

**Submission with regard to the UPR mechanism
submitted by the National Human Rights Commission
of the Republic of Korea**

Introduction

1. The National Human Rights Commission of the Republic of Korea (hereinafter NHRCK) hereby submits information on human rights situations in the Republic of Korea (hereinafter ROK), in particular, for the 4 years from 2004 to 2007, taking note of the UN HRC Resolution 5/1, 15(a). The NHRCK is an A-accredited national human rights institution, as it was established in 2001 in accordance with *the Paris Principles*.

2. During the course of writing this document, the NHRCK consulted with various civil groups. However, the opinion of this document is solely that of the NHRCK.

Preparation for the UPR

3. It is hard for the NHRCK to assess to what extent the government will consult and listen to stakeholders, including NGOs, during the preparation of the state report. In consideration of past experiences with regard to the state party reporting and examination process under the international human rights instruments, the government needs to find a more effective means to consult and cooperate with stakeholders.

National Frameworks for Human Rights

4. The Constitution includes the Bill of Rights as well as various human rights protection mechanisms. In May 2007, the government set up the National Action Plans for the Promotion and Protection of Human Rights (NAP) as recommended by the NHRCK in 2005 and made it public. Though being the first plan for national human rights policy, the NAP failed to include important issues recommended by the NHRCK (See Annex). It is too soon to tell to what extent and how the NAP is being implemented.

5. Under the Constitution, the international human rights instruments acceded and ratified by the government have the same legal effect as the domestic legislation. However, international human rights law is still not widely known to the public, and the Executive, Legislative and Judicial branches do not possess an in-depth understanding of their legal obligations to implement international human rights law. Recently the Judicial and the Legislative branches have begun to refer to international human rights law.

Cooperation with the International Human Rights Mechanisms

6. As of late 2007, the Korean government is a State Party to ICESCR, ICCPR, ICERD, CEDAW, CAT and CRC, under which the government is implementing quite well the obligation of submitting reports. The government listens to the NHRCK while drafting its reports.

Improvements in Major Human Rights Issues

7. Over the previous four years, the overall human rights situation has improved greatly, in particular, with regard to civil and political rights. Discrimination is now recognized as an important human rights issue in society. While socially marginalized people and minority groups attract more attention, a widening socio-economic gap between the rich and the poor has diminished the enjoyment of social, economic, cultural, and other rights.

8. Torture against persons in detention by investigative agencies and other national bodies has remarkably reduced over the past four years. After 2003, *the Social Protection Law* that was accused of sentencing double-punishment was abolished, *the Criminal Procedure Law* was improved including a stronger system of *habeas corpus*, and alternative military service programs for conscientious objectors started to be considered on a long term basis. On the other hand, there is room for improvements: *the National Security Law* was not abolished in spite of the UN human rights bodies' recommendations; the death penalty was not abolished even though it has not been executed for more than 10 years. Also, assemblies related to political issues were banned in advance for fear of traffic disruption and probable violence, which requires change as well.

9. Instances of torture in detention facilities including prisons are reported to be decreased greatly; however human rights in protective facilities for the mentally-ill, the disabled, the older and children need to be urgently improved. Human rights violations, in particular, in unregistered facilities are reported to be serious; therefore, effective supervisory measures are needed. Additionally, policies for smaller and more personal facilities and the inclusions of said people in their communities are needed.

10. With the development of information technology, there is a growing risk of privacy invasion, from CCTV surveillance and eavesdropping to abuse of personal database and bio-recognition technology. Another problem is digital divide - the inevitable emergence of a group of people who do not have access to information technology and therefore cannot enjoy the benefits from it. In this regard, efforts should be made to protect the rights to privacy from excessive collection and misuse of personal data and to guarantee the accessibility to information for all individuals.

11. Similarly, development of biotechnology presents such serious challenges as ethical issues raised by the new technology and rights of the people who are objects to the experiments, to name a few.

Especially upon collecting human eggs, the right to life and women's rights to health should be guaranteed by relevant legislation which needs to be established and strictly observed.

12. The understanding that the government should guarantee and fulfill individuals' economic, social and cultural rights needs to be strengthened. For the past four years, governmental policies to guarantee social rights have improved. However, considering a wider gap between the rich and the poor, increasing job insecurity, and unemployment, individuals' social rights need to be more protected.

13. Non-regular workers are seriously suffering from discrimination in employment and do not enjoy labor rights. In particular, they suffer from job insecurity and low income, and discrimination against non-regular workers are especially compounded by discrimination against women. Thus the feminization of poverty is a serious concern. In July 2007, *the Act on Protection for Non-regular Workers* became effective. However, there are few positive outlooks among laborers and academics on whether or not the Act will achieve its aims of job security and counter-discrimination. When the law became effective, some employers started to fire non-regular workers or deny renewal of their employment contracts to avoid the possibility of making non-regular workers regular ones under the law. This brought about even more insecurity in the employment market.

14. Combined with the lack of a social safety net and the weakness of the current social welfare system, economic divide and expansion of the poor are becoming more serious, which contributed to the tendency of poverty passing on from generation to generation. The government should provide measures to guarantee the right to health by strengthening the social welfare system, guaranteeing rights to shelter, and expanding medical assistance for the poor so that all individuals in the country can enjoy adequate standards of living.

15. For the past four years, middle school education has become compulsory in addition to elementary school education, but parents still need to pay for some portion of the education. Thus primary education is not entirely free. In that sense, measures should be taken to guarantee the right to education for students from low-income families. Also for children outside of the regular education system to get alternative or vocational education, various opportunities should be provided.

16. Currently, the public health insurance program is being provided to all individuals, and the range of coverage is improving. However, the portion that individuals pay needs to be reduced and insurance coverage requires to be further widened, partly because economic burdens on patients with incurable diseases and long-term care needs are ever increasing.

17. CEDAW has largely contributed to improvements of women's rights in the ROK. It influenced the process of revising the family law, which led to the most important achievement in the four years: the abolishment of the male-only family head system or *hojuje*. Still, there remain many problems; a wide salary gap between men and women, the low ratio of women in high ranking positions, violence against women, sexual harassment and stereotypes on gender roles including the conception that women should be the primary child caregivers. With that, the government should proactively implement policies to change stereotypes of women and intensify the punishment of perpetrators of violence against women.

18. There is a growing recognition on the importance of the rights of children, yet still corporal punishment against children is a particularly serious issue. Corporal punishment at home and school, bullying at school, excessive focus only on college entrance tests, and the resulting excessive amount of study have been major stumbling blocks to the rights of children.

19. Recently, rights of persons with disabilities have become a major social concern. The government introduced improved policies including self-reliance of persons with disabilities, compulsory employment and better accessibility, and established *the Act on Discrimination against Persons with Disabilities* in 2007. The government signed the Convention on the Rights of Persons with Disabilities but did not ratify it yet. However, given the fact that the rights of persons with disabilities have not received their due attention, the government needs to take more seriously the rights of persons with disabilities during its decision-making process regarding resource inputs and policy priorities.

20. With the increase of migrants including internationally married migrant women and migrant workers over the past four years, the government has developed new policies and revised legislations in this area. Examples are the provision of assistance for international marriage immigrants and of employment, medical and industrial accident insurances for migrant workers. However, for unregistered migrant workers their human rights are violated or the education rights of their children are not guaranteed. Discriminations that migrants are facing in their daily lives are serious and the nature of such discriminations is linked with racism. To tackle discriminations against migrants, the government should enhance social awareness, and at the same time, should revise legislation and policies for better protection of their basic rights. Also the refugee recognition procedures should be improved in line with the international refugee law.

21. As the ROK's population percentage of elderly people is one of the fastest growing in the world, the protection of the rights of elderly people with regard to social alienation, underemployment and poverty, and medical care have emerged as new challenges.

Recommendations and Suggestions

22. Despite the relatively abundant available resources and capacity of the ROK, there is a lack in the government's contribution to improvements in the international human rights situation. The government should develop projects for capacity building and technical assistance, cooperating with the NHRCK and civil society, as it has voluntarily pledged upon its election to the Human Rights Council. The government also should consider how to incorporate human rights perspective in its official development assistance.

23. The ROK has obligations to implement the international human rights instruments to which it is party. For national implementation, the Executive, Legislative and Judicial branches should all take part in. For this purpose, the government should develop national mechanisms for the Legislative and Judicial branches to participate in the implementation of international instruments, and at the same time it should find effective ways to proliferate the instruments.

24. Human rights education should be provided to personnel in law enforcement including judges, prosecutors, public officials and social welfare workers. In addition, human rights education programs should be included and strengthened at all levels, types and channels of education in a comprehensive way. To do this, laws on human rights education should be passed and the government should identify ways to expand human rights education.

25. The ROK should abolish *the National Security Law* and death penalty and introduce policies for conscientious objectors in a prompt manner as the UN human rights bodies recommended. Also it should ratify the OPCAT and the Convention on the Rights of Persons with Disabilities.

26. The government should take diplomatic efforts and measures across ministries to make sure that North Korean defectors overseas be protected from *refoulement* and enjoy humane treatment. It also should take humanitarian efforts to improve the quality of living and the rights of North Koreans.

Annex: Examples of Policies not Included in the National Action Plans for the Protection and Promotion of Human Rights

Annex.

Examples of Policies not Included in the National Action Plans for the Protection and Promotion of Human Rights

The below is the major policy issues that are not included in the NAP of the ROK despite the NHRCK's recommendations. The list is illustrative.

A. Civil and Political Rights

- Wider-recognition of political activities of civil servants and teachers
- Establishment of independent Military Prosecutor's office
- Abolishment of the National Security Law
- Recognition of the conscientious objector to military service and introduction of alternative military service for them
- Abolishment of the death penalty

B. Economic, Social and Cultural Rights

- Improvement of the industrial accident insurance
- Improvement of unemployment insurance policies
- Clarification of the criteria of the layoffs
- Increase of the minimum wage for labor guaranteed by law
- Fair arrangement of medical resources among regions
- Protection of the rights of patients to learn about the medical service and of the confidentiality of patients
- Prohibition of forced eviction without providing shelter
- Ratification of the ILO's Conventions on the right to assembly

C. Socially Marginalized People and Minority Groups

- Provision for the principle of equal remuneration for equal work
- Improvement of medical service for children in poverty
- Improvement of legal system for transparent management of protective facilities
- Fair procedures for refugee recognition
- Reinforced protection for the children without foster care
- Improved provision of law and institution for birth-registration of the children of migrant workers