



**대한변호사협회**

**KOREAN BAR ASSOCIATION**

**UPR submission on Republic of Korea**

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## 1. Introduction

Founded in 1952, the Korean Bar Association (KBA) is a professional organization of which all practicing lawyers in Korea are required to join membership. The KBA has worked to advance human rights in Korea and to advocate and provide legal assistance for the marginalized groups in the Korean society, including the handicapped, senior citizens, North Korean defectors, migrants, refugees, victims of the Japanese occupation during the Second World War, and sexual violence victims, as well as enhancing the laws and policies to better safeguard and promote their rights. In addition, the KBA has published annual human rights reports since 1985. This stakeholder report is based on the Association's human rights reports from 2008 and on.

## 2. Migrant Workers

**2.1** In order to transfer to another business or workplace, migrant workers are required to obtain approval from the employment security office, a government agency,<sup>1</sup> and even when there are legitimate legal grounds for a transfer, a migrant worker is subjected to restrictions on the number of transfers<sup>2</sup> and the length of the job search period.<sup>3</sup> The government has also targeted the leader of the migrant workers' labor union for investigation and deported him later for "working illegally."<sup>4</sup>

**2.2** Although a provision prohibiting discrimination against migrant workers<sup>5</sup> exists, there is no law or policy prohibiting discrimination against female migrant workers in particular. There have been many

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<sup>1</sup> Article 25 (Permission for Change of Business or Workplace), Act on Foreign Workers' Employment  
“(1) A foreign worker (excluding those that fall under art. 12 para. 1) may apply for a transfer to another business or workplace to the head of an employment security office, as prescribed by the Ordinance of the Ministry of Employment and Labor, for a ground that falls under any of the following subparagraphs:

1. Where his/her employer intends to terminate his/her labor contract during the contract period or to refuse to renew his/her contract after its expiration for a justifiable reason;

2. Where the foreign worker is deemed unable to continue to work in the workplace because of temporary shutdown or closure of business; where the employment permit is cancelled pursuant to Article 19 (1) or restrictions are imposed on the employment of the foreign worker pursuant to Article 20 (1); where the working conditions of the workplace are not consistent with the terms and conditions of the labor contract, or the foreign worker is subjected to unfair treatment by the employer; or any other reason not attributable to the foreign worker that the Minister of Employment and Labor has recognized to make it difficult to maintain the labor contract considering social norms;

3. Where any other cause specified by the Presidential Decree occurs.”

<sup>2</sup> *Ibid.*

“(4) A foreign worker shall not, in principle, make a change of business or workplace under paragraph (1) more than three times during the period prescribed in Article 18 (1), and more than two times during the extended period prescribed in Article 18-2 (1).”

<sup>3</sup> *Ibid.*

“(3) A foreign worker who fails to obtain permission for a change of workplace under Article 21 of the Immigration Control Act within three months from the date of applying for a transfer to another business or workplace pursuant to paragraph (1), or fails to apply for a transfer to another business or workplace within one month from the date on which his/her labor contract with the employer is terminated shall depart from Korea: Provided that if a foreign worker fails to obtain permission or apply for a change of workplace due to a reason, such as occupational accident, disease, pregnancy and childbirth, etc., the period shall be each calculated from the date on which such reason ceases to exist.”

<sup>4</sup> Park, Tae-woo. "Migrant labor organizer bids bittersweet farewell to Korea." *The Hankyoreh Newspaper*, 21 Jan 2012. <[http://www.hani.co.kr/arti/english\\_edition/e\\_national/515773.html](http://www.hani.co.kr/arti/english_edition/e_national/515773.html)>

<sup>5</sup> Article 22 (Prohibition of Discrimination), Act on Foreign Workers' Employment

“No employer shall discriminate or unfairly treat any person on the grounds that he/she is a foreign worker.”

female migrant workers who suffered sexual abuse and were laid off for reporting the crime. The government should ensure that the female migrant workers who are victims of sexual violence or harassment are able to stay and work in Korea while investigation and trial are taking place, and that the female migrant workers, like Korean citizens, are provided legal counsel.

**2.3** As of 2009, in 62.2% of the cases, public officials failed to present their identification and/or emergency detention order at the time of immigration crackdown.<sup>6</sup>

### **3. Migrant Women and Children; Human Trafficking**

**3.1** The Support for Multicultural Families Act<sup>7</sup> only provides support for naturalized Korean citizens or foreigners married to Korean nationals. Also, although now the children of undocumented migrant workers may enroll in or transfer schools, many drop out of school because there is no curriculum in place that is suited for their needs.

**3.2** Although the Korean government is a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, there is currently no Special Act that prosecutes and punishes traffickers and protects the trafficking victims in accordance with the Trafficking Protocol, aside from the general criminal code which includes the punishment of human trafficking acts.

### **4. Refugees**

**4.1** The Refugee Act, which was passed in 2011 and will be effective starting in 2013, includes an "abridged procedures" (or "accelerated procedures") provision for certain cases of refugee status application.<sup>8</sup> The provision is very broad, making it likely to be subject to abuse by the authorities for

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<sup>6</sup> National Human Rights Commission of Korea, *2009 Report on the Field Research at Foreign Protection Centers*, Dec. 28, 2009.

<sup>7</sup> Article 2, Support for Multicultural Families Act

"The definitions of terms used in this Act shall be as follows:

1. The term "multi-cultural family" means a family falling under any of the following items:

(a) A family comprised of a married immigrant under subparagraph 3 of Article 2 of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea and a person who acquired the nationality of the Republic of Korea by birth pursuant to Article 2 of the Nationality Act;

(b) A family comprised of a person who obtained permission for naturalization under Article 4 of the Nationality Act and a person who acquired the nationality of the Republic of Korea by birth pursuant to Article 2 of the aforesaid Act;

2. The term "married immigrant or naturalized citizen, etc." means any of the following persons:

(a) A married immigrant defined in subparagraph 3 of Article 2 of the Framework Act on Treatment of Foreigners Residing in the Republic of Korea;

(b) A person who obtained permission for naturalization under Article 4 of the Nationality Act."

<sup>8</sup> Article 8 (Refugee Status Determination), Refugee Act

"(5) The Minister of Justice may omit part of the refugee status determination procedures set forth in Article 1 for a refugee that falls under any of the following categories:

1. Applied for refugee status using untruthful information including submitting falsified documentations or giving a false testimony

2. Re-applied for refugee status after being rejected or after having his or her refugee status cancelled due

forgoing parts of the refugee status determination process.

4.2 While the Refugee Act gives the Minister of Justice the discretionary powers to grant basic livelihood support or work permit to each refugee status applicant,<sup>9</sup> it fails to provide that at least one of the two should necessarily be granted.

## 5. Women's Rights

5.1 To this day, the Supreme Court, unlike some of the lower courts, has never recognized the criminality of marital rape.<sup>10</sup> In 2010, 10.4% of married women had been sexually abused by their husbands through non-consensual sex or sex in an unwanted form.<sup>11</sup>

5.2 As of 2010, 65.8% of children and adolescents had been victims of child abuse including mental abuse by their parents, and 16.7% of households had been affected by domestic violence between wife and husband.<sup>12</sup> Moreover, in 59.3% of the cases in which a victim reported the domestic violence to the police, the police failed to take action.<sup>13</sup>

5.3 No records could be found regarding whether law enforcement officials had been provided human rights training relevant to child abuse and domestic violence cases.

## 6. Freedom of Expression

6.1 The current law allows for many grounds for prohibiting assemblies and demonstrations,<sup>14</sup> and

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to reasons included in Article 22, without any substantial change in circumstances

3. Applied for refugee status when he or she had stayed in Korea for a year or longer and when his or her legal stay was approaching the end, or applied for refugee status for the purpose of delaying the execution of a deportation decision

<sup>9</sup> Article 40 (Livelihood Assistance), *Ibid.*

“(1) The Minister of Justice may provide livelihood assistance to a refugee status applicant in accordance with Presidential Decrees.

(2) The Minister of Justice may permit a refugee status applicant to work, if six months or more have passed since the application was made, in accordance with Presidential Decrees.”

<sup>10</sup> Supreme Court Decision 1970Do29 (decided Mar. 10, 1970)

<sup>11</sup> Ministry of Gender Equality and Family, *2010 Survey Report on Domestic Violence* (Jan 28, 2010), p. 103.

<sup>12</sup> *Ibid.*, p. 103.

<sup>13</sup> *Ibid.*, p. 19.

<sup>14</sup> Assembly and Demonstration Act

Article 5 (Ban of Assemblies and Demonstrations)

“(1) No one shall hold any assembly, or stage any demonstration, which falls under any of the following subparagraphs:

1. An assembly held or a demonstration staged in an attempt to obtain the achievement of objectives of a political party that has been dissolved by the decision of the Constitutional Court; and
2. An assembly or demonstration which clearly poses a direct threat to public peace and order by inciting collective violence, threats, destruction, arson, etc.

(2) No one shall conduct any propaganda campaign for such assembly or demonstration as is banned under paragraph (1) or incite people to hold such assembly or stage such demonstration.”

Article 8 (Notice of *Ban* of, or Restriction on, Assembly or Demonstration)

“(1) The head of the competent police authority who has received the report as provided in Article 6 (1) may, if such outdoor assembly or demonstration as reported to him/her falls under any of the following cases, notify its

the ambiguity of these restriction categories makes the provision likely to be subject to abuse. In

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organizer of the ban of the assembly or demonstration within 48 hours after the receipt of the report: *Provided*, That in cases where an assembly or demonstration poses a direct threat to public peace and order by inciting collective violence, threats, destruction, arson, etc., he/she may, in respect of the remaining period of such assembly or demonstration, notify its organizer of the ban on the continuation thereof even after a lapse of 48 hours from the receipt of the report:

1. When it is deemed that such outdoor assembly or demonstration violates Article 5 (1), the main sentence of Article 10, or Article 11;
2. When the required details under Article 7 (1) have not been complemented; and
3. When it is presumed that such assembly or demonstration must be banned under Article 12.

(2) If two or more reports on assemblies or demonstrations have been submitted, which are proposed to take place concurrently in the same place and of which the objectives are in mutual conflict or mutually interfering with, the notice of ban of the assembly or demonstration on which a report has been received later, may be given by applying paragraph (1).

(3) If a resident in a specific place or an administrator of facilities, who falls under any of the following subparagraphs, requests such place or facilities to be protected, the ban of, or restriction on, any assembly or demonstration at such place or facilities may be notified. In such cases, paragraph (1) shall apply *mutatis mutandis* to the notification of the ban of the assembly or demonstration: <Amended by Act No. 8733, Dec.21, 2007>

1. Where the place specified in the report under Article 6 (1) (hereafter in this paragraph, referred to as "reported place") is a residential area or a place similar thereto and therefore an assembly or demonstration is likely to cause serious damage to its properties or facilities or to seriously affect the privacy of its residents;
2. Where the reported place is an area surrounding a school under Article 2 of the Elementary and Secondary Education Act and therefore an assembly or demonstration is likely to seriously violate the right to learning; and
3. Where the reported place is in the vicinity of a military installation under subparagraph 2 of Article 2 of the Protection of Military Bases and Installations Act and therefore an assembly or demonstration is likely to cause serious damage to the military installation or to seriously affect the conduct of military operations.

(4) The notification of ban of, or restriction on an assembly or demonstration shall be prepared in writing, specifying reasons for the ban or restriction, and shall be sent to the organizer of the assembly or demonstration or the person in charge of liaison."

#### Article 10 (Hours Prohibited for Outdoor Assembly and Demonstration)

"No one may hold any outdoor assembly or stage any demonstration either before sunrise or after sunset:

*Provided*, That the head of the competent police authority may grant permission for an outdoor assembly to be held even before sunrise or even after sunset along with specified conditions for the maintenance of order if the organizer reports the holding of such assembly in advance with moderators assigned for such occasion as far as the nature of such event makes it inevitable to hold the event during such hours.

<Pursuant to the decision of inconsistency with the Constitution by the Constitutional Court made on September 24, 2009, 'outdoor assembly under the main sentence of Article 10' under paragraph 1 of this Article shall continue to apply until June 30 2010, or until the legislature amends it, whichever comes earlier.>"

#### Article 11 (Places Prohibited for Outdoor Assembly and Demonstration)

"No person may hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences:

1. The National Assembly building, all levels of courts, and the Constitutional Court;
2. The Presidential residence and the official residences of the Speaker of the National Assembly, the Chief Justice of the Supreme Court, and the Chief of the Constitutional Court;
3. The official residence of the Prime Minister: *Provided*, That the same shall not apply in cases of a parade or procession; and
4. Diplomatic offices or residences of heads of diplomatic missions in Korea: *Provided*, That the same shall not apply if it is presumed that an assembly or demonstration, which falls under any of the following items, may not interfere with the functions or security of diplomatic offices or residences of heads of diplomatic missions:
  - (a) Where the assembly or demonstration is not directed at the diplomatic offices or residences of heads of diplomatic missions;
  - (b) Where the assembly or demonstration would not escalate into a large-scale assembly or demonstration; and
  - (c) Where the assembly or demonstration takes place on a holiday when diplomatic offices are off duty."

#### Article 12 (Restriction on Assembly or Demonstration for Smooth Flow of Traffic)

"(1) The head of the competent police authority may ban an assembly or demonstration on a main road of a major city as determined by Presidential Decree, or may restrict it, specifying conditions for the maintenance of traffic order if it is deemed to be necessary for smooth flow of traffic; (2) If the organizer of an assembly or demonstration assigns moderators for the occasion of parading along the road, the ban as referred to in paragraph (1) shall not be ordered: *Provided*, That if such assembly or demonstration could cause obstruction to the smooth flow of traffic on the road concerned and other roads nearby, thus giving rise to serious inconvenience to traffic, the ban as referred to in paragraph (1) may be ordered."

addition, nighttime outdoor demonstrations—those taking place after sunset and before sunrise—are prohibited. About 4,000 are charged each year with violating the Assembly and Demonstration Act,<sup>15</sup> and in 2008, after the large-scale candlelight demonstration against the Korea-U.S.A. FTA measure on beef import, the number of unregistered demonstrations saw an increase of more than five times.<sup>16</sup>

**6.2** The National Security Act has not been abolished or revised, nor has the Security Surveillance Act been revised, earning criticisms of constituting double jeopardy. The number of National Security Act cases has been increasing rapidly since 2008,<sup>17</sup> and the number of those detained for violating the Act has increased almost fourfold in the last four years.<sup>18</sup>

**6.3** The government does not recognize the right of the low-level government employees, police officers, and military officers to form and to join labor unions.

## **7. Right to Conscientious Objection to Military Service**

The government has failed to propose any legislation for alternative military service or organize hearings on the issue, and there is no provision on an alternative military service system in the second National Action Plan (NAP).<sup>19</sup> Every year, the government punishes and detains over 800 men who are conscientious objectors of military service under the draft system, and both the Constitutional Court and the Supreme Court deny the right to conscientious objection to military service.<sup>20</sup>

## **8. Rights to Personal Information Protection**

**8.1** As instances of personal information leak are constantly occurring in Korea,<sup>21</sup> and if leaked, national identification numbers could be exploited for illegitimate financial transactions or criminal activities, the government has revised the information and communications network law to prohibit the collection and/or use of national identification numbers online, but with exceptions.<sup>22</sup> It also stipulates

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<sup>15</sup> In 2008, 4,425 cases were recorded as violating the Assembly and Demonstration Act; in 2009, 4,215 cases. (Lee, Hun-Chang. "Unapproved Assemblies and Punishment." *Human Rights Oreum* 04 Apr 2012, Web [Korean]. <<http://www.hr-oreum.net/article.php?id=1723>>)

*The origin of the data is the Fourth State Report on the Implementation of the International Covenant on Civil and Political Rights, written by the National Police (Jan 2011).*

<sup>16</sup> From 588 cases in 2007, the number jumped to 3,155 in 2008 (*Ibid.*).

<sup>17</sup> From 40 cases in 2008, the number has been rapidly increasing to 70 in 2009, 151 in 2010, and by the end of Oct. 2011, 114. (Kim, Hye-seung. "Since MB Administration, National Security Act Cases Increase Four-fold." *Oh My News* 15 Feb 2012, Web [Korean].

<[http://www.ohmynews.com/NWS\\_Web/View/at\\_pg.aspx?CNTN\\_CD=A0001698074](http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0001698074)>)

<sup>18</sup> *Ibid.* As of Jan. 1, 2012.

<sup>19</sup> Published in 2012.

<sup>20</sup> Supreme Court Decision 2004Do2965 (decided Jul. 15, 2004); Constitutional Court Decision 2002Hun-Ka1 (decided Aug. 26, 2004); Constitutional Court Decision 2007Hun-Ka12 (decided Aug. 30, 2011)

<sup>21</sup> [http://www.logn.co.kr:8081/Intro/LogN\\_Example.html](http://www.logn.co.kr:8081/Intro/LogN_Example.html) (Korean)

<sup>22</sup> Article 23-2 (Restriction on Use of Personal Information), Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

that the national identification number data that is already collected should be destroyed, also with exceptions.<sup>23</sup> In reality, however, because of the user identity verification requirement<sup>24</sup> and other similar measures,<sup>25</sup> companies may refuse to destroy the collected national identification number

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“(1) No provider of information and communications services may collect and/or use the personal information of service users, except in any of the following cases:

1. Where the provider is a government-appointed identity verification agency in accordance with Article 23-3;
2. Where the provider is allowed to collect and/or use personal information under a specific provision in this Act or any other Act otherwise;
3. Where the personal information is necessary in performing the contract on provision of information and communications services, and the Korea Communications Commission has officially recognized the ground for the exception.

(2) Even in cases where the provider of information and communications services is allowed to collect and/or use the national identification numbers of their service users in accordance with (1)2 or (1)3, the provider shall provide the users with a method by which they can subscribe to membership by verifying their identity without using their national identification numbers (hereinafter referred to as “alternative method”).”

[This Article Wholly Amended Feb. 17, 2012, Effective from Aug. 18, 2012]

<sup>23</sup> Addenda Article 2 (Interim Measures Regarding Restrictions on the Collection and Use of National Identification Number)

“(1) Any provider of information and communications services using a membership subscription method requiring the use of national identification number shall destroy all of the collected national identification number information within two years after the Act enters into force, unless the provider falls under any of the categories specified in Article 23-2(1).

(2) Any provider that fails to destroy the national identification number information within the time period set forth in para. 1 shall be regarded as violating Article 23-2(1).”

<sup>24</sup> Article 44-5 (Verification of Identity of Users of Open Message Boards), Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

(1) A person falling under any of the following subparagraphs shall, if it intends to install and operate an open message board, take necessary measures as prescribed by Presidential Decree (hereinafter referred to as “measures for verifying identity of users”), including reparation of a method and procedure for verifying identity of users of the open message board:

1. A State organ, a local government, a public enterprise, a quasigovernment agency under Article 5 (3) of the Act on the Management of Public Institutions, or a local government-invested public corporation or a local government public corporation under the Local Public Enterprises Act (hereinafter referred to as “public institution”);
2. A provider of information and communications services who falls under the criteria prescribed by Presidential Decree, where the average number of users of each type of information and communications services rendered by it reaches or exceeds 100,000 persons per day.

(2) The Korea Communications Commission may, if a provider of information and communications services falling under the criteria under paragraph (1) 2 does not take any measure for verification of identity, order it to take a measure for verification of identity.

(3) The Government shall prepare a policy to develop a safer and more reliable system for verification of identity under paragraph (1).

(4) A public institution or a provider of information and communications services may have its liability for damages caused by fraudulent use of a user's identity by a third party mitigated or discharged, if it has taken the measure for verification of identity under paragraph (1) with care as a good manager.”

[This Article Wholly Amended Jun. 13, 2008]

<sup>25</sup> In addition, the Korean government has instituted the “Shut-down Policy” which prohibits youths and teens under 16 from accessing online games during night hours from midnight to six a.m.

Article 12-3 (Prevention of Excessive Immersion in and Addiction to Games), Game Industry Promotion Act

“(1) For the prevention of excessive immersion in and addiction to games, game products related business operators shall execute the following measures (hereinafter referred to as “preventive measures”):

1. Identification of name and age, and verification of identity of the game products user at the time of membership subscription;
2. Requirement of the approval of the legal guardian (e.g. parents) for a juvenile to join membership;
3. Restriction of game products use, hours, etc. at the request of the juvenile user or the juvenile's legal guardian;
4. Communication of basic information on the provided game products(e.g. the nature of the game, rating classification, fee policy) and the usage information (e.g. hours, payment information) to juvenile users and their legal guardians;
5. Visible inclusion of warnings in order to prevent the excessive immersion in games;
6. Indication of usage hours on the game screen;
7. Other measures prescribed by Presidential Decree as policies necessary for the prevention of excessive

information, citing the reason that they need to verify the identity of the users.

**8.2** The government is also promoting an IC-chip-based electronic national ID system, which may lead to violations of individual privacy and intrusive public and personal surveillance and control, if the electronic national ID contains even more personal information than the current non-electronic national ID.

## **9. Women Drafted for Military Sexual Slavery by Japan during Second World War**

In 1965, the Korean government and the Japanese government signed an agreement to resolve the issues arising from the Japanese occupation of Korea between 1910 and 1945; however, controversy persists over whether the issue of the damage suffered by the Korean women drafted for military sexual slavery by Japan and the Korean nuclear bomb victims—both groups having been denied compensation—has actually been resolved through the agreement. As the Korean government had, and has, failed to carry out procedures to address the problem, including proposing a third-party arbitration, the Korean Constitutional Court ruled in 2011 that the non-action of the state was unconstitutional.

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immersion in games or such.”

Article 23-3 (Restriction of Nighttime Provision of Online Game), Juvenile Protection Act

“(1) In accordance with the Game Industry Promotion Act, a provider of the game products that are provided real time via information and communications network, as defined in Article 2(1)-1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (hereinafter referred to as “online games”), may not provide online game services to juveniles under 16 during night hours between midnight and six a.m.”