

Joint NGO Submission on Civil and Political Rights

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Submitted by

**South Korean NGOs Coalition (77 NGOs)
for the 3rd Cycle of the UPR on the Republic of Korea**

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I. Background and Framework

1. This submission was jointly written by 77 NGOs in the Republic of Korea (ROK). The submission aims to evaluate the implementation of the recommendations from the 2nd cycle of the Universal Periodic Review (UPR) and to raise awareness regarding the situation of human rights in the ROK since 2012, focusing on civil and political rights in the country.

A. Scope of international obligations and implementation

2. The Government has not ratified 2nd Optional Protocol to the International Covenant on Civil and Political Rights(2nd OP-ICCPR), Optional Protocol to the International Covenant on Economic, Social and Cultural Rights(OP-ICESCR), the Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(OP-CAT), the Convention for the Protection of All Persons from Enforced Disappearance(CED), the Optional Protocol to Convention on the Rights of Persons with Disabilities(OP-CRPD), and 3rd Optional Protocol to the Convention on the Rights of the Child(3rd OP-CRC). Also, it still maintains reservation on Article 22 of the ICCPR. The Government has not ratified ILO core Conventions No. 29, 87, 98 and 105. Number of rulings refereeing to international human rights treaties at the court increased from 949 in 2000s to 1,959 in 2010s. However, most rulings are on the Refugee Convention or the ICCPR.¹ Decisions on the individual complaint by treaty bodies are not fully implemented under the excuse of discrepancy between national legislations. Also, there is no committee at the National Assembly to evaluation implementation of the UN recommendations. **The Government should present specific implementation plan on ratifying the CED, CMW, 2nd OP-ICCPR, OP-ICESCR, OP-CAT, OP-CRPD and 3rd OP-CRC, withdrawing reservations and implementing international human rights standards at administrative, judicial and legislative branches.**

B. National Human Rights Commission of Korea (Recommendation 14)

3. National Human Rights Commission of Korea (NHRCK) had its reaccreditation deferred three times in a row from 2014 to 2015, by the Sub-Committee on Accreditation of Global Alliance of National Human Rights Institutions (GANHRI-SCA, former ICC) for reasons including a lack of transparency and diversity in selecting its commissioners and lack of civil society engagement.² Although the

¹ Supreme Court International Human Rights Law Society Members, Implementation of International Human Rights Law and the Court, 2013

² GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 9-13 May 2016, Pp.41-43, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20MAY%202016-English.pdf>

NHRCK eventually maintained its A-status in May 2016, the GANHRI-SCA reiterated its recommendation to make vacancy announcement and establish an independent body for the selection of commissioners after criticizing there is no consistent selection standards or process in the three appointing bodies of the President, the Supreme Court, and the National Assembly. Although a partial amendment to the National Human Rights Commission Act was made in January 2016, it does not stipulate the establishment of an independent selection and appointment committee, the development of transparent selection criteria, and the guarantee of full participation by and consultation with civil society. Moreover, the Guidelines regarding Principles and Procedures on Selection/Appointment of Commissioners of the NHRCK, which was prepared and recommended to the appointing bodies have no binding power. In fact, there have been a total of five commissioners (one standing commissioner and four non-standing commissioners) either newly appointed or reappointed since it received A-status in May 2016, however the recommendations by the GANHRI-SCA were not implemented except vacancy announcements made on the official website of the NHRCK, as no independent selection committee participated by civil society was established and selection criteria and process were not made public. In addition, as of March 2017, 8 out of 11 commissioners including the chairperson held a legal profession, which is far from guaranteeing diversity in the composition. **The Government should ensure the development of transparent procedures and criteria and establishment of an independent committee for selecting and appointing commissioners by amending the NHRCK Act in order to enhance the independency and effectiveness of the NHRCK. The Government should proactively accept the NHRCK's policy recommendations regarding human rights issues and integrate them in relevant government policies for effective implementation of the recommendations.**

C. Policy Measures – National Action Plan of Human Rights (Recommendation 15)

4. The Government announced that they included civil society members when forming the Evaluation Committee of the 2nd National Action Plan of Human Rights(NAP), however it is difficult to say so looking at the list that consists solely of academics, lawyers, researchers, and religious people. The 3rd NAP is scheduled to be implemented from 2017 to 2021 and the public hearing for its establishment was held on 30 September 2016, yet the draft of the NAP was not even disclosed at the hearing. It is already March 2017, a point in time when the 3rd NAP should have been implemented, but even its progress of establishment is unclear. An official of the Ministry of Justice said NAP work is on hold because the Minister of Justice needs to chair the working level consultation among Ministries that are supposed to be held after the public hearing from last year September but, currently, there is no Minister of Justice. Hence, it is uncertain when the 3rd NAP will be released or when the government ministries will reflect NAP in their work. **The Government should guarantee the participation**

of civil society organisations and disclose the entire process of NAP establishment in a transparent manner.

II. Implementation of International Human Rights Obligations

A. Equality and non-discrimination

5. **Enactment of the Comprehensive Anti-Discrimination Act (Recommendations 21, 22, 23 and 24):** First proposed in 2007, the Anti-Discrimination Act has not been passed at the National Assembly despite three attempts. However, these proposers themselves retracted the draft bills after organized opposition from anti-LGBTIs and conservative Protestant organizations.³ The Government stated, “Legislative procedures have been delayed due to continuing social controversies surrounding aspects including grounds for the prohibition of discrimination” in the mid-term report of the 2nd cycle.⁴ However, it was the Government who caused a controversy at first, by excluding seven categories⁵ including sexual orientation from the Anti-Discrimination Bill in 2007.⁶ While the enactment of the law was thus being delayed, the Government neither disclosed its research for the legislation nor implemented public campaigns. Attempts to forge a cooperative relationship with civil society for the enactment were not made, either. **The Government should immediately enact a Comprehensive Anti-Discrimination Act that prohibits all forms of discrimination, including race, gender, sexual orientation, and gender identity, in a clear language, through discussions with civil society and key stakeholders.**

6. **SOGI Rights (Recommendations 33, 34):** LGBTI persons in the ROK are subject to discrimination and stigmatization in both public and private spheres. According to the 2014 survey conducted by the NHRCK,⁷ 44.8% of the respondents experienced discrimination in employment due to their identity and 14.1% of lesbian, gay, and bisexual persons and 16.5% of transgender persons were found to have been fired or recommended for resignation because of their identity. Also, discrimination against LGBTIs and gender non-conforming youth is more serious.⁸ In the NHRCK survey on the hate speech in 2016, the respondents who experienced the most hate speech in both on-line and off-line were LGBTI persons. The Beyond the Rainbow Foundation, a LGBTI association, was denied its legal personality by the Ministry of Justice,

3 Human Rights Monitor South Korea, “Comprehensive Anti-Discrimination Act Withdrawal: Korea human rights situation back tracks”, 5 May 2013. <http://www.humanrightskorea.org/2013/comprehensive-anti-discrimination-act-withdrawal-korea-human-rights-situation-back-tracks/>

4 Republic of Korea, Second universal periodic review mid-term progress update by the Republic of Korea on its implementation of recommendations made in October 2012, October 2012.

5 Seven deleted categories from 2007 Anti-Discrimination Bill: sexual orientation, military status, nationality, language, appearance, family type, ideology, criminal or detention record, and educational status.

6 Human Rights Watch, “South Korea: Anti-Discrimination Bill Excludes Many”, 6 November 2007. <https://www.hrw.org/news/2007/11/06/south-korea-anti-discrimination-bill-excludes-many>

7. National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

⁸ “54% of LGBTQ youth said they were harassed by their friends” National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

ostensibly because the group works on a narrow human rights issue, which is sexual minorities, whereas the Ministry claimed that it can only register groups who work on broader “general human rights” themes.⁹ The Parade of the Seoul Queer Festival, a celebration of sexual minorities’ pride, was restricted by the opposition or the police ban in 2014, 2015, and 2016.¹⁰ The Ministry of Education has violated the right to information, health and education, which is a basic right of the youth, by excluding sexual minorities from the new sex education guidelines.¹¹

Article 92-6 of the Military Criminal Act¹² views consensual same-sex intimacy in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for such acts. In the ROK, where military service is mandatory (for a predetermined term) for most males, the clause constitutes a universal sodomy ban.¹³ Although the 2nd Universal Periodic Review in 2012¹⁴ and the Human Rights Committee in 2015¹⁵ have recommended the Government to abolish the clause, the Constitutional Court ruled that Article 92-5 of the former Military Criminal Act was constitutional on 28 July 28.¹⁶ **The Government should clearly and officially state that it does not tolerate any form of social stigmatization and discrimination, including violence against persons based on their sexual orientation or gender identity. It should repeal Article 92-6 of the Military Criminal Act, protect the freedom of assembly and association of LGBTI individuals and groups. It should also develop and carry out public campaigns and training to public officials to promote sensitivity and respect for diversity in respect of sexual orientation and gender identity.**

7. Racial Discrimination (Recommendation 30): Racial discrimination and hate speech against foreigners have been widespread both online and offline¹⁷ and some media

⁹ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2. at para. 49.

¹⁰ Human Rights Watch, Dispatches: No Parade, but Pride Preserves in South Korea, 1 June 2015

¹¹ Human Rights Watch, “South Korea Backslides on Sex Education”, 17 February, 2017

¹² Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labour for not more than two years.

¹³ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011. <http://www.koreaherald.com/view.php?ud=20111215000521>

¹⁴ The United States’ recommendation: “to review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military.” UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Republic of Korea*, 12 December 2012, A/HRC/22/10, at para. 124.34.

¹⁵ “The Committee is concerned about: ... (b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to Article 92-6 of the Military Criminal Act... repeal Article 92-6 of the Military Criminal Act.” HRC, *UN Human Rights Committee: Concluding Observations: Republic of Korea (CCPR/C/KOR/CO/4)*, para. 14).

¹⁶ Hankyoreh, Constitutional Court upholds military’s ban on sodomy, 8 August 2016. http://english.hani.co.kr/arti/english_edition/e_national/755208.html

¹⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the fifteenth and sixteenth periodic reports of the Republic of Korea, CERD/C/KOR/CO/15-16, para. 10

strengthens and proliferates negative recognition on other races in the country.¹⁸ The Christian Liberty Party¹⁹ spread slogan of anti-Islam and opposing the Anti-Discrimination Act during national assembly election campaign in 2016. Not took any measures by the Government, the election brochure of that party including incitement of a specific religion was distributed over the country, which rated 2.63% of all voters. However, the Government has not restricted or punished those actions, not having punishment regulation. **The Government should legislate the Act to stop racial discrimination and immediately provide anti-racial educational programs for all nationals.**

B. Right to life, liberty and security of the person

8. **Death Penalty (Recommendation 35):** In the ROK, the death penalty has not been carried out for the past 19 years since its last execution on 31 December 1997. However, the sentencing of the capital punishment continues. As of 31 December 2016, there are 61 death-row convicts and 4 more in the military. The Government has stated that it will review abolishing the death penalty taking public opinion and legal appraisal on the abolishment or execution of death penalty into consideration, yet it is not exerting any effort to actually abolish it. **The Government should raise public awareness about capital punishment being a punishment against the right to life through education and campaigns. In addition, the Government should join the declaration of moratorium on death penalty execution, stop the review of execution, and immediately abolish the death penalty. Furthermore, the sentences of all convicts on death row should be reduced to life sentences and the National Assembly should pass a special act on death penalty abolition and ratify the Second Optional Protocol to the ICCPR to eradicate capital punishment completely.**

9. **Prohibition of torture (Recommendations No. 3, 13, 16, 37):** Although CAT and Article 12(2) of the Constitution of the ROK²⁰ stipulate prohibition of torture, the national laws do not have a clear definition of torture or other cruel, inhuman or degrading treatment, and there are no penalty clauses based on the definition. According to the statistics from the country report submitted to the Committee Against Torture, the NHRCK received 8,207 petition related to human rights abuses including police brutality, violence, cruel treatment and the excessive use of force between 2012 and 2015, yet only 2 cases of them were reported to the police or requested to be investigated and the NHRCK made recommendations for 11 cases only. Also, the country report showed that prosecution rate is substantially low, considering only 20

¹⁸ UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 20 April 2015, A/HRC/29/46/Add.1, paras. 60-62

¹⁹ Seoul Shinmum, Korean Islam says "Christian Liberty Party's materials maliciously defame Islam", 10 April 2016, <http://www.seoul.co.kr/news/newsView.php?id=20160410500132>

²⁰ Constitution of the Republic of Korea Article 12(2): No citizen shall be tortured or be compelled to testify against himself in criminal cases.

people were prosecuted among thousands of reported cases related to torture including illegal arrest and imprisonment.²¹ **The Government should include a clear definition of torture, in line with the CAT, and penalty clause to domestic laws, and establish or consolidate relevant organizations and procedures to undertake investigations for torture or other cruel, inhuman or degrading treatment committed by national agencies. The Government should also immediately ratify the OP-CAT.**

C. Administration of justice and rule of law

10. Human Rights in the Military: Over the last five years, approximately 100 soldiers died every year in the military and 70% of those deaths are due to unidentified causes or suicide.²² When Private First Class Yoon of the 28th Division died in 2014 from abuse, there were strong demands for institutional improvement to prevent human rights violations in the military, including introducing military human rights officers('military ombudsman'). The Ministry of National Defense (MND) says it already has a hotline (Help Call) and other preventative measures in place.²³ However, civil society argues that the military's system does not protect the victims and penalize the assailant or responsible officers properly nor show meaningful improvement in reducing human rights violation cases.²⁴ The Framework Act on Military Status and Service enacted in 2015 stipulates that an officer for protection of soldier's human rights shall be assigned, yet as of February 2017, this has not been introduced. Cruel treatments and suicides slightly decreased but are still ongoing in the military.²⁵ **The Government should introduce independent 'military ombudsman' with unlimited access to related information and visitation without prior notice, through consultation with civil society and various stakeholders.**

D. Right to privacy, marriage and family life

11. Marital Rape and Domestic Violence (Recommendations 27, 39): The 'Comprehensive Plan Against Domestic Violence', enforced in 2013, views domestic violence as personal character, addiction such as alcohol addiction, psychological or domestic problems and focuses on policies to 'maintain a normal family life'. Main

²¹ Third to fifth periodic reports of State parties due in 2012: Republic of Korea, UN Doc. CAT/C/KOR/3-5, Annex Tables 23-26, 11 April 2016

²² Statistics Korea, Situation of death and accidents in the military (Year 2007~2016)
http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1701

²³The Korea Times, Will military change itself this time?, 22 September 2014,
http://www.koreatimes.co.kr/www/news/nation/2016/11/180_165010.html

²⁴ South Korean NGOs Joint Action for Human Rights in the Military, Press Conference calling for the Amendment of Three Major Acts to Protect Human Rights In the Military, 1 December 2014,
<http://www.peoplepower21.org/Peace/1222541>

²⁵ In 2016 only, more than 80 soldiers died in the military, and 70% of them including suicide were because of abuse. Abuses cases are still existing even though they are not ended with suicide. MBC News, Sexual abuse and put a fire on penis, abuse in the military still continues, 13 October 2016,
http://imnews.imbc.com/replay/2016/nwdesk/article/4138400_19842.html

reason of covering up domestic violence is a perspective that it is a private issue which does not require social intervention.²⁶ **The Government should take measures to change perspectives on domestic violence, aiming for raising awareness on gender equality and human rights.**

At the same time, indictment rate of domestic violence becomes lower. Because of a decision not to take measures and suspension of indictment under the condition of receiving counselling²⁷, domestic violence is not properly punished and victims are exposed to continued threats.²⁸ Also, the Government does not even categorize nor collect cases of spousal violence including marital rape into its criminal cases statistics. Even though divorce is filed due to domestic violence, the court orders couple counselling and allows right of access to a child, which threatens lift and safety of victims.²⁹ Moreover, the Government identifies assets of victims of domestic violence staying in shelter, and provides differential assistance. **The Government should amend the law which does not punish domestic violence perpetrator, with perspective to maintain family, and improve current support system which identifies victims of domestic violence with recipients of selective welfare.**

²⁶ Among victims of domestic violence, only 0.8% asked help to other people and among these cases, only 1.3% reported to the police. 68% was 'No response to domestic violence' which is the highest response, and 35.3% of no response replied the reason 'because we are family'. Ministry of Gender Equality and Family, Situation of Domestic Violence, 2013.

²⁷ Indictment rate of domestic violence is 15% in 2013, and 13.3% in 2014 and 8.5% in 2015. According to 'Guideline on suspension of indictment under the condition of receiving counselling' by the Prosecutors' Office, 'possible habitual offender or second offender cases' are also included. Accordingly, a serious case which requires criminal punishment receives suspension of indictment. Also, according to result of home protection cases in the last 3 years (2013-2015), 38.3% decision not to make measures and even if measures are taken, 31.4% is counselling and 16% is social service while measures to protect victims such as restraining order(1.61%) and limit to parental rights(0.02%) are minimal. UN Committee Against Torture, Consideration of reports submitted by States parties, Republic of Korea, 11 April 2016, CAT/C/KOR/3-5, The Office of Court Administration, Situation of Domestic Violence Cases, 2014-2016 Judicial Review

²⁸ On 4 June 2016, a perpetrator who had received counselling for five months under a home protection case abused and killed his wife a day after counselling. NocutNews, Habitual Domestic Violence victim was killed, one day after counselling with a police, 7 June 2016.

²⁹ [Case 1] A victim who had been abused by her husband for 14 years of marriage sought refuge in shelter and filed a divorce. However, the court ordered 10 times of couple counselling. The husband told the wife 'if you come back home one night and stay with children, I will divorce you' and she went back home. Unfortunately, that morning (4 May 2013), she was strangled to death by the husband. The Hankyoreh, Find a settlement with a husband who wanted to kill her... Wife was killed during a divorce suit, 22 May 2013

[Case 2] On 7 December 2015, a victim who was 4-month pregnant and 6-year old child were kidnapped and killed by ex-husband. He came to see them, using right of access to a child. Seoul Sinmun, Police could not prevent murder of Vietnamese Family, 14 December 2015

12. **The Resident Registration Number System:** While the Government told that it would accept the recommendation of the 1st UPR³⁰ which require the Government to review the resident registration system and limit the use of resident registration number(RRN) in order to protect privacy, RRN is still widely used in the public and private sectors. In January 2014, there were 105 million RRNs and financial information leaked from three credit card companies, which caused a serious damage to the public.³¹ The IMS health, a US company, bought 4.7 billion data of 44 million people including their RRNs and sensitive prescription data from pharmacies and hospitals nationwide and operates across the world.³² Although the processing of RRN may be enforced only if it is based on the Personal Information Protection Act since August 2014, exception laws are more than 1,000 and it even allows telecommunication companies to collect RRNs in order to verify user's identification for convenience of investigative agencies. The telecommunication companies and financial companies can verify personal identity through the Government designated 'identity verification institution' which is called I-PIN system as an alternative identification number, but this system is also based on the RRN. In December 2015, the Constitutional Court allowed the change of RRN to protect the public from the damage caused by the leakage of RRN. However, the Government does not allow to change first seven digits of RRN out of 13 digits which include birth and gender information.³³ **The Government should strictly restrict the use of RRN to essential cases for public service provision and prohibit the collection and use of it in the private sector. Furthermore, the numbering system should be changed to a serial number system that does not include personal information such as date of birth and sex.**

13. **Provision of warrantless communication data:** The investigative and intelligence agencies in the ROK can obtain subscriber's personal information such as name, ID, address, resident registration number, etc. from telecommunication companies without the court's warrant under Article 83 (3) of the Telecommunications Business Act. According to the Government statistics, of the total population of about 50 million, 10,577,079 subscribers' information was provided to those agencies in 2015 only. A vast amount of subscriber's information is being collected only by the arbitrary decision of those agencies without any external supervision on the procedure of

³⁰ Report of the Working Group on the Universal Periodic Review, Republic of Korea, 29 May 2008, A./HRC/8/40, p. 15

³¹ As of March 2017, the population of Korea is about 50 million and the economically active population is about 35 million.

³² IMS health purchased this information for about 2 billion KRW, and sold it to South Korean pharmaceutical companies for 7 billion KRW after processing those data through big data technique. See also http://khnews.kheraldm.com/view.php?ud=20150726000368&md=20150727003027_BL

³³ Sweeney, Latanya., Yoo, Ji Su, De-anonymizing South Korean Resident Registration Numbers Shared in Prescription Data, Technology Science, 29 September 2015, <http://techscience.org/a/2015092901/>

provision.³⁴ In November 2015, the UN Human Rights Committee recommended to the Government that "subscriber information should be provided only when there is a warrant.", but it has not been implemented yet. **The Government should amend relevant laws or abolish Article 83 (3) of the Telecommunications Business Act, for subscriber's information to be provided only when there is a warrant.**

14. DNA Collection: Since 2010, the police and prosecutors have been collecting DNA from the suspects, juvenile offenders, and those who have been arrested for 11 crimes such as sexual violence, and are building and operating a database. However, the object of DNA collection includes not only felonies, but also evictees, workers, and activists who were charged in protest to the Government or companies.³⁵ Although the operation of the national DNA database could infringe on human rights because it is likely that not only the parties involved but also their families would be the subject to investigation, the Constitutional Court ruled that the Act on Use and Protection of DNA Identification Information was constitutional in August 2014. **The Government should reconsider the operation of national DNA databases, or strictly review the possibility of recidivism when deciding the object of DNA collection, should not include juvenile offenders and suspects.**

15. Leakage of Information on Residents in Protected Facilities: The Government accepted the recommendation of the 2nd UPR to "strengthen information protection related to shelter for victims of domestic violence" and it minimized the collection of RRN in the Government database on such facilities. Nevertheless, the threat of personal information leakage continues, because the Government operates mandatory centralized system of personal information of victims and employees nationwide on the grounds of supporting victims of violence against women such as domestic violence, sexual violence, and prostitution. In 2014, the Ministry of Gender Equality and Family has revised the enforcement ordinances related to the support of victims of violence against women and specified the collection of RRN in the system. From May 2017, it will be possible to change the RRN of victims of violence against women, but newly issued RRN will still maintain the first 7 digits of 13 digits, indicating the date of birth and gender. **The Government should abolish the mandatory requirement collecting personal information of victims of sexual violence and domestic violence in the**

³⁴ In May 2015, 500 people have filed a constitutional suit with the help of a civic group and are awaiting a ruling. Oral Statement delivered by PSPD and MINBYUN-Lawyers for a Democratic Society at the 32nd Regular Session of the UN Human Rights Council, Interactive Dialogue with the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 16 June 2016, http://www.peoplepower21.org/index.php?mid=English&page=2&document_srl=1427976&listStyle=list

³⁵ Joint Statement of 5 South Korean NGOs, The authorities' conducts to take DNA samples from those Yongsan displaced persons and SSangyong workers and to establish and use a database containing said samples are constituted the serious violation of the constitutionally protected human rights, 9 July 2013, <http://act.jinbo.net/wp/7631/>

central system, and establish a separate bill that takes into account the specificity of victims of violence. When changing the RRN of victims of violence against women, newly issued RRN should be a serial number system that does not include personal information such as date of birth and sex.

E. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

16. **Right to Freedom of Peaceful Assembly (Recommendation 36):** The Government has arbitrarily applied the Assembly and Demonstration Act(ADA), making it as a de facto registration system and violated rights of participants by abusing governmental power.³⁶ The statistics of the notice of ban issued by the police in Seoul between 2011 and 2016 shows that the police have banned 447 cases (42.2%) out of 1,059 cases for based on flow of traffic.³⁷ According to the article 12 of the ADA³⁸, the head of the police authority may ban or restrict an assembly or demonstration on a main road if it is deemed to be necessary for smooth flow of traffic. Furthermore, the article 11 of the ADA which prohibits any assembly and demonstration in certain areas seriously violates people's right to peaceful assembly and demonstration. On the day of the People's Rally in November 2015, a 69-year-old farmer was knocked to the ground by high-powered police water cannons. He had remained in a coma for 317 days and passed away on 25 September 2016. However, the Prosecutor's Office has not made much progress in terms of investigation until today(March 2017) and no one has been punished yet. The work of 'Advisory Committee on Assembly and Demonstration', run by the police, has been criticized for vagueness of its activity and the lopsided composition of the members.³⁹ **The Government should repeal the article 11, 12 of**

³⁶ Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and association who officially visited the Republic of Korea in January 2016, expressed his concern through his mission report that if notification is mandatory, particularly when they leave no room for spontaneous assemblies, notification regimes for assemblies may become de facto authorization requirements. He also expressed deep concern about indiscriminate use of water cannon and bas barricade by the police in assembly and protest.

A/HRC/32/36/Add.2, para.19,33, 37

³⁷ AP News, Most frequently used reason for notice of ban of assembly is traffic flow, 10 November 2016, <http://www.yonhapnews.co.kr/bulletin/2016/11/10/0200000000AKR20161110166600004.html>

³⁸ Article 12 of the ADA (Restriction on Assembly or Demonstration for Smooth Flow of Traffic): (1) The head of the competent police authority may ban an assembly or demonstration on a main road of a major city as determined by Presidential Decree, or may restrict it, specifying conditions for the maintenance of traffic order if it is deemed to be necessary for smooth flow of traffic. (2) If the organizer of an assembly or demonstration assigns moderators for the occasion of parading along the road, the ban as referred to in paragraph (1) shall not be ordered: Provided, that if such assembly or demonstration could cause obstruction to the smooth flow of traffic on the road concerned and other roads nearby, thus giving rise to serious inconvenience to traffic, the ban as referred to in paragraph (1) may be ordered.

³⁹ According to MP Park Nam-choon, 112 out of 217 members of Advisory Committee on Assembly and Demonstration run by the Seoul Police Agency were presidents or interested persons of organizations which represent business, hospital or private educational institute, etc. Only 5% of the members were recommended by civil society groups.

the ADA, guarantee notification regimes for assemblies in practice, and immediately stop excessive use of force including water cannon and gas barricade in peaceful assemblies.

17. **Freedom of Opinion and Expression (Recommendation 50, 51, 52):** According to Article 44-2 (Temporary Measures) of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., a person claiming to be a victim makes a request to delete a post, it is mandatory for providers of information and communications services to delete it, even though it is temporary. This measure blocks the reported post temporarily, up to 30 days, which can deprive the publisher of one's 'timeliness' of expression. The Government says the publisher have the right to file formal objections regarding this matter, yet this right is not guaranteed by law. The actual number of objection filed by the publishers is about 5 % of the total number of temporary measures,⁴⁰ and the remaining 95% is deleted by the service providers according to the requests.

Korea Communications Standards Commission (KCSC), an organization the Government insists on being private, has been confirmed as an administrative body by the court in terms of committee composition and budget securing.⁴¹ This means that KCSC can make deliberations at the request of the Government as a de facto administrative organization. **The Government should abolish 'temporary measure' or amend the law in a way to guarantee publishers with rights equal to those asserting to be victims and change the obligatory temporary measures to voluntary. Moreover, it should also abolish communications deliberation by KCSC since it is a de facto administrative body.**

[Table 1] Composition of the members of Advisory Committee on Assembly and Demonstration run by police stations in Seoul (as of June 2014)

Police stations running the committee	Total	Classification by recommendation			
		Lawyer, Tax account	Professor	Person recommended by civil groups	Representative of local residents
32 police stations(the National Agency) in Seoul	217	32	34	12	139
Component ratio (%)	100	14.7	15.7	5.6	64

[Table 2] Details of the representatives of local residents in Advisory Committee on Assembly and Demonstration

Total	CEO or executive of business	Director of hospital or Manager of pharmacy	Director of kindergarten or private educational institute	Etc.
39	86	15	11	27
Component ratio (%)	62	11	8	19

⁴⁰ Yoo Seung-hee, MP of the Democratic Party of Korea, Press Release, Around 1.43 million posts were deleted by temporary measure on the Internet, 10 September 2015

⁴¹ Seoul Administration Court, 2009Guhab35294, Sentence 11 February 2010 4

Defamation⁴² and insult⁴³ in the Criminal Act are representative clauses that violate freedom of expression in the country. Consumer reviews on products or criticism of politicians including the President and senior officials have received criminal punishment because of defamation and insult law. Due subjective feelings of being insulted, criticism regarding senior bureaucrats, politicians and other people in power have been punished as well. **The Government should abolish the defamation law in the Criminal Act and get rid of the insult law since even the court cannot provide a consistent standard for the latter.**

18. **Freedom of Expression for Public Officials:** Unlike the general citizen, public officials and teachers in elementary and secondary school are totally prohibited from expressing their political opinion and affiliating to a political party under the Political Parties Act, Public Official Election Act, State Public Official Act and Local Public Official Act and are subject to criminal sanctions. Moreover, the Public Official Election Act puts a comprehensive restriction on participating in election campaign by employees in public institutions and cooperatives⁴⁴, even though they are not public officials or teachers but civilians. The duty of political neutrality is imposed on public officials, teachers and employees in public institutions and cooperatives to maintain impartiality in public services. However, those who are subject to the laws are excessively prohibited from exercising their rights to freedom of expression in their daily lives outside of their duty. **The Government should revise the related laws so that freedom of expression for public officials who are not in senior executive or elected position, teachers, employees in public institutes and cooperatives are fully guaranteed.** ⁴⁵⁴⁶

⁴² Criminal Act Article 307 (Defamation): (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won. (2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won.

⁴³ Criminal Act Article 311 (Insult): A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

⁴⁴ Employees in Δstate and local government Δinstitutions at least 50/100 shares of which are owned by the Government, Δcooperatives established under the Agricultural Cooperatives Act, the Fisheries Cooperatives Act, the Forestry Cooperatives Act, the Tobacco Producers Cooperatives Act, and Δlocal public corporation or local industrial complex .

⁴⁵ With regard to the political activity by public officials and teachers, the UN special rapporteur pointed out that this prohibition based on a largely vague notion - 'political activity' - imposes broad constraints on the ability of these categories of individuals to express themselves on a wide range of issues under the guise of maintaining 'political neutrality'. (A/HRC/32/36/Add.2)

⁴⁶ The Committee of Expert on Application of Conventions and Recommendations urged, in its report to the ILC 105th session, 2016, the Government to take immediate measures to ensure that elementary, primary and secondary school teachers enjoy protection against discrimination based on political opinion regarding activities outside the classroom and the school and unrelated to teaching, as provided for in the Convention, and are not subject to disciplinary measures for such reasons.

19. **Freedom of Expression during Election:** According to Article 93(1) of the Public Official Election Act, offline freedom of expression is still constrained during election period.⁴⁷ Even during the 2016 General Election, individuals and civil groups who expressed opinions regarding candidates or political parties had to go through search and seizure and prosecution for violating the Public Official Election Law and the trials are still in progress.⁴⁸ Problems still exist with online freedom of expression as well during election period. Even though the Internet Identity Verification system was abolished by the Constitutional Court in 2012, the Internet Real Name system for the election period remains in place in accordance with Article 82-6 of the Public Official Election Act. This is a problem because personal information of the publisher is provided to investigation agencies without much restriction. **The Government should abolish Article 93(1) and Article 82-6 of the Public Official Election Act to guarantee freedom of expression during election period.**

20. **Conscientious Objection (Recommendation 53):** The ROK imprisons the most conscientious objectors out of any country in the world with some 600 currently in jail. However, the Government refuses to introduce an alternative service system on the grounds of tensions between two Koreas, jeopardizing social cohesion and the lack of public consensus on the matter. Furthermore, in accordance with the December 2015 revision to the Military Service Act, the personal information including the name, age and address of 237 military service evaders has been publicly released on the Military Manpower Administration's website of which more than 160 have been confirmed as conscientious objectors.⁴⁹ There has also been increasing support for the need for an alternative service system from inside the Government including 18 not guilty rulings were handed in lower court trials between 2015 and the time of writing in March 2017 and an appeals court not guilty ruling (Gwangju District Court Appellate Division, October 2016). In addition, the field of alternative service is already broad with around 80,000 carrying out alternative service in special research and social welfare positions

⁴⁷ Public Official Election Act Article 93(1): No one shall distribute, post, scatter, play, or run an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party (including the preparatory committee for formation of a political party, and the platform and policy of a political party; hereafter the same shall apply in this Article) or candidate (including a person who intends to be a candidate; hereafter the same shall apply in this Article) or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provisions of this Act, from 180 days before the election day (the time when the reason for holding the election becomes final, in case of a special election) to the election day: Provided, That the same shall not apply to acts falling under any of the following subparagraphs.

⁴⁸ Change 2016, We Condemn Repression of Legitimate Voter Actions, 16 June 2016,

http://www.peoplepower21.org/index.php?mid=English&page=2&document_srl=1429084&listStyle=list

⁴⁹ Ministry Manpower Administration, Public List of Military Service Evaders,

<http://open.mma.go.kr/caisGGGS/bygp/list.do>

including auxiliary police and fire fighters.⁵⁰ An alternative service system for conscientious objectors without military training could easily be created through the existing alternative service system. **The Government should immediately introduce alternative service for conscientious objectors and immediately repeal the system for publicly releasing the personal information of military service evaders.**

21. **National Security Act (Recommendations 54, 55, 56, 57):** The Government has arbitrarily applied the National Security Act to silent dissents.⁵¹ In 2008, 46 people were arrested for violating the NSA, but the number had increased to 129 in 2013, and 70 people were detained and indicted charged under the Act. Detained, prosecuted and punished cases for violating Article 7 of the NSA even include cases having a formal meeting with Democratic People's Republic of Korea (DPRK) as a part of South and North Exchange and Cooperation with the approval from the government of the ROK⁵², retweeting the DPRK government's official twitter⁵³, singing the 'Revolution Comrade Song' (Supreme Court, 2014 Do 10978), selling books on socialism.⁵⁴ **The Government should immediately repeal the National Security Act, which is used to repress freedom of opinion and expression and freedom of assembly, and to silence political opponents.**

22. **Security Surveillance Act (Recommendation No. 58):** Security Surveillance System, a mandatory reporting system for those who are sentenced more than 3 years for violations of the NSA on their activities every 3 months, cannot but causes serious infringement on human rights for following grounds: 1) Minister of Justice, not the judiciary, makes a decision upon prosecutors' request, 2) it may be used to control freedom of opinion 3) those who served their time are subject to double jeopardy based on a vague criteria as high propensity to re-offend 4) period of surveillance can be renewed indefinitely starting from 2 years. 5) mandatory reporting regarding main activities involve privacy across broad subject, such as family and friend relations, occupation, property status of one's own and family, education, work experience, religion and membership of organizations.⁵⁵ **The Government should repeal the Security Surveillance Act.**

⁵⁰ Ministry Manpower Administration Statistical Yearbook 2015

⁵¹ Statistics Korea, Current status of public security related cases by crime type-Violation of NSA, http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1745

⁵² Pressian, Prosecutors charged 3 executive members of Pomchonghakryon (The National Alliance of Youth and Students for National Reunification) for violation of NSA, 24 June 2009, <http://www.pressian.com/news/article.html?no=95549>

⁵³ CNN, South Korean 'joke' may lead to prison, 4 July 2012, <http://edition.cnn.com/2012/07/03/world/asia/south-korea-north-joke/>

⁵⁴ Yonhap News, Arrest warrant issued for representative of 'Book of Workers', electronic library, 4 January 2017, www.yonhapnews.co.kr/bulletin/2017/01/04/0200000000AKR20170104171500004.HTML

⁵⁵ Security Surveillance Act Article 2, Article 4 Section 1, Article 7, Article 14, Article 18, etc.

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