
**UN 「International Convention on the Elimination
of all Forms of Racial Discrimination」**

**The Independent Report of the National Human
Rights Commission of Korea for the Review of
Seventeenth to Nineteenth Periodic Reports of
the Republic of Korea**

October 22, 2018



**The National Human Rights
Commission of Korea**

– Table of Contents –

Classification	Issue	Page No.
A. Introduction		1
B. Status of the Implementation of the Convention		1
C. General Overview		1
II. Article 1	Issue 1. Implementing the Definition of Racial Discrimination to Internal Law in accordance to the Convention	2
III. Article 2	Issue 2. Rejection of the Usage of the Term "Illegal Stay" Stipulated in the Framework Act on Treatment of Foreigners Residing in Korea	3
	Issue 3. Extension of the Definition of Multicultural Families	5
IV. Article 3	Issue 4. Adoption of Legislative Measures against Racial Discrimination	6
	Issue 5. Enactment of a Comprehensive Anti-Discrimination Act	7
V. Article 4	Issue 6. The Right to Receive Equal Treatment before the Law	7
	Issue 7. Immigration Detention, Liberty and Security of Person	8
	Issue 8. The Right to Form and Join Trade Unions	9
	Issue 9. The Right to Leave Any Country including One's Own and Return to One's Own Country	10
	Issue 10. The Right to Public Health and Medical Care	11
	Issue 11. Expansion of Public Assistance for At-risk Migrants	13

	Issue 12. Protection of Basic Right of Migrant Children	14
	12-1. Introduction of Universal Birth Registration System	14
	12-2. Provision of Stable Medical Service for Migrant Children	14
	12-3. Guarantee of the Complete Right to Education of Migrant Children	15
	12-4. Protection and Support for Migrant Children	15
V. Article 5	Issue 13. Refugee Protection System	16
	13-1. Improvement of Refugee Application Procedure and Treatment at Port of Entry and Departure	16
	13-2. Securing Expertise and Transparency of Refugee Recognition Procedure	17
	13-3. Improvement of treatment for refugee applicants, humanitarian status holders, and recognized refugees	18
	13-4. Current Status on Yemeni Refugee Applicants in Jeju Island and the Need for Government's Active Response	19
	Issue 14. Enhancement of Rights of Marriage Migrant Women	20
	14-1. Guarantee of stable stay of marriage migrant women	20
	14-2. Establishment of Marriage and Maintenance of Family Life Based on Human Dignity and Gender Equality	21
	14-3. Policy for Returned Marriage Migrant Women and Children of Multicultural Families Abroad	22
	Issue 15. Improvement of Human Rights of Migrant Workers	23
	15-1. Improvement of Dire Working Condition and Wage Discrimination	23
	15-2. Revision to the System Incurring Undocumented Immigrants	25
VI. Article 6	Issue 16. Prevention of Human Trafficking and Protection of Victims	27
	16-1. Legislation to Implement the Protocol and Establishment of Cooperative System	27

	16-2. Active Utilization of Identification and Protection Indicators for Human Trafficking Victims	29
	16-3. Regular and Comprehensive Status Survey to Prevent Trafficking in Persons	29
	Issue 17. Remedies and Support for Foreign Victims to Crime	30
	Issue 18. Establishment of Domestic Implementation Procedures for Individual Communications under Article 14	32
VII. Article 7	Issue 19. Provision of Education, Information and Monitoring on Racial Discrimination by the Media	33
C. Conclusion	Issue 20. Missions of the NHRCK	35

SUMMARY

1. The National Human Rights Commission of Korea (NHRCK) is submitting an independent report to the UN Committee on the Elimination of Racial Discrimination (CERD) to present information and opinions that would help the CERD's consideration of the seventeenth to nineteenth periodic reports of the Republic of Korea.
2. The independent report consists of a total of 20 issues (31 specific issues) and contains recent cases in regards to bringing the internal law in line with the International Convention on the Elimination of all Forms of Racial Discrimination ("the Convention") by including a definition of racial discrimination in keeping with that contained in the Convention, adopting specific legislative measures to prohibit and punish racially motivated criminal offenses, and drafting a discrimination prohibition act.
3. The report elaborates on issues related to taking appropriate measures, in accordance with article 5 of the Convention, to guarantee the right to equal treatment before the tribunals and all other organs administering justice, the right to freedom of movement and residence within the border of the State, the right to form and join trade unions, the right to leave any country, including one's own, and to return to one's country, the right to public health, medical care, social security and social services, and the right to public assistance in case of an emergency.
4. In particular, regarding the issue on the protection of migrant children's basic human rights, this report states recent cases on introducing the Universal Birth Registration, providing consistent medical services, ensuring education rights, and providing protection and support for migrant children.
5. The report set forth the views of NHRCK and detailed statistical data on the refugee protection system in Republic of Korea in line with the concerns and recommendations provided by the Committee as the Korean society has been outspoken in its racial hatred or racial discrimination towards Yemeni refugee applicants whose numbers have recently increased rapidly in Jeju Island.
6. The report dilates on issues that have been under constant debate as well as

issues that have not been discussed, such as strengthening the rights of foreign female spouses, promoting human rights of immigrant workers, preventing human trafficking and protecting the victims of human trafficking, providing remedies and support for victims of crimes, allowing individual communications to be implemented in Republic of Korea, monitoring the media on racial discrimination, and educating and promoting the prohibition of racial discrimination. In turn, the report emphasizes the role and responsibility of NHRCK in terms of promoting the human rights of migrants and eradicating racial discrimination.

A. Introduction

The NHRCK is submitting the combined report to the UN Committee on the Elimination of Racial Discrimination (CERD) for consideration of the seventeenth to nineteenth periodic reports of the Republic of Korea (hereafter "the government report") in accordance with the UN International Convention on the Elimination of all Forms of Racial Discrimination (hereafter "the Convention"). This report was formulated based on the information and opinions collected while reviewing the Convention, taking into account the guidelines for the CERD-specific document adopted by the Committee (CERD/C/2007/1).

B. Status of the Implementation of the Convention

I. General Introduction

1. In response to the rapidly increasing number of immigrants and growing trend of immigrants settling in Korea, the government held a meeting on immigration policy in May 2006 and confirmed the "1st Basic Plan and Implementation System for Immigration Policy." In line with the enforcement of immigrant policy, government ministries enacted governing laws, such as the Immigration Control Act (1963, Ministry of Justice), the Act on the Employment, etc. of Foreign Workers 2003, Ministry of Employment and Labor), the Framework Act on Treatment of Foreigners Residing in Korea (2007, Ministry of Justice), the Multicultural Families Support Act (2008, Ministry of Gender Equality and Family), and the Refugee Act (2012, Ministry of Justice).
2. In addition, the government expeditiously established public infrastructure in support of immigrants in order to fulfill social integration of foreigners and multicultural society.

[Table 1] Status of Public Infrastructure Support for Immigrants

Public Infrastructure	Social Integration Program	Multicultural Family Support Center	Foreign Workers Support Center	Welfare Center for Foreigners
Target	Foreigner	Multicultural family	Foreign workers	Foreigners

Government Department	Ministry of Justice	Ministry of Gender Equality and Family	Ministry of Employment and Labor	Local Governments
No. of Establishment (As of 2017)	316	217	40	57

3. Despite the robust effort of the government in the comprehensive enforcement of immigrant and multicultural policies by establishing a national plan and enacting related laws and establishing nationwide support infrastructure, the survey on human rights status of immigrants indicates that the aforementioned efforts had insignificant impact on the protection and promotion of human rights of immigrants.
4. In this regard, the NHRCK developed a Human Rights Guidelines for Migrants in 2012 to provide guidelines in terms of human rights to relevant government bodies to establish immigrant policies and follow the policy direction. The 2nd Human Rights Guidelines for Migrants is currently under way to provide direction in dealing with the constantly changing situation of immigrants and coping with current state of immigrants both at home and abroad.

II. The Definition of Racial Discrimination (Article 1)

Issue 1. Implementing the Definition of Racial Discrimination to Internal Law in accordance to the Convention

5. The definition of racial discrimination under article 1 of the Convention is a comprehensive notion which includes reason, action, and territory. However, there is no law that covers the definition of racial discrimination in Korea and even the laws that prohibit racial discrimination are applied on a limited basis.
6. Regarding the sudden large-scale influx of Yemeni refugees on Jeju Island, a petition went up on the presidential website on June 13, 2018 calling to abolish the Refugee Act, revise the visa waiver program, and revoke refugee applicant permits. Moreover, sentiments of racial hatred and discrimination in Korean society was publicly exposed through different events such as public

protests against Yemeni refugees, forums held by lawmakers urging the government to abolish the Refugee Act, and sensationalistic headlines and media reports¹.

7. According to the 2016 Monitoring Survey on Racial Discrimination in Gyeonggi Province², racial hatred or discrimination such as disrespect, abasement, insult, hatred, bullying, and sexual harassment was prevalent in a variety of occasions such as schools, commercial spaces, hospitals, public transportation, and private spaces.
8. Against this backdrop, the Korean government needs to provide legal and institutional framework to prevent racial hatred or discrimination in Korean society, and should include a definition of racial discrimination in keeping with that contained in the Convention, that is, a comprehensive notion that encompasses reason, action, and jurisdiction.

III. Government Policy on the Elimination of Racial Discrimination (Article 2)

Issue 2. Rejection of the Usage of the Term "Illegal Stay" Stipulated in the Framework Act on Treatment of Foreigners Residing in Korea

9. As of December 2017, the number of foreigners who must have completed their alien registration as their stay has exceeded the 90 day period was 1.58 million, of which 273,000 came for non-professional employment and 225,000 came as guest workers, reaching a total of 498,000.
10. Article 10 of the Immigration Act, revised on March 20, 2018, classifies foreigners according to their qualifications for status of sojourn and permanent residence and added article 10-2 (status of sojourn) to classify qualifications for short-term stay and long-term stay. Under article 10-2, qualifications for

1 The numerous media outlets reported sensationalistic headlines that mentions the possibility of "refugee crime" in connection to a woman who went missing in Jeju Island in July 2018. Police reports also put emphasis on refugee crime even in the report that said the woman may have gone missing as she might have possibly missed her footing and fell to death.

2 The 2016 monitoring survey was conducted on Gyeonggi Province residents by the Gyeonggi Province Human Rights Support Center for Foreigners. The survey focused on four major categories of appearance, nationality, alienage, and religion. A total of 185 cases were collected then analyzed.

long-term stay are applied to study abroad, training, investment, sojourning employees, and marriage, however, "employment" was not included although it accounts for 31% of the foreigners who intends to reside in Korea.

11. While the Framework Act on Treatment of Foreigners Residing in Korea, which prescribes basic matters relating to the treatment, etc. of every foreigner residing in Korea, stipulates the treatment of marriage immigrants and their children, permanent residents, and refugees, it does not specify the treatment of non-professional immigrant workers who enter Korea via the Employment Permit System (EPS).
12. The EPS is revised in time of the every expiration date of the immigrant worker's employment activity period, allowing them to extend their stay up to nine years and ten months, however, the "purpose of long-term stay" stipulated in the Immigration Act and the "treatment of foreigners residing in Korea" stipulated in the Framework Act on Treatment of Foreigners Residing in Korea are not applicable to immigrant workers, thus making them excluded from the government policy.
13. Meanwhile, article 9-1 of the Framework Act on Treatment of Foreigners Residing in Korea stipulates fact-finding surveys on foreigners in Korea and illegal immigrants, using the legal term "illegal immigrants." The use of such term "illegal immigrants" could incur negative perceptions on the undocumented immigrants or immigrants residing in Korea after their final expiration date. Moreover, the term could result in the exclusion of foreigners residing in Korea from legal and institutional protection, making them vulnerable to the infringement of human rights, and in turn, bring about social prejudice and hatred towards immigrants in Korea.
14. According to a 2017 big data analytics³ of 10,000 tweets that used words related with multicultural, foreigners, and immigrants, "Southeast Asia, abasement, opposition, hatred, and deportation" were among the extracted words related to immigrant workers while "less-educated, stupid, hate, and set faces against illegal immigrants" were the terms used for illegal immigrants.
15. In July 2016, the NHRCK has expressed its opinion to reject the usage of the

3 Kim, Seok-ho (2017). *Change of Perception of Koreans towards Immigrants*. Collection from 2017 Korea Immigration Society Symposium, [The Direction of Korea's Immigration Policy: Unsolved Issues and Issues to be Solved]

term "illegal immigrants" that it had used in the combined seventeenth to nineteenth periodic reports submitted to the Committee and revise it to "undocumented immigrants." Although the government used the term "undocumented immigrants" in its English-translated report that was submitted to UN in October 2017, the original Korean report still described them as "illegal immigrants."

16. In this regard, if laws related to foreigners such as the Immigration Act are to be revised, the government should take into account the fact that the majority of foreigners enter Korea with the purpose of employment. Also, the term "illegal immigrants," as stipulated in the Framework Act on Treatment of Foreigners Residing in Korea, should be avoided.

Issue 3. Extension of the Definition of Multicultural Families

17. Although the number of immigrants who are staying in Korea for a long period with their families is increasing⁴, the Multicultural Families Support Act is applied on a limited basis such as naturalized citizens and marriage immigrants. As a result, "immigrant families of same nationalities, immigrant families of two different nationalities, and overseas Koreans who have settled in Korea after living abroad" are not considered as policy targets of the government.
18. The policies of central administrative agency and local governments, established in accordance to the pan-governmental national program, "Basic Plan for Immigration Policy," also targets multicultural families of marriage immigrants and their children, so other groups of multicultural families are naturally excluded from the immigration policy, leading to discriminatory treatment of those in other groups.
19. The government should establish a family policy that reflects the different types of multicultural families in Korea so that immigrants and their families are not excluded from the category of multicultural family based on their race, nationality, and status of sojourn.

⁴ The *Survey on the Condition and Employment of Immigrants* by the Statistics Korea and Ministry of Justice (2017) shows that as of May 2017, among the immigrants over 15 (1.23 million in total), single-person and two-person households accounted for 19.4% and 80.6%, respectively.

IV. Eradication of Racial Hatred (Article 4)

Issue 4. Adoption of Legislative Measures against Racial Discrimination

20. The combination of "refugee hatred group" that has filed a petition regarding the sudden surge of Yemeni refugee applicants in Jeju Island to the presidential house and the worried citizens who have not received full explanation and information on the Yemeni refugee applicants has spurred the so called "racially motivated remarks" in Korea.
21. The most troubling concern related to the rise of racism in media, internet, and offline spaces is that the activities are becoming organized and politically influenced. For instance, a lawmaker made hatred remarks on foreigners during the congratulatory address for a forum called the "Debate on the Amendment Bill for the Expansion of Basic Rights of Immigrants," hosted by the National Council to achieve Constitutional Reform for the Safety of Korean Citizens in August 2017. The lawmaker said, "if freedom is granted to a person who does not perform the four national obligations, for example, it could bring about serious terroristic problems to our daily lives."
22. The above actions and remarks are punishable as racially motivated criminal offenses in accordance with article 4 of the Convention," State parties shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law," however, it is difficult to prosecute as racially motivated crimes in Korean society due to the inadequacy of legislative system that could prevent or regulate racial discrimination.
23. Korean peoples may be insensitive as to why the hatred remarks and racial discrimination toward foreigners could bring about serious problems, but those remarks and actions are sensitive matters for immigrants. According to a 2016 Survey on Racially Motivated Remarks conducted by NHRCK, 56% of the immigrants said they experienced emotional distress such as stress and depression after encountering hatred remarks about them.
24. In this regard, the government should have a full grasp on the overall practice of racial discrimination and bring the internal law in line with the Convention by adopting specific legislative measures to prohibit and punish racially motivated criminal offenses, as recommended by the Committee, to send a

message to Korean society that hatred and racism towards foreigners are serious criminal acts that shall not be tolerated.

Issue 5. Enactment of a Comprehensive Anti-Discrimination Act

25. The South Korean NGOs' Coalition for Enactment of Anti-Discrimination Law, active since 2010, was re-launched in March 2017 as the number of civic groups under the alliance has sharply increased from 25 to 105 organizations, indicating that demands for the enactment of anti-discrimination act is high, however, there are also strong objections to the idea as it might promote homosexuality and bring about social chaos.
26. The enactment of Anti-Discrimination Act is necessary in improving the quality of the lives of disadvantaged and minority groups who are experiencing discrimination, actively addressing unreasonable practices and policies, and realizing the principle of equality, which is the core principle of the Constitution. In particular, the idea of enacting a comprehensive Anti-Discrimination Act that includes discrimination in all its forms was suggested as discrimination is getting diversified and intensified in modern society.
27. In this regard, a comprehensive Anti-Discrimination Act should be enacted as soon as and the government should come up with a roadmap that would encourage the participation from the society members.

V. Equality before the Law in the Enjoyment of the Rights and Prohibition of Discrimination

Issue 6. The Right to Receive Equal Treatment before the Law

28. Article 2 of the Constitution of the Republic Korea uses the term "nationality" and "citizen". The Constitutional Court of Korea stipulates that a "foreigner" has a status similar to that of a "national," and therefore a foreigner is entitled to the basic rights in principle. On the other hand, there are those who deny the basic rights in principle of foreigners, claiming that in accordance with the Constitution, a foreigner is not entitled to the basic rights in principle.⁵

⁵ Decision by the Constitutional Court of Korea, September 29, 2001. Case NO. 2007Hun-Ma1083

29. Amid discussion over the Constitutional Amendment, the government has recently submitted the 10th proposal for the constitutional revision to the National Assembly in March 2018. The government's proposal expands the scope of inalienable basic rights, not only to Korean citizens but to all humankind, however, the rights that should only be entitled to Korean citizens will remain limited to Korean citizens.
30. Also, under the notion that the equal rights need to be strengthened in order to realize social integration and justice, the proposal states that the use of terms such as "race" and "language" should be prohibited in the provisions of equal rights.
31. Although not much progress has been made due to conflicting interests over the 10th proposal for the constitutional revision, the entitlement of basic rights of foreigners should be expressly stipulated in the Constitution so that it will guarantee the equal rights of Korean citizens to foreigners before the law.

Issue 7. Immigration Detention, Liberty and Security of Person

32. The term "detention" under the Immigration Act means an immigration control official's enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation or at flight risk (article 51, Immigration Detention) and detaining a person subject to a deportation order in any detention facility as the person cannot be repatriated immediately for some reason (article 63, Detention of Persons Subject to Deportation).
33. The general comment no. 5 of the UN Human Rights Committee points out that detention in the course of transporting a migrant involuntarily or deportation infringes upon the article 9 of International Covenant on Civil and Political Rights, "liberty and security of a person," thus a defense mechanism against human rights violation is needed as such detention is similar to the confinement of criminals during the criminal procedure.
34. Although the procedure for filing administrative objections to deportation order

and detention is stipulated under the Immigration Act, no objections to deportation order and detention were approved in the last five years. The number of people deported by authorities between 2012 and August 2018 is 95,048, and among the 405 cases that were filed for appeal, most of them (327 cases or 81%) were dismissed and the rest (78 cases or 19%) had their indictment dismissed.

35. Another problem related to "detention" is that it could lead to months of long-term detention. Although article 63 of the Immigration Act stipulates that the immigration authority should obtain prior approval from the Minister of Justice when the period during which a person subject to a deportation order exceeds three months and immediately release the person from detention if he or she fails to obtain approval, only a single person was released from detention between 2012 and August 2018 upon failure to obtain approval.
36. Against this backdrop, the meaning of "detention" in the Immigration Act should be expressly stipulated as "confinement" which specifically refers to the confinement of the body, and such confinement should only be carried out upon court order and the due process, such as an access to a lawyer for a fair trial, should be guaranteed.
37. Also, in July 28, 2018, the NHRCK formally expressed its opinion on the revised Immigration Act that detentions should never be applied to a child unless there are obvious reasons for the best interest of the child to be detained. To avoid arbitrary detention, the definite detention period should be prescribed, and an objective and a neutral procedure should be prepared for the extension period.

Issue 8. The Right to Form and Join Trade Unions

38. The Migrants' Trade Union (MTU) was established on April 24, 2005, but the government disapproved the MTU on the grounds that it mostly consist of unregistered immigrants. The government also has a history of cracking down on the union head and leadership of MTU and forcibly deported them as it viewed the union activities, which is the right of union members, as political group activity.
39. However, on June 25, 2015, the Supreme Court of Korea confirmed that in cases where a foreigner who has not obtained a sojourn status to work in

Korea pursuant to the Immigration Act but provides labor to another party based on a subordinate relationship and receives wage, etc. in return, such foreigner can be included in the scope of "worker" prescribed under the Trade Union and Labor Relations Adjustment Act.

40. The government report states that immigrant workers eligible for employment have the right to form and join trade unions, indicating that those without a working visa are not guaranteed the same right.
41. In this regard, to guarantee the three basic labor rights such as the right to form and join trade unions regardless of their employment status, to ensure the freedom to express themselves regarding the improvement of their status and elimination of discrimination, and to guarantee the freedom of participating in protests, the government should review article 17 of Immigration Act for revision as it states that no alien staying in Korea should engage in any political activity.
42. The Immigration Act stipulates that no immigrant in Korea should engage in any political activity and if an immigrant staying in Korea engages in any political activity, the Ministry of Justice may issue a deportation order. The term "political activity" refers to not only political rights such as the right to vote and electoral eligibility, but also freedom to express one's political point of view and to participate in rallies, thus there were cases in which immigrant workers were deported for participating in rallies.

Issue 9. The Right to Leave Any Country including One's Own and Return to One's Own Country

43. In December 2017, three siblings of seven, three, and one year olds who were unregistered immigrants born in Korea, visited the Immigration Office at the airport with their grandmother to fly out of Korea. Upon their visit, the immigration officer notified them that they must pay a fine of KRW 2.2 million in total and will be suspended from departure if they do not comply.
44. A fine is an administrative punishment which cannot be the reason for the suspension of departure under article 29 of the Immigration Act. In this case, the fine defaulter is the parents of the immigrant children, not the children

themselves, so the Immigration Office does not have any legal grounds to suspend their departure.

45. On April 19, 2018, the NHRCK made a formal recommendation to immediately withdraw the suspension of departure of the unregistered immigrant children under the grounds of failure to pay the fine. The Ministry of Justice replied by mentioning the modification of laws and regulations related to the case, but whether its recommendation is being implemented should be continuously monitored

Issue 10. The Right to Public Health and Medical Care

46. As of the end of 2016, the health insurance coverage rate of immigrants eligible to obtain health insurance was 60.8%, a significant gap from the health insurance coverage rate of Korean nationals at 96.5%.⁶

[Table 2] Status of Health Insurance Subscribers of Korean Nationals and Immigrants in 2016
(Unit: People)

Classification		Korean National	Long-term Immigrants (Legal Immigrants)
Population		51,696,216	1,454,357
Health Insurance Subscribers		49,879,509	883,774
	Employee Insured	36,039,444	635,295
	Self-employed Insured	13,840,065	248,479
Health Insurance Coverage Rate		96.5%	60.8%

47. Although employee insured subscribers of legal immigrant workers receive the same insurance coverage as Korean nationals, the actual subscription rate of employee insured immigrant workers differed from Korean nationals. The employee insured subscription rate of immigrant workers under the

⁶ The *Research on Reestablishing Guidelines for Human Rights of Immigrants*, p. 235, by the NHRCK in 2017 is referenced based on the *2016 Health Insurance Statistics*, by National Health Insurance Service.

Employment Permit System was 71.2% in 2015, but the subscription rates of industries other than the manufacturing industry was significantly lower with the construction industry at 54.9%, service industry at 44.5%, and agriculture and livestock industry at 16.1%.

48. The reason behind the low coverage rate in agriculture and livestock industry is either because the migrant worker and employer are not aware that they are mandated to join the health insurance, or they are reluctant to do so due to expenses. In addition, even when there exists a substantial employment relationship, if the workplace is not registered as business, the National Health Insurance Service do not recognize the workplace as place of business, thus do not grant the right for the employee insured subscription.
49. As for individual farms in agricultural and livestock industry, they are not required to submit a certificate of business registration, and as of April 2017, among 20,471 migrant workers in this field, 10,523 workers are working at places not registered as business and thus are not granted the right for the employee insured subscription.
50. Unlike the employee insured subscription, the self-employed insured subscription is allowed to those who stayed in Korea more than three months since they have entered the country. With increasing number of cases where people who already had developed disease came to Korea to treat the disease with health insurance program and then leave the country⁷, the amended National Health Insurance Act which was announced on 29 October prior to its legislation, extended the required period of stay in Korea from three to six months.
51. The fiscal deficit of the self-employed health insurance of foreigners stood at KRW 205.1 billion in 2017 and KRW 700 billion for the past five years. However, with the big volume of surplus in the employee insured insurance, the overall fiscal balance in 2017 of foreign subscribers of health insurance is KRW 249 billion surplus and KRW 1.1 trillion surplus for the past five years.

⁷ According to the analysis on top 100 foreign patients in terms of provision of medical expenses by the National Health Insurance Service, 31,983 aliens have received treatment and left the country, losing their eligibility for health insurance from 2015 to 2017. Patient's sharing of the medical expenses were KRW 7.4 billion while the NHIS paid KRW 22.8 billion. For example, Mr. A, a Korean-Chinese received treatment for three years due to avascular anemia and the medical expenses for three years was KRW 61 million. He has paid KRW 61 million as a patient's sharing but then he has received back KRW 45 million from the NHIS as the cost he has paid exceeded the ceiling of the patient's sharing. So, he has paid only KRW 16 million

However, this fact on surplus is hardly known⁸, and only the deficit and some abuse cases were reported in the media.

52. The right to health, in a broad sense, include all social determinants of health such as income, education, housing, labor, employment and prohibition of discrimination, beyond the rights to health care service or medical social security system. Therefore, in a view that it is not desirable to take measures that go against the protection of the rights of all migrants who are legally residing in Korea base on some abusive cases, the government should carefully review and supplement the amendments to the Enforcement Decree of the National Health Insurance Act and Enforcement Rule of the National Health Insurance Act.
53. In addition, it is needed to strengthen supervision on the workplaces that are reluctant to provide the mandatory employee insured subscription benefits and to increase the number of workplaces registered as business in agricultural and livestock industry to prevent migrant workers who have entered Korea through the Inter-governmental Memorandum of Understanding on Sending Manpower and currently under the Employment Permit System from working in places where they are not even granted the right to join the health insurance.

Issue 11. Expansion of Public Assistance for At-risk Migrants

54. The National Basic Living Security System restricts the scope of migrants who become beneficiaries of the system to marriage migrants and refugees, and even marriage migrants can become beneficiaries only when they perform traditional female roles such as pregnancy, child rearing or supporting lineal ascendants.
55. The Emergency Aid and Support System provides aids for livelihood, medical care, and housing for migrants who have suffered from fire, crime or natural disaster for a certain period without causes attributable to them even if they are not marriage migrants or refugees. However, when both the victim and perpetrator of crime are migrants, the victim is excluded from receiving the support.
56. As the number of migrants residing in Korea increases and types of stay diversify, some of them are becoming homeless. The Act on Support for Welfare and Self-reliance of the Homeless, Etc., prescribes the beneficiary of

⁸ "Surplus in Foreigner Health Insurance, Abuse case has to be stopped" (13 October 2018. CPBC, Radio, < Open World Today! This is Kim Hyeyoung>)

support as a homeless person and does not specify beneficiary's nationality. However, the Ministry of Health and Welfare is taking the position that the Act is interpreted in a way that does not include foreigners as beneficiaries, resulting in no aid for housing, school meal or medical care being provided to foreigners. In addition, under the Immigration Act, migrants without economic competency can be subjected to deportation or departure order.

57. Poverty may be regarded as a matter limited to the social rights. However, it is directly and indirectly linked with other basic human rights such as the right to health and housing as well as the right to pursue human dignity and happiness. There is no special reason not to apply the same for aliens when it comes to violation of basic rights due to poverty.
58. Therefore, provision of subsidies for living, medical care and housing for the vulnerable migrants under the National Basic Living Security System and Emergency Aid and Support System should be reviewed, and the migrants should not be subject to forced deportation just because they are homeless.

Issue 12. Protection of Basic Right of Migrant Children

12-1. Introduction of Universal Birth Registration System

59. The government's periodic report states that the registration of births of aliens is closely related to the acquisition of nationality of the Republic of Korea and thus requires careful examination and it has shown special measure for refugees, humanitarian status holders, and children of refugee applicants who cannot file a birth report to the Embassies of their home countries by allowing them to stay in Korea.
60. The government intends that the personal information of these children can be entered into the alien registration system to enable them to stay in Korea. However, alien registration is not intended to serve as a document proving the birth. In addition, there were cases where immigration officers or parents entered in the nationality of the child at their discretion, and it is hard for children born from unregistered parents to apply for the alien registration.
61. Birth registration is the first step in guaranteeing the right to access of all children to the rights to life, development and quality service. Failure to register immediately after the birth not only has negative impact on the child's personal identity but also increases the possibility of the child being excluded

from receiving basic benefits of health, education and social welfare. Accordingly, a measure to guarantee the right to birth registration of all children regardless of their residence status and nationality must be devised.

12-2. Provision of Stable Medical Service for Migrant Children

62. For children, health is the most basic prerequisite for survival and development, and they must be provided with stable medical service. That is why the government has been trying to prevent the deprivation of the child's right to access medical service through the health insurance system and medical care assistance system.
63. However, even when the migrants staying in Korea for a long time are eligible to join the employer-insured insurance or self-employed insured insurance, the coverage rate is significantly low due to several reasons, and undocumented migrant children are not allowed to join the health insurance at all.
64. In addition, medical care assistance system, which guarantees provision of the medical care for low-income citizens who have no or less life-sustaining ability, recognizes only recognized refugees as special exceptions, and excludes migrants, leading to a number of migrant children whose not only health but also survival is being threatened.
65. Therefore, it is needed to review the amendment of the National Health Insurance Act and the Medical Care Assistance Act so that at least children can be covered by the health insurance regardless of their status of sojourn and migrant children of the low-income family can receive the medical assistance.

12-3. Guarantee of the Complete Right to Education of Migrant Children

66. With the amendment of the Enforcement Decree of the Elementary and Secondary Education Act, migrant children, regardless of their status of sojourn, can attend elementary and middle schools which are compulsory. However, there are migrant children who are still unable to receive compulsory education due to their parent's indifference, neglect or lack of information. In addition, there were cases where migrant children who have entered Korea in the middle of their studies and are eligible for stay are refused admission because the transfer or admission is at the discretion of the school principals under the current law.
67. Nationwide, there are 23 Rainbow Schools, alternative schools that provide support for Korean language education and school life for migrant children.

The number of children attending the school has increased to 837 in 2013, 1,003 in 2014, and 1,278 in 2015. However, the proportion of students who went on to regular schools has decreased to 15.8% in 2013, 10.1% in 2014 and 8.1% in 2015.⁹

68. Therefore, in order to guarantee the complete education right of migrant children, measures to encourage school age children to go to school have to be actively navigated, including issuing a letter of notification of admission to school, guidance of admission procedures and other means of encouraging admission in connection with immigration offices or residents' centers.
69. It is also necessary to find a way to increase the enrollment rate of migrant children who have entered Korea in the middle of their studies to regular schools after completing the alternative school. In addition, to enable them to receive Korean language education at regular schools that they go to, measures including securing classroom, preparing curriculum, and dispatching teachers must be considered.

12-4. Protection and Support for Migrant Children

70. Recently, child abuse has become a social issue, and the systems to identify and report child abuse and protect and support abused children have been improved. However, there were cases where migrant children residing in Korea could not receive appropriate protection and adequate support even when they were abused.
71. According to the National Child Protection Agency, 1,217 cases of abuse against migrant children were reported in 2016, which is 3.6 times of 2013. With increasing number of migrants in Korea, it is estimated that the number of migrant children in need of protection and support due to abuse or poverty is also on the rise.
72. On 28 December 2017, the NHRCK recommended that the Immigration Act should be amended to establish a special provision in order to guarantee the right to stay or extend the period of stay for the purpose of providing remedies and recovering damages of abused migrant children, and the Ministry of Justice has replied that it would pursue the revision. Therefore, in order to ensure the stable protection and appropriate support for abused children, the

⁹ Material requested by the Ministry of Gender Equality and Family through office of members of National Assembly to the Network on Basic Rights of Migrant Child/Juvenile in September 2016

recommendation of the NHRCK must be implemented immediately.

Issue 13. Refugee Protection System¹⁰

13-1. Improvement of Refugee Application Procedure and Treatment at Port of Entry and Departure

73. The percentage of the decision on referral to refugee status screening at the port of entry and departure is shown in Table 3, and when the decision is made on non-referral, the applicant will be denied entry and stay in the waiting room for repatriation process.

[Table 3. Referral of Refugee Applicants at Port of Entry and Departure]

Classification	2013	2014	2015	2016
Application(A)	26	141	400	187
Referral(B)	15	52	287	61
Non-referral (C)	11	89	113	126
Ratio of Referral (B/A×100)	57.7%	36.9%	71.8%	32.6%

74. In general, about 99% of aliens sent to the waiting room will be repatriated within four days. However, if an alien whose application for refugee status was not referred file a suit against the decision on non-referral, he or she will have to stay for a long time in the waiting room. As of September 2016, all foreigners who have stayed in the waiting room for more than three months were refugee applicants, and they have stayed there for 8 to 11 months.

75. The problem is that the waiting room is not suitable for long-term stays of several months. Through transparent walls, staff can monitor 24 hours, while there is a no sunny window, bed or bedding. There are only benches provided in the room, and when the number of accommodated people exceeds the acceptable number of people, there are not even enough benches to go around. Then, they have to gather chairs and sleep on them or on paper boxes.

76. In 2016, the NHRCK recommended to amend the relevant law to refer the

¹⁰ Statistics and information on current status were referred to the Research on re-establishment of a guideline on human rights of migrants by the NHRCK in 2017(pp. 195–204), which was submitted by the Ministry of Justice upon the request of civil society organization to disclose administrative information

application to the refugee status determination procedure except in cases where the applicant is clearly not a refugee, and guarantee proper treatment for those who have filed a suit against the decision on non-referral. The Ministry of Justice replied that a careful examination is needed on the amendment of the law and enhancement of treatment.

77. However, it is desirable for the government to improve the system so that refugee applicants at the port of entry and departure receive refugee status screening unless the application clearly lacks formal requirements.

13-2. Securing Expertise and Transparency of Refugee Recognition Procedure

78. According to the status of refugee application by offices of the Ministry of Justice in 2016, the Seoul Immigration Office has received 82.5% (6,224 out of 75,420) of the applications, accounting for the biggest portion. The Seoul Office has 22 people in charge, so more than 280 refugee applicants per one public officer. The period of the first round of the refugee status determination procedure is limited to six months under the relevant law, which may be extended once. In 2016, the average period of the first round was five months, much shorter than in the past.
79. The issue of interpretation in the process of refugee status determination has been continuously raised. In recent years, the court canceled the decision on non-recognition of refugee as it turned out that certain interpreter and immigration officer had prepared false interview reports.¹¹
80. An objection against the decision on non-referral can be filed and deliberated at the second round of procedure, and the deliberation is conducted by the Refugee Committee under Article 25 of the Refugee Act. However, the Refugee Committee is composed of 15 members and the deliberation is conducted based on only papers without hearing procedures, and the

¹¹ Seoul Administrative Court 2017GUDAN4294 on 12 October 2017 and Seoul High Court 2016NU47245 on 27 June 2018. According to the above-mentioned court ruling all the interview report conducted by certain public officer and interpreter include the following false comments: “I have applied for refugee to stay legally in Korea for a long time and make money.”, “(All of the reason for refugee application in the application letter are false?) Yes, they are all false. I have written down false reasons to apply for refugee status.” The above-mentioned court ruling on 2017NU47245 pointed out that while it is very rare for the refugee applicants to make a statement not consistent with the reason for refugee application, and such inconsistency is found especially in interview reports where Korean-Arabic interpreter B has participated, implying that there is significant problem with regards to the content of ways of interpretation of interpreter B

Committee deals with a large number of cases at once in each session

[Table 4] Timing and Frequency of Refugee Committee

Year/Month	March	May	June	Sept.	Oct.	Dec.	Total
2015	306	-	462	658	-	590	2,016
2016	777	563	459	501	896	1,151	4,347

81. Therefore, at every stage of the refugee status screening process, appropriate interpretation service with expertise in refugee issues and culture of the country concerned as well as political and religious neutrality must be provided. In the long term, it is also necessary to ensure the deliberation on objection by a permanent refugee judge with expertise and independence and guarantee a hearing process where the refugee applicants attend and speak for themselves.

13-3. Improvement of treatment for refugee applicants, humanitarian status holders, and recognized refugees

82. Refugee applicants are not allowed to be employed for six months from the date of submission of the application, but they are eligible for receiving a living allowance. However, the average period that takes to receive the allowance is three months and ten days. This is because it takes at least 50 days to complete the procedures including obtaining the documents necessary for applying for living expenses (alien registration card and bankbook with the applicant's name), receiving examination and getting actual payment.

83. In addition, the ratio of people applied for a living allowance accounts for around 10% of all refugee applicants. There are many cases where the applicant found out the information on provision of a living allowance too late to apply for it.

[Table 5] Applicants and Beneficiaries of Living Expenses compared to Refugee Applicants

Year/classification	Refugee Applicants (person)	Living allowance applicants (person)	Beneficiaries of living allowance (person)	Ratio of beneficiaries among refugee applicants

2014	2,896	585	317	10.9%
2015	8,711	589	373	4.3%
2016	7,542	824	651	8.6%

84. The Seoul Administrative Court has ruled that the order on forced deportation of the plaintiff, a refugee applicant, on the ground that the plaintiff was employed for a period other than permitted, only emphasized the uniformity and convenience of administration and neglected the dignity of the applicant as a human being.¹²
85. Humanitarian status holders are also granted with residence status (G-1) and allowed to be employed; but, their rights to freedom of departure and family reunion are restricted.
86. It is stipulated under the Refugee Act that the person recognized as a refugee receive the same level of social security as the Korean people. However, individual legislation and the guidelines of related ministries include provisions on discrimination against “aliens”, so even the recognized refugees may not receive the treatment specified under the Refugee Act.
87. In March 2017, the NHRCK recommended to improve the system on registration of persons with disabilities by including refugees in the scope of foreign nationals who can be registered on the system as people with disabilities stipulated under Article 32 Paragraph 2 of the Act on Welfare of Persons with Disabilities. The Ministry of Health and Welfare has accepted the recommendation and amended the legislation.
88. For the promotion of the human rights of refugee applicants, humanitarian status holders and recognized refugees, it is necessary to eliminate the period of prohibition of employment of refugee applicants and ensure their activities for living. In addition, there is a need for appropriate measures to be taken to ensure that humanitarian status holders and recognized refugees can settle down and integrate into the Korean society.

13-4. Current Status on Yemeni Refugee Applicants in Jeju Island and the Need for Government's Active Response

¹² Case won on forced eviction order on the grounds of being employed for livelihood [Seoul Administrative Court 2013GuHap13617]

89. Jeju Island is a non-visa area where people can enter without a visa for the purpose of sightseeing, etc., except for the people of the country designated and announced by the Minister of Justice. Yemeni were also allowed to enter Jeju Island without a visa.
90. Most of the Yemeni people who had left the country due to the civil war moved to neighboring countries such as Oman, 51,000, Saudi Arabia, 39,880, or Malaysia, 2,830, where they can stay for a short period without a visa. Since the opening of the direct flights between Malaysia and Jeju Island in December 2017, more than 500 people have entered Jeju Island between April and May 2018 and applied for refugee status.
91. Based on Article 22 of the Immigration Act, the government restricted the scope of activities of Yemeni refugee applicants who have entered since April 30 to Jeju Island so that they could not go to the main land. On June 1, Yemen was designated as a country excluded from the list of visa-waiver country, and since then the entrance of Yemeni people has been restricted.
92. In addition, the government stated that as an exception to the rule that permits employment after six months from the submission of the refugee application, Yemeni refugee applicants could work in aquaculture industry, fishery and restaurants, and it planned to carry out the refugee status determination procedure as soon as possible within two to three months.
93. Negative perceptions on refugees and migrants based on unfounded, distorted or exaggerated claims arising from the burden of accepting refugees and prejudices against Islamic religions are spreading. In response, the NHRCK has announced chairperson's statements twice to establish a firm position and measures that conform to the international human rights standards and the Refugee Act. The NHRCK also visited Jeju Island for several times to interview refugee applicants and met refugee officers to encourage fair refugee status determination procedures.
94. On 27 July 2018, 2018 Briefing on Racial Discrimination was held under the lead of civil society organizations, and it was pointed out that "while the government failed to present fundamental resolutions and messages that conform to international standards regarding the influx of Yemeni refugee applicants in Jeju Island, words of hatred against refugees began to spread". In this regard, the government should make active efforts to dispel the misunderstanding, prejudice, and unfounded fear against refugees.

Issue 14. Enhancement of Rights of Marriage Migrant Women

14-1. Guarantee of stable stay of marriage migrant women

95. According to the Report on Actual Condition of Foreign Residents, the number of marriage migrants including naturalize ones, has increased from about 120,000 in 2007 to about 280,000 in 2017, more than doubled over the past decade. As of 2017, 83.8% of the spouses of citizens who have not acquire nationality were women.
96. According to the Survey on the Status of Multicultural Families, the proportion of marriage migrants who have stayed in Korea for more than 10 years has increased from 36.1% in 2012 to 47.9% in 2015; 30% of marriage migrant women in employment were engaged in simple labor; many of them were employed as non-regular workers; and the proportion of single-person households of migrant women or single-parent households of marriage migrant women and children has increased.
97. A marriage migrant woman must be married to stay in Korea. If the marriage relationship is suspended due to divorce with consent, etc. without having a child of Korean nationality, the marriage migrant status (F-6) is no longer granted and thus they must leave regardless of the period for which they have stayed in Korea. Of the holders of marriage migration status (F-6), 1,433 in 2016 and 1,334 in 2017 have become undocumented migrants.
98. Therefore, it is necessary to prepare legal measures to enable stable stay of marriage migrant women by changing their status of residence when they want to stay in Korea and have means of livelihood even if their marriage has ended.

14-2. Establishment of Marriage and Maintenance of Family Life Based on Human Dignity and Gender Equality

99. The International Marriage Guidance Program by the Ministry of Justice which has started since 2011 allows marriage migrant visas to be issued only when Koreans including women who are preparing for international marriage complete the program.
100. As of 2018, seven countries – China, Vietnam, the Philippines, Cambodia, Mongolia, Uzbekistan and Thailand – have been designated as countries whose citizens are required to take the International Marriage Guidance Program, and the reasons are relatively high divorce rates or high number of

people acquired Korean nationality. In 2015, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance recommended in the report to the Korean government to make efforts to eliminate the practice of requiring the International Marriage Guidance Program when a man of Korean nationality wants to marry a woman from specific country.

101. In addition to the International Marriage Guidance Program, On-site Preliminary Education for Marriage Migrants, which focuses on adaptation to Korean life and the role of women in the family, is conducted in Vietnam, the Philippines, Cambodia and Mongolia throughout the year.
102. However, both the International Marriage Guidance Program and On-site Preliminary Education for Marriage Migrants are composed of courses that do not reflect gender equality when the recognition on gender equality in the family is very important as main causes of conflicts in international marriage families are conflicts between married couple due to patriarchal awareness and gender discriminatory role of women, and physical, verbal and emotional domestic violence.
103. On the other hand, with regards to the system to support international marriage of men in rural area implemented by the enactment of ordinances of some local governments in order to prevent the hollowing-out phenomenon of rural area¹³, a petition was filed to the Presidential House on 9 May 2017 to “suspend providing subsidies for paid marriages”, and the criticism on human trafficking marriage also started to be raised.
104. As in the system to support international marriage of men in rural area, the perspective of local governments looking at marriage migrant women is also revealed in the name of the departments of local governments responsible for supporting multicultural families. 25 districts of Seoul Metropolitan City use names such as “Maternity Multicultural Team”, “Multicultural Team Promoting Maternity”, and “Maternity Child Team (Multicultural Family Work)” which equal maternity and multiculturalism.
105. Therefore, the government should reflect gender and human rights related

¹³ When a single man aged 35 and above living in rural area wants to marry foreign women, the local government provides subsidies related to marriage from KRW 3 to 6 million, and currently 40 cities and districts enacted related ordinance to implement the system

perspectives on policies for multicultural families and marriage migrant women which had been approached from the perspective of composition, maintenance and reproduction of family. It should strive for the constitutional value of establishment of marriage and maintenance of family life stipulated in Article 36 Paragraph 1 of the Constitution be applied to migrants.

14-3. Policy for Returned Marriage Migrant Women and Children of Multicultural Families Abroad

106. The nationality of marriage migrant women is in the order of China and Korea (59,740, 47.6%), Vietnam (40,479, 31.5%) and Japan (11,892, 9.3%).¹⁴ Based on 2016 statistics of the Statistics Korea, it is estimated that one out of five Vietnamese marriage migrant women (about 19.25%) is experiencing family dissolution and the number of divorces with minors accounts for 19% (3,183 cases) of the total divorce, leading to an assumption that at least 3,777 under-aged Korean – Vietnamese children have experienced family dissolution.¹⁵
107. Among the Vietnamese women returning to their home country, a large number of them returned immediately after family dissolution including divorce (47.3) %; some after staying in Korea as undocumented migrants (22.94%, including 9.68% of deportation); and others are refused or restricted re-entry when they returned to Korea after meeting with families in their home country (9.32%).
108. The problem is that from the early stages of marriage, their activities to adapt to the Korean society including the visit to Multicultural Family Support Center are restricted and they return to their home countries without ending the marriage or receiving legal support through the Danuri Center, etc., and forced to divorce without having the right to child custody. In addition, when they return with their children with Korean nationality, children are experiencing problems regarding legal status, education and health care because their Korean fathers are out of contact or do not provide support.
109. Therefore, the government needs to provide an administrative and judicial support system regarding divorce proceedings and child custody for returning

¹⁴ *Report on Actual Status to Guarantee Stable Stay of Marriage Migrants* by the NHRCK (2017), p.18

¹⁵ Symposium on Opening of Legal Counselling Center on Korea–Vietnam Domestic Issues, Can Tho Office in Vietnam, UN Human Rights Policy Center (25 Jan. 2018) 「*Current Status and Support Measures for Returning Vietnamese Women and Korean–Vietnamese Children*」, p. 52

marriage migrant women and overseas children of multicultural families who require a new policy due to dissolution of multicultural families.

Issue 15. Improvement of Human Rights of Migrant Workers

15-1. Improvement of Dire Working Condition and Wage Discrimination

110. The number of women migrant workers who are exposed to complex vulnerabilities for being workers, aliens, and women at the same time and whose voices as minorities are hardly heard stands at 324,000, accounting for 33.7% of total foreign workers.
111. A survey on women migrant workers in the manufacturing industry shows that their rights to work are not protected and exposed to discrimination as the majority has not signed any form of employment contract. They also suffered from economic hardship due to low income or overdue wages and faced sexual harassment and ignorance of maternity protection mostly in small-scale businesses.¹⁶
112. 33.3% workers engaged in agriculture and livestock industries is women, most of whom do not subscribe to employer-provided health insurance as their employers are not registered. Isolated away from cities, their workplace and dormitories are mostly under complete control of their employers, which deprives government agencies or migrant worker advocate groups of the accessibility necessary for providing remedies.
113. On the other hand, migrant seafarers mostly on coastal fishing vessels are more likely to stay undocumented: as of the end of July 2017, the ratio of undocumented workers on costal fishing vessels smaller than 20 tons was 65% and the ratio for those costal fishing vessels larger than 20 tons was 37%, much higher than the ratio for the entire population of foreign workers, 11.2%, for a same period. This is the reason they usually encounter substandard working conditions, violation of human rights, and discrimination in minimum wages.¹⁷
114. The minimum wages for seafarers is decided by the Announcement of the

16 According to the *Survey Report on Female Migrant Workers in Manufacturing Industry* by the NHRCK in 2016, a total of 385 female workers were surveyed among whom only 49.4% had signed an employment contract, 54.3% were paid less than KRW 1.5 million, 15.1% had suffered from overdue wages, 11.7% had endured sexual harassment/violence which mostly recurred more than twice.

17 The *Studies on Reestablishment of Guidelines on Human Rights of Migrants* by the NHRCK in 2017, p.100, is referenced, which is quoted from the Ministry of Justice's discussion in the booklet for the *Conference of Promotion of Human Rights of Migrant Seafarers* held on September 5, 2017.

Minimum Wages for Seafarers by the Minister of Oceans and Fisheries, which stipulates that the minimum wages for foreign migrant seafarers be decided by a collective agreement between a relevant labor union of seafarers - the union comprising Korean laborers only without letting any foreigners participate - and a group of fishing vessel owners as a "special case."

[Table 6] Comparison between Minimum Wages of Korean and Foreign Migrant Seafarers of Coastal Fishing Vessels over 20 tons

Years	Korean Seafarers (A)	Foreign Migrant Seafarers (B)	Ratio (A/B)
2007	906,000	752,000	83%
2016	1,641,000	1,265,000	77%

115. Wages of seafarers is basically performance-based, total revenue net of total costs on top of minimum wages divided by a predetermined ratio which does not count in foreign migrant workers. The structure works against foreign migrant workers and exacerbates the violation of their human rights as, the more they work, the bigger the Korean counterparties' share becomes.
116. On July 16, 2018, the Korea Federation of SMEs has suggested an apprenticeship scheme for foreign migrant workers at a round-table conference with the Minister of SMEs and Startups in which the apprentice will be guaranteed 80% of the minimum wage in their first year in Korea, 90% in the second year, and 100% in the third. In response to this, two revision bills to the Minimum Wage Act have been submitted to the National Assembly in August 2017, which allows a different set of minimum wages for the migrant workers having been in Korea less than two years or employs a separate set of minimum wages for the migrant workers in agriculture and livestock industries.
117. The idea of employing the different sets of minimum wages is flying in the face of Korean laws such as Article 6 under the Labor Standards Act and international agreements such as the Convention, infringing human rights and rights to work of migrant workers, and eventually compromising working conditions of the entire population of workers in Korea as the workforce deemed "cheap and replaceable" would increase.

118. In March 2018, the NHRCK made a recommendation to revise the system to prevent sexual harassment and violence and offer remedy in consideration of the fact that these are even harder to prove for women migrant workers mostly lacking the fluency in Korean language. The government has reportedly accepted the recommendation by pushing ahead with the "Urgent Application of Change of Workplace" system and setting up a counseling center dedicated to women migrant workers. The NHRCK will continue to monitor the progress of relevant policies of the government to promote human rights of women migrant workers.
119. On the other hand, the government needs to hold a strict stance against the discriminatory attempt to apply a different set of minimum wages to foreign migrant workers and take a relevant measure to ensure the rights to work for everyone without any discrimination based on nationalities.

15-2. Revision to the System Incurring Undocumented Immigrants

120. As of December 2017, the accumulative number of undocumented immigrants was 82,837¹⁸, and the year of 2017 alone sees 26,178 documented foreign nationals turn into undocumented: non-professional employment visa holders under the Employment Permit System (EPS) account for the largest share of turning undocumented at 9,455, followed by artistic performer visa holders, a highly controversial status for sexual exploitation.

[Table 7] Documented Turned Undocumented (Unit: People)

Classification	Non-professional Employment (E-9)	Vessel Crew (E-10)	Culture and Entertainment (E-6)	Designated Activities (E-7)	Working Visit (H-2)	Marriage Migrant (F-6)
Documented Immigrants (Accumulative)	273,406	15,334	3,383	20,684	225,455	120,840
Undocumented Immigrants (in 2017)	9,455	1,355	449	975	1,267	1,334
Ratio of Turning Undocumented	3.5%	8.8%	13.3%	4.7%	0.6%	1.1%

18 *Monthly Immigration Statistics, December 2017: Korea Immigration Service* shows that, as of December 2017, undocumented immigrants number 251,041, among them **167,140 or 66.6% are undocumented short-term visa holders** (shorter than 90 days), 82,837 or 33% are longer-term documented immigrants, and 1,064 or 0.4% are foreign nationals who reported their residence.

121. Since August 2012 has the list of hiring companies been no longer provided to migrant workers who enter Korea under the EPS when they attempt to change the work place due to unfair treatments by an employer, etc.
122. Therefore, all they can do is just to wait until a new employer calls them, and they can hardly reject any offer upon an interview even though they find new working conditions unsuitable for them. This is because the application for changing workplace and the job search shall take no longer than a month and three months, respectively. Those who fail to find a new job within the preset period will be deprived of their visas and deported or turn into undocumented immigrants.
123. From 2010 to June 2015, those who exceeded the application period numbered 26,466, while those who failed to meet the job search period were 16,530; thus, the number of immigrants facing forced deportation or becoming undocumented in the process of changing their workplace reached 42,996 in total.¹⁹
124. The Immigration Act stimulates that an employer who hires an alien shall report to the head of the competent Regional Immigration Service if the whereabouts of the employed alien becomes unknown. When the report is filed, the immigrant worker is immediately listed as "whereabouts unknown" on a computerized system and asked to appear. When he/she does not show up and explain, his/her status of stay is revoked after an announcement of attendance, which leads to forced deportation eventually a month afterwards.
125. This repercussion makes the article called the "report of absconding" system instead of its formal title, "report of change in employment," which works against migrant workers as employers often abuse it to threaten them, i.e., turning them into illegal or deporting them, in response to their request for protection of rights.
126. The side effect of the report becomes severe when it comes to fishers and migrant workers in agricultural and livestock industries. Their workplace, farm

19 The *Research on Reestablishing Guidelines for Human Rights of Immigrants*, p. 77, by the NHRCK (2017) is referenced, which is quoted from the Ministry of Employment and Labor's discussion in the booklet for the *Seminar on Improvement of Immigrant worker's Rights to Work* held on September 2, 2015.

or fishing vessels, is mostly an isolated place from which they have to separate themselves, i.e., leaving the workplace or refusing going on board, in order to find some help from a job center, the Ministry of Employment and Labor, the Office of Oceans and Fisheries, or manning agents, usually leading their employers to file the missing report for their unknown whereabouts.

127. There was a case in point where the Immigration Office failed to inform migrant workers about how to file a complaint or seek protection of rights and left them turning undocumented. In 2015, the Gwangju High Court ruled that the forced deportation order placed on them be illegal as it is based on disposition of revocation of the status of stay which is basically nonexistent due to the lack of formality as a legitimate disposition (2014Nu6318).
128. Rather than to drive them out of the boundary of the law, the system, therefore, needs to be revised to ensure their freedom to choose an occupation in the long run and to embrace more reasons to change the workplace as many times as needed in protest of violation on human rights or unfair treatments and ease the liabilities of workers in proving the misconduct of employers in the short term.
129. In addition, it is necessary for employers to fill in reasons in the report of change in employment, and their permit of hiring migrant workers be revoked or limited once their report proves false so that the system can no longer be abused as the "report of absconding" which technically enables an employer to revoke the status of stay and trigger protective or compulsory eviction order.

VI. Protection and Remedies for Foreigners (Article 6)

Issue 16. Prevention of Human Trafficking and Protection of Victims

16-1. Legislation to Implement the Protocol and Establishment of Cooperative System

130. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the "Protocol") ratified by the government in 2015 states that "trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, while the

revised Criminal Act carries a narrower definition in which a person who buys or sells another shall be punishable.

131. Additionally, the Protocol states that the consent of a victim shall be irrelevant where any of the illegal or improper means have been used, while the Criminal Act does not acknowledge it as criminal human trafficking when a victim seems to have been in agreement.
132. The *Survey on Culture and Entertainment (E-6) Visa Holders* by the NHRCK in 2014 cites an interview with one woman migrant worker, saying that she had to work 24/7 and was forced into prostitution. Sex buyers were charged KRW 150,000 of which she was given KRW 45,000. She had to provide any sexual act demanded and was even videotaped during sex.
133. The National Assembly's audit of state affairs in 2015 and relevant media report shed a light on the issue where women migrant workers entering the State with E-6 visa were forced into prostitution but investigated as a suspect on charge of prostitution and subjected to compulsory eviction and protective order to be sent to a public shelter for foreigners.
134. A women migrant worker counseled by a support center for women foreigners also testified that she was assumed as a voluntary prostitute and subjected to judgment on the violation of the Immigration Act first rather than investigated as a human trafficking and forced prostitution victim only because she could use a cell phone even though she had to escape from confinement and called for help with her passport confiscated and no geographical knowledge about her location.
135. Another issue is that there is no precedent to punish a perpetrator for the charge of forcing women migrant workers holding E-6 visa into prostitution. If punished for something else, the degree of the punishment was mere a meager fine which was not enough to stop them from running a brothel and exploiting them.
136. Rarely has violators been punished, victims, on the other hand, frequently suffer from secondary abuse, forcing them to withdraw the litigation against their exploitative and abusive employers upon deportation order.
137. Thus, it is highly necessary to legislate a law to punish violators, protect victims, and prevent human trafficking of migrant workers in Republic of Korea. Prior to this, what is urgent now is to establish a cooperative system or devoted institution that can coordinate and synchronize roles and responsibilities of multiple corresponding government agencies.

16-2. Active Utilization of Identification and Protection Indicators for Human Trafficking Victims

138. Exploitation lies at the core of trafficking in persons: inflictors continually exploit victims and pocket compensation for the purpose of financial benefits without paying appropriate wage for their labor. The government needs to acknowledge the victims trafficked and trapped in prostitution and forced labor and charter countermeasures to eradicate the crime.
139. Considering the limited definition of human trafficking under the Criminal Act and ensuing difficulties in identifying victims, the NHRCK developed the *Indicators for Identification and Protection for Human Trafficking Victims* in June 2016, which was referenced in the 3rd Master Plan for Immigration Policy (2018-2022) as a measure to protect human rights of the art and entertainment visa holders.
140. However, the indicators should be considered as a general outline as compiled based on the cases already laid bare. This is why the law enforcement agency should proactively utilize the indicators but at the same time come up with measures to identify and protect victims on the ground.

16-3. Regular and Comprehensive Status Survey to Prevent Trafficking in Persons

141. While human trafficking of women migrant workers with the art and performance (E-6) visa for the purpose of sexual exploitation has long been an issue seeking attention but has failed to bring out desired improvement in the relevant institution, those who recently enter the country without any working permit, i.e., B-1 visitor visa holders, also reportedly fall victim to human trafficking and sexual exploitation.²⁰
142. In July 2017 the media reported about 70 business owners and brokers were arrested en masse for having brought Thai women with B-1 visiting visas whom they locked in brothels around Busan and Jeju Island and forced into prostitution. The crime came up to the surface as, two months before they were arrested, one of the victims managed to avoid surveillance and secretly delivered a note to a deli clerk asking for help.
143. In February 2017, Asia Chang interviewed related personnel and Thai women

²⁰ The *Research on Reestablishing Guidelines for Human Rights of Immigrants*, p. 255–257, released by the NHRCK in 2017 is referenced.

who had worked in massage parlors and made public, albeit partially, that they were given false information before entry, had to prepay entrance fee, were deprived of rights of self-determination while succumbed to sexual violence under the name of testing, had their passports confiscated, had been isolated physically and psychologically and threatened with sex video, and had feared their safety after returning to their countries.

144. On the other hand, there are human trafficking cases for the purpose of labor exploitation, targeting foreigners who enter the country with a visiting visa but try to find a job. In May 2017, two Malaysian workers, who had entered the country with visa waiver program and worked in a construction site for a year, had their passports taken away by a broker who pocketed KRW 50,000 out of KRW 90,000 pay per day. They said there were many more workers working and living under the same conditions in their dormitory, who borrowed the air fare from a broker and paid additional KRW 2 million in return when they arrived.
145. The status of stay is granted for those who have managed to be recognized as a victim and have to go through a long haul of investigation and litigation until they settle down on remedies. The visa granted, according to the visa classification by the Ministry of Justice, titled "G-1-11: Fallen victim to prostitution, etc.," can cause secondary damage for its title.
146. As migrant workers seldom, if ever, report exploitation as their status of stay lacking work permit makes them fear crackdown and compulsory eviction, exploitative attempt to take advantage of their fear becomes rampant and feeds a continuous stream of human trafficking of immigrants in the country.
147. Thus, once a human trafficking victim is identified, even an undocumented immigrant should be given the extension of stay or a temporary but stable visa so that he/she can complete the process of seeking remedies. In addition, a regular and broad investigation on the current status of human trafficking should be conducted, which includes unofficial routes of inflow of immigrants opening the door for sexual or labor exploitation.

Issue 17. Remedies and Support for Foreign Victims to Crime

148. On November 1, 2017, a Thai women migrant worker was murdered by her Korean colleague at work. He lured her to his car saying he would take her to a safe place where she could hide her undocumented identity only to kill her having attempted to rape her. This incident clearly shows how vulnerable the

undocumented women migrant workers are to crimes such as sexual violence.

149. The relief system to provide aid to a crime victim to whom death or bodily harm is caused by a criminal conduct finds its legal ground in the Crime Victim Protection Act. However, Article 23 of the act states that, if a foreigner is a victim subject to relief or a bereaved family member, this Act shall be applicable only where the cross-guarantee agreement with the relevant country exists.
150. Article 30 of the Constitution of the Republic of Korea gives shape to the criminal injury relief fund under the Crime Victim Protection Act. Crime victims' rights to claim aid is part of the most critical and fundamental rights of human being, such as life and body and, hence, in nature, apply to foreigners as well. Mexico and Switzerland, along with Korea, also define the right to compensation of crime victims under their constitution and, accordingly, pay foreigners the relief fund of which amount is equivalent to what is paid to their citizens.
151. Spain and Canada, for example, are in the cross-guarantee agreement with Korea; however, not a lot of Spanish or Canadians are residing in Korea and their rates of victimization is also low. The *Monthly Immigration Statistics, December 2017: Korea Immigration Service* shows that the largest group of foreign nationals residing in Korea is Chinese at 46.7%, followed by Vietnamese, 7.8%, Thai, 7.0%, American, 6.6%, Uzbek, 2.9%, and Filipino, 2.7%.
152. Most of the foreign populations, except Americans, suffer from substandard social status in Korea, rendering them more susceptible to crimes. In 2016 and 2017 Chinese took up the largest share of foreign crime victims at 40.2%, followed by Vietnamese at 35.6%, Cambodians at 5.7, Uzbeks at 4.6% and Mongols at 3.4%.²¹
153. Given its strict demand for the cross-guarantee agreement, the Crime Victim Protection Act seems inadequate to protect and rescue foreign nationals from crimes, and, therefore, needs to be revised accordingly. In consideration of the fact that the status of being undocumented residents actually exposed foreign nationals to crimes as stated above, the Act should be applied to everyone in this country regardless of their nationality in order to protect undocumented immigrants, the most vulnerable to crimes.

21 The *Research on Current Status and Improvement of Support for Foreign Crime Victims*, p.50, by the Korean Institute of Criminology in 2017

Issue 18. Establishment of Domestic Implementation Procedures for Individual Communications under Article 14

154. The Committee has adopted the opinion at its eighty sixth session on May 20, 2015 via Communication No. 51/2012 (L.G. vs Republic of Korea) about mandatory medical tests for HIV/AIDS only applied to foreign English-speaking teachers who are not ethnic Koreans. The Committee recommends that the State party grant the petitioner adequate compensation for the moral and material damages, including compensation for the lost wages. It also recommends that the State Party takes the appropriate measures to counter any manifestations of xenophobia.
155. The State, contracting party to the Convention, has an obligation to dutifully implement the recommendation of the Committee; however, without any institutional facility to enforce the implementation of individual communications by UN treaty bodies, it is hard to ensure effective remedies including compensation for the individuals in reality.
156. On September 8, 2016, the NHRCK advised to adopt legislative and administrative measures to ensure effective implementation of the opinions regarding the individual communications by UN human rights treaties including appropriate compensation to the petitioner.
157. However, the government replied that it would not accept the advice on the ground that, under the current domestic positive law, the case bears no liability for compensation as it ensues only when a breach of contract or illegality is acknowledged. It also added that it would discuss the measures and procedures to implement the communications by international human rights instruments in the process of legislation of rules and regulations regarding human rights.
158. Thus, an institutional mechanism to ensure the implementation of the individual communications needs to be set in place as soon as possible so that effective remedies including personal compensation can be reviewed.

VII. Education, Culture and Information to Combat Prejudices leading to Racial Discrimination (Article 7)

Issue 19. Provision of Education, Information and Monitoring on Racial Discrimination by the Media

159. From January 2012 to December 2015, a total of 14,530 articles released by 237 media outlets were searched for keywords tracking emotion related to “migrant laborers, alien laborers, and foreign workers.” The result shows that words with negative connotation top the list.²²

[Table 8] Emotion Keywords for Migrant Workers

Rank	No. 1	2	3	4	5	6	7	8	9	10
Words	Various	Illegal	Poor	Necessary	Crime	Hard	Consistent	Suspicion	Help	Safety
Pos/Neg	Neutral	Neg	Neg	Neutral	Neg	Neg	Neutral	Neg	Pos	Pos
Frequency	1,218	1,178	550	515	513	376	372	321	318	305

160. Media outlets do not even seem to recognize the issue in their media reports which instigate racism: for example, an individual foreigner’s misconduct often escalated into wrongdoing of the whole immigrant population or distorted reports and fake news inciting hatred for refugees.

161. As is often the case, a movie tends to have a huge social ramification. A film released in 2017 seemed to reinforce a criminal stereotype for ethnic Koreans from China and their residential district, which caused a relevant organization to demand a suspension of showing and apology from its production crew.

162. The Internet should offer the freedom where everyone can express his/her own opinion, idea, and thought in order to achieve a certain object. However, it is necessary to monitor and rein in the abuse of racist remarks online as long as the surveillance does not violate the freedom of speech when such remarks are highly likely to encourage racism beyond the boundary of the freedom protected by relevant international and domestic standards and regulations.

163. Case in point, “one-person media” and the recent surge of its popularity proves to be highly influential as it is producing some incendiary, often sexist or racist, video clips, spread on social network services which help reproduce stereotypes and negative perception.

164. Therefore, the government needs to adopt active, urgent, and appropriate

²² A sentiment analysis commissioned by the Korea Economic Daily: Emotion keywords mean the list of words reflecting attitude or perception about a certain object.

countermeasures against the malicious or racist remarks on-line which disperse fake news about an individual or a group or hatred for refugees or foreign nationals. Policies should be in place to facilitate people's awareness of higher social costs arising from conflicts due to worsening racism in the society, followed by education and information which helps monitor and prevent racial discrimination across the society.

C. Conclusion

Issue 20. Missions of the NHRCK

165. The NHRCK has conducted a status survey, monitoring, ex officio investigation, visiting research about the situation of human rights of immigrants from December 2001 to September 2018 and issued its recommendations and opinions regarding 67 cases of human rights of immigrants and racial discrimination as below:

[Table 9] Policy Recommendation (including Opinion) regarding Human Rights of Immigrants

Classification	Total	Human Rights			Human Rights in Immigration and Immigration Acts	Racial Discrimination	Visiting Research
		Migrant Workers	Marriage Migrant(Female), Migrant Children	Refugees, etc.			
Cases (No.)	67	16	11	9	12	9	10

166. Investigation into violation on human rights and discriminatory treatment is usually launched when a complaint is filed. Not only a victim but also any third party, including a person or an organization, who knows of the misconduct, can file a complaint. Once filed, the case is reviewed to decide whether it falls under the violation of human rights or discrimination. When it does, the NHRCK advises the accused person or his/her supervisory institution to adopt necessary measures to prevent the recurrence of an incident and restore any ensuing damage.

[Table 10] The Number of Complaints filed in regards to Human Rights Violation and

Discriminatory Acts²³ in Immigration

Year Classification	2013	2014	2015	2016	2017
Human Rights	100	89	128	83	111
Discrimination	18	18	10	8	5

167. The cases for which the NHRCK has issued recommendation include human rights violation of foreign nationals by the government authority usually related to their status of stay, i.e., compulsory eviction and crackdown. There are also cases where commercial facilities run discriminatory practice against foreigners; for example, denial of access to restaurants, denial of treatment in a doctor's office, or rejection of insurance policy underwriting citing her period of stay in Korea as for marriage immigrants.
168. There was a recent incident where a Myanmar worker died in the process of crackdown by the Ministry of Justice. The NHRCK has decided to launch ex officio investigation on October 4, 2018 in order to investigate whether the ministry complied with lawful procedures and abided by human rights rules and regulations in the process and took timely measures to take care of the injured. It will also charter measures to turn the current immigration policy more human rights friendly as it focused on undocumented migrants' crackdown and deportation.
169. In order to enhance its independence, the prerequisite to achieve its mission, the NHRCK established the Regulations on Selection and Appointment of Members of the NHRCK in December 2014 and revised the National Human Rights Commission of Korea Act in February 2016 to include a new article ensuring diversity in its members and independence.
170. As pointed out by the Committee, the NHRCK requires more human rights experts and ample financial resources in order to facilitate the rights prescribed in the Convention and fulfill its mission. The NHRCK will continue to actively pursue its missions including investigation into

²³ Related to "state of origin, ethnic origin, race, and skin color" among the grounds of discrimination, defined by the National Human Rights Commission of Korea Act

complaints, survey on human rights status, issuance of policy recommendation as well as improvement of system and practice regarding hatred and discrimination against social minority along with education and campaign projects.