

REPUBLIC OF KOREA

NGO assessment of the follow-up actions of the State party in implementing
UN Human Rights Committee's recommendations

As of 3 November 2016

South Korean Human Rights Organizations Network (84 NGOs)

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This assessment form was developed by the Centre for Civil and Political Rights (CCPR) in order to facilitate civil society assessment of the implementation of follow-up recommendations by the State party and more effectively contribute to the Committee's follow-up procedure.

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Action for Youth Rights(ASUNARO), Advocates for Public Interest Law, Alliance for Enactment of Anti-Discrimination Act, Buddhism Human Rights Committee, Busan Counselling Center against Sexual Violence, Busan Women Education Center, Busan Women's Associations United, Byunnal : sexual minority Human Rights Group of Ewha Womans' University, Catholic Human Rights Committee, Center for Military Human Rights Korea(CMHRK), Christian Solidarity for World without Discrimination(Chasegiyeon), Chungbuk Women's Association, Collective for Sexual Minority Cultures(PINKS), Daegu Queer Culture Festival, Daejeon Women's Association for Democracy, Democratic Legal Studies Association, Disability and Human Rights in Action, Disabled People's International Daegu(DPI Daegu), Dongcheon Foundation, GongGam Human Rights Law Foundation, Housewives Meeting Together Hamjumo, Human Rights Education Center(Deul), Information & Culture Nuri for Disabled Koreans, Jeju Human Rights Center, Jeju Women's Association, Jeju Women's Human Rights Solidarity, Joint Committee with Migrants in Korea, Korea Center for United Nations Human Rights Policy(KOCUN), Korea Human Rights Foundation, Korea Queer Culture Festival, Korea Women's Hot Line, Korea Women's Political Solidarity, Korea Women's Center for Social Research, Korea Women's Studies Institute, Korean Alliance on Mental Illness, Korean Catholic Women's Community for a New World, Korean Confederation of Trade Union(KCTU), Korean Differently Abled Women United, Korean Gay Men's Human Rights Group Chingusai, Korean Government Employees' Union(KGEU), Korean House for International Solidarity(KHIS), Korean Lawyers for Public Interests and Human Rights, Korean lesbian community radio group(Lezpa), Korean Progressive Network(JINBONET), Korean Sexual-Minority Culture and Rights Center(KSCRC), Korean Teachers and Education Workers' Union(KTU), Korean Women Workers Association, Korean Women's Association United, Korean Womenlink, Lesbian Community Group(Gruteogi), Lesbian Counselling Center in South Korea, LGBTAIQ Crossing the Damn World, LGBTQ Student Alliance of Korea(QUV), MINBYUN-Lawyers for a Democratic Society, Minority Rights of the Green Party, My Sister's Place, National Association of Parents for Cham Education, National Solidarity for Solving Prostitution Issues, Network for Glocal Activism, Network of Youth Human Right Activist, Open Net Korea, People's Solidarity for Participatory Democracy(PSPD), Pohang Women's Association, Protesting against Poverty & Discrimination Solidarity for Human Rights, Rainbow Action against Sexual-Minority Discrimination, Saewoomtuh, SARANGBANG Group for Human Rights, Sexual Minority Committee of the Justice Party, Sexual Politics Committee of the Labor Party, Solidarity against Disability Discrimination, Solidarity for HIV/AIDS Human Rights Nanuri+ HIV/AIDS, Solidarity for LGBT Human Rights of Korea(Dong In Ryun), Solidarity for Peace & Human Rights, South Korean NGOs Coalition for Law Enforcement Watch, Suwon Women's Association, The Korean Society of Law and Policy on Sexual Orientation and Gender Identity(SOGILAW), The National Human Rights Commission of Korea Watch, The Truth Foundation, Ulsan Solidarity for Human Rights, Ulsan Women's Association, Unninetwork, Women Making Peace, Women Migrants Human Rights Center, World Without War

Paragraph 15: Discrimination on the grounds of sexual orientation and gender identity

Para 14: The Committee is concerned about: (a) The widespread discrimination against lesbian, gay, bisexual, transgender and intersex persons, including violence and hate speech; (b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to article 92-6 of the Military Criminal Act; (c) The authorization of the use of the buildings of the National Assembly and of buildings of the National Human Rights Commission to host so-called “conversion therapies” for lesbian, gay, bisexual and transgender persons; (d) The lack of any mention of homosexuality or sexual minorities in the new sex education guidelines; and (e) The restrictive requirements for legal recognition of gender reassignment (arts. 2, 17 and 26).

Recommendation of the HR Committee in para 15	Action taken by the State	Measures needed additionally / Other comments
<p>The State party should clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, including the propagation of so-called “conversion therapies”, hate speech and violence.</p>	<p>The measures taken are contrary to the Committee’s recommendations. In July 2016, the Ministry of Justice appealed the court’s decision to grant Beyond the Rainbow Foundation legal personality. Originally, Beyond the Rainbow Foundation, a LGBTI association, was denied of its legal personality by the Ministry of Justice, ostensibly because the group works on a narrow issue of sexual minorities, whereas the Ministry claimed that it can only register groups who work on broader “general human rights” themes.¹</p>	<p>The State party should clearly and officially state that it will not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, especially from the government officials.</p>
<p>Case</p> <p>Recently, LGBTI persons experience alarming rates of visible discrimination and violence. Queer In SNU (QIS), a student organization for LGBTI rights in Seoul National University, hung a banner on campus to welcome LGBTI students but the banner was found damaged on March 22. QIS made a complaint to the Gwanak Police Station but the police never found a suspect, since the site didn’t have any CCTVaround. Similarly, an LGBTI student group in Sogang University hung four welcome banners around the campus. One of the banners was found damaged in March 1. After reviewing the CCTV, it was found out that the perpetrator is a professor from chemistry department. The police investigated the case and the prosecutor eventually had his indictment suspended, since it is “minor” and first-time crime. The Republic of Korea doesn’t recognize hate crimes under its criminal law system. A gay rights group, Chingusai reported that a member of their gay choir group got assaulted from a drunken male, called “faggot” on the Jongro street on August 16, 2016. Jongro 3-ga and its outside food vendors are known as a “gay district”. Soongsil University cancelled its initial permit given to a student group for a screening of “My Fair Wedding”, a documentary filmed by the renowned gay director couple, Kim Jho Gwangsoo and his partner Kim Seunghwan on November 9, 2015. The student group filed a petition to the National Human Rights Commission of Korea and the case is still pending. The National Council of Churches in Korea (NCCCK), a progressive Christian group, planned a seminar featuring Kim Jho in April 2016. Anti-LGBT counter-protesters gathered inside the venue and made a loud, audible prayer to disturb the event. The organizers are considering legal options for remedy. Chongshin University, run by a conservative Christian church group, the General Assembly of Presbyterian Church in Korea, repeatedly harassed its LGBT student group for a couple of years. The University sued students for criminal “defamation” of the university’s reputation in July this year. Also, the university threatened those students to expel them from the school.</p>		
<p>(The State party) should strengthen the legal framework to protect</p>	<p>Not that we are aware of.</p>	<p>Adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including race, sexual orientation</p>

¹ UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Country Visit: Republic Of Korea (A/HRC/32/36/Add.2)

<p><i>lesbian, gay, bisexual, transgender and intersex individuals accordingly</i></p>		<p>and gender identity. The legislation should impose appropriate penalties for direct and indirect discrimination committed by both public and private entities, and should provide effective remedies.</p>
<p>(The State party should) <i>repeal article 92-6 of the Military Criminal Act</i></p>	<p>The measures taken are contrary to the Committee’s recommendations. On July 28, Constitutional Court upheld military’s ban on sodomy in five (constitutional) -to four (unconstitutional) ruling. The provision in question was up for Constitutional Court review twice in the past. “In the military, there is a markedly high possibility for abnormal sexual intercourse to take place between members of the same sex and a strong likelihood for superiors to attempt homosexual acts onto their subordinates,” wrote justices Park Han-chul, Lee Jung-mi, Kim Chang-jong, Ahn Chang-ho, and Seo Ki-seong in the majority opinion. “If left alone, this presents a serious risk of direct harm to the preservation of combat strength.” Their reasoning was that the special characteristics of the military as an organization justifies discriminatory treatment onto soldiers who engage in heterosexual acts.</p>	<p>Repeal article 92-6 of the Military Criminal Act.</p>
<p>(The State party should) <i>avoid the use of State-owned buildings by private organizations for so-called “conversion therapies”</i></p>	<p>The measures taken are contrary to the Committee’s recommendations.</p> <p>No known anti-gay events have been held in the NHRCK building for over a year. But till this day, anti-lgbt events endorsed by well-known anti-lgbt members of the National Assembly have been regularly held within the National Assembly Building, more than 15 occasions in two years. Organizers of some of these events clearly promoted “conversion therapies” to minors, claiming themselves as “ex-gay human rights group”.</p>	<p>The State Party shall not grant the use of State-owned buildings, such as National Assembly Building, by private organizations for so-called “conversion therapies” and, incitement of hatred and discrimination against LGBTI persons.</p>
<p>(The State party should) <i>develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities</i></p>	<p>The measures taken are contrary to the Committee’s recommendations.</p> <p>The Ministry of Education released its first government-level sex education materials for nationwide use last year, only to be criticized for its blatantly sexist and discriminatory contents. Since then, the Ministry of Education stated that they are working on revisions to the guidelines.</p>	<p>Withdraw the existing sex education guidelines and develop sex education programmes that provide students with comprehensive, accurate and age-appropriate information regarding sexuality and diverse gender identities</p>

	On September 23, MOE urged a provider of online education for teachers to cancel the LGBT-inclusive sex education program, since it doesn't align with the ministry's sex education guideline. The provider followed the MOE's request and 700 teachers who applied for the course couldn't take the sex education course.	
(The State party should) facilitate access to the legal recognition of gender reassignment.	Not that we are aware of.	Facilitate access to the legal recognition of gender reassignment.
(The State party should) develop and carry out public campaigns and provide training for public officials to promote awareness and respect for diversity in respect of sexual orientation and gender identity.	There are no new measures taken after the Committee's recommendations that we are aware of.	Develop and carry out public campaigns and provide training for public officials to promote awareness and respect for diverse sexual orientations and gender identities

Paragraph 45: Conscientious Objection to military service

Para 44: The Committee is concerned that, in the absence of a civilian alternative to military service, conscientious objectors continue to be subjected to criminal punishment. It notes with concern that conscientious objectors' personal information may be disclosed online (art. 18).

Recommendation of the HR Committee in para 45	Action taken by the State	Measures needed additionally / Other comments																																	
<p>The State party should (a) <i>Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service;</i></p>	<p>Since the adoption of the Concluding Observation on the Republic of Korea in 2015, no conscientious objector was released except for conscientious objectors who completed their sentences.</p> <p>Republic of Korea continues to impose criminal punishment to conscientious objectors. Total of 315 conscientious objectors were imprisoned since the adoption of the Concluding Observation in 2015.</p> <p>Number of Imprisoned conscientious objectors btw. 3rd Nov. 2015 and 31st Aug. 2016</p> <table border="1" data-bbox="589 746 1312 1034"> <thead> <tr> <th></th> <th>Nov. 2015</th> <th>Dec.</th> <th>Jan. 2016</th> <th>Feb.</th> <th>Mar.</th> <th>Apr.</th> <th>May</th> <th>Jun.</th> <th>Jul.</th> <th>Aug.</th> </tr> </thead> <tbody> <tr> <td>No. of COs in Prison</td> <td>587</td> <td>576</td> <td>539</td> <td>527</td> <td>527</td> <td>513</td> <td>501</td> <td>523</td> <td>499</td> <td>399</td> </tr> <tr> <td>No. of COs imprisoned</td> <td>35</td> <td>32</td> <td>21</td> <td>47</td> <td>19</td> <td>52</td> <td>52</td> <td>22</td> <td>17</td> <td>18</td> </tr> </tbody> </table>		Nov. 2015	Dec.	Jan. 2016	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	No. of COs in Prison	587	576	539	527	527	513	501	523	499	399	No. of COs imprisoned	35	32	21	47	19	52	52	22	17	18	<p>The State Party should recognize right to conscientious objection in its law and release all imprisoned conscientious objectors.</p>
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<p>(b) Ensure that <i>conscientious objectors' criminal records are expunged, that they are provided with adequate compensation and that their personal information is not publicly disclosed;</i></p>	<p>Following the amendment of the Military Service Act, dated 31 Dec 2014, which provides disclosure of personal information of draft evaders, the regional military manpower offices had drawn up a preliminary list of draft evaders in their jurisdiction as of Dec 2015.</p> <p>According to the Military Manpower Administration (MMA), persons who are included in the preliminary list will be given a chance to explain their reasons within six months. Validity of their explanation will be deliberated at the Committee on Draft Evasion stashed under each regional military manpower offices, which will</p>	<p>Discloser of personal information is by its nature a form of punishment via public humiliation. Given the fact that most of draft evaders are subjected to criminal sanction under the Military Service Act, such measure could amount to double punishment.</p> <p>The authorities claim that this disclosure system will prevent draft evasion and create culture of earnest fulfilment of military service. However, the Republic of Korea has one of the highest rates of conscription. According to the MMA, as of end of 2014 there were 951 draft evaders including conscientious objectors, and among those, 162 were staying overseas without lawful immigration status. This only</p>																																	

	<p>make final decision whether to disclose personal information of the draft evaders.</p> <p>Personal information of draft evaders is expected to be disclosed for the first time in 20 Dec 2016.</p>	<p>represents 0.3% of total of 274,292 conscripted men in 2014, and in case of 162 “illegal immigrants”, which was the main reason of concern, according to the MMA, the ratio goes down to 0.06%. The gain that comes out of this system is trivial, however the harm it brings is severe.</p> <p>The Government should immediately cancel its plan to disclose personal information of draft evaders including conscientious objectors.</p>
<p>(c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility of performing an alternative service of civilian nature.</p>	<p>No meaningful effort to implement the recommendation to introduce an alternative service was made by the Government.</p> <p>The Constitutional Court of the Republic of Korea is reviewing constitutionality of provisions in the Military Service Act, which provides criminal sanction for conscientious objectors without exception. The court will adjudicate whether the provisions violates the freedom of conscience, which is enshrined in the Constitution of the Republic of Korea.</p> <p>The Government continues to claim that it is difficult to introduce an alternative service because of lack of national consensus on the issue, citing the Government commissioned opinion poll result in 2014. The 2014 poll results showed that 58.3% expressed their objection to the introduction of alternative service and 38.7% showed support for such service.</p> <p>Total of 9 conscientious objectors were acquitted at the lower court since May 2015. The prosecutor’s office appealed the decision.</p> <p>The Gwangju District Court of Appeal acquitted the three conscientious objectors and held them not guilty of evading military service in Oct 18 2016. This is the first time in history that the appeals court ruled in favour of conscientious objectors.</p>	<p>It is inspiring that lower courts are ruling in favor of conscientious objectors. This trend can be interpreted as a strong sign that within the judiciary, there are growing supports for a change in law and practice that criminalize conscientious objection.</p> <p>The same trend is shown in an opinion poll conducted by the Seoul Bar Association in 2016. Out of 1,297 lawyers who participated in the poll, 1,044 (80.5%) showed their support for alternative service for conscientious objectors. 964 (74.3%) answered that “freedom of conscience includes freedom to object military service on the ground of conscience”. 822 (63.4%) answered that it is unconstitutional to compel military service without offering an option of alternative service. 859 (66.2%) answered that conscientious objections should be recognized as a right.</p> <p>The Constitutional Court’s decision should come in a timely manner. Also, the Court should take note of repeated recommendations from the UN human rights mechanisms on the issue and continued innocent ruling of conscientious objectors at the lower courts in making decision.</p> <p>Regarding the Human Rights Committee’s recommendation to introduce an alternative system, the Government claims that there are difficulties in introducing alternative services. However, it should be noted that the State Party had already prepared solutions to this issue through a government commissioned research on a detailed outline of alternative service system. However, the Government had refused to</p>

		<p>introduce the system on the ground of opinion poll result attached to the report. Although there were other poll results which were in favour of introduction of the alternative service system, the government has not acknowledged such poll results. The State Party claims that it is difficult to introduce such system solely on the basis of opinion poll results unfavourable to the introduction of the alternative system.</p> <p>The Government should stop criminalizing conscientious objectors and immediately introduce an alternative service to military service.</p>
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Paragraph 53: Freedom of peaceful assembly

Para 52: The Committee is concerned about the severe restrictions placed on the right to peaceful assembly, including the operation of a de facto system of authorization of peaceful assemblies by the police, cases of use of excessive force, car and bus blockades, and the restriction on demonstrations held past midnight. It is also concerned about the frequent application of criminal law to impose fines on and arrest journalists and human rights defenders for either organizing or participating in protests without due consideration for their right to freedom of assembly (arts. 7, 9 and 21).

Recommendation of the HR Committee in para 53	Action taken by the State	Measures needed additionally / Other comments
<p>The State party should ensure that <i>all persons enjoy the right to peaceful assembly, and that limitations on that right are in strict compliance with article 21 of the Covenant.</i></p>	<p>On 3 June 2016, the National Police Agency suggested amendment of article 10 of the Assembly and Demonstration Act(ADA) to prohibit any outdoor assembly or demonstration between 12am to 7am. Currently, the act bans outdoor assembly or demonstration either before sunrise or after sunset.</p>	<p>Completely restricting assembly and demonstration at certain times (blanket ban) is not in line with the Constitution of the Republic of Korea.² The core element of the right to freedom of peaceful assembly and association guaranteed in the Constitution is that organizers of peaceful assembly should be able to freely choose time, location, and method of the assembly. Therefore, prohibiting assembly and demonstration at certain times violates the essence of freedom of assembly and demonstration.</p> <p>According to Article 6(1) of the Assembly and Demonstration Act(ADA)³, assembly and demonstration can be held by notifying to the police. However, the police are making as a de facto registration system by arbitrary banning assembly and demonstration based on reasons such as flow of traffic, a ban on certain areas and/or concerns for collective violence and arson, etc. Even though Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and association who visited South Korea in January 2016, expressed his</p>

² Article 21 of the Constitution of the Republic of Korea: (1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association. (2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized. (3) The standards of news service and broadcast facilities and matters necessary to ensure the functions of newspapers shall be determined by Act. (4) Neither speech nor the press shall violate the honour or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honour or rights of other persons, claims may be made for the damage resulting therefrom.

³ Article 6(1) of the Assembly and Demonstration Act: (1) Any person who desires to hold an outdoor assembly or to stage a demonstration shall, from 720 to 48 hours before such assembly or demonstration is held, submit a report on the details in all the following subparagraphs to the chief of the competent police station: Provided, That if two or more police stations have jurisdiction over such assembly or demonstration, such report shall be submitted to the commissioner of the competent regional police agency, and if two or more regional police agencies have jurisdiction over it, such report shall be submitted to the commissioner of the competent regional police agency exercising jurisdiction over the place where it takes place: 1. Objective; 2. Date and time (including hours involved); 3. Place; 4. The following matters concerning the organizer (in the case of an organization, including its representative), the person in charge of liaison, and moderators: (a) Address; (b) Name; (c) Occupation; and (d) Contact information; 5. Organizations expected to participate and the estimated number of participants; and 6. Methods of demonstration (including a route map).

		<p>concern over this issue⁴, nothing has changed since then.</p> <p>The police are provoking unnecessary conflicts between the police and protesters by making assemblies 'illegal' based on the notice of ban they issued in advance and justifying its use of excessive force against 'illegal' protesters.</p> <p>The organizers and participants of assemblies and demonstration, such as Candlelight Vigils against Korea-US FTA(2008), Forced eviction protest in Yongsan(2009), Ssangyong Motors mass layoffs protest(2009), and assemblies following the Sewol ferry disaster(2014), have been punished by criminal law. Despite of the recommendation by the Human Rights Committee and the Special Rapporteur that the use of violence by a small number of participants in an assembly does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, the Government considered the assemblies related to People's Rally as illegal with prior ban notice and violent with some participants' violent actions. As a consequence, organisers and even non-violent participants are punished for criminal offences.</p> <p>The police have forcibly seized items from assembly sites based on the reason that the items have not been reported in advance. (Please see case no.4 below)</p> <p>When the police receive two or more reports on assemblies or demonstrations, which are to take place concurrently in the same place and of which the objectives are in mutual conflict or mutually interfering with, the police should undertake actions necessary to make sure each assembly or demonstration would be held in a peaceful and non-interfering way. However, the police accept a report</p>
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⁴“The Assemblies and Demonstrations Act (ADA), in line with the Constitution, prohibits authorities from requiring that peaceful assemblies be previously authorised. It does, however, require assembly organizers to submit a report notifying authorities of details of the proposed assembly in advance (art. 6(1)). Notification regimes for assemblies may be permitted under international law norms (A/HRC/20/27 para. 28). But such regimes – regardless of how they are labelled – may become de facto authorization requirements if notification is mandatory, particularly when they leave no room for spontaneous assemblies, which are also protected by international human rights law.” Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mission to the Republic of Korea, the 32nd session of the Human Rights Council, A/HRC/32/36/Add., 16 June 2016, para. 19.

		by order of arrival and therefore, issue the ban notice of the assembly or demonstration on which a report has been received later.
<p>Case 1. Arbitrary notice ban</p> <p>At the People’s Rally which took place in less than 10 days after receiving recommendations from the Human Rights Committee(14 November 2015), the police have issued 15 assembly ban notices out of 63 assembly reports(23.8%). The reports of assemblies whose locations were nearby Gwanghwamun Plaza which is close to government institutions, the U.S Embassy and the Presidential Office have not been accepted without exception. Its ban was based on the Article 12(1) of the ADA⁵. However, only 10 assemblies out of 52 which were held nearby Gwanhwamoon area were banned during the period between September and December in 2015, which was before and after the People’s Rally, and the rest of assemblies and demonstrations took place in that location.</p> <p>The People’s Committee for Farmer Baek Nam-gi and Condemning State Violence submitted a report for a commemoration ceremony for farmer Baek, who passed away, 317 days after he went unconscious as he was severely hit by the police’s water cannon during a peaceful protest. After the ceremony, the People’s Committee plans to march to National Police Agency, using 2 lanes of the road. However, the police issued the notice of ban from the intersection of Jonggak Station to National Police Agency by arguing the march would cause serious traffic congestion. Despite of complaints from protesters on the day, the police blocked the march in the intersection of Jongno-gu Office and ordered to disperse. The protesters had no choice but to disperse after placing white chrysanthemums on a memorial alter which was set up in front of the line.</p> <p>Case 2. Excessive Use of Force</p> <p>On the day of the People’s Rally, the police set up bus barricades as a pre-emptive measure, using 20 barricade trucks and 679 police buses, which seriously obstructed the path of the protesters as well as pedestrians.</p> <p>On the day of the People’s Rally, all 19 police water cannon trucks were mobilized and 10 of them were used. The police shot water cannon indiscriminately and excessively against the participants. A mandatory warning by the police before using water cannon not either carried out properly or communicated effectively to the participants because of background noise. The amount of water used by water cannon on that day is a total of 202 tons, which is the maximum record in the last five years. The police reportedly mixed 432 liters of PAVA, a mixture of capsaicin which can cause serious problems including skin rash, hives, irritation and temporary blindness. The number of people who had been injured on that day had far surpassed 100 including 30 patients who had suffered from loss of consciousness, concussion, haemorrhage from the iris, fracture, laceration etc.</p> <p>On the same day, 69-year-old farmer Back Nam-gi was knocked to the ground by high-powered police water cannons. He was hospitalized and had a cerebral haemorrhage surgery. He had remained in a coma since then for 317 days and passed away on 25 September 2016. The act that the police fired water cannons directly at protestors without any clear legal grounds is unconstitutional and infringes freedom of peaceful assembly.</p>		

⁵ Article 12(1) of the ADA: 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.

In the first trial ruling of Han Sang-gyun, the president the Korean Confederation of Trade Unions(KCTU), the court did acknowledge water cannon use as illegal in the case of farmer Baek Nam-gi. However, Prosecutor's Office has not made much progress in terms of investigation until today and no one has offered sincere apology to the late Back's family. Rather, those in charge of security and investigation on the People's Rally were promoted.

Case 3.

Crackdown on protest participants (human rights defender)

On 4 July 2016, the Central District Court in Seoul convicted Mr. Han Sang-gyun, the president of KCTU, for his role as an organizer of a number of demonstrations against the government-led regressive labour reform. The court handed down on a sentence of five years in prison and a 500,000 KRW (around 450 USD). He was found guilty on all the charges including violation of the Assembly and Demonstration Act, violation of the General Obstruction of Traffic(Article 185 and 30 of Criminal Act), violation of the Special Obstruction of Public Duty leading to injury(Article 144, 136 of Criminal Act), and violation of the Special Obstruction of Public duty(Article 144, 136, 30 of Criminal Act). A total of 13 assemblies were cited, including the People's Rally on November 2015 and a 2014 memorial rally by People's Committee for the Sewol Ferry Tragedy. The heavy punishment of 5 years in jail term is based on the "Joint Principal through conspiracy without participation", a unique legal principle the South Korean judiciary adopted, in which an organiser of demonstration is liable for all the actions occurred in the demonstration concerned.

The police had launched a massive investigation on the very next day of the People's Rally, indiscriminately summoning people. Around 1,500 people, the organizers of assemblies as well as the participants who had no personal role in the violence, had been summoned for investigation on charges of violation of the Criminal Act including General Obstruction of Traffic and Special Obstruction of Public Duty. It turned out some of those summoned did not even participate in the rally. The police also had excessively collected participants' personal information and inquired communication data from telecom companies, creating fear on the participants and spreading 'illegal' and 'violent' images on assembly and demonstration to general public.

Case 4.

Seizure of protest items

On 27 June 2016, the police seized rolls of tinfoil mat from the families of victims of Sewol Ferry disaster who pulled an all-night vigil asking the government to stop disbanding Sewol Special Investigation Commission forcefully and extend the commission's working period. The police argued the tinfoil mats were not reported in advance, which makes them illegal assembly items. The day before, the police removed yellow ribbons and shade canopies for the same reason.

On 5 October 2016, the police stopped the farmers, in the middle of a bridge, who carried bags of rice in their truck to a protest against the government's agricultural policy. The police said that because the rice was not a reported assembly item, the farmers could not go to the protest with the rice in the truck. Since a confrontation between the farmers and the police lasted for more than 12 hours, the farmers could not participate in the protest and had to go back home the next morning.

Case 5.

Counter-protests

Members of Yoosung union has been fighting against union busting and unjustifiable dismissal for six years. They submitted a report to Seocho police station in Seoul for a sit-in protest in front of Hyundai Motor's building on 17 May 2016. However, they could not hold a demonstration because Hyundai Motor was the 1st applicant at the same place. Hyundai Motor allegedly had employees and people from private security company standing in front of the main gate for all day long and called it an assembly.

According to the ADA, one can submit a report as earliest as 720 hours before assembly or demonstration. That is why members of Yoosung union arrived in Seocho police station around 11:50pm on 22 May 2016 to submit a report for an assembly on 21 June. Midnight of 23 May was exactly 720 hours before 21 June. However, the police kept postponing receipt of the union’s report and instead accepted a report of a staff from Hyundai Group who showed up after midnight. At the complaint of the union member, the police argued the staff member had arrived in the station at 7am on 22 May, which made Hyundai Motor the 1st applicant.

(The State party) should **review its regulations on the use of force** and ensure that **they are in compliance with the Covenant**, and **train its police officials accordingly**.

Not that we are aware of.

There are no clear legal sanctions for firing water cannons at demonstrators, which indiscriminately infringes freedom of peaceful assembly. The only document the police have regarding specific usage of water cannons is <Operation Guideline on the Water Cannon Truck>. However, the document is an internal guideline, which means no one is compelled to be punished for violating it. Moreover, it is attainable only through a request of information disclosure, which makes it hard for the public to inspect the document.

Even though human rights groups in the Republic of Korea have raised the danger of using water cannon directly at people, the guideline of the police have maintained a vague standard which only requires aiming water cannon under a target’s chest when shooting directly.

The police officers operating water cannon have not received a proper training.

Case

At the National Assembly hearing on the police brutality and excessive use of force on Farmer Baek, which was held on 12 September 2016, the senior police officer who used the water cannon at Baek stated that he “had never had a training of shooting under a target’s chest” and “the training usually was about shooting to the ground”.

<Additional Update>

Paragraph 42: Monitoring, surveillance and interception of private communication

Para 42: The Committee notes with concern that according to Article 83 (3) of the Telecommunications Business Act subscriber information may be requested without warrant from any telecommunications business operator for investigatory purposes. It is also concerned about the operation and insufficient regulation in practice of so-called “base-station” investigations to identify participants at assemblies, and about the extensive use and insufficient regulation in practice of wiretapping, in particular by the National Intelligence Service (arts.17 and 21).

Recommendation of the HR Committee in para 43	Action taken by the State	Measures needed additionally / Other comments
<p>The State party should take the necessary legal amendments to ensure that any surveillance including for purposes of state security are compatible with the Covenant. It should inter alia ensure that subscriber information may be issued with a warrant only,</p>	<p>The request of subscriber information without warrant for investigatory purposes continues.</p>	<p>Telecommunication operators continue to provide subscriber information including name, resident registration number, postal address etc. to intelligence and investigative agencies without warrant according to Article 83 (3) of the Telecommunications Business Act. The subscribers hadn't been notified of the fact and purpose of provision of their data, which aroused fear of surveillance and constricted communication rights. However, the Constitutional Court of the Republic of Korea found that provision of subscriber information is left to business' discretion, so state has no responsibility for that in the decision on 23 August 2012, while the Supreme Court ruled that business is not liable for damage on the provision of subscriber information on 10 March 2016. As a result, any remedy was not provided by both institutions.</p>
<p>Case The number of subscriber information provided to those agencies reached 10,577,079 in 2015 only, which is about 20.5 % of the overall population. It was disclosed in March 2016 that victims of provision of personal data encompassed a wide range of people, including politicians, journalists, and common people who had not even been summoned as a suspect. 6</p>		
<p>introduce a mechanism to monitor the National Intelligence Service's communication investigations,</p>	<p>Lack of oversight mechanism to monitor the National Intelligence Service's communication investigations</p>	<p>The National Intelligence Service of the Republic of Korea has an enormous power including investigative power as the only secret agency in the country apart from the Military. It conducted about 97.9% of overall wiretapping done by the whole agencies in 2015 officially. The biggest problem is that it has been engaged in domestic politics for a long time without sufficient oversight mechanism such as a court or a national assembly to monitor its communication investigations and operations.</p>
<p>Case</p>		

⁶ If there's a reason for snooping, the NIS should say so, The Hankyoreh, 15 March 2016, http://www.hani.co.kr/arti/english_edition/e_editorial/735005.html

It was revealed that the then director of the National Intelligence Service(NIS) had engaged in presidential election in 2012 by manipulating public opinions on the internet. While he was found guilty, necessary measures were not taken place to prevent the abuse of NIS' power. What was worse, the NIS had hacked individuals' smartphone by the help of Hacking Team, the Italian company, without any notice to the national assembly nor permission of a court even when the special committee to reform the NIS was in operation at the national assembly in 2013.

It was first revealed in 2009 that the NIS had been wiretapping all the communications through the internet line of a target in real-time for over a decade using Deep Packet Inspection (DPI) technology. The victim filed constitutional petition on March 2011, but the Constitutional Court delayed the decision and closed the case without any decision when the claimant died on February 2016.

<p>and increase the safeguards to prevent the arbitrary operation of so-called base-station investigations.</p>	<p>The practice of so-called "base-station" investigations is not regulated yet.</p>	<p>The practice of so-called "base-station" investigation still continues to be in operation. Intelligence and investigative agencies can be provided with all mobile phone meta data around specific base-station from mobile phone operators according to the Protection of Communications Secrets Act. They only need to meet the requirement of "being necessary for investigation" to get a permission from a court. The National Human Rights Commission of Korea recommended in 2014 that communication can meta data only be provided limitedly "when there is circumstantial evidence the suspect has committed a crime and when the data is known to be related to the corresponding case". The government of the Republic of Korea did not accept the recommendation yet.</p>
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Case
 The police officially denied that it had operated "base-station" investigation to identify participants at assemblies. However, base station investigation was conducted on a journalist who was covering the opposition party's event on June 2014 and the journalist filed a constitutional petition. The case is currently being reviewed.