**Submission by the National Human Rights Commission of Korea to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and**

**Committee on the Elimination of Racial Discrimination**

*The National Human Rights Commission of Korea(NHRCK) is submitting below information to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families(CMW) and Committee on the Elimination of Racial Discrimination(CERD) for their joint general comment/recommendation on State obligations with regard to public policies for addressing and eradicating xenophobia and its impact on the rights of migrants, their families, and other non-citizens affected by racial discrimination.*

**1. Laws and policies against xenophobia and discrimination against minorities**

1) Laws with anti-discrimination in general

In the Republic of Korea, there is currently no comprehensive anti-discrimination law that prohibits discrimination against minorities, including migrants, sexual minorities, women, and people with disabilities. The National Human Rights Commission of Korea(NHRCK) works extensively with civil society organizations, academia, religious communities, and the legislature to build consensus on the need for a comprehensive anti-discrimination law and to work toward enactment. A total of 11 comprehensive anti-discrimination bills have been proposed between 2007 and 2021, but most have expired or been withdrawn.

There are no laws regulating hate speech, incitement to hatred, or hate-based crimes targeting social minority groups online or offline, and no specific provisions stipulated within the other laws. In 2018, a bill was proposed to regulate hate speech, but it was withdrawn due to opposition from some religious communities. Therefore, under the current legislation, it is possible that some criminal offenses may be motivated by racist prejudice, which may be considered as an aggravating factor in both sentencing processes, but no specific cases or statistics have been identified. In addition, in the case of hate speech, there is a general insult or defamation offense that may be established if the speech is directed at a specific individual.

The Constitution of the Republic of Korea states in Article 11(1) that "All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." This provision and all other provisions of fundamental rights stipulate "all citizens" rather than "all persons," thus limiting the subject of fundamental rights to "citizens." The Constitutional Court has held that if a right is universal in nature and applies to all human beings, then as a "human right," foreigners are also subjects of fundamental rights, but there may be "restrictions on the right to suffrage by nature and reciprocity. This view can also be seen as somewhat restrictive in light of the provisions of Article 6(2) of the Constitution, which states that "The status of aliens shall be guaranteed as prescribed by international law and treaties.," and the Committee on Economic, Social and Cultural Rights' General Comment No. 15 (1986), which states that "the rights provided for in the Covenant apply to all persons, regardless of reciprocity and regardless of their nationality or statelessness."

However, with the enactment of the National Human Rights Commission Act on May, 2001, which established the NHRCK, regulations were established to define "discriminatory acts that violate equal rights," and a system was established for the National Human Rights Commission to receive and investigate complaints and recommend remedies for such discriminatory acts.

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| **Article 2(3) of the National Human Rights Commission Act** 3. The term "discriminatory act violating the equal right" means any of the following acts, without reasonable grounds, on the grounds of sex, religion, disability, age, social status, region of origin (referring to a place of birth, place of registration, principal area of residence before coming of age, etc.), state of origin, ethnic origin, physical condition such as features, marital status such as single, separated, divorced, widowed, remarried, married de facto, or pregnancy or childbirth, types or forms of family, race, skin color, ideology or political opinion, record of crime whose effect of punishment has been extinguished, sexual orientation, academic career, medical history, etc.: Provided, That the temporary favorable treatment to a particular person (including a group of particular persons; hereafter in this Article the same shall apply) to solve the existing discrimination, the enactment and amendment of statutes and the formulation and enforcement of policy to this effect shall not be deemed a discriminatory act violating the equal right (hereinafter referred to as "discriminatory act"):(a) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding employment (including recruitment, appointment, education, posting, promotion, payment of wage and any other money or valuables, financing, age limit, retirement, dismissal, etc.);(b) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding the supply or use of goods, services, means of transportation, commercial facilities, land and residential facilities;(c) An act of favorably treating, excluding, discriminating against or unfavorably treating a particular person regarding education and training at educational facilities or institutions for workplace skill development, or the use thereof;(d) An act of sexual harassment (referring to making people feel sexually humiliated or loathsome in business, employment or other settings or giving disadvantage in employment on the pretext of disobedience to sexual comments or other demands by a working person, an employer or an employee of a public agency (referring to State agencies, local governments, various levels of schools established under Article 2 of the Elementary and Secondary Education Act, Article 2 of the Higher Education Act and other Acts, and agencies affiliated with public services pursuant to Article 3-2 (1) of the Public Service Ethics Act) who takes advantage of their superior position or sexual comments, etc. with regard to their duties, etc.); |

There are anti-discrimination laws targeted at specific groups and areas, such as race, nationality, or ethnicity, but there are no specific anti-discrimination provisions for race, national origin, or ethnicity.

* Act On Prohibition Of Age Discrimination In Employment And Elderly Employment Promotion, enacted Dec. 1991
* The Gender Equality Act. Completely revised from the Basic Act on the Advancement of Women on May 2014, 5.
* Act On The Prohibition Of Discrimination Against Persons With Disabilities And Remedy Against Infringement Of Their Rights, enacted on April 4, 2007

2) Individual articles law prohibit discrimination

"Article 6 of the Labor Standards Act stipulates that " An employer shall neither discriminate against employees on the basis of gender, nor take discriminatory treatment in relation to terms and conditions of employment on the ground of nationality, religion, or social status," and violators are subject to a fine of KRW 5 million (Article 114).

There are also individual articles that prohibit discrimination on the basis of nationality, ethnicity, or race, such as the following, but these laws are only declaratory, with no detailed regulations for implementation or penalties for violations.

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| **Act On The Employment Of Foreign Workers**Article 22 (Prohibition against Discrimination)No employer shall unfairly give discriminatory treatment to a foreign worker on the ground that he or she is a foreign worker.**Broadcasting Act**Article 6 (Impartiality and Public Interest of Broadcasting)(2) A broadcast shall not be discriminative in broadcast programming on account of sex, age, occupation, religion, belief, class, region, race, etc.: Provided, That the foregoing shall not apply where a broadcasting business entity engaged in a specialized programming with respect to a missionary work of religion within the limit of a relevant broadcast field.Article 33 (Review Regulations)(2) Review Regulations formulated under paragraph (1) shall include the following:8. Matters concerning prohibition against discrimination on grounds of race, nationality, region, religion, etc.;**Framework Act On Education** Article 4 (Equal Opportunities in Education) (1) No citizen shall be treated with discrimination in education for reasons of gender, religion, faith, race, social standing, economic status, or physical conditions, etc.**Act On Execution Of Sentences And Treatment Of Inmates**Article 5 (Prohibition of Discrimination)An inmate shall, without reasonable grounds, not be discriminated on the grounds of sex, religion, disability, age, social status, region of origin, state of origin, nation of origin, physical conditions including features, medical history, whether married or not, political opinion, sexual orientation, etc.**Framework Act On Treatment Of Foreigners Residing In The Republic Of Korea**Article 10 (Safeguarding Human Rights of Foreigners Residing in the Republic of Korea)The State and local governments shall endeavor to take necessary measures, such as the conduct of education and publicity activities, to prevent unreasonable discrimination against foreigners residing in the Republic of Korea and their children and to safeguard their human rights.Article 18 (Enhancement of Understanding about Cultural Diversity)The State and local governments shall endeavor to take measures such as education, publicity, and correction of unreasonable institutions, etc. to ensure that Koreans and foreigners residing in the Republic of Korea understand and respect each other's history, culture and institutions. |

3) Examples of local government ordinances that prohibit discrimination

Some local governments enacted human rights ordinances for migrants and migrant students in their communities, such as the following:

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| **Ordinance for Supporting Foreign Residents and Multicultural Families in the City of Seoul**Article 3 (Status of Foreign Residents and Multicultural Families) Unless otherwise provided by law or other ordinances, foreign residents and multicultural families may use city property and public facilities and receive various administrative benefits in the same manner as residents. Article 24 (Participation of Foreign Residents in Policies) 1. The Mayor shall endeavor to enable foreign residents and multicultural families to participate in policies.**Seoul Metropolitan Government Human Rights Ordinance**Article 5 (Right to Non-Discrimination) 1. Students have the right not to be discriminated against on the basis of gender, religion, age, social status, place of origin, national or ethnic origin, language, disability, physical condition, pregnancy or maternity, family type or family situation, race, economic status, color, ideological or political opinion, sexual orientation, gender identity, medical history, disciplinary history, or sexual performance.3. The founders and managers of the school, the president and staff of the school, and the students shall not violate the human rights of others through discriminatory words or actions or hateful expressions based on the reasons exemplified in Paragraph 1.Article 28 (Guaranteeing the Rights of Minority Students)1. The superintendent, founders and managers of the school, school principals, and school staff shall ensure that poor students, students with disabilities, students from single-parent families, students from multicultural families, foreign students, athletes, sexual minorities, and working students (hereinafter referred to as "minority students") are adequately guaranteed the rights requested by their characteristics.6. The human rights of foreign students, including students from multicultural families, students from migrant families, and students from foreign countries shall be respected by the parties or shall be protected regardless of the immigration status of the guardian. Superintendents, school principals, and school staff shall take measures to ensure that foreign students, including students from multicultural families and students from migrant families, are able to attend school without discrimination due to language and cultural differences in educational activities, and shall endeavor to ensure that opportunities for transfer and enrollment are not unreasonably impair. |

4) National Human Rights Commission of Korea’s recommendations to improve discriminatory practices

As previously discussed, the NHRCK has the power to investigate and provide remedy on discrimination on the grounds of race and ethnicity. Based on this mandate, on March 3, 2021, the NHRCK issued a decision that the "Order on COVID-19 Diagnostic Testing for Foreign Workers" issued by some local governments, which forced foreign workers to undergo diagnostic testing separately from all close contacts or workers in a workplace suspected of being infected with COVID-19, was a discriminatory measure against foreigners and recommended that the order be suspended. The NHRCK has investigated and recommended remedies for various other cases of racial discrimination.

**2. Impact of Xenophobia on foreign individuals and groups**

In the Republic of Korea, hate against foreigners, migrants, and immigrants began to emerge as a new social problem around 2010, especially in anti-multicultural online communities. As certain online communities became more prominent, discussions on hate speech against migrants and other social minorities began to take place in earnest, and the NHRCK published cases of monitoring racial discrimination, expressed opinions, conducted surveys, and expressed views on the Government reports on the Convention on the Elimination of all forms of Racial Discrimination.

However, the problem of hate speech against minorities has gradually intensified, and it is now common for people to make discriminatory remarks against minorities offline rather than online, or to hold rallies for that purpose. According to the 2016 Hate Speech Survey and Regulatory Measures Study conducted by the National Human Rights Commission, migrant respondents who experienced hate speech online were asked what changes have occurred since then, and the following responses were found.

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| Answers | Percentage of responses (Somewhat true + Very true) |
| It became harder to write freely online | 42 |
| I have stopped visiting places where I have experienced hate speech | 52.5 |
| Experience stress, depression, and mental difficulties | 42.6 |
| Lost self-esteem | 46.7 |

In the 2021 Online Hate Speech Perception Survey, 59.5% of respondents believed that hate and discrimination in South Korean society has increased since COVID-19, while 5.3% believed that it has decreased, and 90.2% of respondents agreed that it will "deepen social rifts," 87.8% agreed that it will "lead to crime," 79.5% agreed that it will "curtail minority freedom of expression," and 79.2% agreed that it will "promote discriminatory phenomena." This is compared to the results of the 2019 survey, which showed an 11.8 percentage point increase in the proportion of respondents who agreed that it will "deepen social rifts," and a 79.Compared to the results of the Hate Discrimination National Perception Survey conducted in 2019, the percentage of respondents who agreed that "social rifts will deepen" increased by 11.8 percentage points, and the overall negative outlook increased by 16.7 percentage points, with the most notable increase being the percentage of respondents who were concerned about the setback of minorities' freedom of expression.

In a recent case, a group of people who formed a group in the name of protecting the country and illegally stopped and assaulted foreigners in the name of detecting illegal immigrants were sent to the prosecutor's office following a police investigation. One of the members of the group was running for a local parliamentary seat. According to media reports, the victims of the incident complained of extreme fear that prevented them from going out.

**3.** **Impact of Xenophobia on political and social discourse on migration**

According to a report published by a South Korean media organization, when searching for keywords for "migrant workers and foreign workers" in media articles, negative words dominated the list. There are still issues with news coverage of criminal incidents committed by foreigners, news reports that criminalize all migrants as a criminal group, misrepresentation of refugees, and fake news reports.

In particular, powerful politicians may respond to hate groups for political reasons, or take passive or regressive actions, such as the withdrawal of the anti-discrimination act. Experts have assessed that these hate groups are not only recognized as experts in influencing the direction of the government's migration policy, but also 'publicize' the racism of South Koreans.

The Republic of Korea has received fewer refugees than other countries in Europe, but in April and May 2018, approximately 500 refugees from Yemen entered Jeju Island and applied for asylum. Based on Article 22 of the Immigration Control Act, the Government restricted the activities of asylum seekers from Yemen who entered the country without a visa to Jeju Island, preventing them from leaving the island, and on 1 June 2018, designated Yemen as a visa-free exception country, preventing further entry. At that time, unfounded, distorted, or exaggerated claims about the burden of accepting refugees and prejudice against the Islamic religion spread negative perceptions of refugees and foreigners in the Republic of Korea, and anti-refugee rallies were held, and a petition to the President Office to reject and deport the refugees was posted and received many supports from the public.

In 2021, a mosque was planned to be built in Daegu for Muslims who are studying in the Republic of Korea, but strong opposition from local residents prevented the construction from proceeding. Despite the owner's success in pursuing legal remedies, the construction has been halted due to continued sabotage and illegal administrative procedures by the local government. During this process, the opponents posted banners and distributed flyers with hateful expressions claiming that the construction of the mosque would cause slumization, public unrest, and increased danger to residents, and the NHRCK recommended to remove the banners with hate speech in 2021. However, when the local government's decision to cancel the stop work order was finalized and construction resumed, the oppositions brought a pig's head to the construction site and grilled pork in front of the construction site, which is taboo in Islam. Since March 2023, a large number of banners stating "Islam (Muslim) OUT" have been displayed by a parliamentary candidate, who is also a representative of the organization that carried out the illegal arrests of foreigners described above.

Meanwhile, the Government continues to use the term "illegal migrants" rather than "undocumented migrants" despite repeated recommendations by the Committee on the Elimination of Racial Discrimination. The Committee believes that the government's use of the term "person" to refer to the administrative offense of "overstaying" may lead to negative perceptions of "undocumented migrants" and make them vulnerable to human rights violations and discrimination.

**4.** **Other forms of discrimination intersect with Xenophobia**

According to a 2019 survey conducted by the NHRCK, many people experienced discrimination due to "language, nationality, or cultural differences," and the areas of discrimination included verbal degradation, denial or disadvantage in employment, education, services, or goods, and physical violence.

In addition to discrimination based on race, an overlap and intensification of discriminatory factors are found such as mockery and derogatory remarks about physical appearance, bias against certain religions, and disregard for and disparate treatment of economically disadvantaged groups.

South Korean society is still characterized by a strongly patriarchal and male-centered culture, and despite the fact that women are becoming more educated and outpacing men in university enrollment, there are still issues with career interruptions due to childcare, low-quality jobs for women, a large gender pay gap, low representation of women in senior positions in private companies and government agencies, and discrimination against women.

In addition, there is a tendency to view migrant workers as "cheap labor" who do not need to be treated equally in terms of wages and working conditions, and in 2018, two amendments to the Minimum Wage Act were proposed to allow migrant workers who have been in the country for less than two years to be paid a different minimum wage, and to allow agricultural workplaces to apply a different minimum wage for migrant workers.

is present.

In particular, domestic workers, of which a high proportion of women are employed, have long been criticized for their poor working conditions, but it was not until 2022 that a law was enacted to improve them, and they became subject to the Labor Standards Act and the Minimum Wage Act. However, in March 2023, a bill was proposed to amend the law to exclude foreign domestic workers from the minimum wage. Even now, the President, local governments, and various media continue to advocate for excluding them from receiving minimum wage, and there is a risk that female migrant workers, who have the complex vulnerabilities of being 'women', 'migrants', and 'workers', will be exploited as low-cost labor.

In addition, migrant women are also faced with the problem of domestic and childcare work being transferred to native women, who are forced to take on traditional gender roles such as childcare and care for in-laws, and in the event of a divorce, the foreign spouse's stay in the country is limited to the marriage with the South Korean spouse. They are in a precarious situation that depends on whether or not they are raising a child.

**5. Contact Details**

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