

**「Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment」**

**Opinion Report of
National Human Rights Commission of Korea for
Consideration of the Sixth Periodic Reports by
Republic of Korea**

2020. 1.



National Human Rights Commission of Korea

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Introduction

1. The National Human Rights Commission of Korea (hereinafter referred to as “**NHRCK**”) submits its opinion to provide information for the preparation of “List of Issues Prior to Reporting: LolPR”, which will be adopted at the 69th session (April 2020 – May 2020) of the U.N. Committee Against Torture (“**Committee**”), prior to the 6th Government Report Review of Republic of Korea (“**Korea**”) on the implementation of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment of Punishment (“**Convention**”).
2. The NHRCK is an independent national human rights institution that aims to assist the Committee in preparing list of issues by presenting issues requiring inquiries regarding the implementation of the Convention.
3. The Opinion Report is written in relation to the Committee’s concluding observations on the third to fifth periodic reports of Korea (2017) and other recommendations made by treaty bodies including the Committee. Important issues that are not implemented by Korean government are presented as “Previously Recommended Issues”, and the issues that the Korean government has come up with corrective measures yet remain inadequate are described as “Partially Implemented Issues”. In addition, the report selected issues having high necessity for resolution in consideration of; changes in the social environment, major human rights violations by the state that were not included in the previous recommendations, the recommendations of the NHRCK to national institutions, and summarized as “New Major Issues”. The NHRCK looks forward to the Committee’s special attention on the following issues.

A. Previously Recommended Issues

Issue 1: Ratification of the OPCAT

Status

4. Korea has joined 11 of the 18 international human rights treaties and optional protocols including the Convention. However, it has not joined the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**OPCAT**”), which includes site inspections and establishment of national preventive mechanisms. Despite the fact that Korea was elected to the U.N. Human Rights Council (“**UNHRC**”) in 2006 and has been serving five terms to date (2020), the state is still “in consideration” of joining OPCAT (2015 UNHRC Resolution) and no tangible progress has been confirmed.

5. The NHRCK, on the other hand, stated to sign and ratify OPCAT in 4 April 2006. It also set forth its opinion that the NHRCK is appropriate as a national preventive mechanism being stipulated in Article 17 and 23 of the Optional Protocol, and no legislative action is required for designation.

Questions

6. Please specify your position on joining the OPCAT.

Issue 2: Amendment of Criminal Act to Incorporate Definition of Torture in the Convention

Status

7. The Committee recommended that “the State party should incorporate into the Criminal Act a definition of torture that includes the mental and psychological aspects of torture” in its concluding observations on the combined third to fifth periodic reports of the Republic of Korea in 2017.

8. In addition, the U.N. Human Rights Committee (“**UNHRC**”) concerned that “the State party’s criminal legislation does not adequately ensure that acts covered by the internationally-accepted definition of torture are fully criminalized, especially mental torture” in its concluding observations on the forth periodic report of the Republic of Korea.

9. In response, the Korean government made its position that the article 125¹ of Criminal Act stipulates penalizing “acts of violence or cruelty”, and acts of cruelty includes mental torture. It added that amendment of Criminal Act is not necessary to incorporate definition of torture.

10. The Supreme Court ruled that cruel act in Article 273 of Criminal Act involves not only physical pain but also mental discrimination to abandonment (Supreme Court Decision 2000Do233 Decided April 25, 2000), and the acts of cruelty (ibid., art. 125) is broader than cruelty (ibid., art. 273) and is equivalent to cruel act (ibid., art. 277)² under general interpretation of

1 A person who, in performing or assisting in activities concerning judgment, prosecution, police or other functions involving the restraint of the human body, commits an act of violence or cruelty against a criminal suspect or against another person while in the performance of his/her duties, shall be punished by imprisonment for not more than five years and suspension of qualifications for not more than ten years.

2 A person who illegally arrests or confines another, thereby treating that person cruelly, shall

domestic laws³. Given that interpretation, the Committee's recommendation on "including mental torture in the acts of cruelty" can be regarded as a minor issue.

11. Provided, that as the article 125 of Criminal Act stipulates a perpetrator as "a person who, in performing or assisting in activities concerning judgment, prosecution, police or other functions involving the restraint of the human body", it is not clear whether prison officers conducting duties of safe custody and protection in correctional institutions are included⁴, and even during working hours, it is difficult to include assaults or cruel acts caused by personal feelings without being related to the duty. Considering that there are still gaps in the definition and scope of perpetrator as aforementioned, the definition of torture in article 1 of the Convention needs to be applied more explicitly to the Criminal Act to eliminate blind spots of legal application.

Questions

12. Please define your position on amendment of relevant laws such as "Criminal Act" to clearly include the definition of torture stipulated in article 1 of the Convention and extend the definition and scope of perpetrator.

be punished by imprisonment for not more than seven years.

3 Hong Kwan Pyo, "Criminalization of Torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", 2018

4 About this issue, a high court ruled as follows: [Gwangju High Court Decision 92Cho43 Decided November 21, 1992] "Prison guards..... cannot be considered as falling into any category of special public officers stipulated in Article 125 of Criminal Act, unless they deal with screening crimes or assisting screening. Assault or cruel act against convicted prisoners cannot be dictated by Article 125 of Criminal Act".

Issue 3: Abolition of Death Penalty

Status

13. International society has recommended abolition of death penalty by several means including the Committee's concluding observations on the combined third to fifth periodic reports of the Republic of Korea (2017) and third Universal Periodic Review on the Republic of Korea (2017), however, the Korean government has not officially abolished death penalty to date.

14. While noting the moratorium on the application of the death penalty has been more than 20 years since 30 December 1997, there are still 61 persons on death row.

15. The NHRCK recommended to the Korean government for joining the "Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty" and the abolition of death penalty stipulated in Military Criminal Act, considering that; the death penalty is cruel and inhuman punishment which violates the essence of human dignity, values and the right to life guaranteed by the Constitution and international human rights standards; it is difficult to recognize the criminal deterrence of the death penalty; and the death penalty has not been executed for more than 20 years since 30 December 1997.

16. On the other hand, some argue that the death penalty is a punishment imposed only on violent crimes and it is necessary to punish with death penalty in view of the cruelty of the crime or severe pain, loss of the victim's family and national sentiment. The 2018 NHRCK survey on abolition of death penalty and alternative penalties showed that only 20.3% of

respondents agreed⁵ to abolish the death penalty. However, 66.9% agreed that the death penalty would be abolished if a proper alternative penalty was introduced instead of the death penalty.

17. Even though Korea has now suspended execution of the death penalty, it needs to actively consider abolition of the death penalty and introduction of alternative penalties given the fact that; the international community such as the Committee (2017) and the UNHRC (2015) continued to recommend the abolition of the death penalty; violation of the right to life due to the death penalty is very significant and irreversible; the introduction of alternative penalties along with the abolition of the death penalty may be in accord with national sentiment as shown in the above survey.

Questions

18. Please define your position on joining the “Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty” and present execution plan to official abolition of the death penalty and introduction of alternative penalties.

Issue 4: Repeal or Amendment of National Security Act

Status

19. There are concerns that article 7 of the “National Security Act” may violate basic human rights such as freedom of expression with its too vague and abstract stipulation. “Reports of the U.N. special rapporteur on human

⁵ An online survey was conducted on 1,000 citizens of the Republic of Korea.

rights defenders (2014)”, “Concluding observations on the fourth periodic reports of the Republic of Korea (UNHRC, 2015), “Reports of the U.N. special rapporteur on the rights to freedom of peaceful assembly and of association (2016)” and “Concluding observations on the combined third to fifth periodic reports of the Republic of Korea (the Committee, 2017)” point out the possible abuse and misuse of the National Security Act, and damage to political pluralism and restriction of freedom of expression brought by article 7 of the same act.

20. The Constitutional Court ruled that the provisions contained in article 7-1 of the “National Security Act” –A person who praises, incites or propagates the activities or who acts in concert with it, with the knowledge of the fact that it may endanger the existence and security of the State of democratic fundamental order– and the provisions in article 7-5 of the same act –Any person who manufactures, holds, distributes or acquires any documents, drawings or other expression materials, with intention of committing the act as referred to in paragraph (1)– do not violate the void for vagueness of the principle of Nulla Poena Sine Lege. (Constitutional Court Decision 2012Heonba95 Decided 30 April 2015)

21. The Supreme Court ruled that on the condition that the operator of the private internet posting space, who has the authority to delete postings of others, did not delete but left the posting of others, it cannot be deemed as “possession” of the posting (Supreme Court Decision 2010Do8336 Decided January 27, 2020). The Court also decided that just “following” the account “Uriminzokkiri” –North Korea’s official twitter account– does not conform to “distribution”, “aid and abetment” or “possession” of enemy-benefitting expression materials in article 7-5 of the National Security Act (Supreme Court Decision 2016Do18715 Decided January 25, 2018).

22. In 2004, the NHRCK recommended to abolish the “National Security Act” as it leaves a substantial room for infringement on freedom of thought, conscience and expression, which the Korean government refused to accept. As suggested by the NHRCK in 2016 in its recommendations for the “National Action Plan for the Promotion and Protection of Human Rights (2017-2021),” it is imperative for the Korean government to establish measures including amendment of article 7 to prevent abuse of the “National Security Act” and human right violation.

Questions

23. Please define the Korean government’s position on the amendment or repeal of the “National Security Act” and present related plans.

B. Partially Implemented Issues

Issue 1: Partially Implemented Follow-ups of Concluding Observations on the Third to Fifth Periodic Reports of Korea under the Convention

Status

24. The Committee adopted the concluding observation on the third to fifth periodic reports of Korea in 2017 and requested to provide follow-up information on the outcome of the investigations undertaken by the Prosecutor’s Office and the National Police Agency in relation to the death of farmer Baek Nam-Gi, the outcome of any judicial proceedings related to

the Sewol Ferry accident, closure of “substitute cells”, and establishment of military ombudsman office.

25. The Korean government provided follow-up information on 14 March 2019 accordingly⁶. But other than that, the position and follow-ups to the recommendations stated in the concluding observations are not disclosed, so effective monitoring and adequacy evaluation are difficult.

26. The NHRCK requested the Ministry of Justice for Korean government’s implementation reports to the Committee on the concluding observations on the third to fifth periodic reports of Korea (excluding CAT/C/KOR/CO/3-5/ADD.1) and other implementation data. However, the Ministry of Justice answered as non-existence and non-retention, respectively.

Questions

27. Please inform us whether the Korean government would disclose or not the follow-ups of the concluding observations on the third to fifth periodic reports of Korea under the U.N. “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment”.

Issue 2: Improvement of Detention Conditions and Protection of Rights

Status

⁶ CAT/C/KOR/CO/3-5/ADD.1.

28. The Committee was concerned about “continued overcrowding in correctional facilities, the amount of living space available to each inmate, which does not meet international standards, the insufficient number of prison staff and the insufficient access to medical care and to outside medical facilities” and recommended to take specific measures to address the issues in the concluding observation on the third to fifth periodic reports of Korea in 2017.

29. In case of overcrowding in correctional facilities, the minimum living space of for solitary confinement and the place of detention (for one person) is 5.40m² and 3.40m² (International Committee of the Red Cross), 4.65-5m² and 7.20m² (Japan), respectively, and 5.57m² for solitary confinement in the U.S.. On the other hand, it is a mere 4.62m² and 2.58m² in Korea⁷ which leads to severe overcrowding in correctional institutions. The Constitutional Court has ruled that overcrowding is unconstitutional by violating the human dignity and value of the inmates (Constitutional Court Decision 2013Heonma142 Decided 29 December 2016).

30. The NHRCK conducted an ex officio investigation on detention facilities on 5 May 2018 and confirmed the issues of overcrowding and lack of manpower and facilities, and made recommendations including: implementation of preferential measures (the use of idle spaces, the expansion of living rooms for female inmates); construction and extension of correctional facilities by coming up with measures to persuade residents; active expansion of parole; reduction of pre-trial detention to implement the principle of investigation and trial without detention; establishment of a consultation committee to resolve the overcrowding of correctional facilities; regular notification of implementation status.

⁷ Recommendations on ex officio investigation of human rights violation of inmates by overcrowding in detention facilities (5 November 2018).

31. With regards to fairness of punishment for inmates, the article 111 of “Administration and Treatment of Correctional Institution Inmates Act” stipulates establishment of disciplinary committee, being comprised at least five but not more than seven members with at least three outside members. However, the outside members are selected among the directors of the competent agencies, which hampers the independence of the members and highly likely leads to arbitrary disciplinary decisions.

32. In addition, the U.N. “Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)” prohibits long-term solitary confinement for more than 15 consecutive days (art. 43-1 and 44) whereas the “Administration and Treatment of Correctional Institution Inmates Act” allows forfeiture of rights for up to 30 days and not more than 45 days (art. 108 and 109), which leaves a room for excessive forfeiture of rights exceeding international standards.

33. The NHRCK accordingly recommended total 15 items including eight items related to investigation acceptance and seven items related to punishment, based on the results of the visit to the correctional institution on 16 January 2019. However, the Korean government did not accept six recommendations including: (1) Use a name badge for the Correctional Rapid Patrol Team (CPRT)⁸ and take human rights training course when being selected as a team member; (2) Wear minimal protective equipment; (3) Separate the investigation room and the punishment room; (4) Provide the information of disciplinary members in advance to guarantee the right of inmates to avoid members, comprise disciplinary committee with over the

8 The CPRT is responsible for maintaining the order of correctional facilities and for supporting safe custody, as well as initial suppression of the emergency in the event that impairs safety and order.

majority of outside members, and exclude former correctional officials from outside members; (5) Establish disciplinary retrial system, and (6) Limit forfeiture of rights for up to 15 days to comply with international human rights standards, and revise relevant regulations so that continuous execution of forfeiture of rights shall have a certain period in between.

Questions

34. To address overcrowding in correctional facilities and lacking number of prison staff and insufficient facilities, please present practical action plans including measures to expand facilities and persuade residents.

35. Please present your position on concerns about selection standards of disciplinary committee members in the detention facilities including impaired independence of members and arbitrary disciplinary decisions, and define the position with reasons on revision of “Administration and Treatment of Correctional Institution Inmates Act” to limit forfeiture of rights for up to 15 days.

Issue 3: Countermeasure for Corporal Punishment Against Children

Status

36. The Committee recommended to “amend and enact legislation so as to prohibit corporal punishment in all settings, including orphanages and child welfare facilities, and take the measures necessary to prevent such punishment” in the concluding observation on the third to fifth periodic reports of Korea in 2017.

37. The Korean government presented programs replacing corporal punishment against children, including student autonomy trial, scoring system based on daily living, volunteer activities (Seoul Metropolitan Office of Education) and life education (Gyeonggi-do Office of Education), in its consolidated third and fourth periodic reports of state parties due in 2011 Republic of Korea (CRC). As of January 2020, four offices of education in provinces and municipalities (Seoul, Gwangju, Gyeonggi Province, North Jeolla Province) have legislated and implemented the “Municipal Ordinance on Student Human Rights” ensuring student rights and banning corporal punishment at schools.

38. The Korean government responded in the concluding observations on the combined fifth and sixth periodic reports of Korea (additional report in 2019, CRC) that the government enacted prohibition against corporal punishment by revising the “Enforcement Decree of the Elementary and Secondary Education Act”. It is true that the enforcement decree explicitly prohibits direct corporal punishment, but there are no sanctions for violation. Also, there is no prohibition against indirect corporal punishment, such as disciplinary punishment or putting children in the corner.

39. The “Child Welfare Act” states that no protector of children shall inflict physical or psychological pain and prohibits committing physical abuse against a child that may hurt his/her body or injure his/her physical health and development. However, the Supreme Court decreed that physical abuse against a child is “use of physical force that would have negative effect on a child’s body to the extent of impairing the integrity of the body or impairing physiological function even if it does not lead to the degree of injury that would result in abovementioned impairments”⁹. And according

⁹ Supreme Court Decision 2015Do6781 Decided May 12, 2016.

to the “Civil Act”, it is parent who have parental authority and rights to take disciplinary action. Therefore, corporal punishment in homes is hardly banned under the current law, unless it clearly leads to abuse that damages a child’s body and harms health and development. In this regard, the Korean government announced the “Policies for children toward Building an Inclusive Society” in May 2018 that it will consider ways to exclude corporal punishment from the rights to take disciplinary action, but no specific attempts for amendment has been found thereafter.

40. Children in child welfare facilities, including orphanages, have limited basic right of personal liberty, and there is a risk of human rights violations such as corporal punishment and degrading treatment if the monitoring on the admission and living condition is insufficient. The NHRCK gave recommendations on 2 April 2018 and 9 May 2019 on harsh acts occurred in child welfare facilities and is exerting all efforts to objectively check child rights situation by conducting a survey of child rights in child welfare facilities (2010) and developing human rights evaluation index for child welfare institutions (2017) in order to improve the index which was developed in 2005.

Questions

41. Please provide the Korean government’s plans on alternative discipline methods to eradicate and replace all forms of physical violence against children, including domestic and school corporal punishment. In addition, please present amendment progress and future plan.

42. Please present detailed plans to effectively ensure basic rights of children in child welfare facilities, including independent supervision and exclusive monitoring agency.

Issue 4: Securing Resources and Enhancing Process for Refugee Screening

Status

43. The Committee recommended to “consider revising article 5 of the “Enforcement Decree of the Refugee Act”, ensure an effective administrative appeal mechanism with regard to negative decisions, establish a legally prescribed maximum duration of immigration detention, apply non-custodial measures to immigrant minors and eliminate overcrowding and improve material condition in immigration detention facilities including at points of entry and in departure waiting area” in the concluding observation on the third to fifth periodic reports of Korea in 2017.

44. The NHRCK published “The Second Edition of Human Rights Guidelines on Migration” on 18 December 2019, stating ten guidelines, including prohibiting racial discrimination, enhancing remedy procedure against infringement of their rights, improving fairness of refugee screening, ensuring right to work of immigrants, improving immigrant-related institutions, strengthening health care services, implementing non-discriminatory social security system, ensuring the principle of the best interests of the child for immigrant children, protecting human rights of immigrant women and minimizing detention.

45. The 2018 refugee application (Ministry of Justice) shows that the number of refugee applicants jumped from 1,574 to 9,942 between 2012 and 2017. Total 6,446 applications out of 9,942 went to Seoul Immigration

Office but the number of refugee screening personnel was only 22, with more than 290 refugee applicants per person.

46. Despite the response of the Ministry of Justice that it developed professional interpreting system for refugees with 173 professional interpreters in 24 languages as of June 2018¹⁰, lack of interpreters and quality in the refugee screening process have been raised issues. Recently, an interpreter and immigration official have falsely wrote an interview report, and the court ruled cancellation of non-recognition of refugee status¹¹.

47. As an administrative appeal to non-recognition of refugee status, a formal objection is regulated which is reviewed by the Refugee Committee under the Ministry of Justice. However, the head of the committee is deputy minister of the Justice and the ratio of public official is high, which threatens “Independent, fair and impartial” principle of appeal review. In addition, the appeal is currently reviewed by the Refugee Committee, which is comprised of 15 members, and the committee was held six times in 2017, dealing with total 4,542 applicants. The number of cases handled in a review is 750 cases on average, and the heavy workload has led to a documentary review of the applicants without having an interview.

48. The “Refugee Act” does not prescribe maximum duration for immigration detention and the immigration detention of minors in immigration detention facilities. Therefore, if the refugee screening process is delayed, the detention period may be extended indefinitely and the infringement of right to education of minors is also concerned in this process.

Questions

10 http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=2820

11 Seoul Administrative Court Decision 2017Gudan4294 Decided October 12, 2017, Seoul High Court Decision 2017Nu47245 Decided June 27, 2018

49. Please present the status of public officials and interpreters in the immigrant office who are responsible for refugee screening, and the plan for enhancing their capabilities.

50. Please provide specific guidelines for refugee screening officers and public officials in charge of refugee screening during the screening process.

51. Please explain specific action plans to increase the independence and fairness of the deliberative body of administrative appeal against refugee screening results.

52. Please define your position on amendment of laws regarding maximum duration for immigration detention and the immigration detention of minors in immigration detention facilities.

Issue 5: Enhancement of Crackdown on Migrant Workers and Amendment of Criminal Act regarding Prohibition of Human Trafficking

Status

53. The Committee recommended to “provide legal protection to migrant workers against exploitation, consider amending labor legislation with a view to allowing migrant workers to change employment within a reasonable amount of time, ensure that migrant workers have access to a helpline in a language they understand and to interpreters and have access to remedial measures ” in the concluding observation on the third to fifth periodic reports of Korea in 2017.

54. The NHRCK recommended not only 10 guidelines in “The Second Edition of Human Rights Guidelines on Migration” on 18 December 2019, but also made other recommendations on migrant workers, including: (1) Take disciplinary action against those responsible for the death of migrant workers in the process of crackdown on 16 January 2019; (2) Minimize the use of the “Emergency Detention Note”¹² stipulated in article 51 of the “Immigration Act” and set up a guideline to protect foreigners by receiving a “Protection Order” in principle; (3) Provide guidelines and strengthen management and supervision to stop the crackdown immediately in the event of a risk of an accident, rescue people first in case of an accident, and develop a specific safety plan before the crackdown; (4) Conduct prevention education and provide detailed guidelines for prevention of recurrence; (5) Record and keep a video of crackdown mandatorily; (6) Establish and operate a systematic and regular human rights education for public officials in charge of crackdown; (7) Draw up supervisory plan to ensure that measures limiting right to liberty, including de facto arrest and taking a person to the police station that may occur in the process of crackdown on undocumented immigrants, are carried out in accordance with criminal justice procedures.

55. The Ministry of Justice did not accept guidelines for disciplinary actions, mandatory video recording of the crackdown process and preparing plans to supervise the process in accordance with criminal justice procedures. The Ministry partially accepted following recommendations that it is difficult to check personal information of foreigners and it is the reason for using the emergency detention note, but it will make practical efforts going

¹² If there is an emergency and cannot afford a protection order, emergency measures should be prepared after urgently protecting foreigners. In this case, a protection order must be issued within 48 hours, and if no protection order is issued, protection must be released immediately.

forward. It also responded that recurrence prevention education will be conducted four times a year for responsible public officials, but no detailed instructions were provided. The Ministry accepted rest of recommendations. However, it is difficult to expect compliance with the enforcement procedures in emergency situations that may occur during the crackdown process only by human rights education to prevent recurrence, and it is necessary to secure transparency in the crackdown process through video recording and supervision.

56. The “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**“Protocol to Prevent Trafficking”**)”, which is ratified by the Korean government in 2015, prescribes that trafficking in persons shall mean the recruitment, transportation, or transfer of persons, by means of the threat or use of force or other forms of abuse of power. Meanwhile, article 289 of the “Criminal Act” stipulates that trafficking in persons only means act of buying or selling another person. In addition, trafficking in persons is established regardless of the victim’s consent if it is taken by illegal or improper measures under the “Protocol to Prevent Trafficking”, while there is no provision in the “Criminal Act”, and investigation and law enforcement agencies do not recognize it as trafficking in persons if it decides that the victim has consented. The NHRCK developed “Identification and Protection Guidelines for Human Trafficking Victims” on 20 June 2016 and recommended relevant government departments to set up specific and practical plans.

57. Trafficking in persons is mainly related to migrant workers who have entered Korea with short-term visas that cannot be employed, such as B-1

visa exemption¹³. These people are unlikely to report when they are trafficked for labor and sexual exploitation (prostitution, forced fishery activity, etc.) because of their status as undocumented¹⁴. Even though their reports lead to investigation, it is also difficult to be recognized for sexual or labor exploitation by trafficking in persons under the “Criminal Act”. The problem is related to tendency among employers, workers and responsible public officials not recognizing the issue as trafficking in persons, since the concept of trafficking in “Protocol to Prevent Trafficking” is different from that of the “Criminal Act”. Therefore, an education on the scope of human trafficking may be necessary to raise awareness.

58. Moreover, there is a concern that language becomes another barrier that prevent migrant workers from expressing their intentions effectively and protecting their rights, and appropriate action is needed accordingly.

Questions

59. Please present specific measures and plans to prevent human rights violation that may occur in the process of crackdown on undocumented immigrants. And define your position especially on mandatory video recording of the crackdown process and preparing measures to supervise the process in accordance with criminal justice procedures.

60. Please present the statistics of sexual and labor exploitation that occurred after the establishment of article 289 of the “Criminal Act” in 2013.

13 Visa exemption (B-1) is short-term status of stay in the “Enforcement Decree of the Immigration Act”, which is granted to a person who is a citizen of a country that has signed a visa exemption agreement with the Republic of Korea, and intends to act in accordance with the agreement.

14 The NHRCK, Study for reconstruction of migrant human rights guidelines, 2017

And express your position on the criticism that the “Criminal Act” defines the definition of trafficking in persons narrowly.

61. Please provide the plans to prevent human trafficking such as forced labor by reflecting strict punishment standards for human trafficking under the international covenants on human rights to domestic laws and suggest ways to protect victims of human trafficking.

62. Please specify plans to effectively protect rights of migrant workers including strengthened support for interpretation and legal service.

Issue 6: Strengthening Safeguards for Seclusion and Restraint in the Mental Medical Institutions

Status

63. The Committee recommended to “ensure effective supervision and independent monitoring of judicial organs on involuntary psychiatric hospitalization, amend the Mental Health Act, and ensure effective legal safeguards” in the concluding observation on the third to fifth periodic reports of Korea in 2017. Also, the U.N. Committee on the Rights of Persons with Disabilities was concerned that “persons with psychosocial disabilities including mental patients are subjected to acts considered cruel, inhuman or degrading treatment including solitary confinement, constant beating, restraint and excessive drug treatment” in the concluding observations on the initial report of Korea in 2014.

64. The Korean government revised the “Act on the Improvement of Mental Health and the Support For Welfare Services for Mental Patients”¹⁵ in 11 December 2018, and reinforce requirements for involuntary hospitalization stated in article 42, 44 and 50. Though it can be said that the possibility of abuse and misuse of involuntary hospitalization has been addressed to some extent, effective legal safeguards regarding the seclusion and restraint during the admission process are still inadequate.

65. In this regard, the NHRCK initiated the “Survey on Seclusion and Restraint at Mental Hospitals” in 2015. Based on the results, it made following recommendations on 24 October 2016 as follows: Bolster legislations on specific requirements and procedures regarding the use of seclusion and restraint at mental medical institutions; investigate drug administration to the mentally-impaired including chemical restraint; standardize the structure, facility and restraint tools of seclusion rooms; develop alternative programs to replace seclusion and restraint; qualification standards and management plans for caregivers.

66. However, the Korean government hasn’t come up with improvement measures on the NHRCK recommendations except for regulating continuous maximum seclusion and restraint time in “Guidelines for Seclusion and Restraint” of the Ministry of Health and Welfare. In particular, specific requirements for seclusion and restraint are not specified in the article 75 of the “Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients”¹⁶ but provided in the above guidelines of the ministry.

¹⁵ The act has been fully revised from the Mental Health Act in 2017

¹⁶ ① The head of a mental medical institution or mental health sanatorium shall not solitarily continue or tie down a hospitalized or admitted person or impose any physical restraint on a hospitalized or admitted person, except where such restriction is imposed upon the person

Questions

67. Please clarify your position on strengthening legal safeguards for patients in mental medical institutions to prevent arbitrary seclusion and restraint, verbal abuse, assault and cruel act during the seclusion and restraint process.

Issue 7: Guarantee of Due Review Process for North Korean Refugees

Status

68. The Committee and the UNHRC expressed their concerns that “the person escaping the Democratic People’s Republic of Korea may be lawfully detained in solitary confinement for up to six month without right to legal counsel and they may be deported to third countries without rights to an independent review if it is determined that they do not qualify for protection” in the concluding observation on the third to fifth periodic reports of Korea (Committee against Torture, 2017) and the concluding observations on the fourth periodic reports of Korea (UNHRC, 2015).

according to the instruction of a psychiatrist for the purpose of medical treatment for the purpose of medical treatment or care.

② Even when the head of a mental medical institution or mental health sanatorium imposes a physical restraint under paragraph (1) upon a hospitalized or admitted person according to the instruction of a psychiatrist for the purpose of medical treatment or care by isolating or tying down the person, he/she may impose the physical restraint, only where he/she concludes that the person is highly likely to harm him/herself or a third person and that it is clearly impracticable to avoid such danger by imposing the physical restraint. In such cases, isolation shall be limited to the inside of the relevant facilities.

69. In response, the Korean government revised the article 12 of the “Enforcement Decree of the North Korean Refugees Protection and Settlement Support Act” on 24 December 2018 and shortened the provisional protection period of North Korean refugees from 180 to 90 days.

70. However, such measures by the Korean Government cannot be seen as full compliance with the recommendations of the Committee against Torture and the UNHRC. Furthermore, no institutional improvement plans have been established to ensure the right to legal counsel since the review on North Korean refugees includes face to face interview and guarantee the right to an independent review and to appeal the decision regarding deportation to third countries.

Questions

71. Please define your position and reasons for the opinion that the right to legal counsel should be ensured for the persons escaping the Democratic People’s Republic of Korea during the entire period of provisional protection, which is provided for national security, and the period and method of investigation should be strictly in accordance with international human rights standards, including the doctrine of warrants in the article 9-4 of the International Covenant on Civil and Political Rights.

72. In addition, please present your position and reasons for the opinion that a clear and transparent procedure should be adopted to provide appropriate and independent review before deporting North Korean refugees to third countries.

Issue 8: Introduction of Training Program and System for Prohibition of Torture

Status

73. The Committee recommended to “make training on the provisions of the Convention and the absolute prohibition of torture mandatory for all law enforcement personnel and other public officials, introduce training programs on non-coercive investigation techniques and implement specific methodologies to assess the effectiveness of the training” in the concluding observation on the third to fifth periodic reports of Korea in 2017.

74. In order to prevent torture, inhumane treatment or discrimination that may occur in the process of law enforcement and investigation, training should be continuously provided to law enforcement officers and public officials in correctional institutions so that such trainings do more than unsystematic and one-time education. To that end, a system should be in place to measure and evaluate the effectiveness of the training.

75. However, it is difficult to obtain sufficient statistics to confirm whether the Korean government conducts systemic training program of prohibition of torture for law enforcement personnel and other public officials.

76. In addition, the NHRCK recommended the Korean government to use a name badge for the Correctional Rapid Patrol Team (CPRT) and take mandatory human rights training course when being selected as a team member, but the Ministry of Justice did not accept the it.

Questions

77. Please present detailed data to check the contents and current status of prohibition of torture training programs for public officials.

Issue 9: System Maintenance on Discipline and Punishment in the Military and Review of Alternative Service Period for Conscientious Objectors

Status

78. Total 53 petitions relating to unjust systems and dispositions were received by the NHRCK in 2018, describing violations of fundamental rights resulting from the abuse of authority over human resources and command.

79. In 2019, the Commander of the VII corps of ROK Army changed the guidelines to restrict the use of stand-downs, imposed excessive training on soldiers, and refused to acknowledge patients' exemption from the training. From those cases, concerns have been raised about the abuse of authority over human resources and command. Therefore, when taking measures such as vacation restrictions, it needs to set up specific manuals and guidelines to prevent excessive discipline and punishment.

80. Article 38-2 of the “Framework Act on Military Status and Service” stipulates that the commander can conduct training for establishing military discipline if necessary, but the enforcement decree prescribing specific cases and guidelines for the training has not been legislated and implemented.

81. In relation to conscientious objection to military service, the NHRCK has made several recommendations on introduction of alternative service

since December 2005, along with the same recommendation by the international community including UNHRC. The Constitutional Court submitted its opinion that “conscientious objection to military service is an essential aspect of freedom of conscience, and it is contrary to the Constitution to force criminal penalties against them without harmonizing obligation of military service and providing a way to realize both”.

82. The Constitutional Court recognizes that article 5-1 of the “Military Service Act” does not define alternative service as a kind of military service and it is violating the freedom of conscience which is constitutional fundamental right, and decided it is unconformable to constitution (Constitutional Court Decision 2011Heonba379 Decided June 28, 2018 “Constitutional complaint against article 88-1 and others of the Military Service Act”). The Supreme Court has since acquitted conscientious objectors.

83. In order to introduce alternative service, the Korean government announced legislation of “Partial Proposition of the Military Act” and “Legislative bill of Assignment and Service of Alternative Services on 28 December 2018, and the National Assembly voted on above acts on 27 December 2019. On 31 December 2019, the Korean government proclaimed those acts respectively. The NHRCK expressed its opinion that the main contents of the legislation, including the reasons for application, the reviewing agency, the length and scope of service, should be enacted and amended in a manner consistent with the Constitution and international human rights standards.

84. In this regard, the Korea government decided to introduce 36 months of alternative duty at correctional facilities’ dormitories from 2020. However, additional research on alternative service such as reviewing service period is

required since the period is more than 1.5 times of active duty and the punishment of alternative service still remains.

Questions

85. Please provide information of specific manual and guidelines for discipline and punishment in the military.

86. In relation to conscientious objection to military service, please present the Korean government's implementation plan on reasonable alternative service following the NHRCK recommendations and the Constitutional Court's decision, including readjustment of service period and expanding service scope.

Issue 10: Measures to Tackle Violence against Women

Status

87. Recommendations have made to define sexual violence based on free consent of victims and in particular, to take the legislative measures to define non-consensual sexual relations between spouses as a specific criminal offence by the Committee (the concluding observation on the second (2016) and the third to fifth (2017) periodic reports of Korea) and by the Committee on the Elimination of All Forms of Discrimination Against Women (the concluding observation on the seventh (2011) and eight (2018) periodic reports of Korea). In addition, the UNHRC indicated that Korea should pursue policies to tackle social, economic, and political discrimination against women and to prevent domestic violence in the Third Cycle of Universal Periodic Report (UPR) of Korea.

88. The “Public Official Election Act” of Korea stipulates that when any political party intends to recommend its member as candidates to run in the proportional representative National Assembly member election, such political party shall recommend not less than 50/100 of the candidates from among women and recommend candidates falling under every odd number in order of the candidate roll from among women. The government is implementing various policies to address social, economic and political discrimination against women, including “Career Development Center for Women” as a series of employment success package. Regarding violence against women, despite that the Korean government enforced the “Violence Against Women Act” on 25 December 2019 and has implemented various policies, more active measures are needed to prevent violence against women such as rape, domestic violence and digital sexual crime.

89. The article 297 of the “Criminal Act” prescribes that “violence or intimidation” is the constituent of rape and doesn’t include victim’s free consent in the scope of sexual violence against women. In particular, the law hardly considers marital rape – non-consensual sexual relations between spouses – as rape.

90. Domestic violence increased from 160,272 in 2013 to 264,528 in 2016, and the family protection cases under the “Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence” jumped from 494 in 2012 to 19,834 in 2016¹⁷. However, the main purpose of the law is to maintain and restore the family, which led to the result that the 43.4% perpetrators of 16,868 cases of domestic protection orders did not receive any criminal punishment. They are sentenced to the lowest penalty with a

17 CEDAW/C/KOR/CO.8.

fine or got conditional suspension of indictment with consultation as the cases are categorized as family protection. For a person who violates restraining order, only a fine is imposed. Questions are raised about whether such rulings are appropriate to prevent family violence.

91. According to the “2019 Crime Analysis” of the Supreme Prosecutors' Office, the rate of rape among major sexual violence has decreased from 22.6% in 2009 to 18.1% in 2018, while the rate of forced incident rose from 35.6% in 2009 to 48.8% in 2018. Among sexual assault crimes, the rate of illegal picture-taking by using camera, etc. went up from 4.8% in 2009 to 19.0% in 2018. The “Revision of the Sexual Crimes Punishment Act through analysis of precedents such as illegal picture-taking by using camera, etc.”¹⁸ by Korean Women Lawyers Association analyzed the gender of victims and revealed that 98.3% of victims were women. Digital sexual crimes including illegal picture-taking by using camera are on the rise. It is time to raise awareness of the entire society that digital sexual crimes are also severe sexual assault.

92. In September 2019, law enforcement officials of more than 30 countries including Korea, the U.S. and the U.K. have arrested over 300 users in 12 countries who have operated and used child pornography sites on the dark web¹⁹, and more than 200 were found to be Koreans. Concerns about digital sex crimes against the socially underprivileged, including women in Korea, continue to rise.

Questions

¹⁸ Korean Women Lawyer Association, Symposium data for analyzing online sexual assault status and supporting victims, 2016.

¹⁹The World Wide Web requiring specific browser to access. The web lets users remain anonymous and is impossible to track IP address.

93. Please clarify the Korean government's position on the opinion that article 297 of the "Criminal Act" should be amended so that sexual intercourse without free consent of the victim can be defined as a rape with appropriate sanctions.

94. Please defined the Korean government's position on the amendment of "Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence" so that the priority is to be the safety of victims and their families.

95. Please present domestic and international measures to prevent new forms of violence such as digital sexual crimes (online sexual violence), as well as specific remedies for victims to remove and block criminal content upon request of the victims. In addition, please provide measures to prepare educational programs to raise awareness of the severity of digital crimes.

Issue 11: Information Sharing for Prevention of Abuse of Emergency Arrest and its Monitoring

Status

96. The Committee was concerned that "persons who urgently arrested without warrant are not afforded in practice all the fundamental legal safeguard" in the concluding observation on the second (2006) and third to fifth (2017) periodic reports of Korea.

97. The "Criminal Procedure Act" stipulates arrest with warrant (art. 200-2) and exceptions for the doctrine of warrant: emergency arrest (art. 200-

3) and arrest of flagrant offender (art. 212). In principle, arrests that restrain an individual's body shall be warranted, so emergency arrests should be conducted on an exceptional basis in accordance with a strict interpretation of the requirements.

98. The Korean governments revised the “Criminal Procedure Act” in 2007 in relation to the Committee’s concluding observations on the second periodic report of Korea in 2006. Since then, the government has been strictly restricting emergency arrest and trying to prevent its abuse, and the number of persons under emergency arrest has declined to 25, 432 in 2007, 10,628 in 2015 and 5,014 in 2019.²⁰

99. However, the NHRCK has expressed its concerns about infringement of the body’s freedom by abuse of emergency arrest and urged the police to strictly abide by the urgent requirements – no time for warrant issuance – for its illegal emergency arrest²¹.

100. There are also criticisms of abuse of emergency arrests since warrants were not requested after unreasonable emergency arrest of a suspect. In order to confirm this, it is necessary to examine the proportion of persons who are released after the arrest without request for or issuance of warrant, but it is difficult to find the latest statistics.

Questions

20 Korean National Police Agency, Korean Police Crime Statistics in 2019.

21 Emergency arrest of the accused whose escape concern is unclear based solely on investigation of complaint, and emergency arrest of a suspect who was voluntarily present at the police station and under investigation in the interrogation recording room

101. Please provide countermeasures to prevent abuse of emergency arrests, and detailed statistics to confirm just law enforcement of emergency arrests including obtaining warrants after the arrests and issuance proportion.

Issue 12: Supplementing Legal Grounds for Law Enforcement Officers' Use of Equipment and Prohibiting Excessive Use

Status

102. The use of equipment by law enforcement officers, including judicial officers, should be limited to minimum necessary since it may limit the freedom of a person's body and cause torture, depending on the method of use.

103. For police officers, legal grounds for the use of equipment is prescribed in the "Act on the Performance of Duties by Police Officers", and for prison officers in correctional facilities, it is stipulated in the "Administration and Treatment of Correctional Institution Inmates Act" and subordinate laws. Despite the legal grounds, there are still concerns about excessive use of the equipment. According to the "Guideline for Use of Handcuffs", the police should arrest a flagrant offender with front handcuffs, not rear handcuffs. In addition, the guideline only stipulates tying ropes above upper bodies but not lower bodies, which leads to cases that law enforcement officers such as probation officers arbitrarily bind the upper and the lower body of the suspect. The NHRCK recommended that the binding of a suspect in a manner not existing in the guidelines is the use of excessive equipment that causes pain to a suspect on 9 May 2018 and 20 December 2018.

104. In case of public officials in the Prosecutors' Offices (prosecutors and judicial police officers), the use of the equipment is not stipulated in the "Prosecutors' Office Act" but only in established rule of the Supreme Prosecutors' Office (Guideline for Use of Equipment during Arrest and Escort), which brings up a problem that fundamental rights are not restricted by laws but by an administrative rule. In this regard, the NHRCK recommended in 20018 and 2016 that the legal grounds for the use of the equipment for prosecution shall be provided by laws, not by administrative rules.

Questions

105. Please state your position and reasons in detail on the comments that law enforcement officers' guideline for using the equipment under the current stipulations still excessively violated the freedom of body.

106. Please explain improvement measures of the criticism that the legal grounds for the use of equipment should be provided by laws for public officials in the prosecutors' offices.

C. New Major Issues

Issue 1: Remedies for Victims of Torture or Ill-treatment by the State

Status

107. “Seongam Hagwon” was a vagrant camp founded in 1942 in Seongam Island, Ansan City, Gyeonggi Province and closed down in 1982. The Japanese Government General of Choseon ordered the institution forcibly took in children by reason of recruiting combatants for the Pacific War during the Japanese colonial era. Seongam Hagwon was handed over to Gyeonggi Province after Korea’s liberation from Japan. Regardless of whether their parents were dead or alive, vagrant or poor children were abducted and locked away, falling victim to serious human rights violation, such as forced labor, violence, and sexual abuse²².

108. “Brothers Home” was an internment camp located in Busan City, operating in the 1970s and 1980s. Under the name of sheltering vagrants, the disabled without a family and orphans were rounded up off the streets, detained, threatened, beat up and forced to labor at the facility. On December 7, 2017, the NHRCK recommended the government to swiftly enact the Bill to Investigate the Brothers Home Case Resulting from the Interior Ministry Directive, Etc. in order to probe into the case and rehabilitate the victims.

109. “Seosan Developing Group” was an organization operating in the 1960s and 1970s to reclaim mudflats in Seosan City, South Chungcheong Province. Survivors have testified that people were forcibly brought to the Group to clear abandoned salt farms to farmland, suffering forced labor, diseases, and persistent beatings²³.

110. As such, when cases of state violence or state’s violation of its duty of active protection create victims, the state should make strong efforts to probe into such cases and recover damages through reparation, recovery, rehabilitation, and the like. However, any official efforts at the government

22 NHRCK, Report on Seongam Hagwon Incident, 2019.

23 NHRCK, Study on Seosan Developing Group Case and Remedies for Victims, 2019.

level, such as reparation, have not been confirmed yet. In addition, the Framework Act on the Reexamination of Past History for Truth and Reconciliation with regard to investigating victims of state violence and taking follow-ups as well as probing into additional state violence cases has been pending at the National Assembly.

111. With regard to the state reparation ruling for the People's Revolutionary Party Incident, illegal state violence committed by the Korean government in 1974, the NHRCK recommended on January 14, 2019 that it is desirable to come up with and implement complete and effective remedies, which can address difficulties of victims and their bereaved families resulting from the issue of returning the compensation amount executed provisionally and fulfil the state's responsibility to protect its people.

112. In 2018, the Korean government revised Article 15 Paragraph 2 of the Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients and made it possible to establish a national center for trauma to offer support for patients traumatized by disaster or other accidents, laying a foundation to treat and rehabilitate victims of state violence. However, the Bill to Establish and Operate a National Center for Patients Traumatized by State Violence has been pending at the National Assembly.

Questions

113. Please propose specific efforts to probe into state violence, such as Seongam Hagwon, Seosan Development Group, and Brothers Home cases, and to provide remedies for victims at the national level.

114. Please provide effected remedies for the victims in relation to returning the provisionally executed amount provided to compensate for the People's Revolutionary Party Incident.

Issue 2: Improvement of Acts and Subordinate States on Court-Ordered Confinement

Status

115. Court-ordered confinement is a sanction that the court, by its decision, detains those who undermine the order of court. Since its first stipulation in the Court Organization Act in 1981, the use of the sanction has been expanded to the civil and administrative levels.

116. Court-ordered confinement imposes a severe restraint on the fundamental right to liberty of an individual by detaining the person for a certain period. However, the provisions of other acts and subordinate statutes are applied to court-ordered confinement without the acts and subordinate statutes on which the sanction is based stipulating details, such as enforcement and procedure.

117. The Rules for Trials to Maintain the Order of Court, Etc. stipulate the enforcement of court-ordered confinement. In accordance with Article 23 Paragraph 9 of the Rules, the confined under the Administration and Treatment of Correctional Institution Inmates Act are treated as unconvicted prisoners and detained with other inmates at a detention room or correctional institution and may face restrictions, such as wearing handcuffs, ropes, or uniform for unconvicted prisoners.

118. Although the confined may be detained at a detention room of a police station, correctional institution, or house of detention by a judge in accordance with Article 61 Paragraph 3 of the Court Organization Act and Article 7 Paragraph 2 of the Rules for Trials to Maintain the Order of Court, Etc., detailed standards thereof do not exist. Hence, depending on the type of a detention facility, the treatment of the confined may change and their right to meet their families can be limited unnecessarily since they are treated as unconvicted prisoners.

Questions

119. Please propose measures to establish and revise acts that stipulate detailed enforcement and procedure of court-ordered confinement.

120. Please provide concrete improvement measures, such as preparing a manual for the protection of fundamental rights of prisoners at detention centers under court-ordered confinement.

Issue 3: Improvement of the Operation of Video Recording Devices Inside Vehicles to Transport Suspects

Status

121. Among vehicles used by the Korean National Police Agency (“KNPA”), vehicles to transport suspects are space where physical freedom of arrested suspects is restricted, which raises concern that such vehicles can be a blind spot in terms of additional human rights violations by the police. On September 8, 2011, the NHRCK asked the prosecution to investigate torture practices committed inside transport vehicles of the KNPA after

securing numerous relevant testimonies and circumstances. In order to improve the situation, the KNPA has been installing and operating video recording devices to film inside the police vehicles.

122. With regard to video recording devices, the Personal Information Protection Act, Enforcement Decree of the Act, and Regulations for Operation of Visual Data Processing Devices of the Korean National Police Agency prescribe the definition and limitation to installation and operation of visual data processing devices and establishment of privacy policies. Above Act and Enforcement Decree state that retention period of visual data is 30 days in principle and detailed retention period shall be stipulated in the relevant guidelines when 30-day retention period cannot be met. However, KNPA's Privacy Policy, the relevant guidelines, shows that each regional policy agency states their retention period from one day to 30 days, failing to secure a sufficient retention period of visual data and to fulfil the intention of the policy to prevent human rights violations inside transport vehicles.

123. The NHRCK recommended on December 20, 2019 that regulations concerning retention period of video recording devices inside the police vehicles should be adjusted to protect human rights of suspects and ensure and to ensure transparency in law enforcement, and improvement plans should be gradually established and implemented to realize the intention of operating video recording devices.

Questions

124. Please propose measures to gradually establish and implement improvement plans to realize the intention of operating video recording devices inside the vehicles of the KNPA.

Issue 4: Amendment and Improvement of Juvenile Justice

Status

125. The UN Committee on the Rights of the Child recommended in its General Comment No. 10 (2007) that State parties should increase their minimum age of criminal responsibility to at least 12 years and State parties with a minimum age at 12 and higher should not reduce the minimum age. Although the minimum age of criminal responsibility is 14 years under the Criminal Act of Korea, multiple bills have been submitted to the 20th National Assembly, proposing to lower the minimum age to 12 or 13 years. The Korean government announced the 4th Master Plan to Prevent School Violence on January 15, 2020, revealing its plan to reduce the minimum age of criminal responsibility to 13 years.

126. According to the 2017 Crime Analysis published by the Supreme Prosecutors' Office, among all juvenile crimes, the crimes committed by juveniles aged below 14 years took up just 0.6% in 2006 and 0.1% in 2015²⁴. In addition, juveniles who are ten years of age or more but under 14 years of age may receive protective dispositions, such as probation or transfer to a juvenile reformatory, under the Juvenile Act. In particular, transfer to a juvenile reformatory for a long-term (no more than two years) or order to attend a lecture may be imposed.

127. Meanwhile, the Criminal Act states that the number of days of confinement before imposition of a sentence shall be included in the period of limited imprisonment, etc. However, the number of days of confinement

24 From the 2019 Crime Analysis, cases of suspects aged under 14 have been excluded.

at the detention center or the Juvenile Classification Review Board (no more than two months) are not included in the transfer period set by a protective disposition, such as transfer to a juvenile reformatory, due to the reason that protective dispositions under Article 32 of the Juvenile Act are not limited imprisonment. However, transfer to a juvenile reformatory leads to confinement at a closed facility for a period of minimum one month to maximum two years, which is de facto detention and needs to be improved.

Questions

128. Please provide opinions and reasons thereof concerning whether strengthening punishment for juvenile crimes by lowering a minimum age of criminal responsibility is effective in reducing juvenile crimes and reoffending rates.

129. Please propose comprehensive juvenile justice measures to prevent violent crimes and repeated crimes by juveniles.

130. Please provide opinions and relevant legislative improvement efforts concerning the thought that it is desirable to include the detention period and the days at the Juvenile Classification Review Board in the period of a protective disposition of a juvenile reformatory as is the case with the limited imprisonment period.

Issue 5: Measures to Address Hatred and Discrimination

Status

131. The Republic of Korea has been experiencing a social issue where people make online and offline comments that demean and insult others based on their gender, age, disability, country of origin, ethnicity, or sexual orientation, including hateful comments toward Yemeni asylum seekers on Jeju Island in 2018. At the UN Human Rights Council's third Universal Periodic Review (UPR) of Republic of Korea in 2017, the need for the government's sustained efforts to prevent hatred toward sexual minorities and the disabled was also mentioned.

132. According to the Survey on Public Perception of Hatred and Discrimination conducted in 2019 by the NHRCK, 64.2% of the survey respondents²⁵ experienced hateful expressions. 77.2% said that Korean society discriminates against sexual minorities. The percentages were 76.6%, 72.1%, and 71.6% against mentally disabled people, physically disabled people, and migrant workers, respectively. Meanwhile, the NHRCK recommended to National Assembly Speaker to urge not to use demeaning or discriminatory expressions toward the disabled and to draw up recurrence prevention measures.

133. The 2019 analysis of defamation and contempt rulings under the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. showed that hateful expressions accounted for 33.5% of malicious comments that were put on trial, an increase from 31.6% announced by Korean Institute of Criminology based on its study of cyber slander rulings between 2016 and 2017. Among them, hatred toward gender took up 73.3% while hatred toward the disabled was 23.3%. However, the average fine for a comment using hateful expressions was KRW 550,000, which was lower than KRW 1.6 million for false information and KRW

²⁵ 1,200 men and women aged 19 and older residing in Korea.

730,000 for abuses and threats²⁶. Although defamation under the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. is punished more harshly than insult under the Criminal Act in general, fines for defamation are lower in reality.

134. As such, hatred and discrimination have been spreading widely in everyday life in Korea, which is deepening social conflicts, violating the dignity of social minorities, reproducing and solidifying structural discrimination, threatening democracy, and undermining social cohesion. Although the government has an obligation to actively cope with hatred issues, measures, such as recurrence prevention and appropriate punishment, do not seem to have been developed yet.

Questions

135. Please lay out a detailed roadmap for raising awareness of widespread hatred and discrimination in Korea, reaching a social consensus on the seriousness of the issue, and developing effective solutions.

²⁶ CBS Nocut News, examination result of all 242 defamation and insult rulings under the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. in relation to malicious comments in 2019, February 7, 2020.