**Written Submission for the CRPD general discussion on the right of persons with disabilities to work and employment**

*Ul-ryeok & Pum-asi* Project Team[[1]](#footnote-1)

**I. Overview: *Ul-ryeok & Pum-asi* Project**

1. In 2014, international community as well as the Korean society were shocked from the so called ‘salt farm slavery case’ in which at least 63 persons with disabilities (“PWDs”) had lived in slavery-like condition for several decades in the southern coastal region of the Korean peninsula.[[2]](#footnote-2) Regrettably, labor exploitation and forced or compulsory labor against PWDs still continues to this day. In their decision of non-prosecution disposition on cases concerning severe labor exploitation along with physical and verbal violence toward PWDs, police and prosecutors have used the terms ‘Ul-ryeok’[[3]](#footnote-3) and ‘Pum-asi.’[[4]](#footnote-4) Those two words refer to Korean traditional culture of helping and cooperating with neighbors. Against this background, DPOs, NGOs and lawyers in Korea who fight against labor exploitation of PWDs planned the *Ul-ryeok & Pum-asi* project and released a report on the situation of labor exploitation against PWDs in South Korea in November 2020.
2. *Ul-ryeok & Pum-asi* Project Team makes this submission to the CRPD Committee in response to a call for written submission for a general discussion on the rights of persons with disabilities to work and employment concerning the draft general comment on article 27 of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as “the Convention”). This submission aims to create a world where PWDs enjoy their labor rights safely and fully, with particular attention to the article 27(2) of the Convention. We wish that our submission could contribute to the CRPD Committee as meaningful data in finalizing the draft general comment.

**II. Situation of abuse and other forms of violence against PWDs in South Korea**

1. The Ministry of Health and Welfare in South Korea released the *2018 Disability Abuse Status Report* and the *2019 Disability Abuse Status Report* in 2019 and in 2020 respectively. The 2018 Report was the first report released by the South Korean government on statistics of abuse against PWDs.
2. Abuse against PWDs was classified into physical abuse, emotional abuse, sexual abuse, economic exploitation, abandonment and neglect, and forced or compulsory labor falls into the scope of economic exploitation. In 2018, a total of 889 cases of abuse against PWDs occurred, among which economic exploitation (186 cases, 20.9%) was the second highest cases after multiple abuse[[5]](#footnote-5) (263 cases, 29.3%). When counting multiple abuse cases as individual cases per each abuse type, the number of abuse cases increase to 1,234 cases. Even so, in this condition, economic exploitation (302 cases, 24.5%) was the second highest after physical abuse (339 cases, 27.5%).
3. In 2019, a total of 945 cases of abuse against PWDs occurred, among which economic exploitation (231 cases, 24.4%) was the second highest after multiple abuse cases (244 cases, 25.8%), as it was in 2018. When counting multiple abuse cases as individual cases per each abuse type, the number of abuse case increase to 1,258 cases. Similarly, in this condition, economic exploitation (328 cases, 26.1%) was the second highest after physical abuse (415cases, 33.0%) in 2019.
4. In particular, in 2019, the report investigated labor exploitation cases separately among those abuse cases against PWDs. In this report, labor exploitation means forced labor that unjustly uses PWDs’ labor by taking advantage of their vulnerability stemming from their disabilities, such as not paying or embezzling wages for their work. In 2019, cases of labor exploitation (94 cases) take up 28.7% among the economic exploitation (328 cases). Of all victims of labor exploitation, persons with intellectual disabilities were the largest in numbers (65 persons, 69.1%), and the most common labor exploitation period was 5 years or more (35 cases, 37.2%).

**III. Outcome of the *Ul-ryeok & Pum-asi* Project: Key cases of labor exploitation against PWDs**

1. *Ul-ryeok & Pum-asi* Project Team analyzed 10 cases of labor exploitation against PWDs concerning prosecutors’ non-prosecution disposition and not-guilty verdict in courts in South Korea, and reviewed international human rights norms and cases in other countries. Followings are findings of the five key labor exploitation cases against PWDs.

(1) Huksan Island slavery case

a. Facts of the case

1. “A,” person with intellectual disability, who had lived in Mokpho city, went to Huksan Island to find a job through an employment agency. He was exploited for about 17 years from 2002 to 2019 by four perpetrators at, among others, a fish cage farm and a workplace for anchovy sauce packaging. He had to do a lot of menial works at various places including abalone cage farm, but he had not had any formal written employment contract nor paid for his work.

b. Problems in the investigation process and results

1. After conducting three interviews with the victim, police transferred the case to the prosecutor with its opinion that the perpetrators would be prosecuted on charges of labor exploitation and abduction (Article 288 (2) of the Criminal Act) and quasi-fraud (Article 348 (1) of the Criminal Act). The prosecutor, however, ordered non-prosecution disposition on all perpetrators for lack of evidence in February 2020. Some of the main reasons of the prosecutor’s such decision were that the victim “A”’s intellectual capacity was not less enough to be exposed to labor exploitation and that the victim was not under practical control of the perpetrators (based on the perpetrators’ arguments that the victim had escaped frequently). Nonetheless, the prosecutor’s such decision concerning the severity of disability and the existence of practical control is hard to accept considering that the victim had difficulty in calculating numbers and time, and using ATM machine; impossible to manage sizable and planned financial management; lived in a warehouse of a perpetrator’s house or in a place 5-minute walking distance from a perpetrator’s house; and perpetrators accompanied the victim whenever the victim went out including visiting hospitals. Also, during the investigation process, police conducted interviews with the victim at a counselling center to develop rapport with the victim considering his disability. Prosecutor, on the other hand, denied the victim’s request to accompany a person with a reliable relationship with him without any justifiable reason for interview.

(2) Jamsil Baseball Park slavery case

a. Facts of the case

1. “B,” person with intellectual disability, was exposed to labor exploited at Jamsil Baseball Park for around 12 years from June 2006 to March 2018. He lived at a garbage collection center of the baseball park and mostly worked in separating garbage and collecting papers. B’s daily working hours usually exceeded 10 hours and he would work from 7 pm to 7 am next morning on the day of baseball game. Nonetheless, his employer never paid fair wage.

b. Problems in the investigation process and results

1. The Ministry of Employment and Labor decided that this case does not constitute a forced labor stating that, even though he could have escaped the place whenever he wanted to, the victim continued to stay in the garbage collection center because he was able to sleep and eat at the baseball park. Such ground was solely based on the perpetrator’s argument that “I provided place to stay and fed the poor disabled person who had nowhere to go,” with no consideration of environmental and individual vulnerabilities of persons with disabilities. As clearly seen from this case, the core of labor exploitation case in South Korea is that, being too well-accustomed to the control of perpetrators, persons with intellectual disabilities who have long been exploited live their life without realizing that they are being exploited and that their working place is the end of the world.

(3) Temple slavery case

a. Facts of the case

1. “C,” person with intellectual disability, was exposed to forced labor with physical and verbal violence toward him at a religious temple located in Nowon-gu, Seoul, for 32 years. He was also subject to crimes of identity theft for opening bank account, etc.

b. Problems in the investigation process and results

1. The perpetrator, a buddhist monk, was summarily indicted with 5 million KRW (about 5,000 USD) for physical violence, but the case concerning labor exploitation was closed without indictment based on the reason that there was no valid employment relationship. The perpetrator argued that the victim was only doing his shared temple work as one of the monks in the temple and that it was not a labor exploitation but Ul-ryeok, a traditional custom of cooperation. Those arguments were fully accepted at the investigative stage. Based on the 12 cases of physical violence occurred in the process of providing labor, it is obvious that the provision of victim’s labor was not voluntary but exploitation. Nevertheless, this case shows legal limitation in South Korea which do not recognize such acts as infringements of rights to freedom and bodily legal interests of PWDs but portray them as practice or traditional custom.

(4) *Pum-asi* case in Gokseong city

a. Facts of the case

1. “D,” person with intellectual disability, had been exposed to sexual violence and exploited by a neighboring perpetrator for 17 years. The victim’s spouse also has intellectual disability. Perpetrator exploited victim’s labor skillfully by abusing the fact that the couple were both persons with intellectual disabilities.

b. Problems in the investigation process and results

1. In this case, the local labor agency transferred the case to a prosecutor with non-prosecution opinion and, within two weeks receiving the case, the prosecutor dropped the case without further investigation. The prosecutor’s reason for non-prosecution disposition was that the victim’s labor constitutes the concept of *pum-asi*, which do not aim for receiving wages, and that there was no subordination between the perpetrator and the victim. However, the perpetrator had long exploited victim’s labor for free knowing that the victim does not have capacity to take measures such as claiming damages or reporting to the authority when she does not receive fair compensation. Although the statuses of the victim and of the perpetrator were clearly different and the victim was in a very vulnerable position prone to be exploited, the prosecutor decided that the victim’s labor was *pum-asi*, or “labor exchange based on mutual trust and recognition,” conducted in equal relationship between the victim with intellectual disability and the perpetrator.

(5) Slave case in a deep-sea fishing vessel

a. Facts of the case

1. “E,” person with borderline intellectual disability, worked at a deep-sea fishing vessel for 10 years. As he grew up alone from a young age in poor condition, the victim had a strong attachment to family relationship. Perpetrator couple misused victim’s such feeling and exploited more than 500 million won (about 450,000 USD) of victim’s wage by taking victim’s identification card, bank account and passport from the victim for the purpose of well-managing his finance. Despite suffering from liver cancer, E was forced to work at a deep-sea fishing vessel.

b. Problems in the investigation process and results

1. The investigative agencies considered this case as a simple case of withholding wages while overlooking the fact that the perpetrators gained benefits by taking advantage of the victim’s intellectual disability to exploit and not pay fair wage. During investigation process, investigators did not accept the victim’s disability registration based on his appearance. As labor exploitation against PWDs is an exploitation crime similar to human trafficking, this is clearly different from simple violation of the Labor Standards Act. Though criminal charges for individual acts may differ based on applicable laws such as Labor Standards Act, Act on Welfare of Persons with Disabilities, Criminal Act, etc., harms caused to the victim occur in a continuous course of action. Nonetheless, such continuous criminal acts are segmented during the investigation process so that acts violating the Labor Standards Act could be handled by the local labor agency, and other criminal charges could be investigated by police. As a result, such cases would end up only as a simple wage withholding case not as labor exploitation or abuse case. Regardless of how many years, for 30 years or 10 years, the victim had worked, cases of labor exploitation against PWDs often close under a passive agreement between perpetrator and victim with perpetrator’s paying for 3-year-wages which is not subject to wage extinctive prescription.

**IV. Suggestion**

1. Based on the outcome of the *Ul-ryeok & Pum-asi* Project, it is utmost important for the state to identify specific characteristics of PWDs’ high risk of being subjects to forced or compulsory labor and to fulfil its duty to prevent crimes and execute punishments so as to protect rights of PWDs prescribed in the Convention. In this regard, we would like to make suggestions adding below sentences to the draft general comment:

<Article 27 (2), forced or compulsory labor>

1. Paragraph 2 of article 27 addresses the protection of persons with disabilities from forced or compulsory labour Persons with disabilities are at particular risk of being victims of forced or compulsory labour. In the case of labor exploitation against persons with disabilities, perpetrators tend to continue to exploit victims physically and mentally and to commit an abusive act for a long time by using disability characteristics of victims. The state party should take enough legislative and policy measures to prevent possible forced or compulsory labor against persons with disabilities and except the measures, it should take active actions when victimized case is identified. It is important that when States address these situations, they ensure that (…)

<States parties’ obligations>

1. “The state party should provide regular training to investigators, labor inspectors and persons working in courts who address cases of labor exploitation against persons with disabilities to enhance their understanding and to ensure appropriate criminal and judiciary procedures, and release statistics of crimes against persons with disabilities including cases of abuse.”
2. “States parties should review and, when necessary, enact laws to properly punish perpetrators of labor exploitation against persons with disabilities.”
3. “States parties may introduce ex officio investigation and expert opinion inquiry procedure for judges’ full understanding of the forced or compulsory labor victim with disabilities’ statements and damages.”

<States parties’ obligations – II. Provision of reasonable accommodation>

1. “Legislative and policy measures shall be established to provide legal assistance to victims with disabilities of labor exploitation from the initial stage of investigation and the judicial proceedings and, when necessary, provide witness intermediary personnel to aide victim’s testimony.”
2. “When labor exploitation case of persons with disabilities occurs, investigative agencies should provide reasonable accommodations such as providing personal assistants including communication assistants and interpreters, providing Easy-to-Read version of documents and explanation of procedures, ensuring enough break time, reducing psychological uneasiness by accompanying with a person who has reliable relationship with persons with disabilities from considering characteristics of each disability type in the early stage of investigation and throughout the whole legislative judicial procedures.”

1. *Ul-ryeok & Pum-asi* Project Team is a research group on labor exploitation against PWDs in South Korea composed of activists and lawyers from: Duroo Association for Public Interest Law, GongGam Human Rights Law Foundation, Korea Disability Law Association (KDLA), Korean Lawyers for Public Interest and Human Rights, Lawyers for Public Interests Companion, MINBYUN – Lawyers for a Democratic Society, National Advocacy Agency for Persons with Disabilities, The Research Institute of the Differently Abled Person's Right in Korea (RIDRIK), Wongok Law Office. [↑](#footnote-ref-1)
2. F. Klug, ‘A living hell’ for disabled slaves on South Korean islands, *Associated Press*, 2 January 2015, <https://apnews.com/article/b32f26a9836c46c78acc1b916f0e5e90> [↑](#footnote-ref-2)
3. In Korean, ‘*ul-ryeok*’ means cooperation, as it is a combination of words ‘combine (*Ul*)’ and ‘power (*ryeok*).’ [↑](#footnote-ref-3)
4. In Korean, ‘p*um-asi*’ means exchanging works of each other, as it is a combination of words ‘taking (*asi*)’ and ‘efforts (*pum*)’. [↑](#footnote-ref-4)
5. Cases in which several types of abuse occur simulatneously. [↑](#footnote-ref-5)