**Submission for the Questionnaire on Art. 5 of the CRPD**

30 June 2016

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| **Background**This submission was prepared by the Korea Center for United Nations Human Rights Policy (KOCUN), the Korea Social Welfare Policy Institute, and Mr. Sooyeon Kim, for the purpose of highlighting the situation of discrimination faced by deaf and blind persons in the Republic of Korea, with the hope that the OHCHR’s study gives due attention to the experiences of and human rights issues faced by a much neglected group of minorities.For more information, please contact Effie Kim (Ms.) at effie@kocun.org.  |

**1. Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.**

In 2008, the Republic of Korea enacted the *Anti-Discrimination against and Remedies for Persons with Disabilities Act (ARPDA)*, which defines disability as “a physical or mental impairment or loss of function that substantially limits an individual's personal or social activities for an extended period of time” (art. 2). It must be noted that such a definition of disability that exclusively focuses on an individual’s impairment is not in accordance with the definition of the CRPD, which identifies the “interaction with various barriers” as an important factor of hindrance to a full and effective participation in society.

Under art. 4 of the ARPDA, the following discriminatory acts are prohibited, including the denial of reasonable accommodation:

1. Treating the disabled persons unfavorably by means of restriction, exclusion, segregation or denial on the ground of such disabilities without justifiable grounds;
2. Applying disability-blind standards that cause the disabled persons to be unfairly treated without justifiable grounds, despite the absence of explicitly unfavorable treatment, such as restriction, exclusion, segregation or denial;
3. Refusing to provide legitimate convenience to the disabled persons without justifiable grounds;
4. Directly placing, or permitting or promoting to place, any advertisement that indicates or encourages unfavorable treatment of the disabled persons, such as restriction, exclusion, segregation or denial of such persons, without justifiable grounds. In such cases, an advertisement shall include any act normally considered to have the effect of advertising that causes unfair treatment of the disabled persons;
5. Committing any act defined in subparagraphs 1 through 4 against individuals representing or accompanying the disabled persons for the purpose of helping such persons (including guardians or protectors of the disabled children or other persons reasonably recognized to help the disabled persons: hereinafter referred to as "persons related to the disabled"). In such cases, any act committed by persons related to the disabled against the disabled persons shall be subject to the determination of a discriminatory act prohibited under this Act;
6. Interfering with the rightful use of guide dogs or auxiliary equipment for disabled persons, etc., or committing any act prohibited under subparagraph 4 against guide dogs or auxiliary equipment for disabled persons, etc.

Under the same legislation, reasonable accommodation (“legitimate convenience”) means “any or all human and material arrangements and measures that will lead the disabled persons to participate in activities on an equal basis with persons without disabilities, including convenient facilities, equipment, tools and services designed to take into account the gender of a disabled person, as well as the type, degree and nature of a disability” (art. 4(2)). However, if “an excessive burden or undue hardship” may be incurred, the act is not considered to be an act of discrimination (art. 4(3)).

**2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).**

While the ARPDA lists the types of accommodations that must be provided by employers, educational institutions, etc., neither the legislation nor its Enforcement Decree provides guidance on standards in determining whether an accommodation request is undue or disproportionate. Therefore, the decision is left at the discretion of those concerned, such as the employers and educational institutions.

Even if those types of reasonable accommodations explicitly mentioned within the Act are ensured, deaf and blind persons may still face barriers and remain excluded. This is because methods of communication for such persons, including finger braille, finger spelling, print-on-palm, and tactile sign language, are hardly known, understood, and developed in the Republic of Korea. In the absence of such support, deaf and blind persons remain unable to communicate their will, needs, and preferences and, furthermore, without access to education, employment, health services, information, etc., on an equal basis with others.

Therefore, both when listing the types of accommodations and when drafting standards for determination of (dis)proportionality, due consideration must be given to the specific needs of persons with multiple disabilities, particularly deaf and blind persons.

**3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).**

Art. 4(4) of the ARPDA stipulates that, “[a]ffirmative measures taken for accomplishing genuine equality rights for, and eliminating discrimination against, the disabled persons in accordance with this Act, any other Acts or subordinate statutes shall not be deemed discrimination under this Act.” Affirmative measures can mainly be found in the area of employment, as The *Employment Promotion and Vocational Rehabilitation of Disabled Persons Act* requires the central and local governments and public institutions to employ persons with disabilities to fill at least 3% of the total number of employees, while private companies with over 50 employees are required to fill at least 2.7%.

As of 2014, the percentage for public and private sector remained at 2.65 and 2.48, respectively (Ministry of Employment and Labor). Not only do such numbers fall short of the legal standard, they can be misleading, as they do not show how inclusive the measures were for persons with severe and/or multiple disabilities and how equitable the conditions of employment (i.e. wage, job type, etc.) were. As of 2015, there still existed a stark contrast between the national employment rate of 65.9% and the employment rate for persons of disabilities, which remained at 34.8% (Korea Statistical Information Service). Unemployment rates were also more than twice as higher for persons with disabilities.

The situation of employment and economic activity of deaf and blind persons and how they have benefitted from existing affirmative measures remains completely unidentifiable, as there does not exist any disaggregated data on this particular group of persons with disabilities.

**5 Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?**

According to the Welfare of Disabled Persons Act (WDPA), the Ministry of Health and Welfare must conduct a Survey of Persons with Disabilities – the only national-level survey - every 3 years. Although it does include data on social discrimination, the data is not sufficiently disaggregated by type and degree of disability, gender, and age. The data included in the 2015 survey simply provides data disaggregated by type of disability and the context (i.e. in school, during marriage, at work, etc.) in which discrimination occurred (Korea Statistical Information Service).

No data exists on the situation of deaf and blind persons, as persons with multiple disabilities are not considered in any way when monitoring and collecting data. Still today, the Government has no official count or estimate of the total population of deaf and blind persons, which means that there is no informational/statistical basis for the implementation of programs, policies, and strategies to ensure the rights of deaf and blind persons. This not only points to grave human rights implications for those concerned, but also opens a serious gap in the implementation of all articles of the CRPD, including art. 5 on non-discrimination.