

Petition

Petitioners *** and 122 others

Respondent Government of the Republic of Korea (President)

Purport of Petition

The Commission is hereby asked to accept, with respect to the right to life of Petitioners, that there has been a breach by the State of its obligation to protect fundamental rights, and to issue recommendations as follows.

In the interests of protecting the dignity and right to life of older persons and ensuring their health and security in a situation of climate crisis, the Commission recommends that the Government of the Republic of Korea (President):

1. enhance the 2030 national greenhouse gas reduction targets under the Enforcement Decree of the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis and improve on the annual greenhouse gas reduction targets under the First National Basic Plan for Carbon Neutrality and Green Growth, in each case, to a level that is both appropriate and effective to achieve the goal that the increase in the global average temperature should be limited to a maximum of 1.5°C above pre-industrial levels;
2. in formulating its next nationally determined contribution (NDC) under the Paris

Agreement, reflect the standards presented in the Sixth Assessment Report (2023) of the Intergovernmental Panel on Climate Change (IPCC) and adopt targets of a level that is both appropriate and effective to achieve the goal the increase in the global average temperature should be limited to 1.5°C above pre-industrial levels;¹ and

3. from the standpoint that the climate crisis has a widespread impact on human rights, including the right to life, right to food, right to health, and right to housing, and that it is a fundamental obligation of the State to protect the human rights of all people from this and to further those rights, swiftly conduct a factual survey and epidemiological investigation into the risks the climate crisis poses to the human rights of vulnerable social groups, including older persons, and, based on these, make improvements to the Third Round of National Climate Change Adaptation Measures and the Third Round of National Climate Crisis Adaptation Reinforcement Measures.

In the alternative, even if the Commission were to reject the petition brought by Petitioners, we would ask that it expresses an opinion on the need for policy improvements to protect the human rights of older persons from the climate crisis.

Grounds for Petition

¹ Under the Paris Agreement, the Republic of Korea must submit its next nationally determined contribution (NDC) in 2025, and the Ministry of Environment has revealed that it will commence its work this year (2024) to formulate the 2035 NDC.

I. Status of Petitioners

All of Petitioners are citizens of the Republic of Korea and constitute older persons aged 50 or over. The average age of Petitioners is 63, and the oldest of Petitioners is ○-Soon Kwon (aged 92).

Older persons are particularly vulnerable to the impacts of climate change. Although the drastic abnormal climate resulting from climate change affects the human rights of mankind as a whole, it has an unequal, and particularly serious, impact on the enjoyment by older persons of their rights to life, dignity, health, and security. In particular, to older persons, climate change constitutes a pressing and serious risk that can lead to loss of life.

With respect to the right to life and the right to pursue happiness², the basis of which may be found in “human worth and dignity” under Article 10 of the Constitution, even though the

² There have also been violations of constitutional rights of Petitioners including the right to health and well-being (Article 36, Paragraph 3 of the Constitution), the right to live in a healthy and pleasant environment (Article 35, Paragraph 1 of the Constitution), and the right to live a life worthy of human beings (Article 34 of the Constitution), but since the Commission is only competent to conduct inquiries in cases where there have been a violation of human rights guaranteed under Articles 10 through 22 of the Constitution (Article 30, Paragraph 1, Subparagraph 1 of the National Human Rights Commission of Korea Act), in the below, Petitioners’ arguments will focus on the violations of human rights guaranteed under Article 10 of the Constitution.

Government of the Republic of Korea has a positive obligation³ to take adequate and efficient measures to protect the rights of Petitioners, as older persons, from the pressing and serious risk of violation that is presented by the climate crisis, the Government is not fulfilling this obligation. It is for this reason that Petitioners have come to file this Petition.

II. Background to Petition

1. Climate Crisis and Human Rights of Older Persons

A. Climate Change Threatens Lives in Many Ways and Particularly Threatens Lives of Older Persons

In 2018, it was revealed by the United Nations (UN) Human Rights Committee that climate

³ See **Constitutional Court *En Banc* Decision 2018HeonMa730 dated December 27, 2019**, in which it was stated that “Under the provisions of Article 10 of the Constitution, it is the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals, and fundamental rights have the character of a community’s objective value order. Therefore, at least in relation to violations of important and fundamental legally protected interests, such as protection of life and body, the State has a positive, protective obligation even in cases where the violation is caused not by the State but by a third party,” and **General Comment No. 36 (2019) of the UN Human Rights Committee**, in which it was stated that “The duty to protect life also implies that States parties should take appropriate measures to address situations that (...) prevent individuals from enjoying their right to life with dignity. (...) Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”

change constitutes some of the most pressing and serious threats to the enjoyment of right to life by the present and future generations.⁴ In a study carried out in 2012, it was anticipated that, by 2030, 700,000 or more people would lose their lives as a result of the climate crisis.⁵

Of these, since older persons are more vulnerable to threats to health and risks of disease caused by climate change and they do not, in many cases, have the appropriate socio-economic ability to cope with climate change, threats to the lives of older persons are even more serious compared to other segments of the population.

By first being the cause of diseases, climate change directly threatens the lives of older persons who are vulnerable to diseases. According to the World Health Organization (WHO), climate change is the largest of the risk factors that threaten health, which the mankind is faced with.⁶ According to the WHO, climate change is a direct cause of, *inter alia*, illnesses caused by extreme temperatures, such as heatwaves and cold weather, respiratory diseases caused by exposure to air pollution, external injuries and deaths caused directly by extreme weather phenomena, such as drought, floods and storms, and cardio-cerebrovascular diseases. Indirectly, climate change affects the occurrence of contagious

⁴ HRC General Comment No. 36 (2018)

⁵ DARA and the Climate Vulnerable Forum. (2012). A Guide to the Cold Calculus of a Hot Planet. Page 17

⁶ <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

insect and animal-borne diseases that are caused by changes in ecosystems and vectors, and water and food-borne diseases that are caused by changes in food and water quality.⁷⁸

Since older persons are more vulnerable to these risks than other segments of the population, climate change poses a serious and substantive risk to the lives and health of older persons. According to the Korean Climate Change Assessment Report (2020, Ministry of Environment), **older persons aged 65 or above are affected to a greater degree compared to other segments of the population in terms of, *inter alia*, increase in the number of deaths caused by heatwaves, health impacts of air pollution and allergies, and severe fever with thrombocytopenia syndrome (SFTS) caused by increase in temperature.** In addition to these, various combined factors, including heatwaves, extreme temperatures, deterioration in air quality, and air pollution, increase the risk of death for older persons in connection with cardiovascular and respiratory diseases⁹, while climate risks worsen the health of older persons even further by increasing the inflammatory response in illnesses common to older persons, such as cardiovascular diseases, diabetes,

⁷ WHO (2018), COP24 Special Report: Health and Climate Change. See the following website: <https://www.who.int/publications/i/item/9789241514972>

⁸ Korea Disease Control and Prevention Agency (2022), First Climate and Health Impact Assessment Summary Report

⁹ Leyva, E. R. W., Beaman, A., Davidson, P. M. (2017). 'Health Impact of Climate Change in Older People: An Integrative Review and Implications for Nursing,' *Journal of Nursing Scholarship*, vol. 49, No. 6, p. 670–678; WHO (2022) *ibid.*

and Parkinson's disease¹⁰, and older persons are also vulnerable to the impacts of climate change in areas of malnutrition and mental health¹¹.

These do not stop as issues of deterioration in health but are causing the loss of lives of older persons. According to a special report published by the IPCC in 2018 (hereinafter, "IPCC 1.5°C Special Report")¹², **older persons and the chronically ill fall into groups with the highest rate of temperature-associated mortality.** As climate change becomes a reality, older persons in the Republic of Korea are already dying in unequally greater numbers as a result of climate change. According to the First Climate Health Impact Assessment Report (2022) published by the Korea Disease Control and Prevention Agency, **whereas older persons aged 65 or over account for 13.5% of the population structure in Korea, 68.5% of persons who died from heat-related illnesses in the last ten years were aged 65 or over.** In 2018, when the number of days of heatwave was the greatest in the latest ten-year period, **the number of deaths in persons aged 65 or over jumped to over twice the annual average.** Older persons aged 65 or over also recorded meaningfully

¹⁰ United Nations, Economic and Social Commission for Asia and the Pacific (ESCAP) (2022), Climate Change and Population Ageing in the Asia-Pacific Region: Status, Challenges and Opportunities, page 14

¹¹ WHO (2022). The UN Decade of Healthy Ageing 2021-2030 in a Climate-changing World, Connection Series 3. See the following website: https://cdn.who.int/media/docs/default-source/decade-of-healthy-ageing/decade-connection-series-climatechange.pdf?sfvrsn=e926d220_1&download=true

¹² IPCC (2018), Special Report on 1.5 degree warming

higher mortality rates compared to other segments of the population in other areas such as cold-related illnesses, excess deaths from exposure to fine particulate matter, and excess deaths from ozone exposure.¹³

Threats to the lives of older persons do not just stop at vulnerability to diseases resulting from age. The distinct socio-economic characteristics of the older segment of the population make it difficult for older persons to cope with diseases and disasters caused by climate change, and this threatens the lives of older persons in situations of climate change-related disasters. In the older population, characteristics such as disability, poverty, residence in isolated areas with inadequate access to health and social services, and poor living environment in cities are predominant compared to other segments of the population. Such intersectional vulnerabilities make it even more difficult for older persons to respond to the risks of climate change. Characteristics related to the life stages of older persons, namely decline in health and physical strength, loss of income, loss of spouse and social network, and inadequate access to information, also constitute factors that make it difficult for older persons to adapt and cope in situations of climate disasters.¹⁴ In other words, while some older persons are able to cope with extreme weather and other risks, most older persons lack

¹³ Korea Disease Control and Prevention Agency (2022), First Climate Health Impact Assessment Report

¹⁴ United Nations, Economic and Social Commission for Asia and the Pacific (ESCAP) (2022), Climate Change and Population Ageing in the Asia-Pacific Region: Status, Challenges and Opportunities, pages 15-17.

the physical, cognitive, social, and economic resources needed to avoid or mitigate the outcome that is generated by being exposed to serious weather phenomena or natural disasters.¹⁵ These vulnerabilities of older persons constitute yet another factor that threatens the lives of older persons in a situation of climate change.

Meanwhile, Korea is the most rapidly aging country in the world, with the proportion of older persons aged 65 or over being 18.4% as of 2023, and as this is expected to increase to 20% by 2025, the country is set to become a super-aged society. In other words, it is clear that the threat to the lives of older persons caused by climate change is not only a real risk to Petitioners, but also a serious and wide-ranging human rights issue for our society as a whole.

2. Acceleration of Climate Change (IPCC Sixth Report (2023)) and Climate Change in Korean Peninsula

According to the Sixth Assessment Report published by the IPCC (hereinafter, “IPCC Sixth Report”), each decade in the last 40-year period saw greater warming than any other period since 1850. The global surface temperature in the first two decades of the 21st century (2001-2020) was 0.99 [0.84-1.10] °C higher than that in 1850-1900, and in the case of 2011-2020, it was 1.09 [0.95-1.20] °C higher.

¹⁵ UN ESCAP, *Ibid.*, page 13.

The Korean peninsula is no exception. According to the Korea 109-year (1912 - 2020) Climate Change Analysis Report, the **annual average temperature in the latest 30-year period increased by 1.6°C compared to the past 30-year period**, and six out of the ten hottest years in the last 109-year period were in the last ten years. The background concentration of carbon dioxide in the atmosphere measured in Anmyeondo, Korea, was 415.2ppm as of 2018, which is an increase of 44ppm compared to the annual average concentration in 1999.

Climate disasters are also on the rise. 2020 saw the longest rainy season (54 days in the central region) recorded in history, with 46 dead or missing in the localized torrential downpours in the summer, and in 2022, heavy rain in the metropolitan area caused flooding in the cities. In 2022, there were as many as 756 cases of wildfires, which was an increase of 41% compared to the annual average (537 cases), and in the same year, wildfires in Uljin and Gangneung caused damage to the largest area recorded in history. In the spring of 2023, the longest drought in history was recorded in Gwangju, Jeonnam.¹⁶

In this situation of climate change and disasters, older persons are experiencing a substantive threat to their lives due to their vulnerability to diseases and inadequate ability

¹⁶ Joint Publication by Relevant Ministries (2023), National Carbon Neutrality and Green Growth Strategy; Joint Publication by Relevant Ministries (2023), Third Round of National Climate Crisis Adaptation Reinforcement Measures.

to adapt to disaster situations. As addressed above, these risks have the real consequence of causing deaths and will continue to do so, and unless greenhouse gas emissions are reduced effectively, the risks are expected to become even greater.

According to the IPCC Sixth Report, if the current greenhouse gas emission pathways are maintained, global temperature will increase by at least 1.5°C above pre-industrial levels in the near term (2021-2040) in nearly all scenarios, and even if the NDCs that have been submitted by the States were to be implemented in full, it is thought that the increase in the global average temperature will exceed 1.5°C in 2040. However, according to the IPCC 1.5°C Special Report, if the increase in the global average temperature were to exceed 1.5°C and reach 2°C above pre-industrial levels, the prevalence of diseases and rate of mortality associated with heat, and the rate of mortality associated with ozone will increase meaningfully compared to a scenario in which the increase is limited to 1.5°C. In other words, we are placed in a situation where it can be predicted both reasonably and realistically that, if the current levels of greenhouse gas emissions and greenhouse gas emission reduction targets are maintained, older persons in vulnerable positions would die more quickly, and in greater numbers, in the near future.

III. Breach by Government of Republic of Korea of Its Obligation to Protect Fundamental Rights

1. Relevant Legal Doctrine – Positive, Protective Obligation of Respondent to Protect Petitioners’ Rights Against Threats to Petitioners’ Lives

A. Right to Life as Fundamental Right That Is Guaranteed by Constitution and International Human Rights Law

The right to life, as a right that inheres in every human being, is the most precious right in its own sake, but it also constitutes the most fundamental right, because the effective protection of the right to life is the prerequisite for the enjoyment of all other rights (General Comment No. 36 (2018) of the UN Human Rights Committee).

Although the Constitution of the Republic of Korea does not contain an express provision on the right to life, it is widely recognized that the right to life is a right guaranteed under the Constitution (see Constitutional Court Decision 95HeonBa1 dated November 28, 1996). In academic circles, there are views that the basis for the right to life is found in “human worth and dignity” in Article 10 of the Constitution, and views that Article 10, together with Article 12, which ensures personal liberty, can constitute the basis for the right. In the first and second national reports submitted to the Human Rights Committee, the Government of the Republic of Korea explained that the primary basis for protecting the right to life may be found in Article 10 of the Constitution, which provides for respect for human dignity, and that the secondary basis may be found in Article 12, Paragraph 1, which provides for personal liberty.¹⁷

¹⁷ CCPR/C/68/Add1. (1991), para.105; CCPR/C/114/Add1. (1998), para 73.

Furthermore, since the International Covenant on Civil and Political Rights (hereinafter, “Covenant on Right to Freedom”), which, having been ratified by the Republic of Korea, has equal force as its laws, provides for the right to life in Article 6, the first of the provisions concerning substantive rights, the Government of the Republic of Korea also has an obligation to protect right to life under the international human rights law.

B. Positive Obligation of Respondent to Protect Lives and Dignity of Petitioners

1) Overview

As explained below, **it is established that, under the Constitution and the international covenant on human rights, the State has a positive obligation to protect** right to life. It is not always the case that a breach of such an obligation is established only if death occurs as a consequence. When an act of a third party or an external factor threatens a person’s life and personal security, the State’s obligation to take adequate and efficient measures to prevent such a risk is established. If the State fails to fulfill this obligation or only takes measures that are manifestly inadequate and inappropriate, then a breach of positive obligation to protect right to life may be established.

2) Respondent’s Obligations under Constitution

In providing that “All citizens shall be assured of human worth and dignity and have the

right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals,” Article 10 of the Constitution not only prohibits state power from violating the fundamental rights of citizens, but also goes a step further to declare that there is a duty to actively protect the fundamental rights of citizens and realize the same.

Based on this, it has been held by the Constitutional Court that, where there is a risk that an important and fundamental legally protected interest, such as the protection of life and body, would be violated, a positive, protective obligation is established on the part of the State to protect the fundamental rights of citizens from such risk.

In the *En Banc* Decision 2018HeonMa730 dated December 27, 2019, it was held that “Under the provisions of Article 10 of the Constitution, it is the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals, and fundamental rights have the character of a community’s objective value order. Therefore, **at least in relation to violations of important and fundamental legally protected interests, such as the protection of life and body, the State has a positive, protective obligation even in cases where the violation is caused not by the State but by a third party.**” The Court also held that, considering that environmental damage can result in, *inter alia*, violations of important and fundamental legally protected interests, such as the protection of life and body, the State in certain cases has a duty to actively take measures to protect fundamental rights. Although, on this issue, the Constitutional Court reached its judgment mainly in relation to environmental rights violations, in suggesting the “likelihood that

(environmental) harm could have a severe impact on the legally protected interests of life and body” as one of the factors for consideration, the Court explained that the State must take the minimum adequate and efficient protective measures to prevent such harm.

Furthermore, where there is a threat to the lives of citizens, the Constitutional Court considers that the State has a protective obligation to “prevent the risk of violation” not only in cases where lives have actually been lost as a result of the threat, but also where “there is concern that lives would be so threatened.” It has also been decided by the Constitutional Court that “rights concerning life and personal security are not only fundamental rights forming the basis of human worth and dignity, but also, since, by providing that “the health of all citizens shall be protected by the State,” the Constitution specifically emphasizes the protective obligation of the State in relation to health, including the protection of life and body from diseases (Article 36, Paragraph 3), where lives and personal security of citizens are threatened by diseases, etc. or **there is concern that they would be so threatened**, the State has a comprehensive obligation, depending on the cause and extent of such risk (...), to **prevent the risk of such violation** and maintain that state by taking adequate and efficient legislative and administrative measures that are necessary to protect the lives and personal security of citizens” (Constitutional Court Decision 2008HeonMa419 dated December 26, 2008).

The Constitutional Court has also recognized the positive, protective obligation of the State on the basis of Article 10 of the Constitution, which guarantees human worth and dignity, and recognized that a human rights violation had been caused by an omission

(Constitutional Court *En Banc* Decision 2006HeonMa788 dated August 30, 2011). In the relevant decision, the Constitutional Court held that “as the supreme constitutional value and the State’s normative goal, human dignity binds all state institutions, which means that realization of human dignity is both the duty of, and a task for, the State. Thus, not only is human dignity an individual’s right of defense that must be protected from violations by the State as the “limit on state power,” but also, as the “task for state power,” when the human dignity of citizens is threatened by a third party, the State has an obligation to protect it.” Further, in deciding that “since, in the absence of fulfillment of obligation (act), it is possible that the fundamental rights of Claimants would be gravely violated, Respondent’s obligation to act constitutes an obligation to act that stems from the Constitution,” the Constitutional Court recognized that a violation of fundamental rights had been caused by the Government’s omission.

In our opinion, when viewed in light of this legal doctrine, the right to life is the most fundamental of fundamental rights, which functions as the prerequisite to all of the fundamental rights that are provided for in the Constitution (Constitutional Court Decision 95HeonBa1 dated November 28, 1996). Thus, based on Article 10 of the Constitution, if the right to life of citizens comes under threat, or there is concern that it would be so threatened, Respondent must be regarded as having a positive, protective obligation to prevent the risk of such violation and maintain that state by taking adequate and efficient measures.

3) Respondent’s Obligations under International Human Rights Law

Under the international human rights law, it is as clear as day that the State has a positive, protective obligation to take measures to address any situation that poses a threat to human lives.

According to General Comment No. 36 of the Human Rights Committee regarding Article 6 (Right to Life) of the Covenant on Right to Freedom, “States parties need to adopt positive measures to protect (right to life),” and the obligation of the State to respect and ensure the right to life extends to “reasonably foreseeable threats and life-threatening situations that can result in loss of life.”¹⁸ In other words, even if such threats and situations do not result in loss of life, the State must take “appropriate measures to address the situations that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”¹⁹ and if it fails to, a breach of Article 6 may be established.

As an example of this, in the case of **Toussaint v. Canada**, in emphasizing that the right to life must not be interpreted narrowly and that States parties must adopt positive measures to protect right to life, the Human Rights Committee considered that, if lack of access to health care would expose a person to a reasonably foreseeable risk that can result in loss of life, States parties have an obligation to provide access to health-care services that are reasonably available, and decided that Canada was in breach of its obligation to protect

¹⁸ HRC General Comment No. 36 (2018) para. 7.

¹⁹ Ibid., para. 26.

right to life under Article 6 of the Convention.²⁰

In May 2020, five of the UN human rights treaty bodies issued a statement on human rights and climate change, stating that “failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.”

From this legal doctrine, one may deduce that, in cases where climate change would expose people to a reasonably foreseeable risk that can result in loss of life, Respondent has an obligation to take adequate and necessary measures in response thereto.

D) Sub-conclusion

Thus, if Petitioners are exposed to a reasonably foreseeable risk that can result in loss of life, it is clear that the State has a positive, protective obligation to protect the right to life of Petitioners from such risk.

4) Relationship between Climate Crisis and Respondent’s Protective Obligation

The climate crisis affects all rights of human beings in practice, including the right to life,

²⁰ Toussaint v. Canada, Communication No. 2348/2014(2018).

right to food, right to hygiene, right to health, right to housing, right to self-determination, and right to education. Of these, it is a common perception of international society that the climate crisis can pose a grave threat to human lives, and the lives of vulnerable social groups in particular.

Since 2008, the UN Human Rights Council has adopted resolutions on climate change and human rights on twelve occasions. The “Human Rights and Climate Change” resolution²¹ adopted by the UN Human Rights Council in 2022 expressed deep concern at the scale and frequency of recent disasters, diseases and infectious diseases, as well as negative impacts of climate change, which have resulted in substantial loss of life, and emphasized that the climate crisis can result in violations not only of the right to life but also of, *inter alia*, the right to health, the right to adequate housing, and the rights to safe drinking water and sanitation. In pointing out that such adverse effects are felt even more directly by those segments of the population that are already in vulnerable situations owing to factors such as age, poverty, and geography, the Council “emphasizes the urgent importance of continuing to address, as they relate to States’ human rights obligations, the adverse consequences of climate change for all, particularly in developing countries and for the people whose situation is most vulnerable to climate change.”

Going a step further, the Human Rights Committee expressly made the point that climate

²¹ A/HRC/RES/50/9

change constitutes a pressing and serious threat to the enjoyment of right to life under Article 6 of the Covenant on Right to Freedom, and clearly stated that States parties have a positive, protective obligation under the Covenant on Right to Freedom to protect human lives from climate change. In General Comment No. 36, the Human Rights Committee states that “the duty to protect life also implies that States parties should take appropriate measures to address the conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These conditions may include (...) degradation of the environment (...) and the prevalence of life-threatening diseases”²² and that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” The Committee also emphasizes that “implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends on, *inter alia*, measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”²³

As explained above, climate change poses a substantive threat to the lives and health of older persons, as a particularly vulnerable segment of the population. Older persons are actually dying due to, *inter alia*, heatwaves, severe cold, ozone exposure, and exposure to

²² HRC General Comment No. 36 (2018) para. 26.

²³ *Ibid.*, para. 62.

fine particulate matter, and the proportion of total deaths accounted for by older persons is meaningfully high compared to the proportion they account for in the entire population. While climate change-induced natural disasters are on the increase every year, most older persons are unable to secure adequate resources to adapt to and cope with diseases and disaster situations due to their intersectional vulnerabilities, which is heightening the threat to their lives.

In short, climate change is already a substantive threat to the lives of Petitioners as older persons, and as such, it constitutes a reasonably foreseeable risk that can lead to the death of Petitioners.

Amidst a rise in abnormal weather and disasters caused by climate change, Petitioner ○-Hwa Kim, aged 77 (born in 1947), is in a situation where it is highly probable that, in the absence of adequate measures for adaptation, her life and body would be at risk. Petitioner ○-Hwa Kim lives alone in a house located under a mountain in western Gyeonggi-do, and as heavy rain, heavy snow, etc. increased due to abnormal weather, which has intensified in recent years, the roof of the house she lives in became damaged. In addition, amidst a rise in the number of wildfires, Petitioner ○-Hwa Kim's home is also vulnerable to wildfires. If the climate crisis continues to worsen and causes heavy rain, heavy snow, wildfires, etc. induced by climate change to increase, Petitioner ○-Hwa Kim would inevitably become exposed to threats to life and body. Similar cases have already occurred in various parts of

the country: in 2020, heavy rain in Eomjeong-myeon, Chungju-si, which reached 224mm per day, caused a landslide, burying an older person aged 76 who was living nearby²⁴, and in 2019, older persons who were moving to get away from a wildfire in Sokcho and Goseong, Gangwon, lost their lives.²⁵ Meanwhile, Petitioner ○-Hwa Kim is an older person who lives alone after her spouse was recently admitted to a sanatorium due to an illness, and finds it difficult to move quickly due to arthritis in her lower back and knees. Given the circumstances, it has been difficult to take action on the damaged roof of the house, which has been covered with a tent for the time being. Such characteristics, namely loss of social network and inability to cope with disasters, which are found predominantly in older persons, would make it difficult for Petitioner ○-Hwa Kim to avoid the threats to life and body caused by the climate disaster. Unless Respondent achieves effective reduction to mitigate climate change and devises appropriate adaption measures that reflect the vulnerabilities of older persons, it is highly probable that Petitioner ○-Hwa Kim would be exposed to threats to life and body. Thus, the need for the State to take the minimum adequate and efficient measures to protect the right to life and dignity of Petitioners must be deemed established.

²⁴ Yonhap News, Four Dead and Two Missing Among Collapsing Mountains and Rampaging Torrents in Chungbuk, reported on August 2, 2020. See the following URL: <https://www.yna.co.kr/view/AKR20200802029400064>

²⁵ Kukminilbo, Two Residents Die While Moving to Get Away from Wildfire in Sokcho and Goseong, Gangwon, reported on April 5, 2019. See the following URL: <https://m.kmib.co.kr/view.asp?arcid=0013204727&code=61121211&sid1=soc>

Of Petitioners, ○-Nam Lee is aged 89 (born in 1935) and has long been receiving treatment for high blood pressure. According to the WHO,²⁶ changes in temperature caused by the climate crisis significantly increases the rate of early mortality, and cardiovascular diseases account for 50% of the studied causes of early mortality. In other words, when Petitioner ○-Nam Lee's age and vulnerability to diseases are taken into account, and amidst a significant rise in heatwaves caused by climate change in the Korean peninsula, Petitioner ○-Nam Lee must be regarded as being exposed to threats to life and body caused by deterioration of cardiovascular diseases. These threats are already becoming a reality, because the impact of climate change is rapidly growing, in that, *inter alia*, although the 30-year (1991-2020) average of the number of days of heatwaves in the Seoul-Gyeonggi region, where Petitioner ○-Nam Lee lives, was 8.5 days, the average number of days of heatwaves in 2021 reached 15 days, and last year, in 2023, days when the daily average temperature reached 33°C or above were observed in Dongducheon from June 19 onwards.²⁷ Added to this, since Petitioner ○-Nam Lee's spouse died two years ago and his/her children have also died or moved out to become independent, Petitioner ○-Nam Lee is currently living alone in a rented apartment. Such characteristics, which can commonly be found in older persons, namely the loss of social network and socio-economic vulnerabilities, would make it difficult for Petitioner ○-Nam Lee deal with the situation appropriately if he/she were to be faced with a threat to life due to heatwaves, etc. Unless

²⁶ WHO (2018), COP24 Special Report: Health and Climate Change, 23면

²⁷ See Korea Meteorological Administration's Open Weather Data Portal, <https://data.kma.go.kr/climate/heatWave/selectHeatWaveChart.do>.

Respondent takes appropriate measures in relation to older persons' vulnerability to the climate, Petitioner ○-Nam Lee would inevitably continue to be exposed to threats to life and body in the face of climate change, and accordingly, a positive obligation on Respondent to take the minimum adequate and necessary measures must be deemed established.

Petitioner ○-Hoon Han, an older person aged 65 (born in 1959), is a farmer who lives in Chungju-si, Chungnam. In the summer of 2020, there was record-breaking rainfall in Chungju-si, with localized torrential downpours in Chungju-si reaching a maximum of 485mm as of August 1, and Chungju-si being declared a special disaster area as a result. At that time, four died and eight were declared missing in the Chungbuk area. In 2023, Chungju-si experienced the damage of heavy rain again and was declared a special disaster area. The majority of residents in the village in which Petitioner ○-Hoon Han lives are older people who are vulnerable to the risk of disasters. Thankfully, no deaths or injuries have occurred to date, but all village residents incurred incalculable harm to their homes and daily lives due to climate disasters, and Petitioner ○-Hoon Han is experiencing first-hand the fact that climate change-induced disasters pose a pressing and imminent threat to his life and body.

Meanwhile, as per the analysis in the IPCC Sixth Report, if the current greenhouse gas emission pathways are maintained, the increase in the global temperature will exceed 1.5°C in the near term, and in this case, by climate change-induced disasters will increase to an irreversible level, with the rate of mortality caused by temperature also rising. Therefore,

unless we break away from the current greenhouse gas emission pathways, it is plain that the lives of Petitioners as older persons would come under an even greater threat.

Thus, given that climate change poses a threat to the lives of Petitioners as older persons and there is reasonably foreseeable risk that, unless the State takes positive measures to break away from the current greenhouse gas emission pathways, such a threat would result in their deaths, the State has a positive obligation to take adequate and necessary measures to protect the lives and dignity of Petitioners from climate change.

C. Examination Standard: Minimum Adequate and Efficient Protective Measures

When examining whether the State failed to fulfil its positive, protective obligation in relation to the fundamental rights of citizens, whether there has been a breach of the so-called “principle of prohibition of inadequate protection,” which asks whether, **at the very least, the minimum adequate and efficient protective measures have been taken**, becomes the standard of examination (Constitutional Court *En Banc* Decision 2018HeonMa730 dated December 27, 2019). If, in a situation where action is needed to protect the lives and bodies of citizens, the State fails to take any protective measures at all or it is clear that measures that have been taken are entirely inappropriate or grossly inadequate to protect legally protected interests, a breach by the State of its protective obligation may be found (Constitutional Court Decision 2008HeonMa419 dated December 26, 2008). Therefore, the issue at hand in this matter is whether the State has, at the very least, taken the minimum adequate and efficient protective measures to protect the lives,

dignity, and security of Petitioners from the threats posed by the climate crisis, and if measures have been taken, whether it is clear that those measures were entirely inappropriate or grossly inadequate to protect the right to life of Petitioners.

2. Breach by Government of Republic of Korea of Its Obligation to Protect Fundamental Rights

A. Overview

In a situation where the climate crisis is putting the lives of vulnerable social groups, including older persons, under substantive threat, measures that can be taken by the Government of the Republic of Korea to fulfill its obligation to protect fundamental rights has two aspects: reduction and adaptation.

The term “reduction” means the reduction of total national greenhouse gas emissions to a level that is appropriate and effective to achieve the goal of limiting the increase in the global average temperature to 1.5°C above pre-industrial levels, in an effort to prevent the rampage of disasters and punishment caused by the rise in the global temperature. As will be examined in detail later on, setting a greenhouse gas reduction target that is both appropriate and effective for the achievement of the goal of 1.5°C constitutes the minimum measure that is essential to protect the right to life of older persons in the face of climate change.

In addition to reduction, adaptation measures, which consider the distinct need to protect vulnerable social groups in a situation where the human rights violations caused by climate change have already become a reality, are also important. The term “adaptation” refers to all processes whereby adjustments are made by humans and the nature in response to the consequences of climate change²⁸. The impact of climate change manifests differently according to, *inter alia*, demographical characteristics, socio-economic level, and temporal and spatial characteristics of the target group. In particular, as the climate crisis intensifies, the process repeats itself whereby the discriminative harm that results from, *inter alia*, age, gender, social status, disability, and occupation, as social discriminatory structures, worsens intersectionally and reproduces itself. Thus, collecting segmented data on groups that are sensitive to the impacts of climate change, and putting in place adaptation measures to address the issue of climate inequality of groups that are vulnerable to exposure to climate change, becomes a crucial task.

However, from the aspect of reduction, the Government of the Republic of Korea is continuing in its omission whereby it is failing to take the minimum adequate and effective measures, and in relation to adaptation, it is only taking measures that are manifestly inappropriate and inadequate, with the result that the state of breach of obligation to protect fundamental rights persists. In other words, by failing to take the minimum adequate and

²⁸ IPCC Fifth Assessment Report, 2014

efficient measures to protect the right to life of Petitioners as older persons, the Government of the Republic of Korea is in breach of its obligation to protect fundamental rights.

B. Omission Involving Failure to Modify or Reset NDC at Level That Is Appropriate and Effective to Achieve Goal of Limiting Increase in Global Temperature to 1.5°C

1) Minimum Measures to Mitigate Human Right Risks Posed by Climate Change: Setting Greenhouse Gas Reduction Targets That Are Appropriate for Goal of 1.5°C

There is already international agreement on the point that, as the last line of defense for the mitigation of climate change risks, greenhouse gas reduction measures must be taken to limit the increase in the global average temperature to 1.5°C above pre-industrial levels.

Article 2 of the Paris Agreement, which was adopted at the twenty-first session of the Conference of the Parties to the UN Framework Convention on Climate Change in 2015, specifies to all States parties that the increase in the global temperature should be held to well below 2°C above pre-industrial levels and that efforts should be made to limit the increase to 1.5°C above pre-industrial levels. At the twenty-first session of the Conference of the Parties to the UN Framework Convention on Climate Change, powerful arguments were made for the upper limit to the increase in the global average temperature to be set at 1.5°C rather than 2°C, but with the formation of consensus that a scientific basis for the 1.5°C standard was needed, it was agreed that the Paris Agreement would be adopted in the form described above for the time being, provided that the IPCC would be invited to

provide a special report by 2018 on the climate change impacts that will result when warming of 1.5°C occurs. Accordingly, in 2018 the IPCC approved and published its special report on 1.5°C warming. This report presented the scientific basis that warming of 1.5°C and 2°C demonstrated a clear and patent difference in the respective degrees of risks caused by climate change. Thus, the goal in the Paris Agreement to limit warming to 1.5°C gained scientific basis, and in 2021, the Glasgow Climate Pact was adopted at the twenty-sixth session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP26). The terms of the Pact required States parties to submit strengthened NDCs by 2022 for the attainment of the suppression goal of the Paris Agreement of 1.5°C.

International organizations are aiming to limit the increase in the global temperature to 1.5°C not because it is the most ideal climate change mitigation scenario, or because such a limit can prevent all human rights risks. According to the IPCC, even if the goal of 1.5°C warming were to be met, climate change would still occur, and irrecoverable harm would result. However, if the increase in the global average temperature were to exceed 1.5°C, the impact on the mankind and nature would be much more serious, and it is for this reason that agreement was reached on the goal of 1.5°C as the **minimum action needed to mitigate the risks of climate change.**

In this regard, a brief review of the content of the 2018 IPCC 1.5°C Special Report shows that the IPCC has analyzed the respective risks of the increases in the global average temperature of 1.5°C and 2°C in relation to, *inter alia*, Δ temperature and precipitation, Δ rise in sea levels, Δ damage to ecosystems, Δ ocean temperature and ocean acidification,

and Δ impact on food and health, and the advantage of being able to limit the harm when the increase in temperature is limited to 1.5°C compared to 2°C was found in all areas, which is inseparable from the protection of human rights for all. However, we will focus on the part relating to Δ impact on food and health, which is most relevant to the human rights of older people as the subject matter of this Petition. The IPCC found that, even if the increase in temperature were to be limited to 1.5°C, this would not eliminate the risks of climate change; rather, those risks would still exist, as would limitations that would be difficult to overcome. Nonetheless, **if the increase were to be limited to 1.5°C, the population that would be exposed to climate risks can be reduced by a maximum of several hundreds of millions by 2050, and the rate of mortality caused by heat and ozone concentration in the atmosphere would fall, and risks associated with diseases would diminish.** If, however, the increase were to exceed 1.5°C, climate risks would rise rapidly in the increase segment of 1.5°C-2°C, and exposure to poverty and vulnerabilities would rise particularly in the Asian and African regions. In particular, the IPCC found that the population that would be exposed to such climate risks are mainly the vulnerable social groups.

This being the case, **in order to take the minimum adequate and necessary measures** to protect the fundamental rights of vulnerable social groups, including older persons, from the risks of climate change-induced violations of life, **greenhouse gas reduction targets should, at the very least, be set at a level that is appropriate to limit the increase in the global temperature to 1.5°C** and efforts should be made to achieve those targets.

Reference can also be had to the decision of the Dutch Supreme Court as an example of judgment made on whether the State had fulfilled its minimum protective obligation in response to the climate crisis. In November 2012, Urgenda (Urgent Agenda), a non-governmental organization, claimed that the failure of the Dutch greenhouse gas reduction targets to meet the reduction targets required by international society amounted to a breach of the obligation owed to citizens to protect fundamental rights and filed a lawsuit seeking an order of the Court that the greenhouse gas reduction targets be raised. Based on the estimations made by the IPCC, the Dutch Supreme Court found that, even if the Netherlands were to reduce its greenhouse gas emissions by a maximum of 40% compared to 1990 levels, the likelihood that it would still fall short of its goal of 2°C was nearly 50%, and recognized, in view of the goal of 1.5°C, that a 25% reduction constituted the minimum obligation of the Dutch government. The Court considered that the government had been in breach of its positive obligation to protect its citizens in connection with its response to the harm caused by climate change.

When the foregoing points are considered as a whole, setting the greenhouse gas reduction target standard by considering the standards suggested by the international norm, as the minimum standard for preventing the imminent risks caused by climate change constitute the minimum action that the State must take in order to fulfill its obligation to protect the fundamental rights of Petitioners.

2) Breach by Government of Republic of Korea of Principle of Prohibition of Inadequate Protection

In 2010, the Government of the Republic of Korea first legislated its national greenhouse gas emission targets (or nationally determined contribution; hereinafter, “NDC”), which aim to “reduce total national greenhouse gas emissions for 2020 by 30% compared to the greenhouse gas emission projections for 2020” in Article 42 of the Framework Act on Low Carbon, Green Growth and Article 25 of the Enforcement Decree of the same Act, and modified the NDC by amending the Enforcement Decree of the same Act sequentially in 2016 and 2019. Subsequently, with the enforcement of the Framework Act on Carbon Neutrality and the Enforcement Decree of the Framework Act on Carbon Neutrality in 2021, the NDC that “by 2030, greenhouse gas emissions should be **reduced by 40% compared to national greenhouse gas emission levels in 2018**” (hereinafter, “current NDC”) was provided for in Article 8, Paragraph 1 of the Framework Act on Carbon Neutrality and Article 3, Paragraph 1 of the Enforcement Decree of the same Act.

Subsequently, criticisms that the current 2030 NDC was insufficient to meet the goal of 1.5°C continued to be made. Most prominently, the Commission expressed its opinion to the Government of the Republic of Korea (President) in 2022 that the current 2030 NDC needs to be adjusted upwards and submitted its opinion to the Constitutional Court in 2023 to the effect that the current 2030 NDC was unconstitutional.

In particular, Petitioners would like to emphasize that, in presenting its Sixth Report in March 2023, the IPCC presented the results of its assessment that, **based on the States’ NDCs as they currently stand, the increase in the global average temperature will**

exceed 1.5°C by 2040 in all reduction scenarios, and that, in order to attain the goal of 1.5°C, greenhouse gas emissions must be **reduced by 43% compared to 2019 levels** by 2030, and emphasized the importance of rapid, deep and immediate reduction.

Under Article 8, Paragraph 4 of the Framework Act on Carbon Neutrality, the Government must review the NDC every five years, provided that, if it is necessary due to, *inter alia*, changes in social and technical conditions, the NDC may be modified or reset before the five-year period elapses.

The criticism that the current NDC is manifestly inappropriate and inadequate to achieve the goal of 1.5°C has continued to be made, and crucially, the level of reduction that is essential to meet the goal of 1.5°C on a global level was scientifically established in March 2023 in the IPCC Sixth Report. Accordingly, in order to fulfil the State's positive, protective obligation amidst such changes in social and technical conditions, Respondent had an obligation to act by modifying or resetting the NDC so that, at the very least, it was consistent with the 1.5°C increase scenario presented by the IPCC.

However, not only did the Government of the Republic of Korea fail to modify or reset the current 2030 NDC, but it also failed to make any effort whatsoever to review the same. In April 2023 – after the publication of the IPCC Sixth Report – the Government presented the First National Basic Plan for Carbon Neutrality and Green Growth, which, despite the IPCC's assessment results, kept the NDC as is without any adjustment.

Not only that, in the First National Basic Plan for Carbon Neutrality and Green Growth referred to above, the Government of the Republic of Korea set and presented its annual reduction targets based on the current 2030 NDC; the plan presented by the Government was one in which, by assigning 75% of the reduction burden to be achieved by 2030 in the period 2028 to 2030, a sharp reduction was required to be made in the future, while the annual average reduction rate in the period 2023 to 2027 was set at a mere 2%. This is thought to be directly contrary to the purport of the IPCC Sixth Report, which requires a rapid, deep and immediate reduction.²⁹

In other words, the Government of the Republic of Korea has failed to take the minimum action necessary to protect the fundamental rights of vulnerable social groups, including older persons, from violations of human lives and dignity caused by climate change – it has entirely failed to take reduction measures that are appropriate to limit the increase in the global temperature to 1.5°C, in other words – and this must be regarded as neglect on the part of the Government in protecting the right to life of Petitioners, which constitutes a breach of the principle of prohibition of inadequate protection.

Meanwhile, under the Paris Agreement, the Government of the Republic of Korea must submit its next NDC (reduction target for 2035) by 2025, and in its business plan for this year (2024), the Ministry of Environment has revealed that it plans to commence the work

²⁹ Plan 1.5 (2023) “Basic Plan That Goes Backwards on “Realizable Carbon Neutrality””

to set the next NDC. However, unless the human rights violations resulting from the ongoing omission are remedied, it is highly likely that the 2035 NDC will also be set at a level that is markedly inappropriate and inadequate, with the result that the threat to Petitioners' lives will be heightened even further. Petitioners sincerely hope that, by accepting this Petition, the Commission sounds the alarm on the State's failure to fulfil its obligation to protect fundamental rights and issues recommendations so that the 2035 NDC may be set at a level that satisfies the minimum standard.

3. Adaption Measures for Older Persons Are Manifestly Inappropriate and Inadequate

A. Need for Climate Adaptation Measures That Consider Distinct Needs of Older Persons

1) Overview

As mentioned repeatedly in the above, threats to human rights presented by climate change do not affect everyone equally. Risks of climate change and disasters have a greater impact on vulnerable social groups, including older persons, and this leads to threats not only to their health and well-being, but also to their lives and dignity.

Impacts of climate change on vulnerable social groups, including older persons, are not fragmented; rather, they are interconnected with various social structural factors. Vulnerabilities of older persons in a situation of climate change are shown as outcomes

involving the intersection of vulnerabilities in several areas, including vulnerability to diseases, disability, poverty, lack of access to health and social services, lack of social and economic resources, loss of social network, and difficulty in accessing information. Accordingly, the degree of influence over, ability to cope with, and resilience to climate change varies for each vulnerable social group.

This being the case, formulation of any climate adaptation measures by the Government must be preceded by an analysis of the social groups that are vulnerable to the climate crisis as well as a review of human rights violations. In relation to the issue at hand in particular, adaptation measures need to be formulated by reviewing the distinct vulnerabilities of older persons as a segment of the population and adopting the resulting data as the foundation for the measures, so that the measures reflect the distinct needs of older persons.

2) International Standards

On July 16, 2020, by adopting a resolution on human rights and climate change, the UN Human Rights Council called upon all States to adopt an age-inclusive and disability-inclusive approach to climate change adaptation and response policies.³⁰ On July 25, 2023, the UN's Independent Expert on the enjoyment of all human rights by older persons submitted a report titled Human Rights of Older Persons In the Context of Climate Change-

³⁰ A/HRC/RES/44/7

induced Disasters to the UN General Assembly.³¹ In this report, the Independent Expert emphasized that adequate plans for climate-related disasters must be based on disaggregated data and protect the human rights of older persons. In particular, in pointing out that climate and disaster-related law and policy often refer broadly to vulnerable groups, thereby dismissing the distinct needs of older persons, and that, to remedy this, older persons should be explicitly included in preparedness and planning for climate-related disasters. By emphasizing that the susceptibility of older persons to disasters is also a result of “limited social, financial, and community support available to older persons,” the Independent Expert states that various factors, including social security systems, adequate housing, effective systems for communicating disaster-related information to older persons, and health-care infrastructure, must be integrated. In other words, law and policy on climate-induced disasters must consider the various distinct needs of older persons.

In a report published in 2022, the UN Economic and Social Commission for Asia and the Pacific (ESCAP) diagnosed the various crises and vulnerabilities faced by older persons in Asia in a situation of climate change and stated that policies that build individual resilience and reduce vulnerabilities are required to protect older persons from the risks of climate change. In doing so, the ESCAP presented its key messages, which include the following:³²

- An understanding should be gained of the social, economic, and environmental

³¹ A/78/226

³² UN ESCAP (2022), *Ibid.*, page 39

factors determining older persons' ability to adapt to and recover from climate change impacts, including collection and analysis of data on how older persons were affected.

- When dealing with climate change and taking disaster risk reduction measures, the needs of older persons arising from their age, gender, and disability should be considered;
- In order to take account of the climate vulnerability of older persons and build individual and community resilience, adequate and accessible social protection systems should be provided, including universal health and social care policies;
- Action should be taken to ensure that risk factors specific to the locations in which older persons live are addressed and potential risk factors which worsen the impact of climate change for older persons are removed;
- Action should be taken to ensure that basic, adequate, and accessible services are available during climate change-induced disasters.

3) Sub-conclusion – Minimum Appropriate and Necessary Protective Measures

Thus, in order to fulfil the positive, protective obligation to protect the right to life of older persons in situations where climate change-induced disasters are imminent, there must at least be a recognition of vulnerabilities of older persons as a segment of the population, and efforts should be made to formulate an adaptation policy that addresses these. The content of this policy may be inadequate or incomplete, but this aside, and as a minimum, it is only by specifying older persons as a vulnerable social group and putting in place a plan for

identifying the policy needs of older persons and formulating an adaptation policy which addresses those needs, that minimum adequate and efficient protective measures can be regarded as having been taken.

B. Omission Whereby Respondent Failed to Formulate Minimum Adaptation Measures That Are Adequate to Protect Lives and Dignity of Older Persons

1) Current State of Affairs

Article 38 of the Framework Act on Carbon Neutrality requires the State to formulate measures regarding national climate crisis adaptation and stipulates that the measures should include “matters regarding the sectoral and regional impacts of climate crisis and assessment of sectoral and regional vulnerability to climate crisis” and “matters regarding the prevention of disasters for vulnerable social groups, regions, etc. caused by climate crisis.” Following the adoption of the “National Climate Change Adaptation Measures” in 2011 under the Framework Act on Low Carbon, Green Growth as the first set of statutory adaptation measures, national climate change adaptation measures were adopted by Respondent on three occasions to date: the Third Round of National Climate Change Adaptation Measures (2021-2025), which was adopted in 2020, and the Detailed Action Plan for Third Round of National Climate Change Adaptation Measures, which was adopted in 2021, are both currently under implementation. In addition, when faced with a storm of criticism regarding the inadequacy of these measures, Respondent adopted the Third Round of National Climate Crisis Adaptation Reinforcement Measures in June 2023 to supplement

those measures, and the relevant plan is currently under implementation.

However, as seen below, the above measures adopted by Respondent are markedly inappropriate and inadequate to protect the lives and risk of older persons from climate change. In preparing these measures, Respondent failed to even specify older persons as a social group that is vulnerable to the climate, with the result that the measures lack even a bare minimum plan for identifying and addressing the risks climate change poses to the lives and dignity of older persons, even in form. In other words, even though climate crisis adaptation measures are formally in place, a state of omission persists, in which Respondent is completely failing to take the minimum action to protect older persons from risks of violation of life and dignity.

2) Absence of Basic Investigation into Impacts of Climate Change on Vulnerable Social Groups Including Older Persons

Since the statutory climate crisis adaptation measures were adopted for the first time in 2011, no efforts have been made whatsoever to the present day to gather basic information, through a factual survey, impact assessment, or otherwise, on the unequal impacts of climate crisis on vulnerable social groups, including older persons.

Article 47, Paragraph 1 of the Carbon Neutrality Act requires the Government to identify the current status of, *inter alia*, social groups that are vulnerable to climate crisis, and regions and industries where socio-economic discrimination is being aggravated, such as

job losses and impacts on the regional economy. Despite this, Paragraph 2 of the same Act requires surveys to be conducted only on the impacts on employment status, such as occurrence of unemployment, as prescribed by Presidential Decree, with the result that Article 48 of the Enforcement Decree of the same Act only provides for, *inter alia*, surveys of impacts on employment status, and no provision is made for surveys of impacts on social groups who are vulnerable to the climate crisis.

It is on the basis of such inadequate legislation that, to date, Respondent has entirely failed to even conduct a basic identification of, *inter alia*, the current status and demographic characteristics of social groups who are vulnerable to the climate crisis, and the cause of their vulnerabilities.

3) Third Round of National Climate Change Adaptation Measures and Third Round of National Climate Crisis Adaptation Reinforcement Measures Are Markedly Inappropriate and Inadequate to Protect Lives of Older Persons from Climate Change

The Third Round of National Climate Change Adaptation Measures (2021-2025), which was adopted in December 2020, does not in any way consider the diverse impacts of climate change on the human rights of vulnerable social groups, including older persons. As a result, even as “protection of vulnerable social groups” was being touted, only the issues that had attracted the piecemeal attention of the media and the public were “patched up,” and the measures comprised details that were markedly inadequate to afford actual protection to the lives and dignity of socially vulnerable groups against climate change.

The title of Chapter 7 of the Third Round of National Climate Change Adaptation Measures is “Protection Focused on Social Groups Who Are Vulnerable to Climate Change, Including Health, Economy, and Work,” and with this, Respondent ostensibly affirmed the protection of social groups who are vulnerable to climate change. However, a review of the actual measures contained in the relevant item shows that piecemeal focus has merely been set on two topics, namely mitigation of harm to residents of shanty towns caused by heatwaves and protection of health of outdoor workers against heatwaves.

In other words, as a result of the failure to even conduct a basic investigation or identification of impacts of climate change on the human rights of vulnerable social groups, the Third Round of National Climate Change Adaptation Measures stops at partially addressing the risks of heat-related illnesses caused by heatwaves, which is only a tiny fraction of the numerous human rights risks that are brought about by climate change. Moreover, out of the various vulnerable social groups, just a few – namely the residents of shanty towns and outdoor workers – were identified, and measures that consider the various vulnerabilities, including disability, poverty, area of residence, and gender, were not included in any shape or form. It goes without saying that absolutely no mention was made of the threats to the lives and dignity of older persons or the vulnerabilities of older persons.

Measures such as these cannot be viewed as the minimum adequate and efficient protective measures for the lives and dignity of older persons; no mention is made of the distinct vulnerabilities of older persons as a segment of the population, with the natural result that

measures addressing the distinct needs of older persons are not included even in a formal sense. In other words, these are measures that are lacking even the basic and bare minimum form of identifying the vulnerabilities of older persons and preparing measures to address them. Thus, however one views this, it would be difficult to conclude on the basis of the foregoing that Respondent has taken the minimum adequate and necessary measures to protect the lives and dignity of Petitioners as older persons.

Meanwhile, in March 2021, Respondent presented its Detailed Action Plan for Third Round of National Climate Change Adaptation Measures, and a review of the Plan shows that the budget allocated to the item “protection of vulnerable social groups” was a mere KRW 100 million, out of the entire budget of KRW 6.34637 trillion, as of 2024. This constitutes direct evidence that almost no plan was made in relation to substantive measures for the protection of vulnerable social groups and backs the point that the Third Round of National Climate Change Adaptation Measures was markedly inappropriate and inadequate as measures to protect the right to life, etc. of older persons from the threats of climate change.

When widespread criticisms were levelled at the effectiveness of the Third Round of National Climate Change Adaptation Measures, Respondent published the Third Round of National Climate Crisis Adaptation Reinforcement Measures in June 2023 to supplement the foregoing measures. The relevant plan contained an item called “Strengthening national protection for, *inter alia*, persons with vulnerabilities to the climate crisis,” and in this item, Respondent admitted the issue of “lack of information on, and customized adaptation policy for, persons with vulnerabilities to the climate crisis” and proposed the implementation of

“factual survey of social groups who are vulnerable to the climate crisis” as its agenda. However, a review of the details shows that the point in time at which a pilot survey is to be conducted is 2025, with factual surveys by local governments due to be conducted in 2027. Even though factual surveys constitute a preliminary phase that precedes the adoption of minimum measures for the fulfillment of the State’s positive, protective obligation, the point at which this phase is to be completed falls at least three years from now. In other words, the state of omission, in which the “minimum adequate and efficient protective measures” that reflect the distinct needs of vulnerable social groups, including older persons, are absent, is expected to continue for at least several years from now.

The Third Round of National Climate Change Adaptation Measures was a partial improvement, in that provision of health-care services for vulnerable social groups was included as a policy agenda. This, however, is also a piecemeal measure and no more, in that it made absolutely no provision for the review of social, economic, and environmental factors that make older persons vulnerable to climate change, nor any measure that reflected the distinct policy needs of older persons.

This being the case, the Third Round of National Climate Change Adaptation Measures adopted by Respondent in June 2023 constitutes a set of measures that is markedly inappropriate and inadequate to protect the lives and dignity of older persons from climate change. In other words, **even as Respondent was formulating its national climate change adaptation measures, it failed to specify the risks that climate change poses to the lives and dignity of older persons or include the bare minimum step that a plan would be**

formulated to address those risks, even in form. Accordingly, the state of omission persists, in which Respondent is failing to fulfill its positive obligation to protect the lives and dignity of Petitioners as older persons.

4. Sub-conclusion

Thus, by failing to take the minimum adequate and necessary measures from the aspects of both “reduction” and “adaptation” – these being the crux of the law and policy for protecting human rights from climate change – to protect the right to life of Petitioners, Respondent has breached the obligation it owed to Petitioners to protect fundamental rights.

IV. Discussion: This Petition Does Not Fall Under Grounds for Rejection under National Human Rights Commission of Korea Act

1. If Petition Is Filed One or More Years After Day on Which Fact Forming Cause of Petition Occurred

Article 32, Paragraph 1, Subparagraph 4 of the National Human Rights Commission of Korea Act provides that, where the petition is filed one or more years after the day on which the fact forming the cause of the petition occurred, that petition shall be rejected.

Petitioners are arguing that Respondent’s omission amounts to a breach of its obligation to protect fundamental rights, and since such state of omission continues to this day, it cannot

be said that “one or more years” have elapsed since the day on which the fact forming the cause of this Petition occurred. Specifically, Responding is disputing the omission whereby, despite the inadequacy of the current NDC of the Republic of Korea being confirmed through the publication of IPCC Sixth Report in March 2023, Respondent failed to reset or modify the NDC to a level that is consistent with the reduction target of 1.5°C, and the omission whereby, despite the existence of real threats to the lives and dignity of older persons, Respondent entirely failed to include climate adaptation policies to address the distinct vulnerabilities of older persons in the national climate change adaptation measures, and these omissions continue to this day.

Even if the time period were to be counted from the time when specific acts were committed by Respondent, it is plain that this Petition was filed at a time when the period of one year had yet to elapse after Respondent presented the First National Framework Plan for Carbon Neutrality and Green Growth in April 2023 without adjusting the current 2030 NDC, despite the publication of IPCC Sixth Report in March 2023, and when the period of one year had yet to elapse after Respondent presented the Third Round of National Climate Crisis Adaptation Reinforcement Measures in June 2023. Therefore, this Petition does not fall under a ground for rejection under Article 32, Paragraph 1, Subparagraph 4 of the National Human Rights Commission of Korea Act.

2. Whether This Is Matter in Respect of Which Procedures for Providing Remedy for Infringement of Rights Are in Progress under Other Statutes

Article 32, Paragraph 1, Subparagraph 5 of the National Human Rights Commission of Korea Act provides that, where, at the time when the petition is filed to the Commission, procedures for providing a remedy for infringement of rights are in progress under statute, including trial by a court or the Constitutional Court, with respect to the fact forming the cause of the petition, that petition shall be rejected. At present, a constitutional complaint is pending before the Constitutional Court. In this constitutional complaint, it is argued that Article 8, Paragraph 1 of the Framework Act on Carbon Neutrality and Article 3, Paragraph 1 of the Enforcement Decree of the same Act are contrary to the State's obligation to protect fundamental rights.

However, the cause of this Petition concerns the omission on the part of the State, whereby it has failed to take any action whatsoever to address the pressing and imminent risks to the lives of older persons, which differs from the constitutional complaint mentioned above in terms of, *inter alia*, persons whose fundamental rights have been violated, the terms of fundamental rights that have been violated, and the details of the acts that have been committed by Respondent. In the constitutional complaint mentioned above, no specific arguments were made in relation to the risks of climate change for the lives and dignity of older persons, or the obligation of the State to protect fundamental rights, pursuant to which the State must protect the lives and dignity of older persons from those risks. This being so, the facts forming the cause of this Petition cannot be regarded as being the same, just by virtue of the fact that the statutes that are at issue in connection with Respondent's conduct are the same. Therefore, this Petition must not be regarded as falling under a ground for rejection under Article 32, Paragraph 1, Subparagraph 5 of the National Human Rights

Commission of Korea Act.

3. Whether There Is No Dispute About Individual and Specific Matter

In December 2020, forty climate crisis victims filed a petition to the Commission asking that it provide a response to the human rights violations caused by the climate crisis. The Commission rejected the petition on the grounds that it did not dispute an individual and specific case.³³ This Petition, on the other hand, disputes the specific omissions that are related to Respondent's performance of its duties, namely the omission whereby, despite the inadequacy of the current NDC of the Republic of Korea being confirmed through the publication of IPCC Sixth Report in March 2023, Respondent failed to reset or modify the NDC to a level that is consistent with the reduction target of 1.5°C, and the omission whereby, despite the existence of real threats to the lives and dignity of older persons, Respondent entirely failed to include climate adaptation policies to address the distinct vulnerabilities of older persons in the national climate change adaptation measures. Therefore, unlike the matter described above, this Petition does not fall under a ground for rejection.

³³ Petition Case Number: 20-JinJeong-088550; Case Name: Case of Violation of Right to Life, etc. Caused by Government's Inadequate Climate Crisis Response

V. Conclusion

Issues concerning the climate crisis and reduction of greenhouse gases are addressed mainly from the angle that they concern the issue of equity between the future and present generations that arises when the present generation shifts the burden on to future generations.

However, Petitioners would like to draw attention to the fact that the climate crisis is also a pressing issue for us who are living in the present, namely the fact that it is posing a threat, right now, to human lives and dignity, as well as to personal security and health. Furthermore, Petitioners would like to make it known that the climate crisis is a risk that is even more pressing and serious to vulnerable social groups, including older persons like Petitioners, and that persons who fall within vulnerable social groups are actually at risk of contracting diseases and dying as a result of climate change.

Petitioners have come to file this Petition in order that, through the foregoing, Respondent may be called upon to give adequate consideration to the State's obligation to protect human rights when it comes to set its next NDC this year (2024) and, going further, adopt adequate and efficient climate adaptation measures "right now" to address the climate inequality of vulnerable social groups.

On October 29, 2020, the Commission resolved on the "recommendations to improve the working environment of construction workers to address climate conditions," and on

December 30, 2022, it resolved on the “expression of opinion on the climate crisis and human rights,” and on August 21, 2023, it resolved on the “submission of opinion of unconstitutionality in relation to the constitutional complaint concerning the Framework Act on Carbon Neutrality and the Enforcement Decree of the same Act.” In other words, the Commission has played a leading role in informing our society of the fact that the climate crisis is a human rights issue and that greenhouse gas reduction policies and climate crisis adaptation policies require a human rights-based approach, and in making recommendations to Respondent on policy improvements.

Petitioners hereby ask that, based on the Constitution and international human rights law, the Commission confirm the point that, in a situation of climate crisis, Respondent has an obligation to protect the lives of vulnerable social groups – that it has a positive obligation to protect fundamental rights, in other words – and, accordingly, issue recommendations to Respondent that it should take adequate and efficient measures to protect the lives and dignity of vulnerable social groups from the aspects of both reduction and adaptation.

March 6, 2024

TO the National Human Rights Commission of Korea