

# **NGO Thematic Alternative Report on Juvenile Justice System to the Committee on the Rights of the Child**

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## **I. About reporting organizations and research method**

### **A. Reporting organization**

1. We are members of the "Lawyers for the Democratic Society", "DDingDong", the LGBTQ Youth Crisis Support Center, and "Catholic Human Rights Committee". We believe that the human rights of children who violate the law in Republic of Korea are guaranteed under the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Guidelines for the Prevention of Juvenile Delinquency.

### **B. Research Method**

2. The testimonies in this report were based on interviews with six protected juveniles<sup>1</sup> who had been protected according to the Juvenile Act, and the case was based on the actual experience of the experts in the Protected Juveniles Human Rights Advocacy. In addition, the testimonies from the expert discussion materials were also quoted. The discussion was hosted by Sang-Hee Kim, the member of the Democratic Party of Korea, and covered problems on the process of the juvenile delinquency focusing on the investigation process, the process of treating school violence, and the amendment of the Juvenile Act.

## **II. Introduction**

### **A. Amendment to the Juvenile Act**

3. The Juvenile Act was enacted on July 24, 1958, and was revised extensively on June 22, 2008. The main points of the amendment are: First, the age under the Juvenile Act was reduced from under 20 to under 19, and the age of delinquents and juvenile liable to commit a crime was reduced from under 12 to under 10. So, the age under the Juvenile

Act was changed from the age between 12 and 20 years old to the age between 10 and 19 years old. Second, a new system was introduced: ① Mandatory adoption of Court-Appointed Assistant to a protected juvenile entrusted to the Juvenile Classification Review Board, ② introduction of a victim's statement, ③ introduction of reconciliation recommendation system, ④ introduction of pre-decision investigation and consultation-conditional suspension of prosecution by prosecutors, ⑤ regulations on the prevention policies of juvenile delinquency are established that the Minister of Justice should establish and operate examination, research, education, public relations and policies to help the juvenile delinquent develop soundly, and establish and take operational measures cooperative systems with central administrative agencies, public institutions and social organizations related to guidance and education to juvenile delinquent.

4. In the case of a change in the decision of protective disposition after the appeal trial, the court did not count the already enforced period to the new enforcement. A suit was filed to challenge its constitutionality because it was unlawful presumption of principle, the unjustified infringement of physical freedom and violation of equality rights. But it was dismissed because there was a reasonable reason to discriminate against them. However, there was a dissenting opinion that it violated equal rights. The protective disposition does not have a reasonable reason to treat discrimination when compared to the criminal case, compared with the treatment, which is virtually the same as the criminal punishment in terms of restricting the freedom of the body. As a result, the amendment to the Juvenile Act was made on December 1, 2015. If the appeal was cited, the enforcement period of the already enforced protective disposition was included in the new enforcement period. It is unfair to acknowledge the fact that such a protective disposition deprives the physical liberty of the body, but to rationalize the discrimination against the protected juvenile by its aim is to rehabilitate the juvenile with anti-socialism and to promote healthy development. inhumane treatments cannot be tolerated because of laws that are more unfair than adults.
5. There is a growing public opinion in Republic of Korea concerning a few cases committed by a protected juvenile have continued to be highlighted in the media and

that the Juvenile Act should be abolished. Public Opinion pushes the South Korean government to lower age criteria from under 14 to under 13. There is a need to think more about what policy is to ensure the healthy development of the protected juvenile.

### **B. Amendment to the Act on the Treatment of Protected Juveniles, Etc.**

6. As of August 7, 1958, the Juvenile Reformatory Act, renamed to the Act on the Treatment of Protected Juveniles, Etc., was enacted. After that, the Juvenile Act was revised on June 22, 2008, and the discipline for securing solitary children by lowering the age of delinquents and juvenile liable to commit a crime was also lowered from over 16 years old to over 14 years old. And regulations have been established that allow the use of equipment to protected juvenile such as handcuffs, ropes, and tear gas guns. In May 2013, the protected juveniles' rioting<sup>23</sup> occurred in Busan Juvenile Reformatory, and the protected juvenile was blamed for the riot. As of January 31, 2014, the act was revised and added to the security equipment that can be used. The regulations were established to install and operate the equipment so that it can install video information processing equipment in bathrooms and restrooms. As of September 30, 2016, the provision of the application for the change of the protective disposition was newly established. In cases where it is necessary to extend the period of protection for correctional education for the protected juvenile who significantly disturbs the safety and order of the facility, it is possible to extend the period of confinement. And the age restriction which can be kept within 20 days in the private room is deleted, that enabled solitary confinement of the juvenile whose age is between 12 and 14. Looking at the revision process, it is more focused on the management and supervision of the protected juvenile than the protection of the human rights of the protected juvenile, through changing and establishing regulations on the substantial punishment, security equipment, and image information processing equipment. In the case of rioting cases in Busan Juvenile Reformatory, the law was revised in order to hold the juvenile accountable for the riot and to impose more strict regulations rather than finding out the causes of overcrowding facility and inhumane treatment and developing corrective measures in the right direction.

## **C. Conclusion**

7. As described above, the juvenile justice system of Republic of Korea has been degraded. The age under application of the Juvenile Act is lowered. More juveniles are being punished in a judicial way rather than being treated in terms of welfare. And the treatment of protected juvenile at the juvenile reformatory is also going against the UN Convention on the Rights of the Child. Not only the legal regulations but also the operation is approached from the viewpoint of the manager rather than the human rights of the protected juvenile.

## **III. General aspects of the juvenile justice system**

### **A. Age of criminal responsibility**

8. In August 2018, the Deputy Prime Minister for Social Affairs and Ministry of Education of the Republic of Korea (ROK) stated that he was pushing to lower the minimum age of criminal responsibility from the current age of 14 to 13.<sup>4</sup> In the same month, the Minister of Justice said in a ministerial meeting that he would cooperate with the National Assembly to revise the Criminal Act and the Juvenile Act to lower the minimum age of criminal responsibility.<sup>5</sup>
9. Although the Government recently announced that it is pushing to lower the age of criminal responsibility, based on claims that the average age of offenders in juvenile crime is falling, the proportion of juvenile delinquents under the age of 14 among those who were prosecuted between 2008 and 2016 was 2.8% in 2008, 1.8% in 2009, 0.4% in 2010, 0.4% in 2011, 0.8% in 2012, 0.5% in 2013, 0.04% in 2014, 0.1% in 2015, and 0.1% in 2016. This actually shows either a steady decrease or no significant change. Therefore, it is unreasonable to conclude that the offenders of juvenile crime are becoming younger based only on the statistics of the first half of 2018.

10. In its General Comment No. 10 (2007), the UN Committee on the Rights of the Child urges State parties not to lower the minimum age of criminal responsibility below the age of 12, and also recommends them to continue to increase it to a higher age level. Meanwhile, in the Republic of Korea, the Criminal Act is applied from the age of 14, which is a standard that has been adopted by 40 countries, the largest number of State parties to the Convention on the Rights of the Child. In such a situation, if the minimum age of criminal responsibility is further lowered, it would run contrary to the United Nations Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

- The Government should withdraw the policy proposal to lower the age of criminal responsibility to 13.

## **B. Protection of privacy: Forced AIDS tests, DNA collection, and media reports**

### **Forced DNA collection for juvenile delinquents**

11. The Ministry of Justice collected 1,472 genetic samples from 10 juvenile reformatories from 2010 to 2014, according to the o a higher age level. Meanwhile, in the Republic of Korea, the Criminal Ac<sup>6</sup> This was carried out in accordance with the Act on Use and Protection of DNA Identification Information (DNA Act) enacted in 2010. The DNA Act provides for the collection of DNA samples from juveniles who have received protective disposition (transfer to juvenile reformatory) under the Juvenile Act (Article 32, Paragraph 1, Subparagraphs 9-10).
12. The majority of the charges against the protected juveniles who had their DNA samples taken by the prosecutors was larceny (833 cases, 56.6%), followed by sex offences (386 cases, 23.6%), robbery (122 cases, 8.3%), and assault (112 cases, 7.6%),<sup>7</sup> and this results in a person who committed larceny as an adolescent being classified as a potential criminal for the rest of his or her life, as the DNA information is stored

indefinitely. In particular, the process of obtaining the consent of the juvenile concerned or the juvenile's legal representative in the collection of DNA from protected juveniles in juvenile reformatories is either non-existent or not implemented in practice. This is an illegal use of power by the state that seriously violates the privacy and personality rights of juveniles.

- The investigative authorities should immediately discontinue the collection of DNA from juveniles the storage their identification information in a database, and also delete the information on juveniles currently stored in the database.
- The National Assembly should amend the DNA Act to exclude juveniles from compulsory DNA collection.
- The State party should immediately delete the DNA information of juveniles who had their DNA samples taken for larceny-related crimes,<sup>8</sup> as the Constitutional Court ruled the crime of habitual larceny under the 'Act on the Aggravated Punishment, etc. of Specific Crimes' to be unconstitutional on 26 Feb. 2014.<sup>9</sup>

### **Forced HIV/AIDS tests for juvenile delinquents**

13. The Ministry of Justice's Guidelines on the Health Care Management of Inmates, which has been partially amended on 21 January 2016 and remains in effect, requires all new inmates to be tested for AIDS (Article 3, Paragraph 5) and compulsory HIV/AIDS tests for detainees in juvenile reformatories are still taking place after more than ten years.

<2018. 10. 29. A, B Interview<sup>10</sup>>

e1: I got blood drawn.

r: Why?

e1: I don't know why.

e2: So did I when I first went to the juvenile classification review board/the judges,

r: But didn't they tell you why they drew it? (...) So you're not sure if they tested for HIV/AIDS, right?

They took your blood out, but they didn't even explain what it would be used for?

e1: I don't know the details. They just said they were checking for STDs.

r: Did they just call it a STD testing? Not HIV/AIDS tests?

e1: Yes they did.

14. Although Article 7 of the Prevention of Acquired Immunodeficiency Syndrome Act prohibits the divulgence of confidential information on HIV infections, according to an investigation by the National Human Rights Commission of Korea, the confidentiality requirement regarding HIV-infected persons has not been complied with in any detention facilities that were investigated.<sup>11</sup> Above all, juvenile reformatories are currently isolating juveniles who are known to be infected with HIV, which makes it highly likely for other inmates to know about their infection status, thus violating the personality rights and privacy of the HIV-infected persons.<sup>12</sup>

- Stop the forced HIV/AIDS tests for convicted and unconvicted juveniles.
- Establish guidelines and implement mandatory training for employees in juvenile reformatories to ensure that confidentiality requirements for HIV-infected juveniles are strictly complied with in all youth detention facilities.
- End the isolation of HIV-infected juveniles.

### **Media reports on juvenile delinquents**

15. Article 68 of the Juvenile Act provides that in a protection or criminal case under investigation or trial under the Act, facts or photographs which may identify the juvenile concerned, by means of their names, ages, occupations, appearance, and other things, shall neither be published in newspapers or other publications nor be broadcasted. Nevertheless, with regard to recent juvenile crimes, newspapers and other media in the ROK have revealed the family information of juveniles or have shown pictures of juveniles being transported for trial while tied in rope.

16. In 2014, a child who stole clothes hung up on the rooftop of a building was arrested on suspicion of special larceny. The press release that the police provided to the media included the location of the crime scene and the age, sex, and occupation of the child who was in the early teens<sup>13</sup>.

- The State party should actively and practically carry out punishments for the media for violations of Article 68 of the Juvenile Act.
- For juvenile criminal cases, the State party should implement measures to protect the privacy and personal information of the persons concerned by establishing a provision that prohibits the reporting of cases by the media for up to one month from the time of the incident, when requested by the juvenile concerned and their families.
- The State party should establish guidelines on the announcement of information on suspicions of underage suspects and ensure the compliance of the police and other investigative agencies.

### **C. Crime-proneness and change of disposition**

#### **Crime-prone juveniles**

17. Article 4, Paragraph 1, Subparagraph 3<sup>14</sup> of the Juvenile Act stipulates that a juvenile over 10 years of age (so-called "crime-prone juveniles") who has not yet committed a crime but may be prone to commit such acts shall have his or her case tried as a protection case by the Juvenile Department. The current Juvenile Act, which applies to crime-prone juveniles, punishes juveniles for acts that would not lead to punishment for adults. This is unreasonable discrimination based on age (so-called "status offence") which strengthens the stigmatization of juvenile delinquents.
18. In particular, the provision on 'crime-prone juveniles' in the Juvenile Act is problematic as it includes abstract expressions such as "inclinations to cause uneasy feeling for people around them," "stay away from home without any justifiable reason," or "inclinations to drink alcohol, raise a disturbance or be exposed to harmful environment influences," which are vague and contain subjective and normative factors that depend on the judge's personal values.<sup>15</sup> Also, it is impossible to know whether a crime-prone juvenile sent to a juvenile reformatory receives appropriate education appropriate for a crime-prone juvenile that is different from that for other juvenile delinquents, including those under the age of criminal responsibility. In such a reality, the provisions of the

Juvenile Act seriously undermine the principle of *nulla poena sine lege* and also goes against the principle of equality before the law, as juveniles who are identified as crime-prone juveniles receive treatment within the same scope of protective dispositions as juveniles who have actually violated the law or are under the age of criminal responsibility

19. In addition, the Juvenile Act stipulates that a guardian or the head of a school, a social welfare organization, and a probation office that has identified a 'crime-prone juvenile' may notify the competent Juvenile Department. It has been reported that some child-care facilities, which are responsible for protecting children and adolescents who have been orphaned, etc., report children they are unable to take care of to the court as "crime-prone juveniles".
20. Although the Committee has already recommended the repeal of such provisions on status offences to States parties, they remain in effect in the ROK. Even in 2015, the Seoul Metropolitan Police Agency stated that it would actively utilize the crime-prone juvenile transfer system for those who have run away from home and are exposed to various types of crimes.<sup>16</sup>

**<2018. 10. 28. C Interview>**

e: Of course, kids fight a lot. They hated that place. (...) They caused problems both outside and inside, so it was hard for teachers to do anything. So the teachers acted to speak to the director or the nun to send a notice. I don't know when it started, but a boy who lived with me suddenly was sent to the court. I didn't know what's going on. Then I was sent to the court. Of course, I have stolen a small amount of money or something there, but there has been no crime or anything like that outside.

r: Then why did you go?

e: I was in much trouble with kids and teachers there, and I was so young that I did something like stealing.

r: Only in there?

e: Yes, almost.

r: So, when you were in the second grade of middle school, did they file a notice to the court juvenile department because you were having a bad relationship with teachers and the kids and you took things and did something like this there?

e: No matter how much I say I haven't done anything wrong, the judges go ahead with the trial just by

looking at the verdict (\*the notice form).

(...)

e: I mean, the notification system is so ridiculous, not a big deal, and even if I talk to the kids I grew up with now, they don't know why they went.

r: Did you know your own reason?

e: No, I didn't know my reason, either. So I said in court that I never did.

r: What did the judge say?

e: Judges were obviously angry.

r: What did they say and get angry?

e: They were angry by saying like this : 'Don't you know what you did?'

- Repeal Article 4, Paragraph 1, Subparagraph 3 of the Juvenile Act on 'crime-prone juveniles'.

### **Change of disposition**

21. It has been reported that the head of an entrusted protection facility (No. 6 facility) requested a change of disposition for an entrusted juvenile who shifted his own duties onto other juvenile detainees. The head of the facility filed the request based on written statements gathered from the victims, and the accused juvenile was suddenly put into a car without being warned of the actions committed and was transferred to the Juvenile Classification Review Board, with the case being sent to the Juvenile Department. The juvenile was informed about the reason for these measures (his behavior) and about the victims' statements while being sent away. The juvenile asked the court-appointed assistant to show him the victims' statements, but the request was denied and the juvenile was entrusted to the Juvenile Classification Review Board without knowing precisely who the accusers were and what damages they had claimed. The basis for the request for change of disposition of the protected juvenile by the head of the juvenile protection facility was Article 37 of the Juvenile Act.

22. No. 1 and No. 6 facilities are social welfare facilities that do not have the authority to impose disciplinary action even on juveniles who do comply with the regulations of the facility, and they must provide explanations and educate the juveniles about their

incorrect behavior. However, the facilities are using the change of disposition as a means of discipline to compensate for their inability to educate the juveniles<sup>17</sup>.

23. Meanwhile, the heads of most facilities submit the request for disposition change after first expressing their intent by telephone to the judge of the Juvenile Department, which allows for the premature judgment by the judge, and the requests for disposition change are often not objective and may even be exaggerated or include falsified claims to achieve the change of disposition. Most Juvenile Department judges, however, do not go through the process of verifying the facts with the protected juveniles and the request for disposition change is approved in almost all cases. As such, the protected juveniles are not able to fully exercise their right to defense in the process of disposition change, and the decisions for disposition change are frequently made based on the unilateral claims of the facility.

**<2018. 10. 29. A, B Interview>**

r: Have you seen any dismissal cases when they applied for a Change of disposition?

e2: Oh, dismissals? No, it all worked (It means that the change of disposition is all quoted).

- |   |
|---|
| <ul style="list-style-type: none"><li>● Ensure that detailed descriptions are included in applications for disposition change and that the juvenile's right to defense, including the right to appeal, is fully guaranteed during the hearing process.</li><li>● Allow juveniles being transferred to the court due to the request for disposition change to be informed of the reason for the disposition change in advance.</li></ul> |
|---|

**D. Social inquiry reports: The right to know and to appeal**

24. Article 12 of the Juvenile Act stipulates that when a Juvenile Department judge conducts an investigation or hearing, he or she should take into account the diagnosis of experts, classification review results and opinions of the Juvenile Classification Review Board, and investigation results and opinions of the probation and parole office. In fact, such information in juvenile cases have a crucial and significant impact on the court's

decisions on dispositions. Nevertheless, a juvenile undergoing a social investigation will be tried without being aware of the findings. This is because the results of social investigations are often submitted just before the hearing for juvenile cases (usually five days in advance), so the persons concerned or counsel (assistant) cannot actually apply for the transcription of the social investigation results.

25. Particularly, in the case of a juvenile who is in pre-trial detention and under review by the Juvenile Classification Review Board, there is no room for an attorney to be present in the classification review or in the investigation by the court carried out through an investigator. Thus, if the social investigation report does not include the statements of the juvenile or contains information that can be used against the juvenile concerned, the juvenile cannot exercise his or her right to defense.

- Guarantee the right to know by ensuring that the juvenile and the juvenile's counsel has access to the results of the investigation on the juvenile before the disposition decision is made, and adequately ensure the juvenile's right to defense.
- When conducting a social investigation on a juvenile, ensure the presence of assistants such as an attorney.

### **E. Participants in the juvenile justice procedures: The need for increased expertise and training**

26. For children in conflict with the law, the police have separate departments for female youth, but there is a lack of sensitivity and understanding of the rights of the child. For example, there is a lack of expertise on the rights of the child in the investigation process, such as the use of sexually exploited children for prostitution sting operations<sup>18</sup> or considering children from single-parent families to have a high risk of re-offence.<sup>19</sup>

27. Not only are there few judges designated to juvenile cases, but they are rotated out after two years of work, and the term is four to six years even for a specialized judge. The longest term in history for a judge designated to juvenile cases was eight years,<sup>20</sup> which means most of judges in juvenile cases have far less experience and are unable to

continuously build their expertise. The family court investigators are often in charge of household affairs.

28. Training is provided every year for court-appointed assistants, but it is mandatory only for new-coming assistants and there is no additional training course to strengthen the expertise of those who have become appointed as assistants. According to a 2016 survey, 91.6% of the court-appointed assistants answered that regular training was necessary, and the areas of training requested were juvenile delinquency (92.8%), counseling (90%) best practices (83.1%), and the judicial system (81.2%).<sup>21</sup> Although there are lawyers or experts in child working as court-appointed assistants, they lack education expertise or legal expertise respectively.

- The Government should implement training and education to ensure that the police officers responsible for investigations have awareness and expertise in the right of the child.
- Additional expert investigators and juvenile judges should be assigned, and training programs should be provided to foster them into specialists.
- Implement regular training for all court-appointed assistants and develop various training programs according to the experience and needs of the assistants.
- A pair of lawyer and expert in child should be organized for court-appointed assistants.

#### **F. Legal provisions on child protection facilities and the Juvenile Classification Review Board**

29. As a transitional protective disposition, juveniles may be entrusted to child welfare institutions under the Article 50 of the Child Welfare Act (Article 32, Paragraph 1, Subparagraph 6 of the Juvenile Act). However, most child welfare institutions are operated by private or religious organizations, thus their operation methods differ depending on the nature and standards of the operators. At present, there are seven child welfare institutions, which all have different operating standards, that have been entrusted with juvenile protection. However, facilities are operated based on the

individual know-how of the personnel. Therefore, the National Human Rights Commission of Korea (NHRC) has visited facilities and found that human rights violations occur often, including the right to live.<sup>22</sup> Meanwhile, the Ministry of Health and Welfare, which is the competent agency, or local governments do not have obligations or the authority to systematically monitor child welfare institutions on a regular basis, and they have not been able identify infringements of human rights in institutions, such as overcrowding and the restriction of basic freedoms.<sup>23</sup>

**<2018. 10. 28. C Interview>**

r: I thought that child welfare institution (No. 6) is not different from an institution (No. 1), am I right?

e: Absolutely not, I couldn't go to school. I couldn't make a friend in school. So I have no one to befriend.

If I had a friend then I could hang around with them, though. I knew only older people than me.

30. As the current "Act on the Treatment of Protected Juveniles, etc." stipulates only the duties of the Juvenile Classification Review Board and allows for the same treatment of children entrusted to the Juvenile Classification Review Board and protected in juvenile reformatories, there is a high possibility for the rights of the children under classification review who have not been convicted to be violated. Such possibilities for human rights violations can undermine trust in the investigation and diagnosis of the Juvenile Classification Review Board.<sup>24</sup>

- An operating regulations and guidelines shall be provided to ensure that the child welfare institution works properly as a transitional protective disposition facility and the relevant regulations shall be established so that the relevant department can regularly monitor it.
- Regarding the operation of the Juvenile Classification Review Board and treatment of the entrusted children, independent regulations should be established separately from the Act on the Treatment of Protected Juveniles, etc. so that entrusted children to the Juvenile Classification Review Board may receive more favorable treatment than those in juvenile reformatories.

## **G. Protection of women and other minorities**

31. General Comment No. 10 of the Committee on the Rights of the Child suggests that all necessary measures should be taken to ensure that all children are treated equally. However, the current "Juvenile Act" and the "Act on the Treatment of Protected Juveniles, etc." do not provide for the active participation of minority children in juvenile justice procedures or for them to be not treated less favorably than non-minority children.
32. There are no provisions for prohibiting from discrimination against disability, LGBTI, migrant or children who do not speak Korean as their first language, in the juvenile Act and Act on the Treatment of Protected Juveniles. And also, there are no provisions for reasonable accommodation for them neither. For instance, according to statement of children, there are no education programs or television programs provided for children whose first language was English. And There was no translation or translator for Chinese speaking children when he was in Juvenile Classification Review Center. When he was harassed by his peer, he could not ask help to officers in Korean.

**<2018. 10. 29. A, B Interview>**

r: Do you know children with migrant background when you entered? Anyone came from Southeast Asia or other countries?

e1: I know someone.

r: who?

e1: A Chinese.

r: Was there A Chinese? Could he speak Korean well?

e1: No, not at all.

r: In a reformatory? Or?

e1: Juvenile Classification Review Center.

r: How was he doing?

e1: He couldn't make friends.

r: He might need Korean translator since he couldn't speak. Did they provide?

e1: No, there was no translator.

r: So he saw and followed others for living or eating?

e1: Yes.

r: Even they provide education and TV program in Korean only?

e1: Yes, together.

(...)

r: Was there any consideration for him?

e1: At least no one asked him a question, since he couldn't understand.

r: Was it a consideration? Asking no questions?

e1: No one asked a question and there was nothing special.

(...)

r: You know that there is explanation session regarding regulations and so on. How did facilities do?

e1: They did, but he might not catch up. There was no translator, and no one could be. There was nobody who can speak both Korean and Chinese, neither teachers could.

(...)

r: Did you notice that he had difficulties?

e1: Yes.

r: What kind of difficulties?

e1: He was bullied.

r: How? By boys? Can you explain me in detail?

e1: Although he came from China, he had a tattoo. But it wasn't cool to my friends. Well it may be trendy in China, though. So, we bullied him so much and we didn't get along with him.

r: Bullied him in Korean, although he couldn't speak Korean at all.

(...)

r: But he could not report it to teachers, since he could not speak Korean?

e1: Yes.

33. There are only two<sup>25</sup> female juvenile reformatories out of 10 in the country. Among them, only one<sup>26</sup> admits juveniles who have received long-term dispositions of more than six months, thus inevitably leading to overcrowding. In addition, this causes the female juveniles to be accommodated far away from their homes, resulting in difficulties for visiting family members and severed relationships.

- Establish provisions of prohibiting from discrimination and the right to reasonable accommodation for minority children, so that they can be treated less disadvantageous than others in Juvenile Act and Act on the Treatment of Protected Juveniles.
- Establish guidelines, programs, and facilities in child welfare facilities for minority children to ensure that they are no more disadvantaged than other children.
- Provide information on and implement specific plans for facilities and programs of

female children.

## **H. Deleting criminal records and prohibiting access thereto**

34. The "Juvenile Act" prevents the child's delinquency and protective disposition from affecting the juvenile's future status.<sup>27</sup> and the "Act on the Lapse Criminal Sentences" allows criminal records to be accessed only for limited reasons defined by the law.<sup>28</sup> However, the investigative authorities keep records of the child's investigation for the convenience of investigation.
35. Meanwhile, the persons in charge of hiring in companies or government agencies that deal with certification require applicants is to directly access and submit their criminal records (investigation records). In fact, there was a complaint about difficulty to have a job because of a company asked for investigation records. Applicants cannot easily refuse these demands and tend to give up on applying for employment. This practice is an obstacle for adults returning to society after the termination of the juvenile protection case.

- Delete the criminal and investigation records in juvenile protection and juvenile criminal cases after certain period of time.
- Create effective punishments for acquiring criminal records (investigation records) through the individual concerned.

## **IV. Violation of the rights of the child in the investigation and trial process**

### **A. Violation of the rights of the child in the investigation process**

#### **Coercive investigation of the child by investigative agencies**

36. Children have been exposed to various human rights violations during investigations. The media and other organizations, such as the court, have revealed various cases of human rights violations against children in investigations such as forced false testimonies,<sup>29</sup> arrests in violation of due process, detention and late night interrogation,<sup>30</sup> violence, verbal abuse,<sup>31</sup><sup>32</sup> unnecessary use of handcuffs,<sup>33</sup> inducing false confessions,<sup>34</sup> interrogations during class.<sup>35</sup> Considering that human rights violations in the investigation process are not often exposed, there seem to be many more undisclosed cases.

**< The Excerpt Child Interview<sup>36</sup>>**

r: Just because you crossed your legs and used cell phones?

e: Yes. He kicked the chair and swore.

r: Kicked and swore... How did he swear? Do you remember?

e: I don't remember specifically.. I am sure that he swore and asked me to sit upright.

**< The Excerpt Child Interview<sup>37</sup>>**

e: When I arrived, he swore my parents...

r: How did he swear your parents? Could you tell me more specifically?

e: He said, "Did your parents raise you like this?" "Why did your parents poorly manage you like this?" and then he swore at me by saying "Where's your manners? dickhead."

**<2018. 10. 29. A, B Interview>**

r: What kind of swear words did the police use?

e1: Can I say it? They said "Speak right now, you son of bitch" "motherfucker" "dickhead," and so on.

r: When did the police swear?

e1: They swore when they were frustrated. I once denied the criminal fact. Then the police beat around the bush by repeatedly asking the same question about the criminal fact to me about 5 times. I was upset about that. So I banged the desk and shouted "I really did not do that." Then the police swore.

r: What did the police say?

e1: He said, "Sit down motherfucker"

37. Children are also exposed to the risk of criminal penalties for coercive investigation. According to a 2012 case study, the false confession rate for children was 30.6%.<sup>38</sup>

Recently, it was revealed that a child was who subject to coercive interrogation by a police officer provided a false confession and served 10 years in prison for murder by retrial after 16 years from the incident.<sup>39</sup>

**<2018. 10. 29. A, B Interview>**

r: Did you hear anything like, “If you don’t say, then you will be more harshly punished.”

e1: Yes.

r: How did the police say?

e1: (...) He explained me that the right to remain silent was saying nothing. He said that I would be more harshly punished at the court, if I exercise the right to remain silent.

r: Did he say this at the end or the beginning of the investigation?

e1: He explained the right to remain silent to me like that

r: At the beginning?

e1: Yes.

**<2018. 10. 29. A, B Interview>**

e1: Even though I denied the allegation, the police repeatedly asked me the same questions to get my answer “I did it.”

r: How did you feel like? Did you feel like you should say “Yes, I did it”?

e1: I said “Yes, I did it” at the end (...)

- Conduct a survey on the situation of human rights violations in the investigation process for children and establish effective measures, including the mandatory recording of testimonies, to eliminate unjust investigation practices such as verbal abuse, intimidation, violence, high-pressure interrogation (forced confessions), and appeasement of investigation agencies.
- Ensure prompt and efficient procedures for lodging complaints regarding human rights violations in investigations of children, and punish the persons responsible for human rights violations and ensure appropriate compensation for victims.

**Lack of support from the guardians in the investigation process**

38. Recently, a child committed suicide while under investigation for stealing four packs of cigarettes (damage of approximately 16 USD). The child's guardians found out that the child had been under investigation only after the child committed suicide.<sup>40</sup> In this case, no contact was made with the guardian. Article 211 of the Rules on Criminal Investigation stipulates that guardians shall be contacted when their children are investigated, but it does not require guardians to participate. Because the participation of guardians is not guaranteed in the investigation process, the child will be investigated in an unstable condition without psychological and emotional support from the guardian. Even if the child is exposed to various human rights violations and unfavorable treatment, there are no ways to adequately file complaints.

- Ensure the guardians' involvement in the process of investigating children as a principle, except when it is considered inappropriate for the best interests of the child.

### **Lack of support from court-appointed assistants and public defenders to the child**

39. The Criminal Procedure Act<sup>41</sup> allows the participation of a person with whom the child has a confidential relationship in the investigation process for the psychological stabilization of the child and to facilitate communication, but does not include provisions on public defenders or court-appointed assistants for the initial stages of investigation for children. In the early stages of investigation, most children who have violated the law are without proper legal representation, which creates a risk of not being able to exercise the right to defense when the child is forced by the investigative agencies to make self-incriminating statements or false confessions.

- Introduce a system that allows all children in conflict with the law to be assisted by public defenders or court-appointed assistants from the early stages of the investigation.

### **Need for increased expert participation in investigations**

40. The police are operating 'Expert Participation System for Juvenile Crime Investigations', which involves the participation of psychology experts, such as criminal psychologists, in the process of investigating juvenile offenders according to Rule of Juvenile Affairs Article 23 to 25. The experts analyze factors that trigger delinquency and administer personality tests to and either refer the juveniles to appropriate programs or dismiss them. As of 2016, only about 20.1% of children who have violated the law have benefited from this system.<sup>42</sup>

**<2018. 10. 29. A, B Interview>**

r: Do you want to recommend 'expert participation system' to others?

e1: Yes. I think the system is good. It will be better if the system exists at schools.

- Expand the use of the expert participation system in the investigation so that all children who are in conflict with the law are guaranteed professional participation in the investigation process.

**Prolongation of the investigation process**

41. The investigation process for children is time consuming, which causes difficulties in daily life, including school life, and emotional anxiety for the children. According to a domestic study,<sup>43</sup> the average time spent<sup>44</sup> from the day the child was booked by the police for violating the law until the case was sent to the prosecution was 48 days on average and 285 days at the longest. The time it took for the case to be transferred from the prosecution to the Juvenile Department was 34 days on average and up to 412 days at the longest.<sup>45</sup> Due to the prolongation of the investigation process, there are concerns that the child who had been living a normal life suddenly suffer from the burden of criminal proceedings.

**<2018. 10. 29. A, B Interview>**

e2: He asked me to come for the investigation on around January 2018(...) The incident was in September 2017.

r: You might have been nervous, since you had been living a normal life.

e2: Of course. I was nervous.

r: Are there any effects on your life if the investigation process is prolonged?

e2: so nervous. I wanted the investigation process to be ended soon...

- Take necessary legislative and administrative measures to ensure that the child's investigation process is carried out in a prompt manner.

### **Diversion programs outside the system**

42. The case of a child who has violated the law and is 14 and over and under 19 years of age will be sent to the prosecution, except in cases that are subject to summary judgment,<sup>46</sup> which includes a fine of up to 200,000 KRW (175 USD), penal detention, or minor fine. In other words, even minor cases are sent to the prosecution, so it is difficult to participate in a diversion program that does not depend on the judicial procedure.

43. Meanwhile, in practice, the police operate a diversion program that does not have any legal basis but is based on their own regulations, such as the Rules on Juvenile Police Duty and Rules on Criminal Investigation. This does not rely on judicial procedures and takes the form of dismissals. This way, if the suspects are dismissed arbitrarily without any legal grounds, it is difficult for the diversion program to be operated reliably because it is affected by the negative press or police trends regarding the case of the child. However, legislative attempts nor relevant discussions have been carried out.

- Establish legal grounds for dismissals by the police, and make available other diversion programs. Additionally, the standards and guidelines should be made to ensure that the appropriate dismissals by the police should be done based on Children's human rights and the education and training programs on Children's

human rights should be institutionalized.

## **B. Violations of the rights of the child in the trial process**

### **Problems with hearings in the criminal trial process**

44. In the ROK, the trial for a child who violates the law proceeds with procedures for either a criminal case or juvenile protection case. In the latter, special protection under the Juvenile Act is applied. However, in the former, there are discriminatory aspects as the Criminal Procedure Act is applied in principle and the Juvenile Act is only partially referenced.
45. In the criminal trial process, Article 24 of the Juvenile Act, which stipulates that the trial shall not be made public, is not applied and the hearing is held in public. As a result, children in the criminal trial process may have their private lives exposed to the general public, including the audience, and this violates the child's right to development.
46. In addition, even though there should be consideration for the unique characteristics of the child by strictly adhering to the presumption of innocence in criminal trials, due to the nature of the trial itself, trials are proceeded in a punitive atmosphere where punishment is presupposed. However, Article 58 of the Juvenile Act<sup>47</sup> merely declares precautions to be taken in criminal trials in an abstract manner and does not specify detailed standards or restraint devices.

- Take legislative and administrative measures to ensure a criminal trial process that is in line with the best interests of the child, such as introducing the principle of private trials, human rights-sensitive trial proceedings based on children's rights, and the system to monitor the trial proceedings (i.e., recording the statements of all stakeholders in the trial process).

### **Problems with transfers for criminal disposition, etc.**

47. Article 7, Paragraph 1 of Juvenile Act gives the Juvenile Department judge the authority to decide, given that the motives and nature of the crime committed by the child make criminal disposition necessary, whether the case should be treated as a criminal case and sent to the competent prosecutor's office. Such decisions should be made carefully because it can violate the right of the child to juvenile judicial proceedings. The decisions, however, are made by Judges based on their discretion without certain criteria. Therefore, there are lots of concerns that the decisions are abused against the interests of the child. In practice, these decisions are often used in juvenile protection cases where the child does not make a confession and claims innocence.<sup>48</sup> In addition, the Juvenile Act does not provide any procedures for appeals, which makes it impossible for the child to appeal the decision.

- Provide detailed statistics, such as the number of transfer decisions and their grounds made in accordance with Article 7, Paragraph 1 of the Juvenile Act, and take legislative and administrative measures to ensure appeals for transfer decisions and to establish detailed criteria on transfer decisions for the prevention abuse thereof.

### **Effectiveness of the recommendation of compromise system**

48. Although Article 25-3, Paragraph 1 of the Juvenile Act sets out the court's recommendation of compromise system as part of restorative justice, it is not well utilized in practice due to the lack of expertise and experience of judges.<sup>49</sup> Only 259 recommendations of compromise cases were made in five years, from July, 2010 to July, 2015.

- Investigate and provide information on the actual use of the recommendation of compromise system stipulated in Article 25-3 of the Juvenile Act, and prepare measures to promote it as an effective system for realizing restorative justice.

## **Problems with hearings in the juvenile protection trial process**

49. Article 25, Paragraph 1 of the Rules of Juvenile Trial that the judge of the Juvenile Department shall notify the juvenile of the facts of the delinquent act and give the juvenile opportunity to make statements that would aid his or her interests. However, the above provisions are not upheld in practice. In actual hearings, the judge rarely notifies the juvenile of the facts of the delinquent acts in a proper manner, and instead asks brief questions such as "You know what you did wrong, right?" This, in principle, goes against the Compendium on Court Practice<sup>50</sup> which requires judges to read the outline of the delinquent acts in the warrant of transfer or investigation report and provide the juvenile with at least a summary.

### **<2018. 10. 28. C Interview>**

r: Did the judge say, "You know what you did wrong right?"

e: Yes, he said like that. He was just like parents who are admonishing their children

r: Is it true that the judge did not explain or clearly read what you did wrong

e: Yes, it is. I could not understand the situation...

50. Juvenile trials for entrustment to the Juvenile Classification Review Board usually end with one trial for entrustment and another trial for disposition after entrustment.<sup>51</sup> Both on the first trial date for entrustment and the second trial date for disposition, the child is usually not given an opportunity for rebuttal. In practice, the judges often engage in inappropriate behavior such as scolding the child after pointing out his or her wrongdoings, forgiving the child but threatening to issue the most severe punishment if he or she is caught again, and sometimes the judge even shouts at the child. If the child makes a statement that is in his or her own interest, the judge considers the child to be unremorseful and goes on to entrust the child to the Juvenile Classification Review Board through temporary measures or issue heavier punishments.<sup>52</sup> In the Juvenile Court of ROK, which is quite different from the Criminal Court of ROK,<sup>53</sup> the child stays in front of the judge and the court-appointed assistant stands between the judge and the child. Therefore, the Judge can look down on the child. This kind of

arrangement leads to the atmosphere that the judge scolds the child, and the assistant cannot help the child even though the judge actually scolds the child.

**<2018. 10. 28. C Interview>**

r: Have you ever seen the judges who were angry?

e: Yes. The judge was angry, but I do not remember how the judge reacted...

r: Frowning at you, admonishing you by saying “You don’t show any regrets”, right?

e: yes

51. Juvenile trial hearings are very short. In most cases, they end within five minutes. One judge said in an interview that trials usually take three to four minutes, which has led to juvenile trials being referred to as ‘instant noodle’ trials.<sup>54</sup>
52. As described above, juvenile protection trials are often conducted inadequately because they are based on the ex officio principle. There are many cases where the child is unable to accept the disposition and left feeling victimized. This goes against the principle that the trial process should provide for opportunities to deal with children in conflict with the law by using social and/or educational measures taking into account the special needs of the child (General Comment 10<sup>th</sup>, 2007, paras. 28, 40).
53. In addition, in juvenile protection trials, even if there is no evidence other than the confession of the child, a protective disposition may be imposed on the judge's authority. This may result in unreasonable protective dispositions based on false confessions. In the absence of evidence other than a confession, there are concerns that the procedures could be abused to punish the child by avoiding a criminal trial where the child may be found innocent.
54. In a case where a court-appointed assistant is designated, the juvenile protection trial shall be held under the aid of the court-appointed assistant, as the assistant is required to be present at the hearing, pursuant to Article 24, Paragraph 2 of the Rules on Juvenile Trials. However, in other cases, the hearing of the juvenile protection trial may be

proceeded with only the child and without the child's guardian or assistant, thus leaving child without assistance in the hearing process.

- Ensure that the judges notify the child of the facts of the delinquent act and that that the child has sufficient opportunities to provide a counter-argument.
- Establish legislative and administrative measures, such as introducing guidelines restricting the trials proceeding in inappropriate manner, and compulsory recording of the trial process, and so on.
- Establish effective measures to provide sufficient time for juvenile protection trials to enshrine the child's right to express opinion considering his or her age and his or her developmental characteristics by providing effective measures such as increasing judges of the Juvenile Court and developing related guidelines, inadequate facilities, etc.
- Introduce in the juvenile protection trial process the criminal justice principles on examination of evidence such as the rule of corroboration of confessions, hearsay, and the exclusionary rule for illegally obtained evidence to ensure the fairness in justice.
- take legislative and administrative measures to ensure that juvenile protection trials should be done with attendance of the child's guardians or assistants.

### **Excessive discretionary authority in protective dispositions and lack of explanation thereof**

55. The protective disposition according to Article 32 of the Juvenile Act depends on judge's discretion and there are no rules, guidelines, etc. on the ruling criteria of judges.

56. Since the decision on protective disposition depends entirely on the discretion of the judge, there is a need to inform the child of the grounds for the protective disposition in detail. Although Article 2, Paragraph 2 of the Rules on Juvenile Trials stipulates that the grounds shall be stated in the decision, the reasons for the decision are described as a formality in practice, therefore the child who receives the protective disposition and the child's guardian are often unable to accept the reasoning.

- Establish criteria or guidelines that can be considered when the judge exercise discretion in protective dispositions, and ensure that the grounds for the decision are clearly stated in the decision so that the child can understand the decision sufficiently.

### **Inadequate court-appointed assistant system**

57. The Juvenile Act allows eligible persons, such as attorneys, to be selected as court-appointed assistants only if the child is entrusted to the Juvenile Classification Review Board through temporary measures. Article 17-2 Paragraph 2 makes exceptions in cases where ① a juvenile is suspected to be a physically or mentally disabled person, ② a juvenile cannot appoint an assistant because of poverty or for other reasons, and ③ a judge of the Juvenile Department deems an assistant necessary, but most children who are not entrusted to the Juvenile Classification Review Board cannot receive legal assistance from assistants.

58. In addition, when a court-appointed assistant is designated after a child is entrusted, the child and guardian are not informed in writing of who was selected as the assistant, so the child and guardian cannot know who the assistant is without a meeting or making contact. There are also cases in which assistants are appointed late by the court, and in this case the child's right to counsel is violated because the child cannot effectively benefit from the support of the court-appointed assistant.

- Guarantee all children's right to counsel by introducing the system of a mandatory court-appointed assistant for all children.
- Ensure that court-appointed assistants are designated in a timely manner by stipulating the time period in the law, and allow the child and child's guardian to effectively exercise the right to counsel by immediately providing information on the assignment of the assistant to the child and child's guardian.

## **Restrictions on access and transcription of records**

59. Article 30-2 of the Juvenile Act allows the records and evidence of juvenile protection cases to be accessed or transcribed only with the authorization of the judge of the Juvenile Department, and as an exception, an assistant is allowed to view the records and evidence of the juvenile protection case without permission after the decision for the commencement of the trial has been made. In practice, however, most cases require the permission of the Juvenile Department judge because the transcribing the records are necessary. In order for an assistant to provide appropriate assistance to the child, it is necessary to access and transcribe the documents and evidence before the hearing begins.
60. Furthermore, access to records is limited even for the concerned child. There was a case in which a child residing in a child welfare facility requested the access and transcription of the child's case record to find out the reason for the disposition, but was denied authorization.<sup>55</sup> In the above case, when the child filed a complaint, the court replied that the decision to grant access to records was entirely at the discretion of the judge.

- Ensure in principle the right of the assistant and the child to access and transcribe trial records.

## **Restrictions on the right to appeal**

61. Although appeals and re-appeals procedures are guaranteed in juvenile protection trials, they are not used in practice. When looking at the statistics from the past five years, there were 180-250 appeals and only 3-24 re-appeals, and only 1.5-10% of them were accepted.<sup>56</sup>
62. The reason for low rates of appeals and re-appeals is that they do not actually serve as a remedy, but it is also due to appeals and re-appeals are impossible without the

assistance from guardians. Furthermore, there are reported cases that children who raised appeals and re-appeals were transferred to another juvenile reformatory without any explanation from the facility, which seems to be a retaliatory measure for filing the appeal.

**<2018. 10. 28. D Interview>**

r: Is the parents' assistance necessary if child try to raise appeals or re- appeals?

e: We cannot do it in alone. It should be done by parents, outside.

r: You mean that child in the facilities cannot raise appeal inside. Right?

e: I am not sure, it is possible inside... however I think it is not possible inside.

(...)

r: Do you know that children who raised appeals and re-appeals were transferred to other juvenile facility?

e: Yes, I know. Most of them were transferred to other juvenile facilities.

(...)

r: Where did the transferred children go?

e: The place which is far from here.

(...)

r: You told me that you saw about 10 children who raised appeals or re-appeals. How many of them were transferred to other juvenile facility?

e: Two children's appeals were accepted, one had remained in the facility, and others were all transferred to other juvenile facility

63. In addition, Article 46 of the Juvenile Act stipulates that the execution of ruling shall not be suspended by the appeal. Indiscriminately denying the suspension of execution during the appeal period may result in irreversible consequence for the child.

- Research on ways to ensure the effectiveness of the appeal system and put a specific investigation on children's actual exercise of the appeal system.
- Revise Article 46 of the Juvenile Act which completely denies the effect of the suspension of execution when the child files an appeal.

**Insufficient provisions on compensation for pre-trial detention**

64. According to the statistics from the past five years,<sup>57</sup> 2.0-3.8% of the children who were in pre-trial detention at the Juvenile Classification Review Board as a temporary measure received non-commencement of trial or non-disposition decisions. However, there are no legislation to compensate those children. Even though the Juvenile Classification Review Board has been used as a detention, it is wrong that there is no compensation for those children due to the absence of legislation.

- Introduce a system through legislation that provides adequate compensation for the infringement of physical freedom of a child who was in pre-trial detention and received non-commencement of trial or non-disposition decisions as a result of non-delinquency.

### **Prolongation of the trial process**

65. Similarly, as mentioned above, the juvenile protection trial process is also time consuming. According to a domestic study, the average time spent from the transfer of the case to the Juveniles Department up to the ruling was 105.5 days, and 440 days at the longest,<sup>58</sup> which raises concerns on the child's right to a prompt trial.

- Establish effective plans, such as legislative and administrative measures, to ensure that the generally long-running trial process takes place in a prompt manner.

## **V. Pre-trial detention**

### **A. Overview of pre-trial detention**

#### **Insufficient education**

66. Proper educational treatment is not being provided in the current pre-trial detention rooms in detention centers or prisons and in the juvenile classification review board, and this leads to gaps in the education of juveniles in school and in compulsory education. This does not comply with international standards<sup>59</sup> which state that children in pre-trial detention, as with children already in detention, should be provided with opportunities for paid labor, education and training, and means for leisure and cultural life. Rule 13.2 of the UN Standard Minimum Rules for the Administration of Juvenile Justice provides that ‘while in custody, juvenile shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality’.

- Establish the diagnosis and observation of the juvenile as an important goal of pre-trial detention, with a view that pre-trial detention is the beginning of the social rehabilitation process. Also, prepare educational programs for juveniles in pre-trial detention so that their studies are not interrupted.
- In particular, enact separate provisions in the Juvenile Act on the treatment and education of pre-trial detainees. And ensure to treat each juvenile according to individual needs, and conduct studies on the principles of pre-trial detention and share them among the persons in charge so that their capacities and quality of service are enhanced.

### **Problems with detention in facilities**

67. Detention in facilities has negative effects on children such as anxiety, fear, depression etc. In the case that the head of a child-care facility reported a child to the court as crime-prone juveniles, he had been transferred in force without explanation to an entrusted protection facility - a child welfare institution (No. 6 facility) and was transferred to the Juvenile Classification Review Board for 4 weeks, after being tried in the Juvenile Department and finally was indicted receive protective disposition to an entrusted protection facility (No. 6 facility) again. The child stated that he was very shocked and being anxious on pressure in the Juvenile Classification Review Board.

**<2018. 10. 28. C Interview>**

r: Then you were first sent to the Juvenile Classification Review Board right away?

e: No, I was first sent to \*\*\*\*\*(a child welfare institution (No. 6 facility))

r: Does the system work like that?

e: Just in my case. Suddenly they took me there and I was waiting in the facility in custody till the trial is open.

r: How did you feel?

e: I kept crying every night because I was scared. The facility was different from the place I stayed before, like older brothers with tattoo in their arms etc.

(...)

r: How did you feel in the Juvenile Classification Review Board?

e: Feeling very nervous all the time

r: Trying not to go to No. 10 facility?

e: Yes.

(...)

r: What was the most difficult thing in the Juvenile Classification Review Board?

e: It was hard to staying there itself.

68. Pre-trial detention of the juvenile has also the side effect of the juvenile being able to learn about the means and methods of crime. At present, the juvenile classification review consists of detention classification reviews and counseling interviews<sup>60</sup>. Statistics confirmed that more juveniles go through detention classification reviews than counseling interviews.<sup>61</sup> Minimize the negative consequences of the detention classification review by introducing an alternative system.

- Refrain from imposing unnecessary pre-trial detention and provide alternatives to institutional detention, such as home pre-trial detention, daily or evening reporting centers, dormitories, and surrogate homes.
- Provide alternatives to detention classification reviews such as weekday attendance classification reviews or weekend attendance classification reviews system.
- Utilize the above alternatives flexibly and appropriately by classifying juvenile

delinquents as first-time or non-serious second-time offenders, juveniles who should not receive immediate disposition or have failed to receive immediate disposition, or more serious offenders.

### **Long-term detention**

69. If a juvenile court transfer disposition is issued from the beginning, temporary measures may be issued for the entrustment to the Juvenile Classification Review Board within two months. However, if the case is sent to the Juvenile Department after indictment by the prosecution and the ruling of the criminal court (Article 49 Paragraph 1, Juvenile Act<sup>62</sup>), the judge of the Juvenile Department typically decides to entrust the detained juvenile to the Juvenile Classification Review Board, which leads to the excessive prolongation of the pre-trial detention. In extreme cases, the child is indicted by the prosecutor and then detained for six months during the first instance trial and four months during the second instance trial, and then receives a disposition for transfer to the Juvenile Department and becomes entrusted to the Juvenile Classification Review Board, which can restrict personal freedoms for up to 12 months. There was a case<sup>63</sup> of protected juvenile who was given protective disposition after being in a detention center for a year.
70. More than half of the juvenile delinquents who have been indicted receive protective disposition instead of punishment in the courts. In 2016, 1,721 of the 3,242 juveniles (53.1%) under the age of 19 who were tried in the court of first instance were transferred to the Juvenile Department (protective disposition). In 2015, 1,981 out of 3,516 (56.4%) juveniles indicted were transferred to the Juveniles Department during the trial, and 2,082 out of the 3,574 (58.3%) juveniles charged in 2014 received the same disposition.<sup>64</sup> As a result of such dualization of the juvenile justice system, juveniles who are supposed receive protective disposition rather than criminal disposition are being held unnecessarily in pre-trial detention under general criminal procedures.

71. Therefore, we would suggest that designating juvenile courts as the single competent authority for juvenile trials. This would involve Juvenile Department judges classifying, through objective screening, cases as either requiring criminal disposition or protective disposition, and trials taking place in either the juvenile protection departments or juvenile criminal department. When it is deemed necessary to detain the juvenile before or after the commencement of the hearing, a method of conducting the classification review while admitting the juvenile in a detention facility (such as the current Juvenile Classification Review Board) or using an alternative system for the review could be utilized.

- Resolve the dualization of the juvenile justice system by setting up specialized juvenile courts.

## **B. Pre-trial detention**

### **Non-separated detention**

72. As there are no independent pre-trial youth detention facilities, children are held in detention rooms for minors in detention facilities for adults (pre-trial detention rooms in prisons or substitute cells in police stations), and there is a risk of juveniles acquiring crime information from adults and being accustomed to crime culture. This is in contradiction with Article 37 (c)<sup>65</sup> of the Convention on the Rights of the Child and Rule 13.4<sup>66</sup> of the UN Standard Minimum Rules for the Administration of Juvenile Justice.

- Establish independent detention facilities for juveniles where they are separated from adults.

### **Grounds for detention**

73. Because the Article 55, Paragraph 1 of the Juvenile Act use the ambiguous expression ‘unavoidable circumstances’, juvenile can be detained by judge’s arbitrary decision. Because most of them are outside the control of families and schools, it can be interpreted meeting the grounds for detention in the Criminal Procedure Act, such as having no fixed abode, destruction of evidence, and flight risk. This is in contradiction with the Article 17, Paragraph 1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice, which stipulates that " Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.”
74. Although detention should be avoided as much as possible since it can have a great impact on the minds and bodies and the future of juveniles who have higher levels of sensitivity, their detention rates are similar to that of adults. In particular, when looking at the rates of detention for those who were indicted by prosecutors, 4.29% of adults were detained while 15.26% of juveniles were detained in 2016. In 2015, 4.47% and 17.49% of adults and juveniles were detained, respectively. Regarding detention rates for those who were subject to a ‘request for trial’ by the prosecution, the proportion of those detained was 17.35% for adults and 24.84% for juveniles in 2016, and 19.36% for adults and 27.11% for juveniles in 2015, which shows that the detention rates of juvenile offenders are much higher than that of adults.<sup>6768</sup>

- Stipulate in the law the grounds for detention in detail and specify the grounds for detention in the Juvenile Act based on the principle of proportionality and the principle of subsidiarity, and clarify the provisions on restrictions of detention warrants.
- Establish legislation<sup>69</sup> to allow for alternative detention disposition at the time the detention warrant is filed, and provide legal mechanisms for prompt legal proceedings, especially in cases where the juvenile is detained.

## **C. Juvenile Classification Review Board (entrustment review)**

### **Overcrowding**

75. The Juvenile Classification Review Board consists of only seven institutions, which are the Seoul Juvenile Classification Review Center and six proxy juvenile reformatories (Busan, Daegu, Gwangju, Daejeon, Chuncheon, Jeju), and this has caused overcrowding.<sup>70</sup> As of the August 2017, serious overcrowding was confirmed as the average ratio of detainees to total capacity on any given day was 129% in the Seoul Juvenile Classification Review Center, 121% in the Busan Juvenile Reformatory, 123% in Daegu Juvenile Reformatory, 153% in the Gwangju Juvenile Reformatory, and 124% in the Chuncheon Juvenile Reformatory.<sup>71</sup> Thus, the situation of human rights violations is serious because entrusted juveniles do not have any private living space. And protected juveniles and entrusted juveniles are in the same place, which exposes entrusted juveniles to negative influence such as the learning of crime

- To reduce overcrowding and human rights violation, increase the number of the Juvenile Classification Review Center and improve the facilities.
- Separate the Juvenile Classification Review Board from juvenile reformatories.

### **Other infringement of the human rights**

76. Not only children are inhumanly treated when transferred to the Juvenile Classification Review Board, but also for the separation of children who violates the law and the protected juvenile, the juvenile reformatories allow the protected juvenile to use the yard for physical activities, but children who violates the law are only permitted to use the indoor gymnasium. Furthermore, the food budget for the proxy juvenile reformatories is 1,559 KRW (1.37 USD) per meal, which is much lower than the 2700 KRW (2.37 USD) per meal budget of elementary schools and children are not allowed to timely medical cure resulting in the infringement of the health right of pre-trial

detainees. Furthermore, violence, abuse and undue punishment were used as means of discipline.

**<2018. 10. 29. A, B Interview>**

e1: Never had I been handcuffed except on the way to the Juvenile Classification Review Board.

r: Handcuffed how when you were sent to the review board?

e2: handcuffed front. Lined up tied with a rope, and taking a bus.

(...)

r: Did you hear why you had to be handcuffed or tied?

e: No.

**<The Excerpt Child Interview<sup>72</sup>>**

r: How did wrist hurt?

e: I could not use my wrist at all. I could not move, but they said they couldn't help it.

(...) (in the No. 6 facility) 'It looks like inflammation, keep taking medicine', doctor said. But it was not cured. I injured my ligament but 'Since it's been a long time since it hurts, it could be an incurable'.

**<The Excerpt Child Interview<sup>73</sup>>**

e: There is a medical office in the Juvenile Classification Review Board. (...) They work improperly. (...) Even if it hurts, they just ointment. (...)

r: Then you could put on Vaseline every day?

e: No. about once in three days? (...) They set the date "Anyone go outside clinic?" We couldn't go except that day.

**<The Excerpt Child Interview<sup>74</sup>>**

e: In the new class, a child just looked at the teacher without any reason. And then the teacher asked, "Why are you staring at me?" the child answered "Sorry", suddenly the teacher grabbed his neck and dragged out, hit a lot, tied him with rope and put the cuffs on him. As a result, he was hospitalized.

**<The Excerpt Child Interview<sup>75</sup>>**

e: In the new class, when going together for a meal, two children coincidentally made eye contacts.

Suddenly the teacher dragged them, knocked down behind the cafeteria, stepped them his foot, grabbed their neck (...) the newcomer just once said hello to existing student, but the teacher hit the newcomer and “Fuck. I told you not to say hello”

r: Did you see it yourself?

e: Yes.

<The Excerpt Child Interview<sup>76</sup>>

e: When I ate, suddenly someone kicked the chair in the back, so I asked, “Could you please stop it?”.

Suddenly, he was angry with me so I paid back. (...) Then the teacher came to us and “Get down on the table” Grabbing my neck. The teacher said to me “Go into the solitary cell right now” and put me to the cell.

r: Didn’t the teacher ask you two about the story?

e: No. I tried to do it, but the teacher did not listen and said, “Go into the cell”

r: But did the other boy just go back to the room?

e: Yes. (...) he just received the penalty and go back to the room.

- Take action to ensure the health rights for the children in the Juvenile Classification Review Board.
- Improve the treatment like correcting the violence, abuse, and the unfair discipline.

77. Even if children are treated unfairly, it seems that they can’t protest because they are afraid that the classification reviewers might write badly about them. Furthermore, even if they appealed the unfair treatment to the lawyer in the Juvenile Classification Review Board, their protest is not considered from the perspective ‘the right of the child’, rather applied against their favor to the subsequent trial.

<2018. 10. 28. C Interview>

e: I asked the lawyer to show me the paper to know what I did wrong. It was different from the truth so I protested ‘why it is written like that’. The lawyer asked me, “Haven’t you acted like that?” So I answered, “I never did like that” with a blunt voice. At trial the judge scolded me “Why did you say you didn’t do it with that voice?” I said, “I just said the truth”

- Ensure the procedural rights for the children in the Juvenile Classification Review Board.

### **Classification reviewer**

78. Classification reviewer goes through about 20-30 classification documents per month on average (the manageable number of documents considered by classification reviewers is about 15 per month), and the classification reviewer has to also carry out escort duties and night shifts, making it difficult to ensure their expertise<sup>77</sup> although classification documents is the most important material at trial.

- Increase the number of juvenile classification review centers and classification reviewers.

### **Insufficient age-based consideration**

79. Juveniles at a younger age are prone to be more sensitive and susceptible to the negative effects of detention. Considering that the proportion of juvenile offenders under the age of criminal responsibility (under 14) in the total protection cases was 13% in 2018, 13.8% in 2017, 12.2% in 2016, and 11.6% in 2015,<sup>78</sup> a considerable number of juveniles under the age of criminal responsibility are entrusted for detention.

- Utilize different detention classification reviews according to age, and for juveniles under the age of criminal responsibility, ensure that they are entrusted to child welfare facilities and provide more opportunities to participate in hearings.

### **Vagueness of the grounds for entrustment (extension), absence of the right to appeal**

80. The Juvenile Department judge may issue temporary measures (Article 18 of the Juvenile Act) only on the grounds that it is deemed necessary for the investigation or trial, and the entrustment to the Juvenile Classification Review Board (including cases where the initial decision and latter decisions were changed) account for around 50%<sup>79</sup> of the total temporary measures. Therefore, imposing such measures when 'deemed necessary for the investigation or trial,' an ambiguous condition, gives the judge wide discretion and results in depriving the entrusted juvenile of physical freedom and educational, economic, and social rights without clear standards. What is more alarming is the fact that the concerned juvenile, guardian, or assistant do not have the right to appeal or request the change of the decision. In addition, in cases where the juvenile is entrusted, if the head of the facility persuades the protected juvenile to request an extension of the entrustment period, the court readily accepts the request.

- Guarantee through procedures the right to appeal or to request the change for temporary measures imposed on the juvenile by the juvenile concerned, guardian, or assistant.
- Specify the grounds for entrustment and the extension thereof, and ensure the use of the objective examination methods when making such decisions.

### **Exclusion of pre-trial detention period, absence of the right to request compensation**

81. If a case is transferred for criminal trial, the period of entrustment at the Juvenile Classification Review Board is included in the period of detention before the ruling, but it is not included in the total sentence when the juvenile is transferred to a juvenile reformatory. In particular, when the case has been transferred from a criminal case to a projection case, the period of pre-trial detention in a detention center is not included in the time served in the juvenile reformatory.<sup>80</sup> Moreover, the right to demand compensation is not ensured when the child receives a non-commencement of hearing or non-disposition decision after being entrusted to the Juvenile Classification Review Board and deprived of personal freedom.

- As a juvenile's personal freedoms are deprived in juvenile protection cases, just as they are in criminal disposition, include the period of pre-trial detention in the protective disposition period. Introduce a compensation system for unjust detention.<sup>81</sup>

## **VI. Protection institutions**

### **Overcrowding**

82. When children who were protected at the Busan Juvenile Reformatory started a riot in May 2013, approximately 400 police officers were dispatched and they used Taser gun to put down the riot. During the incident, one child who was suffering from arrhythmia was hospitalized because of chase pain. One of the children, Kim, was charged with assault as he attacked other children from Seoul and Incheon who bullied him and incited the riot. Other protected children were also charged with assault and destruction of property as they attacked the teachers and damaged computers and CCTVs. 4 of those children were sentenced one year to two years and 6 months in prison at trials. Busan Juvenile Reformatory's capacity was 130, but 180 children were at the reformatory at that time, and this allegedly led to a small fight among the children to the riot.<sup>82</sup>

83. As of August 2017, the total capacity of the 11 juvenile reformatories nationwide is 1,250, but the actual number of detainees is 1,557, which is 125% of the total capacity. The highest facility capacity to inmate ratio was seen in the Seoul Juvenile Reformatory (157%),<sup>83</sup> followed by the Anyang Juvenile Reformatory (156%), Gwangju Juvenile Reformatory (153%), and Chuncheon Juvenile Reformatory (145%). Seven juvenile reformatories, except those in Jeonju, Daejeon, Cheongju and Jeju, were found to be overcrowded.<sup>84</sup> Incidents such as violence, riots, disobedience, and abuse of seniority in juvenile reformatories have increased more than three-fold from 306 cases in 2011 to 1,011 cases in 2015.<sup>85</sup> There is no provision in ordinances disclosed to the general

public regarding the minimum allowed area per protected juvenile.<sup>86</sup> Also, there is no provision that directly prohibits juvenile reformatories from exceeding the capacity.

84. The South Korean government introduced a bill which enables private entities to operate juvenile reformatory, ‘Legislative Bill on Private Juvenile Reformatory’s Establishment and Operation’ in August 2018. The government explained that private entities will be cover land and construction cost, and it will solve overcrowding issue and lessen the government financial burden on the juvenile reformatory operations. However, managing juvenile justice cannot be entrusted with private entities as it restricts the freedom of person and could use disciplinary measures as means of state administrative justice. Furthermore, Minister of Justice said that ‘The Ministry is cooperating with Buddhist community for private juvenile reformatory’s establishment’ in January.<sup>87</sup> These reformatories might be used as means of Buddhism’s missionary work.

- Increase the use of diversion programs so that detention is used as a last resort, and promptly resolve the issue of overcrowding through continuous facility and environmental improvement.
- Ensure the right to a human life by prohibiting the exceeding of detention capacity and specifying the appropriate allowed area per protected juvenile in the law.
- Stop the attempt to establish private juvenile reformatory and increase financial and human resource for national juvenile reformatories.

### **Disciplinary action**

85. The children who were subject to disciplinary action per reformatory capacity increased between 2015 and 2017. As of 2017, 75,9% of detained population were subject to disciplinary actions and 130.7% were subject to separation measures.

86. The Act on the Treatment of Protected Juveniles, etc. defines an 'order to be on good behavior (probation),<sup>88</sup> in other words solitary confinement, as a form of disciplinary

action.<sup>89</sup> When this is imposed, the juvenile will be subject to ‘restriction on watching TV for not more than 20 days’, ‘suspension of group athletic activities for not more than 20 days,’ and ‘suspension of participation in joint events for not more than 20 days’, in principle.<sup>90</sup> According a report, outdoor exercise is prohibited based on the above provisions. Article 18, Paragraph 1 of the Act on the Treatment of Protected Juveniles, etc. only allows for visits by an attorney, assistant, or guardian. In practice, even visits by guardians are not permitted. When the disposition is finalized, attorneys or assistants are no longer involved in most cases, thus no one is able to visit in effect. This raises suspicions that visits are prohibited to conceal evidence of inhuman treatment such as beatings. Such disciplinary action is a violation of Article 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) in that the 'order to be on good behavior' is solitary confinement and prohibits juveniles from contacting their families.

87. Disciplinary action is decided by the Director upon consideration by the Treatment Review Committee. The chair of the Treatment Review Committee is the Director and all members are appointed by the Director. It is difficult to expect such a committee would be able to make independent and objective judgments. In addition, even when compared with the disciplinary committee for adult inmates, Δminimum number of external committee members Δexclusion of members, Δdetailed qualifications of external committee members, Δminimum attendance of external committee members for commencement of a meeting, and Δauthority on interrogation of concerned persons are not specified or guaranteed by the law. In addition, the grounds for and types of disciplinary action and the procedures for appeal are not notified in writing to the protected juveniles. This is a violation of Article 70 of the Havana Rules.

88. As a result, imposing probation is abused, which is the strictest forms of disciplinary measures. In 2017, 94.5% were subject to probation in Seoul, Daegu and Choncheon. According to the Board of Audit and Inspection’s report, 60% of respondents said that the disciplinary actions apply arbitrarily according to the teachers or directors.

89. According to other reports, the disciplinary action decided by the Treatment Review Committee was extended without any specific reason after the period of the original disciplinary measure had ended. However, the juvenile did not appeal due to the fear of having the disciplinary action further extended.<sup>91</sup> In May 2013, after the Busan Juvenile Reformatory riots, the Gyeongnam, Ulsan and Busan local bar association presidents issued a joint statement, which pointed out that the Busan Juvenile Reformatory's 'Life Advisory Guidelines' allows for "disciplinary confinement" and an extension could be issued after disciplinary treatment review, if the behavior of the protected juveniles shows no improvement and there are no signs of remorse. Since the Act on the Treatment of Protected Juveniles, etc. does not have provisions on extensions, the above provision restricts the rights of the protected juveniles to a greater degree than those provided for in the parent law, which is a violation thereof. The statement reads, "the size of a disciplinary room is very small at 2.42<sup>92</sup> or so, and while in confinement for more than 20 days in a separate room, the juvenile cannot interact with other protective juveniles, which creates a sense of isolation and leaves severe trauma that affects the physical and mental growth of the protected juveniles... There is no restriction on the number of dispositions for solitary confinement, which may be extended for indefinitely." On the other hand, punishment for adult inmates cannot be repeatedly imposed for the same act.<sup>93</sup>

90. A juvenile who has received 10 days or more of an 'order to be on good behavior' (disciplinary confinement) more than twice may be subject to disciplinary transfer.<sup>94</sup> Since there are only 11 juvenile reformatories in the country and they are concentrated in certain regions, it is difficult for the juveniles to be visited by their families if they are subject to disciplinary transfer and sent to a remote area that is far from their homes, as an arbitrary and retaliatory measure by the detention centers. In particular, if a juvenile receives disciplinary action more than three times, the juvenile can be transferred to the Jeju Juvenile Reformatory and required to take the "intensive treatment training course".<sup>95</sup> According to an informant who had experienced this, it was a painful experience as the treatment was harsh<sup>96</sup> and it was difficult for family to visit because the Jeju Juvenile Reformatory is located on an island.

**<2018. 10. 28. E Interview>**

r: What do you do after you were sent to the Jeju Juvenile Reformatory?

e: It's like a military. We to trainings and are asked to state our name.

r: And we heard that you should memorize something?

e: We are required to memorize a two-pager and write down those nice words. We have to write more than 10 pages during the weekend.

r: what if you don't memorize them?

e: They take away our table or cushion.

r: How does it feel?

e: It feels shameful when you don't have table during the meal time.

r: What about the weekends?

e: We are not allowed to leave the room during the weekend and we must sit, and not to stand up.

**<2018. 10. 28. E Interview>**

r: You aren't supposed to be in probation room more than 20 days, but you were in that room for 40 days?

e: Yes

r: Didn't you ask your teacher when it passed 20 days?

e: it's legally okay.

r: So the teacher just said, 'Your probation is extended?'

e: The teacher just doesn't come to the room, even when I call them with interphone.

- Abolish disciplinary action of 'order to be on good behavior' (disciplinary confinement)' which places juveniles in in solitary confinement for up to 20 days.
- Ensure that inhumane treatment, such as prohibition of outdoor exercise, is not accompanied with disciplinary action and that juveniles are able to be visited by their families while under disciplinary action.
- Ensure that the solitary confinement is not abused and comply with conditions of solitary confinement.
- Ensure that the members of the Treatment Review Committee are appointed from outside the juvenile reformatory and that independent and fair disciplinary decision procedures are in place.
- Notify protected juveniles, in writing, on the grounds and type of disciplinary action and on the appeal process.

- Abolish the "disciplinary transfer" system, including the "intensive treatment training course" of the Jeju Juvenile Reformatory, and improve systems so that transfers are not made arbitrarily for the purpose of retaliation.
- Prohibit the extension of the length of disciplinary action and repeated penalties for the same disciplinary offense.

## **Protective equipment**

91. The Act on the Treatment of Protected Juveniles, etc. specifies the protective equipment that can be used for protected juveniles and the requirements for their use.<sup>97</sup> However, handcuffs and ropes can also be used for cases where protected juveniles are "escorted for investigation and examination by the court or the public prosecutors' office, transfer, or other reasons," even if there is no flight risk. Handcuffs are not taken off even in the process of transporting juveniles for external hospital treatment, and such excessive use of handcuffs and ropes in escorts seriously infringes on the personality and human rights of the child.<sup>98</sup> Gas guns or electric shock machines<sup>99</sup> are weapons that produce powerful shock and cause damage, yet they can be used without any additional requirements<sup>100</sup> such as urgency or subsidiarity.
92. Unlike disciplinary action that can only be implemented after deliberation by the Treatment Review Committee, protective equipment can be used with the judgment of individual employees, and there is a high risk of the protective equipment being used for a longer period than necessary and as a punitive measure.<sup>101</sup> In addition, in the case of adult inmates, the guards can suspend or mitigate the use of protective equipment when necessary for bathing, eating, relieving oneself, and medical treatment,<sup>102</sup> but children, in principle, must keep the protective equipment on even in the cases<sup>103</sup> mentioned above.<sup>104</sup> Moreover, medical staff periodically check the health status<sup>105</sup> of adult inmates when protective equipment is used, and when the continued use of the protective equipment is deemed inappropriate taking into account the health of the inmate, the medical staff promptly report this to the warden and the use of protective equipment will be suspended immediately.<sup>106</sup> However, this is not the case for children.

**< 2018. 10 28. E Interview >**

r: How were you transferred to the airplane?

e: I was handcuffed. And the handcuff was covered with towel, but people knew. My head was also shaved and stayed handcuffed during the flight as well.

r: Were your legs also tied?

e: Yes.

- Prohibit the use of handcuffs and ropes, in principle, when a protected juvenile is appearing in court unless a flight risk is apparent.
- Strengthen the requirements for the use of gas guns and electronic shock machines so they are not abused.
- Suspend or mitigate the use of protective equipment for bathing, eating, relieving oneself, and medical treatment.
- When protective equipment is being used, ensure that a physician often checks the health status of the juvenile and the use of protective equipment is immediately suspended when there are health concerns.

### **Space for physical and mental stability**

93. Protected juveniles can be admitted into a space for physical and mental stability, which is a living space equipped with facilities to prevent suicide and self-injury.<sup>107</sup> Although the period of admittance in a space for physical and mental stability is up to 15 days depending on the reason and can be extended only once for up to 7 days, there are many cases in which these regulations are not observed and juveniles are admitted for extended periods of time.<sup>108</sup> Although the concerned juvenile must be informed of the his or her admittance to a space for physical and mental stability and the reason for an extension of the admittance period, this can be done verbally and not in writing,<sup>109</sup> which makes it impossible to prove whether the juvenile was properly informed even if there was no notification, according to a report by a protected juvenile. Above all, admittance into a space for physical and mental stability can be decided by an

employee's judgment if a physician's opinion is simply taken into account, unlike disciplinary action which is decided by a Treatment Review Committee, and there is a high risk of the measure being implemented for a longer period than necessary and as a punitive measure.

- Ensure that decisions on the commencement, length, and termination of admittance into a space for physical and mental stability are made in an independent and fair manner so as to prevent the use of it as a means of punishment by employees.
- Notify the protected juvenile in writing of his or her admittance into a space for physical and mental stability and the extension of the admittance period, as well as the reasons thereof, and create and keep records of the notification so that the protected juvenile can access utilize such information in the appeal process.

### **Medical Assistance**

94. There 11 juvenile protection facilities in the State and each facility only have one full time doctor (4 surgeons, 7 general practitioners). Outside examination is also difficult since there are not enough personnel for transportation. Lee, who was admitted to the Jeonju Juvenile Reformatory was able to have outside examination when he was confirmed that he went blind in June 2017. Also, Lee from Chooncheon Juvenile Reformatory lost 40kg and later he was diagnosed with colorectal cancer although he constantly appealed this abdomen pains to the facility.

- Secure appropriate medical staff and facility so that the children at the protective facilities could receive proper medical care in time.
- Ensure that outside examination is accessible and increase transport personnel.

### **Petitions to the Minister of Justice and interviews with the Director**

95. Article 18 of the "Guidelines for the Treatment of Protected Juveniles," which is only a directive of the Ministry of Justice, limits circumstances where one can file a petition to the Minister of Justice<sup>110</sup> to "when the treatment decided by the Treatment Review Committee is appealed" (Paragraph 1), and stipulates that "If the contents of the petition does not concern the appeal of the treatment and is related to suggestions on the improvement of facilities, the petition may be discarded after the reason is explained to the protected juvenile" (Paragraph 2). In other words, the Director of the juvenile reformatory inspects and censors the contents of such petitions in order to decide whether or not to send them to the Minister of Justice. Due to these regulations, the actual number of petitions filed is very small as children fear that they will receive unfavorable treatment. In 2013, there were no petitions filed.<sup>111</sup>
96. Article 10 of Act on the Treatment of Protected Juveniles, etc. stipulates that " The Director shall conduct interviews with protected juveniles, etc. from time to time to hear about their personal situation and treatment," but does not specify the protected juvenile's right to request interviews. In the case of adult inmates, the inmate can request an interview with the warden as a remedy, and the warden should, in principle, accept the request and inform the inmate of the results of any matters to be treated after the interview.<sup>112</sup>

- Allow all treatments to be subject to petitions to the Minister of Justice and prohibit the censorship of petitions so that the protected juveniles are not treated unfavorably.
- As a remedial measure for protected juveniles, specify interviews with the Director as a right of the protected juvenile and notify the protected juveniles of the results of any matters to be treated after the interview. When an interview is denied, notify the protected juvenile of the reason.

### **Visits, correspondence, and telephone calls**

97. Visits, correspondence, and telephone calls are not rights of the protected juveniles and need to be permitted by the Director, and their contents are censored. Visits may be denied for abstract reasons such as "when deemed harmful to the protection and correctional education of protected juveniles, etc. including where there is a considerable reason for doubt that such protected juvenile, etc. is keeping contact with a misconduct group."<sup>113</sup> Visits by friends of protected juveniles are prohibited entirely on grounds that they may be accomplices, even if this is not true. If a visit is to take place "alone without the presence of the guardian, etc. of the protected juvenile," <sup>114</sup> the visit may be denied and a person who is not the guardian cannot visit the protected juvenile alone. In addition, a public official affiliated with the facility may attend the meeting and either provide guidance or terminate the visit.<sup>115</sup> Visits are only held during lunchtime between 12:00 and 1:00 PM on weekdays due to the operation of educational programs.<sup>116</sup>
98. Correspondence may be restricted for vague reasons, such as when it is "deemed to hinder protection and correctional education thereof, including correspondence with a person who committed any misconduct jointly with them,"<sup>117</sup> and may be censored by the Director. Correspondence may be also restricted when the details of correspondence cause impediments to education of the protected juvenile, etc., or there exist grounds that the protected juvenile, etc. should not be aware of the details thereof.<sup>118</sup>
99. Telephone calls may be restricted for abstract reasons, such as "telephone calls with a person deemed harmful to correctional education of protected juveniles, etc., such as an accomplice,"<sup>119</sup> and in practice, all telephone calls other than those with the family are forbidden. Furthermore, telephone calls may be denied when they are "likely to have adverse effects on correctional education of protected juveniles, etc. or admittance order."<sup>120</sup> If the person at the other end is not the protected juvenile's attorney-at-law or assistant, in principle, the Director can listen in on the conversation and record and keep the details of the conversation.<sup>121</sup> According to a joint statement issued by the Gyeongnam, Ulsan and Busan local bar association presidents after the Busan Juvenile Reformatory riots in May 2013, there are no separate phone booths, so protected juveniles who want to make phone calls gather together in a room with a telephone and

make calls in turn under the supervision of employees. This make it impossible to have private conversations or mention sensitive issues such as raising issues about the detention center, which may infringe upon the right to communication. Videophones are currently being installed in juvenile reformatories, but they are placed in offices where the employees work, so nothing has changed with regard to the situation of human rights violations.

- Specify visitation, correspondence, and telephone calls as the rights of the protected juvenile that are not subject to the permission of the Director.
- Extend visiting times so that family members in remote areas are not discouraged from making visits.
- Prohibit in principle visiting surveillance, censorship of correspondence, and the listening and recording of telephone calls.
- Provide a separate space for telephone calls so that other protected juveniles or employees are not able to listen to the conversations.

### **Body inspections**

100. Juveniles undergo thorough body inspections, where they are required to take off all their clothes and wear a robe, when entering juvenile reformatories or the Juvenile Classification Review Board. After visits, juveniles are asked to remove their outer clothes, lower their underwear down to the knees, and sit up and down three times in groups, due to concerns of unauthorized goods being brought in.<sup>122</sup> The infringement of the personality rights of the developing youth is a greater concern than the public interest that would be protected by prohibiting unauthorized items. Even the law provides that stationary item scanners or portable metal detectors should be used to conduct body inspections.<sup>123</sup>

<The Excerpt Child Interview<sup>124</sup> >

e: When the visitation is over, they inspect my genitals. They asked me to spread my legs and also inspect my anal area. They asked us to undress and...

r: They do this because you might hide something to eat?

e: yes.

- Abolish the intensive body inspections at the time of admittance and after visits, and introduce an alternative method such as a stationary item scanner or a portable metal detector.

### **Forced haircuts and CCTV surveillance**

101. Protected juveniles are required to have haircuts at least once a month.<sup>125</sup> According to a report, male protected juveniles are forced to get very short haircuts. Even though sanitation can be maintained if long hair is well managed, an informant was forced to have a haircut and felt humiliated afterwards. On the other hand, female protected juveniles are said to be unable to cut their hair as short as males, and are required to keep their hair bobbed.

102. According to a report, CCTVs are installed in the bathing areas used by protected juveniles and the juveniles are watched and recorded while being naked. Although CCTVs can be installed in bathing areas, washrooms, and toilets only when there is a significant concern of self-injury,<sup>126</sup> in reality, all protected juveniles are videotaped regardless of the concern for self-injury, and the life guidance office follows their movements through a 24-hour monitor a day.<sup>127</sup>

#### **< The Excerpt Child Interview<sup>128</sup>>**

e: They have CCTVs in the bathroom too.

r: In the toilet?

r: Yes, and they could see us on the toilet and our bare buttocks could be seen. There are female teachers too and we are not comfortable with this.

- Prohibit forced haircuts against the will of protected juveniles.
- Prohibit CCTV monitoring and recording in bathing areas, toilets, etc. which

excessively violate the privacy of protected juveniles.

### **Meal provisions and the purchase of goods at one's own expense**

103. The Enforcement Rules of the Act on the Treatment of Protected Juveniles, etc. stipulates different amounts of daily meal provisions and total calories according to the sex of the detainees, and the prescribed amount of food is less than that of adult prisoners.<sup>129</sup> Meal provision standards for juveniles in juvenile reformatories or the Juvenile Classification Review Board are poorer than those of juvenile correctional institutions. The amount of calories in meals does not meet the energy requirement estimates (EER)<sup>130</sup> prescribed by the Ministry of Health and Welfare and the Korean Nutrition Society for individuals who are active or very active.

104. Article 34 of the Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc. does not permit protected juveniles to purchase goods with their own money by stipulating that "Protected juveniles, etc. shall be prohibited from having or directly using money, except for cases specifically permitted by the Director, such as attending schools, commuting to work, etc." At present, juvenile detainees in juvenile correctional institutions can purchase food, etc. at their own expense, thus there is no reason to prohibit protected juveniles from doing so.

#### **<The Excerpt Child Interview<sup>131</sup>>**

e: Teachers asked me not to scoop too much rice, and I just went to my room because I was upset. Then the teachers made me kneel down and got angry with me.

r: Did they just ask you to eat just a couple of rice grain?

e: Yes, that just ask you to eat just a couple of rice grain? Went to my room because I

- Provide meals so that developing protected juveniles are provided with sufficient calories.
- Allow the purchase of food and other items within a set amount of money so that protected juveniles may consume food according to their preferences.



## Endnotes

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- <sup>1</sup> They were consented to the interview and the interview was conducted by telephone or face-to-face and there are recordings.
- <sup>2</sup> After a quarrel with four boys who were staring at the boy's uncomfortable eyes, dozens of people became clumsy and led to riot. The juvenile reformatory calls all the staff in an emergency and almost 400 police officers were urgently put in. As a result, 4 prisoners were sentenced to two years and six months in prison, 1 prisoner to two years in prison and 1 prisoner to one year in prison.
- <sup>3</sup> MBC news, "Juvenile Riot in Busan Juvenile Reformatory, hundreds of police are urgently deployed" 6 May 2018.
- <sup>4</sup> Yonhap News, "Kim Sangkon reveals plans to "lower the minimum age of criminal responsibility from 14 to 13", 23 August 2018.
- <sup>5</sup> Joongang Ilbo, "Minimum age of criminal responsibility to be lowered from 14 to 13 by the end of the year", 12 July. 2018.
- <sup>6</sup> The Hankyoreh, "DNA collection continues amidst talks of clearing juvenile criminal records", 1 March 2015
- <sup>7</sup> The Hankyoreh, "DNA collection continues amidst talks of clearing juvenile criminal records", 1 March 2015
- <sup>8</sup> Joint statement by the Korean Progressive Network Center and 30 other human rights organizations, "We denounce the indiscriminate DNA collection for juvenile delinquents", 5 March 2015.
- <sup>9</sup> The Constitutional Court ruled Article 5-4, Paragraph 1 of the Act on the Aggravated Punishment, etc. of Specific Crimes to be unconstitutional on grounds of violation of the principle of equality, as it stipulates the same elements for habitual larceny as the Criminal Act, but adds life imprisonment to the statutory punishment while raising the minimum sentence for imprisonment and deleting the imposition of fines (26 Feb. 2015, Decision 2014 Hun-Ka16). This law has been criticized and referred to as the "Jean Valjean Law" because it excessively punishes the petty crimes due to financial difficulties. Above all, in cases of juvenile delinquency, acts of theft are often committed multiple times during a certain period of time, and this provision leads to the excessive punishment such acts.
- <sup>10</sup> We marked the children who participated in the interview as A, B, C, D, E... for to protect their privacy. We have also indicated sources in footnotes when we used the interview excerpting from the external material. In all interviews, the interviewer is marked as 'r', and interviewee is marked as 'e'.
- <sup>11</sup> National Human Rights Commission of Korea, "Study on health care services in detention facilities and the promotion of the right of health care", April 2003.

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- <sup>12</sup> Korea Centers for Disease Control and Prevention, “The study on the development of a national HIV/AIDS strategy “, January 2014
- <sup>13</sup> Choongchung Ilbo, “Media reports on juvenile delinquents”, 30 July 2014.
- <sup>14</sup> Juvenile Act, Article 4, Paragraph 1, Subparagraph 3, Juveniles who are ten years of age or more, fall under any of the following items and in view of their character or environment, may be prone to commit acts in violation of Acts and subordinate statutes relating to criminal punishment.
- a. Juveniles who have inclinations to cause uneasy feeling for people around them by roaming in groups;
  - b. Juveniles who stay away from home without any justifiable reason; and
  - c. Juveniles who have inclinations to drink alcohol, raise a disturbance or be exposed to harmful environment influences.
- <sup>15</sup> Kim, Doo Sang. “A Study on Improvement of Regulations and Law Education for Pre-delinquent Juvenile”, 2014.
- <sup>16</sup> Joongang Ilbo, “Police agency ‘protects teenage runaways engaging in habitual prostitution and larceny and crime-prone juveniles through transfers”, 1 October. 2015.
- <sup>17</sup> According to the 'student discipline matters', posted at the No. 1 (consigned protection) in Seoul, a boy was excluded from all classes from 9:00 a.m. to night for 14 days, was disciplined “108 bae”(108 bows) or standing still at the wall, because he smoked indoors. The warning statement followed that if not faithfully committed, the disposition change would be considered.
- <sup>18</sup> National Human Rights Commission of Korea. “Survey on the human rights of children and the youth in prostitution”, 26 October 2016, p. 191.
- <sup>19</sup> BBS, “Police agency’s anachronistic juvenile environment assessment may infringe upon human rights”, 6 September 2018.
- <sup>20</sup> Yonhap News, “Most prominent judge in juvenile delinquency Chun Jong-ho leaves Juvenile Department after 8 years” 22 February 2018.
- <sup>21</sup> Hwang, Ji Tae et al. “A Study on the Current Operation Condition and Improvement Plan in Court-appointed Assistant System”. Korean Institute of Criminology, December 2016, pp. 98-99.
- <sup>22</sup> NHRC, “A Study on the Actual Conditions of Child Rights in Child Welfare Institutions”, September 2010, p. 189.
- <sup>23</sup> Lee, Seung-hyun. “The Diagnosis and Improvement by Types of Juvenile Protective Disposition”. Korean Journal of Criminology, Vol. 29(3), December 2017, p. 22.

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<sup>24</sup> Lee, Seung-hyun. “Revision Direction of the Korean Law through the Act of the Juvenile Classification Review Center in Japan”. Korean Journal of Correctional Discourse, Vol. 10(3), 2016, p. 149.

<sup>25</sup> Cheongju Juvenile Reformatory and Anyang Juvenile Reformatory

<sup>26</sup> Anyang Juvenile Reformatory

<sup>27</sup> Juvenile Act, Article 32 (Decision of Protective Detention of Juvenile) ⑥ A protective disposition on a juvenile shall not in any aspect affect the juvenile’s future status.

Juvenile Act, Article 67 (Application of Acts and Subordinate Statutes on Qualifications) ① When Acts and subordinate statutes on qualification are applicable to juveniles, if their sentence has been executed or discharged, it shall in the future be presumed that no sentence has been rendered.

1. When the person’s sentence has been executed or discharged
2. When the adjudication is reserved or execution is suspended for the sentence

<sup>28</sup> Act on the Lapse of Criminal Sentences, Article 6 (Inquiry into Criminal Records and Investigation Records, and Restrictions on Reply Thereto, etc.) ① An inquiry into criminal records and investigation records, based on investigation materials cards, and the reply thereto may be made with respect to such records in whole or in part within the minimum scope deemed necessary for the purpose of such inquiry if it falls under any of the following subparagraphs

1. Where it is necessary to conduct a criminal investigation or a trial;
2. Where it is necessary to execute punishment or an order to render social services or to attend a lecture;
3. Where it is necessary to execute a protective order or custodial surveillance order, such as protective custody, medical treatment and custody, and probation;
4. Where it is requested by the person himself/herself to confirm the details of investigation material cards or to enter or stay in a foreign country;
5. Where the background check is conducted based on Presidential Decree with regard to security affairs prescribed in Article 3 (2) of the National Intelligence Service Korea Act;
6. Where it is necessary to permit a foreigner to naturalize, to restore his/her nationality, or to stay in the country;
7. Where it is necessary to admit cadets, or to appoint officers, warrant officers, noncommissioned officers and civilian personnel in the military service and to select candidates for such positions;

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8. Where it is necessary to enlist military personnel on active duty or public interest service personnel in relation to the imposition of compulsory military service;

9. Where it is necessary to verify the grounds for disqualification for appointment as a public official, for authorization or permission, decoration, Presidential commendation, or Prime Minister's commendation, etc., the specific grounds for disciplinary punishment of a public official against whom a disciplinary procedure has started (limited to reference to criminal records and the reply thereto) or the reasons for restrictions, etc. on the payment of annuity to public officials, which are prescribed in other statutes;

10. Where other Acts allow inquiry to be made about criminal records and investigation records and replies to be made thereto.

② A person who is in charge of managing investigation material cards, or refers to criminal records or investigation records based on investigation material cards in the course of performing their official duties shall not disclose the details thereof.

③ No person shall obtain criminal records data or investigation records data for purposes other than those provided for in paragraph (1).

④ Persons who receive replies to inquiries regarding criminal record materials or investigation record materials according to paragraph (1), or obtain such data shall not use them for any purpose except as provided for in the statutes.

⑤ Detailed scope of inquiry about criminal records and investigation records under each subparagraph of paragraph (1) and of a reply thereto shall be prescribed by Presidential Decree.

<sup>29</sup> The Kyunghyang Shinmun, “[Breaking News] Police initiate self-inspection over controversy of coercive investigation of a high school student”, 23 April. 2015.

<sup>30</sup> Newsis, “Police investigate disabled minor through voluntary accompaniment ...Court orders "5 million KRW compensation", 15 May 2016.

<sup>31</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “what is the problem with the process for juvenile delinquency“ at Congress (2018. 3. 21.) pp. 28-29.

<sup>32</sup> Newsis, “Police investigate disabled minor through voluntary accompaniment ...Court orders "5 million KRW compensation", 15 May 2016.

<sup>33</sup> MBC News, “Controversy sparked over coercive interrogation of high school student by police”, October 18, 2008.

<sup>34</sup> Yonhap News, “Suwon homeless girl' case remains unsolved”, 25 August. 2016.

<sup>35</sup> Media Today, “CBS re-exposes false justification for ‘coercive investigation of third-year high school student’”, 15 May 2008.

<sup>36</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “What is the problem with the

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process for juvenile delinquency” at Congress, 21 March 2018, p. 29

- <sup>37</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “What is the problem with the process for juvenile delinquency” at Congress, 21 March 2018, p. 28.
- <sup>38</sup> Lee, Ki Soo. “Study on the causes of and measures against false confession in the Korean criminal procedure”, Seoul National University doctoral dissertation, 2012, p. 99.
- <sup>39</sup> Law Times, “[Ruling] Man convicted in ‘Yakchon crossing murder’ declared innocent in retrial after 16 years”, 17 November. 2016.
- <sup>40</sup> The Hankook-Ilbo, “High school student caught stealing cigarettes commits suicide, police accused of ignoring proper procedures”, 9 April. 2018.
- <sup>41</sup> Criminal Procedure Act, Article 244-5, Paragraph 2
- <sup>42</sup> Korean National Police Agency, Korean National Police Agency 2017 White Paper
- <sup>43</sup> Yoon, Woong-Jang. “Problems and improvement measures of promptness of juvenile justice process”, Korean Journal of Probation, Vol. 17(2), Korean Academy of Probation and Parole Services, 2017.
- <sup>44</sup> Yoon, Woong-Jang. “Problems and improvement measures of promptness of juvenile justice process”, Korean Journal of Probation, Vol. 17(2), Korean Academy of Probation and Parole Services, 2017, p. 41.
- <sup>45</sup> Yoon, Woong-Jang. “Problems and improvement measures of promptness of juvenile justice process”, Korean Journal of Probation, Vol. 17(2), Korean Academy of Probation and Parole Services, 2017. P. 42.
- <sup>46</sup> A summary trial is not a type of diversion programs. A summary trial is problematic because it leaves the criminal records to children if the police do not operate diversion programs.
- <sup>47</sup> Juvenile Act Article 58 (Principles for Trial) (1) Trials of juvenile criminal cases shall be conducted in a spirit of kindness and gentleness toward the juvenile. (2) In cases of trials as referred to in paragraph (1), particular emphasis should be placed on evaluation of the juvenile’s physical and mental condition, character, career, family conditions and other circumstances.
- <sup>48</sup> One of the cases that the attorney who have worked as a court-appointed assistant counseled. The child pleaded not guilty to his sexual harassment charges to the judge. The judge, however, said to the child that the child would be transferred to the criminal court if he would maintain his pleading. After all the child gave up maintaining his pleading.
- <sup>49</sup> The Hankook-Ilbo, “Nightmares of school violence washed away with court’s recommendation of compromise” 3 August 2015.

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- <sup>50</sup> Created by the National Court Administration as a reference material for trial related work, which provides trial guidelines for judges.
- <sup>51</sup> Even when there are two trial dates, temporary measures are often issued in the first trial without any explanation or a chance to testify, so in practice there is only one chance for testimony, which is the second trial.
- <sup>52</sup> It is based on the experience of an attorney who has worked as a court-appointed assistant for years and she is one of the members of the reporting organizations.
- <sup>53</sup> In the Criminal Court of ROK, the prosecutor sits on the right side in front of the judge and the defendant and the attorney sit together on the left side in front of the judge.
- <sup>54</sup> Nocut News, "Chun Jong-ho says juvenile trials are 'instant noodle trials...3 minutes per child'", 3 May 2018.
- <sup>55</sup> This case was reported from the staff of National Human Rights Commission of Korea
- <sup>56</sup> National Court Administration, "Yearbook of Judicature", 2013-2017.
- <sup>57</sup> National Court Administration, "Yearbook of Judicature", 2013~2017.
- <sup>58</sup> Yoon, Woong-Jang. "Problems and improvement measures of promptness of juvenile justice process", Korean Journal of Probation, Vol. 17(2), Korean Academy of Probation and Parole Services, 2017. p. 44.
- <sup>59</sup> Hyun, So Hye. "Problems of Korean Juvenile Justice System by the International Standards", p.225
- <sup>60</sup> Which would allow the juvenile to undergo review without detention by periodically visiting the classification review center.
- <sup>61</sup> Institute of Justice, "2017 The White Paper on Crime", Trends in the number of detention classification reviews and counseling interviews (2007-2016), p.659.
- <sup>62</sup> Juvenile Act, Article 49, Paragraph: Where it is deemed, as a result of investigation of juvenile cases, that there is a cause for protective detention, the public prosecutor who has investigated the case shall transfer the case to the competent Juvenile Department.
- <sup>63</sup> The case which is investigated by the teacher in camp for the released children.
- <sup>64</sup> Yonhap News, "More than half of convicted juveniles receive protective disposition rather than punishment in court", 20 September. 2017.
- <sup>65</sup> Convention on the Rights of the Child, Article 37(c): Separation of the child deprived of liberty from adults.
- <sup>66</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13.4: Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding

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adults.

- <sup>67</sup> Supreme Prosecutor's Office, 2017 Analytical Report on Crimes, p386, 712.
- <sup>68</sup> Supreme Prosecutor's Office, 2016 Analytical Report on Crimes, p386, 712.
- <sup>69</sup> Japan provides protective measures through family court investigations and Germany has a youth court assistant system.
- <sup>70</sup> The Chosun Ilbo, "Thirty juvenile delinquents stuffed into a tiny room...Some wish for solitary confinement", 17 August 2013.
- <sup>71</sup> Office of National Assembly Member Park Jumin, table on juvenile reformatory admittance in the last 5 years.
- <sup>72</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, "What is the problem with the process for juvenile delinquency" at Congress, 21 March 2018, p44.
- <sup>73</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, "What is the problem with the process for juvenile delinquency" at Congress, 21 March 2018, p45.
- <sup>74</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, "What is the problem with the process for juvenile delinquency" at Congress, 21 March 2018, p34.
- <sup>75</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, "What is the problem with the process for juvenile delinquency" at Congress, 21 March 2018, p35.
- <sup>76</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, "What is the problem with the process for juvenile delinquency" at Congress, 21 March 2018, pp. 38-39.
- <sup>77</sup> Korean Institute of Criminology. "Strengthening the role of the Juvenile Protection Education Institution", pp.21-22.
- <sup>78</sup> National Court Administration, "Yearbook of Judicature" (2018), pages on 'protected juvenile profiles and background by age (after disposition)' and 'protected juvenile age by year'.
- <sup>79</sup> National Court Administration, "Yearbook of Judicature" (2018, 2017, 2016), pages on 'temporary measures for juvenile protection (temporary entrustment) and cases processed.'
- <sup>80</sup> Lee, Seung-hyun. "Measurements for Implementing International Legal Standards of Juvenile Justice", 2017, Asian Forum for Corrections, p.133.
- <sup>81</sup> Jung, Sook-hee. "Problems regarding provisional detention in the Juvenile Law and its resolution in the Point of View from Due Process ", p.141.
- <sup>82</sup> Korea JoongAng Daily, "In Korea, there's no room at the juvenile prisons", 10 July 2014; Yeonhap News, "Police used Taser gun to the Busan Juvenile reformatory riot" 7 May 2013; Kukmin Ilbo, "Four Busan Juvenile Reformatory riot leaders sentenced jail time", 12 September 2013.

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- <sup>83</sup> Article 23-2, Paragraph 4 of the ‘Guidelines on the Treatment of Protected Juveniles’ stipulates the dispersal of detainees to avoid overcrowding and defines overcrowding as ‘exceeding the capacity by 70%’. According to such criteria established by the government, the Seoul Juvenile Reformatory, which has exceeded 57% of their capacity, is not considered to be overcrowded.
- <sup>84</sup> Information submitted by the Ministry of Justice to National Assembly Member Park Jumin (Democratic Party of Korea) for the 2017 inspection of state administration; National Assembly Member Park Jumin, Press Release, “Anyang Juvenile Reformatory admits long-term female detainees at nearly twice the capacity”, 9 Oct. 2017.
- <sup>85</sup> Information submitted by the Ministry of Justice to National Assembly Member Park Jumin (Democratic Party of Korea) for the 2016 inspection of state administration; National Assembly Member Park Jumin, Press Release, “Overcrowding in youth detention centers...operating at twice the capacity”, 19 Sept. 2016.
- <sup>86</sup> The Act on the Treatment of Protected Juveniles, etc. was amended in March 2016 and stipulates that “Living quarters in juvenile reformatories and Juvenile Classification Review Boards shall have appropriate space for the sound life and growth of protected juveniles, etc., and facilities for lighting, ventilation, and warming,” (Article 6, Paragraph 4), but there are no specific criteria on what constitutes of ‘appropriate space’.
- <sup>87</sup> BBS, “Minister of Justice, Park Sang-gi” 11 January 2018.
- <sup>88</sup> In the past, the ‘order to be on good behavior’ could only be given to protected juveniles aged 16 or over, but with amendments to the Act on the Treatment of Protected Juveniles, etc. in 2007, the age requirement was changed to those 14 or over. Also, the 2016 amendments deleted the minimum age requirement and now all protected juveniles may receive this type of disciplinary action.
- <sup>89</sup> Act on the Treatment of Protected Juveniles, etc., Article 15 (Disciplinary Action) ① Where a protected juvenile, etc. commits a violation falling under any subparagraph of Article 14-4, the Director may take any of the following disciplinary action:
7. Order to be on good behavior in a designated indoor area for not more than 20 days.
- <sup>90</sup> Act on the Treatment of Protected Juveniles, etc., Article 15, Paragraph 4
- <sup>91</sup> The informant was only told that the length of the disciplinary action was extended and was not informed of the reasons and procedures for the extension.
- <sup>92</sup> Approximately 8m<sup>2</sup>
- <sup>93</sup> Administration and Treatment of Correctional Institution Inmates Act, Article 109, Paragraph 3

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<sup>94</sup> Guidelines on the Treatment of Protected Juveniles, Article 22, Paragraph 3

<sup>95</sup> Guidelines on the Treatment of Protected Juveniles, Article 33

<sup>96</sup> Eight people live together in a confined space for 10 weeks (4 rooms with 2 people each and 4 rooms for solitary confinement), and outside access is prohibited. Detainees are informed of the rules and other things that need to be memorized and are put in a cold room without a desk to memorize this information. They are only given cushions and a desk if they pass the memorization test later on. If the detainee does not pass the memorization test again, the cushions and desk are taken away. The detainees are ordered to do PT exercises in the confined rooms. If they refuse to memorize the rules or do not follow instructions, they are put in solitary confinement starting from the first week. There are cases where juveniles were in solitary confinement for 9 out of 10 weeks. Juveniles in solitary confinement are completely ignored for nine weeks no matter how much they yell and scream, and are left to tire themselves out, while others who are not in solitary confinement are made to watch this. No one monitors human rights violations and the facility is not bound by any regulations, and the rights of the juveniles are infringed upon by the abuse of authority to the fullest extent.

<sup>97</sup> Act on the Treatment of Protected Juveniles, etc., Article 14-2 (Use of Protection Equipment) ① Kinds of protection equipment are as follows:

1. Handcuffs;
2. Ropes;
3. Gas guns;
4. Electronic shock machine;
5. Head protection equipment.

② In any of the following cases, the Director may cause public officials belonging to his/her facility to use handcuffs or ropes for protected juveniles, etc.:

1. When necessary to prevent escape, rioting, creating violence, self-injury, or committing suicide;
2. When protected juveniles, etc. are escorted for investigation and examination by the court or the public prosecutors' office, transfer, or other reasons;
3. Otherwise when the safety or order of the juvenile reformatory or the Juvenile Classification Review Board is feared to be substantially disturbed.

③ In any of the following cases, the Director may cause public officials belonging to his/her facility to use gas guns or electronic shock machine in addition to handcuffs or ropes for protected juveniles, etc.:

1. When a protected juvenile, etc. leaves without permission, attempts suicide,

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or hurts himself/herself, or when he/she intends to leave without permission, attempt suicide, or hurt himself/herself;

2. When a protected juvenile, etc. inflicts or intends to inflict injury to others;

3. When a protected juvenile, etc. interferes in the execution of any public official's justifiable duty by the use of force;

4. When a protected juvenile, etc. inflicts or intends to inflict damage to the facilities, instruments, etc. of the juvenile reformatory or the Juvenile Classification Review Board;

5. Otherwise when a protected juvenile, etc. undermines or intends to undermine the security and order of facilities seriously.

- ④ If gas guns or electronic shock machine are used under paragraph (3), the other party shall be warned in advance: *Provided*, That this shall not apply if there is limited warning time due to urgent circumstances
- ⑤ Where a protected juvenile, etc. is much likely to injure himself/herself, the Director may order any relevant public officials to have such protected juvenile, etc. use head protection equipment.
- ⑥ Protection equipment shall be used to the minimum necessary extent, and the use of protection equipment shall be interrupted without delay when it becomes unnecessary to use it.
- ⑦ No protection equipment shall be used as punitive means.
- ⑧ Matters necessary for the usage and management of protection equipment shall be prescribed by Ordinance of the Ministry of Justice.

<sup>98</sup> An informant who was transferred to the Jeju Juvenile Reformatory was transported by a commercial airplane, as there are no separate airplanes for this purpose, so other passengers were able to see him in handcuffs and rope, which made this a humiliating experience.

<sup>99</sup> In May 2013, when dozens of protected juveniles in the Busan Juvenile Reformatory started a riot, about 400 police officers were dispatched to the scene and they used electric shock machines (Taser guns). In this process, a protected juvenile suffering from arrhythmia complained of chest pain and was treated at a hospital. At that time, the Busan Juvenile Reformatory was overcrowded, holding 180 juveniles while its total capacity was 130 (Korea JoongAng Daily, "In Korea, there's no room at the juvenile prisons", 10 July 2014).

<sup>100</sup> For adult inmates, electric shock machines are defined as 'security equipment' and not 'protective equipment', and they are only allowed to be used when there is an emergency in which security cannot be maintained with batons (Enforcement Rules of the Administration and Treatment of Correctional Institution Inmates Act, Article

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187).

- <sup>101</sup> The informant was subject to the so-called 'rotisserie chicken' treatment which involves tying up one's hands to the legs. Sometimes protected juveniles are taken into the staff rooms, where they are surrounded and subject to profanity and verbal abuse by the staff. It has been said that if a protected juvenile does not fully comply in this situation, he or she is put in handcuffs and rope and beaten by the staff, even when the protected juvenile did not engage in violence or pose a threat to safety or order.
- <sup>102</sup> Enforcement Rules of the Administration and Treatment of Correctional Institution Inmates Act, Article 184, Paragraph 2
- <sup>103</sup> Juveniles who have a history of drug abuse (juveniles requiring mind and physical improvement) or have received disciplinary action of 10 days or more of probation (special guidance juvenile) may be put in protective equipment for medical treatment ('Guidelines on the Classification of Health Care for and Treatment of Protected Juveniles', Article 6, Paragraph 3).
- <sup>104</sup> According to a report, some employees let juveniles take off the protective equipment during meal time, but other employees did not, so the juveniles had to eat the food by putting their mouths to the plate like a dog, as they were unable to use spoons. Juveniles may use the restroom if the protective equipment is taken off during meal time, otherwise they have to relieve themselves where they are sitting, for which they are beaten. This happens in rooms without CCTVs.
- <sup>105</sup> Administration and Treatment of Correctional Institution Inmates Act, Article 97, Paragraph 3.
- <sup>106</sup> Enforcement Decree of the Administration and Treatment of Correctional Institution Inmates Act, Article 121, Paragraph 1
- <sup>107</sup> Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc., Article 19.
- <sup>108</sup> According to a report, a protected juvenile who is expected to be discharged soon after passing or being close to passing the treatment review sometimes requests to be admitted to a space for physical and mental stability. This is because the juvenile fears that conflicts with other protected juveniles may lead to the discharge being cancelled or that he or she will not pass the review. Juveniles consider solitary confinement the only way to keep themselves away from harm.
- <sup>109</sup> Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc., Article 19.
- <sup>110</sup> Act on the Treatment of Protected Juveniles, etc., Article 11.
- <sup>111</sup> State party's report, Table IX-21 Petitions by protected juveniles.

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- <sup>112</sup> Administration and Treatment of Correctional Institution Inmates Act, Article 116.
- <sup>113</sup> Act on the Treatment of Protected Juveniles, etc., Article 18, Paragraph 1.
- <sup>114</sup> Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc., Article 38, Paragraph 3.
- <sup>115</sup> Act on the Treatment of Protected Juveniles, etc., Article 18, Paragraph 2.
- <sup>116</sup> Guidelines on the Treatment of Protected Juveniles, Article 36.
- <sup>117</sup> Act on the Treatment of Protected Juveniles, etc., Article 18, Paragraph 4.
- <sup>118</sup> Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc., Article 39, Paragraph 1, Subparagraph 2.
- <sup>119</sup> Act on the Treatment of Protected Juveniles, etc., Article 18, Paragraph 6.
- <sup>120</sup> Enforcement Decree of the Act on the Treatment of Protected Juveniles, etc., Article 39-2 Paragraph 1, Subparagraph 3.
- <sup>121</sup> Guidelines on the Treatment of Protected Juveniles, Article 42.
- <sup>122</sup> An informant who was subject to a body inspection at the Juvenile Classification Review Board after a visit from parents said that he considered giving up on visits because the body inspections conducted afterwards were humiliating.
- <sup>123</sup> Enforcement Rules of the Act on the Treatment of Protected Juveniles, etc., Article 24-9.
- <sup>124</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “What is the problem with the process for juvenile delinquency” at Congress, 21 March 2018, p. 47.
- <sup>125</sup> Enforcement Rules of the Act on the Treatment of Protected Juveniles, etc., Article 42.
- <sup>126</sup> Act on the Treatment of Protected Juveniles, etc., Article 14-3, Paragraph 2.
- <sup>127</sup> ‘Operation Guidelines for Imagery Processing Machines in Juvenile Reformatory’s and the Juvenile Classification Review Board’, Articles 4 and 8.
- <sup>128</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “What is the problem with the process for juvenile delinquency” at Congress, 21 March 2018, p. 47.
- <sup>129</sup> While male protected juveniles and their female counterparts receive 372g (2700kcal) and 276g (2001kcal), respectively, adult inmates are given 390g (2,500kcal) regardless of sex.
- <sup>130</sup> Active males: 2900kcal (12-14 years), 3100kcal (15-18 years); active females: 2300kcal (12-18 years); very active males: 3400kcal (12-14 years), 3600kcal (15-18 years); very active females: 2800kcal (12-18 years).

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<sup>131</sup> Sang-Hee Kim, Tae-Sup Kum, Byung-Wook Kim, “What is the problem with the process for juvenile delinquency” at Congress, 21 March 2018, p. 48.