 4, 2022, 2021Ah13365

130) UNOHCHR Emergency Measures and COVID-19 Guidance

regarded as an excessive restriction in that it has the effect of mandating vaccination in practice even though there is no legal authority to do so.

The government needs to gain social sympathy before implementing the policy, and it is necessary to actively clarify concerns about the effectiveness and side effects of vaccination in order to encourage vaccination. Moreover, it was necessary to sufficiently consider other ways to encourage vaccination, other than restricting the basic rights of non-vaccinated people; however, it is regrettable that yet another restriction was implemented as the extension of the social distancing that was enforced for 2 years.

3. Freedom of Expression and Freedom of Assembly and Demonstration

A. Human Rights Status 2022

Article 21(1) of the Constitution stipulates that “all citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.” The above provision explicitly stipulates freedom of speech and the press, as well as freedom of assembly and association. Freedom of speech and the press is a concept that encompasses the freedom to express thoughts and opinions and the freedom to disseminate them, also called freedom of expression, and if the freedom of expression is seen as a freedom of communication in the form of individual freedom, the freedom of assembly and demonstration can be seen as freedom of communication in a collective form.

Freedom of expression and freedom of assembly and demonstration are one of the most important fundamental rights of citizens in today's democratic country. These basic human rights are fundamental and core rights that are universally stipulated in international human rights standards. They emerged after the American Revolution and the French Revolution and are specified in the Universal Declaration of Human Rights and the Covenant on Civil Rights.

However, freedom of expression and freedom of assembly and demonstration have recently been challenged in many ways. Maria Lessa, a 2021 Nobel Peace Prize winner and a journalist, in her visit to Korea in 2022, expressed her view that democracy could regress due to the harmful effects of social media, the spread of fake news using politicians' hatred, and attempts to manipulate public opinion. Since the outbreak of COVID-19 in 2020, assemblies and demonstrations have been significantly restricted for nearly two years in accordance with quarantine guidelines.

The NHRCK's 2021 Report on Human Rights Situation in the Republic of Korea reviewed the discussions on the repeal of Article 7 of the 'National Security Act' regarding freedom of expression and freedom of assembly and demonstration, controversy over fake news and amendments to the Press Arbitration Act, controversy over the decriminalization

of the crime of insult, and restrictions on assemblies for quarantine reasons, etc. Starting in 2022, the Constitutional Court is examining the constitutionality of Article 7 of the National Security Law,¹³¹⁾ and as the COVID-19 epidemic situation has changed, the restrictions on gatherings for this reason has been lifted. As assemblies and demonstrations resumed, issues of noise and hate speech were raised, and the National Assembly's amendment to the law in response was criticized for excessively restricting the freedom of assembly and demonstration.

However, the proposed amendment to the Press Arbitration Act is pending in the National Assembly, but various controversies surrounding “fake news” appear to have emerged. In Sep. 2022, The questions of ‘fake news’ have been raised on several occasion, such as the case of MBC's report on the president's improper remarks in Sep. 2022, the case of opposition lawmakers and journalists criticizing the president and other members of the ruling party, and there were often cases in which the presidential secretary's office and high-ranking officials responded to the other party through filing of lawsuits, etc.

Regarding this, there is also a view that freedom of expression, assembly and demonstration in Korea are repeating progress and regression, and it is difficult to evaluate the above cases in terms of freedom of expression and freedom of assembly and demonstration. Reporters Without Borders (RWB), an international non-governmental organization, has been releasing an annual Press Freedom Index since 2002, and in 2022, Korea ranked 43rd out of 180 countries, which is one step down from the previous year. Also, in the free speech map, Korea received yellow,¹³²⁾ indicating good.

Below, we will look at ‘the controversy related to reports on the satirical works of the Bucheon International Comics Festival and overseas travel,’ ‘decision on unconstitutionality of Article 103(3) of the “Public Official Election Act” and the freedom of expression,’ and ‘the status of no assembly zone and the amendment to the “Assembly and Demonstration Act”,’ among the freedom of expression and freedom of assembly and demonstration cases in 2022.

131) The NHRCK submitted an opinion to the Constitutional Court that Article 7(1), (3) and (5) of the National Security Act violated the Constitution with the decision on Aug. 31, 2022.

132) RSF Webpage; Maeil Business News Press Release, “Korea Ranked 43rd in the World Press Freedom Index,” May 3, 2022.

B. Main Topics

1) Controversy Related to Reports on the Satirical Works of the Bucheon International Comics Festival and Overseas Travel

A) The Government Response to the Artwork Satirizing the President and the Press Report of the President's Improper Remarks

Works satirizing the president were exhibited at the 25th Bucheon International Comics Festival, which was held from Sep. 30 to Oct. 3. The cartoon work titled 'Yoon Suk-yeol Train' is a picture of a train with the face of the current president running in the center, a woman presumed to be the first lady riding in the cockpit, and prosecutors with swords riding in the train cabin. People in front of the train are running away to avoid getting hit by the train. This work was submitted by a high school student and won the gold prize in the cartoon category of the 23rd National Student Comics Contest held in July and August.

The Ministry of Culture, Sports and Tourism announced on Oct. 4 that the Korea Manhwa Contents Agency, which hosted the contest, violated the approval of the Ministry of Culture, Sports and Tourism, and would hold the organization strictly accountable.¹³³⁾ In the plan submitted by the Korea Manhwa Contents Agency when requesting approval for the use of the Ministry of Culture, Sports and Tourism as a sponsored, 'works with political intentions or defamation of others' were set as disqualifications, and the Ministry of Culture, Sports and Tourism approved on the condition that it could cancel the approval if it violated the approval or caused social controversy; however, the Korea Manhwa Contents Agency did not include these disqualifications in the guidelines nor notify the judges while holding the contest.

However, the culture and art groups protested against the Ministry of Culture, Sports and Tourism's action, saying it violated the freedom of expression. It is said that the Ministry of Culture, Sports and Tourism's response is restricting the freedom of expression of satires made on the power. Relevant groups urged the Ministry of Culture, Sports and Tourism to withdraw the administrative measures announced by stating that it is natural to deal with

133) Ministry of Culture, Sports and Tourism Press Release, Oct. 4, 2022.

political topics as the definition of cartoon is “comic that satirically expresses political contents.”¹³⁴⁾ However, some assert that this is not related to violation of freedom of expression, as it is not holding the students and judges liable, and is a measure against the Korea Manhwa Contents Agency for breaching the standards set by itself.¹³⁵⁾ Meanwhile, opposition members of the National Assembly's Culture, Sports and Tourism Committee filed a complaint with the National Human Rights Commission on October 6, claiming that the Ministry of Culture, Sports and Tourism's stern warning and investigation violated freedom of expression.¹³⁶⁾

On Nov. 9, 2022, the presidential office did not allow MBC reporters to board the presidential plane during their tour of Southeast Asia. Typically, when the president visits overseas, a group of reporters also accompanies the president on a private plane, and the media pays for the expenses. According to the press reports, the presidential office notified that “boarding a private jet has provided convenience for coverage related to diplomatic and security issues, and considering the recent repeated distorted and biased reports on diplomacy by MBC, we have decided not to do so.”¹³⁷⁾ In response, MBC issued a statement in protest, saying that it is an act that severely restricts the freedom of the press. Meanwhile, on Nov. 18, after the president's Q&A on his way to work, an altercation broke out between the MBC reporter and the presidential secretary, and on Nov. 21, the presidential office announced that it would stop answering questions on the way to work. The presidential office is considering canceling the reporter's registration as a reporter, suspending access to the President's press room, and requesting replacement with another reporter from MBC.¹³⁸⁾

On Sep. 22, after attending the Global Fund's Seventh Replenishment Conference in New York, MBC sent out the president's remarks, “It'd be humiliating for Biden if those XX's in the legislature don't pass it,” with subtitles. The presidential office refuted that during the

134) Kyunghyang Shinmun, “Cartoonist groups releasing statements over “Yoon Suk-yeol Train” controversy,” Oct. 7, 2022.

135) Seoul Daily, “Heated discussion during the National Assembly inspection over Yoon Suk-yeol Train... Ministry of Culture, Sports and Tourism arguing breach of standards vs. opposition party concerned over blacklisting,” Oct. 5, 2022.

136) The case is still under investigation as of the end of 2022, at the time of preparing this report.

137) Yonhap News, “The president states that ‘important national interest is at stake during the overseas visit,’ on excluding MBC reporters on the plane,” Nov. 10, 2022.

138) YTN, The presidential office considering penalizing MBC ... The correspondents decide not to express opinions, Nov. 15, 2022.

president's remarks, 'legislature' did not refer to the US Congress, but to the National Assembly in Korea, especially the opposition party, and that 'Biden' was 'if it blows,' but most domestic media, in addition to MBC, reported that the president's remarks were referring to Biden. On Sep. 29, the ruling party filed a lawsuit against four people, including the president of MBC, regarding the above MBC report, and the Ministry of Foreign Affairs requested a correction report from the Press Arbitration Commission against MBC in November, but mediation was not established due to differences of opinion between the two sides.

B) Example of Controversy On Oppression of Freedom of Expression

After two incidents in the second half of 2022 sparked a controversy over freedom of expression, similar cases were re-examined. It is difficult to see that the cause or the development is the same as the case in 2022, but it is worth referring to in that there was a controversy over the government's violation of freedom of expression. The most frequently cited examples are as following.

First is the blacklisting of culture and arts groups by the Ministry of Culture, Sports and Tourism. At that time, the government made a list of cultural artists critical of the government and systematically excluded from government support, and conducted private investigations and inspections. 21,362 people were listed over 9 years, and 9,273 cases (8,931 individuals, 342 groups) were found to have suffered actual damage.¹³⁹⁾ In the constitutional complaint filed by some victims claiming violation of freedom of expression, the Constitutional Court held that the government's act violated the right to self-determination of personal information, freedom of expression, and equality.¹⁴⁰⁾

Next is the accusation of contempt against the president. In Jul. 2019, a representative of a civic group distributed leaflets slandering the president near the fountain at the Capitol, and it became controversial when he was investigated by the police for insult and the case was forwarded to the prosecutor's office in Apr. 2021. The offense of insult is a crime that cannot

139) Yonhap News, Ending the two-year journey in truth-finding for "Art World Blacklist" case, Dec. 31, 2018.

140) Constitutional Court, Decided on Dec. 23, 2020, 2017HunMa416.

be investigated without a complaint filed by the party concerned, and therefore, the president or his representative must have filed a complaint. Criticism arose as a result, but the case was put to rest when the president's spokesperson stated that the president had ordered the withdrawal. At that time, the Blue House explained that it accepted the assertion that the president, who runs the country under the mandate of the people, should be able to endure insulting expressions.

The incident in which a CNN reporter who had a war of words with President Donald Trump on Nov. 7, 2018 at the White House was banned from the White House is also mentioned.¹⁴¹⁾ At that time, the White House collected the reporter's entrance pass for reasons, such as rudeness, but the American media criticized that the reporter's coverage permit should not be used as a weapon.¹⁴²⁾ CNN immediately filed a preliminary injunction against the White House's action to retrieve reporters' passes, and the federal district court in DC ordered the return of the pass during the lawsuit, by pointing out that the White House cannot restrict freedom of speech without proper legal procedures, such as prior notice, opportunity to raise objections, and a written notice of decision. The case eventually ended when the White House returned the pass to the reporter and CNN withdrew the lawsuit.

C) Freedom of Expression as the Basis of a Democratic Society

The Constitutional Court has stated that the exercise of public power that restricts freedom of political expression in cases such as the blacklist in the culture and arts world is contrary to the fundamental principle of the Constitution, the principle of popular sovereignty and the basic order of free democracy by unilaterally excluding opposing views or criticisms of the government from state support just for having critical views, rather than responding with reasonable publicity and persuasion.

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 freedom of expression collectively with freedom of speech, press, assembly, and association. Article 19 of the UN ICCPR also stipulates that “everyone shall have the right to freedom of expression

141) Yonhap News, Free press need not be an angel, Nov. 20, 2022.

142) KBS, Backfire on the White House for Banning CNN, Nov. 15, 2018.

and the right to hold opinions without interference,” and therefore, freedom of expression is a fundamental right universally guaranteed in the international community.

Freedom of expression is indispensable for individuals to maintain their dignity and value as human beings, pursue happiness, and realize popular sovereignty. It can be said to be a basic element for the expression of individual personality and at the same time constitutes the basic order of liberal democracy. In particular, the act of supporting or criticizing a specific political power or expressing a critical opinion against the government is the core guarantee area in a democratic society. The two incidents that took place in the second half of 2022 are still being debated until the end of Dec., but as they are controversy related to the fundamental order of Korean society, it is necessary to keep an eye on the trend until the controversy has ended.

2) Unconstitutionality of Article 103(3) of the Public Official Election Act and Freedom of Expression of Voters

A) The Constitutional Court’s Decision of Unconstitutionality of Article 103(3) of the Public Official Election Act

The Constitutional Court held a total of 58 laws to be unconstitutional and unconstitutional in 2022. There are 22 laws related to the Public Official Election Act among them.¹⁴³⁾ The provisions of the law that were determined to be unconstitutional were mainly those that restricted the posting of advertisements, installation of facilities, and assemblies and gatherings in order to influence elections.

The “anti-campaign” was one of the items that were regulated according to the statutory provisions that the Constitutional Court decided to be unconstitutional or constitutional nonconformity. The anti-campaign refers to an action by a third party, other than the candidate running for election, for the sole purpose of defeating a specific candidate without the purpose of winning the election. The Supreme Court has seen that anti-campaigns can be semantically distinguished from election campaigns, but in terms of behavior and effect,

143) See Case Statistics from the Webpage of the Constitutional Court

they are the same as election campaigns for the election of other candidates; therefore, they are subjected to regulation under the Public Official Election Act.¹⁴⁴⁾ In other words, if a person who is not registered as an election worker campaigns to defeat a specific candidate through methods, such as gathering signatures, distributing handouts, marches, etc., rather than simply expressing opinions, such person may be subjected to criminal punishment for violating the Election Act.

There was criticism that these regulations under the Public Official Election Act excessively restricted the political freedom of voters during the election period and in fact created election offenders.¹⁴⁵⁾ The National Election Commission also submitted opinions on legislative amendments to the National Assembly in Apr. 2021 that included abolishing Articles 90 and 93(1) of the Public Official Election Act.¹⁴⁶⁾

The Constitutional Court decided that these provisions of the Public Official Election Act excessively restrict the freedom of expression of voters. The provision prohibiting the holding of assemblies and gatherings to influence the election during the election period (Article 103(3) of the Public Official Election Act) is considered to be in violation of the Constitution by completely banning and punishing matters that need not be regulated,¹⁴⁷⁾ and the provision prohibiting the installation of facilities and the distribution of printed materials to influence the election from 180 days prior to the election day (Articles 90(1)(1) and 93(1)) also excessively restricts the freedom of expression of voters beyond the necessary scope.¹⁴⁸⁾

According to the decision of the Constitutional Court, the part of Article 103(3) of the Public Official Election Act that “no one shall hold other assemblies or gatherings to influence the election during the election period” became invalid,¹⁴⁹⁾ and the National Assembly has until Jul. 31, 2023 to legislate improvements on the provision that prohibits

144) Supreme Court, Decided on Apr. 27, 2004, 2002Do315

145) Minbyun, 2022 Korea Human Rights Report, Dec. 2022.

146) National Election Commission Press Release, Apr. 2021.

147) Constitutional Court, Decided on Jul. 21, 2022, 2018HunBa164

148) Constitutional Court, Decided on Jul. 21, 2022, 2017HunBa100 / 2021HunBa19 / 2021HunGa5 / 2021HunGa6 / 2021HunBa207 / 2021HunBa232 / 2021HunBa298

149) The part that prohibits “hometown associations, family associations, alumni associations, unity meetings, or picnics to influence the election during the election period,” which is not subjected to the judgment, remains valid.

installation of facilities and distribution of printed materials (Articles 90(1)(1) and 93(1)).¹⁵⁰⁾ Moreover, if you have been prosecuted for holding a press conference during the 21st National Assembly Election in 2021, 20th Presidential Election in 2022 and 8th Simultaneous National Local Election, the verdict of not guilty was declared because the clause that served as the basis for the prosecution became invalidated pursuant to the aforementioned unconstitutional decision, and the people who have already been convicted are said to have requested a retrial.¹⁵¹⁾

B) Criticism of Restricting the Voters' Freedom of Expression Under the Public Official Election Act

Opinion expression is, in principle, included in the protected area of freedom of expression, no matter what the object is, but the degree of constitutional protection differs for each subject and area. Political expression, particularly in the electoral process, has a high place in the protection of freedom of expression. Elections are an indispensable premise of representative democracy because in order to fairly elect the representatives, the people must have easy access to relevant information.¹⁵²⁾

However, even the expressions during elections or political processes are not absolutely free, and some regulations are allowed under certain conditions to properly reflect the true will of the people and ensure fairness in elections. The Public Official Election Act was enacted to prevent irregularities during elections for fair and democratic process, and the freedom of expression is partially restricted in the election process to achieve this goal.

In the past, as related to various regulatory provisions under the Public Official Election Act, there was also a view that securing the fairness of elections by preventing illegal election campaigns was more required than in other countries considering the experience of fraudulent elections in Korean society.¹⁵³⁾ Article 90(1)(1) of the Public Official Election

150) If the National Assembly does not amend the above article, the above article will be invalidated.

151) Incheon Today, Provision on prohibiting the "anti-campaign" held unconstitutional...2016 Election Net appeals, Nov. 9, 2022.

152) Park, Yong-sang, Campaigns and Freedom of Expression, Treatise on the Constitution, Book 11, Constitutional Court, 2000.

153) Constitutional Court, Decided on Dec. 20, 2001, 2000HunBa96/2001HunBa57

Act, which was ruled unconstitutional by the Constitutional Court, has remained in election-related laws since the enactment of the ‘Public Assembly Member Election Act’ in 1958.¹⁵⁴⁾ There have been opinions that the anti-campaign is a threat to the tranquility and fairness of the election due to reckless black propaganda.

However, there is a lot of consensus, recently, on the point that the current Public Official Election Act does not reflect the changes in the election environment, excessively restricts political expression, and lacks institutional mechanisms for guaranteeing the right to vote.¹⁵⁵⁾ The expression of opinions by civil groups and the general public regarding the suitability of a specific candidate during the election period has become commonplace online, and concerns about elections influenced by financial power, government authority, and violence are decreasing.

This view argues that the Public Official Election Act restricts many of the acts starting with ‘anyone’ to target the entire public, and prohibits and punishes too many acts. In 2022, the Constitutional Court discussed the unconstitutionality of many provisions of the Public Official Election Act. However, the overall purpose of unconstitutionality penetrating all decisions reiterate that the regulations under the Public Official Election Act excessively restrict voters' freedom of expression, and therefore, in-depth discussions and revisions of the Public Official Election Act are necessary.¹⁵⁶⁾

C) Need to Amend the Public Official Election Act to Guarantee Freedom of Expression

In his 2011 report on visit to Korea,¹⁵⁷⁾ the UN Special Rapporteur pointed out that the provision in Korea's Public Official Election Act that prohibits the installation of facilities and the distribution of printed materials broadly restricts political discussions for an

154) Constitutional Court, Decided on Apr. 24, 2014, 2011HunBa17/2012HunBa391

155) National Assembly Legislative Research Service, Issues and Arguments, The National Election Commission's opinion the amendments to the Public Official Election Act and tasks for improvements, 2016.

156) Kim, Seon-hyu, Discussion, materials and discussion papers on the direction of revision after the Public Official Election Act was ruled unconstitutional, 2022.

157) Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 2011(A/HRC/17/27/Add.2).

excessively long period before the election, and has recommended the Korean government to fully guarantee the right to freedom of expression, including the open and free exchange of information and opinions on election and candidate-related issues. Many countries around the world, including the United Kingdom, the United States, Germany, and Japan, also have election-related regulations. However, compared to Korea's Public Official Election Act, the focus is on regulations related to election expenses rather than regulation of election activities, or regulation of election campaigns is limited to regulations targeting candidates and political parties.¹⁵⁸⁾

Of course, freedom of election and freedom of political expression cannot be guaranteed without fairness in elections. The forum for communication can be distorted depending on economic power, access to the media, and social influence if there are no specific restrictions on means of expression during elections. However, since freedom of political expression is a fundamental right essential to the principle of democracy, regulations for securing fairness in elections and maintaining order should be kept to a minimum so as not to overly restrict the freedom of political expression.

From this perspective, various regulations under the current Public Official Election Act prohibit such comprehensive and general actions that it is difficult to know specifically what methods of election campaign are permitted to voters, and therefore, it seems necessary to reexamine in the direction of guaranteeing voters' freedom of political expression. With this decision of the Constitutional Court, the National Assembly has an obligation to amend the Public Official Election Act. It is necessary to consider and discuss what actions of voters who are not candidates fall within the scope of 'election campaign' under the Public Official Election Act and whether it is necessary to regulate it, premised on the revision of the Public Official Election Act, and by considering the opinions of civil groups and experts.

158) Seo, Bok-kyeong, Freedom of Voter Expression and Direction of the Election Act Amendments: Focusing on Comparing the Electoral System of Major Countries, Materials from the Discussion on the Direction of Amendments After the Public Official Election Act was Ruled Unconstitutional, 2022.

3) No Assembly Zone and the Current Status of the Amendment to the “Assembly and Demonstration Act”

A) Controversy Surrounding the Yongsan and Pyeongsan Assemblies and Demonstrations and Proposed Amendment to the “Assembly and Demonstration Act”

The presidential office was moved from the Blue House to a building used as the Ministry of National Defense building in Yongsan-gu in May 2022. Afterwards, the police established a policy to ban all assemblies within 100 meters of the relocated presidential office, and banned all assemblies reported.¹⁵⁹⁾ Issues were raised regarding the disposition of the police on whether the office of the president falls under the no assembly zone under the ‘Assembly and Demonstration Act’¹⁶⁰⁾ because the two spaces, the office of the president and the “presidential residence,” where assemblies are prohibited under the Assembly and Demonstration Act, were located in the same place previously but are separated now. The police interpreted the office of the president to be a no assembly zone under the Assembly and Demonstration Act.

Civil groups criticized the police for issuing a ban that violated the freedom of assembly through arbitrary interpretation, even though the “office of the president” is not specified in the no assembly zone under the Assembly and Demonstration Act, and the organizers of the assembly and demonstration requested the court to suspend the execution of the ban by the police. The court found in several cases that the vicinity of the office of the president in Yongsan did not qualify as the “presidential residence,” a place where gatherings are prohibited under the Assembly and Demonstration Act. Moreover, with the decision to suspend the effect of the police’s notice of assembly, the assembly was allowed near the office of the president, with conditional depending on individual cases.¹⁶¹⁾

On the other hand, in May 2022, when former President Moon Jae-in retired and began

159) Sisa Journal, Police maintaining the policy of no assembly within 100m of the office of the president in Yongsan, May 14, 2022.

160) Article 11(3) of the Assembly and Demonstration Act prohibits assembly or demonstration within 100 meters of the presidential residence.

161) Seoul Administrative Court, Decided on May 20, 2022, 2022Ah11434, Decided on May 11, 2022, 2022Ah11236, etc.

living in Pyeongsan Village, some conservative groups and YouTubers held rallies and demonstrations near Pyeongsan Village, and villagers complained of insomnia and stress caused by noise from loudspeakers, high voices and profanity. The assemblies and demonstrations were generally held within the permitted level, but there were repeated cases of noises, hate expressions, swearing and threats with cutter knives, etc. It drew national attention for police complaints and investigations and protests by conservative groups, and ‘counter rallies,’ etc. The situation ended when the police expanded the scope of the security, and restrained excessive profanity, abusive language, and noise generation, other than the demonstrations held legally.¹⁶²⁾

As of Dec. 2022, there are 24 amendments to the Assembly and Demonstration Act pending in the 21st National Assembly, and 12 were proposed after Apr. 2022. A bill to completely abolish Article 11, which regulates places where gatherings are prohibited, and bills to regulate hate speech, invasion of privacy, and strengthening the noise control standards were proposed, and particularly related to the above two cases, an amendment to include the presidential office or the former president's residence in the no assembly zone under Article 11 of the Assembly and Demonstration Act was proposed.

The 2nd Subcommittee on Legislative Review of the Public Administration and Security Committee of the National Assembly discussed 12 amendments to the Assembly and Demonstration Act introduced to the National Assembly on Nov. 23, 2022, and it was decided to submit the inclusion of the presidential office and former president’s residence to the no assembly zone under Article 11 of the Assembly and Demonstration Act, which is awaiting consideration at the plenary session. The amendment is being promoted through an agreement between the ruling and opposition parties,¹⁶³⁾ and the media and civic groups expressed opposition, claiming that freedom of assembly and demonstration would be restricted by expanding the places where assembly is prohibited through unfair “collaboration” between the ruling and opposition parties.¹⁶⁴⁾ On the other hand, there is an opinion that an amendment to the law is needed to ban assemblies in front of the office of the

162) Hankyoreh, “Peace in Pyongsan Village, after 105 days,” Aug. 22, 2022.

163) It was implemented with the agreement of the ruling party, the People's Power, and the Democratic Party, having the largest number of seats in the National Assembly.

164) Kyunghyang Shinmun, “The Two Fighting Parties Unite Against Prohibition on Assemblies,” Dec. 18, 2022.

president and the former president's residence to resolve legislative deficiencies due to changes in the law after the relocation of the presidential office and to protect the people's right to peace.¹⁶⁵⁾

The Constitutional Court declared on Dec. 22 that the provision concerning the presidential residence in Article 11(3) of the Assembly and Demonstration Act was unconstitutional.¹⁶⁶⁾ This seems to have a similar purpose¹⁶⁷⁾ with the previous decisions in which the provisions on the National Assembly Building, various courts, and Prime Minister's office, which did not have proviso provisions, were each determined to be unconstitutional. Some media expressed an opinion criticizing the amendment to the Assembly and Demonstration Act, which is being promoted by agreement between the ruling and opposition parties, and the addition of the presidential office and former president's residence to the no assembly zone under Article 11 of the Assembly and Demonstration Act based on the above decision of the Constitutional Court.¹⁶⁸⁾

B) Controversy Over Expanding the No Assembly Zone Through Amending Article 11 of the Assembly and Demonstration Act

Freedom of assembly is freedom of communication in a collective form. By exercising this, people with the same opinion gather in one place to express their intentions and participate in forming public opinion. The reason for Article 21(2) of the Constitution fundamentally prohibiting the assembly permit system is to guarantee the freedom of assembly, which is an indispensable fundamental element in a democratic society, as much as possible, along with the freedom of speech and the press.¹⁶⁹⁾

The Assembly and Demonstration Act is a law that specifies the standards for restrictions on assembly and demonstration so that the guarantee of the right to assembly and

165) Korean National Police Agency Press Release, Nov. 17, 2022.

166) Constitutional Court, Decided on Dec. 22, 2022, 2018HunBa48, 2019HunGa1

167) It violated the principle of excessive prohibition by setting the area near the presidential residence as a no assembly zone, even places where prohibition is not necessary and by prohibiting small-scale assemblies that are unlikely to turn into a large scale assembly or demonstrations.

168) Kyunghyang Shinmun, "Welcoming Constitutional Nonconformity Over Prohibition of Assemblies Within 100m of the Presidential Residence," Dec. 22, 2022.

169) Constitutional Court, Decided on Oct. 30, 2003, 2000HunBa67 En Banc Decision.

demonstration and public safety and order can be properly harmonized. However, restricting the fundamental rights by law must be limited to the minimum extent necessary for public welfare. Article 11 of the Assembly and Demonstration Act stipulates that assemblies and demonstrations are prohibited in places within 100 meters of the capitol, the courthouses, the Constitutional Court, and the presidential residence, and questions have been raised consistently from the perspective that the restrictions on fundamental rights should be limited to the minimum necessary.

In 2018, the Constitutional Court declared that Article 11 of the Assembly and Demonstration Act was unconstitutional.¹⁷⁰⁾ The Constitutional Court held that the constitutional functions of the National Assembly is compatible with assemblies near the capitol, and that the protection of the function of the National Assembly should be limited to physical pressure on the National Assembly members and threats to the National Assembly facilities, and prohibiting peaceful gatherings in nearby parks and green areas was seen as excessive. Since then, the Constitutional Court and the courts have maintained the same stance regarding the courthouses, Prime Minister's official residence, and the presidential residence.

In accordance with the Constitutional Court's decision of unconstitutionality, the 20th National Assembly established a no assembly zone to Article 11 of the Assembly and Demonstration Act in May 2020; however, a proviso clause is added to cases where there is no fear of interfering with the activities of the National Assembly, cases where there is no fear of affecting the independence of judges in their duties or the trial of a specific case, cases where there is no fear of escalating to a large-scale assembly or demonstration. However, despite the revision by the National Assembly, many civil groups and experts argue that the police is left to make a judgement as the amended Article 11 of the Assembly and Demonstration Act is ambiguous in providing the requirements for exceptions, and claims that 'prohibited in principle and permitted as an exception' does not conform with the international human rights standards.¹⁷¹⁾

170) Constitutional Court, Decided on May 31, 2018, 2013HunBa322

171) Jeong, Jun-il, Kim, Seon-il, Critical Review of Article 11 of the Amended 'Assembly and Demonstration Act,' 2021.

C) Roles and Responsibilities of the National Assembly to Protect the Fundamental Rights

Article 21 of the UN Covenant on Civil Rights stipulates that “the right to peaceful assembly is recognized” and states that no restrictions, other than those necessary in a democratic society, should be excessive. According to General Comment No. 37 (2020) of the UN Human Rights Committee, restrictions on assemblies must meet the principle of necessity and proportionality beyond simply reasonable or expedient, and priority should be given to the least intrusive measures. The UN Special Rapporteur on freedom of peaceful assembly and association pointed out in his report on the visit to Korea (2016) that the unconditional restrictions on the location of peaceful assemblies, such as Article 11 of the Assembly and Demonstration Act, are essentially disproportionate restrictions.¹⁷²⁾

The Constitutional Court has ruled that since the location is important for the purpose and effect of the assembly, it is prohibited to separate the location from the subject of the protest, unless to protect other legal interests.¹⁷³⁾ Moreover, the purpose of prohibiting the assembly under Article 11 of the Assembly and Demonstration Act is seen as to protect the performance of the constitutional functions of the relevant institution.¹⁷⁴⁾

There was a constant disagreement as to whether prohibition of assemblies and demonstrations within 100m of the capitol, courthouses, the Constitutional Court, diplomatic institutions, and the official residences of high officials, which are designated as no assembly zone under the current Assembly and Demonstration Act, is compatible with the constitutional function of those institutions, and therefore, it is an issue worth thinking about in order to protect the fundamental rights of the people. In the cases of the United States, Japan, and the United Kingdom, assemblies and demonstrations are often allowed within areas, such as the capitol, under certain conditions and methods.¹⁷⁵⁾

172) Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, 2016 (A/HRC/32/36/Add.2).

173) Constitutional Court, Decided on Oct. 30, 2003, 2000HunBa67 En Banc Decision.

174) However, while recognizing the constitutional specificity of the President, the National Assembly, the Supreme Court, and the Constitutional Court and the need to be protected from physical pressure or harm, the Constitutional Court is of the opinion that a legal provision compatible with the freedom of assembly and demonstration is necessary.

175) National Assembly Legislative Research Office, Issues and Arguments, Significance and Tasks on the Constitutional Court's Decision on Prohibiting Assemblies Near the Capitol, Jun. 19, 2018.

On the other hand, it is also necessary to consider the opinion that a legislative response is necessary for damage to nearby residents due to hate speech at assemblies and excessive noise. However, in principle, regulation of substance, not the format, of an assembly is prohibited,¹⁷⁶⁾ and since the level of noise can be assessed differently depending on the measuring method, a careful discussion is needed on how to respond to such problems.

As such, the Assembly and Demonstration Act seems to require consideration and social consensus from various perspectives. However, it is regrettable that the expansion of the no assembly zone is being pursued only through an agreement between the ruling and opposition parties, rather than the National Assembly trying to bring about social consensus on whether restricting assembly near the presidential office is the minimum invasion, whether the former president's residence performs the constitutional function at the same level as other institutions related to the no assembly zone under Article 11 of the Assembly and Demonstration Act, or whether other provisions of the Assembly and Demonstration Act need to be amended to suit the current situation in Korea.

176) UN Human Rights Committee General Comment No. 37 (2020).

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

1. Persons with Disabilities

A. Human Rights Status 2022

The Act on Welfare of Persons with Disabilities Act defines ‘person with a disability’ as ‘a person whose daily life or social activity is substantially hampered by physical or mental disability over a long period of time.’¹⁷⁷⁾ On the other hand, the UN Convention on the Rights of Persons with Disabilities (CRPD) states that ‘persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’ The difference appears because defining ‘disability’ is directly related to each country's subject of the policy or budget, and requires various discussions in terms of social and legal definitions.

However, when the UN declared the UN CRPD in 1975, the UN emphasized that persons with disabilities, like persons without disabilities, can enjoy human dignity, value and freedom, and that they have the right to receive the treatment commensurate with them. Since then, the UN has continued the discussions on the human rights of persons with disabilities, including the basic ideologies, definitions and guidelines for establishing related policies, and the UN CRPD was adopted unanimously by 192 countries at the United Nations General Assembly on Dec. 13, 2006. The UN CRPD has become a standard for policies for the persons with disabilities worldwide, and was ratified in Korea in Dec. 2008.

At that time, Korea reserved the Optional Protocol, an annexed document of the UN CRPD, but on Dec. 8, 2022, the Optional Protocol to the UN CRPD was ratified by the

¹⁷⁷⁾ Article 2(1) & (2) of the ‘Act on Welfare of Persons with Disabilities’

National Assembly. Korea became the 102nd party to the Optional Protocol to the UN CRPD. The Optional Protocol to the UN CRPD includes 18 articles, including the individual notification system that enables persons with disabilities to seek remedies for their rights through the UN Committee on the Rights of Persons with Disabilities and the right to investigate by the Committee on the Rights of Persons with Disabilities when the rights of a person with disabilities have been violated under the CRPD, but cannot be remedied by domestic laws or systems. The ratification of the Optional Protocol to the UN CRPD is expected to serve as a basis for promoting the human rights of persons with disabilities.¹⁷⁸⁾

In Sep. 2022, the UN Committee on the Rights of Persons with Disabilities 79 recommendations for each article of the UN CRPD to the Korean government.¹⁷⁹⁾ The recommendations include enacting a comprehensive anti-discrimination law and adopting a strategy to eliminate such discrimination, reviewing the ‘Roadmap to Support Deinstitutionalization of Persons with Disabilities’ in consultation with the disabled groups, and guaranteeing sufficient budget according to the agreement. etc.

The Constitution stipulates that “all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social, or cultural life on account of sex, religion, or social status,” and discrimination on the grounds of disability is prohibited through the Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights. However, even in 2022, there were still unresolved limitations regarding the human rights of the disabled. Below, we will look at the major status, the significance and review future tasks among the cases related to the human rights of persons with disabilities in 2022.

178) Statement by the Chairperson of the National Human Rights Commission of the Republic of Korea on Welcoming the Ratification of the Protocol to the UN Convention on the Rights of Persons with Disabilities, Dec. 18, 2022.

179) The CRPD requires that each country prepare a “national report” on the human rights of persons with disabilities once every four years and submit to the UN Committee on the Rights of Persons with Disabilities. The final opinion of the UN Committee on the Rights of Persons with Disabilities is a recommendation in nature to ensure that the UN CRPD is well implemented.

B. Main Topics

1) Protests to Secure Budget for the Rights of the Persons with Disabilities and Deinstitutionalization

A) Subway Protests and the Budget For the Rights of Persons with Disabilities in 2022

Demonstrations on the subway in Seoul demanding an increase in the budget and enactment of laws to guarantee the rights of the disabled have continued for more than a year since Dec. 2021, and many people became aware of the budget for the disability rights and policies. As the representative of the human rights group for the disabled (Solidarity Against Disability Discrimination, SADD) and the ruling party held an open discussion, the meaning of “deinstitutionalization,” which was unfamiliar to the public at the time, and related issues became known.

The key demands of human rights organizations for the disabled are guaranteeing the right to move for the disabled, support for deinstitutionalization of the disabled, guaranteeing education for the disabled, and reflection in the budget. In particular, the central and local governments are requesting an increase of the budget for the disabled. They argue that people with disabilities are being discriminated on right to move, and as a citizen, they are protesting against the inequality by peacefully holding a subway ride demonstration.

However, As protests on subway rides during commuting hours continued for more than a year, the media focused on the legitimacy of the protest method¹⁸⁰⁾ and various inconveniences that citizens experienced on their way to work, and there was a controversy related to this, and this issue has become a case of special interest in 2022, with some opinions being raised about the need to shed light on the reason why they had no choice but to choose the method of subway protests. As the second half progressed, the confrontation

180) The Korea Association of the Persons with Physically Disabilities and the Korea Differently Abled Federation each released statements in Mar. 2022. Both organizations urged in common to guarantee the right to move for the disabled, but the Korea Association of the Persons with Physically Disabilities expressed their view that demonstrations that the public can understand are necessary because the subway protests damage the image of the disabled in an overly radical way, but the Korea Differently Abled Federation expressed their view to the effect that demonstrations inherently cause inconvenience to the majority and that it is unfair to point out only the method of demonstrations.

between the Seoul Metropolitan Government and human rights groups for the disabled intensified, including the Seoul Transportation Corporation filing a lawsuit seeking compensation for damages in response to the subway protests, and in early 2023, it passed through, without stopping at subway stations where protests were expected without stopping.

On the other hand, only 0.8% of the budget requested by the disabled human rights group was reflected in the 2023 budget in the end, and the budget allocated to operating costs for the special transportation for the disabled (taxis for the disabled), additional projects, activity support services, and de-institutionalization projects were not increased from the original budget.¹⁸¹⁾

In the end, the human rights group for the disabled announced a policy to resume the subway protests in Jan. 2023. In response, the mayor of Seoul announced on Dec. 26 that he would respond with a “zero-tolerance policy.” As of the end of 2022, it is known that several civil and criminal lawsuits and investigations are underway, and this problem is expected to continue in 2023 as the Seoul Metropolitan Government did not accept the Seoul Central District Court's compulsory mediation plan.¹⁸²⁾

B) Differing Opinions Surrounding the Budget for the Rights of Persons with Disabilities and Deinstitutionalization

The budget for the rights of persons with disabilities is a budget used for the projects to guarantee the rights of persons with disabilities, such as the right to move, right to education, right to work, and deinstitutionalization. The human rights group for the persons with disability that led the subway protests demanded an increase in the budget for the rights of the disabled in 2023, specifically, budget for expanding subsidies for the introduction of low-floor buses, the introduction of special transportation means (taxis for the disabled), support for the disabled, and self-sufficiency support services for the disabled, etc.

181) Kyunghyang Shinmun, Why is SADD protesting? Only a small increase in the budget for the rights of persons with disabilities, Jan. 3, 2023.

182) On Dec. 19, the Seoul Central District Court recommended SADD to pay 5 million won to the Seoul Transportation Corporation for every 5-minute of train delay, and advised the Seoul Transportation Corporation to install elevators in 19 stations where elevator circulation has not been secured by 2024.

The clear difference of opinion in Korean society appeared in the issue of deinstitutionalization. The discussion on deinstitutionalization in Korea was sparked in 2008 with embezzlement and corruption at Seogam Bethesda Nursing Home, a facility for the disabled, and it began in earnest when Korea joined the UN CRPD in Dec. of that year.¹⁸³⁾ As the discussion progresses, the concept of deinstitutionalization has changed from ‘disabled people in facilities to leave the facility and live independently in general housing in the community’ to ‘reducing and abolishing existing residential facilities for the disabled and improving infrastructure for the disabled to settle in the community.’¹⁸⁴⁾

In modern society, it was common to classify the disabled as an abnormal group and to isolate them for reasons of protection, medical care, and social order, and Korea was no exception. In fact, according to a survey conducted in 2010 on people with disabilities residing in facilities in Korea,¹⁸⁵⁾ only about 10% of them voluntarily decided to enter the facility, showing that many people with disabilities were admitted to facilities regardless of their will. Moreover, the percentage of persons with disabilities residing in institutions who responded that they wished to deinstitutionalization ranged from a minimum of 36% to a high of 79%. Reasons for wanting to deinstitutionalization included ‘a desire for independent living, a desire for social relationships, and problems with the institutional environment,’ and many of the disabled living in facilities have the ability to live in the community, as long as they can afford the living expenses, a place to live, and a job.

In accordance with these requests for independent living in the community of persons with disabilities and their obligations as a party to the UN Convention on the Rights of Persons with Disabilities, the government announced the ‘Roadmap to Support Deinstitutionalization of Persons with Disabilities’ and is implementing related policies through the 2nd Disability Policy Coordination Committee in Aug. 2021.

However, some argue against deinstitutionalization, mainly for the people with developmental disabilities.¹⁸⁶⁾ For example, people with developmental disabilities do not

183) Article 19 of the Convention stipulates the ‘obligation to ensure independent living for persons with disabilities.’

184) National Assembly Library, Deinstitutionalization of Persons with Disabilities at a Glance, Sep. 2022.

185) Oh, Wook-chan, Study on the Way the Deinstitutionalized Persons with Disabilities Settle Down in Local Communities, Korea Institute for Health and Social Affairs, Dec. 2019

186) Lee, Ha, Cho, Seong-hae, ‘Problems with Deinstitutionalization of Persons with Developmental Disabilities –

recognize what deinstitutionalization is, so there are cases in which they cannot express their opinions even though they do not want deinstitutionalization, and if deinstitutionalization is forced on these people under the pretext of guaranteeing them the right to choose a place to live, it is rather a violation of their right to choose and therefore constitutes a violation of human rights. Moreover, some also argue that people with severe disabilities are unable to live independently and may face even greater risk from deinstitutionalization. Even if there are acquaintances who help the disabled, such as parents, it is difficult to completely prevent unexpected accidents because it is impossible to be around 24 hours a day, unlike a specialist in a facility for the disabled.

C) Need for a Continuous Communications and Efforts

Article 19 of the UN Convention on the Rights of Persons with Disabilities (Living independently and being included in the community) stipulates that all persons with disabilities have the right to live in the community on an equal basis with others, without isolation or segregation from the community. Moreover, States have the obligations to ensure that persons with disabilities have effective and appropriate access to in-home and residential, and other community support services, including appropriate measures to facilitate full enjoyment and full inclusion and participation in the community.

In Aug. 2022, the UN Committee on the Rights of Persons with Disabilities expressed concerns about the Korean government's policy on persons with disabilities in its second and third concluding observations on the Korean government, and made a total of 79 recommendations. In particular, the recommendations for the 'deinstitutionalization' included "strengthening the implementation of deinstitutionalization strategies for adults and children with disabilities in residential facilities and improving the availability of community-based services" and "consult with disabled groups to review the 'Roadmap to Support Deinstitutionalization of Persons with Disabilities' and ensure sufficient budget and other measures pursuant to the agreement."

Focusing on the Ways to Review and Improve the Proposed 'Act on Support for Deinstitutionalization of the Persons with Disabilities', 『Treatise on Labor Law』, The Korea Society of Comparative Labor Law, Aug. 2022.

It is clear that deinstitutionalization is necessary to ensure the human rights of persons with disabilities because it is necessary to guarantee the right to choose a place of residence for persons with disabilities who do not wish to live in support facilities and have the ability to live alone. Amidst social confrontation, it is necessary to reach a consensus through communication and efforts and to promote deinstitutionalization policies.

2) Issues with the System that Protects the Rights of the People with Developmental Disabilities

A) The Problem of Caring for People with Developmental Disabilities Passed on to the Families

As of Dec. 2021, the registered number of people with developmental disabilities was 25.5 million, an increase of about 2.2 million compared to 2018. The number of people with developmental disabilities are increasing each year, but the problems arise due to the absence of a system that protects the rights systematically. The people with developmental disabilities need assistance of other in daily lives and communications, and the families bear this burden often times.

According to the '2021 survey on the status of the people with developmental disabilities' released by the Ministry of Health and Welfare in Sep. 2022, most people with developmental disabilities need help from others in daily life and communication. 22.5% needed help in all daily activities, 18.2% needed help most of the time, and 29.8% needed help in some ways. 18.4% were almost impossible to communicate, 16.2% were able to communicate with a lot of help, and 26.9% were able to communicate with some help.

However, parents accounted for 67.6% of the people who mainly helped people with developmental disabilities in daily lives, followed by siblings (8.0%), spouses (6.8%), and visiting caregivers (4.5%). 9.1% of the people with developmental disabilities responded that the help of others in their daily lives was 'very lacking,' and 40.7% responded that they were 'insufficient.' Parents (50.4%) were also the most important decision-makers in daily lives, which is a larger number than on their own (28.6%).

In this regard, systems that support the decision-making of the persons with developmental disabilities include the adult guardianship, the public guardianship support program and the property management support services; however, lack of detailed guidelines, information provision and personnel are also pointed out as problems. In 2022, the UN Committee on the Rights of Persons with Disabilities recommended the Korean government to replace the alternative decision-making system, including guardianship and wardship programs, with a decision-making support system to ensure the autonomy and individualized support of persons with disabilities.

There were several reports of cases in which guardians killing the persons with developmental disabilities as related to the burden on their families. In Mar. 2022, a woman in her 50s murdered her daughter with a developmental disability and she attempted suicide. On the same day, in Suwon, Gyeonggi-do, a woman in her 40s murdered her son with a developmental disability. In May, a woman in her 60s in Incheon killed her daughter with a developmental disability and then tried, unsuccessfully, to commit suicide. In the same month, a woman in her 40s committed suicide in Seoul by throwing herself, while holding her son with a developmental disability. Other similar incidents have been continuously reported for several years, and there, probably, are many unknown cases, as well.

Against this background, the NHRCK pointed out the realities in the recommendation of the 4th National Human Rights Plans of Action (NAP) in Jul. 2022, that most of the families, including parents, bear the burden of supporting the people with developmental disabilities, and requested that the current service support system be improved. On Nov. 29, 2022, the Ministry of Health and Welfare also announced the ‘Measures to Strengthen the Life-long Care for the People with Developmental Disabilities.’ The key contents are the establishment of a 24-hour support system for the most severe developmental disabilities and the strengthening of care services that guarantee daytime activities in consideration of the individual characteristics of the persons with developmental disabilities.

On Dec. 28, 2022, a ‘resolution for the preparation of measures for the developmental disabilities’ was passed at the main meeting at the National Assembly. The resolution is intended to demand fundamental support measures for the people with developmental disabilities from the government, and it includes the implementation of the ‘Measures to

Strengthen the Life-long Care for the People with Developmental Disabilities’ announced by the Ministry of Health and Welfare, and the urging a full investigation on the families of the persons with developmental disabilities.

B) Criticisms Related to ‘Measures to Strengthen the Life-long Care for the People with Developmental Disabilities’

The government is implementing support for the people with developmental disabilities as a national task. In addition, through the measures to strengthen lifelong care for people with developmental disabilities announced in November, support plans were announced, including preparing a 24-hour care support system for the people with severe developmental disabilities, expanding care services, raising disability pensions and disability benefits, and expanding job support. This approach appears to have a positive side, such as expanding the support for the entire life cycle of the people with developmental disabilities, and improving the problem of deducting the activities support service time (activity assistance, visiting bath, visiting nursing) when using the daytime activity service, which had been criticized, etc. However, the human rights groups for the disabled still raise some issues.¹⁸⁷⁾

First, there is a criticism that distinguishing and supporting people with “most severe” developmental disabilities could repeat the problem of the “disability grading system,” which was phased out from 2019, for failing to consider the individual needs of people with disabilities. There would be no other choice but to select the ‘most severe case’ using the grading system according to the medical model, but in such a case, the scope of people with disabilities who actually need protection of their rights may be reduced. In response, the government has decided to set standards through the ongoing research on the development of integrated care services for the people with severe developmental disabilities, and establish a reasonable plan through communication with academia and the disability communities.

187) See Ministry of Health and Welfare Briefing, Nov. 29, 2022; Yonhap News, Lessening the Burden of Caring for Developmentally Disabled ... Concern for Revival of the Disabilities Grading System, Nov. 29, 2022; The Indigo, Ministry of Health and Welfare Refutes on the Criticism for the Life-long Care for the Developmentally Disabled, Dec. 6, 2022.

It is also pointed out that the plan to expand the support services is not realistic. In case of the 24-hour care service, daytime activity support is provided during the day and living in a communal living support housing at night, and in order to receive the support at night, they have to travel a long distance. Human rights groups for the disabled expressed the view that they should be able to receive home-based support. In addition, they argue that it is not easy to secure manpower in reality due to the high intensity of activity support labor, despite the expansion of additional benefits and price increases for the activity support organizations for the people with severe developmental disabilities announced by the government.

Another problem to be resolved is the lack of the base hospitals and behavioral development promotion centers (hereinafter referred to as “base hospitals”) designated and managed by the Ministry of Health and Welfare so that people with developmental disabilities can receive treatment for behavioral problems. As of 2022, there are 10 base hospitals nationwide, and 9 out of 17 metropolitan municipalities across the country, including Jeju, Daegu, Gwangju, and Daejeon, do not have the base hospital. Behavioral problems often require long-term treatments. However, 2,683 (32.3%) of 8,285 people with developmental disabilities who used base hospitals in 2021 visited base hospitals in regions other than the place of their residence.¹⁸⁸⁾ The government announced that it plans to increase two more base hospitals in 2023, but it is insufficient to solve the problem of medical accessibility.

C) The Need for a System to Protect the Rights of Persons with Development Disabilities

In 2022, a number of murder-suicide cases involving families with developmental disabilities, and there was a case of a man was charged with attempted murder for attempting suicide with his 9-year-old child with developmental disabilities in Mar. but was sentenced to 2 years and 6 months in prison and 5 years of stay of execution. Among the murder-suicide cases involving families of persons with developmental disabilities that occurred between 2009 and 2022, 3 out of 4 cases of attempted murder and 4 out of 7 cases

188) National Assembly News, People with development disabilities became medical refugees ... Looking for a base hospital for the disabled, Oct. 6, 2022.

of murder were sentenced to stay of execution.¹⁸⁹⁾ Since the will of the disabled person is not reflected in the death, this is an obvious case of murder; however, the social context is taken into consideration by the court, that the burden suffered by the perpetrator and the absence of a social support system in the continuous protection and nurturing of the person with developmental disability is a matter to be considered.

There are a considerable anxiety about the future when the families of the people with developmental disabilities, especially their parents, provide the daily life support at all times. When people with developmental disabilities were asked what they were most worried about the future, ‘fear of being left alone’ (33.4%) was found to be the biggest, and as for the difficulties faced by the families of people with developmental disabilities, the biggest concern was “desperate about the death of the guardian” (34.9%).¹⁹⁰⁾

Article 19 of the UN Convention on the Rights of Persons with Disabilities stipulates that providing in-home and residential support services and other community support, including assistance with activities necessary to support life and integration of persons with disabilities in the community and prevent marginalization or separation from the community are the duties of the state to ensure access.

Supporting people with developmental disabilities to live their lives as members of the society is an important role that the state must play. It is necessary to establish a systematic and effective rights protection system to support the independent living of people with developmental disabilities in connection with various social services, such as activity support for people with developmental disabilities and daytime services.

189) Hankyoreh, A Tragic Choice for the Families with Developmental Disabilities ... Trapped in ‘Life-long Care,’ Jul. 4, 2022.

190) Ministry of Health and Welfare, 2021 Survey on the Conditions of the People with Developmental Disabilities, Sep. 2022.

3) Providing Voting Assistance for the Persons with Developmental Disabilities and Suffrage

A) Deletion of Voting Assistance Guidelines for the Persons with Developmental Disabilities and Controversy

In Apr. 2020, the National Election Commission (NEC) revised the guidelines related to voting assistance for the persons with developmental disabilities in the voting management manual. In the 2016 National Assembly election and the 2018 national and local elections, a person with developmental disabilities could receive voting support from two persons nominated by a family member or him/herself pursuant to the pre-revision voting management manual, which prescribed that “blind people who cannot read Braille and cannot vote alone and those with physical disabilities (including intellectual/autistic disabilities) who cannot vote alone” may obtain voting assistance.

However, after the NEC’s voting management manual was amended to stipulate the persons eligible to obtain voting assistance as “a person who cannot cast a ballot by himself,”¹⁹¹⁾ a problem was raised that the persons with developmental disabilities who did not know how to write or who had difficulty performing the voting process by themselves were unable to exercise their right to vote. They tried to obtain voting assistance from their parents, but there were cases in which the election officials and were refused to vote, saying that the persons with developmental disabilities are a type of disability that cannot receive voting assistance, so they cannot enter the voting booth together with their families. In response, the NHRCK made a recommendation to the head of the NEC in Mar. 2021 to “prepare a plan to provide legitimate accommodations to guarantee the right to vote for the persons with developmental disabilities and to provide relevant training to all election officials.”¹⁹²⁾

Moreover, in Nov. 2021, before the 20th presidential election, human rights groups for the disabled applied to the court for interim measures to provide voting support for the persons with developmental disabilities, and in Feb. 2022, the Seoul Central District Court decided to include “the persons with developmental disabilities (intellectual and autistic disabilities)”

191) The National Election Commission has expressed its opinion that the revision of the manual is consistent with the interpretation of Article 157(6) of the Public Official Election Act.

192) NHRCK, Decided on Mar. 26, 2021, 20JinJeong0257300

in “voters who cannot vote by themselves” regarding the voting assistance, and to provide voting assistance.¹⁹³⁾ In response, the NEC changed the manual to allow voters who wish to receive voting assistance because they cannot vote alone, regardless of whether or not they are registered with a disability and the type of disability. However, it was repeatedly asserted that there were cases in which the polling station workers, who were not familiar with the type of disability, refused voting assistance unless they had apparent disabilities, such as eyesight.¹⁹⁴⁾

In the National Assembly, a bill to partially amend the Public Official Election Act¹⁹⁵⁾ has been proposed and is pending, including adding the persons with developmental disabilities to the list of voters eligible to obtain voting assistance, preparing and providing election notices and voting guides that are easy to understand, and allowing easy identification of candidates and political party by including photos of the candidates and the political party symbol to the ballot. In Jan. 2022, human rights groups for the persons with disabilities filed a discrimination relief lawsuit against the state, demanding that the persons with developmental disabilities be provided with easy-to-understand election materials and picture ballots.

B) No System to Protect the Right to Vote of the Persons with Developmental Disabilities and Controversy

The right to vote has the power to express political opinions freely and bring about policy changes through various methods, and is a right to be protected for the broad freedom of political activities. Moreover, it is a fundamental right that any citizen can exercise, and the persons with disabilities are no exception. However, Article 157(6) of the Public Official Election Act stipulates that “a voter who is unable to record his or her vote for him/herself due to a visual or physical impairment may be accompanied by his/her family or two persons nominated by him or her to assist in his or her voting.” Voting assistance for the persons with developmental disabilities is not explicitly stipulated.

193) Seoul Central District Court, Decided on Feb. 10, 2022, 2021KaHap21948

194) Be Minor, “No Suffrage for the Persons with Disabilities? Voting Assistance Blocked at Local Elections, Complaint to the Human Rights Commission,” Jul. 22, 2022.

195) Co-sponsored by Rep. Lee, Eun-ju and 10 Others, Bill No. 2112977.

Initially, the NEC expressed that allowing all persons with developmental disabilities to receive voting assistance is not permitted under the Public Official Election Act, and emphasized that the right to self-determination of the persons with disabilities must be protected as the direction of voting can be determined by the preference of the voting assistant, not the voter. On the other hand, there are also objections that not allowing voting assistance to people with developmental disabilities due to the possibility of voting by proxy, unlike people with visual or physical disabilities, is discrimination,¹⁹⁶⁾ and there is a high probability that an arbitrary standard will intervene in determining whether a person is eligible under the category of “a voter who cannot cast a ballot due to a visual or physical disability” at the polling station.¹⁹⁷⁾

The fact that it is difficult for the persons with developmental disabilities to access the information at the same level as people without disabilities in elections also acts as a barrier to the persons with developmental disabilities in exercising their right to vote. In order for the persons with disabilities to exercise equal right to vote as non-disabled people, they must be able to access the election information so that they can select candidates, and must be able to vote the candidate of their choice. However, it is difficult for the persons with developmental disabilities to easily understand the generally provided election announcements, and even if the voters understand the campaign pledges and vote for the candidate of choice, the voters often have difficulty voting alone because the voter cannot read.

C) Efforts to Guarantee the Right to Vote of the Persons with Developmental Disabilities

Article 29 of the UN Convention on the Rights of Persons with Disabilities (Participation in Political and Public Life) states that, in order to ensure that the persons with disabilities enjoy political rights and opportunities on an equal basis with others, the states must ensure that voting procedures, facilities and equipment are adequate and accessible, easy to understand and use, guarantee the free expression of opinions for the persons with

196) Be Minor, “NEC, Refusing Voting Assistance to the Persons with Development Disabilities, Even with Court Orders,” May 24, 2022.

197) Yonhap News, “Capricious Voting Standards for the Persons with Developmental Disabilities,” Jun. 1, 2022.

disabilities as voters, and recognize that the persons with disabilities to obtain assistance in voting, if necessary.

In order to actually guarantee the fundamental rights of the persons with disabilities, not only the ‘different treatment’ for essentially the ‘same things,’ but also ‘same treatment’ for essentially ‘different things’ must be prohibited. Not distinguishing essential differences is itself discrimination and exclusion. The obligation of the state is to provide voting assistance to the persons with developmental disabilities so that they can exercise their voting rights on an equal basis with the voters without disabilities.

The issue of voting assistance for the persons with developmental disabilities may be choosing what is more important: preventing voting assistance for all persons with developmental disabilities as it may infringe on the right to self-determination of those who can vote alone; or minimizing the persons being excluded from exercising the right to vote during the selection process of deciding whether he/she must receive voting assistance. However, it is important to consider that in reality not all election officials have a minimum understanding of developmental disabilities.

On the other hand, in addition to simply the voting process, the rights of people with developmental disabilities need to be protected throughout the entire election process. It is necessary to seek various measures to expand the suffrage of the disabled, such as how to provide easy-to-understand information such as election notices, as in the case of many countries abroad, a method of printing candidate photos on ballots so that candidates can be easily identified, and how to motivate to vote and provide opportunities to become familiar with elections through the operation of an election experience education program that allows the voters to experience the process of elections in advance, etc.

4) Status and Challenges of Abuse of the Persons with Disabilities

A) Status of Abuse of the Persons with Disabilities in 2022

Statistically, cases of abuse of the persons with disabilities are on the rise. According to the '2021 Report on the Status of Abuse of the Persons with Disabilities' published by the Ministry of Health and Welfare and the National Advocacy Agency for Persons with Disabilities, the number of reports of abuse of the persons with disabilities in 2021 was 4,957, a 17.8% increase from the previous year. Among them, 1,124 cases were determined as abuse, an increase of 11.5% compared to 1,008 cases the previous year. However, it is necessary to take into account the fact that active reports are being made due to increased social interest in the abuse of the persons with disabilities, and that cases of abuse are being identified and investigated through organizations advocating for the rights of the persons with disabilities.

In the case of the abusers, there were 407 cases (36.2%) of family members or relatives, an increase of 23.0% from the previous year's 331 cases. Abuse by family or relatives continues to increase since COVID-19. As for the place where abuse occurred, the residence of the victim accounted for 41.1%, followed by a residential facility for the disabled (12.7%) and the residence of the abuser (9.5%). As for the type of disability of victims of abuse, those with developmental disabilities were the most common at 74.1%. Types of abuse varied, with physical abuse (27.4%), economic exploitation (24.9%), repeated abuse (20.8%),¹⁹⁸⁾ emotional abuse (11.0%), sexual abuse (10.1%), and neglect (5.8%).

In 2022, an incident was reported in which a person with intellectual disabilities was rescued from forced labor in a barn for 30 years,¹⁹⁹⁾ and a case was reported to the prosecution due to physical abuse, such as tying the user's body to the toilet for not being able to urinate at a residential facility for the disabled, and forced worship, donations, and labor.²⁰⁰⁾ In particular, a number of cases in which the guardian of a person with

198) Multiple types of abuse in a single incident, such as physical, emotional and sexual abuse, financial exploitation, abandonment, or neglect

199) MBC, A person with intellectual disability enslaved for 30 years at a barn ... wages and pension were taken away, Apr. 28, 2022.

200) Yonhap News, Two side of the facilities for the disabled ... Tied to the toilet and abused, Sep. 2, 2022.

developmental disabilities attempted suicide after killing them were reported in the media, highlighting the burden on the family and the problem of the state's support system.

There was also controversy over the verdict in an abuse case of a person with disabilities. Criticism was raised that the punishment for the accused was too light, in such cases as in which a middle school special education teacher was sentenced to probation after assaulting a disabled student until his eardrum was damaged for disturbing the class atmosphere,²⁰¹⁾ and a case in which an employee at a day care center for the disabled forced a disabled person to eat kimbab and tteokbokki and died, but was acquitted of abuse and death,²⁰²⁾ etc.

B) Progress and Challenges of Legislation Related to Abuse of the Persons with Disabilities

In order to eradicate abuse of persons with disabilities, it has been pointed out that it is necessary to strengthen the effectiveness of prohibited acts, a specific and clear definition of the crime of abuse of persons with disabilities, strengthening the level of punishment and preparation of related sanctions, and a system of assistance in criminal procedures for victims of abuse with disabilities under the ‘Act on Welfare of Persons with Disabilities.’²⁰³⁾ In this regard, some progress has been made with the recent revision of the Act on Welfare of Persons with Disabilities.

First, at the end of 2020, a new definition of “abuse crimes of persons with disabilities” was established under the Act on Welfare of Persons with Disabilities.²⁰⁴⁾ This provision was introduced for the purpose of extending the existing restrictions on employment that only limited sex crimes to abuse of the disabled, and for the purpose of aggravated punishment for those who habitually or those who are obliged to report commit crimes related to abuse of the disabled. In the meantime, criticism has been raised that effective

201) The Indigo, Court failing to punish the special-ed teacher who assaulted a student with disabilities, Aug. 11, 2022.

202) Yonhap News, Not guilty to death by abuse of a person with disabilities, Oct. 31, 2022.

203) The Indigo, Hoping for an increased social awareness with an amendment to the abuse crimes under the Act on Welfare of Persons with Disabilities, Jan. 8, 2021.

204) “Abuse crime of persons with disabilities” refer to offenses falling under each subparagraph (subparagraphs 1 to 19) of Article 2(4) of the Act, including murder, mutilation, abandonment, confinement, and defamation. In other words, it is an abuse of the people with disabilities and at the same time a crime corresponding to a certain crime.

regulation, such as employment restrictions, is difficult because there is no specific regulation of abuse crimes in the case of the disabled, unlike children and the elderly. However, strictly speaking, crimes related to abuse of persons with disabilities are distinct concepts from crimes against persons with disabilities.

Meanwhile, as of Jan. 28, 2022, due to the revision of the Act on Welfare of Persons with Disabilities, the application of the ‘crimes and relationships’ was partially excluded for crimes related to abuse of persons with disabilities. Under the Criminal Act, ‘crimes and relationships’ exempt relatives, such as direct blood relatives and spouses, from punishment for property crimes, such as fraud, embezzlement, and theft. The provisions on ‘crimes and relationships’ have been demanded to be abolished for being one of the causes that encourage the exploitation of the persons with disabilities by relatives, and constitutional complaints have been filed.

In 2020, with the revision of the Act on Welfare of Persons with Disabilities, a special provision for the appointment of public defenders for persons with disabilities who have been victims of abuse was newly established, and has been in force since Jun. 2021. However, an issue has been raised that the appointment of a lawyer is not effective because it is a voluntary provision rather than a mandatory provision. The percentage of crimes involving abuse of persons with disabilities in all public defender appointed cases is only 0.3% in 2021 and 0.5% in 2022 (as of Nov.), and the difference is large as compared to 33% of child abuse crimes, where the appointment of a lawyer is mandatory.²⁰⁵⁾

C) Efforts to Eradicate Abuse of Persons with Disabilities

As the abuse crime of persons with disabilities is a crime that violates many laws, there is a potential for various discussions, but related discussions are not actively conducted. Much research on the application or interpretation of penalty provisions under various laws, including the Criminal Act, Special Act on Criminal Affair, Act on Welfare of Persons with Disabilities, Act on Persons with Developmental Disabilities, and Act on the Prohibition of Discrimination Against Persons with Disabilities, etc.

205) The Indigo, “On my side?”… First step in discussion on public defender for the persons with disabilities, Jan. 28, 2023.

Efforts to prevent the abuse is necessary, apart from these institutional arrangements. According to the '2021 Report on the Status of Abuse of Persons with Disabilities,' cases of persons with disabilities being abused at home increased by 17.3% compared to the previous year, but cases at work decreased by 41.4%, and this is seen as an educational effect for persons obligated to report the abuse of the persons with disabilities at workplace. It is necessary to strengthen the mandatory education for the reporting persons and systematic review to prevent abuse by family members or relatives of the persons with disabilities.

It is also necessary to actively conduct preventive education so that the persons with disabilities can actively inform the abuse and receive the help needed from appropriate institutions. In particular, the most common type of disability of the abuse victims was developmental disabilities, at 74.1%, and if the education is provided using easy language and accessible media, it will help in increasing the sensitivity of the persons concerned.

2. Migrants and Refugees

A. Human Rights Status 2022

As restrictions from COVID-19 were eased, the number of foreigners residing at the end of Dec. 2022 was about 2.2 million, up from about 1.9 million at the end of the previous year.²⁰⁶⁾ In the future, it is expected that the proportion of foreigners residing in Korea will continue to rise due to factors such as changes in the demographic structure. Migrants are a major member of Korean society, and they have the right not to be discriminated against unreasonably pursuant to relevant laws, including the Constitution, the National Human Rights Commission of Korea Act, the Framework Act on Treatment of Foreigners Residing in the Republic of Korea, and the Act on the Employment of Foreign Workers.

However, hatred and discrimination against migrants still remain in Korean society, and the migrants' human rights problems may intensify as the number and diversity of migrants increase in the future. The Ministry of Justice established the “Immigration and Immigration Management System Improvement Implementation Team” as a temporary organization in 2022 pursuant to the policy that a new organization dedicated to immigration (tentatively named: Immigration Office) was needed to serve as a control tower for the immigration policy.²⁰⁷⁾

Moreover, the government has an obligation to protect refugees as Korea is a country that has joined the Convention on the Status of Refugees and the Convention on the Status of Stateless Persons and enacted the Refugee Act. However, the low refugee acceptance rate, various problems in the refugee review process, and the insufficiency of the system for requesting and reviewing stateless people to grant nationality are still not improved as of 2022, and the civil groups continues to criticize to guarantee the right to apply for asylum and prepare specific policies for refugee settlement continues.

On the other hand, Korea ratified the Convention on the Elimination of Racial Discrimination in 1978 and has been preparing and submitting reports on legislative, judicial and administrative measures for the implementation of the Convention since 1980 pursuant

206) Ministry of Justice, Monthly Report of Immigration Policy Statistics – Dec. 2022, Jan. 19, 2023.

207) Donga Ilbo, MOJ's first priority is establishing an organization to prepare Immigration Office, Nov. 8, 2022.

to Article 9 of the Convention. In 2022, the government prepared the 20th-22nd consolidated government reports on the implementation of the Convention during 2017-2021.²⁰⁸⁾ The UN Committee on the Elimination of Racial Discrimination is expected to make recommendations on whether to implement the Convention by integrating the government reports, and the opinions of the NHRCK, and civil groups.

The human rights issues of migrants and refugees are mainly discrimination and hatred targeting migrant workers, marriage immigrants, migrant children and students studying abroad, overseas Koreans, refugees, and stateless people, as well as the state's duty to protect them. The 2021 NHRCK Human Rights Situation Report reviewed the limitations in the process of entry and support for Afghan refugees, the employment permit system and restrictions on migrant workers' workplace changes, the unstable status of undocumented migrant children, and the issue of using protective equipment in foreigner shelters and long-term detention.

Afghan refugees who entered Korea as "special contributors" are known to be experiencing difficulties in the settlement process.²⁰⁹⁾ There is not much improvement with the issue of changing workplace in the Employment Permit System, and the issue of undocumented migrant children's sojourn qualifications has not been sufficiently resolved, even with the Ministry of Justice taking measures to make improvements in early 2022. On the other hand, the civil groups continued to raise issues with the misuse and abuse of protective equipment at Hwaseong Foreigner Detention Center until early 2022, and the victim was released from detention on Feb. 9, 2022. As a result, several new follow-up measures related to the operation of foreigner shelters were taken.

In this 2022 Report, we will look at the current status, controversy and improvements to be made with the issues of refugees following the Russia-Ukraine war, the human rights situation of migrant workers in agriculture, and the current status of protection facilities under the Immigration Control Act.

208) On Feb. 7, 2022, the NHRCK, in response to the government's 20th, 21st, and 22nd reports (draft), presented opinions on expeditious enactment of the Comprehensive Anti-Discrimination Act and provision of racial discrimination definition provisions, and on the prevention and improvement of human rights violations caused by prolonged stay at protection facilities and excessive use of protective equipment.

209) Donga Ilbo, [Exclusive]20% of the Afghans who settled in Korea left their jobs... "Korea is still a country of hope," Aug. 18, 2022.

B. Main Topics

1) Russia-Ukraine War and the Issues of Accepting and Protecting the War Refugees

A) Russia-Ukraine War, Status of the Displaced People Heading to Korea

Russia declared a “special military operation” against eastern Ukraine on Feb. 24, 2022, and the Russia-Ukraine war continued until the end of 2022. According to UNICEF, the war resulted in more than 7.83 million Ukrainian refugees in 2022 alone.²¹⁰ Ukrainian refugees, more than 90% of whom are children and women, have moved across Europe, including Poland, Hungary and Slovakia, and the EU issued a “temporary protection order” in Mar. 2022, allowing Ukrainian refugees to stay in EU member states for up to three years.

The Korean government took measures including temporarily changing the status of sojourn for 3,800 Ukrainians who were staying in Korea,²¹¹ expansion of the range of family invitations for Koreans (Russian Koreans)²¹² and relatives in Korea, and simplification of visa issuance, etc.,²¹³ but there is almost no Ukrainians who entered the country as refugees.²¹⁴ In response, the Korean Bar Association urged the government to actively accept Ukrainian refugees through a statement on Mar. 22,²¹⁵ and the chairperson of the NHRCK also released a statement on Mar. 7 urging the Korean government, as a member of the UN Human Rights Council, to actively participate in international measures to protect the human rights of Ukrainian refugees and civilian victims and provide humanitarian assistance.²¹⁶

210) See Webpage of the Korean Committee for UNICEF, Status of Ukraine Relief Efforts (As of Dec. 13, 2022).

211) MOJ Press Release, Feb. 28, 2022.

212) There is no accurately estimated data, but according to the Ansan Koryoin Cultural Center, the number of Ukrainian refugees who moved to Korea after the Russia-Ukraine War is estimated to be 2,500, and they are living in Ansan and Anseong, Gyeonggi-do.

213) Kyunghyang Shinmun, MOJ expanded the family invited visa to Koreans living in Ukraine...Allowing long-term residence, Mar. 29, 2022.

214) Herald Business, One month since the invasion by Russia ... No Ukrainian refugee applicants in Korea.. Why?, Mar. 24, 2022; SBS, [Coverage] 3.55 mil. Ukrainian refugees ... Can we accept them?, Mar. 23, 2022, etc.

215) Korean Bar Association Press Release, Mar. 22, 2022.

216) Statement by the Chairperson of the NHRCK, Mar. 7, 2022.

On the other hand, there are also Russians who entered the country to avoid conscription in Russia. Russia declared a partial mobilization of approximately 300,000 people on Sep. 21, and Russians living in Korea applied for asylum to avoid unwanted conscription. In 2022, there were 1,380 Russian refugee applicants, a significant increase from 45 in 2021. However, the Ministry of Justice's position is that the purpose of evading the mobilization order does not constitute a ground for recognizing refugees, and is denying their entry or refusing to refer them for refugee screening.²¹⁷⁾

Between Oct. 1 and Oct. 10, 27 Russians aboard 6 yachts from Russia entered Korea, but 21 were reportedly denied entry.²¹⁸⁾ It was reported that five Russians who are in the process of filing a lawsuit against the decision not to recognize as refugee status in the departure waiting room at Incheon International Airport have been living in the country since Aug. 18.²¹⁹⁾ Civil groups criticized the government's response and filed a complaint with the NHRCK, stating that refusal of military service against the war is a proper ground for recognizing the refugee status, and that they should be given an opportunity to undergo the refugee screening.²²⁰⁾

B) War Refugees and Controversy Surrounding Refugees Under the Refugee Act

Under the Convention Relating to the Status of Refugees (1951),²²¹⁾ the Protocol Relating to the Status of Refugees (1967), and Korea's Refugee Act, a refugee is a person who is likely to be persecuted by his/her country of nationality or habitual residence because of race, religion, nationality, status or political opinion. The refugees under the Refugee Act are somewhat different from those generally referred to as 'refugees' (displaced people). The Korean government has maintained the view that people displaced by war do not qualify as refugees because they do not meet the five requirements under the Refugee Act and are not the result of intentional persecution by the country of nationality for belonging to a specific group.

217) Hankyoreh, Russian students in Korea applying for refugee status as only death awaits them in Russia, Dec. 30, 2022.

218) Hankyoreh, Russian Boat People in the East Sea ... Will they be recognized as war refugees?, Oct. 18, 2022.

219) Hankyoreh, Political refugees ... Russians refusing military service are stuck in Incheon Airport, Dec. 30, 2022.

220) Civic Group, Without War, Press Release, Dec. 30, 2022.

221) Korea acceded to the Convention Relating to the Status of Refugees on Dec. 3, 1992.

According to the MOJ's "Monthly Report on Immigration Policy for Dec. 2022," the status of refugees recognized by nationality and related media reports,²²² etc. no person (Ukrainian, Russian) has been recognized as a refugee from the Russia-Ukraine War in Korea in 2022. Even if you look at the cases of Jeju Yemenis in 2018,²²³ which have recently received a lot of attention in Korean society, and Afghans in 2021,²²⁴ there are very few cases that have been recognized as refugees, and most of them were granted humanitarian stay permits²²⁵ or special contributor²²⁶ status. Many criticisms have been raised against these cases.

First is the issue of protecting the displaced people ('war refugees'). Refugees today arise en masse through armed conflicts rather than individually through political persecution, etc. The definition of refugee under international human rights laws has limitations in protecting the displaced people from war or armed conflict (civil war, etc.). Accordingly, there is a conflict between the view that protecting them is necessary from a humanitarian perspective and Korea's status in the international community, and the view that it is necessary to discuss the social cost associated with accommodating them, and similar discussions appear in other countries around the world.

Second, even when the displaced people are accommodated, their status and protection methods become a problem. Most of the Ukrainians who fled to Korea this time are single-parent families consisting of a mother and her children, and it is expected that they will experience great difficulties in child-rearing, employment, and daily life due to

222) Segye Ilbo, Of 537 Russian Refugee Applicants, 0 Recognized, Oct. 19, 2022, Kyeonggi Ilbo, [Refugees' First Winter in a Foreign Country] No program to support them in Korea, Dec. 6, 2022.

223) As the civil war in Yemen prolonged, about 500 Yemenis who entered Jeju Island between 2016 and 2018 applied for refugee status

224) As Taliban occupied the capital Kabul in 2021, Afghans who cooperated with Korea entered the country as "special contributors," see '2021 NHRCK, Report on the Human Rights Situation in Korea'

225) If recognized as a refugee, various rights are guaranteed in terms of basic living, education, academic background, and recognition of qualifications, including receiving the same level of social security as citizens. In addition, the Refugee Act stipulates that foreigners who do not meet the refugee requirements but who have received permission to stay as 'a person who has reasonable grounds to believe that his/her life or personal freedom may be significantly infringed upon due to inhumane treatment or punishment such as torture or other circumstances' defined as a humanitarian sojourner, and forced repatriation against the person's will is prohibited.

226) Regarding the Afghan civil war, the Korean government in 2021 repatriated Afghans who cooperated with Korea as "special contributors" and granted residence status, and see the discussion under section 'Entry of Afghan Refugees and Limitations on the Supporting Process' in '2021 NHRCK, Report on the Human Rights Situation in Korea'

language problems. However, it is difficult to find support to help them adapt at the national and local government levels.²²⁷⁾ The Refugee Act provides a separate status for “humanitarian sojourners” for those who are not refugees but need protection, but most Ukrainians are not recognized as humanitarian sojourners, and even if they are recognized as humanitarian sojourners, it is difficult to find special support other than a work permit in limited fields. As such, there are discussions to expand the concept of refugees to protect people displaced by war, and demanding to strengthen²²⁸⁾ the systems and functions to protect them regardless of the legal concept of refugees.²²⁹⁾

Third is a criticism related to the disposition of not allowing Russians to enter the country and not referring them to refugee screening. Korea has a referral/non-referral procedure to decide whether to allow refugee screening or not if a foreigner wants to apply for refugee status at the port of entry prior to the immigration screening. Some of the cases of the Russians were also rejected without being reviewed as refugees, and they were unable to enter Korea and are currently living at the port of entry. As related to this, there is an opinion that they are political refugees who are persecuted for refusing to participate in the war, and the Ministry of Justice's action violates the principle of prohibition of forced repatriation stipulated in the Refugee Convention, etc. Also, some argue that even if the system is maintained, minimizing grounds for non-referral, preparing a remedy procedure, improving treatment, and minimizing detention are required.

C) Korea's Responsibilities in the International Community and Obligations to Satisfy the Refugee Act

Korea is a party to the Refugee Convention and the first country in Asia to enact a refugee law. Moreover, Korea has an obligation to recognize and protect the rights of refugees without regards to the contribution or capability of the refugees, as a member of the international community. Under international human rights law, each country has the

227) Some of the support is limited to support for the so-called “Goryeo-in (Russian Koreans).”

228) Specifically, for the humanitarian sojourn, the demand is that a procedure comparable to the refugee recognition procedure be guaranteed in line with the international ‘supplementary protection,’ and that the rights corresponding to those recognized as refugees be guaranteed in the treatment.

229) Oh, Seung-jin, Protecting the War Refugees, Gangwon Legal Studies, 2022.

authority to examine and determine whether a person is a refugee. However, Korea screened 46,506 out of 84,922 refugee applicants between 1994 and 2022, and only 1,338 (1.5% of the applicants) were recognized as refugees. The international community has also expressed concern over Korea's relatively low refugee recognition rate among major countries and delays in refugee status screening.

The Committee on the Elimination of Racial Discrimination, in its final opinion (2018) on 17th, 18th, and 19th reports of Korea, expressed concerns over the reports that the refugee recognition rate was extremely low and that interviews for refugee recognition screening were conducted in an unprofessional manner, and recommended that human rights education for immigration officials and interpreters dealing with refugee applicants should be continuously implemented and strengthened.

In fact, around 2016, courts confirmed a number of cases in which the investigator in charge of the refugee interview distorted the reason for refugee application as “for the purpose of making money” and made a decision to deny refugee status, contrary to what the refugee applicant had actually stated. There are concerns that even though they are considered refugees under the Refugee Act, their legitimate status is not recognized due to problems of inaccurate screening, decisions not to refer to refugee status screening, and delays in screening. It is necessary to devise measures to ensure that refugee applicants can protect their “right to be judged fairly” during the screening process, including minimize the reasons for non-referral for refugee status, establish an appeal procedure for non-referral decisions, recruitment of refugee examination officers, and legal assistance for vulnerable refugee applicants, etc.

Meanwhile, the Korean government condemned Russia's invasion of Ukraine and, as a responsible member of the international community, expressed its intention to actively participate in the international community's efforts, including economic sanctions, to resolve the situation peacefully. In addition, humanitarian aid and cooperation with the international community have been announced several times.²³⁰⁾ Despite such an active will, it is necessary for the government to investigate and take necessary measures to ensure that

230) Ministry of Foreign Affairs Press Release, Feb. 28, 2022; Office of Government Policy Coordination Press Release, Dec. 23, 2022.

Ukrainians residing in Korea are receiving an appropriate level of protection. In this regard, related laws and regulations should be amended so that the status and treatment of humanitarian sojourners conform with the purpose of supplementary protection under international norms.

2) Poor Living Conditions for Migrant Agricultural Workers and Countermeasures

A) The Importance of Migrant Agricultural Workers and Problems of Poor Living Conditions

As of 2022, migrant workers provide the core labor force in the domestic agricultural sector. Although it is difficult to find statistics that accurately calculate the number of migrant workers in the agricultural sector, the number of migrant workers staying in Korea through the agricultural sector (E-9-3) under the Employment Permit System²³¹⁾ and the seasonal worker system²³²⁾ is estimated to be more than 23,000.

This is the result of an increase in demand for migrant workers in rural areas as the aging of farmers and the insufficiency of agricultural labor intensify. In general, the relationship of substitution between domestic workers and migrant workers occurs when the labor cost of migrant workers is low, and in contrast, the agricultural sector appears to prefer migrant workers who can provide stable workforce due to labor shortages.²³³⁾ However, the reality is that it is difficult to hire the necessary manpower in a timely manner for various reasons. In particular, recently, due to the influence of COVID-19, the number of migrant workers has decreased²³⁴⁾ and aggravated the labor shortages in rural areas.

231) The Employment Permit System, which began in 2004, is not limited to the agricultural sector. This is a system in which the government annually determines the size of foreign workers, including manufacturing and service sectors, and introduces foreign workers to each sector accordingly. As a rule, full-time employment is applied, and some permitted items (crop cultivation, livestock, agriculture-related service) and farmhouses of a certain size or more are subjected.

232) The seasonal worker system has been implemented since 2015 as a system that allows small farms to hire foreigners for a short term (up to 5 months) in response to seasonal and short-term labor demands in agriculture, such as fruit and vegetable fields.

233) The result of a survey conducted by the Korea Rural Economic Institute in 2017 indicates that the biggest reason for hiring migrant workers in farm households was securing stable employment (58.82%), followed by sincerity of migrant workers (29.41%), labor cost reduction compared to Koreans (7.84%) and excellent work ability (3.92%).

234) The number of foreign workers staying under the Employment Permit System is estimated to have decreased by about 59,000 from approx. 277,000 at the end of 2019 to approx. 218,000 at the end of 2021.

On Sep. 8, the government announced a ‘plan to improve the management system for seasonal agricultural workers’ with the goal of solving the labor shortage problem in rural areas.²³⁵⁾ The main substance of this plan is to ease administrative procedures and employment requirements for attracting foreign seasonal workers. As the number of migrant workers engaged in agriculture seems to continue to increase in the future, interest in their treatment and working conditions is also increasing.

In particular, there has been a recent interest in housing issues for the migrant agricultural workers.²³⁶⁾ Agricultural businesses are scattered throughout different regions, and it is difficult for migrant workers to personally find accommodations because it is not easy to move within rural areas. Therefore, a common practice is for the farmhouses to provide accommodations to the migrant workers.²³⁷⁾ However, according to the living conditions report conducted by the Ministry of Employment and Labor in 2021,²³⁸⁾ the majority (75.1% of employees, 88.1% of workers) responded that there was accommodation in the workplace (in the farm/on farmland) in the agricultural sector. As for the type of accommodation, it was found that more than 70% (77.6% of employees, 71.4% of workers) of non-residential accommodations, such as prefabricated panels, containers, and facilities in vinyl houses rather than residential accommodations, such as houses, officetels, and lodging facilities (motels).

Such housing types can cause problems in several aspects. According to consultations with migrant agricultural workers from Cambodia conducted by a civic group ‘Migration Labor 119’ for a year, there were cases of excessive deduction of wages in the name of dormitory expenses, and poor accommodation conditions, such as vinyl houses and temporary buildings being flooded, snakes and leeches entering the living quarters, and structural problems of not having ceilings or doors in the bathrooms. Poor housing conditions can be particularly vulnerable to sexual violence and illegal filming.²³⁹⁾

235) Office of Government Policy Coordination Press Release, Sep. 7, 2022.

236) Regarding the human rights issues of migrant workers in the agricultural sector, the issues requiring discussions and resolution are health insurance application, forced labor in the form of human trafficking when brokers or employers confiscate passports, wage arrears, discrimination and hatred, etc., in addition to the housing issues.

237) Um, Jin-yeong, Employment Status and Policy Tasks Related to Foreign Workers in Agricultural Sector, Roundtable Discussion at the National Assembly Legislative Research Service, “Employment Status and Challenges of Foreign Workers in Rural Areas,” Nov. 2019.

238) Ministry of Employment and Labor Survey, Survey of the Living Conditions of Foreign Workers Under Work Permit System and Plans on Improving the Laws and the System, Dec. 2021.

In Dec. 2020, an incident occurred in which a migrant worker was found dead in his room (temporary building) inside a vinyl house in Pocheon, Gyeonggi-do,²⁴⁰⁾ and gathered attention on the treatment of foreign workers in the agricultural sector, such as the living conditions. Because of this incident, the government announced a policy of “significant strengthening of the standards for residential facilities for employment permits in the agricultural and fisheries sectors”²⁴¹⁾ and is promoting related follow-up measures. However, due to many controversies and differences of opinion from various areas, some measures are being postponed.²⁴²⁾ On Sep. 16, the NHRCK also recommended to the Minister of Employment and Labor to devise support measures, such as the establishment of public dormitories, to ensure housing rights of the migrant agricultural workers, and to revise relevant regulations so that accommodation and food expenses are not deducted from the wages of migrant workers.²⁴³⁾

B) Progress and Limitations on Strengthening the Standard for Residential Facilities of Migrant Agricultural Workers

In the past, accommodation fee deduction agreement between farmers and migrant workers is recommended at 8-20% of monthly wages pursuant to the ‘Guidelines for Provision of Accommodation Information to Foreign Workers and Collection of Expenses’ (Feb. 2017), which was provided to assist employers in collecting accommodation fees at an appropriate level when providing residential facilities. However, at that time, there was no

239) Kyunghyang Shinmun, 549 Episodes of “Broken Korean Dream” Experienced by Cambodian Workers, Sep. 27, 2022.

240) The victim's official cause of death was complications of cirrhosis of the liver. However, the victim and four fellow migrant workers lived together in a dormitory in the form of a sandwich panel in a plastic house installed on farmland, and it received attention when it became known that a worker was found dead in a space with poor heating facilities. On Apr. 27, 2022, the victim was recognized as having died from an occupational disease pursuant to Article 37(1)(2) of the Industrial Accident Compensation Insurance Act by the Occupational Disease Determination Committee..

241) This policy includes measures, including prohibiting employment permit and allowing change of workplace when providing accommodation in temporary buildings, strengthening guidance and inspection of residential facilities in the agricultural and fisheries sector and promotes labor supervision, supporting improvement of residential facilities for small farmers and fishermen, and strengthening training on labor management for farmers and fishermen.

242) National Assembly Legislative Research Service, Issues and Arguments, No. 1860, Status on Strengthening the Standards on Residential Facilities for Migrant Agricultural Workers and Alternative Options, Jul. 30, 2021.

243) NHRCK, Decided on Sep. 16, 2022, 21JinJeong0000400·21JinJeong0000500(Combined) Infringement of Right to Residence and Health of Migrant Agricultural Workers Due to Poor Residential Conditions

legal basis for migrant workers' living conditions, and the guidelines were used as a justification for pre-deduction of accommodation or accommodation expenses from wages in a situation where it was difficult for migrant workers to negotiate on an equal footing with employers.

In Jan. 2019, Article 100-2 of the ‘Labor Standards Act’ and Article 22-2 of the ‘Act on the Employment of Foreign Workers’ were newly established to reflect the criticism of the poor living environment and the tendency to excessively deduct accommodation expenses without legal grounds. When employers provide dormitories to foreign workers, duties such as maintaining workers' health and protecting their privacy were imposed. However, the “Regulations on Provision of Dormitory Information for Foreign Workers,” prepared by the Ministry of Employment and Labor in Jul. 2019, still included “containers and prefabricated panels” as residential facilities and “non-residential areas in mountainous or rural areas” for installation locations.

After the death of the victim became known in Dec. 2020, the government established measures for the migrant worker's residential environment, and these measures include not allowing employment permits and allowing workplace changes when providing accommodation in temporary buildings, strengthening guidance and inspection of residential facilities in the agricultural and fisheries sector, promoting labor supervision, and supporting the improvement of residential facilities for small farmers and fishermen. However, some of these measures have been suspended due to objections from farmer organizations, and furthermore, they are not being complied with due to difficulty in satisfying legal requirements (existence period within 3 years, area restrictions, etc.) or not knowing about the mandatory reporting, etc.²⁴⁴⁾

Looking at the views of various sectors on the government's measures,²⁴⁵⁾ farmers' groups agree in principle with the direction of improving housing standards for migrant workers, but demands follow-up measures such as postponement of implementation of the policy, establishment of lodgings by the central and local governments, and improvement of related

244) Ministry of Employment and Labor Survey, Survey of Housing Conditions of Foreign Workers Under the Employment Permit System and Recommendations for Improving Laws and Systems, Dec. 2021.

245) National Assembly Legislative Research Service, Issues and Arguments, No. 1860, Status on Strengthening the Standards on Residential Facilities for Migrant Agricultural Workers and Alternative Options, Jul. 30, 2021.

laws including the 'Farmland Act,' citing the fact that the sudden change in guidelines is adding to confusion, uniform regulation can have adverse effects on both farms and foreign workers where rural labor shortages are serious due to aging and population decline, and the related legal and institutional conditions are obstacles to accepting the new policy, etc.

On the other hand, the policy announced by the government is seen as insufficient because it only bans temporary buildings within vinyl houses, but does not ban temporary buildings as accommodations themselves, did not repeal the accommodation expenses collection guidelines, and the actual guarantee for the migrant workers to change workplaces freely is insufficient.

Meanwhile, the National Assembly Research Service recommended conditionally recognizing temporary building with necessary facilities, expanding public support to turning idle spaces into accommodations in the region, and reviewing accommodations for employees in agricultural promotion zones because, although the minimum residential condition is a universal value and migrant workers are no exception, the maintenance of the rural economy and agricultural production base is an essential element for national existence.

C) The State's Role in Improving the Poor Living Conditions of Migrant Agricultural Workers

The Constitutional Court, regarding the right to work guaranteed by Article 32 of the Constitution, held that not only the 'right to a place to work' but also the 'right to a working environment' should be guaranteed, and that the 'right to a working environment' is a right to protect against violation of human dignity, which is also recognized for foreigners, as well. Moreover, this includes the right to demand a healthy working environment, fair remuneration for work, and guarantees of reasonable working conditions.²⁴⁶⁾

Article 11 of the UN Covenant on Economic, Social and Cultural Rights stipulates that everyone has a right to an adequate standard of living for himself and his family, including adequate housing, and to the continual improvement of living conditions. According to

246) See Constitutional Court Decision 2004HunMa670 on Aug. 30, 2007.

General Comment No. 4 of the UN Covenant on Economic, Social and Cultural Rights Committee ('The Right to Adequate Housing', 1991), housing is not just a place where you can take shelter from the rain or just sleep, but a space where you can live with dignity, and this right should be guaranteed to everyone regardless of income.

The International Labor Organization (ILO), in 'Recommendation No. 115 for Workers' Housing,' stipulates that structural safety and an appropriate level of dignity, hygiene and convenience should be guaranteed in providing housing to workers. Workers living in employer-owned and controlled spaces have fewer opportunities for integration into the local community and tend to be more dependent on their employers, so it is generally undesirable for employers to provide direct housing to workers.

Some evaluate that many legal and practical improvements have been made in the housing conditions of migrant workers in the agricultural sector, as compared to the past. However, migrant workers who have language limitations and lack of human networks, especially the migrant workers under the employment permit system who are restricted in their freedom to choose and change workplaces, are forced to use temporary buildings installed by their employers near the work sites, such as farmland, as accommodation. Moreover, various surveys confirm that even if the facility is at a level that threatens health and safety, there are still cases where a demand for improvement cannot be made to the employer or a demand, even if made, is ignored.

The human rights of foreigners must be guaranteed at the minimum, and human rights violations must be resolved quickly. Moreover, considering diverse circumstances of the agricultural sector, the public support, such as the state and local governments, as well as business owners' organizations, is necessary to solve the poor housing conditions of migrant workers. In order to improve the poor living conditions of migrant workers so that they can lead a safe and dignified life, legal and practical measures need to be implemented, such as the establishment of public dormitories, prohibition of advanced deduction for accommodation expenses, and abolishment of wage-linked accommodation expenses calculation guidelines.

3) Changes and Limitations Related to Protective Equipment and Treatment at Immigration Detention Centers

A) Introduction of Additional Protective Equipment at Immigration Detention Centers and Attempt at Conversion into Open Facilities

Foreigners who are subject to deportation due to violations of the Immigration Control Act and are ‘detained’ at immigration detention centers in Korea until they leave the country. They mostly live in immigration detention centers in Hwaseong, Cheongju, and Yeosu,²⁴⁷⁾ and the average waiting period for a detained foreigner at the immigration detention centers is around 10 days. However, there are cases of waiting for longer periods of time for reasons, such as refugee application, disposal of residual property, liquidation of various contractual relationships, and personal affairs.

Foreigners subject to deportation violated the Immigration Control Act, but they did not commit a criminal offense. Accordingly, unlike criminal arrests, the process of administrative detention for foreigners subject to deportation, such as ‘physical detention’ and ‘protection,’ is carried out by the immigration officials in a simple procedures, not under the control of a judge. However, there are criticisms on the operation of the immigration detention centers, which are places where foreigners subjected to deportation wait before leaving the country, because they are managed similar to that of correctional facilities, unnecessarily violating the physical freedom of foreigners.²⁴⁸⁾

In 2022, there were several changes to immigration detention centers in Korea due to the controversy over the harsh treatment at the Hwaseong Immigration Detention Center that occurred during the previous year²⁴⁹⁾ and the release of the Ministry of Justice's improvement plan.²⁵⁰⁾ Since early 2022, the Ministry of Justice has promoted the revision of the “Foreigner Protection Rules.” This rule collected opinions from related ministries

247) In the case of Yeosu, the name is ‘Yeosu Immigration Office Protection Room,’ but it actually serves as a detention center, and the Ministry of Justice classifies it as a long-term protection facility.

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

249) A case related to a use of protective equipment in a so-called ‘shrimp’s posture’ method; see ‘2021 NHRCK: The Report on Human Rights Situation in the Republic of Korea’; NHRCK, Decided on Oct. 8, 2021, 21JinJeong045100 0·21JinJeong0477800(Combined); NHRCK, Decided on Dec. 3, 2021, 21JinJeong0520600, etc. for details.

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

around Jan., announced legislation on May 25, and will be enforced from Mar. 2023 through partial revision on Dec. 5. The revised Foreigner Protection Rules includes the introduction of human rights protection officers at the Immigration Office, the specification of special protection procedures, the addition of types of protective equipment, and the specification of how to use them, and during the revision process for about a year, there was a controversy regarding the introduction of a new type of protective equipment.

The Ministry of Justice initially prepared a plan to add ‘ankle protection equipment, protectors, protective chairs, protective clothing, protective beds’ to the ‘security equipment,’ such as police batons, gas guns, and electroshock weapons, and the ‘protective equipment,’ such as handcuffs, harnesses, and head protection equipment, but the NHRCK presented an opinion that it is necessary to reconsider the introduction of security equipment and some protective equipment (handcuffs, protective chairs, protective clothing, protective beds, etc.) and to prepare safety standards.²⁵¹⁾ Moreover, some media and civic groups expressed objections by stating that the additional protective equipment violates international human rights standards and may violate human rights.²⁵²⁾ In the end, the revised Foreigner Protection Rules limited the types of protective equipment to two-handed handcuffs, one-handed handcuffs, guards, belt-type harnesses for the upper body, belt-type harnesses for the lower body, vest-type harnesses, and head protection equipment.

Meanwhile, the Ministry of Justice announced that it would change the women's protection building of the Hwaseong Immigration Detention Center to an open protection facility from April.²⁵³⁾ The Ministry of Justice has stated that the purpose is to improve the facility into human rights-friendly facilities and significantly strengthen the treatment in response to the criticisms on the human rights issues, and it announced that it would remove iron bars in the women's protection building, open the daytime playground, prepare an internet computer lab and mobile phone space, install convenience facilities including vending machines and dryers, and remodel the entire facility.

251) NHRCK, Decided on Mar. 3, 2022, Expression of opinion on ‘Partial Amendment to the Foreigner Protection Rules.’

252) Statement by the Joint Committee on Responding to a Case of Torture at the Immigration Detention Center, May 31, 2022.

253) MOJ Press Release, Apr. 7, 2022.

The NHRCK, through its decision on Apr. 15, recommended to the Minister of Justice, to prevent human rights violations in immigration detention centers, to improve the detention condition, improve the right to medical care and health, allow use of mobile phones and access to Internet to guarantee the right to external transportation, pay special attention to protection of vulnerable people such as sexual minorities and HIV-infected persons, conduct regular interviews with foreigners under long-term detention, and active review of temporary suspension of detention.²⁵⁴⁾

B) Controversy Surrounding the Nature and Realities of Control and Protection of Undocumented Aliens

Undocumented aliens²⁵⁵⁾ are “foreigners staying without extending his/her stay or leaving the country even after the period of sojourn has passed.” They often stay in Korea beyond the period of sojourn to provide for themselves and their families through employment, and domestic jobs that require foreigners’ labor force sometimes encourage foreigners to violate their sojourn status. On the other hand, the enforcement and protection of the undocumented aliens under the Immigration Control Act is an administrative action for physical detention and restricting the freedom of movement and physical freedom.

In other words, undocumented aliens are those who have violated the laws related to the status of stay under the Immigration Control Act, and are distinguished from other criminal offenders, and under the Immigration Control Act, the enforcement and protection of undocumented aliens are different from criminal procedures. These conceptual and logical facts are used to mean that ‘illegal acts committed by undocumented aliens have a lower degree of social harm than criminal offenses,’²⁵⁶⁾ and ‘enforcement and protection of undocumented aliens do not require procedures, requirements and rules that protect the rights of others, which are required for criminal procedures.’²⁵⁷⁾ However, despite such

254) NHRCK, Decided on Apr. 15, 2022, Recommended to Improve the System to Increase Human Rights of the Detained Foreigners from the Investigation Conducted at the Immigration Detention Centers

255) In this report, the terms ‘undocumented immigrants’ or ‘undocumented aliens’ will be used instead of the term ‘illegal immigrants,’ which raises concerns about causing hostility to migrants.

256) Kim, Se-jin, Materials from International Symposium on the Current Immigration Detention System of Korea and Improving the Immigration Detention System, Sep. 2022.

257) MOJ Implementation Plan on NHRCK Recommendation (18-Ex Officio-0001800), 2019, etc.

discussions, enforcements and detentions in reality are in fact similar to arrests under the Criminal Procedure Act.²⁵⁸⁾

Immigration officials enforcing the undocumented aliens have special judicial police authority. Moreover, during the enforcement and detention process, immigration officials can use gas guns and handcuffs, and the foreigners in the immigration detention centers are restricted from outside travel and movements. The Cheongju Immigration Detention Center uses the building used as Cheongju Prison, and iron bars and CCTVs are installed in the detention rooms, and possession, bringing in, and purchases of personal items, including mobile phones, are restricted. Rather, compared to correctional facilities, they have fewer medical personnel, equipment, and emergency medical systems.²⁵⁹⁾

Two changes related to the immigration detention centers in 2022 seem to be discussed in this context. Security and protective equipment (ankle protectors, guards, protective chairs, protective clothing, protective beds) that the Ministry of Justice intended to introduce by amending the Foreigner Protection Rules are equipment used in correctional facilities pursuant to the ‘Enforcement Rules of the Act on Execution of Sentences and Treatment of Inmates.’ Regarding this, concerns were raised about the introduction of procedures and security/ protective equipment related to correctional facilities without considering the differences between the two facilities, even though the immigration detention centers are not of the same nature as the correctional facilities, having the purpose of executing sentences.

Demands for the operation of open immigration detention centers and improvements related to the treatment of foreigners in immigration detention centers are also related to various human rights issues that arose as immigration detention centers are managed similar to correctional facilities. Several overseas studies have also confirmed that immigration detention centers that replicate prisons have a serious adverse effect on the physical and mental health and rights of migrants, and therefore, it is necessary to provide treatment and medical services that deviate from the current practice of detaining foreigners.²⁶⁰⁾

258) NHRCK, Decided on May 23, 2005, 04JinIn139, 04JinKi131 Combined Decision

259) NHRCK recommended improving the system to increase the human rights of the detained foreigners from the investigation conducted at the immigration detention centers in 2021, Apr. 2022.

260) Park, Ju-young, In need of an immigration detention center that protects human rights and health, People’s Health Research Institute, Jan. 27, 2022.

C) Need to Rearrange the System to Provide the Minimum ‘Detention’ Necessary

Korea’s immigration detention centers were designed for the purpose of temporarily detaining foreigners subjected to deportation until they leave the country. However, the current Immigration Control Act does not stipulate the maximum limit of the period of detention for foreigners, the subject of detention, and the procedure for determining the appropriateness of detention. Therefore, if circumstances arise in which it is difficult for a protected foreigner to leave the country, detention indefinitely is possible. As of the end of Jul. 2021, out of 394 foreigners in Hwaseong and Cheongju immigration detention centers, 55 foreigners have been detained for more than 2 months and 12 foreigners have been detained for more than 1 year.²⁶¹⁾

They are exposed to overcrowding without a fixed duration, restrictions on possession of goods without legal grounds, poor clothing and opportunities to access medical services, limited exercise time, and difficulties in responding to life and rights that were created prior to being detained. In particular, there are many concerns about whether the treatment of social minorities, such as children and adolescents, the elderly, sexual minorities, HIV-infected people, and the disabled, in the detention centers is adequately provided.

Countries such as the US, France, Germany, and Taiwan have the maximum detention period protected by law and are trying to manage and supervise people to be deported in methods other than detention, such as the ‘home time designation system,’ mandating the person to stay at home, and the use of facial recognition apps, etc.²⁶²⁾ The Global Compact on Migration (GCM), an agreement to protect migrants that is adopted and approved by the UN in 2018, also stipulates that detention of migrants should be used only as a last resort and that efforts should be made to develop alternatives to detention.

Restricting the human rights of detained foreigners must be limited for the purpose of protection. Unlike the operating purpose of correctional facilities, such as correction, isolation from society, and retribution, if the immigration detention center is a simple

261) Yonhap News, One out of every 2 detained foreigners are long-term detainees ... Concern for violation of human rights, Oct. 31, 2021.

262) The Korean Legal News, Is it a detention or a prison? Controversy over immigration detention centers without maximum detention period, Oct. 17, 2022.

waiting place before departure, then the management method and treatment must be determined accordingly, and the foreigners detained for a long-term should be given separate treatment and facilities.

Therefore, it is necessary to correct any violations of human rights in the installation and operation of equipment, such as living room structures and CCTVs, and to improve the treatment of social minorities by considering their individual characteristics in order to protect their rights. Furthermore, detention of migrants in need of special protection, such as pregnant women, women victims of sexual harassment, sexual violence or other violence, the elderly, the disabled, survivors of torture or trauma, people in need of rehabilitation from industrial accidents, and people with special physical or mental health problems, should be prohibited, and provide provisions in laws and regulations regarding the upper limit of the detention period, system to guarantee the rights and remedy procedures.

3. Women

A. Human Rights Status 2022

Article 11(1) of the Constitution protects the gender equality by stipulating that, “all citizens are equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status,” and Articles 32(4), 34(3), and 36(2) also stipulate the state's duty to protect women's work, welfare, rights and interests, and maternity.

The Charter of the UN, enacted in 1945, contains the phrase “reaffirm faith in the equal rights of men and women and of nations large and small.” With the adoption of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, efforts to improve women's status could be directed not only to women's human rights in the public sphere, such as suffrage and labor issues, but also to women's human rights issues between individuals, such as sexual violence and prostitution, etc. Discrimination against women and violence are important human rights issue under the international standards.

The issue of protecting women's human rights in Korea is an ongoing discussion. In the 2021 NHRCK, the Report on the Human Rights Situation in Korea, ‘stigma of being a feminist and decline in women’s rights,’ ‘implementation of the Act on the Punishment of Stalking Crimes,’ and ‘workplace sexual harassment and sexist hiring practices’ were considered as major topics in the section on women. The comfort women issue, ‘court rulings related to comfort women for the Japanese military and controversy over distorting history,’ ‘decision to disapprove the testimony of victims of sexual violence under the age of 19,’ and ‘consecutive deaths of sexual assault victims of noncommissioned officers’ are also topics closely related to women's human rights.

These topics are similar in that even in 2022, it is difficult to find a significant improvement. Each topic examined in 2021 has similar context in terms of the controversy over the abolition of the Ministry of Gender Equality and Family, the discussion of the death of Sindang Station and the revision of the Stalking Punishment Act, and the enforcement of the Housework Labor Act, receiving much attention in 2022, and its human rights significance. We will look at some major phenomena in 2022 below.

B. Main Topics

1) Controversy Over the Abolition of the Ministry of Gender Equality and Family

A) Attempt to Abolish the Ministry of Gender Equality and Family Through the Revision of the Government Organization Act

On Oct. 6, the Ministry of the Interior and Safety announced a plan to reorganize the government organization with the main content being the abolition of the Ministry of Gender Equality and Family, and on Oct. 7, the ‘Partial Amendment to the Government Organization Act’ with the same substance was proposed at the National Assembly.²⁶³⁾ According to the amendment, the Ministry of Gender Equality and Family will be abolished, and tasks related to youth and family, gender equality, and rights promotion will be transferred to the Ministry of Health and Welfare, by establishing the ‘Headquarters for Population and Family Gender Equality,’ and women’s employment will be transferred to the Ministry of Employment and Labor.

The reasons for the amendment were the need to redesign the government organization to strengthen the social security function for the socially underprivileged and create an equality society by connecting the policies for specific life cycle that are scattered in different ministries. The abolition of the Ministry of Gender Equality and Family and the transfer of policies are receiving much attention after the 2022 presidential election, and the government plans to implement comprehensive social policies through abolishing the Ministry of Gender Equality and Family. The incumbent Minister of Gender Equality and Family announced at the first press conference after taking office on Jun. 16 that the Ministry of Gender Equality and Family will be abolished and has established a task force team for reorganization.²⁶⁴⁾

However, there are opposing opinions, as well. Even before the presidential election, women's groups have consistently expressed their opposition to the abolition of the Ministry of Gender Equality and Family,²⁶⁵⁾ and in the National Assembly, opposition parties such as

263) Co-sponsored by 115 representatives, including Rep. Jun, Ho-young, Bill No. 2117759, Oct. 7, 2022.

264) Joongang Ilbo, Minister of Gender Equality and Family announces abolition of the Ministry ... but at a beginning stage, without a set timeline, Jun. 15, 2022.

the Democratic Party of Korea are opposing the abolition of the Ministry of Gender Equality and Family as their party platform.²⁶⁶⁾ The NHRCK also made a decision to express its opinion on Oct. 14 that the abolition of the Ministry could lead to a general regression in women's human rights and gender equality policies, and it is necessary to reorganize into an organization dedicated to gender equality policy, such as the Ministry of Gender Equality.

Meanwhile, the public opinion for and against the abolition of the Ministry appears to be tense. The government has expressed that the result of public opinion polls indicate that the responses calling for the abolition or reorganization of the Ministry have prevailed, and some poll results agree with this. However, some suggest that the result indicate that the “abolition of the Ministry” includes responses demanding a strengthened role through functional reorganization, such as the “Ministry of Gender Equality and Family Affairs.”²⁶⁷⁾

B) Controversy Surrounding the Abolition of the Ministry of Gender Equality and Family

The preference for the Ministry of Gender Equality and Family, one of the government ministries, shows an unusually wide split compared to other ministries. This seems to be related to the polarization of the opinions on the gender equality policies promoted and implemented by the Ministry, as anti-feminism has recently grown among men in their teens and 30s.²⁶⁸⁾

Those in favor of the abolition of the Ministry of Gender Equality and Family claim that even though women are no longer the socially underprivileged, excessive planning and implementation of policies that favor women cause conflicts between men and women and raise concerns about reverse discrimination. The remarks of the current president and some politicians during the presidential election that there is no structural gender discrimination

265) Statement by 286 Women's Groups Nationwide, Oct. 4, 2022; Joint Statement by Women's Violence Victims' Support Group, Oct. 11, 2022, etc.

266) Hankyoreh, The Democratic Party of Korea officially opposes abolishment of the Ministry of Gender Equality and Family... Must be expanded and reorganized, Oct. 11, 2022

267) MBC, [As it turns out] Overwhelmingly in support of abolishment of the Ministry of Gender Equality and Family? Looking into the poll results ..., May 5, 2022.

268) Opinion that political, economic, socio-cultural discrimination based on gender should be eliminated

caused controversy.²⁶⁹⁾ In response, some criticize that the politicians are using the women's rights and the abolition of the Ministry to gain votes and approval ratings. Men in their 10s to 30s feel that they are victims of reverse discrimination in the course of their lives, but the media and politicians are encouraging them even though this is not due to gender equality policies.

On the other hand, although the abolition of the Ministry and the transfer of functions itself are merely a reorganization of the government organization, there are opinions that the impact on the government's gender equality policies will be significant. The current Minister of Gender Equality and Family also stated that the abolition of the Ministry of is rather an attempt to create a system that can further strengthen gender equality, and that all functions of the Ministry will continue without reduction or decline, even after the transfer. However, concerns are raised that if the Ministry is abolished and its functions are distributed among several ministries, it may be pushed to a lower priority than the specific tasks of each ministry or it may drift, and will become difficult to comprehensively promote gender equality policies.

C) Need for an Organization Exclusively Dedicated to Gender Equality

The 'Beijing Platform for Action on Women,' which was unanimously passed by 189 member states at the 4th UN World Conference on Women in 1995, ordered each government to establish a national organization for the development of women and allocate sufficient manpower and resources to it. Accordingly, as of 2020, gender equality organizations have been established in 194 countries worldwide, and there are independent ministries in 160 countries. The reason why many countries have separate organizations dedicated to gender equality is that it has been confirmed that it is necessary for the country's sustainable development to reflect the perspective of gender equality in the process of implementing all policies and an independent body dedicated to gender equality in the form of an independent ministry is most effective.

269) Hankyoreh, Abolition of the Ministry of Gender Equality and Family will not necessarily lead to increased approval rating and solve men's complaints, Oct. 18, 2022.

According to the World Gender Gap Report published by the World Economic Forum (WEF), the level of gender equality in Korea is still very low compared to its economic level, such as Korea's gender gap index ranked at the bottom of the list at 102nd out of 156 countries in 2021, and at the mid-lower ranks at 99th out of 146 countries in 2022, and the gender wage gap reached 31.5%. Moreover, it is difficult to solve issues of physical risk, gender violence combined with the development of digital technology, and hate issues experienced by women, which are important topics in Korean society, by approaching them from the perspective of welfare, population, or family.

The essential function of the Ministry of Gender Equality and Family is to serve as a control tower for gender equality policies in order to reveal and resolve the problems of conventional and structured gender discrimination. Therefore, it is necessary to discuss a system that can stably implement women's rights and gender equality policies, rather than the status or dissolution of the Ministry itself. Considering that the issues of gender equality, gender violence, female employment, and family care support are closely linked to the social and cultural structure, it is appropriate to coordinate and promote policies from a gender equality perspective, with a dedicated ministry as the leader, by organically linking and mediating relevant ministries, such as labor, welfare, environment, and education.

2) ‘Sindang Station Murder Case,’ Stalking Damages and Act on the Punishment of Stalking Crimes

A) Implementation of the Act on the Punishment of Stalking Crimes and a Murder of a Stalking Victim

On Sep. 14, 2022, a station attendant was killed by a stalking perpetrator in the women's bathroom at Sindang Station in Seoul. The perpetrator stalked the victim, who was a colleague at work, from Nov. 2019, installed a camera in the women's bathroom to illegally film the victim, and threatened the victim with the footage. At the time of the incident, the perpetrator was on trial for illegal filming and stalking, and committed the crime a day before the sentencing date. Both the perpetrator and the victim were employees of the Seoul Transportation Corporation, and the perpetrator was removed from his position on the

charges that were pending trial, but it was reported that he committed the crime after finding out the victim's work information through the company's internal network.

This case gave a social shock and received national attention because it is similar to the murder case of a woman in a public bathroom near Gangnam Station in 2017 in its method and location of the crime, it is a retaliatory crime committed by a suspect on trial, nearing one year anniversary of the 'Act on the Punishment of Stalking Crimes' ("Stalking Punishment Act"), and fact that a stalking perpetrator worked at the same workplace as the victim, etc., and became known as the 'Sindang Station Murder Case.' On Sep. 19, the identity of the perpetrator was disclosed, and the prosecutor's office conducted a search and seizure of the Seoul Transportation Corporation to investigate how the perpetrator was able to access the company's internal network without authority and the company's management of personal information. Controversies over whether this case could be defined as gender violence, the government's role in protecting victims in connection with the abolition of the Ministry of Gender Equality and Family, and inappropriate remarks by some politicians occurred among the politicians and the media.²⁷⁰⁾

Meanwhile, discussions on responding to stalking crimes and victim protection, including the need to supplement the stalking punishment law, were triggered again at the National Assembly. The Ministry of Justice has been implementing the amendment to the Stalking Punishment Act since Oct. and is in the review stage at the Ministry of Justice, as of the end of 2022. The main contents include the abolition of the crime of unwillingness to punish the stalking crime, the addition of an electronic device for tracking the location of the stalker as provisional measures to protect the victim, and the victim protection order program allowing a restraining order against the stalker for the victim's residence or workplace

On Dec. 28, the 'Act on Prevention of Stalking and Protection of Victims' was passed at the plenary session of the National Assembly, which stipulates the protection and support system for victims, etc., and will become effective in Jul. 2023. According to this law, protective measures are available even the stalking act of the other party that does not fall under the stalking crime under the Stalking Punishment Act. Moreover, it includes contents

270) Kyunghyang Shinmun, Controversy over reckless remarks by Seoul councilor over 'Sindang Station murder case,' Sep. 16, 2022

such as establishing a stalking reporting system, providing support services such as legal aid and housing support, and preventing victims from being exposed, etc.

B) Substance of the Discussions on Improving the Stalking Crime Related Legislation

The current issue of the revision of the stalking punishment law is the abolition of the crime of disapproval according to the victim's will to punish the stalking crime. Article 18 of the Stalking Punishment Act stipulates that the suspect cannot be punished if the victim specifically expresses his/her intention not to be punished. However, since most of the stalking crimes occur between acquaintances, victims may be forced to express their intention of not wanting punishment for the fear of retaliation. Even if the stalking victim does not want to 'settle,' there is a risk that the perpetrator will try to contact the victim for a settlement and the victim will suffer even more.

Criticism is also raised that the scope of stalking stipulated in the Stalking Punishment Act is too limited.²⁷¹⁾ Under the current law, the type of stalking behavior is limited to physical access and direct reach to the other party, and the target of stalking is also limited to cohabitants and family members. Therefore, blind spots in the law, such as approaching through online, surveillance using electronic devices such as CCTVs, and damage to neighbors and acquaintances may occur. An example is the case of Germany, where stalking is comprehensively defined by enumerating the types of stalking in the law to included 'other similar acts.'

The need for an effective means of monitoring perpetrators has been raise constantly.²⁷²⁾ According to the current system, the victim can be provided with a smartwatch that can transmit location and make 112 reports, and take measures such as restraining order within 100 meters. However, there are problems of ineffective legal disposition in practice. For example, in the case of 'emergency measure,' a restraining order against the perpetrator, the penalty for violation is only a fine, and arrest and detention, which is a method that can actually separate the perpetrator and the victim, is rarely carried out in practice.²⁷³⁾ It is also

271) Kim, Jeong-hye, Legislative direction and policy tasks for protection and support of stalking victims, "Materials on Lack of Legislation and Policies to Prevent Stalking and Future Tasks," Oct. 4, 2022.

272) Hankyoreh, 'Alarm' should sound through 'GPS' tracking, Sep. 18, 2022.

asserted that the direct monitoring of the perpetrator's location is needed so that the victim can avoid the perpetrator.

However, on the contrary, some assert that there are concerns over violating the perpetrator's privacy. As a result, a conditional release system is discussed as a compromise to the arrest of stalking perpetrators. The conditional release system refers to a system in which a judge dismisses a request for an arrest warrant and instead releases the suspect under certain conditions, such as payment of a bond, restriction on housing, attachment of electronic devices, and prohibition on contacting the victim. In Sep. 2022, the Supreme Court has stated that the current personal restraint system has its limitations as it can only make an all or none decision, and therefore, it is necessary to introduce a conditional release system at the stage of an arrest warrant and harmonize the principle of presumption of innocence, the principle of investigation without detention, and the protection of victims.

C) Proactive Efforts to Protect the Stalking Victims

From January to August 2022, out of 18,806 safety measures for crime victims taken by the police, measures against stalking victims accounted for the highest proportion with 4,266 cases. It was followed by sexual violence (3,899 cases) and domestic violence (3,443 cases).²⁷⁴⁾ Stalking is seen as an act of threatening because it ignores the wishes of the stalking target, and it can cause a serious fear for personal safety in everyday life, along with invasion of privacy, which can have a lasting impact on social life afterwards. According to the 'Results from the Study on the Anti-Stalking Legislative Policy' by a research team of the Department of Criminal Psychology at Kyonggi University, 226 out of 256 stalking victims (88.4%) complained of a serious level of fear for personal safety in their daily lives, and 206 people (80.4%) felt 'hatred and distrust of others.' Some victims quit school or work and move to other places.

273) According to a Yonhap News report (Sep. 20), from 2021 to June 2022, re-reports by victims who were under personal protection were 7,772 cases. Among them, arrest investigations were carried out in 211 cases, which accounted for 2.7%, and in the case of provisional measure No. 4, which confines the offender to a detention center or at a police station, the court's citation rate was found to be around 43%.

274) Newspim, [National Assembly] Rep. Lee, Tan-hee, "Crime requesting police personal protection is 'stalking'," Oct. 19, 2022.

Therefore, it is necessary to recognize stalking as crime and respond actively, and should not be treated lightly as ‘courtship,’ ‘male and female problems,’ and ‘personal problems.’ The cause of the ‘Sindang Station Murder Case’ is not simply a lack of legislation. It is necessary to check whether the protection duty has been fulfilled by the court and the investigative agencies.

On the other hand, limitations of the Stalking Punishment Act has been pointed out since its enactment, such as the anti-willing punishment clause, the fact that the penalty for violating emergency measures is only a fine, and the fact that the Stalking Victim Protection Act has not been enacted. A year after its implementation, some problems were supplemented due to various incidents, and some revisions are under discussion. It is necessary to prepare a detailed stalking victim protection and support system so that the victim can lead a healthy daily life through quick recovery from stalking damage. A constant interest and effort are needed in the future, as new methods and forms of stalking have occurred through the Internet, SNS, and messengers, and as discussions on stalking in the workplace and stalking in family relationships are necessary.

3) Implementation and Limitations of the Act on the Employment Improvement of Domestic Workers

A) The Process of Enacting the Act on the Employment Improvement of Domestic Workers

It has been a long time since housework has already been formed as an industry in Korean society due to the increase in women's participation in economic activities and the socialization and marketization of housework. The National Assembly Budget Office estimates the number of domestic workers to be 390,000 as of 2020. The Korea Labor Institute also estimates that domestic work accounts for about 5% of platform work, as of 2020, which is not a low ratio. On the other hand, workers engaged in housekeeping service are mostly female.²⁷⁵⁾ The Statistics Korea has calculated that 98.4% of housekeepers are

²⁷⁵⁾ In other words, domestic work in Korea is still performed free of charge by women in the household, or it tends to be provided by female workers as a service product. Meanwhile, the Ministry of Employment and Labor announced that it would consider allowing foreign employment in some industries, such as housekeepers, at the end of 2022.

women,²⁷⁶⁾ and the Constitutional Court reviewed the regulations preventing the application of the Act on the Guarantee of Employees' Retirement Benefits to employment activities within households in 2022, and also considered whether the regulations discriminated against women's work.²⁷⁷⁾

However, domestic workers are excluded from legal protection under the 'Labor Standards Act,' 'Minimum Wage Act,' and 'Industrial Accident Compensation Insurance Act' because their place of work is at home. As a result, they were not guaranteed the minimum standard of working conditions and the right to receive social insurance benefits. The poor conditions of domestic workers did not receive social attention, but since the 2010s, the need for legislation to protect domestic workers has been raised. In 2016, the NHRCK recommended measures to the Minister of Employment and Labor to protect the working conditions and social security, through revising the Labor Standards Act, to ensure that the domestic workers²⁷⁸⁾ are protected and their social security rights are guaranteed.

As a result, the Act on the Employment Improvement of Domestic Workers ("Domestic Workers Act") was enacted and entered into force on Jun. 16, 2022. This law is applicable to domestic workers who have signed an employment contract with a domestic service provider certified by the Ministry of Employment and Labor after meeting certain requirements, and the workers under this law are guaranteed the right to minimum wage, social insurances, severance pay, and annual paid leave. The enactment of this Act is significant in that it laid a basis for guaranteeing labor rights for domestic workers who had not been protected as workers by the labor laws and social insurance since the Labor Standards Act was enacted in 1953.

However, the implementation of this law does not solve all problems. The Domestic Workers Act excludes domestic workers in the informal sector who are not certified by the Ministry of Employment and Labor, and they are still unprotected. According to a survey

When the policy is introduced, it may be necessary to discuss various treatment issues of migrant workers in the field of housework, which are actively discussed overseas later.

276) Hwang, Deok-soon, "Informal employment and labor supervision system in the care service sector," Study on Informal Employment, Korea Labor Institute Report, 2012.

277) Constitutional Court, Oct. 27, 2022, 2019HunBa454, See opposing opinions of Lee, Seok-tae and Kim, Gi-yeong

278) Unlike domestic workers in public sector, such as the government's voucher program, domestic workers in private sector provide services to households under private contracts between employer and employee.

conducted by the NHRCK in 2015, domestic workers in informal sector experience significant unfair treatments, such as low hourly wages, assault, sexual harassment, and personal disregard by employers, revealing that they need protection by the law

While the industry welcomed the implementation of the Domestic Workers Act, they also raised concerns that if labor costs rise due to the enforcement of the law, the service fees will increase, and platform companies with large capital will dominate the market. The originally proposed bill included the cultivating public service providers and social enterprises in order to prevent excessive profits in the market and improve the working conditions of workers, but was not discussed at the time of legislation.²⁷⁹⁾

B) Implementation and Limitations of the Domestic Workers Act

The limitation of the Domestic Workers Act is that the workers protected by the law is limited to domestic workers who have employment contracts with certified domestic service providers. In order to expand the number of people subjected to the law, it is necessary to first secure a service market centering on domestic service providers, but it is also pointed out that there is a lack of incentives. Details are as following:²⁸⁰⁾

First assertion is that the obligations of domestic service providers are excessive compared to the government support. The housework has been mainly done through employment agencies, but as a housework service provider, additional costs of around 30%, such as VAT on sales, severance pay, social insurance premiums, and annual allowances, will incur. Furthermore, according to the law, the service providers must guarantee at least 15 hours of work, and must consider costs for compensation for damages, grievance handling, and conflict management. The government has decided to subsidize VAT exemption, national pension, and some of the employment insurance premiums, but the current employment agency, which are mostly small private businesses, seems to lack incentives to bear these additional costs and apply to be certified. In this case, concerns are also raised that problems

279) Hankyoreh, Domestic Workers Act implemented, but there are concerns for the platform operators dominating the market, Jun. 13, 2022.

280) Choi, Young-mi, Implementation and Prospects of the Domestic Workers Act, Monthly Labor Laws, Jun. 30, 2022; Oh, Eun-jin, Discussion on the Significance of Establishing the Domestic Workers Act and Practical Application to the Domestic Workers, Jun. 2021.

related to working conditions may arise if platform companies with capital power enter and gain advantages in the market.

Second, from the perspective of domestic workers, the immediate reduction in income cannot be ignored. According to a research conducted in 2020, domestic workers want 6 working hours per day, but in reality, around 5 hours are provided, indicating that the market is not providing enough work. As a result, women who are the main breadwinner by working as domestic workers do not have sufficient income security, and if the market does not expand, there is not enough incentive for the workers to work for service providers while paying social insurance premiums and taxes. When working for a service provider, severance pay, unemployment benefits and industrial accident benefits are provided, but they are not sufficient incentives to endure an immediate decrease in income.

Third, there are many considerations on the part of housekeeping service users compared to the existing methods, such as employment agencies. Incentives include the fact that it is a service certified by the government and that it is possible to issue a receipt for deduction as expenses. However, it is necessary to include in the contract the guarantee of break time, safety issues, provision of dormitory space and meals, and guarantee of continuous break time in case of residential domestic workers, which were not previously given to domestic workers. Aside from the issue of responsibility of employers in housekeeping services, there is question of whether there is any incentive to use the service even after considering the fact that the fee for using the service may increase.

C) Tasks to Protect the Rights of the Domestic Workers

In 2011, the ILO adopted the “Decent Work for Domestic Workers” (Convention No. 189) to internationally recognize the status of 100 million domestic workers worldwide as workers, and has demanded the member states to guarantee working conditions, the right to organize, and social security systems at the same level as workers in order to protect the human rights of domestic workers.

In the preamble of the Convention, the ILO revealed that the value of domestic workers' labor continues to be undervalued and invisible, even when the domestic workers have made

significant contributions to the economy by increasing opportunities for those responsible for supporting their families to participate in economic activities and expanding the category of caring for the elderly, children, and the disabled. Moreover, the ILO pointed out that housework is mainly performed by women, immigrants, and the poor, and given that they are vulnerable to discrimination and human rights violations in employment and occupation, it is necessary to guarantee the employment rights of domestic workers.

It is welcoming that domestic service providers have been recognized as workers in Korea with the implementation of the Domestic Workers Act, but continuous efforts for improvement are needed in the future. While expanding the domestic service market centered on domestic service providers, it is necessary to take measures to protect the rights of workers who are not subjected to the Domestic Workers Act.

In Uruguay, Spain, the Philippines, and France, domestic service users are defined as domestic workers' employers, and the employment relationship is formalized by requiring the individual users to register the domestic worker's employment with the government agency. Furthermore, if an individual user violates the Labor and Social Security Act, the family is subjected to labor supervision and administrative sanctions (fines). In addition, when an individual user purchases a housekeeping service ticket, the difficulty of imposing and collecting social insurance premiums is solved by including the hourly social insurance premium in the usage fee.

4. Children and Adolescents

A. Human Rights Status 2022

Childhood and adolescence²⁸¹⁾ are the early stages of physical and emotional development, and livelihood during this time is important not only in the present but also in the future. In the same context, the human rights of children and adolescents are seen from a slightly different perspective than adults. This is because the task of future-oriented growth and development is important along with the current status. In the discussion of children's human rights, the two goals of protection and guarantee of autonomy can conflict.

However, Article 25(2) of the Universal Declaration of Human Rights states that “motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Under the UN Convention on the Rights of the Child, children are not ‘owned by their parents,’ but are already respected and dignified beings that make up the Korean society, and children and adults are both equal parties and are defined as owner of all rights.

Thus far, in Korea, children and adolescents have been regarded as objects to be “guided” by parents or adults, rather than being recognized as independent personalities. The human rights of children and adolescents, who have difficulty voicing their opinions, are often violated by parents, schools, and society. Recently, the NHRCK has made recommendations and expressed opinions regarding the so-called ‘No Kids Zone’ and the use of newly coined expression ‘~Lini’(meaning novice)²⁸²⁾ centered on the Internet and broadcasting to prevent the rights of children and adolescents from being violated. These cases are examples that reveal that discrimination against children and adolescents are being carried out without much awareness in Korean society, and that their rights are not properly respected.

281) The distinction between target age groups for children and adolescents is ambiguous. In general, childhood usually corresponds to the elementary school period and refers to the stage before the appearance of secondary sexual characteristics until the age of 12. Adolescence refers to the period between the ages of 13 and 20, which is the age of middle and high school students, when social independence is not yet achieved and a sense of identity is formed.

282) The NHRCK decided in Mar. 2022 that the use of the expression “~lini” in various fields is based on the recognition that children are immature and incomplete beings, not independent individuals who deserve special protection and respect. As a result, it can promote negative stereotypes about children, and expressed the opinion that it is necessary to prepare measures to prevent such expressions from being used indiscriminately. (Decided on Mar. 29, 2022, 21JinJeong0367800)

The subject of the human rights of children and adolescents is broad. In the 2021 NHRCK, The Report on the Human Rights Situation in Korea, the child abuse report and response system centered on the immediate separation system, the death of Yeosu interns and the problem of the on-the-job internship system, the controversy related to the juvenile justice system, the Constitutional Court The impact of the decision to disapprove the evidence of the sexual violence victim's testimony were considered. In addition, issues of sojourn status of migrant children and care and isolation for the vulnerable in the context of the COVID-19 pandemic can also be seen as topics related to children and adolescents.

In 2022, as social distancing measures in response to COVID-19 were eased, the problem of a care gap decreased somewhat; however, during that period, the problem of the learning gap caused by online classes surfaced. Following the Constitutional Court's decision to disallow admission of recorded statements of sexual violence victims under the age of 19, the National Assembly established the ‘Act on Special Cases Concerning the Punishment of Sexual Violence Crimes, etc.’; however, requests to supplement the law was made due to concerns of secondary harm during the course of the investigation. The child abuse report response system, the field training system, and the controversy over law breaching minors continue without any special institutional changes.

Meanwhile, at the end of 2022, discussions related to the human rights issue of overseas adoptees seem to be expanding slightly. There are still 200 to 300 Korean children being adopted overseas each year, and there are many adoptees who were unable to receive proper assistance even when they cannot find their birth information or suffering from abuse. At the end of 2022, the ‘Act on International Adoption,’ which strengthens the state’s responsibility in the adoption process, passed the National Assembly Standing Committee.

Among the issues of 2022 related to the human rights of children and adolescents, this report will address the issues that have received great social attention or are judged to be highly important for discussion in the following. First, this report will look at the ‘suicide after killing a child’ from the perspective of child abuse. In addition, the controversy over lowering the age for the law breaching minors will be considered, as well as the protection policy for the children who are discharged from out-of-home care (youth preparing for independence). Lastly, the report will review the cases of sexual crimes against children and adolescents in the digital age.

B. Main Topics

1) “Filicide-Suicide” From the Perspective of Child Abuse

A) Case of Missing Family - ‘Family Suicide’ and ‘Filicide-Suicide’

Article 4 of the ‘Act on Special Cases Concerning the Punishment of Child Abuse Crimes’ stipulates that a person who commits a child abuse crime and causes the death of a child shall be punished by death penalty, or by imprisonment with labor for an indefinite term or for not less than 7 years. The crime of child abuse and murder is also applied if the abuse continues despite knowing that the act could result in the death of the child.

On Jun. 25, 2022, Gwangju Nambu Police Station disclosed the disappearance of Cho family, including a 10-year-old child. The child requested to take a leave from school for external activities around Mary, but failed to attend school after the leave period had ended, and the school reported it to the police. While the family was missing, their financial circumstances, cell phone search records, CCTV images, and vehicle travel information became known through the media, and the family's disappearance received national attention. Eventually, on Jun. 28, their bodies were found in a vehicle in the sea near Songgok Port, Wando-gun.

The Gwangju Nambu Police Station, on Aug. 2, analyzed the video from the vehicle black box and concluded that the parents committed suicide after giving sleeping pills to the child. The police applied the murder charge to the parents for the death of the child, but as they died, no charges were filed and the case was closed.²⁸³⁾

Immediately after the disappearance of the Cho family became known, several media outlets used the expression ‘extreme choice’ for this case. However, the Korea Association for Suicide Prevention released a statement on Jul. 1, emphasizing that suicide after killing a child is a serious crime, and asked to refrain from excessive attention and hasty reporting on a specific case.²⁸⁴⁾ Civil groups also expressed their opinion that suicide after murdering a child should be defined as child abuse and the government should establish appropriate measures.²⁸⁵⁾

283) Yonhap News, Missing family seems to have committed suicide... investigation to end, Aug. 2, 2022.

284) Statement by the Korea Association for Suicide Prevention, Jul. 1, 2022.

Currently, there are no national statistics on filicide-suicides (suicide after killing child), and suicide attempts after killing children are rarely reported as child abuse or linked to the child abuse protection system. Some media reported that the number of filicide-suicides was 7 in 2018, 8 in 2019, 12 in 2020, and 14 in 2021,²⁸⁶⁾ but there seems to be deviations depending on the calculation or research methods. As the “filicide-suicides” in 2022, it was proposed that a guideline should clearly define such act as child abuse and such events must be investigated.

B) Korean Society’s Perception on Filicide-Suicides and Raising Issues

The main causes of filicide-suicides are marital discord, economic problems such as living difficulties and debt, and parents' psychiatric problems. It is noteworthy that there are cases where a child was murdered due to pessimism about the child's disability and the caregiver him/herself attempted suicide. It is not unrelated to the problem in which the responsibility for personal safety and survival is entirely entrusted with the families, and the distrust of society beyond the family.²⁸⁷⁾

However, recently, despite these factors, many assert that cases involving underage children should be approached as child abuse crimes.²⁸⁸⁾ Save the Children, an international non-profit organization for children's rights, issued a statement in 2020 for the media to no longer use the term “joint suicides.” The Journalists Association of Korea’s recommended standards on suicide reporting also specify that “an act of killing another person and committing suicide should not be described as a joint suicide, and family suicide should be recognized as a criminal act.”

In a ruling in May 2020, the court stated,²⁸⁹⁾ “joint suicide is the language of the

285) BBC News Korea, Parent’s extreme choice ... but the child never made a decision, Jun. 30, 2022.

286) However, this is a collection of cases from each police office nationwide or cases recognized by media reports, and it does not seem to be accurate statistics. According to a 2019 report by Kukmin Ilbo, there were 32 suicides after killing children in 2018. As a result of analyzing media reports from 2000 to Oct. 2019 by the Korea Criminal Policy Institute, a total of 426 cases of suicide or attempted suicide after killing a family member were found. Among them, 247 cases, more than half, included children as victims.

287) Jeong, Seung-hwa, Changes in the Korean Social and Economic Structure in the 1950s and 1960s and Family Suicides, 2011

288) YTN, [Tragedy of a Family] “Filicide” emerged and the expression of ‘joint suicide’ disappeared, Jul. 4, 2022.

289) Ulsan District Court, Decided on May 29, 2020, 2019GoHap365

perpetrator-parent. To speak in the language of a child, this is a murder. Even in the language of the law, this is plain murder. Although there are views that severe punishment should be imposed even in the case crimes committed by mentally ill. I cannot agree with the perception that the reason for lenient punishment is that the crime was committed by a parent.” It is a critical view on the inappropriate use of the term “joint suicide” and paternalism in relation to suicide after the murder of a child.

It is a unique phenomenon in East Asia to use the terms ‘family joint suicide’ or ‘family mass suicide’ for cases of parents committing suicide after killing their minor children (especially infants and toddlers). In Western literature, the case where a child dies together with a parent's suicide is classified from the perspective of a child murder, while Korea’s use of the term ‘family joint suicide,’ and Japan’s use of the term ‘parent-child mind’ (親子心中, oyako shinju). It is seen as unfortunate, and it has formed an attitude of seeing it as an inevitable decision of the family community.²⁹⁰⁾

‘Paternalism’ also seems to be one of the Korean society’s perception on filicide-suicide. A media company analyzed readers' reactions to its article about suicide after killing a child through a special report in 2019.²⁹¹⁾ According to the media, about 32% of the comments were responses that sympathized with the perpetrators to the effect of ‘the child will live a miserable life, but it is irresponsible to leave it alone’ and ‘I understand the feelings of parents who cannot die alone.’ Some expressed complex feelings of blaming the parents but also understanding the unavoidable situation.²⁹²⁾

C) Respecting the Child’s Right to Life and the Role of the Society

The UN Convention on the Rights of the Child, ratified by Korea in 1991, stipulates that every child has an inherent right to life, and that the concerned governments must ensure the

290) Lee, Hyeon-jeong, Concept of Family in East Asia through ‘Parent-Child Joint Suicide’: Comparative Cultural Studies on Korean, Chinese and Japanese Societies, March 2012.

291) Kookmin Ilbo, [Issue & Exploration] Excessive paternalism reduces the ability for social resolution, Oct. 17, 2019.

292) However, this perception seems to be changing recently. As a result of the NHRCK’s analysis of related search terms after the disappearance of Yoo-na Cho in Jun. 2022, the results showed that poverty, difficult, death, murder, suffering, extreme choice, violence, intimidation, pessimism, and punishment appeared in related searches. Also, family, parent, father, child, child killing, choice, tears, and the last were ranked at the top.

child's survival and development to the greatest extent possible. Suicide after the murder of a child is in fact the most extreme form of child abuse. Children are not the property of their parents, and no one's life can become a property of another. It is noteworthy that Korean society considers filicide-suicide as “family suicide,” indicating that the children are regarded as property of their parents.

In particular, ‘filicide-suicide’ should be approached as an incident requiring measures to prevent child abuse, rather than approaching it as an ‘inevitable decision of the family as a whole.’ To this end, the police, relevant ministries, and the media need to revise guidelines related to briefings or case management procedures to clarify that filicide-suicide is child abuse. Moreover, it can be a socially important signal for the government to include ‘filicide-suicide’ as an indicator in key statistics on child abuse and conduct a systematic investigation on the related situation.

On the other hand, it is also important to come up with measures to prevent incidents in advance, such as finding families in crisis in advance. The number of family members making extreme choices was highest during the 1997-1998 financial crisis. Suicides occur more frequently when faced with an economic downturn, as the number of families in crisis increases from business failures and depression, etc.

Developed countries deal with this issue by strategically cooperating between the public sector, private sector and local communities. The Lethality Assessment Program (LAP) adopted in the US identifies victims who are at high risk of being murdered, and provides counseling services by connecting with domestic violence counseling agencies. Moreover, Domestic Violence High-Risk Team (DVHRT) composed of experts from protection groups, police, prosecutors, and corrections is performs identification, investigation and review of high-risk groups. y, investigate, and review high-risk groups.

The Korean government also needs to establish a public system so that families in crisis can be detected early and actively intervened, even for low-income families or those who are not recipients of the national basic livelihood security. It will be important to raise the level of social trust that “the society is raising children together” by setting standards to start social services for the families in crisis, including psychological counseling and treatment, based on child abuse occurrence factors rather than income standards.

2) Law Breaching Minors and the Issues of Lowering the Age of Criminal Liability

A) Controversy Over Law Breaching Minors and Lowering of Age for Criminal Minors

The Criminal Act of Korea defines ‘criminal minor’ as a person who is physically and mentally immature and who has no possibility of being criticized for committing a criminal act even if he/she has committed a criminal act, and thus cannot be recognized as competent for criminal responsibility, and is under fourteen years of age. Moreover, children between the ages of 10 and 14 who commit acts in violation of the Juvenile Act are not subjected to criminal punishment,(Article 9 of the Criminal Act) so-called “law breaching minors,” and they are subjected to 10 protective detention of juvenile under Article 32 of the Juvenile Act.

The global trend is to have a special treatment procedures that are independent of the general criminal procedures for child delinquencies and crimes. However, in the case of juveniles in their early and mid-teens, the law breaching minors, there have been constant assertion that it is unfair not to receive criminal punishment even if they have committed a crime, or that the standard age for the criminal minors is too high.

In Sep. 2022, 16 people, including 2 people in their 20s, were arrested in Daejeon for recruiting law breaching minors to commit theft. They took advantage of the fact that the law breaching minors are not prosecuted, and they recruited and involved them in breaking into jewelry stores and stealing precious metals. At the time of the arrest, one of the criminals, who mistook his birthday and refused to testify, thinking he was a law breaching minor, but later confessed to the crime when he learned that he was subjected to punishment.

According to the National Police Agency, over the past five years, the number of cases sent to the Juvenile Department of law breaching minors increased from 7,533 in 2017 to 10,915 in 2021, and the number of thefts committed by law breaching minors increased from 4,073 in 2017 to 5,460 in 2021. However, the number of violent crimes, such as murder, robbery, arson, and rape, remains at 400 to 450 per year.

In May 2022, the government revealed a plan to adjust the age standard for law breaching minors as part of the ‘Yoon Seok-yeol Administration’s 110th State Affairs Task’ and is pushing to amend the law. Currently, an amendment to the Criminal Act to lower the age of

criminal minors from 14 to 13 and an amendment to the Juvenile Act to lower the upper age limit from 14 to 13 have been submitted to the National Assembly in December. A number of legislative amendments were also tabled at the National Assembly. Most of the amendments include lowering the age of criminal minors, and in the same context, intended to strengthen criminal sanctions or punishment for juvenile offenders.

However, some people, centering on civic societies, are opposing the implementation of such revision. The NHRCK also decided to express its opinion that the “Partial Amendment to the Criminal Act,” lowering the standard age for criminal minors, and the “Partial Amendment to the Juvenile Act,” lowering the maximum age for law breaching minors, to be against the perspective of juvenile rehabilitation and recovery required by international human rights standards and improper as an effective alternative to preventing juvenile crimes and recidivism.

B) Issues and Discussions on Lowering the Age of Criminal Minors

There are three main arguments for lowering the age of criminal minors and lowering the upper limit of law breaching minors (hereinafter referred to as “lowering the age of criminal minors, etc.”). ① The present day children are physically and mentally more mature than the children of the past. ② Recently, crimes by children under the age of 14 are increasing, and becoming more violent, so strong punishment is needed for law breaching minors under the age of 14. ③ As the age of criminal minors is 14 years old, criminal punishment for violent crimes of children under 14 is impossible, and only protective dispositions are given under the Juvenile Act. This in turn weakens the effectiveness of crime prevention.

Regarding the first argument, they suggest that a 13-year-old boy in 2022 is completely different from a 13-year-old boy in 1958 in terms of social and cultural aspects, including the increase in the level of information acquisition due to the popularization of the Internet and smartphones and changes in physical conditions and economic environment. However, even if a child's maturity level has increased compared to the past, it is difficult to find objective data to evaluate that the current child's ability to discriminate objects or control behavior has improved compared to the past, it is only that the current children are in a situation where they can access more knowledge and information than in the past.

On the other hand, the assertion that juvenile delinquency is becoming younger and more ferocious also lacks objective evidence. There are no statistics that clearly show the current status of the juvenile case among the statistics currently released in Korea. Although it can be partially identified through the data on the number of cases sent to the juvenile department of the National Police Agency, there is a limit because the status of juvenile crimes sent directly to the juvenile department from the facilities are not reflected. Moreover, according to this statistic, the number of violent crimes, such as murder, robbery, arson, and rape, has remained similar each year, making it difficult to conclude that juvenile crimes are becoming more violent.

The assertion that punishment is less effective in preventing crime than the nature of the crime is also questionable. It is difficult to conclude that the punishments are light, considering the fact that from the age of 10, they can be subject to all protective measures except for Article 32 (Decision on Protective Disposition) of the Juvenile Act, Subparagraph 2 (Order to Attend Courses) and Subparagraph 3 (Order to Volunteer in Community Service), and that youths over the age of 12 can be sent to a juvenile detention center for two years. Also, strengthening the criminal punishment does not guarantee the improvement and edification of the law breaching minors, and imprisonment can hinder the person's healthy return to society and recovery through learning criminal tendencies, etc.

C) Efforts to Prevent Juvenile Crimes and Recidivism

The UN Committee on the Rights of the Child, in General Comment No. 24, stated that the world's most common minimum age for criminal responsibility is 14 years old, and urged the states that the minimum age for criminal responsibility be raised to 14 years or older. The UN also expressed concern about the practice of allowing exceptions to set a lower minimum age of criminal responsibility where children are accused, and expressed concern that such practices are often in response to public pressure and are not based on a rational understanding of children's development. In the final opinion on the 5th and 6th national reports of Korea in 2019, a recommendation was made that “the minimum age of criminal responsibility be maintained at 14, and children under the age of 14 should not be treated as criminals or detained.”

Juvenile crime policies based on strict punishment and retribution, such as lowering the age of criminal minors, have no significant effect on preventing juvenile crimes and recidivism. The US and Japan have lowered the age of criminal responsibility and strengthened the punishment in the wake of violent juvenile crimes, but the juvenile crimes have not decreased. Korea also revised the law in 2007 to lower the age limit of law breaching minors from 12 to 10 so that those who were previously not subjected to criminal punishment or protective disposition are subjected to protective disposition. However, despite such hardline responses, policy effects, such as prevention of juvenile delinquencies and prevention of recidivism have not been confirmed.

Excluding the strict juvenile crime policies, alternatives to prevent juvenile crime and recidivism include the expansion of correctional facilities, juvenile classification judges, juvenile detention centers and juvenile prisons, expansion of the number of probation officers in charge of juveniles, diversification of temporary measures, and improving the correctional programs, and establishing measures to strengthen victim protection. In the long term, it is necessary to conduct comprehensive research on the complexity and diversity of causes of juvenile delinquencies, developmental characteristics of children, and environmental factors surrounding children, such as individual, family, and school, and analyze the problems with the current juvenile justice system to respond to juvenile crimes in an integrated manner.

3) Protection Policies and Realities of Youths Preparing for Independence (Children Discharged from Out-of-Home Care)

A) Successive Deaths of Youths Preparing for Independence (Children Discharged from Out-of-Home Care) and Support Policies

In Aug. 2022, two students, 19-year-old and 18-year-old, died at a university and apartment in Gwangju. They were supported as children subject to protection, but their support ended, and they decided to end their lives while experiencing economic and psychological hardships.²⁹³⁾ When the two incidents were reported, the mayor of Gwangju announced a plan to strengthen the local support system for young people preparing for independence.²⁹⁴⁾²⁹⁵⁾

The legal protection for the children subject to protection²⁹⁶⁾ who have been living in child care facilities, communal homes, foster homes, etc. due to the death of their parents or child abuse, etc. ends when they reach the age of 18 and they become independent, except for exceptional circumstances, pursuant to Article 16(1) of the ‘Child Welfare Act.’ There are about 2,500 young people preparing for independence in a year, and despite various self-reliance support policies, they are facing difficulties.²⁹⁷⁾

Some self-reliance support is provided after being discharged from the facility,²⁹⁸⁾ but the ratio of receiving the basic livelihood benefit reaches 36.1% within 5 years from the end of

293) Kyunghyang Shinmun, Another Youth Discharged from Out-of-Home Care Takes Own Life ... Social Care is Desperately Needed, Aug. 24, 2022.

294) In the past, ‘children discharged from out-of-home care’ meant those whose protection by the state and local governments ended when they reached a certain age, but from 2021, the government has announced that it will use the term “youth preparing for independence” to mean that they will be seen as independent beings.

295) Kwangju In, Mayor of Kwangju, Full text of press conference on ‘strengthening support for youth discharged from out-of-home care,’ Aug. 25, 2022.

296) The term “child subject to protection” means a child who has no protector or is separated from a protector, or whose protector is unsuitable for, or incapable of, rearing them, such as in cases of child abuse by the protector (Article 3(4) of the Child Welfare Act).

297) NHRCK, Decided on Apr. 21, 2021, Recommendation to Improve the System for Heightened Human Rights of Children Discharged from Out-of-Home Care

298) The state and local governments take certain supportive measures to support self-reliance after the end of protection for children who have not passed 5 years after the end of protection. (Article 38, Child Welfare Act). Support for self-reliance include: ① support for residence, living, education and employment, etc.; ② support in formation and management of assets; ③ develop and manage programs to strengthen independent living capacity; and ④ regular payment of allowances for independence to support living expenses, etc.

protection, and the college entrance rate is low at 62.8% compared to 70.4% for general youth, and the unemployment rate is twice as high at 16.3%.²⁹⁹⁾ They lack basic knowledge to maintain a livelihood, and they have difficulty finding people to ask for help, so they are at a high risk of exposed to poverty and crime. In particular, half of the children preparing for independence experience psychological difficulties to the extent that they have considered suicide,³⁰⁰⁾ and for various reasons, contact with support organizations is lost for about 20% of the cases.³⁰¹⁾

In Jul. 2021, the government announced a ‘Plan to Strengthen Support for Children Discharged from Out-of-Home Care.’ This plan includes extending the period of protective measures, extending the independence allowance period after the end of protection, increasing the allowance, strengthening public housing support, expanding case management support, operating an agency dedicated to independence support, expanding dedicated personnel, and expanding psychological support programs. At the end of 2021, the Child Welfare Act³⁰²⁾ was revised, and from Jun. 2022, the children subject to protection can extend the protection period until the age of 24, if they wish.

Recently, the unstable and poor living conditions of young people preparing for independence have been continuously reported in the media, and the interest in the need to improve appropriate policies and systems to support independence of the young people preparing for independence is increasing as civil groups promote projects to support children who have discharged from facilities. Despite the revision of the law from 2021 and the government's improvement plans, several tragic incidents of children whose protection ended in 2022 show that the state must take on more responsibilities for the best interests of children.

299) Joint-Ministry, Plan to Strengthen Support for Children Discharged (Youths Preparing for Independence), Jul. 13, 2021.

300) Korea Institute for Health and Social Affairs, Study on Improving the Delivery System of Protective Services to Strengthen the Support for Youths Preparing for Independence, 2020.

301) National Center for the Rights of the Child, 2021 Children Independence Support Statistics Report, 2022.

302) Child Welfare Act Article 16-3 (Extension of Period of Protection) ①Where a child subject to protection who reaches the age of 18 has an intention to extend protective measures, a Mayor/Do Governor or the head of a Si/Gun/Gu shall extend the period of protection until the child reaches the age of 25, notwithstanding Article 16 (1).

B) Limitations of the Protection Policy for Youths Preparing for Independence (Children Discharged from Out-of-Home Care)

Usually, independence of children and adolescents is achieved through a long-term care of their families. Particularly in Korea, the age of entry into society is later and more difficult than OECD member states due to difficulty in finding jobs, high college entrance rate and fulfilling the military service obligations. The process of becoming independent for youths preparing for independence is inevitably more difficult than other adolescents and young adults because they lack social and economic resources and the support systems.

It is reasonable to say that the biggest difficulty experienced by young people preparing for self-reliance is a problem stemming from economic power. However, many experts believe that the government's recent policies to support independence for the youths preparing for independence focus on financial support programs, but it is also pointed out that it is necessary to more delicately deal with many practical problems face by these young people in the process of standing alone.³⁰³⁾

First is a matter of psychological and emotional support. Various studies have confirmed that the level of psychological and emotional satisfaction and life satisfaction of young people preparing for independence are lower than other children, youths, and lower than those children under protection, and tend to decrease as the years pass after they are discharged. Even when they are in a dangerous psychological state to contemplate suicide, they sometimes cannot effectively respond on their own. For those who lack social support after the end of protection, psychological and emotional independence is an essential element for overall independence, but in reality, as the follow-up period becomes longer, the independence support system tends to be neglected except for economic support.³⁰⁴⁾

Second is a problem of the service support system. Although self-reliance support services, including economic support, have been greatly expanded, the support services cannot be provided if contact is lost with youths preparing for independence, and the issue of lost contact, which accounts for about 20%, is one of the factors that reduces the

303) Chosun Media, From a Youth Preparing for Independence to a Young Adult with Many Potentials, Jun. 24, 2022.

304) Asia Today, Half of Youths Preparing for Independence Think about Suicide ... Must Reinforce Support System, Aug. 28, 2022.

effectiveness of the service.³⁰⁵⁾ However, as of 2020, about half of the cities and provinces do not operate an agency dedicated to independence support, and considering the number of youths preparing for independence per manager, even in the regions with a dedicated agency have difficulty managing individual youths, including follow-up management.

On the other hand, the issue of children leaving facilities who are in the blind spot of the system is also raised. The current independence support services for youths discussed the cases of discharge after completing the protection period, and this is a support based on the Child Welfare Act. However, there is no provision to support those who return to their homes or leave the facilities without permission during the protection period. In August of this year, a young person was excluded from the support policy with a difference of only about 15 days, which shows that blind spots can still occur.³⁰⁶⁾

C) Tasks to Protect the Human Rights of Youths Preparing for Independence (Children Discharged from Out-of-Home Care)

Children are in need of protection due to the nature of their development. The right of children to receive special protection and support is repeatedly emphasized through the full text of the UN Convention on the Rights of the Child, Article 24 of the UN Covenant on Civil Rights, and Article 10 of the UN Covenant on Economic, Social and Cultural Rights. The child protection system in which the national and local governments protect children by separating them from their parents is the obligation of the state to guarantee the children's right to be protected, but the children protected in this way need more special protection and support in the process of growing up. It is necessary to keep in mind the point that a society with a weak foundation for children subject to protection to stand on its own in society is a society that neglects human rights violations that are foreseeable to the socially underprivileged.

One of the strongest support systems before or after a person becomes independent is the family, but the average period of care outside the home is 12 years for the children

305) In some cases, the reason for losing contact is of their own choice to forget that they were children under protection, but there are other cases of unable to obtain information or lethargic psychological state, etc.

306) Kookmin Ilbo, "No One Provided Protection," Leaving Early Leading to More Difficult Independence, Sep. 22, 2022.

discharged from out-of-home care. They have been living in the protection system outside the home for most of their lives. The ratio of single-person household in Korea is 30.2%, but in contrast the ratio of single-person households among youths preparing for independence is 61.6%,³⁰⁷⁾ which is twice as high, making their social networks more vulnerable. Moreover, there is still a prejudice in Korean society against people who have lived in facilities. The support plan for children discharged from out-of-home care is changing positively, but bringing about a change in social awareness is also essential for these children to grow into healthy members of society.

Therefore, beyond simply providing economic support, it is necessary to strengthen relationship-based services after the end of protection, including development of programs that can strengthen the psychological and emotional support for children while they are being protected, improving the professionalism of independence supporting personnel through improving case management, develop ways to connect social mentors, etc.³⁰⁸⁾ Moreover, it is necessary to consider recruiting sufficient manpower to related institutions to enable integrated management, and ways of providing authority to preemptively confirm the need to provide the service, even if not specifically requested by these children, including the children who left the facility early.³⁰⁹⁾

The support policy for the youths preparing for independence is not simply a matter of support prior to being discharged or providing financial support. It is necessary to support children and youths subject to self-reliance support so that they can grow into healthy adults who can exercise the right to self-determination under a sense of self-responsibility and social solidarity, and to this end, it is necessary to prepare a foundation for support tailored to the individual needs of these youths, and to seek ways to strengthen their capabilities upon this foundation.

307) Korea Institute for Health and Social Affairs, Study on Improving the Delivery System of Protective Services to Strengthen the Support for Youths Preparing for Independence, Dec. 2021.

308) See Korea Institute for Health and Social Affairs, Study on Improving the Delivery System of Protective Services to Strengthen the Support for Youths Preparing for Independence, Dec. 2021, etc.

309) In 2022, the government plans to install agencies dedicated to support independence in 17 cities and provinces across the country, and by 2023, the number of people dedicated to support independence will also increase from 120 to 180, but there are about 13,000 discharged youths between 2017 and 2021, and it seems necessary to evaluate whether the number of managers per person is at a level that can provide integrated services.

4) ‘Case of L,’ Sexual Crimes Against Children and Adolescents in the Digital Age

A) Sexual Crimes Against Children and Adolescents Online - ‘L Sexual Exploitation Case’

On Aug. 29, 2022, the media reported that a crime of production and distribution of over 1,000 sexual exploitation of minors had occurred through Telegram in a similar way to the ‘nth room sexual exploitation case.’³¹⁰⁾³¹¹⁾ This case received national attention as it became known as the ‘L sexual exploitation case’ after the main culprit’s name. The Seoul Metropolitan Police Agency’s Cyber Investigation Team established a dedicated team for the case on Aug. 31, and the Ministry of Justice once again announced its strict response policy to digital sex crimes.³¹²⁾ The prime suspect in the ‘L sexual exploitation case,’ was arrested in Australia on Nov. 23, and the police requested extradition of the criminal to Korea.

According to the Ministry of Gender Equality and Family’s ‘2022 Trend and Analysis of Sexual Crimes against Children and Adolescents’ (Mar. 2022),³¹³⁾ the crime of production and distribution of materials consisting of sexual exploitation of children increased by 61.9% as compared to the previous year, among the crimes of criminals convicted of sex crimes against children and adolescents in 2020. Moreover, according to the results of the National Investigation Headquarters of the National Police Agency’s crackdown on cyber sexual violence crimes from March to October, child sexual exploitation was the most common at 43.8%.³¹⁴⁾

Meanwhile, discussions on sexual harassment in the online space continue. In 2021, Article 15-2 of the ‘Act on the Protection of Children and Youth Against Sex Offenses’ was newly established, making it possible to punish grooming sexual violence online and offline.³¹⁵⁾

310) Sexual exploitation refers to an act of inducing, forcing, or sexually exploiting a child or youth to engage in illegal and harmful sexual acts by taking advantage of their status.

311) KBS News, Appearance of another ‘devil’ ... Sexual exploitation became more vicious, Aug. 29, 2022

312) MOJ Press Release, Sep. 1, 2022.

313) The result of analyzing the crime pattern, occurrence trend, and damage status of those convicted of sex crimes against children and adolescents in 2020 by the Korea Institute of Criminology and Justice

314) Joongang Ilbo, National Investigation Headquarters, 1,694 arrests over 8 months of intensive crackdown on cyber sexual crimes... 99 arrests were made, Nov. 15, 2022.

315) Grooming sexual assault refers to sexual abuse and exploitation by the perpetrator after forming an intimate relationship with the victim. Among them, online grooming means that the process of grooming is done through

Moreover, as the metaverse³¹⁶⁾ market continues to grow and young adults begin to use the metaverse platform,³¹⁷⁾ discussions on the need to regulate sexual harassment in the digital environment are also beginning. In Jan. 2022, the Digital Sexual Crimes Expert Committee of the Ministry of Justice recommended the establishment of new provisions related to “sexual personality rights” in the Sexual Crimes Punishment Act to regulate the act of sexually targeting others in the digital space as a sex crime.³¹⁸⁾

The National Assembly submitted a bill has been proposed in to establish an obligation for online platform operators, such as Metaverse, to immediately report to the investigative agency once they become aware of related crimes, such as sexually exploiting conversations with children and adolescents, in the information and communication network operated and managed by them,³¹⁹⁾ a bill to establish new penalty provisions for sexual violence against avatars in virtual space,³²⁰⁾ and a bill that prohibits stalking and acts that cause sexual shame or disgust by using avatars in virtual spaces and establishes new penalty provisions,³²¹⁾ etc.³²²⁾ The NHRCK also recommended to establish policies for the prevention and protection of violence against children in the digital environment, such as strengthening the support system for the victims of digital sexual violence, through the recommendation of the 4th National Action Plans for the Promotion and Protection of Human Rights (Human Rights NAP) in July 2022.

digital technology and online space without actual meeting.

316) Metaverse is a combination of “Meta” meaning “processing, abstract” and “Universe” meaning the real world, and refers a three-dimensional virtual world.

317) As of Jan. 2021, according to a survey by Nielsen Korea, the main users of the Metaverse are teenagers, with the proportion of teenagers accounting for 60–70% of ZEPETO and Roblox users among the Metaverse services.

318) MOJ Press Release, Jan. 28, 2022.

319) Co-Sponsored by 10 representatives, including Rep. Gang, Seon-woo, “Partial Amendment to the Act on the Protection of Children and Youth Against Sex Offenses,” Bill No. 2114465, Jan. 28, 2022.

320) Co-Sponsored by 13 representatives, including Rep. Min, Hyeong-bae, “Partial Amendment to the Act on Special Cases Concerning the Punishment of Sexual Crimes,” Bill No. 2115468, May 2, 2022.

321) Co-Sponsored by 11 representatives, including Rep. Yoon, Yeong-deok, “Partial Amendment to the Act on Promotion of Information and Communications Network Utilization and Information Protection,” Bill No. 2116686, Jul. 27, 2022

322) Minbyun, Lawyers for a Democratic Society, 2022 Report on Human Rights in Korea, Dec. 2022.

B) The Human Rights of Children and Adolescents in the Digital Environment and the Issue of New Types of Sexual Crimes

The digital environment is a space that provides an important opportunity for teenagers to express their thoughts, opinions, and political opinions. In addition, the use of the digital environment plays an important role in the growth process and establishing self-identity of children and adolescents.³²³⁾ In other words, the digital environment is an important part in the development and the protection of human rights of children and adolescents, and at the same time, children and adolescents are an important users of digital platforms.

However, the production and distribution of digital sexual exploitation materials targeting children and adolescents have recently been organized using new information and communication technologies, such as the Dark web.³²⁴⁾ In addition, sex crimes that occur in the digital environment require special attention to protect the children and adolescents in that the damage is semi-permanent and highly scalable in many cases. The main characteristics of the situations in which children and adolescents are exposed to the digital environment are as follows.

First, it is more difficult to recognize, report, and investigate problems targeting minor victims in an online environment. In many cases, when sexual offenses occur, children and adolescents do not recognize that they are in such a situation and end up in an irreversible situation, and they tend not to report for the fear of their parents finding out.³²⁵⁾ In addition, even when there is a report, if the platform operator does not cooperate with the investigation, confirming the crime is difficult.

Second, sex crimes that occur in the digital environment are new, and there is no established basis for punishment or appropriate disciplinary methods. Actions with sexual connotations towards avatars are not subjected to criminal law, not only in Korea, but also abroad.³²⁶⁾ However, there is a research result indicating that the real and virtual experiences

323) 5 Rights foundation, Our Rights in a Digital World: A snapshot of Children's views from around the world, 2021.

324) If it exists on an encrypted network, various crimes occur because certain types of websites that can be accessed only through special paths, anonymity are guaranteed, and IP addresses cannot be traced.

325) NHRCK, Human Rights Status Investigation, Investigation on the Prevention of Sexual Exploitation of Children and Measures for Human Rights Relief, 2021.

326) Kim, Jeong-hwa, Kim, Yoon-sik, and Cha, Ho-dong, A Study on Sexual Violence Crimes and Criminal Legal Regulations

are not clearly distinguished by being immersed in the avatar character in the virtual space,³²⁷⁾ and if a device that implements even the sense of touch is introduced in the future, the pattern of psychological and physical damage will be similar to that of the real world. However, some view that social consensus and discussion are necessary to see whether avatars can be seen as representing a person's personality in the online space or whether it is appropriate to regulate under the same standards as in real life when sexual speeches and behaviors that cause sexual humiliation or shame are made to online characters.³²⁸⁾

Third, it is difficult to delete information on sexual exploitation, which is the result of digital sex crimes, and accordingly, the possibility of secondary damages is particularly high. The Digital Sexual Crime Victims Support Center under the Women's Human Rights Institute of Korea is in charge of requests for the deletion of illegally filmed materials and support for the victims in accordance with the Telecommunications Business Act, but due to the characteristics of the Internet environment that allows rapid duplication and distribution, the reproduction cannot be predicted and the damages can spread abroad. In the end, completely deleting the illegal videos and recovering damages with the current technology and environment are very difficult.

C) The Need for the Efforts to Protect Children and Adolescents from Digital Sexual Exploitation Crimes

The rights of children and adolescents in the digital environment and the issue of sex crimes are international issues. The UN Committee on the Rights of the Child stated in General Comment No. 25 in 2021 (on children's rights in relation to the digital environment) that strong international and regional cooperation is inevitable due to the cross-border nature of the digital environment. Moreover, ECPAT International, a human rights organization, published a report on the actual circumstances of child sexual exploitation in Korea in 2018,

in the Metaverse Space – Focusing on the Direction of the Amendment to the Act on Promotion and Information and Communications Network Utilization and Information Protection – New Trend in Criminal Law, 2022

327) Lee, Hyang-jae, A Survey of Users' Perception of Avatar Characters in Virtual Space, *Design Studies*, 2004; 17(3) 61–70.

328) National Assembly, Science, Technology Information, Broadcasting and Communications Committee, Report on Partial Amendment to the Act on Promotion and Information and Communications Network Utilization and Information Protection (Bill. No. 2115927), Sep. 2022.

and stated that “Korean children are pressured for consumerism and money, which makes them vulnerable to prostitution³²⁹⁾ and online sexual exploitation. Korea is committed to eradicating the distribution of child sexual exploitation, but it is still a source, transmission point and destination of online child sexual exploitation.”

In its final opinion on the 5th and 6th national reports of the Korean government in Oct. 2019, the Committee on the Rights of the Child expressed its concern for lack of comprehensive policy and strategy to deal with and resolve all forms of violence against children, including digital sexual exploitation, and experts in related fields. It made a recommendation to establish strategies for crimes of digital sexual exploitation from the perspective of violence against children, train experts and implement public education programs, investigate and respond, and allocate sufficient human, financial, and technical resources.

The rights of children must be equally respected, protected and realized in the digital environment. In particular, as crimes of sexual exploitation targeting children and adolescents are changing in ways that are difficult to respond to with existing laws, investigations, and support systems, the state has an obligation to establish a strict system that can protect children from violence newly emerging in the digital environment and punish the perpetrators.

In the short term, a system to support digital sexual violence victims need to be strengthened by regularizing the information sharing channels, including the types of digital child and adolescent sexual violence and how to deal with them, increasing the budget and granting authority to the support centers for victims of children/adolescent sexual exploitation, and providing psychological counseling to the digital sexual violence victims. In particular, in the long term, it is important to continue the efforts to delete and block digital sexual exploitation to function effectively, including raising awareness of the problem that digital sexual exploitation causes extreme damage to the victims, and improving laws and the system, and establishing a foundation for international cooperation.

329) The international community views child prostitution from the perspective of ‘exploitation’ of children, and views children used for prostitution as ‘victims of sex buyers.’ The UN Committee on the Rights of the Child published a draft guidelines for the implementation of the 2019 Optional Protocol to the Convention, through which it encourages avoiding the previously used term ‘child prostitute’ and to use the term “sexual exploitation of children in prostitution.”

5) Raising the Problem of Human Rights Violations of Children During the Process of Overseas Adoption and the Direction of Improvements

A) Emergence of Human Rights Issues of Overseas Adoptees

For about 70 years from the end of the Korean War to 2022, about 170,000 children were adopted overseas. About 60% of children adopted in Korea are adopted overseas. In the past, there were many success stories of children abandoned by war and poverty, adopted abroad, meeting good adoptive parents, receiving quality education, and returning to Korea as adults.³³⁰⁾

However, there have been continuous claims of administrative problems that violated the human rights of adoptees during the overseas adoption process and thereafter. Among adopted children who grew up overseas, there are many cases in which accurate birth information cannot be found due to adoption agencies illegally creating false family registers to expedite the adoption process, and cases where appropriate help was not received even after experiencing abuse.

In particular, at the end of 2022, discussions related to the human rights issues of children adopted abroad increased. The 2nd Truth and Reconciliation Commission, Republic of Korea (hereinafter referred to as the ‘Truth and Reconciliation Commission’) decided to investigate the human rights violations during the overseas adoption process on Dec. 6. The Truth and Reconciliation Commission confirmed that the applicants were adopted by fabricating the identity of an orphan or a third party even though they had biological parents, and reason for initiating the investigation was explained that the national investigation committee of the Netherlands had previously uncovered that there had been illegal acts by the state, etc., and human rights violations against the children and birth parents in the process of overseas adoption in the past.

Regarding the Truth and Reconciliation Commission's decision to initiate an investigation, international adoptee organizations urged the Korean government to determine the truth on whether the Korean government fulfilled its responsibilities in preventing human rights

330) NHRCK, Study on the Human Rights Protection Measures Through Survey on the Human Rights Status of Overseas Adoptees, Dec. 2022.

violations of overseas adoptees and whether human rights violations occurred during the overseas adoption process.³³¹⁾ Many media reported on the difficulties and human rights issues that Korean adoptees experienced while growing up after being adopted overseas.³³²⁾

In Dec. 2022, the National Assembly passed the ‘Act on International Adoption,’³³³⁾ which implements the ‘Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption’ (hereinafter referred to as the ‘Hague Convention’) and regulates the standards and procedures for overseas adoptions. The main provisions of this bill is to prescribe the matters concerning the requirements and procedures for overseas adoption in response to an assertion that a separate regulation for overseas adoption is necessary.

In 2013, Korea signed the Hague Convention, which strengthens state responsibility in the adoption process for the protection of overseas adoptees, but it has not yet been ratified by the National Assembly. As such, the NHRCK recommended on Apr. 11, 2005 to the Prime Minister and the Minister of Foreign Affairs to join the Hague Convention and implement the Convention.

B) Problems with the Past Overseas Adoption Practices

The Korean government had actively encouraged the overseas adoption as a measure for the war orphans in the past, and the adoption process was led by private organizations without state intervention. As a result, a number of child rights problems occurred during the overseas adoption process, and the main causes are the following practices.³³⁴⁾ The following characteristics have become known as adoption practices for decades, and continued until the full revision of the ‘Act on Special Cases Concerning Adoption’ in 2011.

331) Women News, Took 68 Years to Investigate on Human Rights Violations in Overseas Adoption ... “A Historical Decision,” Dec. 11, 2022.

332) Sisa In, Lives of overseas adoptees ... Drifting without directions, Dec. 23, 2022.

333) Co-Sponsored by 14 representatives, including Rep. Kim, Mi-ae, Bill No. 2115361, Apr. 21, 2022.

334) NHRCK, Study on the Human Rights Protection Measures Through Survey on the Human Rights Status of Overseas Adoptees, Dec. 2022.

First is the practice of creating family registers for the orphans. In the past, overseas adoption agencies issued orphan family registers of adoptable children in consideration of the adoption system of the recipient country to facilitate the adoption process. For example, in the US, if the child to be adopted is an orphan, the process is much easier because there is no need obtain consent of the biological parents, from passport issuance to the US visa issuance and adoption trial in the US. Under this practice, even when the consent of the biological parents can be obtained during the adoption process, no efforts were made to do so, and there were cases where children were illegally processed as orphans while knowing the existence of the biological parents.

Second is the practice of adoption by proxy. Adoption by proxy is an adoption method that allows the adoptive parents to proceed with the adoption in the country of the adopted child through an agent, such as an adoption agency, without directly seeing the child. Adoption by proxy was carried out in the 1950s by private organizations that led overseas adoptions between Korea and the US, with the intent of implementing the adoption process efficiently in terms of cost and time. However, this adoption by proxy scheme has been criticized in that it cannot guarantee the safety and welfare of adoptees, and it is highly probable that the adoption will proceed with a focus only on the interests of the adoptive parents and the adoption agencies.

Such establishment of family registers for orphans and permitting adoption by proxy facilitated the overseas adoptions, which is closely related to the commercialization of adoption. The adoption fees for Korean children amounted to 5,000 USD in 1988 (Korea's per capita income of 4,571 USD in the same year) and 17,215 USD in 2009 (Korea's per capita income of 17,074 USD in the same year). It was also reported that some private adoption agencies lobbied the welfare facilities and medical institutions to secure children to be adopted.³³⁵⁾

335) Hankyoreh, Back money to secure an adopted child, Sep. 27, 1989.

C) State's Responsibility During the Adoption Process

Article 21 of the UN Convention on the Rights of the Child stipulates that the best interests of the child must be given the highest priority during adoption, the decision must be made by the competent authorities, overseas adoption should be permitted only as a last resort when the child cannot be protected in the country of origin, and obtaining financial benefits through overseas adoptions must be prohibited. Moreover, Article 7 of the UN Convention on the Rights of the Child stipulates the right of children to be registered at birth, the right to a name, the right to acquire nationality, and the right to know and be cared for by their parents. Article 6 of the Convention declares the inherent right to life, and Article 7 of the Convention declares the 'right to social life.' Therefore, the best interests of the child should be given the highest priority in the adoption process for children of all ages, support must be provided to raise children in the original family as much as possible, and the overseas adoption should be attempted as a last resort after considering domestic adoption when the birth parents are unable to raise the child.

The Hague Convention stipulates that a protective network should be established to prevent theft, trafficking or trading of children at the time of adoption, and that the overseas adoptions should be carried out under the intervention of the central authority. The UN Committee on the Rights of the Child has repeatedly recommended ratification of the Hague Convention after the 3rd, 4th, 5th and 6th deliberations of the government report of Korea.

Korea's current adoption system entrusts all procedures, other than court approval, to private adoption agencies. This method does not conform to the provisions of the Hague Convention that the overseas adoptions must be carried out under the responsibility of a competent public authority, and is a matter that raises question as to whether the state is playing an appropriate role in protecting children's human rights. Therefore, it is necessary to identify and remedy human rights violations that occurred during the overseas adoption processes in the past, while strengthening the public responsibility in the future adoption processes and making improvements to place priority on the best interest of the child.

5. Elderly

A. Human Rights Status 2022

The concept and definition of the elderly appear differently depending on the times and cultures or individual laws. In fact, changes and adjustments to the standards are being discussed not only in Korea but also in many countries. However, according to the definition of the International Association of Gerontology & Geriatrics, the elderly can be seen as ‘a person in a complex process in which physiological, psychological, and environmental changes and behavioral changes appearing in the human aging process interact.’

However, looking at the domestic legislation, each individual law or organization has different standards for the elderly. The ‘Welfare of Senior Citizens Act’ sets the age standards for entering the welfare house for senior citizens and the provision of prohibition of abuse differently as ‘seniors aged 60 or older’ or ‘seniors aged 65 or older,’ and the National Pension Act, the Human Rights Survey by the NHRCK and the Korea Disease Control and Prevention Agency use 60 years of age as the standard for senior citizens. On the other hand, according to the ‘2022 Senior Population Statistics’ of the Statistics Korea, which was conducted with the people aged 65 or older, as the standard of elderly, the elderly population of Korea in 2022 is 17.5% (9,018,000) of the total. In the 2021 senior population statistics, the population aged 65 or older accounted for 16.5% (8,537,000 people) of the total population, and this confirms that Korea is currently heading toward a super-aged society at a very rapid pace.³³⁶⁾

The perceptions and treatments toward the elderly are expressed in various ways depending on the conditions faced by each country and society and the degree of human rights that are protected. COVID-19, which has been prevalent since 2020, has had a great impact on the problems of living as an elderly person. It was reported that ageism has been strengthened throughout the world due to the nature of COVID-19, where age was an important factor in becoming a serious illness. The ‘Policy Brief: The Impact of COVID-19

336) The UN classifies a society as an aging society if the proportion of the population aged 65 or older exceeds 7% of the total population, an aged society if it exceeds 14%, and a super-aged society if it exceeds 20%.

on older persons'³³⁷⁾ (May 1, 2020) pointed out that, even though solidarity is ever more needed, discrimination against the elderly, such as age discrimination and stigmatization of the elderly, has worsened in the aftermath of the COVID-19 epidemic. In addition, the limitation of direct contact between people and the increase in the non-face-to-face activities, the care gap, and the digital divide had a negative impact on the daily lives and mental health of the elderly.

On the other hand, the elderly in Korea are at risk of poverty and isolation, and this problem has not improved for a while. The elderly poverty rate and elderly suicide rate remain high, and the policies for improvement are not showing any special effects. In the 2021 NHRCK: The Report on Human Rights Situation in the Republic of Korea, the issues of employment for the elderly, caring for the elderly, and elder abuse were discussed, but it is difficult to say that the discussions on the elderly were more active in 2022 as compared to the previous year.

The Federation of Korean Industries (FKI) analyzed the 'retirement and employment status of the elderly aged 55-79' for the past five years, and as of May, the number of elderly aged 55-79 working while receiving pension was about 3.7 million, an increase of 46.7% from 2017. Moreover, according to the 'Statistics of the Elderly in 2022' and the 'Results from the Supplementary Surveys by Work Type in Aug. 2022' by the Statistics Korea, the employment rate of the elderly aged 65 or older increased from 30.6% in 2016 to 34.9% in 2022. However, the proportion of people engaged in unskilled labor has increased significantly. When the pensions cannot cover the cost of living entirely, the poor working conditions of the elderly and the resulting poverty are a major factor in deterioration of the human rights of the elderly.

The concerns over the degree and standard of protection and promotion of the rights of the elderly is especially important in Korea. However, although there are conventions on women's rights, children's rights, and the rights of the disabled, there is no convention that directly deal with the protection of the rights of the elderly. Currently, the NHRCK, as the chair body of the Working Group on Aging of the Global Alliance of National Human

337) UN, "Policy Brief: The Impact of COVID-19 on older persons", May 1, 2021.

Rights Institutions,³³⁸⁾ is exerting efforts by preparing a draft for the ‘UN Convention on the Rights of the Elderly’ and holding international conferences with the EU and the Asia-Pacific Forum of National Human Rights Institutions (APF).

Nevertheless, many of the elderly human rights issues in 2022 seem to be the result of exacerbation of problems that have already lasted for a long time. In the following, this report will discuss the analysis of the elder abuse problem, the digital divide problem, and the elderly traffic accident prevention system, along with the plans for improvements.

338) The NHRCK was elected as the APF Chairperson at the 27th APF Annual Meeting on Sep. 15, 2022. Moreover, accordingly, the position of the APF representative body in the Asia-Pacific region of the Executive Board of the Global Alliance of National Human Rights Institutions (GANHRI) from 2023 to 2026 was also assumed.

B. Main Topics

1) Status of Elder Abuse and Elder Abuse by Families

A) Status on Elder Abuse and a Demand to Reinforce the Investigative Procedures

According to the “The Report on the Status of Elder Abuse” (2022) released by the Ministry of Health and Welfare and the Central Senior Protection Agency, the number of cases of elder abuse in 2021 was 6,774, an increase of 8.2% compared to 2020. This is an increase of about 3.32 times as compared to 2,038 cases in 2005. The reasons for the increase are the natural increase due to the increase in the elderly population, the reinforced ability to identify the abusive cases from the expansion of the infrastructure, such as senior protection institutions, and the deepening social isolation and care problems after COVID-19.

The perpetrator is a family member in about 70% of all elder abuse cases. Sons were the most common elder abusers until 2020,³³⁹⁾ but in 2021, spouses (29.1%) exceeded sons (27.2%) and were found to be the most common. This can be attributable to complex factors, conflicts between families living together due to the prolonged COVID-19 epidemic and changes in household types,³⁴⁰⁾ and stress over the burden of caregiving. Meanwhile, abuse in living facilities, such as nursing homes, etc. increased by 2.9%, but abuse in activity facilities used by senior citizens decreased by 5.4%. These figures are cases of abuse in 2021 that are reported in 2022, and are results indicating the social distancing implemented by COVID-19 and increased care stress in facilities.³⁴¹⁾

Cases of abuse of elderly with dementia were still high among the victim types. According to the Ministry of Health and Welfare,³⁴²⁾ in 2021, victims with dementia (suspected,

339) Type of Abusers (2020): Son (34.2%), Spouse (31.7%), Institution (13.0%), Daughter (8.8%)

340) Abuse by a spouse is expected to continue to be the dominant form of elder abuse, when considering the fact that elderly couple households increased from 47.1% in 2008 to 59.4% in 2020, households living with children decreased from 27.6% to 20.1% during the same period.

341) When looking at the living facilities during the spread of COVID-19 in 2022, due to low fatality rate of the variants, the quarantine measures in general society have undergone frequent changes, but the nursing homes, etc. classified as high-risk facilities, only non-contact visits were possible for a long time. In response, the NHRCK in Jul. 2022 recommended the Minister of Health and Welfare that measures be taken to not restrict the rights of the in-patients for visitation and going outside, such using alternative means in cases where visits are restricted for quarantine purposes.

342) Ministry of Health and Welfare, Degree of Abused Elderly with Dementia by Year, 2022.

diagnosed) accounted for about a quarter, 25.1% of the total abused. In 2022, through the media, there were reports of a case being investigated by local government and senior citizen protection organization where a nursing home worker in Jeju Island unfairly used body restraints against an elderly,³⁴³⁾ and a case where an investigation and a trial are underway on charges of attempted suicide after killing a family member.³⁴⁴⁾

In Nov. 2022, the Anti-Corruption and Civil Rights Commission announced plans to improve the system from the results of the fact-finding survey, and stated a need to strengthen the standards for requesting investigations and accusations of elder abuse, as only 10 cases (0.5%) were requested for investigation or reported out of 1,883 cases judged as elder abuse in the home by an elder protection agency, in 2021.³⁴⁵⁾ In response, the Ministry of Health and Welfare explained that it has guidelines for investigation requests or accusations when criminal procedures are needed in cases of elder abuse, and is planning a detailed guideline to classify and manage the matters necessary for criminal procedures and administrative dispositions for each elder abuse case.³⁴⁶⁾

The NHRCK also expressed an opinion on the need to pass the “Protection and Support for the Rights of Victims of Elder Abuse,” pending in the National Assembly that stipulates ‘self-neglect’ in the definition of elder abuse and mandating the operation of the ‘Elderly Human Rights Guard,’ on Dec. 1 to the Speaker of the National Assembly. Moreover, it was recommended to the Minister of Health and Welfare to expand the shelters exclusively for abused elderlies and promote the revision of the ‘Welfare of Senior Citizens Act’ to stipulate the requirements and procedures when the physical freedom of seniors admitted to senior medical welfare facilities is restricted.

B) Position of an Abused Elderly at Home, as a Form of Domestic Violence

The ‘Welfare of Senior Citizen Act,’ the ‘elder abuse’ is defined as any act of physical, mental, emotional, and sexual violence, and economic exploitation of, or atrocities against,

343) MBC, Tying an elderly with dementia to the bed ... Controversy over elder abuse, Jul. 14, 2022.

344) Dementia News, Murder of 90-year old mother-in-law... any plans for the repeated dementia crimes?, Oct. 14, 2022.

345) Anti-Corruption & Civil Rights Commission, Press Release, Nov. 22, 2022.

346) Ministry of Health and Welfare, Materials on Press Release, Nov. 22, 2022.

or desertion or neglect of, senior citizens. Elder abuse does not usually appear as a single type of abuse, but several types of abuse occur simultaneously. As of 2021, the types of elder abuse were emotional abuse (43.6%), physical abuse (41.3%), and neglect (6.5%), and emotional abuse, such as verbal abuse, threats, and threats, is also an act that harms the mental health of the elderly.

Investigation of cases of elder abuse is carried out by local governments, local senior protection agencies, and the police. When they receive a report of elder abuse, they are dispatched to the scene to investigate, and they have the authority to lead the elderly to a medical institution when separation or treatment is needed. However, one of the biggest characteristics of elder abuse is that the victim does not want the abuser to be punished. Most of the abuse cases are by family members. The case management, such as effective first aid measures or counseling, is bound to be limited when the abused expresses his/her intention not to report or want a spouse, son, or daughter as an abuser punished for various reasons.

However, even though the situation of hiding the abuse is similar to that of other domestic violence, it is argued that the elder abuse victims are not within the system to protect from domestic violence. Social awareness of domestic violence in Korea has increased, but elderlies aged 70 or older have been exposed to continuous and repeated abuse or violence while living at a time when punishment or intervention by institutions for domestic violence was not common.³⁴⁷⁾ The ‘Act on Special Cases Concerning the Punishment of Crimes of Domestic Violence’ can be applied to elder abuse cases, but are rarely utilized.

On the other hand, there is an opinion that solving the problem of social isolation of the elderly is a prerequisite for alleviating the problem of elder abuse. Social isolation is a well-known risk factor for elder abuse, and maintaining strong and diverse social relationships is an advantage in protecting older people from abuse. According to overseas studies, elderly people who frequently participated in social activities during the spread of COVID-19 were less likely to be abused. In an untact society, the risk of elder abuse increases, but at the same time, it is highly likely that the abuse will not be known to the outside world.³⁴⁸⁾

347) Kim, Hye-seong, Problems of Elder Abuse and Domestic Violence From Analysis of Elder Abuse Cases, 2017.

348) See Section on Elder Abuse from 2021 NHRCK: The Report on Human Rights Situation in the Republic of Korea for

C) The Need for Multilateral Efforts to Eradicate Elder Abuse

Among elder abuse, abuse by spouses is increasing, and abuse of the elderly with dementia, who have difficulty communicating, is becoming a social problem. This can be seen as a result of the increased possibility of abuse, such as violence or neglect, against the elderly in a situation where movement is inevitably restricted and isolated due to social distancing in the context of COVID-19. However, even though the number of elderly and the number of elderly people with dementia continue to increase, the problems arising from a spouse caring for another spouse suffering from dementia or other geriatric diseases can be attributable to the government's lack of efforts for resolution. Without the proper intervention of the state, these problems could be further aggravated in the event of an economic downturn in the future. Diene Keita, Deputy Executive Director of the United Nations Population Fund (UNFPA), said that with the rise in domestic violence following the global spread of COVID-19, another crisis is growing within the crisis.

In the case of elder abuse at home, the ever-increasing number of abuse reports, cases of abuse cases, and low investigation and accusation rates compared to abuse determinations all seem to reflect the uniqueness of Korean society. It is not that elder abuse is on the rise in Korean society or that there is special problem with institutions that investigate elder abuse. But there are still many cases of elder abuse hidden in Korean society, and there are various circumstances in which measures cannot be taken against the will of the abuse victims on the scene.

However, one of the biggest problems with elder abuse in the home is that the victim tends to find the cause of the abuse in themselves, and as they become accustomed to human rights violations, it can lead to more serious human rights violations. Therefore, in interventions for elder abuse victims, it is important to have a thorough understanding of the victim, including shame or self-abasement, which is a psychological and emotional area, and it is necessary to encourage a change in the perception of the elderly through continuous counseling and intervention.

To this end, it is also important to prepare an institutional device through which the state

can strongly intervene in the situation of elder abuse at home by referencing the recently strengthened ‘Act on Special Cases Concerning the Punishment of Child Abuse Crimes.’ However, in order for the elderly to enjoy their rights themselves, education for the elderly, strengthening of the capacity of related organizations, and support for this must be carried out simultaneously, and in relation to the various problems experienced by the elderly, it is necessary to first establish a minimum standards for social protection for the elderly, such as public medical service, care service, and establishment of an institutional foundation for income support.

2) The Issue of Elderly Digital Divide in a Digital Society

A) The Digital Divide Issued Accelerated by COVID-19

Since the COVID-19 epidemic in 2020, the Korean society experienced accelerated digitalization in important parts of daily life, such as vaccination reservations, quarantine passes, video chats using Zoom, and QR codes. With the development of intelligent information technology, represented by AI, a lot of information has been created and opportunities to access it have increased. However, with such social changes, the lack of access to digital devices and the ability to use information causes inequality beyond inconvenience, and the issue of the digital divide³⁴⁹⁾ is drawing attention.

Korea is one of the countries with a highest level of digital infrastructure, but the digital divide between generations is the largest among OECD member states.³⁵⁰⁾ In general, digital use tends to be inversely proportional to age, and the level of digital informatization of the elderly has been found to be lower than that of other information-vulnerable groups (the disabled, low-income class, farmers and fishermen).³⁵¹⁾ As of 2021, when the level of digital information utilization of the general public is set at 100%, the elderly are 69.1%, lower than the disabled (81.7%), low-income class (95.4%), and rural residents (78.1%). In addition, the smart device ownership rate of the elderly in their 70s and older was 63.2%, which was significantly lower than the national ownership rate (93.5%).

349) Also referred to as ‘information divide,’ it refers to a difference in opportunities to access or use intelligent information services and related devices and software due to social, economic, regional, or physical conditions.

350) KERI Press Release, Mar. 29, 2022.

351) National Information Society Agency, Survey of Status on Digital Information Divide 2021, Mar. 2022.

Even within the elderly group, the actual use of digital devices varies greatly depending on the individual. According to the NHRCK's human rights status survey, depending on several factors, there are elderlies who find it not difficult to use digital devices and actively use them, while others find it difficult to use digital devices. For example, the experience of using digital devices before retirement, whether the ability to use digital devices is required in various social activities (such as writing documents using a computer at church or holding a meeting using Zoom), and the degree of assistance in using digital devices from those around you seem to affect the ability to use them.

On the other hand, the digital environment and level of the elderlies in rural areas clearly showed the characteristics of the digital divide compared to the elderly group in the city. Although the percentage of people who own a smartphone is very high, most of them do not have Wi-Fi, which is needed to access the Internet. Also, almost no interviewees were able to access and use the Internet in general, including bus time information, e-commerce, and banking. This can be seen as a result of many factors, including education, age, and lack of social, economic, and cultural capital for the elderlies in rural areas.

In Jan. 2021, the 'Digital Inclusion Act,' which aims to promote policies to resolve and prevent the digital divide,³⁵²⁾ was proposed in the National Assembly and is pending. The 6th Basic Plans for National Informatization (2018-2022) proposes strengthening education as a policy to bridge the digital divide for the digitally underprivileged, and in practice, the leading digital education for the elderly is educational program conducted by the local welfare centers. However, the limitations are lack of equipment that can train a small number of people and conduct training, such as a kiosk for experience,³⁵³⁾ a kiosk education app was created because it is realistically difficult to visit the kiosk experience center and receive education and obtain experience,³⁵⁴⁾ and even though they received training on how to use digital devices, they do not have enough opportunities to practice what they learned, and in many cases, it does not lead to an increase in their ability to use digital devices.³⁵⁵⁾

352) According to the reason for the bill proposal, the content on the digital divide is relatively passive in the current 'Framework Act on Intelligent Informatization,' which mainly regulates matters related to the promotion of the development and spread of intelligent information technologies and intelligent information services, and therefore, a separate legislation is required.

353) Chungcheong Today, Is the Digital Divide for Seniors, Right?, Sep. 5, 2022.

354) E-Korea News, What do you think about installing Kiosk at Senior Centers?, Jun. 17, 2022.

B) Obligation of the State to Bridge the Digital Divide and the Rights of the Social Minorities

Digital literacy can be defined as the ability to understand and utilize information from various digital sources.³⁵⁶⁾ In order to lead a smooth life in society today, it is very important to carry out the cultural and social activities using various digital media and devices. In the past, there was also an optimistic opinion that the digital divide would be naturally resolved as informatization progressed, but there is a great concern for the digital divide emerging as a new inequality as it is intertwined with existing economic, social, and cultural inequality.³⁵⁷⁾

In the context of COVID-19, all information related to the characteristics of the infectious disease, testing and vaccination was exchanged online in real time, and a significant number of administrative services were based online. The elderly, who were most vulnerable to COVID-19, had to be delayed in obtaining information and accessing administrative services due to their low digital literacy. When the elderly face this reality, it could lead to anger, lower self-esteem, and worsening feelings of depression and isolation,³⁵⁸⁾ and it is directly related to the issue of anyone being deprived of the right to enjoy a dignified life. Resolving the digital divide needs to be approached as a right of the elderly to enjoy, not as a protective measure or a charity.

Lack of digital literacy means experiencing significant difficulties in accessing information and administrative services, as well as in using daily services. It is essential for the elderly who are unfamiliar with digital devices and culture to adapt to a new lifestyle, but the elderly without digital devices or inexperienced in using them find it more difficult to learn the functions of increasingly complex digital devices and are in a state where they are not even familiar with the terminologies. This can be called a ‘digital exclusion’ and could lead to social inequalities, etc.³⁵⁹⁾

355) NHRCK Human Rights Status Survey, Survey of Human Rights Situation of Elderlies Due to Digital Divide, Dec. 2022.

356) Kwon, Seong-ho and Hyeon, Seung-hye, A Study on the Digital Literacy of Middle-Aged Workers: Focusing on Improving the Digital Literacy, 2014.

357) NHRCK, Human Rights Status Survey, Survey of Human Rights Situation of Elderlies Due to Digital Divide, Dec. 2022.

358) Kyunghyang Shinmun, Increasing “Digital Divide,” Leading to More Depressed Elderlies, Jun. 24, 2021.

359) Lee, Dong-seok, Implications of the UK’s digital inclusion policy and non-face-to-face disability services, International Social Security Review, 2021.

C) Need to Establish a Dedicated System to Bridge the Digital Divide

Efforts to diagnose and address the risk of exclusion of the elderly due to the rapid progress of digitalization are continuing internationally. The United Nations Economic Commission for Europe (UNECE), through “Aging Policy Brief No. 26: Aging in the Digital Age” in 2021 (UNECE Policy Brief on Aging No. 26, July 2021), has emphasized importance of recognizing the intersection of the various factors that determine whether older people use digital technologies in order to understand the digital barriers of elderlies. In London, from 2017 to 2018, the Mi Wifi pilot project was implemented to rent smart devices and provide digital education to vulnerable groups, such as the elderly and the disabled. In the case of Japan, the development of care robots began in the 2000s and is awaiting development and commercialization.

The elderly group have difficulty in attaining appropriate level of digital literacy due to lack of experience, confidence, motivation, interest, inaccessible design, and physical and cognitive disabilities, in addition to access to the digital device or the Internet. In particular, these factors are linked to social and economic conditions. For example, when the elderly want to use digital devices, they depend on their children the most, but when it is difficult to ask for help or when their children seem to ignore them, they have conflicts with their children and do not want to use the digital devices any longer. Elderly people with such experiences are highly likely to become ignorant whenever new digital devices and infrastructures appear.

In the end, to solve the problem, the elderly, education experts, and policy experts commonly say that digital education need to be provided more assertively. The issues are cultivating personnel to effectively conduct digital education, improving education methods, and improving accessibility to education. There is a limit to the educational effects of large-scale group education for the elderly people due to memory loss and cognitive function deterioration, and therefore, it is necessary to continuously provide customized education centered on individualized or small groups lessons according to the digital competency level of the elderly.

Specifically, it is necessary to prepare a systematic and long-term education plan for digital education for the elderly using existing support personnel who have close contact

with the elderly in vulnerable groups, such as nursing care workers and life support workers or by cultivating educational personnel suitable for the elderly, such as senior citizens and volunteers. To this end, dedicated implementation system should be established to comprehensively carry out the educational plan establishment, evaluation, monitoring, human resource development, and system improvement, as well as improving the education methods, including on-hand education and individualized education, etc.

3) Elderly Traffic Accident Prevention System and Elderly Protection Zones

A) High Traffic Accident Mortality Rate of Elderly and the Government Measures

Korea is a country with many traffic accidents and fatal accidents. Since 2018, 10 traffic safety measures have been announced as part of a pan-governmental project to protect people's lives,³⁶⁰ and various measures were implemented, such as the Yoon Chang-ho Act and the Min-sik Act, the lowering of the speed limit and the strengthening of the duty to stop, and the expansion of children's protection zones and senior citizens' protection zones. The number of deaths from traffic accidents is on a significant decline, from 4,292 in 2016 to about 2,900 (tentative) in 2021.³⁶¹

Traffic Accident Mortality Rate (Comparing 2016 & 2021 (tentative) figures)

Classification	Total No. of Deaths	Pedestrian	Children	Elderly	Commercial Vehicles	Two-Wheelers
2016	4,292	1,714	71	1,732	853	614
2021(Tentative)	2,900	1,009	24	1,288	566	457
Overall Rate of Decrease	▽32.4%	▽41.1%	▽66.2%	▽25.6%	▽33.6%	▽25.6%
Annual Average	▽7.5%	▽10.1%	▽19.5%	▽5.8%	▽7.9%	▽5.7%

360) In order to reduce deaths from traffic safety, industrial accidents and suicide, the Office for Government Policy Coordination (OGPC), as a control tower, implemented joint measures with related ministries.

361) Inter-Ministry (Ministry of the Interior and Safety (MOIS), Ministry of Land, Infrastructure and Transport (MOLIT), OGPC, and National Police Agency (NPA)), 'Measures on Traffic Accident Mortality 2021,' Feb. 23, 2022

However, the percentage of pedestrian deaths in traffic accidents, which is a high indicator in countries with relatively low traffic safety, is 38.9% (as of 2019), which is still the highest among OECD member states, and specifically, as of 2020, out of a total of 1,093 traffic accident deaths while crossing the road, 628 (57.5%) were elderly.³⁶² This ratio continues to rise from 50.5% in 2016 to 56.6% in 2018 and 57.5% in 2020.³⁶³ Considering Korea's high proportion of the elderly,³⁶⁴ even comparing the death toll from traffic accidents per 100,000 people over the age of 65, as of 2019, it was 19.8, more than twice as high as the average of 7.6 OECD member countries, and is the highest level among OECD member states for about 10 years since 2010.³⁶⁵ These indicators show that the number of elderly traffic accidents in Korea is frequent, and in the event of an accident, the degree of damage is serious, leading to death in many cases.

A protection zone for the elderly is one of the leading measures to prevent traffic accidents for the elderly. The elderly protection zone is a system introduced in 2008 to ensure the safe passage of elderly pedestrians. When a mayor designates a certain area of the road, the passage of vehicles restricted or prohibited (traffic or parking is prohibited, speed limit is lowered, etc.). However, as of 2021, there are 2,673 elderly protection zones, which are relatively small compared to 16,759 child protection zones,³⁶⁶ and the regional differences seem to be large, such as Chungnam (692), Chungbuk (322), Seoul (175), Busan (85), and Sejong (6).³⁶⁷

On April 7, the NHRCK expressed its opinion to the Speaker of the National Assembly to prepare a regulation limiting the speed of passage within the elderly protection zone to 30 km or less and requiring priority installation of facilities and equipment for traffic safety, as well as mandatory installation requests. Moreover, it was decided to recommend to the Minister

362) Inter-Ministry (MOIS, MOLIT, OGPC, NPA), 'Measures on Traffic Accident Mortality 2021,' Mar. 25, 2021.

363) Looking at the number of traffic accident mortality age group for OECD member states, in Korea, the elderly aged 65 and over accounted for 44.5% of all traffic deaths, higher than the average of OECD member states (28.1%) and second only to Japan (57.3%).

364) As of 2020, the elderly population aged 65 or older in Korea is 8.15 mil., accounting for 15.7% of the total population.

365) According to the Korea Road Traffic Authority's 'Comparison of Traffic Accidents in OECD Member States' (Dec. 2021), among the 36 OECD member states as of 2019, the number of deaths per 100,000 people in Korea was 6.5, the 10th highest, and the number of deaths per 10,000 vehicles is 1.2, which is the 5th highest.

366) Chosun Ilbo, School Zone is managed minutely ... but the Silver Zone is being neglected, Jun. 6, 2022.

367) Busan Ilbo, The elderly pedestrian traffic accidents in Busan is the highest in the country, Sep. 15, 2022.

of Public Administration and Security and the Chief of Police to inspect and expand the designation and management of elderly protection zones, and to prepare measures to strengthen the safety measures.³⁶⁸ In response, the Ministry of Public Administration and Security and the National Police Agency each expressed their willingness to accept the plan to expand the designation of the elderly protection zones and to strengthen the safety measures within the protection zones.

On Dec. 7, 2022, the National Assembly partially amended the ‘Road Traffic Act.’ The amended ‘Road Traffic Act’ includes the grounds for producing and distributing signs for elderly drivers (newly established Article 7-2) and the expansion of the scope of designation of elderly protection zones (Article 12-2(1)).

B) Raising the Question of the Effectiveness of Elderly Protection Zones in Preventing Elderly Traffic Accidents

Policies to prevent traffic accidents are in many cases regulations that impose certain duties on drivers or restrict their rights, and opinions for and against them are often conflicting. For example, the Yoon Chang-ho Act and the Min-sik Act are subjected to consideration by the Constitutional Court, or debates are raised about the Safety Speed 5030.³⁶⁹ However, the elderly protection zones, which is a representative measure to prevent traffic accidents for the elderly, raise a different level of problems.

Originally, Article 12-2 of the ‘Road Traffic Act’ stipulated the areas to be designated as elderly protection zones were specific areas among the roads surrounding facilities, such as nursing facilities, senior citizen centers, and living sports facilities. As the targets were defined based on the facilities, there were assertions that hospitals with a large number of elderly people and roads near markets are excluded from the elderly protection zones, reducing the effectiveness of the system.³⁷⁰ In fact, according to the 2021 special inspection

368) NHRCK, Recommendations and Opinions on Improving the System to Protect the Human Rights of the Elderly from the Risk of Traffic Accidents, Apr. 7, 2022.

369) Joongang Ilbo, “5030 Policy is at a slow pace” vs “Yet another change,” Mar. 25, 2022.

370) Donga Ilbo, 58% of the deaths while walking are elderly ... even with high traffic accidents, ‘protection zone’ is not established, Jun. 8, 2022.

by the Ministry of the Interior and Safety, the elderly pedestrian traffic accidents often occur during road crossings in places with a large floating population of elderly, such as markets and hospitals, during the winter and the daytime.

In addition, the lack of absolute number of elderly protection zones and regional discrepancies are also raised as problems. Establishing the elderly protection zone is the responsibility of the head of a local government. However, because social interest is low as compared to the child protection zones, there is a huge discrepancies depending on the will of the head of the local government. Each local government is promoting for the expansion of the elderly protection zones through separate ordinances, but designating the elderly protection zones through analysis of actual traffic accident cases is still lacking.

The lack of practical crackdowns to ensure safety is also pointed out as a problem.³⁷¹⁾ Unlike child protection zones, the current ‘Road Traffic Act’ does not stipulate a mandatory installation of unmanned traffic enforcement equipment (speed cameras) and traffic safety facilities and equipment (traffic lights) in elderly protection zones. In addition, even in the areas designated as the elderly protection zones, facility management, such as speed bumps and signs, is often insufficient. Therefore, it is difficult for drivers and pedestrians to know that the area has been designated as an elderly protection zone, or illegal parking and speeding occur on a daily basis, resulting in a decrease in the effectiveness of the policy.

C) The Need to Exert Efforts to Prevent Elderly Traffic Accidents

The Constitution specifies the dignity and value of all citizens as human beings, guarantees the right to pursue happiness, and obliges the state to guarantee the basic human rights of individuals, as well as stipulates to implement policies to improve the welfare of the elderly. Moreover, as a signatory to the UN Covenant on Economic, Social and Cultural Rights, Korea has an obligation to guarantee the right to enjoy the highest attainable level of physical and mental health.

When we are reminded of our state obligations regarding the protection of human dignity and fundamental human rights as set forth in the Constitution and international human rights

371) Sindonga, “Is this a silver zone?” Ineffective Silver Zone, Jun. 21, 2022.

norms, the government should actively pursue measures if a person's life is exposed to risks in daily life over a long period of time, resulting in death or irreversible health damage. In the child protection zone, the areas surrounding schools were improved so that drivers could easily recognize small children³⁷²⁾ Then, the areas where elderly traffic accidents are common should consider the characteristics of the elderly, who have slow walking speed and reduced reaction ability due to deterioration in physical ability.

In other words, there is a significant need to analyze the main triggering behaviors of elderly traffic accidents, identify their causes, and suggest measures to prevent traffic accidents. Therefore, the government regularly announcing measures against traffic accidents involving the elderly and the National Assembly preparing regulations to solve the problem of traffic accidents involving the elderly through legislation are proper efforts. However, these legislative and administrative measures need to be taken regularly and continuously, as well as conducting on-site fact-finding surveys in the areas where elderly traffic accidents are common.

With the amended Road Traffic Act, it is necessary for the local governments to actively designate roads in residential and commercial areas with a lot of elderly pedestrian traffic as elderly protection zones, and install safety facilities, including unmanned traffic enforcement equipment, smart crosswalks for elderly pedestrians, safety fences, and walking islands, etc. To this end, legislative and budgetary considerations should be accompanied as well, such as setting speed limit to 30 km or less, priority installation of traffic safety facilities and equipment, or mandating installation, etc.

In addition, it is essential to strengthen the education for the drivers about the elderly pedestrians. In order to prevent accidents of elderly pedestrians, it is necessary for drivers to understand the characteristics of the elderly pedestrians. The development and installation of effective information signs and publicity measures should be considered so that the drivers can understand the characteristics of elderly pedestrians and prevent accidents.

372) In fact, according to the National Statistics Portal (KOSIS), the number of traffic accidents involving the elderly aged 65 and over increased by 33.3% from 26,483 to 35,312 between 2011 and 2020, but the traffic accidents involving children under the age of 12 decreased by 37.0% from 13,323 to 8,400 during the same period. This seems to be the effect of various policies such as expanding child protection zones and strengthening punishment.

6. Soldiers

A. Human Rights Status 2022

Among the major human rights issues of 2021 in Korea, significant attention was focused on incidents and problems in the military. The case of a forced discharge and death of a transgender noncommissioned officer received international attention in comparison with the US, as it brought about a policy change that allowed transgenders to serve in the military again, where in the United States the new president overturned the previous president's measure to stop the new military enlistment of transgenders. The successive deaths of noncommissioned officers who suffered sexual violence had a great impact on the establishment of laws and systems, such as the establishment of the military human rights officers through the amendments of the Military Court Act and the National Human Rights Commission Act. Various restrictions, due to COVID-19, on the daily lives of the soldiers at training centers and front-line units and treatment issues during quarantine have been criticized for the human rights sensitivity of unit commanders.

The above incidents continued, or had an impact, in 2022. Regarding the death of Staff Sergeant Byun Hee-soo, the Military Death Investigation Committee recommended that the Minister of National Defense review the case as a death in the line of duty, but the army determined the death as a death not in the line of duty on Dec. 1. Another female officer took her own life from the unit where an air force sergeant who died after suffering sexual violence worked.

Due to the special nature of the military environment, once an incident becomes a public issue, appeals from the soldiers who have suffered similar damages or human rights violations tend to follow. In 2022, similar but new types of issues continued to be raised in various Internet communities that were used as spaces for accusations and disclosures related to the treatment of soldiers.

It has been evaluated that the situation of human rights violations in the military has improved due to recent legal and institutional measures to protect the human rights of soldiers and changes in the environment, but the recent events in 2021, such as human rights violation

cases that continue to shock the Korean society, the popularity of TV dramas, D.P. and the Recruits, which deal with absurdities in the military, and the increase in deaths and suicides in the military, etc., raises the question as to the need to re-evaluate such assessments.

In Jun. 2021, Hankook Research conducted a survey on the military conscription system on 1,000 men and women over the age of 18 across the country. 83% (830 respondents) agreed that “military service is a natural duty for Korean citizens,” and 66% (660 respondents) agreed that “military service is a sacrifice that the state unilaterally demands from individuals.” The perceptions of military service differed by generation. The older age groups tend to view the military service positively, but the lower the age groups had more negative perceptions of the military service. In particular, 82% of those in their 20s responded that “the military service is a sacrifice that the state unilaterally demands from individuals.” This difference in perception between generations should be considered in resolving the connection between incidents and culture in the military, as well as unresolved problems surrounding the military. Based on these points, this report will look into the human rights situations in the military in 2022.

B. Main Topics

1) Status and the Cause of Irregularities in the Army

A) Raising the Issues of Irregularities in the Barracks, Including the Marine Corps

An active duty soldier serving in the 1st Division of the Marine Corps left the country without permission on Mar. 21 to join the Ukrainian International Corps while on vacation. This incident received a lot of attention when it became known through the media during the escalating Ukrainian-Russian war, and in a telephone interview, he said that “as a soldier, I could not just watch the civilians continuing to die.³⁷³⁾ I came with the idea of dying a meaningful death rather than making an extreme choice.”³⁷⁴⁾

He was denied entry at the border on the Ukrainian side, and after staying in a local refugee camp, he expressed his intention to return. On Apr. 25, the Marine Corps investigation team secured him and transported him back to Korea. The Marine Corps said of the soldier that, “they will investigate the details of his departure from the military service in the future and take strict action according to the laws and regulations.”³⁷⁵⁾³⁷⁶⁾

Meanwhile, on Jul. 28, civil groups raised a claim that a victim who had been beaten and harassed for a long time by seniors in the Marine Corps passed out and was being hospitalized for post-traumatic stress disorder.³⁷⁷⁾ The victim asserted to his senior officers that he was subjected to verbal abuse, abusive language, unreasonable pressure to memorize, assault, and harsh behavior while working at the guard post, and even though the unit officers were aware of this, he suffered from secondary damage from comments, including “it’s a problem with your mental strength” and “other comrades were also beaten, so why is it only you?” etc.

373) Regarding the above claim, the Marine Corps said, “the harsh act that he claimed was a friction with his senior, and we investigated this. The perpetrator has been transferred to another unit per his request.” However, as he again insisted that he had been subjected to harsh treatment, the military announced a policy to thoroughly investigate the facts.

374) Segye Ilbo, Active-duty Marine Entering Ukraine stated, “He would choose a meaningful death than making an extreme choice.” Mar. 22, 2022.

375) If he is handed over to trial pursuant to Article 30(1)(3) of the Military Criminal Act, he may be sentenced to imprisonment for not less than one year and not more than 10 years.

376) SBS, A Marine Who Tried to Enter Ukraine Requests Business Seat, Apr. 25, 2022.

377) Military Human Rights Center Press Release, Jul. 28, 2022.

In addition to this case, in Apr. 2022, the following cases became known through the raising of the problems by media reports and civil groups: A case investigated by the military police where three senior soldiers in the Marine Corps repeatedly beat, sexually assaulted, and forcibly fed food to their successors;³⁷⁸⁾ A case being investigated by the military authorities in which a navy soldier was assaulted for two hours in the name of congratulating his comrades on discharge the night before he was discharged;³⁷⁹⁾ and a case in which the court sentenced a soldier to 6 months in prison and 1 year probation for being charged with assaulting and abusing his successors during his service.

To improve the military culture, the Ministry of National Defense allows soldiers to use mobile phones, prohibits personal errands between the soldiers, runs vision green camps for soldiers who are unfit for service or concerned about suicide, and operates a military life expert counseling system. In 2021, the drama ‘D.P.,’ which deals with the absurdities in the military, became popular, and then an opinion was expressed that, “it is too extreme to see it as an absurdity that happen in the military in 2014. Currently, the military environment is changing so that such malicious accidents cannot be concealed.”³⁸⁰⁾

However, there seem to be many opinions that irregularities in the military are still serious. Posts about various absurdities and bad behaviors experienced directly or indirectly during the military service, such as ‘Marine Literature,’³⁸¹⁾ which has been popular since 2021, mainly in the online community, or fictional stories that exaggerate and satirize them have also received attention.³⁸²⁾ It is difficult to find statistics that directly confirm the current status of irregularities in the military, but the number of reports and consultations on defense help-line, the number of assaults in military courts, and the status of damages, such as sexual harassment and sexual violence, reported to the military sexual harassment prevention and response center appear to have increased significantly as compared to 5 years ago.³⁸³⁾

378) Seoul Shinmun, Sexual Violence, Force Feeding .. Abuses in the Marine Corps, Apr. 25, 2022.

379) YTN, [Exclusive] Discharge Hazing .. Bloodied Naval Soldier, Jul. 6, 2022.

380) Yonhap News, Netflix’s D.P.’s portrayal of abuses in the military no longer true ... according to Ministry of National Defense, Sep. 6, 2021.

381) It is a fictional story that satirizes life in the Marine Corps in an exaggerated form, and refers collectively to posts in the form of a lot of hate expressions with a strong ridicule or demeaning character.

382) Kyunghyang Shinmun, What Happened to the Mighty Marine Corps, Apr. 2, 2022.

383) However, this may be seen as a result of the increase in reporting by victims who hesitated due to improvements and activation of the reporting system and social issues.

B) The Problems with Irregularities in the Military Being Repeated

The irregularities in the military is used as a broad term referring to human rights violations, such as beatings, cruelty, abusive language and swearing, and unreasonable restriction of fundamental rights, as well as various types of other abuses. As such, the cases referred to as irregularities in the military also vary from unit to unit. In addition to assault and sexual violence, harsh behaviors, such as forced memorization, prohibition of certain basic actions necessary for life, sleep disturbance are widely known. The irregularities in the military and the human rights violations that follow directly or indirectly cause mental pain to the victims, and it can cause medical problems, such as depression and adjustment disorder, or even cause suicide in severe cases.

Violence and irregularities within groups have been a problem in many parts of Korean society, but the irregularities within the military seem to have special elements in their causes and problems. In the past, ‘remnants of the Japanese culture’ and ‘immoral personal problems’ were suggested as causes of irregularities in the military, but it is worth paying attention to the fact that there has been a perception and culture in the military that justifies various irregularities as ‘military discipline’ or ‘unity,’ or that ‘the military had always been this way.’

Those who cannot meet or adapt to the level required by the military for various reasons become a minority within the military. One type of irregularities that is a problem in the Korean military is the way that the majority continues a distorted fellowship and anti-human rights leadership, while targeting the minorities.

Distrust that the human rights protection system inside and outside the military is not working well is also asserted as a major factor in preventing irregularities from being eradicated. When a suffering soldier reports to his superiors in order to rectify the problem, he is criticized for not being a man, for not understand the military culture, or becomes the target of bullying within the unit, and there are also cases even in the units, when an irregularity case is reported to the upper level, they stop at self-discipline within the unit to avoid disadvantages that the unit may face.

C) The Need for Active Efforts by the State to Eradicate Irregularities in the Military

Soldiers are citizens in uniforms, and the state has an obligation to actively protect the basic human rights of soldiers performing their national defense duties. It has been evaluated that the situation of human rights violations in the military has improved due to the recent legal and institutional measures taken to protect the human rights of soldiers and changes in the environment. However, even in 2022, shocking cases of irregularities are occurring in the military, and there is a large gap in the recognition of the military human rights status between civilian and military authorities. As the interest in human rights and the desire to guarantee human rights increase, expectations are high for the method of personal education and training in the military, but the improvement in the military life seems to be unable to keep pace. In particular, the civilian concerns about the irregularities and human rights violations that can occur in basic army life have not been resolved, and it is also worth noting that whenever an incident occurs within the military, the military authorities show a defensive attitude, which in turn leads to high external distrust of the military.

The UN Human Rights Committee also expressed concern to the Korean government in 2015 about the high number of cases of sexual violence and physical and verbal assault in the military, and that only a small number of such cases were recorded and prosecuted. It also expressed the opinion that perpetrators should be brought to justice and punished through a full and fair investigation into allegations of abuse in the military, rather than by simply excluding or dismissing the perpetrators from service. As an overseas example, the US military declared ‘combat hazing’ along with the revision of the army service discipline in 2013 to reflect the cases of Harry Lu and Danny Chen, who died in 2011 due to collective harassment, leading to beatings in the military. Measures were implemented to eradicate harsh behaviors by implementing heavy punishments for the crimes.³⁸⁴⁾

Not only should the military have to narrow the distance from society, but active efforts are needed to improve the irregularities within the military culture rather than a vague forecast that the irregularities and human rights violations within the military will decrease eventually. It is necessary to continuously educate soldiers from the beginning of the service that they can be punished even after they are discharged from the military for crimes, such as cruelty and assault, which occurred in the military, and in fact, it is important to properly

384) Weekly Sisa, Why do Korean sons continue to suffer harsh treatments?, Sep. 2, 2020.

punish the perpetrators and those responsible. Moreover, it is necessary to improve the perception that the military should be seen differently from the society in terms of human rights issues by taking measures for recovery quickly after reporting, and establishing a plan for the human rights guarantee system to operate effectively to prevent any secondary damage by the officers and the military.

2) Status and Measures Against Suicides in the Military

A) Suicide - No. 1 Cause of Death in the Military

According to the Ministry of National Defense, the number of military deaths in 2021 was 103, the highest among the previous five years (2017-2021),³⁸⁵⁾ and an increase of 87% compared to 55 cases in 2020.³⁸⁶⁾ The number of military deaths has been steadily declining from 273 in 1997 to 70-80 recently, but the significant increase in 2021 can be attributed to the increase in the number of military suicides.

Suicide ranks the highest among the causes of military deaths, and 65-80% of annual military deaths from suicides.³⁸⁷⁾ The number of military suicides has steadily decreased from 97 in 2011, but recently increased slightly, except for 2020, to 52 in 2017, 56 in 2018, 62 in 2019, 42 in 2020, and 83 in 2021. However, 2021 has doubled as compared to the previous year. In 2022, 40 people died by suicide as of August.

Status of the Military Suicide Rate Over the Recent 5 Years

(Unit: person, %)

Classification	2017	2018	2019	2020	2021
No. of Suicides	51	56	62	42	83
Suicide Rate per 100,000 people	8.0	8.7	9.7	7.1	14.1
No. of Officer Suicides (Ratio)	34 (66.6)	35 (62.5)	35 (56.4)	27 (64.2)	58 (70)
No. of Enlisted Suicides (Ratio)	17 (33.3)	21 (37.5)	27 (43.5)	15 (35.7)	25 (30)

※ Source: Ministry of National Defense

385) 76 in 2017, 86 in 2018, 86 in 2019, 55 in 2020, 103 in 2021

386) 'Military death accidents' refer to safety accidents (traffic accidents, misfired firearms, drowning, etc.) and military accidents (assault death, suicide, drunk driving death, etc.) that occur inside and outside the unit, and Deaths unrelated to military preventive activities (personal illness, murder by civilians, righteous death, etc.) are excluded,

387) 68% in 2017, 65% in 2018, 73% in 2019, 76% in 2020, 80% in 2021

The number of suicides tends to be higher among officers than enlisted soldiers each year. Among all military suicides in 2019, the share of officer suicides increased from 56.4% to 64.2% in 2020 and 70% in 2021. In particular, there are many suicides of junior officers who have been in service for 1 to 3 years, and as of 2018, approx. 60% of the officer suicide cases were suicides of junior officers with 1 to 3 years of service.³⁸⁸⁾ Looking at the suicide rate per 100,000 people, after recording a peak of 12.6 in 2010 and 15.2 in 2011, it has steadily declined to 8-9 since 2015, and the lowest level of 7.1 in 2020. However, 2021 recorded 14.1, a two-fold increase.

The Ministry of National Defense and the military are implementing various measures to prevent soldier suicide. Suicide prevention education is held bi-annually, at least, with instructors dedicated to suicide prevention, and a comprehensive system for suicide prevention is managed in stages of ‘identification-management-separation.’ There is also an anonymous psychological counseling program for junior officers. However, since the suicide prevention education system was designed with a focus on supporting the soldiers, criticism has been raised that the suicide prevention system for the officers, such as noncommissioned officers, was not properly established.³⁸⁹⁾

B) Conflicting Interpretations Surrounding the Status of Military Suicides

It goes without saying that a soldier's suicide is a personal and family tragedy. Moreover, in Korea, where the conscription system is maintained, suicide in the military has a serious negative impact on comrades and commanders living together, and causes a decrease in morale and combat power of the military and a decrease in public trust in the military.³⁹⁰⁾ However, various statistical data, such as the number of military suicides and the suicide rate per 100,000 people, can be interpreted differently in relation to the effectiveness or direction of the current military suicide prevention policy.

388) NHRCK, Decided on Jul. 2020, 19ExOfficio0004300, Ex Officio Investigation for the Prevention of Suicides by Junior Officers

389) JoongAng Ilbo, More fatal choices made by military officers and military personnel, Nov. 5, 2021.

390) Lee, Hye-seon and Kwon, Jeong-hye, Effectiveness Verification of the Military Suicide Prevention Program, Journal of the Korean Psychological Association, 2010

Until the number of suicides in 2021 was counted and released, the Ministry of National Defense, civic groups, and researchers evaluated that the suicide rate of soldiers in recent years has decreased significantly as a result of the Korean military's suicide prevention policy showing some effect. It is also emphasized that the suicide rate per 100,000 people is lower than that of all males in their 20s (19-23 people). It is the result of a combination of various factors, such as availability of reporting and counseling channels, such as the Defense Helpline providing practical help in overcoming military personnel's psychological and physical difficulties, social demand for improvement of military human rights, legal requirements for guaranteeing military human rights, such as the 'Framework Act on Military Status and Service,' and strengthening military human rights education.³⁹¹⁾

Of course, there were opinions that such evaluations needed to be cautious. It is too early to conclude that the decrease in the military suicide rate is due to the military's suicide prevention policy, as the suicide rate in Korea also showed a decrease during the same period. Moreover, comparing the suicide rate with the general population is inappropriate, considering that many soldiers with mental illness or difficulty adapting to military service, which have a significant effect on suicide, are discharged early,³⁹²⁾ and the difficulty of attempting suicide due to the nature of being soldiers who live a controlled life in a group setting.³⁹³⁾ Overseas, the suicide rate of soldiers is also known to be lower than that of the general public,³⁹⁴⁾ and the standardized mortality ratio of the British military compared to the general population³⁹⁵⁾ has been reported as 0.58 (95% confidence interval standard, 0.54 to 0.63).³⁹⁶⁾

391) National Assembly Legislative Research Service, Status of Military Human Rights System and Tasks for Improvements, Dec. 16, 2021.

392) As of 2020, a total of 27,274 soldiers were discharged without completing their service period after being determined as unfit for active duty, over a 5-year period, of which 21,349 (78%) were discharged early due to psychological factors such as mental illness or difficulty adjusting to military service.

393) SBS, Human Rights in the Military, Sep. 4, 2022.

394) Similar to the 'healthy worker effect,' even in the case of the military group, the people with physical and mental vulnerabilities are screened through physical examinations, and lower mortality rate is reported because they are required to maintain a certain level of physical health during the service period. Moreover, it can be taken into account that soldiers live in a group setting where it is difficult to commit suicide, even though the life in the military can increase stress due to lack of freedom.

395) The Standardized Mortality Ratio (SMR) is a comparison of the observed event frequency with the expected incidence rate in the standard population, and is calculated as 1 if the two are equal. If less than 1, it is lower than the standard population, and if greater than 1, it is higher.

396) Korea Institute for Defense Analyses, Analysis of Military Suicide Rates, KIDA Defense, No. 1788, Feb. 2020.

On the other hand, the reasons for the fact that the number of military suicides has been gradually increasing recently and that the number of suicides in 2021 has increased significantly among both officers and enlisted men are not clear. Due to restrictions on going out and self-isolation in accordance with the COVID-19 epidemic, soldiers are cut off from the outside world, and the fact that soldiers were not treated for depression in a timely manner,³⁹⁷⁾ and the possibility of the military authorities' detection and protection of those concerned about suicide may be relatively low as a result of not revealing themselves for the fear of being at a disadvantage if signs of suicide are reported among the officers may be the causes.³⁹⁸⁾

C) Tasks for Responding to Suicides in the Military

The various policies and responses implemented by the Ministry of National Defense and the military to prevent suicides in the military have contributed to the formation of a culture of respect for life in the military and have been effective to some extent in practice. Nevertheless, considering that the goal of ensuring no suicide of soldiers due to the stress of military life, the suicide problem in the military is not sufficiently resolved.

In its final observations on the 4th National Report of Korea in 2015, the UN Human Rights Committee expressed concerns over the high suicide rate in the military, stating that “the state should double its efforts to prevent suicide. In particular, it is necessary to study and deal with the fundamental causes of suicide, and improve the suicide prevention policies accordingly.”

Suicide prevention should be the most important countermeasure, and early identification and response to the high-risk group is important. The Ministry of National Defense and the military need to make new assessments based on research of recent suicidal ideation counseling and practice cases to design effective suicide prevention policies. It is important to look at the number of suicide counseling cases, the number of suicide attempts, and changes in the suicide rate from 2017 to the present, and determine whether it is due to temporary effects of COVID-19, and if so, how to respond, etc.

397) Chosun Business, Doubling of Soldiers Committing Suicides in 1 year ... Restrictions on vacations intensified depression, Jul. 7, 2022.

398) KBS, Fatal accidents in the military in three digits ... the cases are..., Jan. 22, 2022.

It is also important to identify whether the main cause of suicide was personal reasons or structural problems in the military regarding suicidal thoughts that occur in the military. Suicides that occur in the military are different from suicides outside the military in that they occur through interplay of the uniqueness of military organizations, conflicts between the members, and individual psychological and social backgrounds, etc. Until now, the military has generally expressed the view that 80~90% of suicide accidents during service are triggered by personal causes, such as personal problems or mental illness; however, it is more difficult to effectively respond to suicide prevention if the causes are viewed as from outside the military.³⁹⁹⁾

In particular, there has been a relatively lack of studies and countermeasures targeting military officers compared to studies related to suicide among soldiers. Junior officers (including noncommissioned officers) have a short military career and are mostly in their mid-twenties, and have the burden and the responsibilities of commanding the soldiers. Their stress is even greater because they are in a dual position where they are also subjected to stress from their superiors. In addition, given that they are a group that is greatly affected by long-term service and promotion, there are many cases of passively responding to inspections or counseling due to concerns about being adversely affected in the long-term service or promotion selection. It is necessary to identify depression, anxiety symptoms, stress situations, social support resources, and individual's attitude toward suicide, and to intervene tailored accordingly regarding the suicide risks of junior officers.

399) According to the special report by Kyunghyang Shinmun (October 27, 2022), the Presidential Commission on Suspicious Deaths in the Military and the Presidential Truth Commission on Deaths in the Military found 154 (98.1%) cases out of 157 cases (events that occurred after 2000) that were judged as irregularities or structural problems in the military. In these cases, the military investigation agency originally limited the cause of death to personal reasons, such as introverted personality, weak constitution, chronic disease, maladjustment to the military service, burden of job performance, family problems, etc.

3) Discussions on Improving the System to Protect the Diversity and Human Rights in the Military

A) Issues of Protecting the Minorities and Improving the System to Protect the Human Rights in the Military

According to the Military Service Act, all male Korean citizens are obligated to serve in the military, regardless of race, skin color, religion, gender identity, or educational background. As of 2020, the proportion of female soldiers in Korea is approx. 7.4%, and the ratio is expected to continue to increase in the future. As the diversity of individual identities and cultural backgrounds⁴⁰⁰⁾ that make up Korean society has increased, the military is also composed of people from diverse backgrounds and identities. Even among the people serving in the military, there are minorities from diverse backgrounds, such as vegetarians, sexual minorities, women, and those who grew up in a multi-cultural background.⁴⁰¹⁾

However, various questions are raised as to whether the military has a structure that is appropriate for the social minorities to serve and whether it has a system that can prevent violations of their human rights. According to the NHRCK's 2020 'Survey on the Status of Hatreds and Discrimination Against Transgenders,' 31 (29.5%) out of 105 participants who are or have completed military service were classified as soldiers under attention based on their transgender identity. In addition, 13(12.4%) experienced sexual harassment or violence or were transferred to non-adaptive institutions, such as Vision Camp, and 10 (9.5%) responded that they experienced discrimination during work performance or assignment.

Regarding the vegetarian option, the Ministry of National Defense revised the relevant guidelines in 2021 to allow alternative meals to be provided to vegetarians or people with religious reasons. This is a welcoming decision to protect the human rights of minorities, but only the regulations have changed. Due to lack of post-evaluation and follow-up measures

400) The definition of diversity in human resources can be interpreted in various ways depending on the perception of the components of diversity. A concept that includes difficult-to-identify attributes such as demographic characteristics such as age, gender, and race, socioeconomic background, gender identity, and religion and belief will be discussed below.

401) In terms of cultural diversity, for example, the Ministry of National Defense expects an average of 2,500 children from multicultural families to enlist in the army in line with the increase in multicultural families in Korean society. As of 2019, approx. 3,000 soldiers from multicultural backgrounds are in service, and it is estimated that approx. 5,000 soldiers will be drafted in 2022, and an average of approx. 8,000 people will be drafted from 2028 to 2032.

by the military, there are many cases where the vegetarian soldiers are not properly guaranteed the right to vegetarian meals.⁴⁰²⁾

In particular, the successive deaths of sexual assault victims and the forced discharge and death of transgender soldiers, which received great attention in 2021, triggered a strong criticism of the human rights protection system in the military, as examples of the military authorities did not protect the diversity of servicemen or failing to adequately protect minorities when human rights violations occur.

In Sep. 2021, the joint public, private and military committee, which was launched in the wake of the death of a sexual assault victim, passed 21 recommendations, including measures to prevent sexual violence and protect the victims. In 2022, the military announced that it would conduct fact-finding surveys to prevent sexual violence, gender equality surveys, and legislative changes in connection with the recommendations of the joint public, private and military committee.⁴⁰³⁾

On the other hand, the biggest change in the military's human rights protection system in 2022 is the introduction of the military human rights officer and the reduction of the military judicial authority. The human rights violations, harsh treatments, and sexual violence in the military, as well as gun accidents, deaths, and suicides have occurred continuously, but in the process, the issue of various rights that were unprotected has been continuously debated. Moreover, some demanded that external control and surveillance of the military should be strengthened.

Accordingly, the 'National Human Rights Commission Act' was amended, and from July 2022, a military human rights officer was established in the NHRCK to investigate the human rights violations and discrimination in the military and, if necessary, to take corrective measures and make policy recommendations. Moreover, the military judicial authority was in charge of investigation and trial for crimes committed by soldiers in the past, but civilian judicial authorities will be responsible for investigation and trial for sexual violence crimes, crimes that cause death or a crime that is the cause of a death through

402) Hankyoreh21, The combat rations have rice containing animal ingredients, Aug. 7, 2022.

403) Ministry of National Defense, 2022 Ministry of National Defense Performance Management Plan, Aug. 2022.

amendment of the Military Court Act in Jul. 2022, and the crimes committed prior to joining the military. Also, appeals against military trials are transferred to civilian courts (Seoul High Court) as the High Military Court was abolished.

B) Changes in the Military's Human Rights Protection System in 2022:

Strengthening the External Control

Helpline, the leading counseling center for grievances in the military, can share the contents of the counseling received in relation to life in the military, sexual violence, and military crimes with the commanders of the concerned unit pursuant to the Military Management Directive. The percentage of consultations shared with the commanders rose from 8.8% in 2018 to 17.8% in 2021.⁴⁰⁴⁾ However, the human rights protection system established within the military has exposed various problems, including suspicion of concealing incidents, neglecting the measures to protect the victims, and secondary harm in various cases, and there are much danger and distrust of concealing the incidents. This is evident from the fact that servicemen report their grievances or human rights violations to civic groups, such as the Military Human Rights Center, and to civilians through Facebook pages, etc.

In particular, the military's human rights protection system showed weakness in dealing with 'gender-based violence,' such as sexual harassment and sexual violence, and discriminatory regulations and administration against LGBTI continue until recently. Accordingly, improvements in the military human rights protection system has been discussed to strengthen the external control, and the establishment of the military human rights officer and the revision of the Military Court Act in 2022 are seen as examples. However, there is a limitation in the external control has not been strengthened to a sufficient level despite the two changes made to the human rights protection systems in 2022.

The military human rights officer system is particularly criticized for its provision restricting the right to investigate. They are the provision that restricts the military human rights officer's right to make an unannounced visit and conduct investigation, and the provision

404) YTN, Increased connection to commanders at the military help-line, Sep. 19, 2021.

allowing the Ministry of National Defense to demand suspension of an investigation ‘for circumstances that significantly affect the national security, national emergency, or impede the performance of operational missions.’ There are concerns that these regulations excessively restrict the right to investigate of the military human rights officers, and in particular with the latter provision, the requirement of ‘execution of an operational mission’ can be applied broadly as it is an arbitrary and comprehensive concept.

The amended Military Court Act is criticized for not abolishing the military courts in peacetime. The current military judicial system, such as the operation of the military courts in peacetime, has been continuously seen as a problem because it enables the commanders to reduce or conceal incidents and is insufficient in materializing judicial justice and human rights protection. On the other hand, those who oppose the abolition of military courts in peacetime argue that the revision of this law alone can place excessive restrictions on the military's unique functions, as well as efficient operation of military courts in wartime.

On the other hand, although sexual assault crimes, soldiers' deaths, and incidents that occurred before enlistment are now investigated by civilian authorities, the fact that initial investigations are still led by the military is also cited as a problem. There is a limitation because the military investigation authority does not have to hand over the case to the police if it determines that there is no crime that caused the death.⁴⁰⁵⁾ Moreover, a controversy emerged because the civilian police handles the sexual violence crimes, but the military police investigates secondary crimes.⁴⁰⁶⁾

C) Tasks to Protect the Human Rights in the Military

Thus far, the human rights in the military have progressed slower than other areas because of Korea's armistice status and the unique characteristics of the military. However, even after considering the unique characteristics of the military and national security, soldiers have the fundamental rights just like ordinary citizens, and the state has an obligation to actively protect the basic human rights of the soldiers fulfilling their military duties

405) Kyunghyang Shinmun, 8 soldiers died only 7 months after implementing new Military Court Act, Jul. 22, 2022.

406) Yonhap News, Sexual crimes in the Military is investigated by the police and the secondary offense is investigated by the military police, Jul. 11, 2022.

The military human rights officer system and the amended Military Court Law, newly implemented this year, are great progress in the area of military human rights. However, since the two are still in their infancy, it is necessary to monitor the future trends so that they can be implemented in accordance with the purpose of the legislation. It is necessary to make efforts to eradicate human rights violations in the military and to establish a human rights-friendly military culture by appropriately utilizing the various authorities granted to military human rights officers, and at the same time, legislative responses are needed to protect the independence of the military courts and the victims' right to fair trials.

Meanwhile, the role of the Ministry of National Defense and the military authorities in protecting the human rights of the soldiers is also emphasized. Cooperation and forward-looking decisions between the Ministry of National Defense and the military authorities are essential for independent external organizations, such as the military human rights officer, to properly carry out the activities to protect the human rights of the soldiers. In addition, it is also important to establish long-term plans and to improve discriminatory laws and facilities to protect various minorities in the military. It is clear that the diversity of soldiers constituting the military and the demand to reveal the identities that has not been visualized will increase in the future, so it is necessary to continuously pay attention to the development of systematic and practical policies to respond to this.

4) Military Medical Accidents and the Conditions of the Military Medical System

A) Servicemen's Right to Medical Access and Satisfaction with the Military Medical System

The military is also building its own system in the medical field in preparation for wartime. However, this particularity has also caused a blind spot in human rights of the servicemen where the military has violated or not guaranteed the human rights of the soldiers for a long time. In 2022, an air force trainee complained of pain in the lower body and went to a military hospital, but the military doctor refused to take an X-ray and went to a private hospital, and the treatment was delayed.⁴⁰⁷⁾ There was also a case of a soldier who was diagnosed with a neuroma in his arm after enlisting and complained that he had not received proper treatment.⁴⁰⁸⁾

According to the 'OECD Health Statistics 2022' released by the OECD on Jul. 4, the number of outpatient treatment per capita in Korea is 14.7 per year, the highest among the OECD member states (OECD average is 5.9). However, the soldiers, especially those living in military camps, often do not receive necessary medical services on time, and it is often asserted that their right to access medical care is violated. In a survey of soldiers who had experience using the military medical services, 24.8% of the soldiers responded that they needed to receive medical treatment or tests in the past year, but were unable to receive them in a timely manner (unsatisfied medical experience rate).⁴⁰⁹⁾ This is 2~3 times the unsatisfied medical experience rate of the general public, and is similar to the results of previous studies that analyzed the data from the 2014 and 2015 military health surveys.⁴¹⁰⁾

On the other hand, satisfaction with the military medical services seems to be low, as well. 18.7% of the soldiers responded that they were 'dissatisfied with the military medical

407) Yonhap News, An air force doctor ignoring even a hip joint necrosis ... "This is not an emergency...", Mar. 23, 2022

408) Seoul Business, Soldier indicated pain in his arms, but forced to continue training ... leading to nervous paralysis, Jan. 26, 2022.

409) The causes of unsatisfactory medical experience (multiple responses) are ① because the symptoms are mild or will improve with time (46.2%) ② because there is no time to go to a medical institution or to leave work due to training or duties (44.9%) ③ the atmosphere in the unit made it difficult to say that they were sick (27.8%) and ④ went to a military medical facility, but the waiting time was too long (24.7%).

410) NHRCK Investigation, Status Survey of the Military Medical System to Guarantee the Soldiers' Right to Health, Dec. 2020.

service,’ which was higher than the officers at 10.4%. Also, among the soldiers who experienced both civilian and military medical services, 46.2% of the soldiers⁴¹¹⁾ and 40% of the officers responded that they were dissatisfied with military medical services, and the satisfaction rate was even lower in the experienced group where civilian and military medical services could be compared.⁴¹²⁾

The Ministry of National Defense has recently been making efforts to expand the “opportunities for the soldiers to receive treatment at civilian hospitals.” This can be clearly seen in the process of change in Article 6 of the ‘Military Patient Management Directives.’ The Ministry of National Defense amended this directive in 2016 to allow the servicemen to access civilian hospitals not only when “mental and physical disorders occur” but also when “medical care is needed” in general, and in 2019, the provisions of the directive, which can be interpreted as ‘priority to military medical institutions’⁴¹³⁾ for treatment, were revised to clarify that ‘receiving treatment at civilian hospitals’ is no longer an exception. However, according to survey conducted by the NHRCK in 2022 at the military units, the practice of having soldiers receive medical treatments at the military medical institutions if the senior officer determines the injury or illness to be not serious remains.

Through a resolution on Dec. 22, the NHRCK recommended to the Minister of National Defense to reorganize the military medical system to expand the use of civilian hospitals, along with the military medical institutions, and to prepare a mid-to-long-term roadmap for this purpose. It was recommended to improve the system to ensure the servicemen’s access to medical care, including the establishment of a new statutory provision regarding the guarantee of servicemen’s right to choose medical treatment.⁴¹⁴⁾

411) Regarding the level of medical service, the soldiers cited ‘insufficient treatment outcomes,’ ‘insincere or unkind medical staffs,’ and ‘long waiting times for reservations and treatment’ as major dissatisfaction factors.

412) Military Medical Service Status Survey (2020), Pg. 157, 222~223.

413) A rule that can be explained as ‘soldiers receive treatment at military medical institutions, as a rule. Occasionally, a soldier may be treated at a civilian hospital, but only as an exception.’

414) NHRCK, Decided on Dec. 22, 2022, Recommendation to improve the military medical system to ensure the servicemen’s right to medical access.

B) Problems and the Causes of Medical Services Within the Military

Article 17 of the ‘Framework Act on Military Status and Service’ enacted in 2016 stipulates that “a soldier has a right to appropriate and effective medical care to maintain his/her health and treat any illness or injury sustained during his/her military service.” However, until recently, there seems to be considerable public distrust that those who suffer from health problems while serving as soldiers will not receive appropriate treatment or compensation from the military. It is necessary to examine this distrust from the perspective of soldiers’ right to access medical care and the level of medical service in the military.

The unsatisfied medical experience rate of the soldiers is 2~3 times higher than that of the general public, and the causes are due to lack of time, work type, unit atmosphere, and waiting time.⁴¹⁵⁾ In general, in order to receive medical treatment at a military hospital, soldiers receive primary medical treatment from a military doctor at a battalion-level medical office, and if the military doctor requests an outpatient visit, they visit a division-level medical office and receive treatment again. Only when there is a medical certificate that it is necessary, report it to the company commander or other middle manager and visit the military hospital after going through the necessary procedures.

In order to go through this procedure, a job vacancy is unavoidable at each step, and since the vacancy must be filled by others, it may not be easy to apply for a hospital treatment unless it is a serious disease. This can be inferred from the fact that unsatisfied medical experience is higher among soldiers with poor health conditions, and those who have irregular working hours compared to those who work regular hours. It is interpreted that the soldiers will be more hesitant to use medical services if they have to ask other soldiers relatively more often, or if the work burden of the nearby personnel increases significantly during work vacancies.

On the other hand, regarding the level of medical service, more than one-third of users of the military hospitals responded that they would use civilian hospitals (in the future) despite the burden of the medical expenses (co-pay). Soldiers cited “insufficient treatment results,”

415) In particular, in the same survey, the causes of ‘it was difficult to say that I was sick when I was sick’ were ① I was afraid that others would think I was faking it (34.7%), ② I didn’t have time for training or work (29.3%), and ③ going to the hospital would make it difficult for the co-workers (22.4%). Among the main causes of unsatisfied medical experience regarding the use of civilian hospitals, 18.2% of the respondents said that they thought that the ‘officers would not allow visits to the medical institutions.’

“unkind medical staff,” and “long waiting hours for reservations and treatment” as major factors for dissatisfaction. Compared to civilian hospitals, the military medical system chronically lacks skilled medical personnel. Short-term medical doctors with little clinical experience are in charge of most of the treatment at the military medical institutions,⁴¹⁶⁾ and the Ministry of National Defense’s plan to increase the hiring of long-term medical doctors and professional contract doctors is also difficult due to the low pay (68.0%) as compared to civilian doctors.

In addition, the lack of essential medical equipment is also a serious problem. Even the division-level medical corps (including the navy fleet-level medical corps and the air force medical squadron), that perform the role of hospitals under the ‘Medical Service Act,’ do not have precise examination equipment, such as CT or MRI. Military hospitals and the Armed Forces Capital Hospital, which perform the roles of general hospitals or tertiary general hospitals under the “Medical Service Act,” respectively, lack medical equipment compared to civilian hospitals. In fact, in 2020, there was a case in which the diagnosis of ‘nephrotic hemorrhagic fever’ (Hantavirus) was delayed because the only blood test device in the unit broke while a deceased soldier was hospitalized in the division medical unit.

C) The Need to Protect the Soldiers’ Access to Medical Care by Strengthening the Promotion of Using Civilian Hospitals

Considering the relevant laws, such as the Constitution, the ‘Framework Act on Military Status and Service,’ and the ‘Military Health and Medical Services Act,’ the soldiers have the right to receive optimal health care services necessary to protect and promote their health. Moreover, the state has an obligation to prepare various legal and institutional means for the soldiers to lead a healthy military life, and to secure necessary financial resources. The quality of medical services provided to the soldiers in performing their duties in national defense should be at least equal to or better than that of the universal medical services for the general public.

416) As of the end of 2022, 2,261 out of a total of 2,449 are short-term service doctors, and only six cases of short-term military doctors applying for long-term service during the past five years. The number of professional contract doctors in the military is only 35 (32 at the Armed Forces Capital Hospital and 3 at Armed Forces Daejeon Hospital), which is about a third of the plan announced in 2008.

However, the limitations of the current military medical service seem difficult to overcome. Sufficient quality medical personnel and medical equipment must be secured to solve problems of insufficient skilled medical personnel, shortage/deterioration of medical equipment, insincere/unfriendly treatment, long waiting times for reservations and reception. However, the difficulties arising in the process can be easily predicted, and this problem has yet to be resolved.

In order to increase the servicemen's satisfaction with health care services, it is also necessary to continuously educate military commanders and military health care personnel so that patient-centered communication and treatment can be achieved, and secure high-quality medical personnel and medical equipment. However, given the realistic difference in human and material resources between civilian hospitals and the military medical facilities, a task that should be resolved with a higher priority is for the soldiers to freely use the medical institutions, especially civilian hospitals.

Since 2019, the Ministry of National Defense has implemented measures to “simplify the procedure for using civilian hospitals for the active duty soldiers,” allowing the soldiers to receive medical treatment at a civilian hospital on the same day if approved by the unit commander, and starting in 2021, the ‘Soldier Private Hospital Medical Expense Support Program’ (providing up to 80% of co-pay) has been implemented. However, it is necessary to devise a plan to better utilize the civilian medical system because many of the soldiers do not use medical services due to ‘difficulty saying that he/she is sick due to the atmosphere in the unit,’ ‘not having time to go to a medical institution or leave their place of work due to training or work,’ ‘going to a hospital will make it difficult for their colleagues,’ and the military still retains a system and practice that prioritizes ‘treatment at military medical institutions.’

To this end, it is necessary to take measures, including establishing statutory provisions to guarantee the soldiers’ ‘right to choose medical treatment’ and a new provision requiring commander’s approval when applying for sick leave for the purpose of medical treatment, easing of the requirements for the soldiers to use sick leave, and allowing soldiers to use vacation in 1-hour increments, etc. This will minimize factors that hinder soldiers from receiving medical treatment at civilian hospitals, and at the same time, the military medical institutions need to more actively operate nighttime medical care so that the soldiers can receive medical treatment more conveniently.

7. LGBTI

A. Human Rights Status 2022

LGBTI refers to any person with an identity that is not gay, bisexual, transgender, intersex, or other non-heterosexual or cisgender.⁴¹⁷⁾⁴¹⁸⁾ The human rights of LGBTI people are mainly related to the realization of the right to equality and the right to pursue happiness in that they are the resistance to discrimination and exclusion based on sexual orientation or gender identity.

Human rights violations based on sexual orientation and gender identity have been around for a long time. After a long history of discrimination, on May 17, 1990, WHO removed homosexuality from the list of mental disorders, and in 2018, transgender was also removed from the list of mental disorders. The UN has designated May 17 as the International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT) to commemorate the WHO's decision to remove homosexuality from the list of mental disorders. The international community of more than 130 countries, including Korea, commemorate this day by reflecting on the past discrimination against LGBTI people.⁴¹⁹⁾

Sexual orientation and gender identity are prohibited grounds for discrimination under the international human rights law, and major international organizations, including OHCHR, ILO, IOM and UNESCO, etc., are also working to protect and promote the human rights of LGBTI. In 2016, the UN Human Rights Commission established a new position of an expert on LGBTI human rights to investigate human rights violations, discrimination, and violence against LGBTI around the world.⁴²⁰⁾

Korea received 22 recommendations related to the human rights of LGBTI in the 2018 UN Human Rights Council's universal periodic review (UPR), but rejected all.⁴²¹⁾ Socially,

417) A person whose gender identity corresponds with the sex registered for them at birth

418) Ashley Mardell, ABS's of LGBTQ+, 2016.

419) Statement of the Commissioner of NHRCK, IDAHOBIT, May 17, 2022.

420) Kyunghyang Shinmun Press Release, Oct. 2, 2016, Muntarbhorn Appointed as the First UN Independent Expert on Human Rights of LGBTI.

421) Hope and Law Webpage, "From Geneva ahead of Korea's 4th Universal Periodic Review," Dec. 28, 2022..

LGBTI are very easily subjected to hatred or discrimination, especially in some religious and conservative groups; however, it is difficult to find any active measures at the government level to mitigate discrimination against LGBTI, although reasons such as “social consensus” or problems in the private sector are presented.

The rainbow index⁴²²⁾ is sometimes presented as an indicator of the level of LGBTI human rights in Korea. The rainbow index indicates the level of guaranteeing the human rights of LGBTI, and the closer it is to 0%, the more serious human rights violations and discrimination exist, and the closer it is to 100%, the more perfect equality it is. As of Jun. 2022, Korea's rainbow index is 10.56%,⁴²³⁾ ranking 45th out of 50 countries, and in light of the economic level and the level of guaranteeing human rights in other fields, human rights of LGBTI people in Korea seem to be an area that urgently needs improvement.

This report will review the main topics related to LGBTI and their significance in 2022, including ‘changes in the Supreme Court precedents and the challenges regarding Article 92-6 of the Military Criminal Act,’ ‘discriminatory administration related to LGBTI, including queer cultural festivals,’ and ‘discussion on gender recognition standards for transgenders.’

422) The European branch of the International LGBTI Alliance calculates the index of each country through the ‘ILGA-Europe Rainbow Index’ every year. Korea’s rainbow index is an indicator calculated using this framework, and is meaningful in that it can infer the level of human rights protection for LGBTI people in Korea.

423) SOGI Law and Policy Research, Korea’s LGBTI Human Rights Status 2020/2021.

B. Main Topics

1) Changes in the Supreme Court Precedent and Challenges On Article 92-6 of the Military Criminal Act

A) Changes in the Supreme Court Precedent on the Application of Article 92-6 of the Military Criminal Act

In a ruling on Apr. 21, 2022,⁴²⁴⁾ the Supreme Court changed the previous precedent⁴²⁵⁾ ruling that “sexual intercourse between male soldiers constitutes a crime of indecent conduct under the Military Criminal Act” in relation to Article 92-6 of the Military Criminal Act. In this ruling, the Supreme Court ruled to the effect that ‘sexual relations between soldiers of the same sex that occur according to voluntary agreement in a private space cannot be punished.’ The court reversed and remanded the defendants who were accused of engaging in same-sex consensual sexual activity in a dormitory for singles outside of working hours.

Article 92-6 of the Military Criminal Act prohibits anal sex or other indecent acts against military personnel and cadets, and provides that a prison term of up to two years is imposed in case of violation. The Criminal Act punishes only indecent acts accompanied by violence or threats (Articles 298 and 299 of the Criminal Act), and the Military Criminal Act also punishes acts of indecent conduct by using violence or threats (Article 92-3 of the Military Criminal Act) or by taking advantage of the other person’s insanity or inability to resist (Article 92-4 of the Military Criminal Act). On the other hand, Article 92-6 of the Military Criminal Act differs from the crime of indecent act by force in that it is subjected to punishment only if the act falls under “anal sex or other indecent conduct” even if there is no circumstances of being against one’s will.

Criticism has been continuously raised that Article 92-6 of the Military Criminal Act violates the individual's right to sexual self-determination by punishing sexual acts that have been freely agreed to only fall under a specific aspect,⁴²⁶⁾ but the Constitutional Court has ruled on three occasions (2002, 2011 and 2016) that this provision is consistent with the Constitution.⁴²⁷⁾

424) Supreme Court, Decided on Apr. 21, 2022, 2019Do3047

425) Supreme Court, Decided on May 29, 2008, 2008Do2222

426) NHRCK, Decided on Dec. 22, 2008, Expression of Opinion on partial amendment to the Military Criminal Act.

The Supreme Court ruling is about the interpretation and application of this provision, and civic groups released a statement welcoming the decision and stating that it was an important decision to protect the human rights of LGBTI people,⁴²⁸⁾ and in the National Assembly, a partial amendment to the Military Criminal Act was proposed to repeal Article 92-6.⁴²⁹⁾ On the other hand, some asserted that the court violated the authority of the legislative body through an interpretation that ignored the text of the law,⁴³⁰⁾ and some raised an issue with the ruling as ignoring the uniqueness of the military.⁴³¹⁾

Meanwhile, the NHRCK welcomed the Supreme Court's ruling through a statement by the Commissioner.⁴³²⁾ In addition, on Jun. 20, it submitted an opinion to the Constitutional Court that this provision violates the principle of clarity, violates the soldiers' right to sexual self-determination, privacy, and the right to equality of gay soldiers.⁴³³⁾ Currently, several constitutional complaints related to this provision have been submitted to the Constitutional Court.

B) Article 92-6 of the Military Criminal Act, Right to Sexual Self-Determination, Privacy and Freedom

Article 92-6 of the Military Criminal Act has functioned as a provision to punish sexual acts between person of the same sex. From the legislative history, it is clear that the provision was established to punish sexual intercourse between male homosexuals,⁴³⁴⁾ and in terms of its application, this provision was applied to heterosexual anal sex only once over a 9.5-year

427) Constitutional Court, Decided on Jul. 28, 2016, 2012HunBa258

428) Statement by the Amnesty International, Apr. 21, 2022.

429) Co-Sponsored by 12 representatives, including Rep. Jang, Hye-won, Bill No. 2115378, Apr. 22, 2022.

430) Law Times, "Concerns Over Judicial Judgments That Ignore the Text of the Law," May 9, 2022.

431) Christian Times, Christian Community Strongly Condemns 'Inability to Punish Same-Sex Intercourse in the Military,' Apr. 22, 2022.

432) Statement of the Commissioner of NHRCK, Apr. 22, 2022.

433) NHRCK, Decided on Jun. 20, 2022, Submission of Opinion on the Constitutional Complaints Related to Article 92-6 (Indecent Act) of the Military Criminal Act.

434) Article 50 of the National Defense Security Act, enacted as the Military Government Act in 1948, stipulates "self-harm, arson, robbery, housebreaking, robbery, theft, embezzlement, perjury, forgery of documents, adultery, and assault for the purpose of committing a felony (omitted)." stipulated to be punished. The above words of the National Defense Security Act are evaluated to have been directly translated from the Articles of War, in force in the US at the time, and the relevant regulations have been revised to the current regulations.

period, from 2012 to 2021.⁴³⁵⁾ Meanwhile, from 2015 to 2019 (five years), 57 cases were investigated for violating this provision, and 1 case was sentenced to imprisonment and 10 cases were suspended.⁴³⁶⁾

This provision was used to prevent a vacuum in punishment when sexual assault crimes in the past were stipulated as offenses subjected to victim's complaints, or when the victim withdrew the complaint in the context of the military and was unable to apply the sexual assault punishment provisions, or cases where it is difficult to prove coercion.⁴³⁷⁾ However, as the provisions on the indecent act by force and quasi-indecent act were newly included in the Military Criminal Act in 2009, and as the provision on quasi-rape was also added in 2013, this provision mainly served the function of punishing same-sex sexual acts conducted on a mutually consensual basis,⁴³⁸⁾ and exposed the following problems.

First is a problem related to the principle of clarity of the principle of legality. This provision does not provide any standards as to the level of obscenity that can be considered 'other indecent act.' The Constitutional Court considered 'other indecent acts' as 'acts of sexual gratification between soldiers of the same sex who have not reached the penetration,' and ruled that the sexual intensity of the act may be less than that of penetration (anal intercourse). In other words, the perpetrator cannot foresee whether acts of light kissing, hugging, deep kissing, or touching the genitals of the other soldier fall under 'other indecent acts.'

Second is excessively restricting soldiers' right to sexual self-determination the privacy and freedom by subjecting the private sexual life of individuals to criminal punishment. This provision prohibits specific sexual acts through the state intervention and plans detection, investigation, and punishment by the state in case of violation by the state interfering with an individual's intimate private life. However, anal sex between soldiers under mutual consent

435) Lee, Sang-hyeon, A study on anal sex and other indecent offenses under the Military Criminal Act: Focusing on the comparison of legal history, legal theory and precedent, Soongsil University, School of Law, Thesis of Law, Vol. 36, 2016.

436) Ministry of Justice, Answers to the Question List to the 5th National Report of the UN Covenant on Civil and Political Rights, 2019, Pg. 26.

437) Lee, Ja-yeon, A study on indecent acts under the Military Criminal Act, Wonkwang Legal Studies Vol. 34, No. 2, Wonkwang University Legal Research Institute, Jun. 2018, Pg. 163~164.

438) According to data submitted by the Ministry of National Defense to the NHRCK (Dec. 9, 2021), 53 cases (79.1%), out of 67 cases to which this provision was applied from 2016 to the first half of 2021, were 'sexual acts between consenting parties.'

does not cause any harm to ‘establishing discipline, preserving military combat power, and protecting soldiers’ right to sexual self-determination.’ According to many preceding studies, it is difficult to find evidence that not stipulating punishment for homosexual behavior harms combat power or unit unity.⁴³⁹⁾

Third, although this provision appears to be a neutral criterion for all groups, it is a so-called ‘indirect discrimination’⁴⁴⁰⁾ that results in unfavorable consequences for a discriminated victim group (homosexuals) with certain personal attributes, and in reality it is applied as discrimination based on sexual orientation. In the case of sexual contact between soldiers of the opposite sex, it is difficult for other people or investigative agencies to know whether there was “anal sex or other similar acts,” unless the person involved confessed. However, among homosexuals, anal sex is the most common sexual act, and if a same-sex military couple frequently visits private locations, it is immediately suspected that there was ‘anal sex or other similar acts’ and can easily become a target for investigation.

C) The Need to Abolish Article 92-6 of the Military Criminal Act

The international human rights organizations, including the UN Human Rights Commission (2015), the UN Commission against Torture (2017), the UN Commission on Economic, Social and Cultural Rights (2017), and the 3rd UPR of Korea (2017), have expressed concern about punishing consensual sexual activities between men in the military pursuant to Article 92-6 of the Military Criminal Act, and recommended its repeal.

Article 92-6 of the Military Criminal Law, which was created following the US military law immediately after World War I, is a judicial system that has already been abolished in the US. Previously, the US military had adhered to a non-disclosure policy of ‘don’t ask, don’t tell’ about homosexuality, but in 2009, the policy was abolished and all sexual

439) As a result of an analysis of the case of the Canadian military, which banned discrimination in military service for homosexuals in 1992, the anti-discrimination measure does not affect military power, military readiness, unity, and military discipline. Also, as a result of a study of the situation in the Israeli army, which banned discrimination against homosexuals in military service in 1993, there is also data analyzing that there is no difference in combat power before and after 1993 (Do, Jung-jin, A report on the crime of indecent acts under the Military Criminal Act, Criminology and Justice Studies, Vol. 26, No. 3, Korea Institute of Criminology and Justice, Sep. 2015).

440) Indirect discrimination refers to cases where same neutral standards are applied to all groups, but some groups end up being treated unequally due to social stereotypes or de facto differences, and such unequal treatments cannot be rationalized or justified.

minorities, including homosexuals, were allowed to express their gender identity and sexual orientation. The provision on the punishment of homosexuality⁴⁴¹⁾ was also revised to punish only forced same-sex intercourse, but in 2017, all references to same-sex intercourse were deleted.

With this ruling by the Supreme Court, the statutory provisions in this case do not apply to sexual acts, including anal sex between male soldiers, in a private space with the consent of the parties involved, but there is room for punishment by treating them differently from sexual acts between the opposite sex if two people mutually agree to engage in sexual acts, such as anal sex, in the public, business realm or similar situations. The public indecency (Article 245) under the Criminal Act, the desertion from military service (Article 30), and the neglect of duty (Article 35) under the Military Criminal Act already exist, and other means to establish discipline while restricting the fundamental rights less, such as disciplinary actions, are available. However, this provision excessively violates individual human rights by criminalizing anal sex between consenting soldiers.

Since Korea applies the conscription system, sexual minorities, such as transgender, intersex, and non-binary people whose legal gender at birth is male, are also subjected to compulsory military service. Moreover, there will definitely be sexual minorities among officers and noncommissioned officers serving in the military. Nevertheless, male homosexuals in the military have long been ostracized. In 2009, the Ministry of National Defense established the ‘Unit Management Directives’ to prohibit discrimination on the basis of homosexuality, and advocated a non-discriminatory military culture for the sexual minorities, but in practice, there is significant lack of related policies, guidelines, and protection systems within the military. With this Supreme Court decision, there is a need to abolish Article 92-6 of the Military Criminal Act, which has unfairly restricted the basic human rights of LGBTI people in the military, and establish conditions for LGBTI people to fulfill their national defense duties without discrimination and serve in the military.

441) Art. 125. 10 U. S. C. § 925.

2) Discriminatory Administration Related to LGBTI Events

A) Raising Issues with Discriminatory Administration of LGBTI Events

The Seoul Queer Culture Festival Organizing Committee reported the use of Seoul Plaza from Jul. 12 to 17 pursuant to the ‘Seoul Metropolitan Government Ordinance on the Use and Management of Seoul Plaza’ to hold the Seoul Queer Culture Festival on Apr. 13.⁴⁴²⁾ After deliberation by the Open Plaza Operation Citizens Committee on Jun. 15, the Seoul Metropolitan Government accepted the request only for Jul. 16, citing the possibility of conflict with citizens who opposed the festival. Moreover, it was conditional on ‘no overexposure of the body, and no sale or display of harmful or obscene materials under the Youth Protection Act.’⁴⁴³⁾

The Incheon Queer Culture Festival Organizing Committee requested permission to use the World Cup Plaza at Incheon Central Park to host the Incheon Queer Culture Festival on Oct. 15. However, the Incheon Park Management Office disallowed the use pursuant to Article 49(3) of the ‘Act on Urban Parks and Green Areas.’⁴⁴⁴⁾ In response, on Oct. 7, the Incheon Metropolitan City Human Rights Officer decided that the disposition of the Incheon Park Management Office’s decision violated human rights and recommended corrective measures.

On the other hand, the Daegu Queer Culture Festival held on Oct. 1 seems to have ended without major conflicts. In preparation for an anti-festival rally being held in a place close to the Daegu Queer Culture Festival, the police prepared measures to act as a buffer zone in the middle of the two venues to prevent clashes between the two groups.⁴⁴⁵⁾

Meanwhile, on Aug. 19, the Supreme Court upheld the lower court ruling in favor of the plaintiffs in a lawsuit for compensation for damages filed by LGBTI rights groups against Dongdaemun-gu and the Dongdaemun-gu Facilities Management Corporation.⁴⁴⁶⁾ The

442) In accordance with this ordinance, the use of Seoul Plaza is subject to a reporting system, as a rule. The mayor must, in principle, accept a report of use under Article 5, and in certain cases (when the purpose of the plaza is violated or use is restricted pursuant to other laws, etc., a risk of infringing on the body or life of citizens is expected, if the plaza is used for 7 or more consecutive days for an event with the same purpose, and if it overlaps with another event), the report may not be accepted.

443) Announcement by the Seoul Queer Culture Festival Organizing Committee, Jul. 6, 2022.

444) Maeil Business Daily, No permission to hold face-to-face Incheon Queer Culture Festival in 3 years ... ‘Discriminatory administration,’ Oct. 6, 2022.

445) Maeil Business Daily, Prevent Any Clashes... D-1 Until Daegu Queer Culture Festival, Sep. 30, 2022.

lawsuit was filed in 2017 as the plaintiff had received permission from the Dongdaemun Facilities Management Corporation to rent the Dongdaemun Gymnasium to host the Queer Women's Sports Festival, but the Dongdaemun Facilities Management Corporation canceled the rental due to unscheduled ceiling construction of the gymnasium after complaints from residents were filed.⁴⁴⁷⁾

In Jan. 2020, the Seoul Western District Court ruled that “the Corporation's cancellation of the rental permit constituted an act of discrimination based on the sexual orientation of the prospective participants and is against the principle of equality.”⁴⁴⁸⁾ Prior to the Supreme Court decision, the NHRCK also stated that canceling the rental permit on the grounds of sexual orientation in 2019 is discriminatory, and recommended Dongdaemun-gu and Dongdaemun-gu Facilities Management Corporation to establish measures to prevent recurrence.⁴⁴⁹⁾

On June 14, the Central Administrative Appeals Commission decided to cancel the disposition of the Seoul Metropolitan Government denying the Seoul Queer Culture Festival Organizing Committee's application for a non-profit corporation status in Aug. of last year. Initially, the Seoul Metropolitan Government denied the Seoul Queer Culture Festival Organizing Committee's application for a non-profit status for having elements that would hinder the public interest due to social conflicts, and was criticized for arguing that ‘guaranteeing the rights of sexual minorities is in violation of the Constitution’ in its supplementary responses submitted to the Administrative Appeals Commission.⁴⁵⁰⁾ Prior to this, the Human Rights Commission of Seoul, on Nov. 1, 2021, recommended that the Seoul Metropolitan Government take measures to cancel the denial as discriminating against LGBTI people without reasonable grounds.

446) Supreme Court, Decided on Aug. 19, 2022, 2022Da241875.

447) Kyunghyang Shinmun Press Release, Restricting the use of public facilities for being sexual minorities is illegal ... Recognizing liability for discriminatory actions, May 17, 2022.

448) Seoul Western District Court, Decided on May 13, 2022, 2021Na47810.

449) NHRCK, Decided on May 10, 2019, 17JinJeong0935400.

450) Seoul Shinmun, Denying corporate status for the Seoul Queer Culture Festival Organizing Committee ... Unconstitutional, Apr. 14, 2022

B) Criticisms on the Discriminatory Administration of Local Governments

The Constitution stipulates that “all citizens are equal before the law, and no one shall be discriminated against in all areas of political, economic, social, and cultural life based on gender, religion, or social status,” and therefore, it is only natural that LGBTI people should be guaranteed human rights. Moreover, cultural events for sexual minorities, such as the queer culture festival and the queer women's sports festival, have significance as a means of realizing the fundamental rights of sharing and exchanging opinions with others despite the environment where the minorities have difficulty revealing themselves. However, local governments are being criticized for their various administrative actions being discriminatory and illegal.

Some repeatedly raise questions about sexual minorities’ cultural events on the grounds of “sensationalism” and “promiscuity.”⁴⁵¹⁾ However, such civil groups are prejudiced and discriminatory in that they accept the exposure of the body or the expressions of affection between the opposite sexes at other events, such as soaking shows or water gun festivals, but oppose only when sexual minorities perform similar acts, citing morality and ethics.⁴⁵²⁾ Under the principle that freedoms of association and expression cannot be restricted unless it falls under ‘a clear case that poses a direct threat to public peace and order,’⁴⁵³⁾ even if the queer culture festival's display and sale of certain objects and paintings and certain exposure and expressions are somewhat ‘sensational,’ the event cannot be banned for this reason.

It is also worth paying attention to the opinion that the act or expression is based on social prejudice toward sexual minorities, which concludes that the act or expression is obscene or decadent because the subject and the host of the festival is LGBTI, even though it is clear that it is not a reason to deny the permission to use Seoul Plaza.⁴⁵⁴⁾

The local governments have restricted cultural events for LGBTI people, at least on the surface, for the reasons of social conflicts and civil complaints. However, sexual minorities

451) Christian Times, *Opposing the Decision of Seoul Plaza to Allow Queer Culture Festival*, Jul. 8, 2022.

452) Commentary by Rainbow Action Against Discrimination Against LGBTI, Feb. 15, 2021.

453) Constitutional Court, Decided on Jan. 28, 1992, 89HunGa8

454) Seoul Metropolitan Government, “Decisions of the Human Rights Officer of Seoul Metropolitan Government (2019),” Referring to expert opinions, 2021.

are a socially vulnerable minority group, and the state and local governments have the duty to protect them from being isolated from the community. Therefore, LGBTI events should not be restricted just because there are rallies or civil complaints against them.⁴⁵⁵⁾

Local government administration towards minorities plays an important role in helping citizens to recognize the social minorities as members of the society. Therefore, restricting the LGBTI cultural events based on opinions, such as ‘why hold the queer culture festival in Seoul Plaza, which is a public space?’ or ‘why hold the queer culture festival at a location with many people gathering’ is giving a wrong perception that the LGBTI cultural events are unhealthy use of leisure.⁴⁵⁶⁾

C) Duties and Roles of the Local Governments to Protect the Social Minorities

It is a discriminatory act of violating the right to equal rights to give preferential treatment, exclusion, discrimination, or unfavorable treatment to a specific person in connection with the supply or use of goods, services, commercial facilities, and land on the grounds of sexual orientation without reasonable grounds. In 2011, the UN Human Rights Council adopted a resolution demanding equal rights for homosexuals regardless of their sexual orientation or gender identity,⁴⁵⁷⁾ and Korea has voted in favor of each resolution of the UN Human Rights Council.

The queer culture festival began as a protest against the American society that was hostile towards LGBTI people and to honor the human rights and dignity of LGBTI people. Since then, it has spread to Europe, the Americas, Asia, and Africa, and is now held annually in about 150 cities. The queer culture festival is meaningful as a movement in which sexual minorities can escape from a sense of isolation and feel a sense of community and pride by affirming each other’s existence through the practice of making visible their differences and existence in public places.

455) Human Rights Commission of Seoul, Recommendation on Denying the Non-Profit Corporate Status of the Seoul Queer Culture Festival Organizing Committee, Nov. 2021.

456) Kim, Ji-hye, A Good Discriminator, 2019

457) UN Human Rights Council, Human rights, sexual orientation and gender identity, 2011. 7. 14.(UN Doc. A/HRC/RES/17/19)

Local governments or public institutions have the obligation to try to protect the social minorities from unreasonable discrimination or oppression, and to eradicate unreasonable prejudice and hatred against the minorities during the process of resolving confrontations and conflicts due to differences in views between groups. Moreover, holding and participating in a queer culture festival is an exercise of the rights protected under the freedom of assembly and association and freedom of expression. Even if it is necessary to mobilize administrative power to manage 'social conflict' as an opposition rally against this, it is an essential social cost required to satisfy the constitutional obligations of the state and local governments to protect the social minorities.

In addition, the local governments need to take a clear response to the propaganda and instigation of discrimination by intentionally spreading prejudice against LGBTI groups and by expanding and reproducing hatred and discrimination. These hate speeches and actions violate the rights of others and fix the structure of discrimination in Korean society, and they are responsible for the costs incurred by 'social conflict.' However, the administrative actions and responses of the local governments that appeared in 2022 raised concerns on whether various institutions of local governments are rather discriminating with hate speeches, rather than solving problems and protecting human rights.

3) Discussion of Transgender Gender Recognition Criteria

A) Supreme Court en banc Decision

On Nov. 24, the Supreme Court ruled that gender recognition should not be denied to a transgender person who is not married only on the grounds that he/she has a minor child. In order to legally correct gender, a transgender person must apply to the court for permission to correct registration, and the court considers the status of gender affirming surgery, loss of fertility, marital status, and whether there are minor children pursuant to the ‘Guidelines for Handling Application for Permission for Gender Recognition of Transgender Persons.’

The applicant in this case underwent a gender reassignment surgery after divorcing due to gender identity issues, and has two minor children. The trial and appellate courts rejected the gender correction on the grounds that, in accordance with the existing precedent, ‘permitting gender correction of an applicant with minor children is against the welfare of the child.’ In 2011, the Supreme Court held that gender recognition is not permitted if a person is “currently married or has minor children.”

The issue in this case, as defined by the Supreme Court, is whether it is appropriate to consider the case of a transgender person, who is not currently married and have a minor child, to have met the conditions of disapproving the gender recognition. Regarding this, the Supreme Court stated that various factors must be taken into consideration, in order to achieve harmony between the protection of the fundamental rights of transgender people and the protection of minor children, and that gender recognition should not be denied just because of the fact that there are minor children. It is desirable to permit gender recognition by examining various circumstances that exist or may occur between a transgender parent and a minor child, for the welfare of the minor children.

Moreover, transgender people, as equal members of Korean society, have the right to form a personality and lead a life according to their gender identity, and the gender recognition does not cause a significant change in the relationship between a transgender person and their minor children or affect the substance of their rights and obligations.

Civil society groups welcomed the Supreme Court’s decision to change the previous precedent and guarantee the rights of transgender people after 11 years.⁴⁵⁸ However, some

expressed an opinion that the standard that specific circumstances related to the presence or absence of minor children should be considered is regrettable because the presence or absence of minor children is not a problem in the approval of gender recognition.⁴⁵⁹⁾

B) Criticism on the Criteria for Gender Recognition in Korea

Currently, there is no law in Korea that stipulates the criteria and procedures for gender recognition of transgender people,⁴⁶⁰⁾ so courts at each level handle gender recognition in accordance with the administrative guidelines. As a result, the standards used by the courts are not consistent, and issues are raised for requiring surgical operations, such as genital removal, adverse to health, in particular.

According to the ‘Guidelines for Handling Application for Permission for Gender Recognition of Transgender Persons,’ the court may require a transgender person to submit various supplementary documents to the application for gender recognition, including a doctor’s note confirming that ‘gender affirming surgery has been performed and currently has a physical genital appearance of the opposite sex of the biological sex’ and a diagnosis from a specialist confirming that ‘there is no current fertility and there is no possibility of fertility occurring or recovering in the future.’

The above documents are reference materials under the above Guideline, but in fact, it can be understood that genital reconstruction surgery and removal of fertility are essential among gender affirming surgeries in order to achieve gender recognition. In the case of FTM (Female to Male) transgender, gender recognition is permitted only with the removal of fertility, or without removal of fertility, but only in a very few cases; however, in the case of MTF (Male to Female) transgender, removal of fertility and genital reconstruction surgery are mandatory.⁴⁶¹⁾

458) Amnesty International Press Release, Nov. 24, 2022.

459) Hope and Law, Nov. 24, 2022.

460) Transgender is a person whose gender identity is different from the sex assigned at birth. Not all transgenders undergo or require gender affirming surgery.

461) Ryu, Se-a, Surgical Requirements of the Supreme Court Ruling and Related Problems; NHRCK, Collection of Materials from the ‘Hearing on Transgender Recognition Criteria,’ Oct. 20, 2022.

Requiring surgical requirements for gender recognition by the court becomes a subject of criticism for making gender recognition difficult⁴⁶² because they are required for legal reasons, even though not medically needed. The sex of others is not recognized in the form of external genitalia in social life, and genital reconstruction surgery is often not performed or cannot be performed depending on economic (cost) or medical factors (unnecessary and risky). Nevertheless, requesting this is contrary to the purpose of medical ethics of maintaining the highest attainable level of health,⁴⁶³ and is an unreasonable violation of the constitutional right not to be physically harmed.⁴⁶⁴ In this respect, Sweden, which had requested the removal of fertility as a requirement for gender recognition until 2013, has conceded to a claim for damages from the state.⁴⁶⁵

C) Right to Gender Recognition of Transgenders

At its 19th session on Jun. 17, 2011, the UN Human Rights Council adopted its first resolution focusing on human rights violations based on sexual orientation and gender identity,⁴⁶⁶ and, at its 27th session on Sep. 27, 2014, it again adopted a new resolution on the prohibition of discrimination and violence based on sexual orientation and gender identity.⁴⁶⁷ In accordance with this resolution, the UN High Commissioner for Human Rights submitted ‘Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity’ report in 2011 and 2015, respectively, and the report recommended that each state issue legal identity documents that reflect the preferred gender upon application and eliminate harsh requirements, such as the removal of fertility and compulsory medical care.⁴⁶⁸

462) According to the NHRCK’s 2020 ‘Survey on Hate and Discrimination Against Transgenders,’ only 8.0% (47 people) of 591 respondents completed legal gender recognition. 86.0% (508 people) had never attempted gender recognition, and the reasons for this were ‘due to the cost of medical treatment related to gender change’ (58.9%), ‘due to complicated legal procedures’ (40.0%), and ‘due to the health burden caused by medical treatments related to gender change’ (29.5%).

463) Han, Ga-ram, Requirements and Issues of Gender Recognition of Transgenders, 1st Colloquium of the Korean Society of Law and Policy on Sexual Orientation and Gender Identity (SOGI), Jun. 29, 2013.

464) NHRCK Human Rights Status Survey, Survey on the Status of Transgender Hatred and Discrimination, 2020.

465) TGEU, Sweden announces to pay compensation to trans people. Mar. 28, 2017.

466) UN Human Rights Council, Human rights, sexual orientation and gender identity, Jul. 14, 2011 (UN Doc. A/HRC/RES/17/19)

467) Human Rights Council, Human rights, sexual orientation and gender identity, 2014. 9. 24.(UN Doc. A/HRC/27/L.27/Rev.1)

Foreign laws related to gender recognition are diverse.⁴⁶⁹⁾ The UK and Germany allow gender recognition without surgery. In the US, the federal government does not have any restrictions on gender affirmation or change in passports or social security cards, and there is no provision requiring surgery for gender recognition on identification cards (driver's license), except for Texas, Iowa and Georgia. Argentina allows gender recognition simply through individual application.

In Korea, gender is indicated on resident registration numbers and identification cards, and legal gender is revealed in most areas of daily life, education, and employment. Under the current system, gender on the register of family relations is regarded as the legal gender, and is reflected accordingly on all official documents, including ID cards. Transgenders experience widespread hatred and discrimination in everyday lives because their gender identity does not correspond to their legal gender. Nevertheless, only 8.0% (47 people) responded that they had changed their legal gender in the fact-finding survey, which is a point to be considered.

As the Supreme Court decision stated, everyone has the right to fulfill their personality and individuality based on their gender identity, and transgenders are no exception. Transgenders, as equal members of Korean society, need to be able to think and work together so that they can pursue happiness and live together with others.

468) UN Human Rights Council, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 2011. 11. 7.(UN Doc. A/HRC/19/41); UN Human Rights Council, Discrimination and violence against individuals based on their sexual orientation and gender identity, 2015. 5. 4.(UN Doc. A/HRC/29/23)

469) Han, Sang-hui, Statutory and Political Studies on Gender Recognition Criteria for Transgenders – Focusing on the Gender Affirmation Surgery Requirements in the Supreme Court Decision, NHRCK, Collection of Materials from the 'Hearing on Transgender Recognition Criteria,' Oct. 20, 2022.

8. Responding to Hatred and Discrimination Against Diverse Members of the Society

A. Human Rights Status 2022

In Chapter 2 above, the human rights situation in 7 categories, the disabled, migrants/refugees, women, children/adolescents, the elderly, soldiers, and sexual minorities, was examined. However, as we move away from a culture that emphasizes the homogeneity of its members and enter an era where individual rights and values are emphasized, the diversity of Korean society is gradually increasing, and types of social minorities can be found in various ways.

‘Social minority’ does not just mean a minority who is numerically inferior in society. It refers to the socially underprivileged who are alienated from all areas of society in realizing equality and justice, and is often expressed by the word ‘vulnerable class.’ Basically, ‘gender, religion, disability, age, social status, region of origin, country of origin, ethnic origin, appearance, marital status such as common-law marriage, pregnancy or childbirth, family type or family situation, race, color, ideology or political opinion, prior criminal record, sexual orientation, educational background, medical history, etc’ are understood as criteria for classifying social minorities by the NHRCK, but a number of laws in Korea specify the vulnerable class in various terms.

However, it is difficult to see that whether someone is a social minority is fixed. Individuals form relationships with many others and are fluid beings made up of various categories. Korean society member, A, is a female and a social minority, but she may be non-disabled and heterosexual. On the other hand, another person, B, may have more characteristics of a minority, including being a woman, a disabled person, and a foreign migrant worker, or she may become a social minority with a new characteristic of experiencing damage from a social disaster.

It is important to protect the rights of various members of society, but hatred and discrimination are one of the major social problems facing the Korean society. According to a survey on the public awareness of hate speeches by the Ministry of Culture, Sports and

Tourism in 2022, the ratio of the respondents who had seen or heard hate speeches against a specific individual or group online or offline was 82.4% and 76.7%, respectively.⁴⁷⁰⁾ This is a result similar to the online hate speech recognition survey conducted by the NHRCK in 2021.

In the 2021 NHRCK: The Report on Human Rights Situation in the Republic of Korea, efforts to enact the Anti-Discrimination Act or Equality Act,⁴⁷¹⁾ hate speech against LGBTI people, opposition to and hatred issues from the establishment of mosques and residential facilities for the disabled were dealt with in this area. There were not any special improvements in 2022 in all three issues. The issue of the construction of the mosque in Daegu is especially regretful in that hate speeches continued among the residents in opposition throughout 2022.

Among the topics that received much social attention in 2022, the controversy surrounding the amendment to the Framework Act on Healthy Families, cases of discrimination against HIV-positive persons, and the issue of hate speeches during the election period are considered below.

470) Ministry of Culture, Sports and Tourism, Result on the Survey on the Public Awareness of Hate Speeches, Dec. 2022.

471) Depending on the purpose and orientation of the bill, the terms 'anti-discrimination law' or 'equality law' are sometimes used together. However, in the following, the commonly used term 'Anti-Discrimination Act' will be used.

B. Main Topics

1) Diversity in Family Types – Problems and Controversy over the Framework Act on Healthy Families

A) Controversy Surrounding the Proposed Amendment to the Framework Act on Healthy Families

The Framework Act on Healthy Families, enacted in 2004, is the only law that defines the term ‘family.’⁴⁷²⁾ Under this law, the term "family" means the fundamental group unit of society formed by marriage, blood or adoption. The Act stipulates the rights and obligations of the people in relation to healthy family life and family, and the responsibilities of the state, such as finding solutions to family problems and supporting policies to promote welfare, and in particular, a “healthy family” means a home in which the desires of family members are satisfied and their human lives are guaranteed.⁴⁷³⁾

This definition of family is becoming a subject of a new discussion as the diversity of family types increases and the public’s perception of family is changing.⁴⁷⁴⁾ Nuclear families consisting of a couple and their children account for only 28% of all families as of 2021, making them no longer the most common household type in Korea. Rather, single-person households account for the highest share of all household types, increasing from 27.9% in 2016 to 33.4% in 2021.⁴⁷⁵⁾ Although the exact status of unmarried families and foster families has not been identified, the number of non-relative households,⁴⁷⁶⁾ that can indirectly shed a light, increased from approximately 580,000 in 2016 to approximately 1.01 million (approx. 470,000 households) in 2021.

472) Apart from this, Article 779 of the ‘Civil Act’ stipulates the scope of family as ① spouse, lineal blood relatives, and siblings, ② spouse of lineal blood relatives, lineal blood relatives of the spouse, and siblings of the spouse.

473) This Act uses the terms single-parent families, elderly single-parent families, disabled families, single-mother families, joint-living families, and self-sufficient communities (Article 21(4)), multicultural families, single-parent families, and grandparent-grandson families (Article 34-2(7)(5)), which leaves room for understanding as distinct from ‘healthy family.’

474) National Assembly Legislative Research Service, Realities of Family Diversity and Policy Tasks: Need to Recognize Non-Related Close Families, May 19, 2022.

475) See Statistics Korea, ‘Census – Households and Household Members by Type,’ ‘Single-Person Households Through 2022 Statistics’

476) Households composed of 5 or less non-related people

In Sep. and Nov. 2020, two partial amendments to the Framework Act on Healthy Families were proposed to the 21st National Assembly.⁴⁷⁷⁾ These amendments include changes to the name of the law to the “Framework Act on Family Policy,” and deletion of the concepts of “family” and “healthy family” from the law. The purpose of the amendment to the Act is to prevent discrimination and prejudice against diverse families and to strengthen support, and amendments to the Act with a similar purpose have been steadily proposed since the 17th National Assembly.

Discussions on the need to revise the Basic Act on Healthy Homes with the same purpose as the above amendment have been going on since 2005, when the same law was enacted, but it seems that the social controversy has increased in 2022. In Dec. 2021 and Jul. 2022, the NHRCK has reviewed and resolved on the revision of the Act to accommodate various family types and the changes in perception of families and to prevent prejudice and discrimination against LGBTI people, and has recommended to establish a system that can encompass various types of families.⁴⁷⁸⁾

On the other hand, the Ministry of Gender Equality and Family has expressed its position that it is necessary to revise the Framework Act on Healthy Families to respond to various ways of forming families and lifestyles through the 4th Basic Plan for Healthy Families in 2021,⁴⁷⁹⁾ but in Sep. 2022, it changed its position and said, “it is necessary to maintain the provisions for the concept of ‘family’ in the current Act in order to increase the actual support rather than a wasteful debate about legal justice.”⁴⁸⁰⁾

As the resolution of the NHRCK and the change in the position of the Ministry became known, the reactions of civic groups were mixed. Some asserted that the National Assembly should promptly prepare a law to guarantee the right to establish a family for LGBTI people

477) Co-Sponsored by 16 representatives, including Rep. Nam, In-sun, Bill No. 2103381, Sep. 1, 2020, Co-sponsored by 10 representatives, including Rep. Jeong, Chun-suk, Bill No. 2104842, Nov. 2, 2020.

478) NHRCK, Decided on Dec. 23, 2021, 19JinJeong0871500·20JinJeong0356300(Combined) System Improvement to Guarantee the Right to Establish Family by Sexual Minorities; Decided on Jul. 11, 2022, Recommendation on the 4th National Human Rights Policy Plan (Human Rights NAP)

479) Ministry of Gender Equality and Family, ‘4th Basic Plan for Healthy Families (2021~2025): Along with All Families 2025,’ Report on the 6th Women and Family Committee for Partial Amendment to the Framework Act on Healthy Families, Dec. 2020.

480) Kyunghwang Shinmun, Sudden Change of the Ministry of Gender Equality and Family – Not recognizing common-law marriages and cohabitation as legal families, Sep. 25, 2022.

according to the resolution of the NHRCK,⁴⁸¹⁾ and some criticized the change in the position of the Ministry regarding the revision of the law.⁴⁸²⁾ There were some claiming that the resolution of the NHRCK is disbanding families and destroying the marriage system.⁴⁸³⁾

B) Debate on Legal Concept and Scope of the Family

Legal recognition of families is related to establishing the rights and obligations.⁴⁸⁴⁾ Inheritance, pension benefits, right to claim property division, and status as a medical guardian vary depending on whether the person is recognized as a family member, and according to Korea's welfare system, which is usually designed on the basis of a family, the being subjected to the rights and support in various areas, such as health insurance dependents, housing welfare, and residence permit, is affected. For example, the targets of childcare leave, maternity leave, and parental leave stipulated in the 'Equal Employment Opportunity and Work-Family Balance Assistance Act' is based on the concept of a legal family.

The legal scope of family is basically determined by the 'Civil Act' and the 'Act on Registration of Family Relations.' Moreover, there are cases where individual laws related to the welfare system have separate regulations depending on the purpose of the law. Therefore, even if the concepts of 'family' and 'household' in the Framework Act on Healthy Families are amended, the scope of legal recognition as a family may not change immediately. Nevertheless, the concepts of "family" and "healthy family" under the Framework Act have been controversial since its enactment in 2005, and as a result, the opinions on the need for revision are divided, and the discussion is also related to the controversy over the legalization of same-sex marriages.

First of all, there are views that raise opinions on the law, separate from the issue of legalizing the same-sex marriages.⁴⁸⁵⁾ Those who argue that the law needs to be revised are

481) Commentary by the Network for Guaranteeing LGBTI People's Right to Establish a Family, Apr. 13, 2022.

482) Basic Income Party, Rep. Yong, Hye-in, Press Conference Calling for Amendment of the Framework Act on Healthy Families, Sep. 29, 2022.

483) State by National Coalition Against Homosexuality and Same-Sex Marriage, Aug. 26, 2022.

484) According to the Family Rights Research Institute (2021), as of 2019, about 240 of the 240 laws (out of a total of about 1,400 laws that are meaningfully mentioned), approx. 24%, individually define the family scope according to the purpose of the law, and 23 % applies mutatis mutandis to the scope of family used in the 'Civil Act' and the 'Act on Registration of Family Relations.'

concerned that since the law focuses on support for ‘healthy families,’ it cannot accept changes in social perception of families,⁴⁸⁶⁾ and may cause discrimination by identifying the opposing concept of ‘unhealthy families.’⁴⁸⁷⁾ On the other hand, discrimination and expand support for unmarried cohabitants, elderly couples, foster families, etc. can be prevented by revising individual laws and systems. Moreover, some raise concerns over changing the definition of family for a potential of being used as a way to abuse of the system for support and benefits or tax evasion, the difficulties in establishing a registration system to recognize people outside the boundaries of existing laws, such as unmarried cohabitation, as legal family members, and that it may lead to accelerated avoidance of marriage, a deepening declining birth rate, and a decline in marital commitment.⁴⁸⁸⁾

On the other hand, when looking only at the text of the Act and the proposed amendment, the debate for and against the amended Act seems to be deeply related to the legalization of same-sex marriage.⁴⁸⁹⁾ Whether to include same-sex marriage in ‘marriage’ among the definitions of family under the Act is more closely related to the Civil Act and the Constitution or the interpretation of the Constitution.⁴⁹⁰⁾ However, those who advocate the legalization of same-sex marriage believe that the concept of family should be broadened through the revision of the same-sex marriage law, while those who oppose the legalization of same-sex marriage recognize the amendment of the Act as a step before legalizing the same-sex marriage.

485) Among the amendments to the Act, some include the deleting the definition of the concept of family, but the members of the National Assembly who initiated the bill also said that it is not trying to recognize same-sex marriage.

486) According to the 4th Family Survey by the Ministry of Gender Equality and Family in 2020, acceptance of various lifestyles of families, such as unmarried single, non-married cohabitation, and childless, has increased overall compared to 15 years ago, and the ‘2020 National Perception on Family Diversity Survey,’ the ratio of recognizing a relationship that shares housing and livelihood as a family (68.5%), and the opinion that a relationship that lives together and shares a livelihood can be a family even if it is not a legal marriage or blood relationship (68.5%) were high.

487) NHRCK, Decided on Oct. 10, 2005, Recommendation on the Framework Act on Healthy Families.

488) Legal Times, Must be Careful on Amending the Law to Change the Definition of Family, May 4, 2021.

489) The Common view is that in order to legally recognize same-sex marriage, it is not enough to amend the Framework Act on Healthy Families, and that related laws such as the ‘Civil Act’ need to be amended, as well as changing the precedents of the Constitutional Court.

490) The Constitutional Court has ruled that “marriage is the establishment of a living community through the agreement of free will as individuals of equal and dignified gender” (Constitutional Court, Decided on Aug. 28, 2014, 2013HunBa119), that “there is no change in that marriage is a mental and physical union of one man and one woman,” and that “marriage is fundamentally the union of a man and a woman on the basis of affection and trust” (Constitutional Court, Decided on Jul. 16, 1997, 95HunGa6, Constitutional Court, Decided on Nov. 24, 2011, 2009HunGa146).

C) Perceptions and the Role of the State Required to Protect Families in Korean Society

Article 36(1) of the Constitution stipulates that “marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve this goal.” Today, it is understood that the provision of family life is based on the fact that the dignity and equality of individuals are the conditions for its establishment and existence, and if serious violations occur in family life, it may be fundamentally difficult to maintain family life.

Therefore, it is not appropriate to view the disappearance of the traditional nuclear family of four as family dissolution, or to view that divorce, non-marriage, single-parent families, and grandparents' families are abnormal families in contrast to normal families, or that such family types should be prevented from appearing. Rather, the state has a duty to make policies and normative efforts to improve prejudice, legal and institutional discrimination, and welfare blind spots that view these diverse types of families, such as divorce, non-marriage, single-parent families, and grandparents' families, as abnormal.

Various surveys indicate that the public's perception of family diversity is changing to an accepting one, and the actual household types are also diversifying. This pattern seems to be due to a respect for various ways of life and strengthened protection of individual choices, and similar patterns are observed around the world, as well. Although family policies should reflect the actual family lives, some provisions and concepts of the Framework Act on Healthy Families do not conform to the social and cognitive changes and may cause negative effects; therefore, an amendment is needed. In current Korean society, it is inappropriate to use the expression ‘healthy family’ as a legal term, and it is desirable to revise the definition of the family to include ‘close relationships,’ even if they are not blood-relatives.

On the other hand, legal protection of same-sex marriage may be a somewhat separate issue from the amendment of the Act, but it requires forward-looking consideration. Everyone is born free, and equal in dignity and in rights. People of different sexual orientations or gender identities are entitled to the full enjoyment of all human rights. As of 2022, same-sex marriage is recognized in 33 countries, including Taiwan, since it was first recognized in the Netherlands in April 2001. It is necessary to establish a protective system

for maintaining community life, such as housing, medical care, and property division, when LGBTI people form a family, and legislations and revisions are required for this purpose.

2) Stigma and Discrimination Against People Living with HIV

A) Cases of Refusal of Surgery for HIV-Positive People by Medical Institutions and Legal and Institutional Problems

In Sep. 2020, an HIV-positive person suffered an accident in which his finger was amputated while working in a factory and was taken to a hospital, but was denied surgery because he was HIV-positive. The hospital said that it was possible, at first, when inquired about a joint surgery, but when it was revealed that they were infected with HIV, the hospital refused by stating that “there was no isolation room and there is a high risk of infection during surgery.”

The NHRCK determined, on Aug. 31, 2022, that the hospital's refusal to operate constitutes discrimination against people living with HIV.⁴⁹¹⁾ This is because surgery does not require special measures or facilities for infectious diseases, such as HIV/AIDS, and it is sufficient to follow the general measures for infection prevention at medical institutions.

Human immunodeficiency virus (HIV) is the causative agent of Acquired Immunodeficiency Syndrome (AIDS). An HIV-positive person is a person who has HIV in the body, and an AIDS patient refers to a person with HIV who develops an infection or a malignant tumor due to the destruction of the immune system. With the introduction of antiretroviral therapy in the mid-1990s and the dramatic development of drugs since the 2000s, HIV/AIDS is an infectious disease that can be managed as a chronic disease by suppressing its spread to others with steady drug treatment.

However, despite the development of medicine, prejudice and discrimination against the people living with HIV is an unresolved problem. In particular, the delay in proper treatment due to discrimination in the medical process is a problem that is directly related to the health of the infected person. According to the UN AIDS Program's (UNAIDS)⁴⁹²⁾ HIV Stigma

491) NHRCK, Decided on Aug. 31, 2022, 21JinJeong0254920·21JinJeong0254900 (Combined)

Index Survey conducted in 19 countries in 2017, 25% of the respondents (infected persons) experienced stigma and discrimination in the health care system, and experienced high levels of prejudice and discrimination. In the case of the infected people, it was found that the treatment was delayed more than 2.4 times as compared to non-infected people.

A partially amended bill to the ‘Prevention of Acquired Immunodeficiency Syndrome Act’ (hereinafter as “AIDS Prevention Act”)⁴⁹³⁾ was proposed in the National Assembly in 2020 to prevent medical personnel or medical institutions from refusing treatment or discriminatory treatment of HIV-positive persons without justifiable grounds, but it is still pending.

The issue of the HIV-related legislation is also raised. On Oct. 24, 2022, the NHRCK decided to submit an opinion that the case pending with the Constitutional Court (2019HunGa30) on Article 19 of the AIDS Prevention Act, stating that the concerned provision is unconstitutional, in violation of the principle of clarity and proportionality, as well as the general freedom of action and privacy of people living with HIV.⁴⁹⁴⁾

This provision, enacted in the 1980s, stipulates that “no infected person shall perform any act of carrying and spreading AIDS to another person through blood or body fluids,” and violation will result in imprisonment for up to three years in accordance with Article 25(2) of the same Act. However, it is criticized for punishing even cases where there is no medical risk of infection or when the other party has not reached infection.

B) Issues of Prejudice and Stigma on HIV

The main routes of transmission of HIV are sexual contact, transfusion of infected blood, sharing of contaminated syringes, and vertical transmission. Medically, there is no risk of infection through everyday life such as shaking hands, hugging, kissing, or eating. Moreover, if an infected person receives continuous treatment and maintains an undetectable level of

492) Joint UN Program on HIV/AIDS

493) Co-Sponsored by 10 representatives, including Rep. Lee, Jeong-mun, Bill No. 2100105, Jun. 3, 2020.

494) NHRCK, Submitting opinion to the Constitutional Court on unconstitutionality of Article 19 of the AIDS Prevention Act, Decided on Oct. 24, 2022, Commissioners Lee Chung-sang and Han,Seok-hun submitted an opposing opinion, stating the said provision is not in violation of the principles of clarity and proportionality.

HIV in the blood, there is no risk of transmission to others through sexual contact.⁴⁹⁵⁾ This is a fact that has been proven through numerous studies conducted around the world, and the ‘U=U Campaign’⁴⁹⁶⁾ is currently underway in the international communities. As of Oct. 2022, 1,099 organizations in 105 countries are participating in the U=U campaign.

However, the Korean society still has erroneous knowledge and prejudices about HIV that need correction. According to the ‘2021 Report on the Survey of Knowledge, Attitude, Belief, and Behavioral on AIDS’ among the general public, released by the Korea Centers for Disease Control and Prevention and the Korea AIDS Prevention Association in Nov. 2021, there are a lot of wrong knowledge about AIDS. For example, to the questions, including ‘the probability of sexually transmitted infection is lower than that of other sexually transmitted diseases (AIDS)’ (Answer: O), ‘even an infected person whose HIV is not detected in a blood test can infect a sexual partner’ (Answer: X), ‘it is unlikely that a person receiving AIDS treatment will transmit AIDS through sexual intercourse’ (Answer: O), less than 15% answered correctly. Only 26.5% of the answers were correct to the question ‘if you are bitten by a mosquito that had bitten a person with AIDS before, you can get infected with AIDS’ (Answer: X).

On the other hand, there were also results that could confirm irrational prejudices and rejections in the same survey. In the case of a question about the fact that AIDS is not transmitted through handshakes and hugs, the ratio of correct answer was high at approx. 85%, but about 50% of the respondents answered “yes (somewhat + very much)” to the statement, “I am afraid to shake hands or hug someone with AIDS.” 66.2% of respondents said that they were afraid of eating with a person with AIDS-infected person.⁴⁹⁷⁾

People living with HIV in Korea experience a very high level of internal stigma.⁴⁹⁸⁾ According to the 2017 Korean HIV stigma index survey, 75% of the respondents answered

495) Since the possibility of transmission is not 0, the possibility of transmission is sometimes expressed as ‘very low’ or ‘negligible’, but this is only a theoretical discussion, and there are no cases of HIV transmission through sexual intercourse between people who are HIV-positive and the virus is undetectable, including a major study of 135,000 cases. Therefore, it seems reasonable to express that there is no possibility of transmission from a medical point of view.

496) Undetectable= Untransmittable.

497) However, it was found that the higher the level of knowledge on all items, the less negative views on the infected person.

498) ‘Internal stigma’ refers to negative evaluations and emotions that people feel about their infection.

that ‘they had been angry with themselves in the past year,’ that ‘they felt guilty about themselves in the past year,’ (64.4%) and that ‘their self-esteem was low’ (59.6%). Also, 36.5% of respondents said, ‘they wanted to commit suicide.’ In addition, the level of social isolation of people living with HIV is high. 39.4% cut off relationships with family or friends, 37.5% did not attend social gatherings, and 21.2% and 14.4% quit work or gave up opportunities for education or training, respectively.

C) Eliminating Discrimination Against HIV-Positive People and Ending AIDS

Unreasonable prejudice and fear of HIV is considered the biggest obstacle to HIV prevention policy. Experts, including international organizations such as UNAIDS, advise that early diagnosis, early treatment, and PrEP therapy⁴⁹⁹) are effective measures to prevent the spread of HIV, but misunderstanding of HIV infection inevitably hinders active testing and treatment.

UNAIDS set “Equalize” as the slogan for World AIDS Day on Dec. 1, 2022, and urged the states and the people to make efforts, emphasizing that the end of AIDS is only possible when discrimination is eliminated. Even in 2021, WHO and UNAIDS warned that 7.7 million people could die from AIDS over the next 10 years if discrimination against people living with HIV is not resolved.

In particular, the law that specifically identifies and punishes HIV is pointed out as a major obstacle to resolving discrimination. UNAIDS continues to recommend that these laws be repealed because they could be counterproductive to HIV prevention, treatment, management and assistance efforts or violate the human rights of people living with HIV and other vulnerable groups.⁵⁰⁰)

Even now, HIV policy in Korea is influenced by old prejudices and discriminatory ideas without any medical basis. In order to resolve discrimination against people living with HIV, it is necessary to correct misinformation and improve awareness, while making efforts to accept the latest medical achievements and reflect them in policies and legislations.

499) Pre-exposure Prophylaxis Therapy: People who are not infected with HIV can prevent HIV infection by taking antiviral drugs.

500) UNAIDS, UNAIDS POLICY BRIEF: Criminalization of HIV Transmission, 2008.

3) Hate Speeches During the Election Process

A) Pattern of Hate Speeches During the Two Election In the First Half of 2022

According to international human rights norms, such as Article 20(2) of the UN Covenant on Civil Rights and Article 4 of the Convention on the Elimination of Racial Discrimination, their interpretation guidelines, and overseas legislative examples, etc., hate speech can be defined as expressions that shows the effect of justifying, encouraging or reinforcing discrimination by ① insulting, humiliating, belittling, intimidating, or ② propagating or inciting discrimination and violence against individuals and groups on the basis of gender, disability, religion, age, region of origin, race, sexual orientation, etc.

In other words, hate speech is an expression that implies 'hostility' such as insults, belittling, and ridicule targeting minorities,⁵⁰¹⁾ or even if it is not an extreme and low-level expression, it can be seen as an expression that has the function of 'incitement' that can make discrimination and hatred a matter of course to the general audience and make them participate in discrimination, hostility, and violence against minorities. Hate speeches toward social minorities is more serious than general insult speeches in that it can be a mechanism to promote and justify discrimination. Hate speech itself can be said to be a form of discrimination, and it can also be said to be a precursor to discrimination.

There were two elections in 2022. Through the 20th Presidential Election on Mar. 9 and the 8th National Simultaneous Local Election and re-election on Jun. 1, the President, regional and local government heads, superintendent of education, regional and local council members, and 12 members of the National Assembly were elected. Before the election, the National Assembly Legislative Research Service presented an opinion that despite the expansion of political opinions through various media outlets, such as mobile, online, and one-person media, there is a problem of false information and hate speech being easily circulated.⁵⁰²⁾ The Commissioner of the NHRCK, on May 18, asked that all political parties, candidates, campaign workers, and ordinary citizens participating in the 8th local elections to

501) In Korea, there are many regulations protecting the socially underprivileged under the current law, but it is difficult to find an example that explicitly defines the expression 'minority.' However, minorities with discriminatory attributes stipulated in Article 2 of the National Human Rights Commission of Korea Act may be subjected to hate speech.

502) National Assembly Legislative Research Service, 2022 Issue of the Year, Dec. 30, 2021.

not use hate speeches in the election process, making this election a public forum for democracy.⁵⁰³⁾

However, it seems that hate speeches against social minorities have not been eradicated during the two elections in 2022. Controversy over hate speeches continued with the politicians, media, SNS and the internet communities. Candidates or politicians used words, such as “dumb” and “mentally ill,” while criticizing their opponents, and there was a statement to the effect of ‘we must teach children not to be homosexuals’ during the election for superintendent of education. After candidates or influential politicians made promises and remarks related to the right to vote for foreigners and the Ministry of Gender Equality and Family, posts containing hate speeches increased significantly, especially in the online communities.⁵⁰⁴⁾ Moreover, there was also a debate over whether these pledges or claims ‘created hatred.’

B) Diverse Perspectives on Hate Speech Regulations

Hate speech can be punished as an insult and defamation under the criminal law because it is often expressed as an insult to a specific group and its members, or it may be regulated as part of the regulation on illegal information or sexual harassment or harassment under the ‘Act on Promotion of Information and Communications Network Utilization and Information Protection.’ However, it probably will not be regulated under the current laws. A significant number of hate speeches target a specific group, not individuals, and the current laws mainly regulate the violation of the legal interests of individuals; moreover, hate speech is not specifically prohibited or regulated.

Regarding ‘regulation,’ Korean society is proposing and discussing measures to ban hate speech and punish criminally through legislation. There are conflicting opinions on this. Some argue that it should be regulated because it negatively affects the society by violating the dignity of social minorities, causing mental and psychological pain to the minorities exposed to hate speech and influencing the public to participate in discrimination. On the

503) Statement by the Chairperson of the NHRCK, May 18, 2022.

504) Kookmin Ilbo, Specific remarks by a politician leads to increase in comments on misogyny, Dec. 13, 2022.

contrary, some argue that the concept of hate speech is not clear from the viewpoint of emphasizing freedom of expression, and that it is only a vague assumption that minority groups suffer damages accordingly, so there is no need for the state to intervene by recognizing it specifically.⁵⁰⁵⁾

However, some also argue that if the method of regulation is not limited to criminal punishment, a more appropriate response to eradicate hate speech will be chosen, and it will be easier to reach a social consensus on this issue. The most powerful regulatory action of the state is to ban hate speech through criminal legislation and criminally punish those who make hate speeches. However, it is possible to change the foundation of hate speech, and preventive regulations, such as publicity campaigns or awareness-raising activities, various support for minorities, implementation of anti-discrimination policies and education in public (educational) institutions, and broadcast reviews, etc. It is important to appropriately use these regulatory methods selectively or together depending on the situation.⁵⁰⁶⁾

ARTICLE 19, an international human rights organization, synthesized international human rights laws and presented four classifications of hate speeches based on the “severity of harm” and methods for limiting them accordingly.⁵⁰⁷⁾ According to this, ① Direct and public incitement to genocide, ② advocacy of discriminatory hatred that amounts to discrimination, hostility, violence, etc. must be prohibited, and ③ expressions that include threats of violence, harassment, or attacks, even though it does not incite specific acts against social minorities, can be restricted if necessary by law. On the other hand, ④ it is desirable for the state to take legal and policy measures against prejudice underlying the hate speech rather than restricting the expression itself in the case of remarks that cause anger or displeasure and can be viewed as biased, if the ‘seriousness requirement’⁵⁰⁸⁾ is not met.

505) See Hong, Seong-su, “Regulating hate speeches”, and Lee, Seung-hyeon, 『Constitutional Review of Hate Speeches』

506) NHRCK Human Rights Status Survey Report, Hate Speech Status Survey and Study on Regulation, 2016.

507) ARTICLE 19, ‘Hate Speech’ Explained A Toolkit, 2015

508) Criteria for context of expression, speaker, intent, content of expression, degree and scale of expression, likelihood and imminence of potential harm

C) Need of Legal and Policy Efforts to Eradicate Hate Speeches

Articles 19 and 20 of the UN ICCPR stipulate freedom of expression and ‘prohibition of propaganda for war and violence,’ respectively. Moreover, the exercise of freedom of expression is accompanied by special obligations and responsibilities, and may be restricted if necessary according to the law for ‘① respect of the rights or reputations of others, and ② protection of national security or of public order, or of public health or morals.’ Several foreign countries, including Germany, Canada, Japan, and the United Kingdom, also regulate various types of hate speech by law.⁵⁰⁹⁾

In light of the classification method of ARTICLE 19, international human rights organization, reviewed above, public contempt, insult, and threat to social minorities or ‘incitement to hatred’⁵¹⁰⁾ are a type that must be prohibited. Given that this type of hate speech has a high risk of causing real harm, there is relatively little controversy related to its criminalization.

On the other hand, in the case of expressions corresponding to harassing the social minorities, it is necessary to consider resolving the problematic situation through corrective recommendations, orders, or mediation, even if they are not subjected to criminal punishment. For this, enactment of the Anti-Discrimination Act, which aims to specify the right of equality under the Constitution and achieve substantive equality, is an effective legislation, noting that the fundamental cause and ultimate effect of hate speech is social and institutional discrimination against a specific group. There is a lot of ambiguity with the components of criminal punishment, but if it is regulated by the Anti-Discrimination Act, these problems can be supplemented to a large extent.

The fact that hate speech has increased in the online communities after specific remarks were made by candidates and politicians in the 2022 election process suggests that the influence of hate speech or the degree of its harm may vary depending on the position of the

509) NHRCK Human Rights Status Survey Report, Hate Speech Status Survey and Study on Regulation, 2016.

510) Kanbara, Hajime, according to ‘No Hate Speech,’ among the expressions corresponding to ‘incitement to hatred,’ among the remarks of the protesters at the Jae-Teuk Assembly, “Getting rid of Koreans is like extermination of pests,” “Kill, kill, Koreans,” “Kill both good Koreans and bad Koreans,” “Scourge the cockroaches Koreans. Let’s do it!” “Fuck the Koreans!” “If you see a Korean, you can throw stones and rape a Korean woman.” These expressions openly reveal discrimination and hostility against the target group, and at the same time incite the audience to practice discrimination and violence.

speaker in society. The pledges or remarks in question are expressions based on prejudice in themselves, but they may not meet the “seriousness requirements” or fall under hate speech. However, since hate speech at a level that requires regulation has increased online since the remarks, it can be said that a more responsible attitude is required, and the state needs to take legal and policy measures against the prejudice underlying such hate speech.

III. A World That Protects Labor

1. Protecting the Right to Labor

A. Human Rights Status 2022

Article 32(1) & (2) of the Constitution stipulate that “all citizens shall have the right to work,” and that “all citizens shall have the duty to work.” Labor or work⁵¹¹⁾ can be seen as both a duty and a right as a citizen of Korea. Moreover, the Constitution stipulates that the standards of working conditions must guarantee human dignity, that the labor of women and minors requires special protection, and that workers are guaranteed the right to organize, collective bargaining, and collective action.

However, in order for labor rights to be safely guaranteed, it is necessary to go beyond individual efforts and enact legislation by the state and society. The 2021 NHRCK: The Report on Human Rights Situation in the Republic of Korea reviewed ‘Enactment and Limitations of Serious Accidents Punishment Act,’ ‘Ratification of the ILO’s Core Conventions and Limitations on Amending the Labor Laws,’ ‘Platform Workers and Legal Blind Spots,’ and ‘Outsourcing the Risks and Repeated Industrial Accidents of Contract Workers’ as part of the changes and limitations of labor laws. The legal and institutional problems pointed out as limitations in 2021 became concrete in 2022, as a matter of protection of specially employed workers, subcontract workers, and policies to eradicate industrial accidents.

⁵¹¹⁾ The new curriculum announced by the Ministry of Education on Nov. 9, 2022 was controversial for the use of the terms ‘worker’ and ‘laborer.’ There seems to be a need for sufficient discussion with the educational community, including researchers, on which term to use. However, since the dictionary and legal meanings of both are virtually the same, this report will use both terms interchangeably.

Meanwhile, the new government has placed labor reform as the challenge of the generation. It is expected that the controversy related to the laws and systems in the labor sector will grow in the future, as there were criticisms regarding the direction of the new government's labor reform as 'anti-labor politics,'⁵¹²⁾ and as a response to this, the Ministry of Employment and Labor announced that the labor reform pursued by the government would create a sustainable labor market with win-win and solidarity labor-management relations.⁵¹³⁾

However, despite significant improvements, Korea's working conditions have been criticized for being inferior compared to other OECD member states. The problem of temporary workers has become a big social issue, and measures are needed to address various problems, including long working hours, treatment of low-wage female workers, and industrial accidents. In this regard, the NHRCK has decided to express the opinion to the National Assembly Speaker on Sep. 15, that it is necessary to expand the scope of application of the 'Labor Standards Act' in order to improve the working conditions and guarantee basic labor rights for workers at workplaces with four or fewer employees, and to prepare a plan for government financial support to reduce the burden on employers during this process.⁵¹⁴⁾

Below, this report will examine various topics related to laws and systems in the area of labor that have received much attention by the Korean society in 2022. The status and their significance will be discussed for: the 'Initiatives and Issues on the Proposed Amendment to the Trade Union Act (Yellow Envelope Act),' 'Controversy over Work Start Order under the Trucking Transport Business Act,' 'Meaning of the Supreme Court's Decision on the Wage Peak System,' and the 'Right to Rest When Sick: A Pilot Program on Korean Injury and Illness Allowance.'

512) Hankyoreh, Yoon administration, Fiction and Trick of 'Labor Reform,' Feb. 1, 2023.

513) MOLIT Press Release, Feb. 1, 2023.

514) NHRCK, Decided on Sep. 15, 2022, Opinion on Proposed Partial Amendment to the Labor Standards Act

B. Main Topics

1) Initiatives and Issues on the Proposed Amendment to the Trade Union Act (Yellow Envelope Act)

A) DSME Strike, Damage Claims Lawsuits and Re-examination of ‘Yellow Envelope Law’

As of Dec. 2022, 10 amendments to the ‘Trade Union and Labor Relations Adjustment Act’ (hereinafter referred to as the ‘Yellow Envelope Act’⁵¹⁵⁾) have been proposed in the National Assembly. The main content of these proposed amendments is to partially limit the employer’s claims for damages in labor disputes in order to guarantee the workers’ three labor rights in practice. Similar legislative amendments have been proposed and abandoned several times since 2015. However, it is receiving attention again due to DSME subcontractors’ strike⁵¹⁶⁾ and the management’s lawsuit for damages of 47.3 bil. KRW⁵¹⁷⁾ in 2022. are drawing attention once again.

The amended Trade Union Act proposed by the National Assembly is common in terms of limiting the filing of lawsuits for damages, etc. by the management for the strikes by trade unions, with slightly different details. It includes regulations prohibiting claims for damages caused by trade union activities, or prohibiting seizure or provisional seizure of property, and regulations prohibiting individuals from claiming compensation for damages caused by collective actions, except for expanding the concept of workers and employers under the Trade Union Act and the scope of ‘labor disputes,’ and damages caused by violence or destruction.

515) The name ‘Yellow Envelope Act’ came from the fact that a citizen sent 47,000 won to a magazine <Sisa in> as the court ruled on compensation of 4.7 bil. KRW in a lawsuit filed by the company after the 2009 Ssangyong Motor strike, and the ‘Yellow Envelope Campaign’ was started. As a result, the term has been used to refer to laws to prevent employers’ indiscriminate claims for damages and provisional seizures against industrial action by labor unions.

516) According to the press conference of the Geosje Tongyeong Goseong Shipbuilding Subcontracting Branch of the National Metal Workers’ Union (May 27, 2022), the main demand of the subcontracting union is to restore wages, which were cut during the shipbuilding industry recession, to the previous level by increasing wages by 30%.

517) DSME is seeking compensation for damages to prevent future illegal occupation and strikes and to establish a future-oriented labor-management relationship. The amount was calculated in consideration of unnecessary expenses due to construction interruption, etc., and damages caused by delays in payment, etc.

The opposition parties (Democratic Party and Justice Party) proposed amendments to the Trade Union Act, respectively, around Sep. 2022, and selected it as top priority for the National Assembly in the second half of 2022. On the other hand, the ruling party (People Power Party) expressed their opposition to the handling of the amendment to the Trade Union Act, and these amendments became one of the most controversial bills in the National Assembly during the second half of 2022.⁵¹⁸⁾ On the other hand, the government expressed the view that labor-management issues should be resolved autonomously between the workers and the management in principle, that illegal acts during the process should be strictly prohibited, and that it would be difficult to accept the amendment to the Trade Union Act proposed by the National Assembly.⁵¹⁹⁾ In addition, at the request of the National Assembly, the Ministry of Employment and Labor released 2 fact-finding surveys in Oct. 2022 (“results of the survey on the status of damages lawsuits and provisional seizures and overseas cases”). However, there was also criticism that the above surveys were merely surveys to oppose the legislation.⁵²⁰⁾

The workers and the businesses had conflicting opinions on the amendments to the Trade Union Act proposed to the National Assembly. While the labor groups assert that the Yellow Envelope Act is necessary to normalize the three labor rights in accordance with the spirit of the Constitution, the management groups assert that such a law promotes illegal strikes and can result in unfair protection of certain labor groups.⁵²¹⁾ Meanwhile, on Dec. 28, the NHRCK viewed that a lawsuit for compensation for damages and provisional seizure resulting from industrial action undermined the three labor rights guaranteed by the Constitution and threatened the right to live of workers and their families, and expressed the need to amend the Trade Union Act to expand the scope of ‘workers’ and ‘employers,’ expand the scope of ‘labor disputes’ and limit the claims for damages caused by the exercise of the three labor rights.⁵²²⁾

518) Daily Labor News, ‘Yellow Envelope Law,’ at the front-line, Sep. 26, 2022.

519) MOLIT Press Release, Oct. 4, 2022.

520) Statement by the Civil Group, Son-jab-go, Oct. 21, 2022.

521) Newsis, ‘Yellow Envelope Law exemption to illegal strikes? ... Normalization of 3 Labor Rights, Sep. 28, 2022.

522) There were some objections to the substance of the opinion by Lee Choong-sang, a standing member of the NHRCK. Labor-management confrontation in Korea is due to illegal strikes by labor unions, and the problem of frequent and illegal strikes by labor unions is an urgent task to be resolved, so they oppose the expression of the same opinion as the majority.

The results of the polls regarding these amendments appear to be tight with slightly more dissenting opinions. Although the results vary depending on the polling agency or the question type, according to the National Barometer Survey (NBS) Report No. 83⁵²³ jointly conducted by four organizations, as of Nov. 2022, regarding the opinion on the enactment of the Yellow Envelope Act, 37% of the responses were ‘positive,’ and 40% of the responses were ‘negative.’

B) Controversy Surrounding the Proposed Amendment to the Trade Union Act

Even in accordance with the current law, compensation cannot be claimed for damages caused by collective bargaining or actions under the Trade Union Act (Article 3 of the Trade Union Act). Moreover, even under current law, as well as the proposed amendment, collective actions that cause direct damage due to violence or destruction are not exempted from liability. In other words, the issue is related to the extent of the act subjected to immunity (‘acts under the Trade Union Act’), and the main substance of the recently proposed amendment is expanding the scope of the acts subjected to immunity (excluded from the damages claims).

The opinion in favor of the revision of the Trade Union Act asserts that in order to be exempted from the damages caused by collective actions, a strike must fall under the conditions set forth in the Trade Union Act and the precedents. However, it is difficult for strikes to be recognized as legal, such as even a strike by a subcontractors’ union that opposes layoffs or restructuring or demands dialogue with the prime contractor is considered illegal strikes.⁵²⁴ It is further asserted that the life of individual members and the activities of the labor union will be greatly reduced in the course of a long court lawsuit due to a large amount of damages claimed.⁵²⁵

523) National Barometer Survey: regular telephone poll conducted and published by Embrain Public, K-Stat Research, Korea Research, and Hankook Research on their own without receiving requests from external institutions.

524) Supreme Court precedents do not recognize matters related to collective labor relations, such as full-time union officials and guarantees of union activities, as ‘matters other than working conditions’ and are not currently recognized as subjects of ‘labor disputes,’ and layoffs and restructuring are also subject to business management. It is not recognized as a subject of labor dispute because it is a management measure. In addition, lower court precedents believe that ‘rights disputes’ (legal disputes), which are disputes between parties regarding the interpretation, application, and implementation of norms such as existing laws, collective agreements, and employment rules, do not fall under the scope of ‘labor disputes.’

Therefore, in order to practically protect the three labor rights, a plan to include industrial actions regarding rights disputes, collective labor-management relations, and layoffs within the scope of collective actions stipulated by the Trade Union Act, a plan to delete the last resort requirement for collective actions, a plan to amend Article 3 of the Trade Union Act so that the scope of immunity is not limited to “legitimate” collective bargaining and action, and a plan to make exceptions to illegal acts, such as violence and destruction, for being subjected to compensation for damages, rather than making labor unions activities subjected to civil immunity, regardless of justification are proposed.

On the other hand, those who oppose the revision of the Trade Union Act claim that the Yellow Envelope Act excessively violates the employer’s property rights, which is a fundamental right under the Constitution, by exempting even illegal acts, not legitimate industrial actions. In many cases, collective actions in Korea include a use of force, such as destruction of business or taking over the facilities, and claiming compensation for the damages from the illegal actors is not abusing the rights and is a basic principle of legal order.⁵²⁶⁾

In particular, based on the Ministry of Employment and Labor’s survey ‘results of damage compensation lawsuits and provisional foreclosure survey and overseas cases’ (Oct. 2022), most of the cases cited and decided by the courts in actual damage claims lawsuits had issues with the means of the collective action, such as use of force during the process. Therefore, it is asserted that even under the current legal system, the additional restrictions on damages are unnecessary as the courts limits the amount of damages and the person responsible only when there is a causal relationship between the tort and damages. In addition, it is presented that there was a case in France, which held a law with a similar purpose to the Yellow Envelope Act unconstitutional, and that there is no foreign legislative precedent that provides immunity even to illegal acts.⁵²⁷⁾

525) PSPD, “Misunderstanding and the Truth about ‘Yellow Envelope Law’,” Nov. 3, 2022

526) Legal Times, [Your Opinion on this Law] Controversy over ‘Yellow Envelope Law,’ Oct. 26, 2022.

527) Labor Law, Business associations “Yellow Envelope Law violates the right to property of the employers and harms market economy,” Sep. 14, 2022.

C) The Need and Direction of Amending the Trade Union Act to Protect the 3 Labor Rights

Article 33(1) of the Constitution stipulates that “workers shall have the right to independent association, collective bargaining and collective action to enhance working conditions,” the 3 labor rights. The ‘act of refusing to work,’ meaning the right to strike (the right to collective action) is a right guaranteed by the Constitution, and compensation for damages caused by the strike itself cannot be demanded. This is because holding responsibility for damages that would have occurred as a result of a peaceful strike is same as disadvantaging the strike itself. Only illegal acts during the strike, such as destroying facilities or acts that are an abuse of the right to strike, can be claimed for damages.

The problem is that the current regulations and precedents on ‘the abuse of the right to strike’ are too unfavorable to the workers. Under the current law, the court may judge that atypical strikes are illegal, including collective bargaining and action by subcontract workers, strikes without union resolution, refusal to work, slowdown, law-abiding struggle, workplace occupation, etc.

In contrast, the ILO Committee on Freedom of Association has observed that even non-typical forms of industrial action should be protected as long as they are peaceful,⁵²⁸⁾ and even in the final opinion of the Committee on Economic, Social and Cultural Rights (2017) on the 4th report of Korea, concerns were expressed over the limited legal strike requirements that effectively hinder the exercise of the right to strike in Korea, retaliation against workers, such as civil claims for damages, and ‘essential services’ that prohibit strikes are excessive.

If a claim for damages of a huge amount is made against individual union members for strikes by a trade union that does not involve violence or destruction, there is a concern that the three labor rights will be substantially violated, and it carries a tremendous suffering to the workers and their families. According to a recent study by the National Assembly Legislative Research Service, although there are damage compensation systems for strikes in other major countries, but in reality, there are not many cases in which compensation for

528) International Labour Organization, Digest, para. 545. “Regarding various types of strike action denied to workers (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful.”

damages is claimed due to concerns over disclosing business data, the impact of labor relations, and a system that widely recognizes strikes.⁵²⁹⁾

Therefore, it is necessary to expand the scope of strikes protected by the law by easing the procedures and requirements for such actions through the revision of the Trade Union Act. It is necessary to define a labor dispute as “a state of dispute between a labor union and an employer or an employer’s organization arising out of disagreements over working conditions, such as wages, working hours, welfare, dismissal, and other treatment, and claims regarding the improvement of workers’ economic and social status,” and to amend the stipulations on the workers and the employers for the special type of workers or platform workers to be protected. Moreover, it is necessary to establish regulations to limit the claims for damages against the individual workers or guarantors with respect to the exercise of the lawful right to organize, collective bargaining, and collective action, claims for damages are limited, but even when a claim for damages is possible, and for the courts to consider various conditions to reduce or reduce the amount of damages.

529) Daily Labor News, National Assembly Legislative Research Service, “No Claim for Damages for Actual Strikes in Major Countries,” Oct. 14, 2022.

2) Controversy Over Orders for Commencement of Business Operations Under the Trucking Transport Business Act

A) Controversy Over Safe Trucking Freight Rates System, Transportation Refusal and the Government's Order for Commencement of Business Operations

In 2018, with the revision of the Trucking Transport Business Act (Trucking Act for short), safe trucking freight rates were introduced. 'Safe trucking freight rate' refers to the minimum fare necessary to secure traffic safety by preventing overwork, speeding, and overloading by guaranteeing an appropriate fare for truck owners,⁵³⁰ and the safe trucking freight rate system (hereinafter referred to as 'safe rate system') had a sunset clause that set the temporary enforcement period of the law to be effective only from Jan. 1, 2020 to Dec. 31, 2022.

Since the introduction of the safe rate system, the Korea Cargo Federation has continuously demanded that the sunset clause be deleted and that the safe rate system be applied to all vehicle types and items to guarantee the minimum rate for freight carriers. Regarding this, trade associations and shippers expressed their objections on the grounds that the safe rate system was ineffective⁵³¹ and that the freight rate increase caused burdens.⁵³² Since June, disagreements between the ruling party, the Korea Cargo Federation, and the MOLIT were unable to reach a consensus, and negotiations and transport refusals (strike or collective transport refusal)⁵³³ have been repeated.

530) Trucking Act, Article 2(13)

531) There are conflicting opinions between the government and the Korea Cargo Transport Association on whether or not there has been an improvement in traffic safety during the two years since the freight car safety fare system was implemented. According to the Korea Transport Institute's 'Analysis of the performance of the safe fare system for trucks and a study on measures to activate it', the number of deaths and traffic accidents caused by 'tow-type trucks' that included vehicles subject to the safe fare system actually increased after the implementation of the system. On the other hand, the ratio of container and cement transport owners who drive more than 12 hours per day on average and the average monthly working hours have decreased, indicating that the problem of excessive driving time that causes traffic accidents has improved. The MOLIT is paying attention to the trend of traffic accidents, and the cargo association is paying attention to the effect of preventing overwork, overloading, and speeding that can affect traffic accidents, and some say that the contents of the research report itself are not sufficient evidence. (KBS News, [Fact Check K] Safe Rate System Causing Strikes ... Any improvements on traffic safety?, Dec. 1, 2022).

532) KBS News, Freight safe rate system... what are the issues?, Nov. 25, 2021.

533) The labor community and the government refer to the cargo union's refusal to transport as a "general strike" and "collective transport refusal," respectively. It seems to stem from a difference of opinion on whether cargo workers are workers under the Labor Standards Act and the Labor Union Act, or whether it can be considered as collective action under the Labor Union Act.

The Korea Cargo Federation announced that it would go on a general strike on Nov. 24, 2022, but the government issued an order for commencement of business operation pursuant to Article 14 of the Trucking Act Nov. 29, and the order was issued for those who refused in steel and petrochemical areas on Dec. 8. This measure is said to be the first case to be applied since the introduction of the order for commencement of business operation in 2004.⁵³⁴⁾

The labor community, including the Korea Cargo Federation, protested, saying that the government's order violates workers' right to strike and violates international human rights treaties, such as ILO Core Conventions No. 29 and No. 105, which prohibit forced labor.⁵³⁵⁾ They responded by filing an administrative lawsuit, requesting a constitutional adjudication, and requesting emergency intervention from the ILO.⁵³⁶⁾ On the other hand, the government said that if it does not return to work, it will initiate administrative and criminal sanctions procedures. In the end, the strike ended as a result of the vote of all union members on Dec. 9, where 60% of the participants voted in favor of ending the strike.⁵³⁷⁾ However, controversy arose when the Fair Trade Commission announced⁵³⁸⁾ that it would investigate the Korea Cargo Federation as a business group and investigate whether there was any coercion of unfair joint actions.⁵³⁹⁾ The controversy continues in the National Assembly, such as the proposal of a partial amendment to the Trucking Act⁵⁴⁰⁾ to delete provisions related to business start order and punishment.

Meanwhile, in relation to the safe fare system, which was initially a problem, there was a conflict of opinion between the ruling and opposition parties in the National Assembly over a proposal to extend the expiration date of the safe rate system by three years, and was abolished as a rule for not being passing within the year. In early 2023, the MOLIT is promoting a plan to reorganize the "safe rate system" into a "standard fare system," in the form of a guideline.⁵⁴¹⁾

534) MOLIT Press Release, Nov. 29, 2022

535) Statement by the Korea Cargo Federation, Nov. 29, 2022.

536) Regarding this, it is believed that the ILO sent a letter requesting the Korean government's opinion.

537) Kyunghyang Shinmun, The government's strong attack ... Cargo federation voted to end the general strike, Dec. 9, 2022.

538) FTC Press Release, Nov. 29, 2022.

539) Regarding the FTC investigation, the Cargo Federation said that it submitted a written opinion that the initiation and purpose of the investigation was unreasonable, the charges were not specified, and the submission order was comprehensive and unfair. As of the end of January 2023, the FTC investigation is ongoing.

540) Co-sponsored by 10 representatives, including Rep. Sim, Sang-jeong, Bill No. 2118664, Dec. 5, 2022.

541) MOLIT Press Release, Jan. 18, 2023.

B) Controversy Over Legality of the Order for Commencement of Business Operations Under the Trucking Act

The Trucking Act limits the issuance of the order for commencement of business operations when a refusal to transport cargo, as a group, greatly hinders cargo transport and causes or is likely to cause a very serious crisis to the national economy. Failure to comply with the business commencement order may result in cancellation of the transport business license or worker license, imprisonment for up to 3 years, or a fine of up to 30 million KRW. In other words, the order for commencement of business operation can be issued when the grounds for refusal of collective cargo transportation are not justified and cause a very serious crisis to the national economy or there is a considerable concern. Administrative and penalties are provided as a means mandate such duties in case of a non-compliance.

The order for commencement of business operation, the purpose is returning to work through a government order, is similarly provided in Article 59 of the Medical Service Act and Article 70 of the Pharmaceutical Affairs Act. The Ministry of Health and Welfare issued the order in 2000 for the issue of the separation of prescribing and dispensing, in 2014 for the opposition to telemedicine, and in 2020 for the establishment of a public medical school, there was a controversy over violating the fundamental rights at the time, as well.⁵⁴²⁾ Various issues were also raised regarding the legitimacy of the MOLIT's order.

However, the disagreement on the nature of cargo workers seems to be a premise for the conflicting views. Cargo workers generally own a truck and are registered as an individual business operator. They enter into a consignment contract with a transport company, and this sets them apart from workers who receive a regular wage from the company. However, those who are subordinate to a specific company and receive direct or indirect work instructions and supervision and provide labor services are called special type workers.⁵⁴³⁾ There are conflicting views on whether the cargo worker's refusal to transport constitutes a labor dispute, and furthermore, whether the cargo worker's status as a worker can be recognized as a special type of worker.⁵⁴⁴⁾

542) Young Doctors, "Order to Return to Work to Doctors = Slavery ... Doctors Raising Their Voices, Oct. 10, 2020.

543) Courier drivers, insurance planners, home study teachers, and surrogate drivers may fall under this category.

544) The Supreme Court judged whether a worker is a worker under the Labor Standards Act based on whether the worker provided work to the employer in a subordinate relationship for the purpose of wages to the business or

Under such a premise, a question was raised as to whether this order for commencement of business operation was lawful. The labor groups argues that the current situation does not meet the requirements for the order under the Trucking Act, considering that the general strike and refusal of transport by the Korea Cargo Federation are the legitimate rights of the workers, and that the trucking business is not the type of essential work the Trade Union Act.⁵⁴⁵⁾ On the other hand, the MOLIT is under the opinion that the order was proper because it has carefully reviewed the damages caused by the long-term refusal of transportation by the Korea Cargo Federation and there were concerns for damages to the industry as a whole.⁵⁴⁶⁾

On the other hand, the controversy over whether the provision of the order for commencement of business operations itself is unconstitutional continued. Requirements of ‘good cause’ and ‘causes or is likely to cause a very serious crisis in the national economy’ violate the principle of clarity, fall under forced labor prohibited by the Constitution and international human rights standards, and violate the three rights of labor, assembly and association and freedom.⁵⁴⁷⁾ Issues with a similar purpose have been raised in the past by the Ministry of Health and Welfare, when ordering medical personnel to commence work, but the Constitutional Court rejected the case on the grounds that there was no immediacy or currency of violation of fundamental rights in the relevant case,⁵⁴⁸⁾ and the controversy over the constitutionality of the case does not seem to have been clearly resolved.⁵⁴⁹⁾

workplace, considering the substance of the contract rather than whether the form of the contract was an employment contract or a subcontract contract,(Supreme Court, Decided on Nov. 28, 2019, 2019Du50168) and in the position that it should be done, there is also a case where the nature of a cargo transport driver as an employee was recognized (Supreme Court, Decided on Apr. 29, 2021, 2019Du39314).

545) KCTU Statement, Nov. 29, 2022.

546) MOLIT Press Release Material, Nov. 29, 2022.

547) MBC, Controversial return to work order, Nov. 29, 2022.

548) Constitutional Court, Decided on Sep. 7, 2021, 2021HunMa937

549) Administrative lawsuits and constitutional lawsuits were also filed against the order for commencement of business, but there is a prospect that it will be difficult to receive judgment from the court and the Constitutional Court as the cargo unions ended the general strike.

C) Protection of the Special Form of Workers and Constitutional Significance of Forced Labor

According to the 2019 NHRCK's human rights survey,⁵⁵⁰ the cargo workers were more likely to get work through platform, rather than from fixed customers, as many logistics platforms have been created in the field of cargo transportation. On the one hand, they seem to be able to freely choose their working hours, but it turns out that they are working super long hours, close to 14 hours a day, 6 days a week.

There seems to be a social consensus on the need for specific measures, as long hours of work and overloading of workers in the freight transportation field can cause various safety problems. Moreover, due to technological development, social changes, and changes in labor, fundamental changes are needed to protect the workers through labor laws, including expanding the concepts of workers and employers subjected to labor-related laws and relaxing the worker indicators.

On the other hand, it is necessary to consider the constitutional meaning of forced labor as related to the order for commencement and under what circumstances it can be permitted. Since the founding of Korea, no law or system stipulated extreme forms of forced labor, such as forced labor under the Japanese colonial rule.⁵⁵¹ As a result, no constitutional disputes have arisen over issues of indirect, compulsory provision of labor in the Korean society, such as work in detention facilities, fulfillment of military service obligations, and the social service system.⁵⁵²

However, forced labor is strictly prohibited, as Article 12(1) of the Constitution stipulates that “no person shall be subjected to involuntary labor except as provided by the law,” and international human rights standards, such as Article 8(3) of the ICCPR and ILO Conventions No. 29 and No. 150,⁵⁵³ except for some exceptional cases. In other words, in

550) NHRCK Human Rights Status Survey, Survey of Platform Workers' Human Rights Status, Nov. 2019.

551) However, cases in which individuals with intellectual disabilities were subjected to forced labor under slavish confinement, and human rights violations against children, the homeless, and the disabled in shelters for multiple people in the past have become social problems.

552) Jeong, Young-hun, Review on the Principle of Prohibition of Forced Labor Under the Constitution, 2018.

553) The Constitutional Court considers that the above provision of the ICCPR has the same purpose as the latter part of Article 12(1) of the Constitution (Constitutional Court, Jul. 16, 1998, 97HunBa23.), and Korea ratified ILO Convention No. 29, which came into effect on Apr. 20, 2022.

terms of human rights, the right not to be forced to work by the state is very important, and if such right is to be restricted, very strict requirements in line with the Constitution and international human rights standards are necessary.

3) Significance of the Supreme Court Ruling on the Wage Peak System

A) Supreme Court Decision and Impact on the Wage Peak System Based on Age Only

On May 26, 2022, the Supreme Court upheld the judgment of the lower court in favor of some of the plaintiffs in the trial of the wage claim filed by a retired researcher.⁵⁵⁴⁾ Prohibiting discrimination on the grounds of age for recruitment, employment and wage, etc. under Article 4-4(1) of the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion (hereinafter referred to as the ‘Elderly Employment Act’) is compulsory, and any contrary terms in the employment contract is null and void. In conclusion, if the retirement age wage peak system is implemented without countermeasures to the wage cuts solely based on age without a reasonable reason, then it is invalid.

The research institute changed the employment rules through labor-management agreement in 2008 and introduced a wage peak system that reduces the wages of researchers aged 55 or older from 2009. Since the introduction of the system, the monthly salary of researchers aged 55 and older has decreased by between 930,000 and 2.83 million KRW, depending on the results of performance evaluation. The wage peak system is a system that adjusts wages in exchange for guaranteeing employment to workers until they reach a certain age.⁵⁵⁵⁾

This is the first time the Supreme Court has presented criteria for determining the effectiveness of the wage peak system. The lower court precedents have recognized the

554) Supreme Court, Decided on May 26, 2022, 2017Da292343

555) The types of wage peak systems are the retirement age maintenance type (reducing or freezing wages while guaranteeing the retirement age set by labor-management agreement), the retirement age extension type (a type of wage reduction from a certain point while extending the existing retirement age), and the re-employment type (retirees after the retirement age). Re-employment while reducing wages after retirement) and working hour reduction (reducing the prescribed working hours per week in conjunction with the extension of retirement age or re-employment and reducing wages by 30% or more compared to peak wages).

validity of the wage peak system for extending the retirement age, as long as it was introduced through labor-management discussion as a measure accompanying the extension of the retirement age in accordance with Article 19-2 of the Elderly Employment Act, it does not fall under age discrimination.⁵⁵⁶⁾ Even in the case of the wage peak system for maintaining the retirement age like the current case, there are many precedents that have recognized that the wage peak system is valid considering the purpose of introducing the wage peak system, although the degree of disadvantage is greater than that of extending the retirement age.⁵⁵⁷⁾⁵⁵⁸⁾

The labor groups generally welcomed the Supreme Court ruling, saying they plan to encourage the abolition or abolition of the wage peak system. Until now, the labor groups have argued that the wage peak system should be abolished as it has little effect on promoting new employment of young people, while only reducing the wages of the workers.⁵⁵⁹⁾

On the other hand, the business groups assert that if ruling on the illegality of the wage peak system is maintained, the burden on the businesses will increase and it will cause job insecurity. In the case of large companies, there is a prospect that there will not be a big impact as they are already adjusting the working hours and workloads for employees who apply the wage peak system. However, there are assertions that confusion is expected in the labor-management negotiation process due to ambiguity with the Supreme Court's judgment criteria.⁵⁶⁰⁾

On the other hand, the NHRCK decided, through related complaints in November and December, that if a worker, whose retirement age is set according to relevant regulations, applies the wage peak system without any reduction in work intensity or working hours, the 'principle of equal pay for equal work' will be violated, and if it operates as a means of expelling employees by excessively reducing wages after a certain age, it may be considered

556) Seoul High Court, Decided on Dec. 14, 2021, 2019Na2029394; Seoul High Court, Decided on Dec. 8, 2021, 2020Na2021662; Incheon District Court, Decided on Feb. 23, 2022, 2019GaHap61600

557) Ulsan District Court, Decided on Dec. 23, 2021, 2020GaDan106120; Seoul High Court, Decided on Aug. 18, 2021, 2020Na2027769; Ulsan District Court, Decided on Feb. 5, 2021, 2019GaDan14560

558) Legal Times, Meaning of the recent Supreme Court decision regarding the wage peak system, Jun. 21, 2022.

559) Yonhap News, The labor community welcomes the ruling on the invalidity of the age discrimination wage peak system ... "Encourage abolition," May 26, 2022.

560) Donga Ilbo, The business groups welcoming the invalidation of the wage peak system, May 26, 2022.

as age discrimination. As such, it expressed an opinion that the management of the wage peak system be improved through rationally adjusting the wage reduction ratio and implementing appropriate target measures so as to meet the purpose of the system.⁵⁶¹⁾

B) Issues of the Wage Peak System After the Supreme Court Decision

It is expected that many similar lawsuits will be filed in the wake of this Supreme Court ruling. However, according to the standard set by the Supreme Court, not all wage peak systems to maintain the retirement age are invalid, and whether or not the wage peak systems implemented by other companies will be recognized as valid may vary depending on the justification and necessity of the purpose of introducing the system, and the extent or period of actual wage reduction. In fact, there are cases where the wage peak system was held valid in a lawsuit related to the wage peak system to maintain the retirement age after the Supreme Court ruling.⁵⁶²⁾

In Korea, the wage peak system was first introduced by the Korea Credit Guarantee Fund in 2003, and has expanded to around public enterprises. After the enforcement of the Elderly Employment Act in 2013, which set the retirement age to 60 or older, it was expanded to private enterprises. As of June 2021, 52% of businesses with more than 300 employees operate a wage peak system. The wage peak system is mainly used for the maintaining the retirement age or extending the retirement age. If it was introduced against the background of the mandatory retirement age of 60, it generally belongs to the retirement age extension type.

Since the Supreme Court decision is on maintaining the retirement age, it is difficult to apply it directly to the extension of the retirement age system implemented by most companies. In the case of the wage peak system for extending the retirement age after the Supreme Court decision, the Supreme Court standard was sometimes cited as a reference, and there was also a case where it was not appropriate to use it as it is.⁵⁶³⁾ However, even in

561) NHRCK, Decided on Nov. 8, 2022, 22JinJeong0328100, Decided on Dec. 22, 2022, 22JinJeong0812300

562) Seoul Eastern District Court, Decided on Oct. 27, 2022, 2020GaHap113172

563) Seoul Central District Court, Decided on Jun. 16, 2022, 2019GaHap592028; Daejeon High Court, Decided on Dec. 7, (Cheongju)2022Na50254

accordance with the Supreme Court standard, the extension of the retirement age can be seen as a target measure in response to wage cuts, so its effectiveness can be recognized more widely than the maintenance of the retirement age.

According to precedents on the wage peak system for extending the retirement age, if the wage peak system was introduced through labor-management discussion as a measure to accompany the extension of the retirement age based on Article 19-2 of the Elderly Employment Act, it is generally considered not to be age discrimination. However, if the wages of workers of a certain age are excessively reduced for reasons of cost reduction or employee dismissal, it may be considered age discrimination.⁵⁶⁴⁾

C) Discussion on the Wage System Reform in Preparation for a Super-Aged Society and Issues of Age Discrimination

The wage peak system was introduced with the intention of relieving the employment insecurity of the elderly and creating jobs for the young people, but questions are constantly raised about its actual effectiveness. According to a study by the Korea Labor Institute, companies with a wage peak system had a 2.6%p lower employment rate for those aged 50 or older than those without the wage peak system, and the employment share fell further by 6.0%p after implementing the extension of the retirement age.⁵⁶⁵⁾ According to a survey by the Statistics Korea, the average length of employment decreased from 20 years in 2011 to 15 years in 2021. Some studies have shown that the wage peak system has no significant effect on new hires.⁵⁶⁶⁾

With this ruling, the need to introduce performance-based wages instead of seniority-based wages was raised, and the Ministry of Employment and Labor also announced that it would push for a reform and expansion of the job and performance-based wage system. While the seniority-based wage system is suitable for inducing long-term service during a high-growth period, it is not sustainable during a low-growth period and in a labor market with frequent

564) Seoul High Court, Decided on Sep. 8, 2021, 2019Na2016657

565) Lee, Byeong-hui, The need for continuous employment promotion for middle-aged and elderly people and support measures, Korea Labor Research Institute, Aug. 2021.

566) Kim, Seung-tae, et al., Analysis of employment effects following the introduction of the wage peak system, Economy Research, Vol. 39, No. 4, Korea Economic and Business Association, Nov. 2021.

turnovers. In order for older workers to work longer, excessive seniority in the wage system should be reduced.⁵⁶⁷⁾

The wage peak system is a system that exists only in Korea and Japan, where seniority-based wage is common. According to the Ministry of Employment and Labor, as of 2021, 55.5% of the businesses with more than 100 employees operate seniority-based wage system, and 70.3% of the businesses with more than 1,000 employees operate seniority-based wage system. The difference in wages between workers with less than one year of service and those with more than 30 years of service in Korea is 2.87 times, which is much higher than even Japan (2.27 times). Seniority-based system is hard to find in the US or Europe.

Korea is expected to become a super-aged society by 2025, with the proportion of the population aged 65 or older reaching 20.5%, and it is reasonable to be needing an appropriate wage system. However, if wages of workers of a certain age are excessively reduced for the purpose of cost reduction or employee dismissal, while the wage peak system is only in name, it constitutes age discrimination and may violate workers' rights. Therefore, considering the significance of this Supreme Court ruling, it is necessary to find a social consensus on the appropriate wage system and strive to supplement the system.

567) MOEL, Briefing on Direction for Implementing Labor Market Reform, Jun. 23, 2022.

4) The Right to Rest When Sick: Introduction of a Pilot Korean Sickness Allowance

A) The Problem of Using Vacation Revealed During COVID-19 Vaccination

As the COVID-19 vaccination for all citizens has been implemented since 2021, the Ministry of Employment and Labor recommended the use of vacation for the time required for vaccination on the day of vaccination and the day following the vaccination if there is an adverse reaction after vaccination. The Central Disaster and Safety Countermeasures Headquarters also announced in Mar. 2021 that it would establish a legal basis to grant workers leave in case of adverse reactions after vaccination.⁵⁶⁸⁾ However, by 2022, no legal basis has been established to grant workers leave related to vaccinations. Workers at small businesses or temporary workers had difficulty taking a leave or rest, regardless of the regulations.⁵⁶⁹⁾

Under the current law, for wage workers, short-term leave (sick leave) or long-term leave for non-work injuries or illness is voluntarily determined by the employee and the employer, employment rules and collective agreements. According to a survey by the Ministry of Employment and Labor in 2020, only 21.4% of the workplaces operate a sick leave system for non-work related injuries, regardless of whether they are paid or not. The smaller the workplace (12% with less than 5 employees, 96.7% with 1,000 or more employees) and the non-unionized workplace (19.7% without union, 80.2% with union), the lower the rate of operating sick leave program.

In the 21st National Assembly, a number of partial amendments to the Labor Standards Act were proposed to establish new grounds to request leave in the event of a worker's injury or illness. Generally, the proposed bills guarantee workers' right to use sick leave within a certain scope, with a varying details by each bill, and stipulate that penalties or fines be imposed for employers in case of violation of the law.

On the other hand, those who earn income through atypical work or business, such as

568) Ministry of Health and Welfare Press Release, Mar. 28, 2021.

569) According to the MOEL's '2020 Sick Leave Operation Survey,' even among workers at workplaces with a sick leave system, many of them use annual paid leave for injuries or illnesses of less than one week (60.5%), and exceed the sick leave period. It was found that there is also a risk of job loss (28.6%) if the medical treatment is to be continued.

special type workers, platform workers, freelancers, and self-employed people, do not have a system to compensate for the decrease in income due to injuries and illnesses. Platform workers and small business owners cannot rest because the platform workers often decide the conditions for providing labor to the other party or the platform operators, and small business owners with low income lose all income during the period when they take a break from work.

Sickness allowance refers to a social system that guarantees a certain amount of income so the workers can focus on treatment while sick without worrying about income.⁵⁷⁰⁾ Article 50 of the current ‘National Health Insurance Act’⁵⁷¹⁾ has a provision to serve as the basis for the sickness allowance, but there is no related provisions in the Enforcement Decree, yet. In Jul. 2020, the government announced that it would introduce a Korean-style sickness allowance system by 2025, through research and pilot projects under the “Korean New Deal Comprehensive Plan.”⁵⁷²⁾ Accordingly, the first phase sickness allowance pilot project will be implemented in 6 cities and districts, including Jongno-gu in Seoul and Bucheon in Gyeonggi-do, from Jul. 2022 to Jul. 2023.

The target of sickness allowance is employed persons between the ages of 15 and 65 living in the pilot project area, and if sickness allowance is recognized, 43,960 KRW⁵⁷³⁾ per day is paid. Benefits began to be paid to those eligible in the pilot area from August,⁵⁷⁴⁾ and as of Sep. 14, a total of 996 people applied for the sickness allowance, and an average of 546,000 won (average 12.3 days) of sickness allowance was paid to 240 people. The Ministry of Health and Welfare announced that in the future it would promote system improvements, such as easing the requirements for submitting documents for special employed workers and self-employed persons, or streamlining the application process, by combining the information derived through the pilot project.⁵⁷⁵⁾

570) National Health Insurance Service Homepage, see policy center insurance benefits and illness allowances system

571) National Health Insurance Act Article 50 (Additional Benefits) In addition to the health care benefits prescribed in this Act, the NHIS may provide benefits for medical expenses for pregnancy and childbirth, funeral costs, sickness allowances, and other allowances, as prescribed by Presidential Decree.

572) Ahead of the 20th presidential election held in March 2022, each candidate announced the introduction of sickness allowance as a pledge, and the content is also included in the 110 national tasks of the current government.

573) As of 2022, 60% of the minimum wage (9,160 KRW) × 8 Hours

574) Ministry of Health and Welfare Press Release, Aug. 3, 2022.

575) Ministry of Health and Welfare Press Release, Sep. 16, 2022.

On May 12, the NHRCK recommended the Ministry of Employment and Labor and the Ministry of Health and Welfare to legislate sick leave system and to introduce a public sickness allowance system for all working people.⁵⁷⁶⁾ In response, the Ministry of Employment and Labor and the Ministry of Health and Welfare responded that they agreed with the purpose of the NHRCK's recommendation, but emphasized the need for social discussion on preparing a specific system or would follow the results of the sickness allowance pilot project.

B) Discussions on Legalization of the Sickness System and Introduction of the Sickness Allowance

The prolonged COVID-19 has revealed that there is a significant gap in the guarantee of the right to rest when sick in Korean society. Moreover, during the COVID-19 epidemic, people began to realize the need to establish a universal and sustainable social safety net that supports people who have injuries and illnesses unrelated to work to fully rest and recover without worrying about job security or income loss. However, discussions are under way regarding the legalization of sickness leave and leave of absence, and how to design the sickness allowance.

First is a debate related to the stipulation of the right to take vacation and leave for non-work related injuries. The purpose is to reduce the difference in the level of rights guaranteed by workplace and to provide a work environment where a person can rest when sick through the Labor Standards Act, etc.

However, the Ministry of Employment and Labor and the business groups consider personal injuries and illnesses that are unrelated to work as problems outside the management scope of companies, unlike work-related accidents. Therefore, in principle, the issue should be dealt with by individual workers or by the state, and because the number of holidays and vacation days for workers has increased in recent years, measures to demand additional burden from companies are difficult accept, as a rule.⁵⁷⁷⁾

576) NHRCK, Decided on May 12, 2022, Recommendations and Opinions to Ensure Workers' 'Right to Rest if Sick'

577) NHRCK, Press Release, Oct. 25, 2022.

Second is a problem related to the universal income preservation system for non-work related injuries. The introduction of social insurance benefits that provide income in case a worker cannot work due to non-work related injuries, that is, the public sickness allowance system targeting all employed persons, is a condition necessary to actually protect the right to rest when sick. The target of support for the sickness allowance pilot project are company-sponsored health insurance subscribers, employed people including self-employed people, and workers at companies designated by local governments, and the maximum wage guarantee period is 90 days or 120 days, which differs for each pilot model.

In response, the Legislative Research Service recommended to apply the OECD member states' average for the waiting period and maximum guarantee period, as in the pilot project, and prevents any blind spots in the eligible recipients, and the insurance premium to be borne by the worker and the employer equally in order to increase acceptability of the system.⁵⁷⁸⁾ However, some assert, led by the business groups, that it should be limited to workers from the vulnerable class, since the additional burden of paying insurance premiums necessary to cover the sickness allowances arises regardless of whether the sick leave system is provided.

C) The Need to Guarantee the 'Right to Rest when Sick' to All Working People

'The right to rest when sick' means that if an individual is unable to work due to injury or disease, the right not to be disadvantaged in employment, such as dismissal, for this reason, and the right to be guaranteed survival in accordance with human dignity even during the period of inability to work. In other words, it is a right that is closely related to the right to health, labor, and social security of working individuals. However, the 'right to rest when sick' in Korea is recognized only in a limited situation of work-related injuries or diseases, and the right to take a leave of absence due to injury or illness outside of work is not recognized as a legal right for most workers.

Articles 7 and 9 of the UN Convention on Economic, Social and Cultural Rights stipulate that everyone has "the right to safe and healthy working conditions" and "social security, including social insurance." According to General Comments 19 and 23 of the UN

578) National Assembly Legislative Research Service, Issues and Arguments, 'Significance and Future Tasks for Implementing the Sickness Allowance Pilot Program,' Aug. 17, 2022.

Committee on Economic, Social and Cultural Rights, paid sick leave is an essential element of ‘safe and healthy working conditions’ in terms of treatment of workers suffering from acute or chronic diseases and reduction of infection to fellow workers, and stated that the right to social security includes the right to be adequately protected from the situation of lack of income due to illness. Moreover, the states party to the Covenant recommended that the social security system of each country should include benefits to compensate for the period of loss of income for those unable to work due to illness.

The ILO stipulated sickness benefits in preparation for income interruption due to illness in the Social Security (Minimum Standards) Convention, No. 102, in 1952. The ‘Medical Care and Sickness Benefits Recommendation, No. 134, 1969’ also stipulates sickness benefits in detail.⁵⁷⁹⁾

Most countries around the world institutionally guarantee workers’ “right to rest when sick” by introducing a statutory sick leave or sickness allowance system.⁵⁸⁰⁾ In many countries, although details may be different for each country, employers are required to provide income support for a fixed period by linking paid sick leave and sickness allowance at work, and after the fixed period, social insurance provides the support.⁵⁸¹⁾

The situation in which people have to continue working because they cannot rest even though they are sick seems to be treating human beings only as a means of labor power, not as subjects of a dignified life. Therefore, the ‘right to rest when sick’ needs to be recognized as a fundamental right that should be universally guaranteed to all working people. Moreover, it is necessary to legally ensure that all wage workers can use vacation or leave for a fixed period for non-work injuries regardless of the type of employment or the size of the workplace.

579) Cho, Seong-hye, “Guaranteeing Income When a Worker is Sick – Comparing Legal Systems of Korea and Germany,” 2018.

580) In 1883, Germany (Sickness Insurance law) first introduced ‘Injury Allowance’ as one of the social insurance benefits. As of 2021, 36 of the 38 OECD member countries, excluding Korea and the United States (which only introduced some states), have introduced sickness benefits. As of 2019, 163 of the 182 member countries of the International Social Security Association (ISSA) have introduced sickness benefits.

581) According to a study that analyzed the status of systems in 184 countries around the world based on data from the ILO and the International Social Security Association (ISSA), only 11 countries, including Korea, did not have both statutory paid sick leave and public sickness benefits. and Korea and the US are the only OECD member states without them. However, in the US, although there is no legal requirement for paid sick leave, 12 weeks of unpaid sick leave per year are guaranteed by federal law to prevent dismissal due to non-work injury (Family and Medical Leave Act of 1993), and many of states have their own statutory paid sick leave schemes.

In addition, the introduction of sickness allowance is meaningful as a prerequisite for anyone to enjoy the right to rest even when sick. However, the level of sickness allowance guarantee and the payment period greatly affect the effectiveness and sustainability of the system and is a key factor in determining the size of the required budget. Therefore, it is necessary not only to find an appropriate level through careful review, but also to review and improve the systems that are linked system.

2. Human Rights Violations in the Workplace

A. Human Rights Status 2022

A workplace refers to any place where business or sales is conducted, and a workplace is also a miniature “society.” According to data from the Statistics Korea, the number of workers in Korea in 2022 is 21,724,000 (13,568,000 regular workers and 8,156,000 temporary workers), accounting for 42% of the total population (51,558,441, as of Aug. 2022). This shows that a substantial number of Korean people spend considerable time at work.

Human rights issues that arise in the workplace are not limited to labor rights issues. There may be problems with other fundamental rights, such as the right to health, personal rights and privacy, from long hours of work, workplace harassment and electronic monitoring at work, etc.

Various human rights issues that occur in workplaces require even more special attention for the vulnerable and social minorities. It is desirable that the relationships between workers and employers, between workers and between workers and customers be equal, but many workplaces in Korea are not so, depending on various factors. In such cases, problems such as ‘forced consent’ and ‘blind spots in the system’ will occur.

Recently, with a rapid growth of delivery platform, elementary and middle school students were found to be working part-time as delivery workers, with the IDs of their mothers, and the use of child labor has been criticized as problematic by international standards. It was asserted that E-Mart, a large discount store affiliated with Shinsegae, is forcibly implementing overtime, nighttime, and holiday work for its employees. However, it is necessary to look back on whether Korean society was interested in such issues from a human rights perspective.

From this perspective, the report will consider the issue of human rights of nurses under COVID-19, a college student’s lawsuit against the labor dispute of university cleaning workers, the night labor problem of distribution center workers, and restrictions on toilet use in the workplace for construction workers, etc.

B. Main Topics

1) Human Rights of Nurses Under COVID-19 Situation

A) Work Environment That Does Not Guarantee the Health and Safety of Nurses

After the outbreak of COVID-19 in Korea in Jan. 2020 and the declaration of a global pandemic by the WHO in Mar. 2020, the impact of the COVID-19 epidemic continues even as of 2022. Where the epidemic has continued for three years, the human rights of nurses, who perform the most extensive work among medical personnel, has become a problem in many aspects, such as heavy workload and health threats.

On Apr. 13, 2022, according to a briefing of the Central Disaster Management Headquarters, the number of medical personnel dispatched by the quarantine authorities to the field to respond to COVID-19 for two years from Jan. 2020 is 24,189 (including repeats). As of Apr. 12, 4,024 medical personnel are provided at medical institutions and screening clinics, of which 2,468 were nurses,⁵⁸²⁾ accounting for more than half.⁵⁸³⁾

The heavy workload of nurses were well known through media coverage during the COVID-19 epidemic. In May 2021, a nurse at a public health center in Busan died after complaining of excessive work while responding to COVID-19,⁵⁸⁴⁾ and in Sep. 2021, 674 nurses at a public hospital designated as COVID-19 dedicated hospitals in Seoul submitted letters of resignation, urging resolution to the shortage of nursing staff.⁵⁸⁵⁾

According to the ‘survey on the human rights status of nurses during the infectious disease crisis’ conducted by the NHRCK in 2022, 598 (58.9%) out of 1,016 nurses surveyed were not guaranteed the required break time while performing duties related to COVID-19. 682 (67.1%) experienced abusive language and assault from patients, and 785 (77.3%) experienced going to work despite being sick during the past 12 months. Regarding how often they performed work through social media, phone calls, etc. after work, during the

582) 347 doctors, 2,468 nurses, 338 nurse assistants, 431 clinical technologists, 105 radiographers, 345 caregivers

583) MEDICAL Observer, 2 Years of COVID-19, the Quarantine Authorities Dispatched 24,189 Medical Personnel, Apr. 13, 2022.

584) Joongang Ilbo, Collapsed health center workers... “Taking on 6 tasks alone in the heavy workload of COVID-19,” May 28, 2021.

585) YTN, Nurses ‘Protesting with Letters of Resignation’... “674 Left Since COVID-19,” Sep. 15, 2021.

busiest 1 month, 197 (19.4%) respondents answered, ‘almost every day’ and 98 people (9.6%) answered ‘3 to 4 days a week,’ and it seems that about 3 out of 10 people continued to work after work. 584 (57.5%) of the respondents said that they had an intention of changing jobs while performing COVID-19 related duties.

Nurses are vulnerable to infection as much as they are easily exposed to infectious diseases at work. As of Jan. 7, 2022, 4,450 nurses were infected with COVID-19 in Korea, and 3 died, which is higher than other occupations.⁵⁸⁶ According to the ‘survey on the working conditions of nurses in response to COVID-19’ conducted by the Korean Nurses Association in 2020, fatigue due to excessive work (52.6%) and poor concentration due to long hours of work (31.7%) are the main factors for the risk of infection.

B) Legal and Institutional Issues Related to Nursing Personnel in Korea

The ILO Nursing Personnel Convention (1977) stipulates that nurses should be treated equally with other workers in overtime work. However, because medical service is an essential public service without interruption, long working hours have become commonplace. For nurses, pursuant to Article 59(1)(5) of the Labor Standards Act, if the employer agrees in writing with the employee representative, overtime work can be performed in excess of 12 hours a week. In such a case, there is no maximum number of hours of continuous work.

These problems became more prominent during COVID-19. One of the difficulties faced by nurses was waiting in the hospital for a long time in case of emergencies. Staying at hospitals for 3~4 days at a time was a common experience for the nurses during the early days of COVID-19.

Through the revision of the Labor Standards Act in 2018, a proviso was added that after overtime work pursuant to Article 59(1)(5), a rest time of 11 or more consecutive hours must be guaranteed, but it is difficult to comply with this regulation in the event of an emergency. Furthermore, there is no upper limit on the continued working hours, so there is no choice but to be exposed to long hours of work depending on the situation.

586) Medi-Gate News, 1,327 doctors with COVID-19, Of 15 medical personnel who died, 10 are doctors, Feb. 17, 2022.

Another problem is that the nursing staff placement standards are not followed in the field. Although the workload of nurses caring for COVID-19 patients has exploded, the level of personnel placement at medical institutions did not follow the recommendations of the Ministry of Health and Welfare. According to the NHRCK's survey, the number of patients per one nurse was 5.34 times higher than the recommendation in the COVID-19 ICU at tertiary general hospitals, and 3.18 to 5.71 times higher than the recommendation in COVID-19 dedicated wards for moderate cases.

The shortage of nursing staff is not a problem limited to the case of COVID-19. During the 2022 National Assembly audit, there were 7,147 medical institutions that did not comply with the quota standards for nurses in the last five years, and as of 2021, 30.3% of all medical institutions did not comply with the quota standards. All tertiary general hospitals complied with the standard, but 53.3% of the hospital (30 to 99 beds) and 11.6% of general hospitals with 100 or more beds did not comply with the nurse quota standard.⁵⁸⁷⁾

C) Tasks to Improve the Working Environment of the Nurses

With the prolonged COVID-19, protection and support for nursing personnel have emerged as important policy tasks in the international community. WHO and ILO have published materials highlighting the importance of occupational safety and health norms during the pandemic—particularly, trying to provide a direction and share the best practices to ensure the safety and health of health care personnel.⁵⁸⁸⁾ An interim guide jointly published by the two organizations in Feb. 2021 emphasizes that even during the pandemic, safe and healthy working conditions for health care personnel should be ensured, and measures to prevent COVID-19 infection for health care personnel should be taken based on risk assessment and the introduction of appropriate measures. It also pointed out that violence, harassment, stigma, discrimination, overwork, and insufficient personal protective equipment (PPE), which are amplified in the midst of the pandemic crisis, are also important occupational safety and health issues.

587) Rapportian, 'Lack of nursing staffs at hospitals, unable to resolve it or not willing to resolve it? 'Let's Change the Medical Act,' Nov. 3, 2022.

588) The WHO and ILO briefs are not limited to the nursing profession, but cover the entire health care workforce.

To improve the working conditions of nurses in Korea, it is first necessary to review the special provisions on working hours under the Labor Standards Act (Article 59). Even if a special extension of working hours is necessary due to the nature of the work, it needs to be applied restrictively. Rather than comprehensively regulating the health industry as a business subjected to special exceptions, as is currently the case, it is necessary to apply it limitedly by reflecting the characteristics of hospitals and wards. Consideration should be given to limiting it to hospitals responding to infectious diseases, such as COVID-19, and limiting it to ERs or ICUs.

Moreover, it is necessary to establish appropriate personnel standards and take binding measures during a crisis. In 2021, the Ministry of Health and Welfare announced a standard for placement of nurses in COVID-19 wards, but it was not complied with for simply being a recommendation, without any binding force. It is necessary to devise measures to secure effectiveness, such as imposing disadvantageous measures on the relevant institutions for violating the standards.

Also, it is necessary to inspect the commanding system of the central and local governments and strengthen the on-site supervision function. The responsibilities of the central and local governments stipulated in the Framework Act on the Management of Disasters and Safety and the Infectious Disease Control and Prevention Act must be properly performed in a crisis situation. In addition, it is necessary to investigate and regulate whether compliance with personnel placement standards, appropriateness of government subsidy use, guarantee of working condition, job education and safety education are properly observed at medical institutions, including public hospitals.

2) College Students' Lawsuit Against Labor Dispute of College Cleaning Workers

A) Labor and Management Conflict that Started with the Installation of Rest Areas, and Labor-School Conflicts

In accordance with Article 128-2 of the 'Occupational Safety and Health Act,' which will take effect from Aug. 2022, workplaces with 10 or more employees employing two or more workers in seven vulnerable occupations, such as cleaners and security guards, must establish rest facilities to be used during breaks so the employees can relieve physical fatigue and mental stress.⁵⁸⁹⁾ The Ministry of Employment and Labor requested employers to voluntarily establish rest facilities because they are "important facilities that can prevent industrial accidents and diseases on the job."⁵⁹⁰⁾

Moreover, in accordance with Article 79-2 of the 'Regulations on Industrial Safety and Health Standards,' employers must establish washroom, bath facilities and changing, laundry facilities in places easily accessible to workers who are constantly engaged in cleaning duties. However, according to a survey by the Seoul branch of the Public Transportation Workers Union, of 146 rest rooms at 11 universities⁵⁹¹⁾ in Seoul, only 16 (10.6%) have shower rooms, and 46 are located in the basement or under the stairs. The Seoul branch of the Public Transport Workers Union stated that 71 places (48.6%) needed improvements due to noise, ventilation, lighting, and room size.⁵⁹²⁾

Cleaning workers at Y University took a collective action in 2022, demanding improvements in treatment, such as wage increase and shower room installation. The Seoul Regional Labor Relations Commission recommended an hourly wage increase to the Y University cleaning service company through mediation procedures, but it was not accepted, and the Y University cleaning workers demanded action from the school from Apr., and held a rally on campus. When the cleaning workers held rallies and demonstrations using

589) In case of non-compliance, fines may be imposed, but in the case of workplaces with less than 50 full-time workers and construction sites with a construction cost of less than 5 bil. KRW, the fine is suspended for one year until August 18, 2023.

590) MOEL Press Release, Aug. 17, 2022.

591) Korea University, Kwangwoon University, Duksung Women's University, Dongduk Women's University, Sogang University Gonzaga Dormitory, Sungshin Women's University, Sookmyung Women's University, Yonsei University, Ewha Women's University, Indeok University, Hongik University

592) Daily Labor News, "9 out of 10 university cleaning workers' lounges do not have showers," Aug. 25, 2022.

loudspeakers on campus, three students at Y University filed civil and criminal lawsuits on May 9 and Jun. 17, claiming that their right to study was being infringed upon by the noise.⁵⁹³⁾

As the press reported the complaints and civil lawsuit filed by the students at Y University, an unprecedented amount of social attention was focused on the case both inside and outside the school in June and July.⁵⁹⁴⁾ A professor of the Department of Cultural Anthropology at Y University criticized the students⁵⁹⁵⁾ who filed the lawsuit by posting a notice titled ‘I hope you are ashamed: to the community members who do not support the struggle of the cleaning and security workers’ at the entrance of the school’s central library on Jul. 7. On the other hand, some on-campus communities said that the demands of the cleaning workers are a matter between the contractors and complained of inconvenience due to the noise.⁵⁹⁶⁾

The incident received much attention with many media outlets reporting the current status of the rest areas from the side of the cleaning workers, the outsourcing structure, the filing of civil and criminal complaints, and the reactions and hate expressions inside and outside the school. As the media’s interest continued, students and graduates of Y University released a statement that criticized the school for not fulfilling its responsibility in relation to the incident.⁵⁹⁷⁾ On the other hand, 12 lawyers from ‘Minbyun, Lawyers for a Democratic Society,’ who are graduates of Y University, said on Jul. 12 that they will represent the cleaning workers, and on the next day, lawyers from ‘Hanbyun, Lawyers for Human Rights and Unification of Korea,’ said that they will represent the students who filed the lawsuit.⁵⁹⁸⁾

According to a KBS poll,⁵⁹⁹⁾ about 90.5% (38.4% strongly agree, 52.1%) were in favor of the cleaning workers rally that continued at various universities in the summer of 2022.

593) Complainant said in an interview with the Korea Economic Daily on July 12, 2022, that “I understand the grievances of cleaning workers, but it is difficult to tolerate harming others in order to make a point.”

594) Media Today, Yonsei University cleaning worker problem, how did the media deal with it, Jul. 16, 2022.

595) Chosun Ilbo, Student sue cleaning worker...Yonsei University Professor, “I feel skeptical” about the lesson plans,” Jul. 2, 2022.

596) BBC NEWS Korea, ‘Right to Learn’ vs ‘Right to Work’...How to view a student suing cleaning workers, Jul. 6, 2022.

597) Joongang Ilbo, “Ashamed of the lawsuit”...2373 alumni supporting the cleaning workers, Jul. 13, 2022, Segye Ilbo, 230 legal expert alumni supporting the cleaning workers, urging the school to resolve the situation, Jul. 18, 2022.

598) Newsis, Lawsuit against the cleaning workers at Yonsei Univ., Minbyun vs. Hanbyun, Jul. 21, 2022.

599) These are the results of an Internet survey conducted by the KBS Public Media Research Institute’s research team on 558 students enrolled in undergraduate and graduate schools among males and females aged 18 to 29 or older nationwide from July 8 to 12, 2022 (5 days).

However, the opinion on whether such rallies violated the right to learn was answered within the margin of error.

The rally by the cleaning workers ended on Aug. 26 by accepting some demands, such as an hourly wage increase of 400 KRW. The school will also consider improving the installation of shower rooms and rest areas.⁶⁰⁰⁾ As a result of investigating the accusation related to the cleaning worker rally on Dec. 1, the police made a decision to not press charges of obstruction of business, except for the rallies conducted without being reported with the school.⁶⁰¹⁾

B) The Status of Cleaning Workers at Universities and the Perspectives of Students Revealed Through the Incident

There have often been cases where cleaning workers took collective actions for improved treatments. However, in the summer of 2022, a lot of attention was focused on this case, because students from a top university filed a civil and criminal lawsuit against cleaning workers for violating their right to learn. In particular, it is noteworthy that this case dealt with keywords, such as ‘discriminatory economic structure,’ ‘fairness and the socially underprivileged,’ and methods of collective action, etc. by the professor, poster, on-campus community and the media.

First, the ‘discriminatory economic structure’ is related to the form of outsourcing of cleaning workers at universities. Most of the cleaning workers at universities are subcontractors. There are many middle-aged female workers,⁶⁰²⁾ and the service contract is less than 2 years to avoid being converted to permanent employment. convert to an indefinite contract.⁶⁰³⁾ Therefore, it is difficult to expect wage increases based on continuous service, and are exposed to high employment instability, repetitive physical labor and long hours.⁶⁰⁴⁾

600) Hankyoreh, 400 KRW increase in hourly wage for the cleaning workers at Yonsei Univ., Aug. 26, 2022.

601) Kookmin Ilbo, [Exclusive] Police ... No charges against the cleaning workers at Yonsei Univ., Dec. 8, 2022.

602) According to the 2021 Labor Status Survey Report by Employment Type (2022) of the Ministry of Employment and Labor, the average age of cleaners and sanitation workers is 60.2 years old, and the number of female workers is more than 2.5 times greater than that of male workers.

603) Maeil Economy, “Demanding better treatment by college cleaning workers,” Jul. 23, 2022.

604) Lee, Seung-yun, Seo, Hyo-jin, and Park, Ko-eun, Why are the cleaning workers precarious? Outsourced female cleaning workers and the fictitiousness of Korea’s social safety net, 2018.

Liabilities and roles of Y University are demanded by considering the subcontracting structure of this case. Service contract through competitive bidding makes it possible to select a company that offers the lowest fee, and therefore, it is difficult for the contractor to improve the wages and treatment of the cleaning workers in order to reduce costs. So, the wages and treatment of the cleaning workers are ‘a problem that only Y University can solve.’

On the other hand, there is an opinion that this incident is meaningful in that it revealed the perspective of students on the collective behaviors of university members. Unlike this case and the majority of favorable opinions on the collective action of cleaning workers in the 2022 KBS poll on the collective action of cleaning workers in colleges, there were both strong negative and favorable opinions about the damages therefrom. The negative opinions were due to excessive noise from the rallies and biased logic and discriminatory remarks made by the protesters.⁶⁰⁵⁾

Regarding this, some assert that it is necessary to recognize campus workers as essential part of the university.⁶⁰⁶⁾ A social discussion that demands the university, not the workers, to take responsibility for the infringement of class rights and the problem of “damaging the school image” caused by the assembly and demonstrations of cleaning workers must be made.

C) The Role of the Universities as a Party to the Labor Issues and Sympathy of School Members

Outsourcing of work to a service company is essentially for cost reduction. It is a common phenomenon for the subcontract workers to be exposed to more risks of industrial accidents or perform work under poor conditions, as compared to the regular employees. However, in the process of outsourcing, it is a structural problem that preventive efforts and devices that protect the rights and safety of subcontracted workers are underestimated due to ‘cost’

605) Financial News, “KCTU cannot tolerate assembly on campus,” “Improving the Working Conditions of the Cleaning Workers on the Backseat,” Oct. 25, 2022.

606) Yonsei Chunchu, [Special Report on Cleaning Workers-①] Reporting the university society that does not respect the essential labor, Aug. 28, 2022.

issues, and this needs to be resolved. The workers should be able to provide labor in an environment where rights and safety are secured, and employers must not pursue profits at the expense of workers' rights and safety.

The international community believes that a plan must be prepared to protect the workers who are not protected due to the diversification of employment forms. In 2006, the ILO General Assembly adopted the 'Employment Relationship Recommendation,' which recommended establishing legal procedures and measures to resolve the issue of 'disguised employment relationship,' where the employer treats an individual as other than an employee to hide his/her true legal status, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due. The ILO Committee on Freedom of Association also expresses concern to the Korean government that prime contractors continue to use in-house subcontracting to evade the exercise of trade union rights, and it was recommended for the Korean government to take measures to strengthen the protection of the right to organize and collective bargaining (Report No.363, 2012).

Thus, the university should be asked to take the responsibility for the problems of the cleaning workers' wage and installation of rest areas, etc. Even in accordance with the Central Labor Relations Commission's decision, in a subcontractor relationship, the primary contractor's status as a party to the collective bargaining (employer) is recognized for certain parts in which the prime contractor exercises actual authority over the working conditions of subcontract workers.⁶⁰⁷⁾ Rather than taking the position of 'school is also a victim' or that 'the students are taken hostage,' it is necessary for the school to respond to the issue as a party involved.

On the other hand, social consensus between the protesters and the students is needed. Since a certain amount of noise is unavoidable in order to convey opinions to an unspecified number of people through assemblies or demonstrations, even the general public, not participating in the assemblies, have an obligation to accept it.⁶⁰⁸⁾ On the other hand, the freedom of assembly is not unlimited, and certain regulations are in place to prevent damage

607) Legal Times, Should the prime contractor negotiate with the subcontractor's union?, Jul. 2, 2021.

608) Supreme Court, Decided on Oct. 15, 2004, 2004Do4467

to others with serious noise or with hate speeches, etc. during assemblies. In 2022, the collective action of cleaning workers at various universities, and the responses to this, provided opportunities to discuss the needs for the roles and social empathy of each member in the university, as parties to the labor issues.

3) Problems with Night Work of Workers at Logistics Centers

A) Health Issues of Workers at Logistics Center from Night Work

Today, logistics centers are not simply a warehouse for storing products, but are changing into a concept of fulfillment. Fulfillment, a logistics model first attempted by Amazon, refers to the process in which a logistics center plays a role in overall logistics, from ordering to warehousing, inventory management, and distribution, rather than simply serving as a warehouse that stores products. Logistics is becoming an independent service rather than simply an additional service that follows when a product is purchased. This is called a ‘Logistics as a Service (LaaS).’⁶⁰⁹⁾

In Korea, as social distancing spread and offline activities were restricted due to COVID-19, the flexibility of logistics and distribution work and untact consumer market became active. As online transactions expanded, sales business without shops grew significantly, resulting in overheated competition among the businesses. In particular, as services that quickly deliver goods during late-night hours became popular, work at logistics centers were especially concentrated during the late-night hours.

In Oct. 2020, a man in his 20s died while returning home after a night shift at a logistics center of an online shopping mall. In Jan. 2021, a woman in her 50s died in the bathroom at dawn while working part-time at another logistics center the same company, in Dec. of the same year, a woman in her 50s died after collapsing from a brain hemorrhage at the same logistics center.⁶¹⁰⁾ As deaths from overwork caused by unreasonably long nighttime work by workers at logistics centers were reported in the news one after another, the possibility of violation of the right to health of workers at logistics centers was raised.

609) NHRCK, Survey of Labor Human Rights Situation of Logistics Center Workers, 2021.

610) YTN, “Middle aged Coupang worker found dead at work,” Jan. 8, 2023.

In particular, with the recent increase in the demand for online shopping, most shopping companies have tried to respond flexibly by operating their own logistics centers and delivering system. However, as the flexibility of the labor force was further demanded, it was criticized for neglecting the health and safety of the night workers.

According to the data on industrial accidents from the Ministry of Employment and Labor, since 2020, the total number of industrial accidents approved by company C's logistics subsidiaries was 866. The number of applications before approval was 373 cases, as of Aug. 2022, following 239 cases in 2020 and 332 cases in 2021.⁶¹¹⁾ Moreover, the number of logistics center workers complaining of various illnesses and disorders caused by long hours of night work has increased.

B) Ethical and Legal Issues of Night Work

In the Night Work Convention (1990), the ILO defined the night work as 'work performed for more than 7 consecutive hours, including the time from midnight to 5 am,' and is finally determined by the concerned state or the government authority after discussion between the employer and the workers' organization. In Korea, according to Article 56 of the Labor Standards Act, the night work is 'work performed from 10:00 pm to 6:00 am the following day.'

Many studies have been conducted on the night work posing a serious threat to health, and the International Agency for Research on Cancer defines it as a second-class carcinogen. According to the 2021 survey on labor and human rights status of the logistics center workers conducted by the NHRCK, the logistics center workers are threatened with their right to health and life due to high-intensity and long night work.⁶¹²⁾ Unlike shift work in other occupations, most logistics center workers perform only night work without rotating day and night shifts, so there is a high risk of health problems, including sleep disorders, eating disorders, metabolic syndrome, and cancer.

611) Global Economy News, "2022 National Assembly Audit – Coupang Fulfillment CEO will strive to reduce industrial accidents and deaths," Oct. 5, 2022

612) NHRCK, Survey of Labor Human Rights Situation of Logistics Center Workers, 2021.

Accordingly, there is a need to regulate the night work. Specific methods proposed are a direct regulation of night work or regulating the business hours of the logistics industry through the Distribution Industry Development Act.

The current Labor Standards Act does not directly regulate night work. Night work is carried out according to an agreement between the parties concerned, and additional allowances are paid in case of night work, or vacation is given in lieu of this, without any regulations on the time and frequency of night work. As a result, the logistics center workers who work at night on a regular basis do not receive legal protection

On the other hand, the Distribution Industry Development Act can restrict the business hours (a fixed time between 0:00 a.m. to 10:00 a.m.) and mandatory holiday days for large-scale stores, and the specific details can be determined by local ordinances. As the distribution industry has gone online, distribution centers are expanding into non-store sales, but business hours restrictions do not apply to non-store sales. As a result, logistics centers are operating 24 hours a day, without any legal restrictions, and this is considered as one of the causes of night work and overwork of logistics center workers. If the night hours of non-store sales are restricted, the speed of the logistics business may be controlled, and accordingly, the night working hours of workers in the logistics centers can be regulated.

C) Finding Ways to Make Improvements Through Diverse Policy Considerations

Life and safety are the most fundamental and core values of human rights, and safe and healthy working conditions are universal and fundamental rights that all workers should enjoy as guaranteed by international human rights treaties and international labor standards. The state and companies must be careful not to continue the problem of threatening the workers' right to health and life

When the ILO adopted the Night Work Convention No. 171 in 1990, it stipulated the right of night workers to undergo a health examination and to receive advice on how to avoid or reduce work-related health problems. It also stipulated that workers who are unsuitable for night work due to health reasons should change their duties, and that appropriate social services should be provided to the night workers.

The long and difficult shift work of logistics center workers, the long hours of night shift work, and deteriorating health issues are constantly being raised overseas, and the future policies and legislation should be implemented by referencing these cases. For example, in the case of France, night work is allowed only exceptionally under the labor law (Code du travail), night work requires consideration of essential matters for the protection of workers' health and safety, and must be justified according to the need to ensure the continuity of work or business that presupposes social benefits.

International norms and labor-related laws of other countries have established provisions regulating night labor not only in the logistics centers but also throughout the industry. Some of the examples are: prohibiting the night work, as a rule, and allowing only as an exception; specifying the maximum working hours and break time for night workers, and guarantee essential rest time after night work until the start of the next day's work; and stipulating the right of night workers' health check-up.

In addition to direct regulatory measures, measures to provide practical convenience to workers in the workplace may be considered, including regular health checkups for night workers, hospital treatment when abnormal symptoms are detected, expansion of the quality and scale of rest facilities and sanitary facilities, and periodic safety checks at the logistics centers.

4) Restrictions on Toilet Use at Work for Construction Workers, Etc

A) Problem of Using Toilet at Work Discovered from the Case of Apartment Construction Sites

Around July, residents complained of headaches and discomfort due to a foul odor in a new apartment building in Gyeonggi-do. After verification, it was discovered that the construction was finished while human wastes were left inside.⁶¹³⁾ The media that first reported the incident described it as an “absurd report,” and some viewed the incident as a problem of migrant workers and ‘some ignorant workers’ with different hygiene standards. However, through many follow-up reports and interviews with construction workers, it became known that the above case is somewhat common due to the poor working conditions during high-rise building constructions, and that similar cases were actually found in other apartments.

According to the ‘Act on the Employment Improvement of Construction Workers’ (Construction Workers Act for short), facilities such as toilets, dining rooms and locker rooms are required to be installed at construction sites that are larger than a certain size prescribed by the Presidential Decree. According to a survey on the installation of convenience facilities at construction sites in 2020, toilets are provided at more than 95% of the construction sites, regardless of the type of construction site; however, the workers actually have difficulty using toilets while working on high floors.⁶¹⁴⁾

On Jul. 26, the Korean Confederation of Trade Unions (KCTU) filed a complaint with the NHRCK related to the poor condition of the bathrooms at apartment construction sites.⁶¹⁵⁾ In relation to the Construction Workers Act, an amendment to the Construction Workers Act requiring the installation of at least one toilet for every 5 floors at a construction site,⁶¹⁶⁾ and an amendment to the installation of toilets in consideration of the number of construction

613) MBC, [Report with MBC] The stench in the new apartment...Excrements in the ceiling, Jul. 19, 2022.

614) Environment and Labor Committee of the National Assembly, Report on the partial amendment to the ‘Act on ally amended Act on the Employment Improvement of Construction Workers,’ Nov. 2022.

615) However, the complaint was dismissed because it was not subject to the investigation of the complaint case under the NHRCK Act. However, the NHRCK recommended to the Minister of Employment and Labor in 2020 to expand convenience facilities to be installed at construction sites and prepare detailed standards for each convenience facility.

616) Co-sponsored by 10 representatives, including Rep. Kim, Yong-min, Bill No. 2116814, Aug. 9, 2022.

workers and the convenience of movement⁶¹⁷⁾ have been proposed and are under deliberation. However, the Ministry of Employment and Labor is of the opinion that if the toilet installation is uniformly decided by the number of floors, there are concerns over the cost of installing and maintaining the sewage treatment facilities and risk of safety accidents; therefore, measures could be taken by amending the enforcement rules that establish the detailed standards for each facility type.⁶¹⁸⁾

On the other hand, through follow-up reports by the media, attention was drawn to the poor toilet and rest conditions of workers performing other duties.⁶¹⁹⁾ Some of the examples are: case of railroad or subway train engineers working in a car without a toilet, and it is not easy to move to a nearby car or station during a short stop; case in which a duty-free salesperson is instructed not to use the customer restroom in front of the store, but to use a separate staff restroom located at a distance; and a case in which a call center agent has to press the ‘personal reasons’ button on the computer to indicate that he/she is away when going to the bathroom, and if he/she does this frequently, it will be reflected in the evaluation.

In particular, female workers face greater difficulties. According to the KCTU’s ‘Research on the Use of Toilets in Workplaces of Female Workers and Their Impact on Health (2021),’ there were difficulties in accessing and using toilets in various aspects, such as the working environment, labor intensity, culture, and awareness, and it has been shown to affect the health of the workers.

B) Toilet Use as an Issue Showing the Poor Working Conditions and Discrimination

Facilities, such as toilets, locker rooms, rest rooms, and shower rooms, are essential to ensuring safe and hygienic working conditions, depending on the industry or regardless of the industry. The toilet problem of construction workers, which received a lot of social

617) Co-sponsored by 13 representatives, including Rep. Park, Dae-su, Bill No. 2118177, Nov. 9, 2022.

618) In 2023, the Ministry of Employment and Labor announced a legislative amendment to the Enforcement Rules of the Act on the Improvement of Employment of Construction Workers, which added the standard for the number of workers to the toilet installation standards at construction sites.

619) Kyunghyang Shinmun, City with Transparent Walls ③ Looking for a toilet... Status of workplace toilets, without water or walls, Oct. 14, 2022.

attention in 2022, symbolically shows that the safe and hygienic working environment of workers is not protected.

The duty to install toilets is stipulated in the ‘Act on Public Toilets, Etc.,’ the ‘Construction Workers Act,’ and the ‘Installation and Operation Guide for Washrooms, Bath Facilities and Toilets at Workplaces,’ prepared by the Ministry of Employment and Labor in 2019. However, the convenience facilities that are mandated in the relevant regulations do not have size or area standards depending on the number of workers, so the number of toilets are insufficient for the number of workers and takes too long to use in many cases.

In addition to facility problems, lack of manpower, labor intensity, and control over the use make it difficult for the workers to use the toilet. There are cases where even the time to use the bathroom is subjected to direct control (using for less than 5 minutes or 10 minutes every 2 hours, etc.), and some workers cannot leave the workplace because he/she is working alone. Workers working in such conditions are in a situation where even the minimum autonomy is violated, such as limiting the amount of water intake, etc.⁶²⁰⁾

Discrimination between workers and subcontractors is also a cause of problems. In addition to the cases discussed above, in the case of female workers, even if there is no direct restriction, there are cases where only toilets without gender distinction are available to make it difficult to use the toilet. The problem with the use of the bathroom can act as discrimination between people in the same space and is also a result of the discriminatory working environment.

C) The Need to Create a Healthy Working Environment in the Workplace

The UN Covenant on Economic, Social and Cultural Rights (ICESCR) specifies the state's obligations to ensure the safety and health of workers, with Article 7 stipulating that everyone has the right to enjoy safe and healthy working conditions, and Article 12 stipulating the improvement in all areas of environment and industrial hygiene as the measures to be taken by the state to achieve the highest attainable level of physical and

620) Korea Labor Safety and Health Research Institute, A study on the status of toilet use and health effects in the workplace of female workers, Mar. 2021

mental health. The UN Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No. 22 (2016, ‘The Right to Sexual and Reproductive Health’), stated that ‘the right to the highest attainable standard of health’ includes adequate sanitation, safe and healthy working conditions and the environment in the workplace.

Regarding the installation of convenience facilities at construction sites, Article 32 of the ‘Safety and Health in Construction Convention’ of the ILO stipulates that at all construction sites, depending on the number of workers and the duration of the work, sanitary and washing facilities, clothing storage facilities and medical drying facilities, and facilities for eating and resting during periods when work is suspended due to climatic conditions are provided, and repair and maintenance facilities should be provided. It further states that sanitary and washing facilities must be provided separately for male and female workers. Major countries, such as Japan, have also established regulations on installing toilets based on the number of workers.

The problems of using bathrooms and other convenience facilities by construction workers, train drivers, department store salespeople, call center workers, and other mobile workers are not new. However, this situation gained social attention in 2022 because the working conditions of these workers failed to keep up with the changing times, where the expectations for human rights and treatment in Korean society are high.

Restrictions on toilet use can cause urinary diseases such as cystitis and pyelonephritis in workers. In addition, having difficulty using toilet while working is related to the issue of dignity as a human being and a working person. Therefore, rather than simply approaching as a problem of inconvenience or cost that must be endured, it is necessary to impose obligations on employers to encourage creating workplace and culture that takes into consideration the simple conveniences of the workers.

IV. Establishing a Foundation for a Better Society in the Future

1. Criminal Justice System and Human Rights

A. Human Rights Status 2022

Criminal justice system refers to ‘a system of state agencies responsible for the execution of the state’s right to punish as a specialized national judicial system.’⁶²¹⁾ Investigation agencies, such as the police and prosecutors, courts, and correctional institutions (detention centers, prisons, etc.) are operated through this system. These institutions are important national institutions in terms of realizing justice for criminal acts prohibited by the Criminal Act, rescuing victims, and taking charge of punishing and edifying perpetrators, and the criminal justice system is also considered as an indicator to measure the level of human rights in a country.

Various human rights issues and discussions arise from various stages of investigation, criminal trial, correction and detention. As 100 key tasks under the 4th National Human Rights Plans of Action (NAP), the NHRCK presented the following: clarification of the procedures for handling the voluntary submission of electronic information storage media in criminal judicial proceedings; strengthen the right to receive assistance from a lawyer in criminal proceedings; protection of the weak during the criminal proceedings; establish measures to prevent abuse of police investigative power; protection of information human rights in judicial proceedings; and improvement of systems related to the collection and use of biometric information. These are the main topics that require consideration to improve the Korean society.

In addition, other topics for consideration in the future are: the need to deal with overall delays in investigations and trials; the need for appropriate treatment for social minorities,

621) Lee, Young-geun, Study on the functional characteristics of German criminal justice system, 2011.

including sexual minorities in correctional facilities; appropriate management of the rapidly increasing number of criminals subjected to attachment of electronic devices; and strengthening the protection of crime victims' rights, such as the right to know.

Although not specifically addressed in this report, the issue of protecting the right to access medical care and the right to health of prisoners in correctional facilities are recognized as the biggest pending issue, along with the issue of overcrowding. Of the correctional facility complaints filed with the NHRCK, more than 35% (700-800 cases per year, as of 2021) are related to inmates' medical treatment and health rights. In addition, at the end of 2020, human rights violations continue to occur in the medical field, such as a group infection of COVID-19 and subsequent death of inmates in correctional facilities. Currently, the medical budget per capita in correctional facilities accounts for only 12% of the current medical expenditure per capita in Korea. In addition, there are currently 89 specialists in correctional facilities, which is about 25% shortage from the quota of 117.⁶²²⁾

As such, the criminal justice system is related to many topics in Korean society. Most people hope to live a life independent of law enforcement agencies, courts, and correctional institutions; however, when involved in the criminal justice system, whether as a suspect or a victim, it is highly likely that core aspects of everyday life and basic human rights will be greatly affected.

As the people's awareness of human rights related to the criminal justice system has increased and the people's demands and interests in the human rights sensitivity of the state institutions and public officials, such as the police, prosecutors, courts, and correctional facilities, have increased, the human rights situation and human rights policy in the field of criminal justice can be evaluated positively as compare to the past; however, some assert that improvement is still needed in light of the international standards.

Some of the topics related to the criminal justice system in 2022 to be considered below are: controversy over adjustment of investigative powers and problems with investigation procedures for human rights protection; the war on drugs and the rehabilitation and treatment of drug addicts; and conditions and problems of overcrowding in prisons.

622) Accordingly, on July 5, 2022, the NHRCK recommended to the Minister of Justice for system improvements such as reinforcing professional doctors in correctional facilities and strengthening medical treatment for mentally ill prisoners. In addition, it was recommended to the Minister of Economy and Finance to make efforts to reflect the Ministry of Justice's medical budget for correctional facilities and the budget necessary for the expansion of doctors as much as possible.

B. Main Topics

1) Controversy Over Adjustment of Investigative Powers and Problems with Investigation Procedures for Human Rights Protection

A) Controversy over Amendment of the Criminal Procedure Act and the Prosecutors' Office Act, and Establishment of the National Police Bureau

Investigations of crimes prior to 2021 were carried out by the police under the direction of the prosecutors' office.⁶²³⁾ The police forwarded all the cases investigated to the prosecution (no right to terminate the investigation), and the prosecution who received the cases decided whether to exercise the right to prosecute. On the other hand, from 2021, according to the revised 'Criminal Procedure Act' and the 'Prosecutor's Office Act,' the prosecution's right to command investigations over the police is limited for crimes other than the six major crimes,⁶²⁴⁾ and the police have the authority to make decisions to forward with prosecution or not on some cases. This change in the authority of the investigation is called 'adjustment of prosecutor and police power,'⁶²⁵⁾ for short.

Since 2022, the Democratic Party of Korea, then the ruling party, promoted a complete separation of prosecution and police powers of prosecution and investigation through amendments to the Criminal Procedure Act and the Prosecutor's Office Act. The main content of the two proposed amendment in April 2022⁶²⁶⁾ was that investigations were the duties of judicial police officers (police officers), and investigations by prosecutors were limited to exceptional cases stipulated in other laws (crimes related to the duties of police officers, etc.). This proposed amendment was known as the "complete deprivation of the prosecution's right to investigate."

623) In the following, the investigation by the High-ranking Public Officials Crime Investigation Agency and the special judicial police officer will be discussed separately.

624) Corruption, economy, public officials, elections, defense projects, major disasters

625) According to the Policy Briefing of the Republic of Korea, the purpose of the adjustment of investigative powers between the prosecution and the police is to break away from the vertical relationship of command and supervision between the prosecution and the police, and to ensure that the investigative powers are exercised for the safety and human rights of the people through decentralization of investigative powers and mutual checks.

626) Co-sponsored by 172 representatives, including Rep. Park, Hong-geun, Bill No. 2115286, Apr. 15, 2022, Co-sponsored by 172 representatives, including Rep. Park, Hong-geun, Bill No. 2115284, Apr. 15, 2022

Regarding this amendment, politicians,⁶²⁷⁾ the government,⁶²⁸⁾ civil groups,⁶²⁹⁾ court administration offices,⁶³⁰⁾ and the media expressed support and opposition respectively, and public opinion⁶³¹⁾ also showed mixed reactions. This issue received a national attention. After the proposal of the National Assembly speaker's arbitration bill, the ruling and opposition parties' agreement on it, and the filibuster in the plenary session after the agreement was broken, the revised bill, partially amended from the original, passed the plenary session of the National Assembly on Apr. 30 and May 3, respectively. From now on, according to the amended law, the prosecution can only investigate "crimes prescribed by Presidential Decree, such as corruption and economic crimes," and only within the scope of not harming the unity of the forwarded cases. However, despite the amendment, controversy over the process of amending the Enforcement Decree and the Constitutional Court's judgment on competence disputes continue until the end of 2022.⁶³²⁾

Meanwhile, on Jun. 21, the Advisory Committee on Improving the Police System of the Ministry of the Interior and Safety released a recommendation for a plan to grant 'security'

627) The People Power Party made it clear that they would oppose the handling of the bill, saying that they would stop it with all their might, including the filibuster. The Justice Party proposed the establishment of a National Assembly discussion body for prosecution reform, saying that it supports the prosecution reform and the adjustment of the prosecution and police investigation powers, but opposes the Democratic Party's promotion method of forcible handling in the extraordinary National Assembly in April.

628) A Blue House spokesperson said, "It is a clear reality that the public doubts the fairness of the prosecution's investigation, and the National Assembly's legislation should also be for the people." The Presidential Transition Committee called for an immediate halt to the bill. The police said, "As the National Assembly is discussing it, it is not appropriate to reveal our position." Prosecutors actively objected, saying, "Now is the time to focus on establishing solutions to the problems revealed after the enforcement of the Criminal Act for coordinating prosecutor and police investigation powers and establishing the revised system."

629) Civil groups, such as the Korea Bar Association, Minbyun, and People's Solidarity for Participatory Democracy also generally expressed the view that "even if they agree in principle to separate the right to investigate and prosecute, it is not an issue to be pursued in a hurry during a regime change, as sufficient deliberation and national consensus must precede it."

630) Through the review opinion on the partial amendment of the Criminal Procedure Act (April 19, 2022), the Court Administrative Office issued a statement regarding the adjustment of investigative powers between the prosecutors and the police and the separation of investigation and prosecution as part of the division of duties within the administrative department. In order to control the risk of excessive or poor investigations by the police, it was suggested that additional or supplementary review is needed for the 13 articles of the amendment to the Criminal Procedure Act.

631) As a result of the survey commissioned by News Tomato to Media Tomato on Apr. 14, 46.3% agreed, 38.4% opposed, and 15.3% did not know about the separation of the right to prosecute and investigate. However, the results of a survey commissioned by the Energy Economics Times for Real Meter on the same day showed that 52.1% were against, 38.2% were in favor, and 9.7% were not sure.

632) Newsis, The ruling and opposition parties in battle over the complete deprivation of the prosecution's right to investigate, Oct. 17, 2022.

to the duties of the Minister of the Interior and Safety to control the police after the adjustment of the investigative powers of the prosecutors and police, and to establish the ‘National Police Bureau’ for execution of the new duties. The National Police Agency's Human Rights Committee,⁶³³⁾ some civic groups, and the media expressed opposition,⁶³⁴⁾ and the political world also had divided opinions for and against,⁶³⁵⁾ showing differences of opinion between the ruling and opposition parties. On June 27, the Minister of the Interior and Safety accepted the advisory committee's recommendation and announced the establishment of a new police work organization and the enactment of the ‘Rules on the Command of the Minister of the Interior and Safety by the Heads of the Relevant Offices,’ and announced a detailed plan on Jul. 15.

On Jul. 15, the National Police Agency expressed its opinion of accepting the establishment of the new National Police Bureau in a commentary; however, about 190 police officers at the police human resources development center held a “National Police Chiefs’ Meeting” on Jul. 23 and expressed their opposition to the establishment of the National Police Bureau.⁶³⁶⁾ The Presidential Office and the ruling party evaluated the ‘National Police Chiefs’ Meeting’ it as ‘inappropriate collective action.’ The National Police Agency placed Superintendent Ryu, who initiated the national meeting, on standby and began investigations of those attending the meeting for violating the duty of obedience and employee regulations,⁶³⁷⁾ and a controversy ensued as the opposition party expressing the

633) According to the Government Organization Act and the Act on the Organization and Operation of National Police and Autonomous Police, ‘public security affairs’ are not the affairs of the Ministry of the Interior and Safety. The establishment of an organization that violated the substantive law undermined the legislative power of the National Assembly, and presented the reason that the subject should not become government power despite the need to control the police power.

634) Opposition is mainly due to the historical context in which the physical force of the police was seized by political power and used as a means of oppression against the people, and this is why independence, neutrality, and democratic control of the police are important to eradicate excessive police force investigations and distorted investigations. Opinions in favor suggest the reason that control over the police power, which has grown after the adjustment of the investigative powers of the prosecution and police, is necessary, and that an organization monitoring the work of foreign agencies is needed like other organizations.

635) In general, various opinion polls show that there are many opinions against the necessity of establishing a police department. As a result of a public opinion poll conducted by the Korea Society Opinion Institute (KSOI), 39.7% supported and 46.4% opposed the establishment of a police department under the Ministry of Public Administration and Security, confirming a 6.7%p gap (June 17–18 survey).

636) It is known for the first time in history that front-line police chiefs, who are senior officers in the rank of superintendent, are holding a meeting, and it is estimated that about 50 superintendents attended the meeting and about 140 superintendents participated online. The total number of active duty officers is about 650.

637) On December 13, the National Police Agency imposed a three-month disciplinary action on Superintendent Ryu,

opinion that it was not appropriate to discipline for attending the meeting. In the end, the National Police Bureau, with 3 divisions and 16 members, was established within the Ministry of the Interior and Safety, but controversy continues in the process of budget allocation at the National Assembly Budget and Accounts Special Committee in Nov.

B) Debate on ‘How to Guarantee the Human Rights of the People’

The police and prosecutors, who are in charge of investigation and criminal law enforcement, are institutions with special powers that have the responsibility to protect the human rights of the people, as well as the public power that can infringe or restrict the human rights of the people. The two cases in 2022 related to the adjustment of the investigative powers of the prosecutors and police, the pros and cons from the police, prosecutors, and politicians, were ostensibly a debate over “how to guarantee the human rights of the people.” Behind this was a clear difference in the perspective on ‘who is the target of the reform’ in relation to the distribution of power between the prosecution and the police. Setting this aside, it is necessary to examine the diverse opinions on the guarantee of human rights in the investigative process related to the amendment.

First, after the adjustment of the investigative powers of the prosecutors and police in 2021, the issue is that the basic human rights of the people are being violated as the investigation is delayed at the scene of the investigation and proper guidance is not provided to the persons concerned. As the police takes charge of most of the investigations of criminal cases, the number of cases involving one investigator increased significantly, but inadequate staffing led to a decline in professionalism.⁶³⁸⁾ According to the Korean Bar Association,⁶³⁹⁾ a result of a survey showed that 73.5% of the lawyers who represented criminal cases experienced delays in investigations at the police stage, and 66.1% responded that they view the police's delays in investigations seriously after the adjustment of the investigative powers.

and it is known that Superintendent Ryu applied to the Appeals Review Committee and the court to cancel the disciplinary action and to suspend the validity, respectively.

638) Hankyoreh, Piling investigation ... No one is satisfied after 1 year, Apr. 22, 2022.

639) Korean Bar Association Press Release, May 1.

Second, since separation from the ‘separation of investigation and prosecution’ is not a formal and functional division of labor, but presupposes cooperation and checks; therefore, a discussion on this is necessary. Rather than focusing on deleting the prosecution’s authority to initiate an investigation, the prosecution needs to focus on redefining its role as a collaborator in police investigations by looking into whether the arrest of the criminal and the collection of evidence are lawful, whether there were any violations of human rights, controlling the police, looking at the arrested criminal and whether the collected evidence is sufficient to obtain a conviction, and examining whether the law applied by the police and the direction of the investigation are appropriate in the course of the police investigation.⁶⁴⁰⁾

Third is related to the democratic control of the police and the status of the National Police Commission. The National Police Agency was promoted to an independent agency with the enactment of the Police Act in 1991, and a certain level of independence was recognized to be free of influence from other administrative department, including the Ministry of the Interior and Safety. However, as the importance of the role of the National Police Commission has increased, but it was not given the appropriate organization or the status needed.⁶⁴¹⁾

C) ‘Human Rights Protection’ as the Final Goal of the Criminal Justice System Reform

The public authority of a state has a great responsibility to enforce the law accurately and equally to realize justice, uphold human rights, and protect the social safety net. Therefore, if the final goal of the investigative practice reform is the respect for human rights, aside from allocation of investigative authority and organization form, it is necessary to pay close attention to the opinion that the prompt confirmation and implementation of the prohibition of disclosure of criminal cases, the prohibition of long-term investigation and late-night investigations, unreasonable separate investigations and restrictions on prolonging the investigation, the strengthening of the office inspection of the high prosecutor's office for the prosecution's direct investigation, the realization of human rights-friendly investigation

640) Kim, Ji-min, Task to Realize the Principle of Separation of Investigation and Prosecution, Nov. 21, 2022.

641) Park, Byeong-wook, Problems with the establishment of the National Police Bureau and the need for practical implementation of the National Police Commission, Nov. 11, 2022.

methods, such as minimizing attendance investigations, and strengthening the right to know of those subject to the departure ban are the parts that show the actual achievements of the reform.⁶⁴²⁾

In principle, the issue of distributing the right to investigate and prosecute between the prosecution and the police is a matter to be determined by a legislative policy, and there are differences overseas depending on the conditions such as the type of country and the judicial system of each country. Moreover, it is difficult to determine whether the establishment of the National Police Bureau itself will negatively affect the independence of the police administration or whether it will mitigate the power orientation of the police through appropriate control over the police. However, it is also true that the background of such discussions includes historical context in relation to differences of opinion on the subject and the direction of the reform, and that there are concerns in various areas, including the civil society.

In the end, both establishing an image of prosecution for the people and the human rights-friendly police reform are the goals, substance, and performance criteria of the reforms, as well as the prosecution's function to protect the human rights and strengthening the human rights guarantees during the police investigation process. Reorganization of the criminal justice system should be planned, implemented, and evaluated in stages according to systematic roadmaps or guidelines, and it is necessary to pursue this process stably by collecting a wide range of opinions from experts, such as the National Assembly, civil society, and academia.

Moreover, it is important to look at human rights issues that emerge in the process of law enforcement as concerns were raised about the weakening of the judicial police officer's investigation control and damage to the judiciary vulnerable in relation to the objection procedure during the process of amending the Prosecutor's Office Act and the Criminal Procedure Act in 2022, and to prepare an alternative so that the people's basic human rights are not infringed at the scene of the investigation after the adjustment of the investigative powers of the prosecution and the police.

642) Kim, Han-gyun, Sustainable Human Rights Guarantee Policies of Criminal Law Enforcement Agencies and Basic Plan for National Human Rights Policies, 2022 Human Rights Policy Forum, Nov. 2022.

2) ‘War on Drugs’ and the Rehabilitation and Treatment of Drug Addicts

A) The Pan-Governmental ‘War on Drugs,’ and Questions on Its Direction

From October 2022, the government announced that it would establish comprehensive measures that include drug crime prevention and crackdown, treatment and rehabilitation, education and publicity at the pan-governmental level, led by the Prime Minister's Office. In addition, it implemented the establishment of a joint investigation team of the prosecution and the police, strengthening crackdowns, and upgrading the status of the Narcotics Countermeasures Council. The Office of the President and the government agencies emphasized this as a major national task, calling it the “war on drugs.”⁶⁴³⁾

Usually, when a country's Drug Index⁶⁴⁴⁾ announced by the UN is higher than 20, the society is considered unable to control drugs,⁶⁴⁵⁾ and in Korea, this index has exceeded 20 since 2015, reaching 31 in 2021. The number of drug offenders in Korea has been approx. 10,000 people since the time of the foreign exchange crisis. After recording 11,916 in 2015, the number has exceeded 16,000 since 2019. The number of drug offenders caught between Jan. and Jul. is estimated to exceed 10,575 in 2022, a record high, and the number of drug offenders who have not been caught will exceed 400,000 and as many as 1 million.⁶⁴⁶⁾ The Supreme Prosecutor's Office cites the environment where ordinary people who have never encountered drugs can purchase drugs relatively easily from domestic and foreign drug suppliers using the Internet (Dark Web) and social media as the main reason for the increase in drug offenders compared to a few years ago.⁶⁴⁷⁾

One of the most noteworthy things about the recent drug problem is that 56.8% of the drug offenders are in their 20s and 30s. Most of them are accused of misuse of psychotropic drugs, and this trend is similar internationally. In the US, the misuse and abuse of counterfeit drugs

643) Joongang Ilbo, [Exclusive] Yoon Administration's War on Drugs, Oct. 3, 2022.

644) Number of drug offenders arrested per 100,000 population

645) Drugs (or narcotics) refers to substances that affect the central nervous system of humans and excessively or inhibit the central nervous system, and are physically and mentally dependent and are designated and managed according to relevant laws and regulations. Narcotics, psychotropic drugs, and cannabis are sometimes used interchangeably as narcotics, but the correct term is “narcotics,” and narcotics are a type of narcotics.

646) Donga Ilbo Report, ‘War on Drug’ should not stop at a slogan, Oct. 26, 2022, Lee, Beom-jin, Professor of Pharmacology at Aju University

647) Supreme Prosecutors' Office, White Paper on Narcotics Crimes, 2021, May 5, 2022

containing large amounts of fentanyl or methamphetamine, which teenagers and young people purchase through online shopping or social media, is becoming a serious social problem.⁶⁴⁸⁾ The Supreme Prosecutor's Office expects increase in illegal cultivation, the number of drug abusers and addicts as economic recession, inequality and poverty intensified due to COVID-19.

On the other hand, as the government is emphasizing the ‘war on drugs,’ some demand measures to solve the problem of drug addiction from the perspective as a disease that requires treatment, not only as a crime requiring punishments. The world has implemented a punishment-oriented policy for the past 50 years, which can be assessed as a failure.⁶⁴⁹⁾ Several studies, including the US National Institute on Drug Abuse (NIDA), show that the cost of investing in treatment is more economical than the cost of imprisonment for drug offenders, and many countries around the world are looking for ways to invest large amounts of money in treatment.⁶⁵⁰⁾

B) Two Perspectives on Drug Addicts: Illness vs. Crime

Among domestic drug offenders, the percentage of first-time offenders in the younger age group continues to increase, and this is a sign that the overall size of the drug users is growing. The rate of reincarceration of drug offenders after being released from prison is 45.8%, which is almost twice the average rate of reincarceration of criminals in Korea, 26.6%. Therefore, measures to curb the increase in drug offenders in their 10s to 30s are needed. While acknowledging that there is a limit to the eradication of drug crimes through investigation and punishment alone, the government is presenting countermeasures focused on supply cuts, crackdowns, and is announcing a policy of “stern responses.”⁶⁵¹⁾

648) Fentanyl is a powerful analgesic that is about 100 times stronger than morphine and is widely used as an anesthetic when feeling severe pain due to its excellent sedation effect. Non-medical use of fentanyl and its analogues has resulted in thousands of deaths worldwide. Overuse of fentanyl and its analogs killed about 5,000 people in the United States in 2015, about 19,000 in 2016, and more than 28,000 in 2017, and the number of deaths is rising every year.

649) Park, Seong-su, Changes in International Narcotics Policy and Response Direction, Journal of the Korean Association for Addiction and Crime, Vol. 12, No. 2, 2022.

650) Park, Dong-gyun and Jang, Cheol-young, A Study on the Risks of Drugs in Korea and Countermeasures, Korean Public Security Administration, Vol. 16, No. 3, 2019.

651) MOJ Press Release, Oct. 13, 2022.

According to the view that emphasizes ‘treatment after punishment’ in relation to drug crimes, the need to increase undercover investigations for illegal online transactions focusing on teenagers, and providing treatment in return for punishment is emphasized.⁶⁵²⁾ Unlike other violent crimes, people smuggling, selling, and administering drugs are all accomplices, so voluntary reporting is extremely rare. On the other hand, in the case of first offenders, the rate of being sentenced to probation is high; however, the recidivism rate of all drug offenders in 2021 was 36.6%, which is double that of other crimes.

Therefore, a plan to ensure the deterrent effect of drug crimes is necessary, and to expand the manpower of the investigation departments and reinforce the sentencing standards. From this view, even if education and treatment are provided together, there is a great need to strengthen punishment, especially for drug distributors and sellers. In the opinions submitted to the 2020 Sentencing Committee, the Ministry of Justice and the Prosecutors' Office suggested that the sentencing standards for drug offenders need to be raised.⁶⁵³⁾

On the other hand, others assert that, in Korea, it is necessary to emphasize the policy for treatment and prevention as the legal system related to drug addiction is not effectively operated.⁶⁵⁴⁾ This view emphasizes the need for education and information to the public and medical personnel, and investment in related infrastructure.

Some of the issues pointed out are: drug prevention education is not systematically operated because it does not have a high priority among various compulsory education; there is a tendency for medical personnel to easily prescribe appetite suppressants, so-called ‘diet pills,’ sleeping pills, or sedatives to patients; and prevention, treatment, and rehabilitation systems are not effectively operated, where only 21 hospitals nationwide are designated as specialized drug addiction treatment hospitals, and of these hospitals, only 8 facilities had any experience treating drug addicts.

652) Korea Economy, How to deal with teenagers' use of drugs? Punishment first or prevention first, Oct. 16, 2022

653) Donga Ilbo, 1 out of 2 drug offenders are sentenced to probation, Oct. 11, 2022.

654) Kim, Young-ho, Legislative discussions on the importance of drug addiction prevention, treatment, and rehabilitation, and response strategies, and support for education to combat narcotics, Sep. 30, 2022

C) Duty of the State for Prevention and Treatment of Drug Addictions

Article 12 of the UN Covenant on Economic, Social and Cultural Rights stipulates that ‘the right of everyone to enjoy the highest attainable standard of physical and mental health’ is recognized. According to ICESCR General Comment No. 14 (2000), ‘the right to the highest attainable standard of health,’ states are particularly obliged to respect the right to health, preferably through legislative implementation, in relation to implementing promotional campaigns on alcoholism, smoking and drug addiction, and the failure to suppress the production, trafficking and consumption of drugs and other harmful substances is failure to take necessary measures by the state in order to protect the people within their jurisdiction from violations of the right to health by third parties.

The international conventions on narcotics control,⁶⁵⁵⁾ and the Narcotics Control Act, the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, the Act on the Aggravated Punishment of Specific Crimes and the Criminal Act stipulate the role of the state in drug control and treatment. These provisions stipulate the state’s responsibilities for early detection, treatment, education, follow-up care, rehabilitation and social integration in relation to drug abuse.

Drugs not only damage one’s mind and body, but also make the other party and the entire society uneasy. It is also of concern that it is highly likely to be linked to violent crimes, such as sex crimes, violence, and murder. However, it is confirmed through international examples that drug addiction is a brain disease, in which drugs act on the brain and cause deterioration of the brain’s compensatory neural circuit and control function. Therefore, it is necessary to implement a policy focusing on treatment from the perspective that drug crimes are pathological phenomena caused by brain diseases, different from general criminal cases.

However, the budget for drug addiction prevention and treatment is insufficient compared to other areas. The budget allocated for the treatment program is only about 400 mil. KRW,⁶⁵⁶⁾ which is only enough for about 100 people to be hospitalized once and far less than the stop-smoking program (about 150 bil. KRW), gambling addiction (about 20 bil. KRW),

655) See Single Convention on Narcotic Drugs (1961), Convention on psychotropic substances (1971), and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

656) Joongang Ilbo, [Exclusive] 90% of hospitals designated for treatment of addicts are not accepting drug patients, Jul. 8, 2022., 20,000 drug addicts, and budget to treat only 100, Oct. 29, 2022

Compared to alcohol addiction (about 15 bil. KRW) and alcohol addiction (about 10 billion KRW), drug addiction (about 3 bil. KRW, and 4.1 bil. KRW when including the local government subsidies and donations). This is only about 1.3% (1/76) of the drug addiction prevention and treatment budget in the UK, having a similar population size as Korea.

In order to minimize social costs caused by drugs, in addition to crackdowns and punishments, it is necessary to implement a sustainable support policy based on human rights from a long-term perspective, including development of a treatment-oriented trial model, substantialize treatment order for drug addicts, treatment order such as outpatient treatment, probation, order to attend classes, etc., training of drug addiction experts, data collection of drug policy, improvement of monitoring and evaluation, and research and implementation of programs to improve social awareness on drug abuse and addiction problems.

3) Conditions and Problems of Overcrowding in Prisons

A) The Supreme Court's Ruling on State Compensation for Overcrowding

In Jul. 2022, in its ruling, the Supreme Court effectively acknowledged the state's human rights violations and for compensation due to overcrowding in detention facilities.⁶⁵⁷⁾ This was the first Supreme Court decision to acknowledge state compensation for overcrowding in detention facilities, and it came about eight years after the Constitutional Court's decision in 2016 that the method of confinement under a certain area violates human dignity. The Constitutional Court stated in a supplementary opinion that the state must secure an accommodating area of at least 2.58m² per prisoner in detention facilities, and since it is not a problem that can be solved quickly, improvements should be made over a considerable period of time (5 to 7 years at the latest). However, the problem of overcrowding remains unresolved.

Overcrowding can be seen from two concepts, broadly. First, it means overcrowding in the sense that the living space of prisoners is small, as in the 'living space per detainee.' Second is a phenomenological concept, referring to accommodating prisoners in excess of the capacity of detention facilities.

657) Supreme Court, Decided on Jul. 24, 2022, 2017Da266771.

Both the Supreme Court ruling and the 2016 Constitutional Court decision are lawsuits related to the smallness of the living space per capita. The Supreme Court ruled that “if the accommodating space per capita is too small to accommodate daily life, it is an illegal act unless there are special circumstances.” However, it is unclear as to what extent the area is ‘too small to allow for daily life,’ whether it is overcrowded to the extent that it goes beyond the limits of exercising the state’s right to punish and violates the dignity and value of the prisoner as a human being.⁶⁵⁸⁾

Korea has yet to legally set the minimum accommodation area per person. The standard area of a room in detention facilities in Korea was set at 2.58m² (0.78 pyeong) or more per person. On Dec. 29, 2014, the Ministry of Justice revised the ‘Standard Rules for Legal Facility’ to expand the standard area to 3.40m² (excluding toilets, International Red Cross standard), and then revised it to 3.40m² including toilets on Dec. 29, 2017. On the other hand, Article 82 of the ‘Guidelines for Classification of Accommodation and Transfer and Record’ sets the standard for calculating the capacity of a single room as 2.58m². These standards are mere rules of the Ministry of Justice and do not have external binding force.

The Ministry of Justice announced on Mar. 6, 2022 that the capacity of correctional facilities nationwide was at 101.3%, a significant improvement from 113.8% in the 4Q of 2019. However, the capacity of detention facilities in major cities (Incheon, Daegu, Daejeon, Gwangju, etc.) is still high at 114.4~135.1%. Detention facilities with less than 100% of capacity are detention facilities for female detainees and non-convicted detainees in large cities.⁶⁵⁹⁾

658) Looking at the area that the Constitutional Court judged as ‘overcrowding beyond the limits of the exercise of the state’s right to punish,’ the claimant’s dignity as a human being is was infringed if a male claimant stayed at 1.49m² for 2 days and 16 hours and 1.79m² for 6 days and 5 hours, respectively (Constitutional Court, Decided on Dec. 29, 2016, 2013HunMa142). In subsequent cases, when the constitutional complaint was filed, each person was accommodated in a mixed living room with an area of less than 2.58m² per person, but after that, if each person was accommodated in a mixed living room with an area of 2.58m² or more per person, “this situation has already ended, and the infringement of the basic rights of the complainant is further It was dismissed on the grounds that, since there is no ideal, the subjective interest in protecting rights to seek confirmation of unconstitutionality is not recognized” (Constitutional Court Decided on Dec. 22, 2020, 2020HunMa1576). The court (Busan High Court, Decided on Aug. 31, 2017, 2014Na50975) decided that “It is difficult to see that the defendant has a legal obligation to secure a holding area of 2.58m² per prisoner based on the standard rules for legal facilities. The plaintiffs’ arguments on other premises are groundless,” and for the following reasons, “if the area of accommodation per person is less than 2m², it is reasonable to view that the act of expropriation during that period exceeded the limit of the number of people and was illegal.”

659) On the other hand, even if there is a shortage of detention centers near large cities, there may be overcrowding problems in addition to the problem that treatment according to the classification of accommodation is impossible.

B) Overcrowding as a Limitation of Exercising the Right to Punish and Violating Human Dignity and Values

Article 10 of the Constitution states that “all citizens shall be assured of human worth and dignity and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.” Article 7 of the ICCPR, which Korea is a party to and has domestic legal effect, stipulates that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Such inhumane treatment is defined as ‘torture’ (means intentional infliction of extreme physical or mental suffering on an individual) in Article 1 of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (Convention against Torture) to which Korea is a signatory, and therefore, Korea, as a signatory, must take effective legislative, administrative, judicial or other measures to prevent it pursuant to Article 2(1).

Overcrowding in detention facilities⁶⁶⁰) causes greater anger, frustration, and tension to inmates, makes it inevitable to have unwanted interpersonal relationships, creates a stressful situation, and adversely affects correctional work, as shown by many studies in Korea and overseas. Psychological changes of detainees due to overcrowding increase detention stress, and consequently, detainees' aggression tendencies increase, and interpersonal phobia, self-escape, indifference, and boredom may increase. As a result, endless correctional accidents may occur, such as mutual assault between prisoners, assault by prison guards by prisoners, or suicide by prisoners.

In other words, the researchers who study overcrowding commonly point out that confining an inmate in a space where human dignity is lost for a long time destroys a person's personality, and it has serious consequences on fellow inmates and prison guards.

The state's right to punish is a retribution for harm, but the means and degree of punishment must be exercised based on human dignity. However, overcrowding causes more anger, frustration, and tension in inmates and creates a stressful situation, which can have negative effect. Cruel and inhumane treatment does not conform to international

660) Here, it means the narrowness of the ‘accommodating living area per person.’

standards or domestic standards that stipulate facilities such as adequate space for healthy living. Moreover, detaining people in a space where a fixed space is not secured has exceeded the limits of the exercise of the state's right to punish.

It is worrisome that there are still detention facilities at 130% of capacity, given that 2.58m² or 3.40m², is not considered large as compared to international standards.⁶⁶¹⁾

C) The Need to Solve Overcrowding

The causes of overcrowding in detention facilities are complex, and sympathy and efforts from the whole society, including various government institutions, are required for a resolution. Overcrowding occurs when the number of detained persons exceeds the capacity, and this is due to the high pretrial acceptance rate compared to developed countries,⁶⁶²⁾ the passive operation of the parole system, and difficulties in building new detention facilities due to the NIMBY phenomenon.⁶⁶³⁾ Therefore, in order to resolve overcrowding, it is necessary to reduce the number of inmates or increase the number of people on parole, build or expand new detention facilities, and specifically expand pretrial and female confinement buildings in the process of securing space.

In other words, the parties involved in the policy to resolve overcrowding are the prosecution, the courts, the Ministry of Justice, the Ministry of Economy and Finance, the Ministry of the Interior and Safety, the National Assembly, local governments and local residents. All of parties involved have expressed sympathy that overcrowding violates the basic human rights of the inmates and must be improved. However, as many actors are involved and the responsibility for overcrowding is dispersed, it is important for the government to have a will to resolve the issue of overcrowding on its own initiative.

661) Looking at overseas examples of the minimum standard area per prisoner, in the case of solitary confinement, 'area necessary for individual health' according to the UN minimum standard for detainees, 5.40m² for the International Red Cross, 7m² for the European Convention against Torture, 5.57m² for the United States (federal facility), 6~7m² for Germany, and Japan suggests 10m² as the minimum standard area. The confinement area per prisoner in a correctional facility will inevitably be influenced by the social and economic conditions of each country and the physical condition of the prisoner, but in light of the fact that it is the most basic environment for human life, the above international case applies to Korea as well.

662) Non-convicted prisoners, which are the main cause of overcrowding in large cities, account for 33.8% of the total prison population as of April 2021. Korea's pending acceptance rate is about 10% higher than the average of OECD member countries.

663) Kim, In-yu, <Relocating Anyang Prison, an old local issue under controversy again>, 《Yonhap News》, Sep. 28, 2022.

Overcrowding has been a problem since the 1970s. The Constitutional Court ruled in 2016 that overcrowding violates human dignity and values. As of Jul. 2022, there are about 209 lawsuits filed for damages against the state in relation to overcrowding,⁶⁶⁴⁾ and some lower courts have even acknowledged the illegality.⁶⁶⁵⁾

The UN Human Rights Committee and the UN Committee against Torture recommended the improvement of the physical condition and implementation of specific measures to comply with the international standards set forth in the Nelson Mandela Rules in their concluding observations on government reports in 2015 and 2017. The NHRCK also recommended to improve the issue of overcrowding in detention facilities based on the results of ex officio investigations in 2013 and 2017, and more than 27 cases of recommendation for improvements were made over the past three year (2020~2022).

The government assessed that the 2021 implementation status of the 3rd National Action Plan for the Promotion and Protection of Human Rights for improving the personal restraints program is underway to resolve the overcrowding in detention facilities.⁶⁶⁶⁾ The government has promised to resolve overcrowding at every opportunity on this issue, but there are no signs of improvement even after a considerable amount of time has passed. As the considerable period (5~7 years at the latest) urged for improvement by the Constitutional Court in 2016 has already arrived, it is necessary to establish alternative plans that can be applied immediately, in terms of budget, organization, and manpower to resolve the issue of overcrowding of inmates.

664) According to the Naeil Shinmun article on July 26, 2022, "Reduce the number of non-convicted prisoners and expand parole," as of July 19, 2022, 209 lawsuits for damages related to overcrowding against the state as defendants are in progress.

665) In the 2019GaSo32442 judgment sentenced on June 16, 2022, the Jeonju District Court stated, "the defendant (Korea) is claiming financial problems and various other circumstances, but these are all unreasonable. It is a matter of the defendant's will" and 'particularly with respect to the financial issue, it is a claim that is completely unreasonable in light of the size of Korea's GDP,' saying, "The defendant cannot solve the problem of confinement and overcrowding of prisoners for any reason. There is no justification for not resolving it."

666) National Human Rights Policy Council, Implementation Status of the 3rd Human Rights NAP, 2021, 2022, p. 2~5.

2. Human Rights Protection System

A. Human Rights Status 2022

Since protecting human rights is the most fundamental role of the state, logically all state activities, laws, organizations, and institutions are a ‘human rights protection system.’ However, this section will look at the topics that have not been examined in other sections among topics related to laws, institutions, recommendations of international human rights organizations, and efforts to implement them in a more direct or specialized way. Institutions or systems that protect human rights sometimes change to reflect the circumstances and the culture of the times, and there were many related discussions in 2022.

In Oct. 2022, Korea was defeated for the first time in its history in the UN Human Rights Council (UNHRC) for consecutive terms. In the election of the four members of the Asia-Pacific region held at the UN General Assembly in New York, eight countries were nominated and 193 countries participated in the vote. South Korea (123 votes) ranked fifth behind Bangladesh (160 votes), Maldives (154 votes), Vietnam (145 votes), and Kyrgyzstan (126 votes).

The UNHRC is responsible for promoting human rights and fundamental freedoms in the international community, and for addressing and recommending serious and systemic human rights violations. Although the decision of the UNHRC is not legally binding, it has a significant impact on the international communities and political weight, and can be an important place for South Korea, especially as it discusses the North Korean human rights resolution. Korea was a member state from 2006~2008, 2008~2011, 2013~2015, 2016~2018, and 2020~2022, and in this election, there was a prevailing prospect that it would be reappointed without major change, but contrary to the expectations, it failed. Moreover, the other states that became the member are also not model countries for human rights, so it is necessary to reflect on the reason for the failure.⁶⁶⁷⁾

Meanwhile, in terms of domestic law, a ‘military human rights officer’ was newly established in the NHRCK from Jul. 1, 2022, due to the revision of the National Human

667) Sisa Journal, Even behind a country with ‘kidnapped marriage,’ Korea’s failure in UNHRC, Oct. 12, 2022.

Rights Commission Act. The duty of the military human rights officer is to guarantee the fundamental rights of soldiers and to remedy the violations. For this, the methods and procedures for visits to military units, notification, information to be notified to the committee in case a soldier dies while serving, method of requesting participation in investigations, and substance of the notification have been established. Moreover, regarding sports human rights, the NHRCK amended the ‘Sports Human Rights Charter’ and ‘Sports Human Rights Guidelines’ prepared on Dec. 12, 2010, and recommended to the Minister of Education, the Minister of Culture, Sports and Tourism, the superintendent of education in each city and province, and the president of the Korea Sports Council to adopt and educate them.⁶⁶⁸⁾

The enactment of the Anti-Discrimination Act and the Framework Act on Human Rights Policy are being delayed. The Anti-Discrimination Act had its first public hearing in the National Assembly, 15 years after it was first proposed, and various civil groups continued their activities for the legislation; however, the National Assembly and some organizations were passive in enacting the bill for the reason of ‘social consensus.’ 42 UN special rapporteurs issued a statement before the 2022 Human Rights Day on Dec. 7, 2022, urging each UN member state to prioritize enacting, enforcing and implementing anti-discrimination laws.

The Framework Act on Human Rights Policy jointly submitted to the National Assembly by the NHRCK and the Ministry of Justice at the end of 2021 is pending without special discussion, except for the need to enact it to guarantee regional human rights. In addition, the 3rd Human Rights NAP expired in 2022, but the 4th Human Rights NAP is not yet prepared. The NHRCK recommended 100 key tasks to the President in July to prepare the 4th Human Rights NAP, but was not prepared prior to the beginning of 2023.

There are no absolute answers in the laws surrounding human rights. It is always necessary to think about a better system or an alternative system to protect the people’s human rights. From this perspective, in order to see whether the human rights protection system is well prepared and working in Korea in 2022, this report examines the issues of local human rights administration, student human rights ordinances, and educational curriculum, which were discussed much in 2022.

668) NHRCK, Decided on Dec. 12, 2022, Recommendation to implement the Sports Human Rights Charter and Guidelines (Amended).

B. Main Topics

1) Issues with the Shrinking Regional Human Rights System

A) Status of the Human Rights Ordinances and Organizations of Local Governments

In 2012 and 2017, the NHRCK made recommendations and expressed opinions to prepare basic human rights ordinances and systems for the local governments. Approx. 10 years later, as of Dec. 2021, all 17 metropolitan local governments and 111 out of 226 provincial local governments enacted basic human rights ordinances, and the human rights departments were established within the local governments. However, with the launch of the 8th national simultaneous local election held on Jun. 1, 2022, the 8th civil election of the heads of local governments and the members of regional councils, there are concerns that some regional human rights ordinances may be abolished or that human rights organizations may downsize.

In Sept. 2022, Daegu abolished the Human Rights Protection and Promotion Committee on the grounds that 99 of the 199 organizations established in Daegu would be consolidated and abolished for administrative efficiency.⁶⁶⁹⁾ Civil groups operating in Daegu region expressed their opposition by holding press conferences demanding that the decision be withdrawn.⁶⁷⁰⁾ The Seoul Metropolitan Government formed the 4th human rights committee, after about 11 months has elapsed since the end of the 3rd human rights committee. Other local governments are also reducing human rights departments in terms of organization, manpower, and budget.

Chungcheongnam-do, while announcing reorganization, transferred the duties of the Autonomous Administration Division, which had a human rights team, to the Autonomous Safety Office, but excluding the “matters (duties) related to the promotion of citizens’ human rights.” Moreover, as a request for the abolition of the Ordinance on Human Rights was filed with the Chungcheongnam-do Council on Aug. 22, signatures from residents are

669) In accordance with Articles 7 and 8 of the Daegu Metropolitan City Ordinance on the Protection and Promotion of Human Rights, it has functions such as deliberation on policies to guarantee and promote citizens' human rights, and discovery of practical tasks. Since 2017, the 3rd committee has been operating for a two-year term (2021. 9. 8. ~ 2023. 9. 7., 15 people).

670) Maeil Shinmun, Civic groups strongly oppose the decision to abolish the 'Daegu Human Rights Commission', Sep. 21, 2022.

being collected, and if 12,016 signatures are obtained by Feb. 25, 2023, it will be presented as an agenda for the regional council. Chungcheongnam-do has experienced human rights ordinances being abolished and re-enacted once in 2018.

Regarding this situation, on Oct. 18, the National Council of Human Rights Committees of Metropolitan Governments issued a statement criticizing the abolition of the Daegu Regional Human Rights Committee and urging the enactment of the ‘Framework Act on Human Rights Policy’ containing regulations related to the establishment of human rights organizations in local governments. The Commissioner of the NHRCK also issued a statement expressing regret over the movement to abolish the ‘Human Rights Protection and Human Rights Promotion Committee’ in some metropolitan and local governments and hope that local governments can play an important role in reviewing the value of human rights in Korean society and strengthening the regional human rights protection system.

B) Challenges and Limitations of the Regional Human Rights Systems

The regional human rights systems can be seen as consisting of human rights ordinances in the normative aspect and human rights organizations and departments dedicated to human rights in the organizational aspect. The local human rights organizations are composed of the Human Rights Committee, Human Rights Center, and Human Rights Relief Organizations (names vary by local government, such as human rights protection officers, human rights defenders, and human rights investigators) according to their unique functions and roles. In addition, the departments dedicated to human rights in administrative agencies carry out human rights affairs of local government administration and play a role in implementing the recommendations of human rights organizations.

Regarding the abolition of the human rights ordinance in Chungcheongnam-do, those who demand the abolition or amendment of the ordinance claim that the current human rights ordinance contains wrong concept of human rights.⁶⁷¹⁾ Moreover, in the course of the actual

671) The gist of the petitioner’s argument for the abolition of the ordinance is that the “Chungnam Human Rights Ordinance” is a false human rights concept (sexual orientation, gender identity, various family types, ideology, criminal record, guarantee of other religions, etc.) reflected in the education, assessment and policy, etc., and social instability due to the increase in terrorist crimes caused by the increase in Muslims in Europe. Also included is the opinion that it is inappropriate for local governments to enact ordinances without legal grounds, since

operation of human rights organizations and departments dedicated to human rights, objections are sometimes raised as to which tasks are specifically related to human rights and whether human rights organizations can make recommendations and comments.⁶⁷²⁾ On the contrary, the concept of ‘human rights’ in the “Chungnam Human Rights Ordinance” does not pose a special problem in light of other related laws.⁶⁷³⁾ Some also assert that raising issues with sexual orientation and religion in particular is an argument based on hatred, and that all administration should be based on the value of human rights.⁶⁷⁴⁾

There are also controversies regarding the powers and legal basis of regional human rights organizations. Although it is difficult to find an explicit provision for local governments to enact human rights ordinances in relevant laws such as the current the ‘Local Autonomy Act,’ but in light of the decision of the Constitutional Court, which determined that local governments have the authority to prepare student human rights ordinances,⁶⁷⁵⁾ it can be said that the enactment of human rights ordinances is based on the Constitution and laws. However, as the specific authority and role that human rights organizations should be granted with varies depending on the image of different regions, various conflicts and problems arise. In order to solve this problem, many are calling for an active role from the human rights organizations, such as enactment of the ‘Framework Act on Human Rights Policy’ currently proposed to the National Assembly and education and support for regional human rights organizations by the NHRCK.

On the other hand, the need to analyze the roles and status of human rights organizations is also raised in order to properly establish the human rights system of local governments so that the roles and status of human rights organizations do not change according to the will of the head of the organization.⁶⁷⁶⁾ These opinions point out the need to present the roles and

“human rights” are state affairs.

672) Kim, Hyeong-nam, Achievements and Limitations of Local Government Human Rights Mechanisms, 2022 Human Rights Policy Forum Discussion Paper, Nov. 2022

673) National Human Rights Commission Act, Article 6 of the Act on the Execution and Treatment of Prisoners (Prohibition of Discrimination), Article 6 of the Act on the Execution of Punishments and Treatment of Prisoners in the Military (Anti-Discrimination), Police Officer Duties for Human Rights Protection Rules (Directive of the National Police Agency) Article 76 (Investigation of Sexual Minorities), Rules for Human Rights Protection Investigation (Directive of the Ministry of Justice) Article 4

674) Woo, Sang-yeol, “Tasks for strengthening the regional human rights system,” 「2022 Human Rights Policy Forum Materials」 Discussion Paper, Nov. 2022

675) Constitutional Court, Decided on Nov. 18, 2019, 2017HunMa1356

the status of the human rights organizations in order to resolve issues, such as lack of awareness of the ‘human rights remedy process’ that is distinct from existing criminal justice organizations or other various civil complaint handling organizations, limitations of independence and expertise, and the problem of uneven overall competency by region for not having working group, etc.

C) Responsibilities to Ensure Human Rights as a Core Mission of Local Governments

Following the adoption of the “Resolution on Local Government and Human Rights” by the 24th UNHRC (Sep. 2013) and the adoption of an interim report on the resolution at the 27th UNHRC (Sep. 2014), the human rights policies at the local government level have begun to be on the agenda at the UN. The guarantee of human rights in the everyday life of the people means the guarantee of human rights in the specific time and space in which people lead their lives, and for this, it is necessary to go beyond the human rights guarantee at a national level and establish a human rights guarantee system in the local communities.

The enactment of ordinances and establishing organizations by local governments to implement their responsibilities in ensuring human rights is not an arbitrary and discretionary act by the head of the local government, but it is a basic administrative act to realize the duty to guarantee the fundamental rights by the state specified in the Constitution, the principle of local autonomy, and the duty to guarantee human rights emphasized by the international human rights norms at the regional level.

The abolition of human rights ordinances or regional human rights committees and the reduction of departments dedicated to human rights in some local governments go against the Korean society’s pursuit of realizing the human rights values. Human rights are universal values whose value cannot be denied depending on political or religious orientation or interests, and various interpretations regarding the meaning and application of human rights are possible; however, there are some terms of human rights that must be protected and realized under any circumstances. It is necessary to make it clear that it is unacceptable to

676) Report commissioned by the NHRCK, Policy research for strengthening and establishing regional human rights protection system, Oct. 2022

oppose the system of promoting human rights and the human rights itself by using hatred towards specific groups, such as LGBTI, foreigners, and certain religions.

The various problems surrounding the human rights system of local governments are due to the lack of clear understanding and interpretation of the human rights system of local governments by the Korean society, including those involved, and the lack of efforts to confirm the normative basis. Administrative agencies recognize human rights organizations as means, rather than as partners, or as unnecessary obstacles, and the society that composes the Human Rights Committee mutually recognizes administrative agencies as objects of enlightenment, resulting in tension and conflict.

Therefore, it is necessary to analyze the performance and limitations of the regional system of promoting human rights over the past 10 years or longer, and to gain consensus among officials, public employees, and local residents about the importance, role, and method of the regional system of promoting human rights. The final task is to refine human rights ordinances based on past experiences and strengthen the human rights duties to make ‘human rights mainstream’ that emphasizes the value of human rights in all decision-making and administration related to the lives of the local residents.

However, it is desirable to prepare explicit legal regulations so that the regional human rights system is not adversely affected by the disposition of the local heads or the external environment, rather than considering the retreat of the regional human rights system as simply a ‘conflict within the community.’

2) Student Human Rights Ordinance and Issue of Discrimination in the New Curriculum

A) Continued Conflict over the Student Human Rights Ordinance and Controversy over the 2022 Revised Curriculum

The student human rights ordinance is an ordinance enacted by each office of education to ensure that the dignity and value of students are guaranteed and realized in the school curriculum, and was first promulgated by the Gyeonggi Provincial Office of Education in Oct. 2010. Since then, it has been enacted by various local offices of education, and as of the end of 2022, it is being implemented in 7 out of 17 cities and provinces nationwide.⁶⁷⁷⁾ Meanwhile, the curriculum announced by the Ministry of Education is the overall plan for what students will study and teachers will teach in the future. The student human rights ordinances and curriculum are considered important because they can have great impact on students who spend a long time at school, acquiring knowledge from classes, and interacting with people on campus.

Conflict continues over these student human rights ordinances and curriculum. In the case of the student human rights ordinance, an attempt to abolish the already enacted ordinance appeared in 2022. In Chungcheongnam-do, from Aug. 22, 2022 to Feb. 25, 2023, resident petitions for the abolition of the Framework Ordinance on Student Human Rights are being collected, and in the Seoul Metropolitan Government, in Aug. 2022, a civic group submitted a list of resident applicants for the abolition of the student human rights ordinance to the Seoul Metropolitan Council. On the contrary, there are cases where the enactment of the student human rights ordinance was implemented. From Oct. 24, 2022 to Apr. 23, 2023, resident initiated signing for the Gangwon-do Student Human Rights Ordinance was conducted,⁶⁷⁸⁾ and on Nov. 22, 2022, a resident initiative proclamation ceremony was held in front of the main gate of the Daejeon Metropolitan Office of Education to enact the Daejeon Student Human Rights Ordinance.⁶⁷⁹⁾

677) Gyeonggi-do, Gwangju, Seoul, Jeollabuk-do, Chungcheongnam-do, and Jeju Special Self-Governing Province, and Incheon Metropolitan City Office of Education. A total of 7 regions, including Incheon Metropolitan City, which is enacting and enforcing the Ordinance on the Promotion of Human Rights for School Members.

678) OhMyNews, "Gangwon-do student human rights ordinance, will it succeed this time?," Nov. 3, 2022

679) News Free Zone, "Proclamation ceremony to enact the Daejeon Student Human Rights Ordinance," Nov. 22, 2022.

Those promoting the abolition take issue with the inclusion of sexual orientation as the grounds for prohibiting discrimination in the student human rights ordinance, or claim that the student human rights ordinance promotes infringement of teacher rights. In response, the NHRCK expressed regret over the movement towards the abolition of human rights ordinances at some local governments, including the attempt to abolish the student human rights ordinance, in a statement by the Commissioner on Sep. 26,⁶⁸⁰⁾ and civil groups criticized the move to abolish the human rights ordinance in 2022.

Meanwhile, diverse discussions on the 2022 revised curriculum, which was confirmed in Dec. 2022, are also continuing. On Nov. 9, 2022, the Ministry of Education issued an administrative advance notice on the amendment to the ‘Elementary and Secondary School and Special Education Curriculum’ to prepare the 2022 revised curriculum. According to the amendment, the term ‘sexual minority,’ which was included as an example of a social minority in the explanation of achievement standards for ‘integrated society’ in high school, is changed to ‘minorities discriminated against based on gender, etc.,’ and the term ‘gender equality’ was replaced with ‘prejudice against gender’ in the moral and health curriculum. Some civic groups, in response, criticized the Ministry for erasing the existence of sexual minorities and denying the structural sexism, and for accepting the logic of hatred and discrimination, which only account for some public opinion.⁶⁸¹⁾

The NHRCK also pointed out in a statement on Nov. 28 that the human rights discourse in Korean society, which has pursued active gender equality, could be pushed back. In particular, they expressed concern that the deletion of the term “sexual minority” could lead to a de facto ban on the use of the term sexual minority in offices of education and schools and a deepening the perception of discrimination against sexual minorities.

680) NHRCK Press Release, “Statement on the movement to abolish human rights ordinances of local governments,” Sep. 26, 2022

681) Hankyoreh, “Gender Equality ... Proposed amendment to the curriculum without sexual minorities,” Nov. 9, 2022; Pressian, Deleting sexual minorities is the public opinion?, Nov. 16, 2022

B) Difference of Opinions Surrounding the Student Human Rights Ordinance and the 2022 Revised Curriculum

The conflicting opinions surrounding the student human rights ordinance and the 2022 revised curriculum are similar in that they focus on issues related to discrimination. First, in case of the student human rights ordinance, those who support the enactment or maintenance of the ordinance are concerned about potential student human rights violations when the ordinance is abolished. The current student human rights ordinances, although there are regional differences, explicitly guarantee the human rights of sexual minorities, women, the disabled, and migrants. Moreover, while emphasizing that teaching rights and human rights are compatible concepts, it also suggests an alternative that if there is a concern about the violation of teacher rights due to human rights ordinances, it can be solved by enforcing the ‘Ordinance on the Protection of Teacher Rights and Educational Activities.’⁶⁸²⁾

On the other hand, those who oppose the enactment of the student human rights ordinance or insist on the abolition of the ordinance claim that the student human rights ordinance, which only emphasized the rights of students without mentioning the responsibilities and duties of students, is wrong, and that the abuse of rights derived from such student human rights ordinances diminishes teaching rights and infringes on students’ right to learn. Moreover, some of the provisions of the student human rights ordinance stipulate ‘wrong human rights,’ and stipulating the right not to be discriminated against for reasons such as ‘sexual orientation’ and ‘gender identity’ encourages homosexuality and transsexualism, and prohibiting discriminatory words or actions and hate speech violates freedom of expression.⁶⁸³⁾

On the other hand, the controversy related to the 2022 revised curriculum was mainly centered on gender-related terms, such as ‘sexual minorities’ or ‘gender equality.’ This issue can later be expanded to the question of whether or not stories such as sexual minority discrimination can be dealt with in schools, where the corresponding curriculum is applied.

682) Keumgang Ilbo, “Could Daejeon Student Human Rights Ordinance Succeed?” Nov. 22, 2022

683) Christian Times, Online petition to abolish Seoul Student Human Rights Ordinance, Feb. 3, 2022.

Not being covered in the curriculum means not being mentioned in the society of school, so some claim that the purpose is to make LGBTI people invisible in the society, while there are also opinions that it is proper to not cover such issue in the curriculum because of concerns about confusing identities of teenagers.⁶⁸⁴⁾

C) Tasks for a Better Human Rights Protection System

Article 29 of the UN Convention on the Rights of the Child, ratified by Korea in 1991, states that the goals of education for children are: advancing respect for human rights, fundamental freedoms and the principles set forth in the Charter of the UN; and to provide for the readiness of children to lead responsible lives in a free society in the spirit of understanding, peace, tolerance, equality of the sexes and friendship in relations with all persons, including racial, ethnic and religious groups and indigenous people.

Rather than making arguments based on hatred and discrimination in discussions on the student human rights ordinances and curriculum, priority should be given to thinking about how to organize a curriculum that ensures that the human rights of students are not violated and that they can receive all the necessary education.

In the 2019 decision on the ‘Seoul Student Human Rights Ordinance,’ the Constitutional Court found that the student human rights ordinance was constitutional as it was intended to form the right values as a democratic citizen and to foster human rights awareness, and specifically standardized what is stipulated in the Constitution and conventions.⁶⁸⁵⁾

It is important that human rights can be effectively guaranteed in daily life and that Korean society pursues the realization of human rights values. To this end, cultivating human rights sensitivity from school is essential for Korean society to accept the value of human rights as the mainstream.

This is absolutely necessary because it reflects the human rights perspective in the student human rights ordinance and the standards of all life at school. It is important to reflect the

684) Hankyoreh, “Gender Equality ... Proposed amendment to the curriculum without sexual minorities,” Nov. 9, 2022

685) Constitutional Court, Decided on Nov. 28, 2019, 2017HunMa1356

human rights perspectives in the curriculum prepared by the Ministry of Education in creating human rights-friendly schools. Human rights should be applied as an important criterion during the discussions on all future curricula beyond the 2022 revised curriculum, and the important values of human rights such as ‘respect for human dignity,’ ‘freedom,’ ‘equality,’ and ‘solidarity’ should be reflected in the education.

3. Information and Communication Technology and Human Rights

A. Human Rights Status 2022

In today's intelligent information society, anyone can easily create, use, process, store, search, and deliver information, and these information are connected beyond space and time through various networks. Furthermore, we are entering an era where machines can learn, analyze, and process information on their own, show insights similar to or far beyond humans, or create new values, beyond the form of information processing in which humans directly intervene, design, and control.

The development of information and communication technology has brought various benefits and conveniences to people, and improvement of rights and equality. However, on the other hand, as technology develops and the information society advances, information itself begins to act as an important element of domination or power, not just a data or knowledge, and as a result, problems such as mass accumulation and utilization of information, control, and widening gaps have emerged.

An example is a new human rights agenda related to information, such as the government, public institutions, and companies' mass collection of personal information, misuse and leakage, monitoring with information and communication technology, and gaps in information access and utilization. The basic rights of individuals related to the processing and distribution of information can be classified as 'Information and Communication Technology and Human Rights.'

As seen above, information and communication technology and human rights are fundamental rights newly emerging in the information society, but there are cases where they can be subsumed by the existing basic rights related to information. They are fundamental rights directly or indirectly related to informational activities, such as freedom of speech and publication, freedom of academic and artistic freedom, personal rights, confidentiality and freedom of privacy, and freedom of communication. On the other hand, there are areas of informational and communication technology and human rights that cannot be sufficiently covered by these traditional fundamental rights alone, such as the right to know, the right to

access, and the right to self-determination of personal information. These are fundamental rights not enumerated in the Constitution, and are understood to be derived based on the existing fundamental rights provisions or other constitutional principles.

The information and communication technology and human rights is a somewhat unfamiliar concept in Korea. However, the mobile phone penetration rate in Korea is 100%, among which 95% are smartphone users. When the service provided by Kakao was suspended in Oct. 2022, various problems arose in various parts of Korea. Korea is at the center of an intelligent information society, such as cases of damage caused by leakage of personal information from large corporations and public institutions, the emergence of various services linked with AI technology, and the use of YouTube and social media, as the daily use of online communities. Therefore, information and communication technology and human rights can be seen as a major human rights area in Korean society. In this context, the NHRCK has prepared human rights guidelines for the development and use of AI in 2022, and the information and communication technology and human rights report of the intelligent information society.

In this section, important topics related to information and communication technology and human rights in 2022, ‘the problem of collecting excessive behavioral information for the purpose of customized advertising,’ ‘the proposed amendment to the ‘Communications Secrets Protection Act,’ ‘the problem of prohibiting the recording of conversations without consent between the parties,’ and ‘AI technology and human rights problems: face recognition CCTV installation and utilization’ will be discussed.

B. Main Topics

1) Problems of Customized Advertising from the Information and Communication Technology and Human Rights Perspectives

A) Personal Information Protection Commission's Decision to Impose Fine on Multi-National Corporations

A global IT company changed its privacy policy in Korea on May 26 and included the collection of personal information, such as third-party behavioral information for customized advertising, in the “mandatory consent”⁶⁸⁶⁾ section. The company stated that this was necessary to provide customized information, such as advertisements or news through algorithms, and announced that Facebook and Instagram could not be used from June if consent is not provided. Civil groups criticized the company's actions through a press conference, saying that they amounted to unlawful consent.⁶⁸⁷⁾

On Sep. 14, the Personal Information Protection Commission judged that company G and M violated Article 39-3(1) of the ‘Personal Information Protection Act,’⁶⁸⁸⁾ and imposed a penalty of 69.2 bil. KRW on company G and 30.8 bil. KRW on company M, along with an order to correct the violation.⁶⁸⁹⁾ The investigation and disposition are the first sanctions related to the collection and use of behavioral information⁶⁹⁰⁾ of the online customized

686) When collecting user's personal information, the business operator divides it into mandatory consent items (personal information that is absolutely necessary to provide the service) and optional consent items (personal information requested from users due to additional functions of the service or business operator's needs), and consent must be obtained for each (Personal Information Protection Commission, “Guidelines for Consent to Processing Personal Information”, March 2022).

687) Yonhap News, “Why do I have to consent to everything?...Controversy over user information collection by Facebook and Instagram,” Jul. 24, 2022

688) 「Personal Information Protection Act」 Article 39-3 (Special Cases on Consent to the Collection and Use of Personal Information) ① Notwithstanding Article 15 (1), an information and communications service provider who intends to collect and use personal information of users shall notify users of the following matters and obtain consent therefor. The same shall apply when changes are made for the following matters:

1. The purpose of the collection and use of personal information;
2. Particulars of personal information to be collected;
3. The period for retaining and using personal information.

689) Company M announced on July 28, 2022, before the decision of the Personal Information Protection Commission, that it had decided to withdraw the mandatory consent process. However, regarding the Personal Information Protection Commission's decision to impose a penalty, the Company M said, “We cannot agree with this decision, and we plan to carefully review the matter while leaving all possibilities open, including the court's decision,” suggesting that it will proceed with administrative litigation.

690) Online user activity information (Korea Communications Commission, Korea Internet & Security Agency, “Online

advertising platform, and it is known that the purpose is to correct the unauthorized collection and use of personal information by platforms without the user's knowledge under the disguise of providing free services.

According to the results of the investigation by the Personal Information Protection Commission, company G did not clearly inform the users that behavioral information was collected and used by other companies when signing up for services, and set the default value to 'agree,' while hiding the setting screen (more options). Company M only posted the contents to be agreed upon when creating an account in the full text of the data policy in a form that is not easy for the users to understand, and did not inform the users of the specifics of the statutory notice.⁶⁹¹⁾ The Personal Information Protection Commission considered that the collection of personal information through this method was not obtained with legitimate consent.⁶⁹²⁾

The Personal Information Protection Commission cited France and Germany as examples, saying that overseas supervisory bodies had already ruled that the companies G and M violated the collection of behavioral information and the use of customized advertisements by other companies. The CNIL, French Supervisory Authority, determined that company G violated the principle of transparency and did not obtain consent from users for customized advertisements (Jan. 2019), and the German Federal Cartel Office (FCO) determined (Feb. 2019) that the company M collected and used behavioral information of other companies without the user's consent.

As users' dissatisfaction and social criticism of customized advertisements grew, in the 21st National Assembly, as of Sep. 2022, five amendments to the 'Act on the Consumer Protection in Electronic Commerce' and the 'Act on Fair Labeling and Advertisement' have been proposed to regulate the customized advertisements. The purpose of these legislative

Customized Advertising Personal Information Protection Guidelines," Feb. 2017)

691) KTV Kookmin Broadcasting, "Illegal collection of personal information... Google and Meta imposed with penalty of 100 bil. KRW," Sep. 14, 2022

692) The Personal Information Protection Commission is set to allow the majority of Korean users to collect behavioral information from other companies on the platform through this method (more than 82% of Company G and 98% of Company M), so the possibility and risk of information subject rights being infringed is minimized. However, in the first paragraph, it was announced that it would continue to conduct additional investigations on the change in the Company M's consent method for collecting personal information.

amendments is to protect users' right to choose, such as strengthening the notification obligations in relation to customized advertisements.

B) Raising Issues of Human Rights Violations for the Customized Advertisements

Customized advertising technology has been widely used in the online market as an advertising method that provides information tailored to the interests by profiling users behavior, and many online operators are collecting users' behavioral information for this purpose. In particular, the big tech platform operators are gaining an edge in the online advertising market by collecting massive behavioral information from many users.⁶⁹³⁾ Customized advertisements have the positive function of enabling advertisers to effectively advertise to target audiences and enabling users to view intensive advertisements based on their interests.⁶⁹⁴⁾ However, since customized advertising technology presupposes tracking and analyzing user behavioral information, it poses problems of collection and use of personal information and discrimination that can be caused by uncontrolled algorithms.

Behavioral information collected for customized advertisements is presumed to be automatically collected in many cases. Therefore, it is difficult for data subjects to reasonably predict what kind of information of themselves will be collected, and when behavioral information of other companies is continuously accumulated, sensitive information that can infer an individual's private life can be created. As the amount of personal information held by big tech companies increases, concerns about citizen surveillance by the state are also raised. In the US, excessive access by investigative agencies to location information among information collected for the purpose of customized advertising has also been a problem.⁶⁹⁵⁾

Therefore, some assert that various forms of user ID, device identifier, IP address, cookie information, etc. used for user identification in customized advertisements should be recognized as personal information and the consent of the data subject should be obtained for the collection of personal information. According to this, the Personal Information

693) National Assembly Legislative Research Service, Issues and Arguments, "Protecting the Behavioral Information from Online Customized Advertisements," Sep. 30, 2022.

694) Ahn, Jeong-min, Choi, Kyeong-jin, "Customized Advertisements and Privacy," Dec. 2017

695) CWN, "US's FBI using geofence warrants to investigate... controversy over invasion of privacy," Feb. 7, 2022.

Protection Commission's decision on the penalty was only focused on the method of consent, but there is a limit to the content and scope of information that requires consent without a clear designation.⁶⁹⁶⁾

However, there are views that more fundamentally raise the problem of discrimination and strengthening bias in customized advertisements. Customized advertising technology can directly or indirectly use information with discriminatory contents related to an individual's race, sexual orientation, gender, etc. and by determining the information to be provided to each individual, it can negatively affect the possibility of accessing information from multiple sources on a particular topic.⁶⁹⁷⁾ In fact, the impact of customized advertising on important political events, such as the 2016 US presidential election and the 2020 British Brexit, is drawing attention. An American media outlet reported in 2017 that Facebook could show anti-Semitic ads to users who showed interest in anti-Semitic categories.⁶⁹⁸⁾

In this way, the fact that customized advertisements can strengthen user bias and promote discrimination seems to be a problem that cannot be solved by obtaining consent in the process of processing personal information in that it can affect democracy and human rights of minorities. Describing the personal information protection principles for the online customized advertising in the 'Online Customized Advertising Privacy Guidelines' published by the Personal Information Protection Commission in 2017 to prohibit the collection and provision of behavioral information of those under the age of 14 appears to be a reflection of this. reflected.

C) The Need to Improve the System to Protect Human Rights Related to Customized Advertisements

Behavioral information itself may not be personal information, but it can be information with a high risk of exposure or infringement of personal information as it is collected extensively and linked to personal accounts. Moreover, this is an example of how an

696) Joint statement by 7 civil groups, including Jinbo Networks, Nov. 14, 2022.

697) Jang, Yeo-gyeong, National Assembly Debate, "Problems if invasion of privacy of customized advertisements, and solutions," Sep. 22, 2022.

698) Seoul Shinmun, "Starting a new," Suspension of customized advertisement for Facebook, Nov. 10, 2021.

individual's consent process can be formatted in the process of collecting extensive information from a big tech platform company. Processing personal information for companies to create economic value can benefit customers as well, but consideration is needed to prepare institutional mechanisms to prevent the risk of forcing users to collect extensively by borrowing the form of consent. To this end, it is necessary to legislate the type of behavioral information, the scope and method of use, and the consent procedure.

It is also necessary to continue discussing options for the customized advertisements and prohibiting discriminations. Users should be able to choose whether or not to view customized advertisements, and an opt-out manner, while being hidden by the setting screen is not proper. Moreover, it is necessary to prevent the big tech companies to provide advertisers with options that can cause discriminatory effects, or algorithms that automatically provide different information based on gender and race to reinforce discrimination. The big-tech companies have the primary responsibility to prevent such discrimination at all stages of designing and learning algorithms, and the state needs to prepare and manage laws that make it clear that companies are responsible to prohibit discrimination.

The UN Committee on the Rights of the Child, in its General Comment No. 25 (2021), stated that states have an obligation to take measures to protect the children's rights in the digital environment, and that there is a need for regulation, particularly a regulation related to advertising and marketing that target children. Moreover, the 'Digital Services Act' established by the EU in 2022 includes transparency, choice, child protection, and regulation of sensitive information related to the customized advertisements.

Customized advertisements using behavioral information and algorithms have undergone significant changes in a short period of time. Recently, there have been various legal and institutional responses to concerns about infringement of basic human rights caused by the customized advertisements; however, the concerns over the collection of sensitive personal information, the ensuing state surveillance, and the strengthening of discrimination and bias have not yet been resolved. In the future, an appropriate level of regulation is needed by referring to overseas cases, and in the process, it is important to fully collect the opinions of the society so that the rights of data subjects and minorities are fully taken into consideration.

2) Proposed Amendment to the Protection of Communications Secrets Act, and the Issue of Prohibiting Recording of Conversations Without Consent of the Parties

A) Proposed Amendment to the Protection of Communications Secrets Act and Controversy

In Aug. 2022, a partial amendment to the ‘Communications Secrets Protection Act’⁶⁹⁹⁾ was proposed to the National Assembly. The proposed amendment prohibits a party from recording conversations without the other party's consent (Article 3(1)), and punishes violations by imprisonment for between 1 and 10 years and suspension of qualifications for up to 5 years (Article 16(1)). The proposed amendment had several controversies, and was resubmitted after being withdrawn and revised. In the amended bill of the Act,⁷⁰⁰⁾ a clause was added stating that ‘the act of recording a conversation with the other party without consent is not punishable when it is in the public interest.’

The current Protection of Communications Secrets Act stipulates that “recording or listening to undisclosed conversations between others is prohibited” (Article 14) and punishes violations thereof. However, even if a conversation is recorded without the consent of the other party, the person involved in the conversation is not subjected to criminal punishment because it is not a conversation between ‘others.’⁷⁰¹⁾ On the other hand, depending on the circumstances, even a recording between the parties involved may result in civil liabilities. There is a precedent in which the act of recording without the consent of the other party was deemed to have infringed on the right to voice, and civil liabilities resulted.⁷⁰²⁾

The main substance of the proposed amendment to the ‘Protection of Communications Secrets Act,’ is to criminally punish the recording without the consent of the parties involved to the conversation, which was previously excluded from criminal punishment. It is understood that the act of recording a conversation without the other party’s consent was intended to criminalize it in the sense that the act of recording a conversation may violate one party’s freedom of privacy.⁷⁰³⁾ The said amendments were withdrawn as of the end of 2022.

699) Submitted by Rep. Yoon, Sang-hyeon, Bill No. 2116905, Aug. 18, 2022.

700) Submitted by Rep. Yoon, Sang-hyeon, Bill No. 2117633, Sep. 29, 2022.

701) Supreme Court, Decided on Oct. 23, 2008, 2008Do1237

702) Suwon District Court, Decided on Aug. 22, 2013, 2013Na8981

The amendment became known as the ‘Conversation Recording Prohibition Act,’ and immediately caused considerable controversy. Civil groups issued a statement criticizing the bill as not only violating freedom of expression and the right to know, but also significantly harming the public interest in that it greatly discourages social accusation activities and media activities that reveal social irregularities.⁷⁰⁴⁾ In a poll conducted by Gallup Korea, more than 80% of the respondents aged 18 to 29 said, that they “oppose the amendment because it is necessary to prove crime and whistle-blowing.” Conversely, according to the ‘Report on Survey of Public Opinion over Call Recording’ conducted by Hangil Research Co., Ltd. on 2,000 men and women over the age of 18 nationwide, 63.6% of the respondents opposed the other party recording without their consent.

B) Competing Interests of Investigating Social Irregularities and the Right to Voice

Privacy and freedom guaranteed by Articles 10 and 17 of the Constitution include the right not to disclose an individual’s private life and the right to autonomously control one’s information. The ‘right to voice’ is a right derived from personality rights and is guaranteed by Article 10 of the Constitution. The act of secretly recording conversations without the consent of the person being recorded and reproducing them openly can be regarded as an act of violating the right to voice guaranteed by the first sentence of Article 10 of the Constitution, unless there are other circumstances, such as presuming consent from the person to be recorded or not violating social norms. The right to voice is a right that has not received much attention as a form of basic human right. The right to voice was discussed as a form of basic human right as part of the proposed amendment to the Protection of Communications Secrets Act.

The people in favor of the amendment assert that it is unethical to record conversations at all times, and that legislation to protect the right to voice is necessary, similar to the response to hidden cameras. They assert that it is necessary to prevent the act of damaging social reputation by intimidating or disseminating the other person through recording conversations or calls without the consent of the persons concerned, and even though this can be punished under the current law, there is no way to punish the simple disclosure of audio files.⁷⁰⁵⁾

703) Reasons for the proposed amendment to the Protection of Communications Secrets Act and main topics

704) OpenNet, Opinion on partial amendment to the Protection of Communications Secrets Act (Submitted by Rep. Yoon, Sang-hyeon, Bill No. 2117633), Oct. 11, 2022

In 2020, when an amendment to the ‘Act on Special Cases Concerning the Punishment of Sexual Crimes’⁷⁰⁶⁾ was proposed to prevent secret recordings of sexual intercourse, it was pointed out that if the voice of sexual intercourse is recorded with a mobile phone or small recorder without the consent of the other party, the recorded voice file is the same as an illegal video. On the other hand, the court had recognized that a reporter violated the right to voice by recording and broadcasting the contents of a call without notice,⁷⁰⁷⁾ but recording a call at interviews has become a common practice.⁷⁰⁸⁾

On the other hand, the people who oppose the amendment to the Protection of Communications Secrets Act claim that unfair distribution of recorded files and intimidation are punishable under the current law, and it is not desirable to impose criminal punishment for recording daily conversations. Moreover, since recording has been used as a means of proving social irregularities, such as workplace harassment, fraud, and corruption, there will be many unfair victims if the amendment is passed.⁷⁰⁹⁾

For the socially underprivileged, who are routinely exposed to abuse of power, verbal violence, intimidation, and sexual harassment, recording of phone calls or conversations is almost the only means to prove their suffering, and when a person cannot know when such abuse may occur, it is difficult to respond to social irrationality if the requirements for illegality are vaguely defined as ‘when it is in the public interest.’ The Constitutional Court also ruled on the former Framework Act on Telecommunications, which prohibits false communications for the purpose of harming the public interest, with the gist of “the meaning of the public interest cannot be objectively determined through the ordinary interpretation by the law enforcement officers.” In other words, even if there is a proviso clause, there will be other controversies regarding the public interest.

705) Legal Times, “Preventing violation of right to voice vs Concern for excessive penalty”...‘Controversy over prohibiting recording without consent, Sep. 13, 2022

706) Submitted by Rep. Kang, Seon-wu, Bill No. 2105476, Nov. 18, 2020

707) Media Today, Should ‘unauthorized recording’ by the media be illegally regulated and banned?, Dec. 23, 2020.

708) Media Today, Reporters are concerned about “reduction of coverage” due to the People’s Power’ Call Recording Prohibition Act,’ Sep. 8, 2022.

709) Hankyoreh, ‘Recording phone calls without consent’ 10 years of imprisonment?, Aug. 29, 2022

C) The Importance of Protecting the Right to Voice and Social Consensus in the Information Society

The right to voice is a separate right to the voice itself, regardless of the substance of the voice. While it is widely known that the Protection of Communications Secrets Act does not consider recording of self-conversation illegal, it is not well known that recording self-conversation without the consent of the other party is illegal in civil courts. However, similar to portrait rights, recording voices without the consent of the persons concerned, or disclosing or distributing recorded voices, can all constitute violations of the right to voice. It is clearly improper for the protection of the right to voice to wait for or induce inappropriate remarks from a person who constantly records conversations or calls with someone for future use.

Nevertheless, conversations and phone calls are recorded widely in Korean society. It is also necessary to think about the reasons for submitting transcripts as evidence in various lawsuits and investigations. Under the Korean legal system, there are very few channels through which the socially underprivileged can collect evidence on their own to prove substantive truth, such as the burdened of proof and lack of discovery system. As a result, as a party who needs to secure evidence, there is a sense of ‘urgency’ to make and submit at least a transcript.

Looking at the case of other countries, illegality of recorded conversation between the parties is different from country to country. In Italy, calls can be recorded without consent, and legal admissibility is also recognized. In the UK, Denmark and Finland, it is possible to record a call without consent, but there is a legal liability for passing the recording to another person. In Germany, not only consent to recording a call but also reasons for recording are not clearly explained in advance, which is subject to criminal penalties. In France, not only recording a phone call without the consent of the other party, but also being in possession of the recording file is subject to criminal punishment. Federal law in the US makes it legal to record phone calls without consent, but each state has different regulations regarding recording.⁷¹⁰⁾

710) E-Korea, Recording without consent, legal in 37 states, illegal in 13 states Why?, Aug. 23, 2022.

In the end, various issues arose in the information society where daily and constant recording became possible with the spread of digital devices, such as problems of the socially underprivileged responding to social problems such as power abuse, school violence, fraud, breach of trust, embezzlement, labor law violation, workplace harassment, and sexual harassment, need to prevent unjust abuse of recording, and the appropriateness of introducing a penalty to punish conversation recording without the consent of the parties as a method of protecting the right to voice. As this proposed amendment to the Act brought such discussions to the surface, it is necessary to seek ways to draw social consensus on each issue.

3) AI Technology and Human Rights Issues, and Face Recognition CCTV

Installation and Utilization

A) Controversy Over Installation of Face Recognition CCTV by the Government

The face recognition technology refers to a technology that extracts and stores unique facial feature points, such as eyes, eyebrows, nose, mouth, and facial contours, from an image of a person, and compares them with feature points extracted from other face images to determine if the person is correct. Recently, the face recognition technology has been further developed by combining with AI technology, and is widely used in various fields based on high accuracy and convenience. Recently, however, the face recognition CCTV using AI technology can be used to constantly monitor a large number of unspecified people by collecting and using a large quantity of human biometric information, causing controversy over human rights violations at home and abroad.⁷¹¹⁾

In October 2021, allegations of invasion of privacy were raised by the National Assembly, the media, and civic groups because the Ministry of Justice provided a large amount of domestic and foreign face information to private companies without a clear legal basis in the process of establishing the ‘Artificial Intelligence (AI) Identification Tracking System,’ a face recognition system for immigration screening.⁷¹²⁾

711) A number of human rights issues are occurring, including AI-related laws and regulations, and the direction of enactment of norms and guidelines in addition to the problems of personal information processing and mass surveillance, as AI technology develops and is used in the private and administrative fields, the occurrence of hatred and discrimination due to artificial intelligence, fairness and transparency of companies and administrations using artificial intelligence technology (See 2021 NHRCK, Human Rights Situation Report).

Immigration screening by the Ministry of Justice consists of passport check, fingerprint recognition, and face confirmation. The Ministry of Justice has been promoting the establishment of an identification tracking system with the goal of ① completing the immigration inspection with only face recognition while passing through the immigration checkpoint, and ② automatically detecting and responding to abnormal behaviors⁷¹³⁾ of immigrants in order to shorten the immigration inspection time in three steps. During this process, facial image information of 57.6 mil. Koreans and 120 mil. foreigners were provided as artificial intelligence learning materials to private companies developing the system.

In April 2022, the Personal Information Protection Commission determined that the Ministry of Justice's act of providing personal information to private companies was not a violation of the Personal Information Protection Act,⁷¹⁴⁾ but civic groups objected to this and filed a constitutional complaint with the Constitutional Court in July.⁷¹⁵⁾

On Oct. 19, 2022, suspicions were raised on installation of CCTVs with face recognition and tracking around the Yongsan Presidential Office building. According to some legislators, when the presidential office moved to the Ministry of National Defense building in May, the Ministry of National Defense changed the previous plan to reinforce the defense facility and planned to install CCTVs with facial recognition and tracking functions. In response, the media and civic groups raised the possibility of human rights violations, such as the risk of exposing the personal information of citizens walking nearby. As the controversy erupted, the Ministry of National Defense stated that the CCTVs to be installed only increased the clarity of image quality and did not have a facial recognition function using AI technology.⁷¹⁶⁾

712) Hankyoreh, "The government handed over 170 million face photos to AI companies," Oct. 21, 2021; Minbyun, Digital Information Commission, Jinbo Network, etc., "Commentary: Artificial intelligence systems using biometric information built by national agencies and local governments should be completely stopped.," Nov. 17, 2021.

713) Abnormal behaviors in the immigration screening area include ① rushing in ② entry by two people (more than two people enter the unmanned screening area at the same time) ③ leaving things behind ④ reversing the screening area (entering the duty-free area after completing the inspection and then reentering the inspection area again)

714) Personal Information Protection Commission, Deliberation and Resolution No. 2022-007-046, 'On Corrective Measures for Violations of Personal Information Protection Act,' Apr. 27, 2022

715) Minbyun, Digital Information Commission, "[Press Release]Immigration Face Recognition Artificial Intelligence Identification Tracking Constitutional Petition and Press Conference," Jul. 21, 2022

716) Kyunghyang Shinmun, Face Recognition and Tracking CCTV installed around the Presidential Office Building, Oct. 19, 2022; Yonhap News, [Fact Check] Facie Recognition CCTV, soon to be introduced to Korea?, Oct. 26, 2022

Controversy over the introduction of face recognition technology in the public domain has been going on for a long time. The National Police Agency, since 2016, has already established and operated a ‘3D face recognition’ system that compares the photo of a person arrested for committing a major crime and stored in the police database with the face photo of the suspect taken through CCTV at the actual crime scene for identification. In 2021, Bucheon-si, Gyeonggi-do, tried to establish a system that could use face recognition technology to check the movements of confirmed COVID-19 patients in the city. Face recognition technology combined with AI is likely to be used in various areas in the future, and similar controversies are expected to continue.

In this regard, the NHRCK, on Dec. 15, decided to make comments and recommendations to the Speaker of the National Assembly and the Prime Minister to prepare relevant laws for the protection of human rights in the introduction and use of face recognition technology, and to conduct human rights impact assessments by organizations that have secured human rights expertise and independence.⁷¹⁷⁾

B) The Dangers of Face Recognition Technology Using AI

Face recognition technology using AI is based on collecting, storing, and processing a large quantity of individual face information. Biometric and face information of an individual represents unique physical and physiological characteristics that cannot be separated from each individual, and is closely related to privacy protection in that it enables one person to be distinguished from another.

If the state extensively uses the face recognition technology in public places, and tracking or monitoring of a specific person can cause a chilling effect for the people to become hesitant or unable to freely express their opinions and actions in public places.⁷¹⁸⁾

In particular, various discussions are underway regarding the dangers of real-time remote face recognition technology.⁷¹⁹⁾ The EU Agency for Fundamental Rights (FRA) has pointed

717) NHRCK, Decided on Dec. 15, 2022, Recommendations and Opinions for the Protection of Human Rights in the Introduction and Utilization of Face Recognition Technology.

718) Park, Won-gyu (2019), Ibid., P. 252

out that the real-time remote facial recognition technology can create a serious power imbalance between the state and the individual and can have discriminatory effects on different groups. This technology affects human dignity in that they are used mainly covertly, leaving people in a vulnerable position, and even if they are used openly, they should be limited in very exceptional cases because they can intimidate people or change their behavior in the target regions. For example, the Tianwang (天網, skynet) system, operated by the Chinese government, is known to be able to monitor all citizens in real time, identify suspects, and arrest them immediately, if necessary.

The face recognition technology using AI technology makes it difficult for data subjects to know how they are being identified or by whom (or institution), and may become subjected to arrest, detention or other restrictive measures, as a result. Currently, attempts are being made to introduce the face recognition technology in the public domain in Korea, but there are clear limits to regulating it only with existing laws, such as the ‘Personal Information Protection Act,’ and it is necessary to prepare countermeasures.

C) Guidelines to Prevent Human Rights Violations

In its General Comment No. 37 (Article 21, the Right to Peaceful Assembly), the UNHRC pointed out that the use of the facial recognition technology by the state in public places may violate basic human rights, such as the individual’s right to privacy and freedom of assembly and association. Moreover, on Apr. 11, the NHRCK, through the ‘Human Rights Guidelines on the Development and Use of Artificial Intelligence,’ recommended by stating that “the state should prohibit the use and prevent abuse of remote biometric technology, such as face recognition, which has a high risk of leading to mass surveillance and discrimination and negatively affecting the freedom of assembly and association in public places.”

The face recognition using AI technology is a new technology and has complex features based on artificial intelligence and algorithms. Before introducing these technologies, it is necessary to carefully and extensively consider the various aspects of their impact on fundamental rights and regulatory measures.

719) It is a technology that can identify biometric information such as face information of a specific person in a very short time from a distance compared to existing databases..

The face recognition technology using AI technology should be restricted from indiscriminate introduction and use by the state, and even when it is introduced, it should be operated in an exceptional and supplementary manner, reflecting the principle of respect for human rights, and only when the need for public interest is recognized. The use of the ‘real-time remote face recognition technology’ targeting an unspecified number of people in public places should be prohibited, as a rule. If the national administrative agencies or local governments introduce the face recognition technology, it must be based on individual and specific laws. Moreover, a human rights impact assessment should be implemented by an institution that has secured human rights expertise and independence, taking into account the amount of data used and the number of affected information subjects.

It is realistically very difficult to respond to this only with the current laws, such as the Personal Information Protection Act, so a new legislation is needed. Moreover, it is necessary to establish and implement measures (moratorium) to prevent public institutions, such as the national administrative agencies, from introducing or using the real-time remote face recognition technology in public places until such legislation is established.

V. Human Rights During Disasters and Catastrophes

1. Human Rights Status 2022

The ‘Framework Act on the Management of Disasters and Safety’ (the Disaster and Safety Act, for short) defines ‘disaster’ as something that causes or is likely to cause any harm to the lives, bodies, and property of citizens and the state, including natural and social disasters. The COVID-19 situation, which has had a global impact since 2020, is also one of the social disasters. Disasters caused by infectious diseases have had a harsher impact on the socially and economically vulnerable classes, deepened economic inequality and social discrimination, and more clearly reveal the human rights issues that existed in daily life.

On the other hand, ‘disaster’ can be seen as an expression that reflects the shock and emotion people feel, such as ‘miserable and horrible accident.’ As can be seen in the debate over the use of the term ‘accident’ and ‘disaster’ for the Itaewon disaster that occurred in 2022, it may be an interchangeable term in a strict sense, but it is also used according to the subjective feelings about the degree of shock to society as a whole. However, in recent years, there is a gap in the intention to use the terms accident and disaster in political context,⁷²⁰ and it seems to have meant to define the nature of the incident.

Disasters and accidents threaten the safety of people’s lives, and in the process, cause various types of human rights issues; therefore, the role and duties of the state must be especially emphasized. In the 2021 NHRCK: The Report on Human Rights Situations in the Republic of Korea, Chapter 5 was titled “COVID-19 and Human Rights,” and a total of 10 topics were discussed, which were all human rights issues during disaster situations. Although many of the issues are no longer prominent as the risks posed by COVID-19 have

720) It is mainly understood in the context of national and social responsibility.

eased somewhat, the aftermath, such as the issue of the right to commemorate the deceased and the bereaved, appears to have continued in 2022.

On the other hand, a particular attention must be paid to the ‘Itaewon Crowd Crush’ as a disaster that occurred in 2022. The Itaewon crowd crush, which is discussed above in Part 2, is an issue that needs to be deeply reflected on the role of the state in protecting basic human rights in disaster and catastrophe situations and the Korean society’s attitude toward this.

Below, five topics related to disasters and human rights in 2022 are discussed. First, focusing on the Itaewon crowd crush, the report will discuss the disaster prevention and response system, prevention of hate speech, and recovery of victims, and will propose improvement plans. Moreover, the need to discuss the problems of industrial accidents that have not been eradicated in Korean society will be emphasized in this section on disaster.

Lastly, the climate crisis will be discussed from the human rights perspective by looking into the inequality and housing rights of the low-income class in the case of the ‘Sillim-dong family in heavy rain flooding,’ and the direction of improvement will be presented.

2. Main Topics

A. Issues of Disaster Prevention and Response System Revealed from Itaewon Crowd Crush

1) Issues with the Disaster Prevention and Response System Raised After Itaewon Crowd Crush

A total of 159 dead and 320 injured were officially counted in the disaster that occurred in Itaewon on Oct. 29, 2022. It was the largest loss of life since the Sewol ferry disaster in 2014, and becoming the most noteworthy incident in 2022. Immediately after the incident, discussions on the cause of the disaster, disaster prevention, problems with the response system, and responsibility began, and investigations are still ongoing at the end of 2022.

Immediately after the incident, there was great criticism of the police's lack of disaster prevention and response systems. The Commissioner General of the Korean National Police Agency disclosed the full text of the 112 calls that continued from the evening before the Itaewon crowd crush on Nov. 1, and acknowledged that the on-the-scene responses to the police's 112 calls were insufficient.⁷²¹⁾ As it became known that there were reports that informed the police of the danger of death by crushing before the accident occurred, criticism immediately grew that the police did not take any safety measures, such as being dispatched immediately after the report was received.⁷²²⁾ It was followed by apologies from the heads of agencies, such as the Minister of the Interior and Safety, the mayor of Seoul, the acting head of the National Fire Agency, and the head of Yongsan-gu.⁷²³⁾

However, a police officer posted in the police internal network and online communities that there was a constant problem of lack of personnel and overload of work, and that an apology from the Commissioner of the National Police Agency, etc. holding the on-the-scene police officers liable is unfair.⁷²⁴⁾ With a similar purpose, criticism was raised

721) According to the police reports, the first report was received by Mr. A, known as a merchant near Itaewon, at around 18:34, raising concerns about a pressure accident, and by 22:11, 11 reports had been received.

722) YTN, 'Itaewon crowd crush' Controversy over 112 recordings...neglecting the disaster, Nov. 2, 2022.

723) Yonhap News, [Itaewon Crowd Crush] Angry over 112 recordings, Nov. 1, 2022.

on the problems presented by each agency at various levels, such as the predictability of disasters, the need for police and local governments to prepare prevention plans, and the reporting system in the process of disasters, apart from the inexperience in handling 112 reports.

Various suspicions were raised, explained, and rebutted in connection with the Itaewon crowd crush in Nov. and Dec. of 2022.⁷²⁵⁾ There were various suspicions, but neglect of command by the Police Special Headquarters was pointed out as the main issue for the fact that the Seoul Metropolitan Police Agency, Yongsan Police Station, Yongsan Fire Station, and the chiefs and executives of the Yongsan-gu Office and some employees did not establish safety management measures in advance even though they were aware of the crowds in advance, and neglected management and supervision of 112 report handling and rescue.⁷²⁶⁾ The National Assembly Special Investigation Committee pointed out problems related to on-site response, such as insufficient preparation of safety management measures, problems with the reporting and cooperation system of related organizations, problems with the disaster control tower function, problems with police manpower deployment, and on-site management and ambulance transfers.⁷²⁷⁾

Since Nov. 2, the government has operated a task force team to enact the ‘Guidelines for Safety Management of Crowd Accidents’ jointly with the relevant agencies.⁷²⁸⁾ The plan is

724) Joongang Ilbo, “Request for support were denied” Writing by Itaewon police, Nov. 2, 2022.

725) Among them, even in matters related to the cause of the accident, prevention and response system, there were cases where the suspicion that the accident occurred because a certain person pushed people or sprinkled slippery substances on the floor appeared to be untrue. There are problems of whether the relevant authorities took sufficient measures to prevent safety accidents in a situation where a large number of people were expected to gather for the Itaewon Halloween festival even before the incident, whether the joint police and firefighting response was appropriate for several hours before and after the accident, the time it took for the emergency medical support team and the disaster medical support team to share the situation and dispatch, the problem of the on-site control tower such as the head of the public health center, and the problem of whether the disaster safety communication network established for communication between related organizations in the disaster situation after the Sewol ferry disaster was properly operated.

726) In addition, 17 people, including the chief of the Seoul Metropolitan Police Agency, the chief of Yongsan Police Station, and the chief of Yongsan-gu, were sent to the prosecution, including charges of teacher destroying evidence, destruction of evidence, creation and event of false official documents, and violation of building and road laws. Although it did not constitute a violation of the Criminal Act, it was revealed that there were also problems such as delay in propagation of the situation while on duty, non-compliance with working hours such as leaving early, and negligence in receiving 119 reports.

727) In mid-January 2023, the Police Special Investigation Headquarters and the Special Committee for Government Investigation, which were formed to determine the cause and responsibility of the disaster after the accident, announced the results of their investigation and investigation, respectively.

for the related ministries and private experts to work together in finding measures to the systematic problems revealed by the Itaewon crowd crush and to prevent recurrence.⁷²⁹⁾ Several bills related to the disaster prevention system from the Itaewon crowd crush were submitted in the National Assembly. A partial amendment to the Framework Act on the Management of Disasters and Safety stipulating that even if there is no organizer or in the case of an unclear informal event, the head of a local government must take measures to prevent accidents, and a partial amendment to the Emergency Medical Service Act stipulating the placement of the CPR devices for public institutions in easy-to-manage places were proposed. The Seoul Metropolitan City Council also proposed a partially amended ordinance on the safety management of outdoor events in Seoul and an ordinance on the safety management of large gathering events in Seoul.

2) Issues with the Lack of Safety Management Measures, Police Personnel Allocation and 112 Report Responses

Unlike other social disasters such as the fire at the Icheon Logistics Center and the collapse of the school building in Gwangju, the humidifier disinfectant disaster and the Sewol ferry disaster, the Itaewon crowd crash was named a “social disaster” or “national disaster” right after the incident. This can be due to factors, such as the symbolism of the place, the type of disaster, young victims, real-time spread through social media, and the spread of opinions that it was a preventable disaster.⁷³⁰⁾ The issues raised as a particular problem are the lack of safety management measures, the deployment of police personnel, and the response to 112 reports in relation to the disaster prevention and response.

First, looking at the problem of insufficient safety management measures, the Disaster and Safety Act imposes the duty to establish a safety management plan and take necessary

728) Ministry of the Interior and Safety Press Release, Nov. 2 & Nov. 17, 2022.

729) The Ministry of the Interior and Safety stated, through the explanatory materials (January 25, 2023), that they identified 14 tasks for improvement, such as establishing a site crowd management system as a result of the operation of the TF team and establishing a manual that includes local festivals without organizers as safety management targets, and they were transferred to the safety system reorganization special team (TF team) and are under discussion.

730) Yu, Hae-jeong, Disaster as a social disaster and the right to safety of citizens, 2022 Korean Human Rights Report, Minbyun, 2022.

measures for safety management in the case of local festivals that meet certain requirements, such as a gathering of more than 1,000 people. In the case of the Itaewon Halloween festival, people voluntarily gathered without a host, and there were arguments to the effect that the Itaewon crowd crush at the beginning of the incident was seen as “unlucky” or that “there is no legal basis for mobilizing administrative power.”

However, it has been asserted that the lack of safety management measures by the relevant agencies was responsible for the disaster for the fact that the Halloween festival is an annual event, and related organizations have held several meetings and the police have been deployed even at events without organizers, such as Christmas and summer beaches, and considering the purpose of the Disaster Safety Act and the fact that the state and local governments have the duty to manage safety even for events without organizers.⁷³¹⁾

The issues of police allocation and response to 112 calls are very controversial in relation to the predictability of the accidents. The police revealed to the National Assembly Special Investigation Committee that there were 137 police officers deployed in Itaewon on Oct. 29. However, there were allegations of negligence for the fact that in 2020, there were plans to deploy police riot squads and police lines in major alleys of Itaewon and preparing for a stampede accident, on the day of the disaster, there were opinions within the police that it was necessary to increase the number of on-site police guards for safety management reasons, and that many of the police stationed at the scene were plainclothes police officers to crack down on drugs, and that there were only 58 police officers in uniform.

Of the eleven 112 reports received from 18:34 to 22:11, only 4 dispatches were made to the scene by the police, and the remaining 7 cases were terminated after consultation, even though code 0 was assigned to the report. Moreover, issues are raised with the fact that the information sharing according to the 112 report manual, emergency hearing, etc. were not implemented, and it is unclear as to the role of the 20 traffic police who arrived at the scene around 21:30. The 112 center of the Seoul Metropolitan Police Agency thought that the 112 reports were resolved and did not take any special reports or measures.⁷³²⁾

731) Yonhap News, [Fact Check] An event without an organizer is almost unheard of... And therefore, no manual?, Nov. 2, 2022, Hankyoreh, "Itaewon, a disaster caused by 'bad no plan,'" Nov. 3, 2022

732) However, it is expected that the facts above may change depending on specific audits and investigations. On December 2, the National Police Agency's Special Inspection Team revealed that they entered duty information as if they were dispatched without being dispatched to the scene for some 112 calls at the Itaewon police box.

3) Obligation of the State to Prevent Disasters

Article 3 of the Universal Declaration of Human Rights stipulates that “everyone has the right to life, liberty and security of person.” The right to security is a basic and core right that supports human dignity, value and life. The right to safety started from the right to be protected from the state’s unlawful or arbitrary deprivation of liberty, but today it has expanded to the right to be protected from disasters.

Not all risks can be fully controlled. However, disasters are highly dependent on human action or lack thereof. UN International Disaster Reduction Strategy (UNISDR), Hyogo Framework for Action (2005-2015), and UNHRC state that even natural disasters have only natural risk factors, and whether or not they become disasters, as well as the scale and the impact, lies under human control. Therefore, it is a clear violation of human rights for the state, as the leader in disaster management, not to minimize the risk or the damage, and it is not appropriate to hold the individuals accountable for the disaster.⁷³³⁾

Despite efforts to improve the national disaster prevention and response system after the Sewol ferry disaster, another unfortunate sacrifice occurred in the Itaewon crowd crush. However, in the process, it seems that the state and local governments have not fulfilled their obligations under the Constitution and international human rights law, and fact-finding is still ongoing. Therefore, the Itaewon crowd crush should be remembered as a disaster that needs to be thoroughly investigated and analyzed in order to identify the truth and prepare measures to prevent a recurrence.

To this end, it is necessary to establish an independent permanent disaster cause investigation organization in accordance with the recommendation of the NHRCK (Jul. 2022) and the recommendation of the Special Investigation Committee on the humidifier disinfectant case and the Sewol ferry disaster (Sep. 2022), and perform duties, including improvement recommendations, inspecting the fulfillment of the recommendations, and communication with the victims. Moreover, it is necessary to discuss the clarification of the people’s right to safety as a fundamental right and the establishment of protection rules through separately legislating laws, such as the ‘Framework Act on Life Safety.’

733) Yu, Hae-jeong, Disaster as a social disaster and the right to safety of citizens, 2022 Korean Human Rights Report, Minbyun, 2022.

B. Preventing Hate Speeches in Response to Disasters and the Victim Recovery Issues

1) Hatred against Itaewon Crowd Crush Victims and the Issue of Healing Trauma

After the Itaewon disaster occurred on Oct. 29, 2022, various videos and photos containing the scene of the accident and the rescue were shared in real time through social media, and the images of the victims spread, without filtering. The Korean Neuropsychiatric Association issued a statement on Oct. 30 and urged the media to stop distributing videos and photos from the accident scene, refrain from hate speeches, and comply with the disaster reporting rules in order to prevent additional psychological trauma to the deceased, victims, witnesses, and the public.

However, from the beginning of the incident, hate speeches toward victims of the Itaewon crowd crush and the bereaved families circulated both online and offline. According to a media report on Dec. 9, 2022,⁷³⁴⁾ the percentage of hate speeches in comments on articles related to the Itaewon crowd crush was greater than last year, when conflicts over COVID-19 and the presidential election were acute.⁷³⁵⁾ The media reported that comments containing hate speeches accounted for more than half, at 58.27%, which contrasted with the higher proportion of non-hateful comments at 52.34% of all comments on Naver articles before the disaster, and that ridicule of victims or xenophobia was also found.

The types of hate speeches related to the Itaewon crowd crush include finding issues with the Halloween party culture itself, blaming and ridiculing the victims, blaming the young people in their 20s and 30s,⁷³⁶⁾ and insulting and ridiculing the memorial service of the bereaved families,⁷³⁷⁾ and was expressed in diverse methods, such as online community posts and comments, rallies and demonstrations in front of the incense burner, remarks by

734) Kookmin Ilbo, Immediately after the disaster, 58% of the comments were hatred, Dec. 9, 2022.

735) Kookmin Ilbo commissioned a team led by Professor Won-jae Lee of the Graduate School of Culture and Technology at KAIST to collect more than 121.14 million comments on the portal Naver Politics and Society section articles (hereinafter referred to as Naver articles) from January 2021 to June 2021 and the day of the 'Itaewon Disaster' (10/29) to November 9, and 10 days later, it was revealed that it had analyzed about 1.23 million comments on articles containing the content of 'Itaewon' (the Itaewon crowd crush article).

736) YTN, Special Report on Itaewon Crowd Crush, What was different from the Sewol reports?, Nov. 7, 2022.

737) Segye Ilbo, "From profanity to fainting," Families of Itaewon victims complaining of pain ... Lawsuits against conservative groups, Dec. 22, 2022.

some politicians, or posts on social media. On Dec. 26, the police announced that they sent 8 people and deleted or blocked 553 posts for online posts insulting victims of the Itaewon crowd crush,⁷³⁸⁾ and the bereaved family and a civic group sued each other, and a city council member was punished for “talking badly.”⁷³⁹⁾

On the other hand, a high school student who had experienced the Itaewon crowd crush was found dead on Dec. 12. No suicide note was found at the scene, and police officials assumed that the student committed suicide.⁷⁴⁰⁾ The student was at the scene on the day of the disaster and was taken to a hospital for treatment. Two of his friends who went to Itaewon with him died. The student’s mother said in an interview that the student was particularly hurt by malicious comments insulting the dead friends.⁷⁴¹⁾

The Central Disaster and Safety Countermeasure Headquarters established a psychological support group within the National Trauma Center and conducted psychological counseling for the bereaved, the injured, accompanying persons, and the witnesses. The Integrated Psychological Support Group consisted of 138 people (as of Nov. 10), including psychiatrists and experts from related academic societies.⁷⁴²⁾ However, about 30% of the bereaved families and about 40% of the injured did not respond to counseling (as of Dec. 10). In addition, there were criticisms with the counseling due to the short period of time, being mainly non-face-to-face, low frequency of counseling, and psychological counseling content that was not specialized for disasters.⁷⁴³⁾

738) Newsis, Police investigation 36 cases of insults against Itaewon victims, Dec. 26, 2022

739) KBS, Changwon city council member penalized for ‘talking inappropriately about Itaewon crowd crush,’ Jan. 18, 2023

740) The student received counseling at school and hospital psychological treatment twice a week, but he did not receive psychological treatment supported by the Ministry of Health and Welfare. The Ministry of Health and Welfare explained that he was included in the list of psychological support, but since he was receiving treatment personally, did not provide support at the government level.

741) MBC, A teenager survivor pleading pain ... He was just a normal student, Dec. 14, 2022

742) Ministry of Health and Welfare, Press Release, Oct. 30 & Nov. 10, 2022

743) Hankyoreh21, [Exclusive] Bereaved families of Itaewon victims received less than 5 psychological counseling, on average, Dec. 23, 2022.

2) The Effects of Social Exclusion on the Recovery of Victims of Disaster and Disaster

Disaster and catastrophic situations affect both individuals and society. After a disaster, victims experience emotional difficulties, such as the loss of family and friends, the self-stigma that their bodies and minds should not be okay, and the burden they feel when their words and actions suddenly attract social attention. Distrust in a safe society can lead to various types of aftereffects and pathological phenomena. Overcoming crisis after disasters and growing up and restoring daily life are important, but the issue of social exclusion of victims of disasters is repeatedly raised.

In many disasters since 2000, policies, such as reparation, compensation, and support, for victims have been approached as a level of moral responsibility and charity of the people and the state based on compassion and love for humanity, rather than being understood as the victims' rights. Moreover, when there is a request for the formation of a group of victims and accountability for the accident, refusal of consultation at the state and societal level, hatred and insult, and various other human rights violations occur.

In many disaster situations, the Korean society tends to attribute the responsibility for the damage to the victims when the victim actively expresses his/her opinion. This can be confirmed in cases, such as comparing the Sewol ferry disaster to a traffic accident or blaming the infection on the people who died from COVID-19. Even in the Itaewon crowd crush, there were assertions from politicians and social leaders, including former and current officials, trying to avoid the responsibility of the state, including content such as “voluntary events without an organizer” and “died while playing.”

Moreover, the claims of victims of disasters face disparagement as a struggle to collect large amounts of compensation. The victims become more isolated when faced with hatred and insults, and their recovery more delayed. The previous studies have analyzed that this ‘accident-compensation’ frame is similar in the experiences of victims of the 2003 Daegu subway fire disaster, the 2011 Chuncheon volunteer service landslide disaster, and the 2013 Taean Marine Corps camp disaster.⁷⁴⁴⁾ In particular, it was shown that parents who lost their

744) Yu, Hae-jeong, A Study on Human Rights Violation Experiences of Disaster Victims: Based on Human Rights-Based

children in the Sewol ferry disaster continued to struggle to adapt to daily life until recently and had a longer period of time to get used to life without the deceased than other cases.⁷⁴⁵⁾

Meanwhile, the lack of active psychological counseling and treatment for the disaster victims is also a problem. Although the act of treatment itself can be a burden for the victims for various reasons, most people have a desire to quickly return to their daily lives, and coping with stress is an important issue. However, as domestic psychological intervention methods for those with the stigma effect are focused only on the mentally disabled or high-risk groups, it is necessary to develop psychological counseling contents for disasters.

3) Obligations of the State for the Recovery of the Disaster Victims

According to the ‘Victims’ Bill of Rights’ adopted by the UN General Assembly in 2006, victims and bereaved families have the right to trial and punishment for human rights violations that occurred in disaster situations, claim for compensation, the right to demand restoration of honor (the right to justice), the right to demand the truth about the cause and the response and measures of the state and local governments (the right to truth), and the right of victims and the bereaved families to demand restoration, monetary compensation, psychological healing, prevention of recurrence (the right to recovery).

It is a basic duty of the state to protect victims in disaster situations and to help them recover their daily lives. For this, the important role of the government is to respect the victims as subjects of rights, intervene to promote recovery through interdependence between the victims,⁷⁴⁶⁾ identify responsibility for accidents, and identify and prevent prejudice against the victims at the national, regional, and social level.

However, the government has been disappointing in all of the above processes for recovering the victims in the 2022 Itaewon crowd crush. Korean society still tends to demand ‘victim-likeness;⁷⁴⁷⁾ from the victims of disasters, and the state has an obligation to

Approach, Focusing on Social Disasters Since 2000, 2020.

745) Kwon, Wook-hyeon, Heo, So-jeong, Lee, Dong-hun, Exploring the Stigma Experience of Bereaved Families: Applying the Stigma Social Cognitive Model to the Bereaved Families of the Family Council at the 5th year of the Sewol Ferry Disaster, Journal of Korean Psychological Association, 2021.

746) The UK’s ‘Crisis Response and Recovery Manual’ emphasizes that the government’s role in providing psychological and sociological support includes arranging for victims to meet each other.

actively correct this perception. Therefore, it is necessary to avoid showing a lukewarm attitude toward various hate speeches and insults online and offline, or to be wary of words and actions that may encourage them.

Moreover, while there are damages that allow return to daily life, there are damages that accumulate over time, and there are damages that cannot be recovered, such as human casualties, as in the case of the student. Therefore, it is important to protect disaster victims' right to systemic damage recovery and appropriate treatment, without being delayed. It is necessary to look back on the fact that the recovery of damage and the preservation of loss are made through the process of reparation and compensation, that reparation and compensation are made based on truth-finding and acknowledgment of responsibility, and that all policies and plans for disasters must be established in a method that corresponds to human dignity, value, and pursuit of happiness.

747) It refers to the stereotype of "victim-likeness," in which the victim must give up being the subject of rights and remain silent, including "pure victim does not talk about money, such as compensation for damages," "pure victim never laughs and never puts on a happy face," or "victims are not normal, so I can tolerate talking carelessly to some extent, but anything beyond that is beyond the scope of a pure victim."

C. Status and Issues of Industrial Accidents – Death of a Bakery Worker and the Collapse of Bonghwa Mining

1) Major Industrial Accidents and Status in 2022

A female worker in her 20s who was working on making sauce at a bakery factory in Pyeongtaek died on Oct. 15. The cause of death is believed to be that the apron got caught in the sauce mixer (blender) and was sucked into the machine. The accident became controversial when it became known that the accident occurred at the end of a 12-hour night shift from the previous evening, the factory's fellow workers raised a problem that the workload so intense that the machine was working without stopping to meet the production quota on time, and there was no automatic protection device (interlock), a device that automatically stops the machine.⁷⁴⁸⁾

This incident occurred at a factory of one of the largest bakery corporation in Korea, and became the subject of nationwide criticism for the management's inappropriate timing for resuming work, gifts, belated apologies, and illegal activities during the investigation by the Ministry of Employment and Labor.⁷⁴⁹⁾ In response to this incident, the Ministry of Employment and Labor inspected harmful and dangerous machinery and instruments across the country and conducted an audit for all companies affiliated with the concerned conglomerate.⁷⁵⁰⁾ In addition, due to this incident and the poor labor conditions at the conglomerate, a consumer boycott campaign was conducted against the affiliated companies.

On Aug. 29, a mine pile collapsed in a mine shaft in Bonghwa-gun, Gyeongsangbuk-do, injuring one miner and killing another.⁷⁵¹⁾ About two months later, on Oct. 26, the same mine collapsed again. Five out of the seven people working at the time were evacuated or rescued, but two were not rescued and 119 report was made only 14 hours after the accident. On Nov. 4, two miners were rescued without serious injuries.

748) BBC NEWS Korea, SPC Bakery Factory Death Accident: Workers Amid Growing Controversy, "Unfair Labor Practices Must Be Eradicated," Oct. 25, 2022

749) E-Korea, High Level of Media Criticism in case of SPC Bakery Factory Death Accident, Oct. 31, 2022

750) MOEL Press Release, Dec. 27, 2022.

751) JoongAng Ilbo, 50m tunnel collapse at Bonghwa Mine...1 dead and 1 injured, Aug. 29, 2022

However, issues regarding mine safety management continued to be raised. The police announced their policy to investigate the cause of the accident, whether safety measures were properly implemented, the responsibility of management and supervision of the people involved, the reason for the delay in reporting and illegal acts in the process.⁷⁵²⁾ The Ministry of Employment and Labor and the Ministry of Trade, Industry and Energy are also conducting investigations into the companies involved in the accident. On the other hand, the media raised issues on the poor working conditions in the mine, delayed rescue due to poor mine drawing management, and insufficient administrative power.⁷⁵³⁾

As of the end of Sep. 2022, there were 483 fatal accidents subject to disaster investigation, resulting in 510 deaths.⁷⁵⁴⁾ By workplace size, 303 cases (308 deaths) occurred at workplaces with less than 50 employees and 180 cases (202 deaths) at workplaces with 50 or more employees, and by accident types, 199 cases of falling (204 people) and 78 cases of being caught (78 people) are the top two types of fatal accidents, accounting for more than half of the total, at 55.3%.⁷⁵⁵⁾

2) Punishment and Self-Regulation for Prevention of Industrial Accidents

Korea has the highest rate of fatal industrial accidents among OECD member states. The number of deaths from industrial accidents in 2021 was 2,080 (an increase of 18 from the previous year), and among them, 828 deaths were due to accidents (a decrease of 54 from the previous year).⁷⁵⁶⁾ The fatal accident rate per 10,000 people⁷⁵⁷⁾ was 0.43 permilliad ($\frac{\%}{1000}$), which is higher than the average of 0.29 $\frac{\%}{1000}$ in OECD member states, and ranked 34th out of 38 countries.

752) Kyunghyang Shinmun, Police identify the site of the Bonghwa mine accident, Nov. 7, 2022

753) Hankyoreh, Not different from the '80s, Nov. 13, 2022

754) The number of deaths during the same period in 2021 was 502. The MOEL evaluated that the number of deaths rather increased after the implementation of the Serious Accident Punishment Act, contrary to its original purpose, but there is an opinion that it is still too early to evaluate the effectiveness of the law, given the time lag between the implementation of the safety and health policy and its effect.

755) MOEL, Status on Fatal Accidents Subjected to Disaster Survey, Nov. 6, 2022

756) MOEL, 2021 Industrial Disaster Status, Mar. 16, 2022

757) Number of accident deaths per 100,000 workers

In Nov. 2022, the Ministry of Employment and Labor announced a plan to reduce the fatal accident rate to the average level of OECD member states by 2026 through the ‘Severe Disaster Reduction Roadmap.’⁷⁵⁸⁾ The Ministry of Employment and Labor saw that the cause of major disaster problems in Korea are the lack of a risk factor prevention system in companies, laws and administrative systems that do not lead to changes in practice, culture and customs that perceive occupational safety and health responsibilities as work of others, and immature safety awareness and culture, and emphasized self-regulation and changes in the field.

From a similar point of view, there is an opinion that the reason for no reduction in accidents even with strengthened occupational safety regulations⁷⁵⁹⁾ is because the culture and system in which all members of the organization, including employers and workers, put safety first is not being implemented as a policy. Strengthened safety and health-related laws alone is insufficient for small and medium-sized businesses that lack the capacity to secure safety and health, and technical support for establishing a safety and health management system, financial support for improving safety facilities, and education for raising safety awareness and promoting safety culture must be expanded.⁷⁶⁰⁾

On the other hand, there is also a criticism on the direction of improvement of the Ministry of Employment and Labor. First of all, it is pointed out that labor supervision is less than 1% of all workplaces, and the Severe Accidents Punishment Act has not been applied strictly enough to experience the limitations of the current regulations and punishments, as only 6 cases were prosecuted in the 11 months of implementation. Moreover, despite the reality that the penalty for violation of the law is not sufficient enough to serve as an incentive to expand the appointment of safety managers and health managers covered by employers, and to establish a safety and health management system.⁷⁶¹⁾

758) MOEL, Roadmap to Reduce Serious Accidents, 2022.

759) Revision of the Occupational Safety and Health Act (January 2020), enactment of the Serious Accident Punishment Act, which punishes business managers, etc. (January 2022), reinforcement of sentencing standards for violations of the Occupational Safety and Health Act (January 2021), establishment of the Occupational Safety and Health Headquarters of the MOEL (June 2021), and strengthening special supervision of workplaces where disasters occur.

760) Global Economy News, [Special Report] Making safe workplace and happy world①...status and cause of repeated industrial disasters, Dec. 2, 2022.

761) Korean Confederation of Trade Unions, Commentary, Nov. 30, 2022.

3) Establishing Laws and Systems to Creating Safe and Healthy Work Environment

Falls, jamming, and collisions that occur at industrial sites are also called “traditional disasters.” The traditional disasters are characterized by the lack of basic safety measures, such as insufficient safety equipment, failure to wear protective gear such as safety helmets, lack of protective equipment, operation of equipment during maintenance and repair, and power failure, leading to fatal accidents. In terms of Korea's industrial accidents, the share of traditional accidents, such as falls, jamming and collisions, is relatively high, and this rate has not changed significantly over the past 10 years.

If so, it is necessary to think about why the problem of ‘lack of basic safety measures’ has not improved even when the same or similar disaster is repeated at the same site. If employers focus on production and short-term profits, workers’ safety and health management will be neglected in terms of cost or will stop at the minimum necessities. In the death accident that occurred at the Pyeongtaek bakery factory and the collapse of the Bonghwa Mine show similar problems.

Article 7 of the ICESCR⁷⁶²) stipulates that everyone has the right to enjoy “safe and healthy working conditions.” According to General Comment No. 23 (The right to fair and favorable working conditions) adopted by the ICESCR in 2016, the prevention of occupational accidents and occupational diseases is a fundamental element of the right to fair and favorable working conditions, and is closely linked to other rights, in particular the right to the highest attainable standard of physical and mental health. The ILO also revised the ‘ILO Declaration on Fundamental Principles and Rights at Work’ in Geneva on Jun. 10, 2022 to include ‘safe and healthy working environment’ as one of the basic labor rights. A ‘safe and healthy working environment’ is stipulated as a basic right of workers around the world.

After the implementation of the Severe Accidents Punishment Act, in the case of SMEs that relatively lack financial and professional manpower, awareness and understanding of the substance of the law itself is lacking, and the violations of safety measures were found with 49.3% of workplaces subjected to inspection during the on-site inspection by the

762) International Covenant on Economic, Social and Cultural Rights (ICESCR)

Ministry of Employment and Labor. In the prevention of industrial accidents, it is not appropriate to view the strengthening of legal and institutional punishment and the voluntary compliance with safe work procedures by employers and workers as mutually exclusive methods. For accidents that occur at industrial sites, it is difficult to prevent industrial accidents simply by attributing workers' insensitivity to safety as the cause and suggesting reinforcement of safety education. In order to establish a safety culture that prioritizes safety, it is important to establish and implement a legal and institutional system so that all employers, managers, and workers can perceive safety as an economic goal.

D. Case of Death of Sillim-dong Family by Flood – Safety Issues for Housing Vulnerable Class

1) Record-Breaking Heavy Rain in Aug. 2022, Flooding of Semi-Basement Houses in Sillim-dong, and Death Accidents

On Aug. 8~9, 2022, in the area south of the Han River in Seoul, heavy rainfall was observed with a maximum rainfall of 141.5 mm for one hour and a maximum rainfall of 435.0 mm for 24 hours. This was the largest rainfall in Seoul since observation began, and the flood damage on the underground spaces, such as subway stations, underground parking lots, and semi-basement houses, in Geumcheon-gu, Gwanak-gu, Dongjak-gu, Seocho-gu, and Gangnam-gu, which are low-lying areas adjacent to the steep mountain areas, was serious.⁷⁶³⁾

Between Aug. 8~17, heavy rain fell across the country, focusing on the central region, causing many casualties and property damages.⁷⁶⁴⁾ According to the Central Disaster and Safety Countermeasure Headquarters, 14 people died, 6 people went missing, and 26 people were injured between Aug. 8~17, and about 2,900 people were displaced.⁷⁶⁵⁾ There were 8,970 cases of flooding in houses and shops nationwide, and 1,754 hectares of flooded crops, about six times the area of Yeouido (290 ha). On Aug. 22, the government declared 10 local governments as special disaster areas and announced that they would deal with and restore damage from the torrential rains.⁷⁶⁶⁾ The city of Seoul announced plans to prevent damages from the heavy rains in the future by re-promoting the construction of six deep-water rainwater drainage tunnels.

In Aug. 2022, an incident that received special attention among the damages seen in the heavy rain occurred in Sillim-dong in Seoul. Three members of a family living in a

763) City of Seoul, Homepage, Local heavy rain in August 2022, what are the rainfall and damage characteristics in Seoul?, Aug. 29, 2022

764) In Seocho-gu, on August 8, a man in his 40s and a woman in her 50s went missing after falling into a manhole at night and were found dead on the 11th. As the water pressure increased due to heavy rain, the manhole cover popped up, and when the rainwater was sucked into the manhole, they fell into the manhole with the rainwater.

765) Ministry of the Interior and Safety, Safety Management Daily Status, Aug. 17, 2022

766) Disaster subsidy support, exemption from national and local tax payment, reduction of public utility charges are provided to the affected residents, and local governments declared as special disaster areas will convert part of the restoration costs for the damage to private facilities and public facilities to the national budget.

semi-basement house died on the morning of Aug. 9, unable to escape from the submerged house.⁷⁶⁷⁾ A woman in her 40s, her older sister with developmental disabilities, and her teenage daughter were living together. When the flooding began, the doors and windows did not open due to water pressure despite the efforts of the neighbors. Meanwhile, in Sangdo-dong, Dongjak-gu, a man in his 50s, who lived in a semi-basement, evacuated his mother who lived with him during the heavy rain, went in to find his pet cat, and died without being able to escape.⁷⁶⁸⁾

The president visited the damaged site in Sillim-dong on the morning of the incident, and the Seoul Metropolitan Government stated on Aug. 10 that the semi-basement house was a threat to the safety of the people, and announced its plan to ban issuance of permit to build basement houses for residential use and to sequentially removing the buildings after the grace period.⁷⁶⁹⁾ However, concerns were raised concerning the announcement by the Seoul Metropolitan Government that the housing vulnerable would be driven to poorer conditions.⁷⁷⁰⁾ In addition, even though the Ministry of Land, Infrastructure and Transport had already designated the concerned house as “sub-basement household with substandard housing and flooding concerns,” in 2020, but the information was shared with the local government.⁷⁷¹⁾ The civil groups held a press conference on Aug. 16, claiming that the social inequality caused the tragic disaster, and demanded that the government and the city of Seoul to effectively prevent recurrence.⁷⁷²⁾

767) KBS NEWS, The police arrived 4 minutes after the report, but 3 family members died, Aug. 9, 2022

768) Donga Ilbo, Families of the deceased in Sangdo-dong said that “there was no consolation, condolences, or notification of support measures from the local government,” Aug. 14, 2022

769) Seoul Metropolitan Government, Press Release, Aug. 10, 2022

770) Be Minor, This heavy rain is a climate disaster, will eliminating the semi-basement housing solve the problem?, Aug. 11, 2022.

771) Kyunghyang Shinmun, 10% of the 8,631 semi-basement housing flooded this summer, Sep. 18, 2022

772) Disaster Inequality Commemoration Action, Aug. 16, 2022

2) Inequality of Disasters and Issues of Housing Vulnerable Class

Recently, localized heavy rains, in which a lot of rain falls in a short period of time in a specific area, frequently occurred. This is known to be due to the effect of the barometer, which is different from the previous year, such as the slowdown of the jet stream and stagnant air flow due to climate change.⁷⁷³⁾ On the other hand, in confined urban areas, the impervious surface⁷⁷⁴⁾ increases due to the continuous development of infrastructure such as roads and houses, so rainwater cannot permeate into the ground and flows along the surface, and distortion of the water table system can cause flooding damage to various facilities in underground and low-lying areas.⁷⁷⁵⁾ In other words, the repeated flood damage in urban areas is possible due to the influence of climate change and urbanization.

During the heavy rain in Aug. 2022, flood damage in urban areas was concentrated on the socially vulnerable. The victims who lived in Sillim-dong and Sangdo-dong were socially vulnerable families who took care of people with developmental disabilities, children, and basic livelihood recipients and lived in a semi-basement houses. The living conditions of many other victims who suffered from flooding are similar. Some view that this revealed the inequality of disasters where the majority of the disaster victims are socially underprivileged.⁷⁷⁶⁾

On the other hand, the problem of the system to minimize disaster damage to housing vulnerable households is also raised. Semi-basement type of residence is one of the common residential spaces in the metropolitan areas where the house prices are high. According to the 2020 Population and Housing Census, there are about 330,000 semi-basement households nationwide, and about 96% of them are located in the Seoul metropolitan area. Moreover, in the case of Seoul, vulnerable households such as semi-basements in flood-vulnerable districts are located in low-lying areas, and flooding is inevitable due to the accumulation of

773) Donga Ilbo, 30 extreme torrential rain this year alone... 'We need to reestablish disaster prevention measures in line with climate change,' Aug. 6, 2022

774) Impervious surface refers to roads, parking lots, sidewalks, etc. paved with asphalt or concrete that prevent rainwater or melted snow from permeating underground

775) National Assembly Legislative Research Service, NARS status analysis, "Urban torrential rain damage prevention and countermeasures," Sep. 16, 2022

776) Seoul Shinmun, Despite the report of 'the water is rising'... Disaster inequality struck again from the semi-basement, Aug. 10, 2022

road surface water and reverse flow of sewage.⁷⁷⁷⁾

Since 2010, the Seoul Metropolitan Government is operating the ‘Flood Vulnerable Household Support Service,’ which selects households that have experienced flooding or are vulnerable to flooding and manages them one-on-one with one public employee per household. In addition, disaster text broadcasting (emergency text message, CBS) is in operations to disseminate to the public in a disaster situation. However, it seems that there was no preemptive contact from the city of Seoul to the Sillim-dong family during this torrential rain, and the disaster text was sent after the flooding.

3) The Need to Establish a Policy to Protect the Housing Vulnerable Class

Poor housings, such as semi-basement, basement, and rooftop rooms, with its small areas, old buildings, lack of air conditioning and heating facilities, and poor environment and sanitation, is the factor that violates the right to live a humane life, the right to life, the right to health and the freedom of privacy. The UN International Covenant Committee on Economic, Social and Cultural Rights expressed concern about the fact that many people live in unsuitable housing in its final opinion on the 4th National Report of the Republic of Korea in 2017, and recommended that the government prepare necessary measures.

On the other hand, the people who live in the semi-basement are people who are in a situation where they have to choose the form of semi-basement living for various reasons. If the semi-basement type of residence is eliminated uniformly, it is also important to prepare countermeasures for them. In a report presented at the 71st session of the UN General Assembly in 2018, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context stated that “states must ensure that social communities and households do not unnecessarily leave their places of residence because of disaster-preventive development plans. When it comes to strategies for migration and disaster prevention, ‘people-centered planning’ should be given priority.”

777) Seoul Institute of Technology, Aug. 12, 2022

When 11 residents of illegal underground housing died in Sep. 2021 due to Hurricane Ida, the City of New York promoted a bill to legalize underground housing and make it a dwelling that meets the safety standards in preparation for flooding due to heavy rain.⁷⁷⁸⁾ It is necessary to keep in mind the above points in the process of the Seoul Metropolitan Government's long-term plan to eliminate semi-basement dwellings and protect semi-basement residents through support for moving into public rental housing.

⁷⁷⁸⁾ However, this bill was repealed when the session expired.

E. Climate Crisis as a Human Rights Issue

1) Climate Crisis and the Issue of Basic Human Rights Violations

Recently, with the occurrence of abnormal weather all over the world, awareness on the climate crisis is rapidly increasing. According to the climate change report released in Sep. by six international organizations, including the World Meteorological Organization (WMO), climate disasters kill an average of 115 people and cause losses of 280 bil. KRW a day.⁷⁷⁹⁾ In Korea, the drought that lasted from the end of 2021 to June 2022, the record-breaking heavy rains in August and even after the end of the repeated rainy season, showers of rain, and relatively warm summer weather in recent years are also being presented as a result of the climate crisis.

The term ‘climate crisis’ refers to a state in which climate change, in addition to the extreme weather, poses irreversible risks to human civilization, such as water and food shortages, ocean acidification, sea level rise, and ecosystem collapse, requiring drastic greenhouse gas reduction. The climate crisis can directly or indirectly have a great impact on the people’s lives, and there is an international trend to deal with it as a human rights issue beyond being environmental issues.

More than 1,587 cases of “climate lawsuits” urging governments or companies to strengthen climate change response or demanding compensation for losses suffered from various climate disasters have been confirmed from 1986 to May 2020. In 2019, the Dutch Supreme Court acknowledged the claimant’s argument in the ‘Urgenda case’ that the government has an obligation to implement greenhouse gas reductions in response to the dangerous climate crisis that could seriously harm the life and well-being of Dutch residents.⁷⁸⁰⁾ In 2021, the Federal Constitutional Court of Germany announced that the “Federal Climate Protection Act” violated the fundamental right of the future generation because it aims to reduce the greenhouse gas emissions by 55% by 2030 compared to 1990, but the target after 2031 is not stipulated.⁷⁸¹⁾

779) SBS News, [Newstory] Hot Earth...2022 Climate Shock, Oct. 8, 2022

780) Lee, Jae-hui, Possibility of Judicial Response to Climate Change: Focusing on Climate Change Constitutional Lawsuit, Korean Society of Law, 2020.

781) Kim, Young-su, Analysis of the German Federal Climate Protection Act and the decision of the Federal Constitutional

In Korea, on June 13, 2022, the ‘Baby Climate Litigation Team’ filed a petition for adjudication on the constitutionality of Article 3(1) of the Enforcement Decree to the Framework Act on Carbon Neutrality and Green Growth to Cope with Climate Crisis (Framework Act on Carbon Neutrality for short) violated the fundamental rights of babies. The Framework Act on Carbon Neutrality was enacted in Sep. 2021 and came into force in Mar. 2022 as a law that regulates procedures and policy means to achieve the national goal of 2050 carbon neutrality, but the enforcement decree of the Act stipulating the national GHG reduction target of 40% compared to 2018 by 2030 is insufficient and is not sufficient to protect the fundamental rights of the future generations, such as the right to life.⁷⁸²⁾

On Nov. 28, the NHRCK resolved to present its opinion to the Korean government that “it is a basic duty of the state to protect and promote the human rights of everyone in the climate crisis situation, and the relevant laws and the systems must be improved to approach and respond to the climate crisis from a human rights perspective.”⁷⁸³⁾ This is known as the first decision of the NHRCK to deal with the climate crisis as a human rights issue, and demands are being made for the active roles of the relevant ministries, such as the Ministry of Environment.

2) Problems of the Climate Crisis Policies

In accordance with the goal of achieving carbon neutrality by 2050, the government enacts the Framework Act on Carbon Neutrality, and is implementing climate change impact assessments, introducing a budget system for recognizing greenhouse gas reduction, expanding the emission trading system, promoting incentive-type policies such as carbon neutral practice points, and promoting righteous low-carbon support projects. However, there are also demands for supplementation of various policies to respond to the climate crisis.

First point is that Korea’s greenhouse gas emission reduction targets and legal regulations

Court on March 24, 2021 to the unconstitutionality of some of the laws and subsequent discussions, KCI, 2021.

782) This is the second constitutional petition filed in relation to the climate crisis in Korea, and a constitutional petition with a similar purpose was already filed in October 2021 and is being reviewed by the Constitutional Court.

783) NHRCK, Decided on Nov. 28, 2022, Opinion on Climate Crisis and Human Rights.

for reduction are insufficient. Article 8 of the Framework Act on Carbon Neutrality stipulates that by 2030, greenhouse gas emissions will be reduced by at least 35% to those in 2018, and Article 3 of the Enforcement Decree of the Act raises the national greenhouse gas reduction target to 40% of 2018 emissions. However, this falls short of the reduction target required by the 2022 IPCC⁷⁸⁴⁾ 6th Assessment Report (43% reduction of 2019 emissions by 2030).⁷⁸⁵⁾ On the other hand, not specifying the greenhouse gas reduction target after 2030 in the Framework Act may cause intergenerational inequality in the reduction amount and may violate the obligation to protect the fundamental rights of the future generations.

Second is the need to review the definition and classification of the climate crisis vulnerable group. The Framework Act on Carbon Neutrality stipulates the need for a just transition that minimizes damage to the vulnerable in the process of implementing a carbon-neutral society, and its realization as the basic principle of this law, but there is no stipulated definition for the classification of the vulnerable. The damage caused by the climate crisis appears differently depending on gender, race, social status, disability, occupation, residential area, and generation, and as the climate crisis intensifies, the process of alternately exacerbating and reproducing these discriminatory damages is repeated. Therefore, it is necessary to categorize the climate crisis vulnerable class by reflecting the aspects of climate change and social and geographical characteristics.

Third is the transparency issue regarding early warning information on the impact of climate change, adaptation and mitigation measures, potential impacts and financing. Governments must ensure informed participation by the people, but there is a lack of related regulations in the Framework Act on Carbon Neutrality, and the climate-related information is distributed and provided through various organizations; so, there is a need for improvements to facilitate information access from the consumer side.

784) IPCC (Intergovernmental Panel on Climate Change): The World Meteorological Organization (WMO) and the UN Environment Program (UNEP) jointly established in 1988 to address the issue of climate change. Contribute to scientific identification of climate change, assess global risks related to climate change, and prepare international countermeasures.

785) Germany aims to reduce greenhouse gas emissions by at least 65% by 2030 and by at least 88% by 2040 compared to 1990 levels. Taiwan has announced a "2050 net zero transition" to reduce greenhouse gas emissions by 50% compared to 2005 and achieve carbon neutrality in 2050. As the US rejoined the Paris Agreement, it set a greenhouse gas reduction target to be achieved by 2030 at 50–52% compared to 2005, and claimed to achieve carbon neutrality by 2050.

3) The State Responsibilities in Responding to the Climate Crisis

If the climate crisis situation is approached from the perspective of human rights, it is directly related to the right to freedom (right to life), social rights (labor rights, social security), and right to solidarity (right to a clean environment), and the fundamental rights violated by the climate crisis include the right to life, the right to food, the right to sanitation, the right to health, the right to housing, the right to self-determination, and the right to education. In particular, the damage caused by the climate crisis can be greater for the future generations, such as children who are not responsible for the cause. Moreover, the fatal accident caused by flooding of semi-basement houses and underground parking lots due to typhoons and heavy rains in 2022 are examples of the need for an active role from the state as climate change can cause human casualties.

The international communities also emphasize enacting laws and establishing policies to address the climate crisis must be based on human rights approaches. Since 2008, the UNHRC and the UN High Commissioner for Human Rights (OHCHR) have explicitly stated that the climate crisis can violate the right to life, health, housing, food and water through resolutions and reports. Moreover, international cooperation is increasing to respond to the climate crisis.

After all, as the climate crisis directly or indirectly has a wide range of human rights, such as frequent disaster situations, the right to life, the right to food, the right to health, and the right to housing, the government needs to recognize that protecting and promoting the human rights of everyone in the climate crisis situation is a basic duty of the state, and it is necessary to improve related laws and systems to approach and respond to the climate crisis from a human rights perspective.

To this end, it is necessary to increase the greenhouse gas reduction target by comprehensively considering the proportionality of the burden of greenhouse gas reduction between the present and future generations and the responsibility of Korea as an advanced country. It is essential to introduce systems and policies that can lead companies that emit large amounts of greenhouse gases to reduce their carbon emissions, and it is necessary to strengthen corporate disclosures related to climate change in the plan for mandatory sustainability management reports implemented by the Financial Services Commission.

In addition, considering that the climate crisis has a wide range of impact on daily life, such as working conditions, housing, health, and hygiene, as well as employment issues for the vulnerable, it is necessary to promote comprehensive measures for the protection of the vulnerable. Above all, since the climate crisis is a problem for all members of the society, it is necessary to transparently manage and provide information on early warnings of the impacts of climate change, adaptation and mitigation measures, potential impacts and financing, and to guarantee the participation of various members of society in the process of establishing and implementing the policies.

VI. Human Rights in North Korea

1. Human Rights Status 2022

‘Human rights in North Korea’ is a concept to devise realistic and reasonable measures to improve North Korean human rights according to the principles of universal human rights based on international human rights standards, not political interests or ideological issues. The NHRCK considers that this category of “human rights in North Korea” includes the human rights of North Korean residents in North Korea, the human rights of North Korean defectors, and human rights related to humanitarian issues between the South and the North, such as separated families, abductees, and POWs.⁷⁸⁶⁾

The UN General Assembly, which has adopted a North Korean human rights resolution every year since 2005, adopted a North Korean human rights resolution in 2022 for the 18th consecutive year. In addition, the Korean government expressed concerns over the deterioration of the human rights situation in North Korea following the measures taken in response to COVID-19, and expressed its position that it urges North Korea to take effective measures to improve the human rights situation of its residents in accordance with the recommendations of the UN General Assembly resolution.

The 49th UNHRC, held in 2022, urged the North Korean authorities to cooperate with the relevant organizations to ensure timely distribution and equal distribution of COVID-19 vaccines to the public. In particular, the ‘2022 Report of the UN Human Rights Council of the Special Rapporteur on the situation of human rights in North Korea’ submitted by the UN Special Rapporteur on the situation of human rights in North Korea (Tomas Ojea Quintana) is he expressed serious concerns about the deteriorating human rights situation in North

786) Dec. 11, 2006, NHRCK ‘Statement by the NHRCK on Human Rights in North Korea’(Full Committee Resolution)

Korea due to the worsening food crisis and strict control over freedom, and at the same time, criticizing that the approach of the international community so far has failed to guarantee an improvement in the human rights situation. He emphasized that it is time for the active involvement of the international community.

In 2021, support from the international community was suspended due to North Korea's strict response to COVID-19, but with the support of the UN, the comprehensive vaccine brought to North Korea via train in Feb. 2022 was released from quarantine and disinfection procedures in Sep., and vaccination began. However, the delivered vaccines are tuberculosis, measles, rubella, and tetanus vaccines, and the North Korean authorities are still refusing the COVID-19 vaccine. The UN-affiliated Food and Agriculture Organization (FAO) has assessed that the majority of the population in North Korea is suffering from food shortages, and has designated North Korea as a country in need of external food.⁷⁸⁷⁾

Meanwhile, regarding the issue of regulating the spread of leaflets to North Korea, which was discussed in the 2021 NHRCK Human Rights Report, the Constitutional Court is in the process of deliberating whether the provision is unconstitutional. The Ministry of Unification is urging self-restraint while expressing concern about the spread of leaflets to North Korea immediately after it was announced by the private organizations, but at the same time, it submitted an opinion to the Constitutional Court that the article violated the freedom of expression and the principle of criminal justice. The decision of the Constitutional Court is attracting attention as the controversy over the regulation of the distribution of leaflets to North Korea continues.

It was a year in which the need for inspection and improvement of the support system for North Korean defectors was once again highlighted. The issue of maladjustment to Korean society was pointed out as the main cause of the re-entry incident that occurred on Jan. 1, 2022 and a discovery of a dead body of a North Korean defector at home, who was presumed to have died alone.

The report will analyze the case of human rights in North Korea that received much social attention in 2022 and present policies that the government should implement to improve the human rights in North Korea.

787) Seoul Shinmun, FAO, North Korea re-designated as a country in need of external food aid, Dec. 4, 2022.

2. Main Topics

A. Status of North Korea-Related Cases: Death of a Public Official in the West Sea, and the Repatriation of North Korean Fishermen

1) Controversy Over the Death of a Public Official in the West Sea and the Repatriation of North Korean Fishermen

On June 16, 2022, the Ministry of National Defense and the Korea Coast Guard reversed their previous stance⁷⁸⁸⁾ on the disappearance and death of a public official in the West Sea that occurred in Oct. 2020, and said, “we investigated whether the public official killed by the North Korean military went to North Korea, but we could not find out how he moved or his intention for defecting to North Korea.”⁷⁸⁹⁾ This case became a big issue in 2020,⁷⁹⁰⁾ but in 2022, as the Korea Coast Guard and others reversed their stance, it became controversial again, centering on the former and current government officials and politicians from the ruling and opposition parties.

From the beginning of the case, the bereaved family of the deceased determined that there was no objective evidence in the investigation results of the Coast Guard and the Ministry of National Defense, and raised suspicion that the circumstances of the death were covered up. 9 Coast Guard officers expressed their intention to resign and take responsibilities for overturning the results of the investigation, and on Oct. 14, the Board of Audit and Inspection announced that it would request the prosecution to investigate 20 people, from 5 agencies, on charges of dereliction of duty, abuse of authority, and preparation of false public documents.⁷⁹¹⁾ As of the end of 2022, the prosecution is investigating the former head

788) A public official died on September 21, 2020 after disappearing at sea near Yeonpyeong Island. It is believed that he defected to North Korea for the purpose of escaping from reality in a state of mental panic from gambling.

789) Yonhap News, Cannot determine the reason for defecting to North Korea of the public official shot by North Korea, the outcome reversed, Jun. 16, 2022

790) On June 22, 2021, the NHRCK conclude that some information violated the personal rights, privacy and freedom of the deceased and the bereaved family as a result of the investigation into the complaint (20JinJeong0820500, human rights violations due to the announcement of the investigation outcome by the Korea Coast Guard)..

791) The Board of Audit and Inspection of Korea, Press Release, Oct. 13, 2022

of the National Security Office and the former head of the National Intelligence Service on charges of deleting intelligence.⁷⁹²⁾

On Jul. 12, 2022, the Ministry of Unification reversed its previous stance on the repatriation of North Korean fishing boats in November 2019⁷⁹³⁾, saying that “considering the various damages that will be suffered if they are handed over to North Korea, the repatriation of North Korean fishermen to North Korea was clearly wrong.”⁷⁹⁴⁾ This incident became known and controversial in 2019 when the text message received by the deputy director of the National Security Office from the JSA officer were captured by the media during a National Assembly inquiry,⁷⁹⁵⁾ and it once again received social attention in July 2022, when the Ministry of Unification released videos and photos of the North Korean repatriation process.⁷⁹⁶⁾

Politicians from the ruling and opposition parties, the press, and the coalition of North Korean human rights groups expressed different opinions on whether the suspicion of fleeing after the murder of the fishermen repatriated to North Korea was credible, ‘the sincerity of the intention to defect to North Korea,’ and the legality of the repatriation method, and there were also media reports that the fishermen who had been repatriated had already been executed.⁷⁹⁷⁾

International human rights organizations continued to pay attention to these cases. On July 14, Human Rights Watch, an international human rights group, presented an opinion to the South Korean government that a transparent fact-finding investigation is needed on the shooting of a public official in the West Sea and the repatriation of North Korean fishermen

792) YTN, ‘West Sea attack’ Ending the week without investigation, Dec. 25, 2022

793) During the investigation of the two North Korean fishermen captured by the South Korean Military on Nov. 2, 2019, they were presumed to have fled after killing many people and were deported back to North Korea through Panmunjeom on Nov. 7, 2019.

794) MBC News, The Ministry of Unification also reversing its position...Returning the defecting fishermen is wrong, Jul. 12, 2022

795) The NHRCK dismissed the complaint about this case on November 23, 2020. It was the result of the fact that there was no established procedure in the Korean government in handling North Korean defectors’ intention to request protection and applicants for protection, so it was expressed the opinion that related laws and manuals need to be improved to prevent human rights violations from recurring in the future. However, as of the end of 2022, the investigation into the complaint is ongoing following the cancellation of the court’s dismissal decision.

796) The video and photos show North Korean fishermen tied to ropes during the repatriation process.

797) Chosun Ilbo, “North Korean fisherman executed for treason... North Korea also confirmed their intention to defect,” Jul. 14, 2022

against their will. The State Department's special envoy for North Korean human rights, Robert King, and the secretary-general of the North Korean Human Rights Commission, a Washington-based private organization, also took note of these cases, adding that such an investigation as a partisan issue is unnecessary.⁷⁹⁸⁾

2) Issues and the Controversies in the Two Cases

Both cases have in common that they were controversial at the time when they occurred, and then became controversial again in the second half of 2022, two to three years later, due to investigations by state agencies and changes in their position. Moreover, since the North Korean military and North Korean residents were involved in the incident, accurate information on the facts were not disclosed, and the issue was part of diverse social discussions.

First, the biggest controversy was whether the public official voluntarily defected to North Korea based on the confirmed circumstances and facts related to the disappearance and death of the public official. There are circumstantial information, such as the location of disappearance, the estimated location of the shot, the current, wearing of life jacket, and information obtained by the military through wiretapping, etc., but depending on the interpretation, it may be different whether he has lost his footing or drifted or has a willingness to go to North Korea voluntarily.⁷⁹⁹⁾

Moreover, there are issues with whether the announcements made by the Ministry of National Defense and the Korea Coast Guard at the time were fair to the extent that they did not violate the human rights of the victims and bereaved families, whether the response of the state agency was appropriate in the early stage of the incident, the controversy over the secondary assault on the bereaved family, whether the NIS tried to cover up the incident by deleting data, and the reliability of the audit results of the Board of Audit and Inspection.

On the other hand, in relation to the repatriation of North Korean fishermen, the debate about the ‘sincerity’ of the North Korean fishermen’s expressed intention to defect has become a subject of controversy. The government found that they were arrested while

798) VOA, U.S. human rights experts “Need a thorough investigation into the shooting of a public official in the West Sea, Legal judgment based on facts is important, Oct. 22, 2022

799) Hankyoreh, Three issues surrounding the public official defecting to North Korea and murdered in West Sea, Oct. 27, 2022

fleeing after killing their colleagues. Criticism was raised as to whether the intention to defect to the South can be trusted as a true intention to defect in a situation where there is a high possibility of the death penalty if repatriated to the North or to what criteria were used to determine “true defection intentions” and whether it was a subject that needed to be judged in the process of accepting North Korean defectors.⁸⁰⁰⁾

In addition, it is a question of whether it is credible that they fled after killing others in the North, whether a person who has committed a crime equivalent to murder should be returned to Korea, and whether there is a basis for refusing defection under domestic law and whether procedures such as trials are necessary in the process of repatriation.

3) The Need to Emphasize Human Rights Protection in Light of the Two Cases

Articles 6 and 9 of the UN Covenant on Human Rights stipulate that everyone has the right to life, liberty and security, and that no one shall be deprived of that freedom except in accordance with the reasons and procedures prescribed by law. The UNHRC, in its General Comment No. 35 (2014, ‘Liberty and Security of the Person’), states that states are obliged to take appropriate measures to protect the right to liberty from being deprived by a third-party, and to protect personal freedom and security. It said that repatriation to a country where there are substantial grounds to believe that the person faces a real risk of serious violation of personal freedom and security may constitute inhumane treatment prohibited by the Covenant.

The two cases are similar in that the right to life, personal freedom, safety, and honor of South Koreans and North Koreans are restricted, respectively, and both the South and the North have become subjected of violation of fundamental rights. Therefore, if the state’s obligation to protect human rights is considered, apart from issues such as ‘willingness to defect to North Korea’ and ‘sincere intention of defection,’ it is an important issue to examine whether the state has fulfilled its duty to protect the basic human rights of victims according to the reasons and procedures stipulated by the law and whether there is no legal or institutional blind spot.

800) Kyunghyang Shinmun, Positions on each issue in the repatriation of North Korean defectors to North Korea, Jul. 14, 2022

From this point of view, the government needs to make efforts to protect human rights in accordance with the rule of law regarding the human rights issues of South Korean citizens and North Korean defectors in relation to the North. In the meantime, the South and the North have adopted different ideologies and systems and have not recognized each other normatively, and in cases where specific facts related to this occur, they have been resolved according to the political decisions and compromises, not judicial judgments, even though they include legal issues.

It is easy to predict that if inter-Korean relations develop in the future, there will be more problems in applying the law in legal disputes between the two Koreas or in cases involving the other party. In such a case, observing universal human rights principles based on international human rights standards is important, not political interests or ideological issues.

B. Blind Spot in Support for North Korean Youths Born in a Third Country

1) North Korean Defector Youths Born in a Third Country Excluded from the List of “North Korean Defectors”

According to the ‘North Korean Defectors Protection and Settlement Support Act,’ enacted in 1997 (‘North Korean Defectors Act’), the term ‘North Korean defector’ means a person who has residence, lineal ascendants and descendants, spouses, workplaces, etc. in North Korea, and who has not acquired any foreign nationality after escaping from North Korea. According to the Ministry of Unification, as of June 2022, the total number of North Korean defectors who entered the Republic of Korea is 33,834 (tentative).

As of April 2022, the number of “North Korean defector students” attending school is 2,061.⁸⁰¹⁾ However, children born in various places, such as China and Southeast Asia, while their parents defected from North Korea do not qualify as North Korean defectors under the North Korean Defectors Act. They are referred to as “North Korean defector youths born in a third country” or “North Korean defector youths who entered Korea midway.”⁸⁰²⁾ According to the Ministry of Education’s Statistics of North Korean defectors, the number of “North Korean defector students” born in a third country has been steadily increasing for the past 10 years, and as of Apr. 2022, 30.8% of students were born in North Korea and 69.2% were born in a third country, more than twice as many students born in a third country.⁸⁰³⁾

Most of the North Korean defector youths born in third countries are the children of a North Korean defector woman and a foreign man. There are many cases in which mothers who are North Korean defectors first settle down in South Korea and then children move to South Korea later. In many cases, they experience difficulties related to growth and education in foreign countries, such as China, the experience of separation in the process of North Korean defector mothers entering South Korea, poor Korean language acquisition, and identity or nationality issues.⁸⁰⁴⁾ Even though they are members of a North Korean

801) See Ministry of Education, 2022 Statistics on North Korean Defector Students

802) In the past, the term “unprotected youth” was also used.

803) It is difficult to accurately determine the total number of North Korean defector youths born in third countries, including those who are not students.

defector family, they are sometimes excluded from being recipient of support for North Korean defectors under relevant laws, such as the North Korean Defectors Act, because they were not born in North Korea,⁸⁰⁵⁾ and the legal status of brothers and sisters in a single family is different sometimes.⁸⁰⁶⁾

In May 2019, an amendment was proposed to the 20th National Assembly to extend the scope of protection of the North Korean Defectors Act to North Korean defector children born in a third country and stipulate the basis for educational support for them. However, as the term of the 20th National Assembly expired, it was automatically abolished. After that, in the 21st National Assembly, the discussion on the issue did not proceed until Dec. 2022 when an amendment to the North Korean Defectors Act was proposed.⁸⁰⁷⁾ The proposed amendment includes extending the eligibility to North Korean defectors born in a third country by amending the educational support beneficiaries to “children of North Korean defectors.”

2) Difficulties Living in South Korea by North Korean Defector Youths Born in a Third Country

North Korean defector youths born in a third country are one of the most vulnerable groups among children and adolescents with migrant backgrounds,⁸⁰⁸⁾ and in terms of identity and emotion, there is a unique difference from the general international marriage family with a foreign background. Moreover, the problems they face while adapting to South Korean society are different from those of North Korean defector youths.

First is the nationality issue. According to Article 2 of the ‘Nationality Act,’ if one of the

804) Shin, Hyo-suk, Why is it difficult to support North Korean defector youths born in a third country?, Donga Ilbo, Jan. 9, 2019.

805) The Ministry of Unification seems to be in a position to broadly interpret the law and include North Korean defector households, so they can be included in the target of settlement support. However, since it is not clearly stipulated in the law, it is understood that there are differences in the content, scope, and scale of support.

806) KBS, “[Friendly News K] North Korean defector youths born in a third country cannot receive support, Aug. 4, 2022

807) Submitted by Rep. Ji, Seong-ho, Bill No.18694, Dec. 6, 2022.

808) In general, ‘migration background children/adolescents’ are children of foreign workers, adolescents who immigrated midway through marriage immigrants who remarried to their Korean spouses and brought their children from their home country, adolescent North Korean defectors in adolescence among North Korean defectors, and defectors from North Korea born in a third country.

parents is a Korean national at the time of birth, the child acquires Korean nationality at the time of birth. Accordingly, North Korean defector youths born in a third country can acquire South Korean nationality, and in practice, they are granted South Korean nationality if they are proven to be children of North Korean defectors. However, in the case of North Korean defectors residing in foreign countries, many North Korean defector youths living in China and other countries born in third countries are considered to be stateless, as there are cases in which they are unable to register their marriage and birth for various reasons after giving birth to their children as undocumented residents. It is estimated. In this case, when their parents disappear or are cut off from their families during their entry into the country, it is not easy for North Korean defector youths born in a third country who are stateless to prove that their parents are North Korean defectors on their own, and sometimes leads to legal disputes.⁸⁰⁹⁾

In terms of education, the children of North Korean defectors born in China, Southeast Asia, etc. are raised in a foreign country, then move to South Korea, and often, their main language is not Korean. Results from various surveys indicate that the North Korean defector youths have lower level of Korean proficiency than children from other types of foreign families.⁸¹⁰⁾ In order to guarantee their proper development and educational rights, differentiated educational support is necessary, but the Korean language education for these children are heavily reliant on alternative schools.

On the other hand, there is also the issue of equity among North Korean defectors in relation to higher education and military service. Pursuant to the North Korean Defectors Act and the Military Service Act, children of North Korean defectors are given special admission benefits outside of the university quota, and may be exempted from the military service. However, the North Korean defector youths born in a third country are not eligible. In response, North Korean defector community demands that North Korean defector refugee children born in a third country should be eligible for the educational support and exemption from the military service, while others assert that such special exceptions amount to reverse discrimination.⁸¹¹⁾

809) Chosun Ilbo, Second-generation North Korean defectors with nowhere to go, 'I am stateless,' Mar. 2, 2021

810) National Youth Policy Institute, Survey on the Status of Children and Adolescents with Migration Background (Dec. 2021)

811) National Youth Policy Institute, Survey on the Status of Children and Adolescents with Migration Background (Dec.

3) Direction of Amendment of Laws and Welfare for the North Korean Defector Youths Born in a Third Country

Article 3 of the UN Convention on the Rights of the Child (CRC) stipulates that the best interests of the child should be considered first in all activities concerning children, and Article 6 establishes the obligation of the states to ensure, to the greatest extent possible, the survival and development of the child

The North Korean defector youths born in a third country is a type of minority group that has recently emerged as North Korean defectors diversified their escape route and time. They are likely to be in a blind spot under the existing legal and institutional system, and are a vulnerable class with characteristics that require special protection in Korean society. The North Korean defectors born in North Korea and those born in a third country have different life backgrounds, but this does not mean that North Korean defector youths born in a third country require less support than those born in North Korea.

Thus far, the government has expanded the placement of bilingual instructors to support the North Korean defector youths born in a third country, distributed customized Korean textbooks, and provided psychological counseling and cultural experiences for the students and parents, in order to provide a customized educational support. After evaluating the achievements and shortcomings of the support so far, it is necessary to prepare measures to help North Korean defector youths born in third countries adapt well to the regular curriculum. Furthermore, it is necessary to discuss the revision of the North Korean Defectors Act so that the North Korean defector youths born in a third country can enjoy the welfare benefits.

C. Incidents of North Korean Defectors Going Back to North Korea, and the System to Support Adaptation of North Korean Defectors

1) Isolation and Maladjustment of North Korean Defectors

On Jan. 1, 2022, civilians defected to North Korea through the military demarcation line barbed wire on the eastern front of Gangwon-do. The person who defected to North Korea was a North Korean defector who defected to South Korea in a similar way in Nov. 2020, and interest in his career, personality, and life in the South continued.⁸¹²⁾ Exact reason for his return is hard to determine, but investigation based on the contents of messages exchanged with others and cell phone records indicate that he had difficulty adjusting to life in the South.

This is not the first time North Korean defectors have failed to adapt to South Korean society and moved abroad or returned to North Korea.⁸¹³⁾ According to the data from the Ministry of Unification, 31 North Korean defectors are officially confirmed to have returned to the North between 2012 and 2022. The exact number is hard to determine, as this data is also a figure obtained through North Korean media reports and investigations.⁸¹⁴⁾ The Chairperson of the NHRCK released a statement on Jan. 12, stating that the resettlement support system for North Korean defectors need supplementation and improvement, as many North Korean defectors are having difficulty settling in the Korean society.⁸¹⁵⁾

The Ministry of Unification, in Feb., stated that it will reinforce the support for the vulnerable class of North Korean defectors, strengthen psychological support and expand the role of the local communities through amending the Enforcement Decree of the North Korean Defectors Act and establishing a plan to implement policy support for the North

812) The Chosun Ilbo (reported on January 4) and other media outlets, through reports from other North Korean defectors who lived in Hanawon with Mr. A, found that Mr. A's unique personality and life in the South were different from other North Korean cases. It was also reported for the purpose.

813) On the other hand, there were studies and press reports stating that since 2007, there have been about 700 North Korean defectors who entered South Korea through this incident and then emigrated abroad due to economic difficulties, discrimination and prejudice. The Ministry of Unification also stated in a press release (Jan. 10) that the study contained errors in its description of the facts.

814) Yonhap News, Ministry of Unification "A total of 31, including 1 this year, returned to North Korea during the past 10 years," Sep. 27, 2022

815) Statement by the Chairperson of the NHRCK, Jan. 12, 2022.

Korean defectors. However, on Oct. 19, 2022, a North Korean defector woman living alone in a rental apartment in Seoul was found about a year after she died, raising criticism regarding the welfare of North Korean defectors.⁸¹⁶⁾

According to the Ministry of Unification, the number of North Korean defectors entering South Korea increased by 67 (tentative), bringing the total to 33,882, as the end of 2022. The number of North Korean defectors entering South Korea increased rapidly around 2000, but has been maintaining 1,000 to 1,500 per year, but the number of North Korean defectors has also significantly decreased since 2020 because the North Korean authorities have completely sealed off the border area between North Korea and China to prevent the spread of COVID-19.

North Korean defectors residing in Korea are living as citizens of the Republic of Korea, and the central and local governments operate various settlement support programs, such as personal protection, housing, medical care, livelihood, and employment in accordance with related laws, including the North Korean Defectors Act. Nevertheless, many studies and surveys show that many North Korean defectors still feel economic hardships and a sense of isolation.⁸¹⁷⁾ In 2019, 20 North Korean defectors died from 'unknown cause,' but in 2020 and 2021, the number increased to 90, and this seems to be due to the fact that more and more people die of loneliness from severe depression as communications with the outside world or North Korean defector society became difficult in the aftermath of COVID-19.⁸¹⁸⁾

816) See "Issues of Lonely Deaths in Welfare Blind Spots" above for relevant information

817) According to the Database Center for North Korean Human Rights' (NKDB) '2022 Economic and Social Integration of North Korean Defectors,' among North Korean defectors, 31.8% of the respondents answered that they had 'felt a sense of depression or despair', 18.9% answered that they had 'thought about re-entering North Korea', and 24.8% answered that they had an idea of moving abroad.. The Ministry of Unification's survey of vulnerable North Korean defectors in the second half of 2021, about 47% of the 1,582 North Korean defectors who settled in South Korea were classified as vulnerable, and answered that they were experiencing emotional and psychological difficulties.

818) Chosun Ilbo, Lonely deaths of North Korean defectors increased by 4 times, with the government's indifference, Nov. 27, 2021

2) Pointing Out the Limitations of the Resettlement Support System for the North Korean Defectors

The North Korean defectors have complex significance, legally, politically, socially, and in terms of inter-Korean relations. The North Korean defectors are citizens of the Republic of Korea, but they show multicultural and refugee characteristics, as well as being social minorities.⁸¹⁹⁾ In many cases, the life-threatening escape from North Korea, staying abroad, entering the country, experiencing the process of settling down, and problems with other family members remaining in North Korea remain as psychological trauma.

The government's major policies for resettlement and support for the North Korean defectors can be divided into three stages: initial entry support, protection support, and residential support. When North Korean defectors enter the South, they are admitted to the Settlement Support Facility (Hanawon) of the Ministry of Unification, where they receive social adjustment education for 12 weeks, are assigned rental housing, receive housing support, and move into their residence. After that, they receive local adaptation education, psychological counseling, and employment counseling for 2 weeks at the local adjustment center, and receive protection for their residence for up to 5 years. Separately, the police provide a personal protection system⁸²⁰⁾ for the North Korean defectors. Some limitations are pointed out while the government, local governments, and the private sector cooperate with each other to support the resettlement of the North Korean defectors.

First is a criticism on whether the Ministry of Unification is properly conducting the fact-finding survey and information sharing. Generally, local governments receive information from the Ministry of Unification to determine the vulnerable and at-risk households among the its residents. However, in the first half of 2021, more than 40% of the 7,517 vulnerable households of North Korean defectors surveyed could not be found. Regarding this, there is a need to actively seek out the whereabouts of the subject and make contact attempts.⁸²¹⁾

819) Moon, In-cheol and Song, Min-kyeong, Direction for Improving the Support Policy for the North Korean Defectors, Nov. 2022.

820) The personal protection system for North Korean defectors is based on the North Korean Defectors Act and related guidelines, and the personal protection officer of the police station having jurisdiction over the place of residence identifies matters necessary for the personal protection of North Korean defectors. This is intended to prevent North Korean defectors from being harmed by the outside, but there are also purposes such as social adaptation, crime prevention, and national security.

Second, although local governments are significant as their living space, there are differences in policy support depending on the individual local governments' capacity and interests. Support for the North Korean defectors by local governments is centered on the regional councils,⁸²²⁾ and there are cases where it is operated as a formality due to regional characteristics. There are significant problems with the operation of the program, including support from local governments only plays the role of executing policy decisions of the central government, not identifying newly vulnerable or at-risk households, or not implementing special education for the community settlement.⁸²³⁾

Third is a criticism on whether the identity protection program is being operated in accordance with its purpose. As the nature of the identity protection program is being run as a surveillance on the risk of the ward rather than personal protection according to the needs and requests of the ward, human rights violations occur or North Korean defectors themselves feel discriminated against.⁸²⁴⁾ On the other hand, some point out that although the police officer can be requested for help in problematic situations, it is difficult to fulfill its function due to the excessive number of North Korean defectors that must be managed by a single officer due to a lack of manpower.⁸²⁵⁾

3) Implications and Direction of Improvement for the Support System for North Korean Defectors

Until now, the resettlement support system for the North Korean defectors has been implemented from the perspective of assimilationism, in which the North Korean defectors must unconditionally accept the mainstream culture. There are many positive examples of

821) Kyunghyang Shinmun, 20 years of living in the South, but was lonely at death, Nov. 7, 2022

822) According to Article 42-2 of the Enforcement Decree of the North Korean Defectors Act, a regional policy council composed of residence protection officers, employment protection officers, regional adaptation centers, private organizations in the region, and North Korean defectors residing in the region (As of 2020, 119 regional councils are operating nationwide).

823) The Institute for Peace and Unification Studies, Seoul National University, A Study on the Factors Influencing North Korean Defectors' Selection of Places to Settle in Korea, Jan. 2022.

824) NHRCK, Human Rights Status Survey, Investigation into Improving the Personal Protection System of the North Korean Defectors, 2018.

825) Yonhap News, 700 North Korean Defectors Left South Korea ... "Difficulty Adjusting Due to Economic Hardships and Discrimination," Jan. 9, 2022.

North Korean defectors living independent lives as their residence period in South Korean society increases. However, socially, they are regarded as objects of surveillance or when there are major positive or negative incidents in inter-Korean issues, there is a conflicting interests between North Korea and North Korean defectors in the media (North Korea ↔ North Korean defectors).⁸²⁶⁾

The fact that there are about 30 North Korean defectors who return to North Korea between 2012 to 2020 indicate that there are still many difficulties for the North Korean defectors to successfully settle in the South Korean society. According to the ‘Survey on the Vulnerable Class of North Korean Defectors’ released by the Ministry of Unification on Jan. 6, 2022, 47% of the respondents complained of emotional and psychological difficulties, and ‘livelihood’ accounted for the highest proportion at 25% as a specific problem, followed by education/going to school (22%), mental health (20%), and family relations (4%).

It is urgent to supplement and improve the resettlement support system for the North Korean defectors, such as establishing a social safety net for the North Korean defectors and overcoming social isolation through a sense of community. Specifically, systematic research on psychological and emotional problems experienced by the North Korean defectors is required, and in particular, development and support for psychological and emotional stability programs that can be implemented by local governments are needed.

The human rights issue of the North Korean defectors is not a new issue that arises after they enter South Korea, but their experiences while living in North Korea before defecting and in the process of passing through third countries after escaping from North Korea act as factors that create various phenomena related to human rights in daily life. In that sense, it is important to systematically improve the human rights situation while observing the entire life history of the North Korean defectors when designing the support system for the North Korean defectors.

826) Park, Jong-min, Ju, Ho-jun, Jeong, Yeong-ju, and Kim, Hyeon-woo, Then, how did the Republic of Korea view “North Korean defectors” over the past 23 years?, Korean Journal of Journalism and Communication Studies, 2022

D. Status and Significance of Legal, Institutional and International Organization Recommendations on North Korean Human Rights

1) Non-Establishment of the North Korean Human Rights Foundation and Recommendations by International Human Rights Organizations on North Korean Human Rights

In 2016, the South Korean government enacted the North Korean Human Rights Act to lead to the practical protection and promotion of North Korean residents' human rights by establishing various systems and devices to protect North Korean residents' fundamental rights to freedom and life. Article 10 of the Act stipulates the establishment of the North Korean Human Rights Foundation to conduct research and policy development related to North Korean human rights promotion, such as inter-Korean human rights dialogue and humanitarian aid, by investigating the actual human rights conditions in North Korea. However, the North Korean Human Rights Foundation was not launched even in 2022 due to the vacancy of the recommended director from the opposition party.

The new government launched the North Korean Human Rights Foundation as a national task, and held a North Korean Human Rights Policy Council on Aug. 25, announcing that it would meet the expectations of the domestic and international communities on the North Korean human rights issues.⁸²⁷⁾ In addition, a plan was established to release the North Korean Human Rights Report around March 2023, which was not disclosed until now.⁸²⁸⁾

Tomas Ojea Quintana, a Special Rapporteur on human rights in North Korea, visited South Korea in February and met with relevant state agencies, victims, and civil groups. At a press conference, the Special Rapporteur said that North Korea is more isolated than ever, and that it is the responsibility of the North Korean authorities to respect and protect the human rights issues in North Korea in accordance with international human rights law. He also stated that the international community and the UN should also take a bold approach to reflect human rights, denuclearization and peace initiatives in their exchanges with North Korea. Moreover, it reported to the 49th UN Human Rights Council that the human rights

827) Ministry of Unification, Press Release, Aug. 25, 2022.

828) Regular Briefing of the Ministry of Unification, Dec. 9, 2022.

situation in North Korea had deteriorated over the past six years due to COVID-19, regular natural disasters, sanctions against North Korea, and government failures. In addition, he made recommendations to the North Korean authorities, the South Korean government, and the UN Secretariat to protect the human rights of North Korean residents and North Korean defectors.

Subsequently, on Jul. 8, 2022 (Geneva time), at the 50th session of the UN Human Rights Council, Elizabeth Silvia Salmon Garate (Peruvian), chairperson of the UN Human Rights Council Advisory Committee, was appointed as the new Special Rapporteur on human rights in North Korea. The new Special Rapporteur visited Korea in August and met with the chairperson of the NHRCK and emphasized the importance of international cooperation to improve the human rights situation in North Korea.

At the 77th UN General Assembly on Dec. 15, 2022 (local time in New York, USA), the North Korean Human Rights Resolution, in which 63 countries, including Korea, participated as co-sponsors, was adopted by consensus without a vote. This reflects the international community's common perception of the seriousness of North Korean human rights. In particular, it expressed serious concern that North Korea is repeating only insubstantial replies to several letters sent to North Korea by the UN Working Group on Enforced Involuntary Disappearance (WGEID). It was urged to North Korean authorities to provide all relevant information to bereaved families and relevant authorities, and to ensure that those forcibly deported or returned to North Korea are not subjected to human rights violations, including forced disappearances, arbitrary execution, torture, ill-treatment, and trials inconsistent with international norms.

2) Different Opinions on How to Solve the North Korean Human Rights Issues

All UN member states have an obligation to promote and protect human rights and fundamental freedoms, and fulfill their obligations under various international conventions. However, according to the reports of many North Korean human rights organizations, North Korean residents seem to be under serious threat in terms of the right to life and fundamental rights, such as health and life, due to the lack of basic human rights, including freedom of the body and freedom of expression, as well as food and medicines essential for the survival of children and the elderly.

Accordingly, the UN General Assembly, the Human Rights Council, and other countries around the world pay close attention to the human rights situation in North Korea and make various recommendations to the governments of both the South and the North. However, both the ruling and opposition parties agree that human rights are a universal value that everyone should enjoy regardless of political ideology, and that the human rights situation in North Korea is poor and needs to be improved. However, there is controversy over the way the South Korean government handles North Korean human rights issues under the Korea's special position as a divided country.⁸²⁹⁾

The reason being that the North is protesting the recommendations of some international organizations and the measures taken by the South on human rights issues in North Korea, calling it a political provocation to infringe on its sovereignty and interfere in its internal affairs as part of its "hostile policy toward North Korea." In particular, this attitude is shown in response to demands for accountability and sanctions for human rights violations in North Korea. This contrasts with North Korea showing a relatively positive attitude in its obligation to submit state reports under the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities.⁸³⁰⁾

Accordingly, there are conflicting views. There is a view that the government of the Republic of Korea should play a leading role through international solidarity and

829) National Assembly Legislative Research Service, 2021 National Audit Issue Analysis II, Aug. 2021

830) Kim, Su-an, Trends in North Korean human rights in the international community and direction of human rights policy toward North Korea, Jun. 9, 2022

self-establishment of policies to fulfill its responsibility in the international community and deal with the human rights of North Koreans as universal human values. On the other hand, there is a view that speaking of human rights in North Korea apart from the inter-Korean relations is only a formality, and discussions on the North Korean Human Rights Act are likely to act as obstacles to progress the inter-Korean relations, so a way to practically protect the human rights of North Koreans must be found. However, despite the basic divergence of views, there seems to be substantial agreement on the need to design complex and detailed solidarity strategies, such as cooperation and solidarity with the international community in areas in which the North Korean authorities are friendly and cooperative, such as the submission of national reports in accordance with UPR and international human rights treaties, by considering the actual improvement of the North Korean human rights situation and the attitude of the North Korean government.⁸³¹⁾

3) Seeking Promotion of Human Rights in Korea, Development of Inter-Korean Relations and Peace on the Korean Peninsula

Article 2(1) of the North Korean Human Rights Act stipulates that the state should strive to protect and promote the human rights of North Koreans, and Paragraph 2 provides that “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 (Purpose) of the North Korean Human Rights Act stipulates that the protection and improvement of 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.”

Meanwhile, the 49th UN Human Rights Council (2022) requested the South Korean government to expand efforts to protect North Korean defectors in third countries, include human rights in inter-Korean negotiations, establish a North Korean Human Rights Foundation in accordance with the North Korean Human Rights Act, and continue efforts to reunite separated families. There are many direct pending issues that the South Korean government needs to deal with, such as the prohibition of distributing leaflets to North Korea

831) Hong, Yong-pyo, Jang, Du-hui, Human Rights and Peace on the Korean Peninsula: Controversy surrounding the enactment of the North Korean Human Rights Act and its implications, 2019.

in the border areas, the impact of COVID-19 on North Korean human rights, and the issue of POWs, separated families, and abductees. In addition, if inter-Korean relations improve in the future, there is a need to prepare for various legal and institutional issues.

In order to promote human rights in North Korea, it is necessary to continue human rights dialogues through human rights mechanisms not only in Korea but also in international communities, and to prepare humanitarian cooperation measures, such as technical cooperations. Moreover, various policies and projects are needed to protect and promote the human rights of North Korean defectors with a North Korean human rights policy infrastructure. The North Korean Human Rights Foundation must be established first to be in charge of basic research and policy development. There may be many controversies about the measures to protect and promote the human rights of North Koreans, but it is reasonable to understand that at least the fulfilling the duties stipulated in the law is the minimum responsibility of the Korean government.

On the other hand, it is also important to create an environment where the North Korean authorities can fulfill their obligations stipulated by major human rights conventions. In this respect, strengthening cooperation to promote the rights of specific groups, such as children, women, the disabled, and the elderly, for which the North Korean authorities have shown an active willingness to cooperate, can be a practical policy alternative. During this process, the government's inter-Korean cooperation fund support project sets 'human rights-based approach' as the main principle, and it is also necessary to support exchanges and cooperation projects with North Korea by South Korean private organizations, as well as at the government level.

Part 3.

Looking Back to the Principles of Human Rights in 2022

‘Era of Talking About Human Rights Every Single Day’

On December 9, 2022, the chairperson of the NHRCK emphasized in a speech commemorating the Human Rights Day on the 74th anniversary of the Universal Declaration of Human Rights, that “we are now living in an era where human rights are talked about every single day, and human rights are our indispensable task in daily lives.” It is difficult to find sustainable alternatives without human rights, from climate crisis, housing, care, labor, education and peace, the companies that do not guarantee human rights may be shunned by consumers, and soldiers now demand the rights of citizens in uniforms.

It is very important to materialize the perspective of human rights in all national decision-making and administration, as well as in individual social activities and daily life. Moreover, understanding the value of human rights by members of the society in this way is suggested as a direction for the Korean society to move forward. However, at the same time, the value of human rights is being challenged in many ways.

In 2022, the world has experienced various disasters, including COVID-19, war and armed conflict, terrorism, and climate crisis, and in the process, the vulnerable and social minorities, such as migrants, children, women, the disabled, the elderly, and the poor, faced greater difficulties. Regarding the crisis facing the international communities today, Michelle Bachelet, UN High Commissioner for Human Rights, diagnosed in a statement regarding the Ukraine crisis on Feb. 28, that despite more than 20 years of efforts and developments to promote various rights, these efforts are in danger of regressing.

However, Mitchell said that ‘the point at which the flow of history changes’ is rather an opportunity to move toward a more peaceful world through effective solutions based on human rights. So, now is an important time to make the right decision according to the principles of international law and human rights.

In 2022, there were various levels of efforts to protect the human rights of everyone, including social minorities; however, we have faced many important human rights issues to consider, including the great pain from the Itaewon crowd crush on Oct. 29. New human rights challenges are emerging one after another, including controversy between measures for quarantine purposes and protection of human rights when social distancing was

implemented due to COVID-19, continuation of global disasters such as climate crisis, and changing society from information and technology development and aging society.

In addition, Korean society is talking about ‘human rights of all people,’ but the human rights situation is very worrisome. At various international human rights conferences held every year centered in Geneva, Switzerland, Korea is seen as having a low level of human rights compared to its international status from economic achievements.

Korean society has improved systems and practices that violate human rights that have been in place for a long time, but the human rights situation can always regress without continuous efforts to protect the achievements. Therefore, Korean society is at a critical point where it is imperative to make the right decisions.

Right to Safety and Duty of the State

Looking back at the human rights situation in the Republic of Korea in 2022, we cannot but emphasize the duty of the state to protect the right to safety and basic human rights.

Article 3 of the Universal Declaration of Human Rights stipulates that “everyone has the right to life and to freedom and security of person.” It is a compact declaration that the ‘right to life,’ ‘personal freedom,’ and ‘safety’ are “rights that everyone should enjoy.” ‘Safety’ refers to “protection from threats or dangers infringing on personal legal interests, such as people’s lives, bodies, and property,” and at the same time, it is a realistic and specific concept that includes “the possibility of future danger or threats as well as currently posed hazards or incidents.”

Looking at the popular search terms of Google in 2022, among all search terms in Korea, topics related to disasters, disasters and safety, such as climate change (1st), ultra-short-term precipitation prediction (3rd), and the Itaewon accident (5th), occupy the top ranks.⁸³² It seems to reflect the reality of high social interest and demand for the right to safety.

832) Google revealed that the top five most popular search terms (comprehensive) in 2022. They were, in order of, climate change, Extraordinary Attorney Woo, ultra-short-term precipitation prediction, 2022 FIFA World Cup in Qatar, and Itaewon Crowd Crush.

Meanwhile, a new government was launched through the 20th presidential election held in the first half of 2022. However, regardless of what political ideology the government and the National Assembly stand for, the state's duty to protect the people's basic human rights cannot change because human rights are universal values that must be guaranteed to everyone and serve as a guideline for judgment in times of crisis. The second sentence of Article 10 of the Constitution stipulates that the state has the duty to "confirm and guarantee the fundamental and inviolable human rights of individuals." The spirit and freedom of the constitution emphasized by the new government are also part of human rights.

However, a reflection is needed on whether 2022 was a year in which these national obligations were faithfully fulfilled. After the Sewol Ferry Disaster, people longed for a safe society, and agreed that a social system should be established to prevent similar disasters from recurring. However, the Itaewon crowd crush in 2022 showed that there was no fundamental change in the Korean society's disaster safety management and prevention system, and the national leadership's sense of responsibility for public safety.

In addition, the issue of the state's responsibility related to the Itaewon crowd crush has not been resolved even at the end of 2022, even though the state's responsibility cannot be lightened for any reason in the face of the severe reality of failing to protect the lives and safety of the people. The idiom of the year chosen by university professors across the country was 'Gwaibulgae (過而不改),' at the end of 2022. It means 'not correcting the mistake that you made,' and the fact that it was overwhelmingly ranked first in a nationwide survey of university professors has a great implication for the social leaders and government authorities of Korea when faced with 'issues of responsibility.'

The Need to Emphasize the Understanding of the Members of the Society on the Value of Human Rights and the Role of the State

Lastly, it is important for all members of Korean society to sensitively look at all issues related to human rights, and for the state to take appropriate actions in a timely manner because if we fail to actively respond to the new human rights issues, the damage to the socially underprivileged and minorities will inevitably increase. For this, the logic of denying the value of human rights based on political orientation or ideology cannot be accepted, even though the human rights are universal values. Various interpretations on the significance and application of human rights are possible, but there are certain terms of human rights that must be protected and realized at all times. It is necessary to reaffirm the principle that while mutual conflicts between human rights and restrictions on human rights are possible, denying the existence of human rights itself cannot be permitted by any political orientation or ideology.

2022

**National Human Rights Commission of Korea
The Report on Human Rights Situation
in the Republic of Korea**

First published in July 2023

© National Human Rights Commission of Korea. All Rights Reserved.

This volume may not be reproduced, stored in a retrieval system, or transmitted
in any form or by any means, without prior permission of the copyright holder.

This English Edition is published by the National Human Rights Commission of Korea.

National Human Rights Commission of Korea

NaraKium Jeo-dong Bldg., 340, Samil-daero, Jung-gu, Seoul, Korea 04551

Tel. +82-2-2125-9824/9828

Fax. +82-2-2125-0918

www.humanrights.go.kr

ISSN 2983-2454

The World for All
NHRCK is always with you

G P R N
11-1620000-000896-10

www.humanrights.go.kr

Narakium Jeo-dong Bldg., 340, Samil-daero, Jung-gu, Seoul, Korea, 04551
Tel : 82-2-2125-9824/9828, Fax : 82-2-2125-0918

Complaints Hotline 1331

ISSN 2983-2454