Situation of Freedom of Peaceful Assembly and Association in the Republic of Korea

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Freedom of Peaceful Assembly – General

1. Background

- While Article 21(2)[1] of the Constitution of the Republic of Korea does not recognize the system of authorization of assemblies and the Assembly and Demonstration Act (hereinafter, "ADA") also stipulates a system of notification, the police have maintained the system of authorization by issuing ban notices.
- In particular, the police have been arbitrarily applying preventative restrictions (ban and restriction notices) through the ADA against assemblies criticizing the government or labour assemblies, and have imposed follow-up punishments for violations of these measures. In addition, the police have infringed upon the freedom of assembly by conducting random stop-and-questions and using equipment in an arbitrary and unlawful manner in assembly areas. In addition to arresting and imposing fines on assembly organizers and participants, the police and prosecution have filed claims for damages under civil law.

2. Relevant Laws

1) Assembly and Demonstration Act (ADA)

- The Assembly and Demonstration Act(ADA) is a law not to "protect", but to "restrict" the freedom of assembly. The ADA does not specify definition of "assemblies", which allows restrictions to be applied to a wide range of assemblies, and its protection is limited to "lawful", but not "peaceful" assemblies.[2]
- The prior reporting system lies at the core of the restrictions of the ADA. According to Article 6 of the ADA, 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 to the chief of the competent police station.[3] The ADA requires assembly organizers to report

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[1] Constitution Article 21(2): Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized.

[2] Assembly and Demonstration Act Article 1 (Purpose): The purpose of this Act is to achieve an appropriate balance between the guarantees of the right to assemble and demonstrate and public peace and order by guaranteeing the freedom of lawful assemblies and demonstrations and protecting citizens from unlawful demonstrations.

[3] Assembly and Demonstration Act Article 6 (Report, etc. on Outdoor Assembly or Demonstration):
(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). (2) Upon receipt of the report referred to in paragraph (1), the chief of the competent police station or the commissioner of the competent regional police agency (hereinafter referred to as the "head of the competent police authority") shall forthwith issue a certificate of receipt specifying the date and time of receipt to the person submitting the report.

their assemblies, and the police review the report and issue ban or complementation notices accordingly. The police cite reasons such traffic order, public peace and order, and prohibition of outdoor assemblies in certain areas for banning assemblies, and the police may forcibly disperse and punish assemblies for noncompliance. While prior reporting is the primary means used by the police to obtain the possibility of control of assemblies and the basis for ban notices, it also leads to the dispersal and punishment of assemblies that have not been reported in advance. Thus, the application of the ADA takes the form of "prior report → ban notice → dispersal/punishment" or "non-reported assembly → dispersal/punishment". The system of notification is in effect a system of authorization. The ADA and related police practices go against Article 21(2) of the Constitution, which prohibits the system of authorization.[4]

- The Supreme Court allows the dispersal of assemblies only in very limited circumstances, such as in cases where a direct and imminent danger exists to the legal interest of others or to the public peace and order (Supreme Court 2009Do13846). Dispersal orders may not be issued even if the assembly was not reported in advance (Supreme Court 2011Do6294). If an assembly was banned, but still carried out in a manner that did not pose a direct and imminent danger to the legal interest of others or to the public peace and order, the assembly cannot be punished and dispersal orders may not be given (Supreme Court 98Da20292). Although the court has urged the police to protect peaceful assemblies regardless of their legality, the police have made distinctions between "lawful" and "unlawful" assemblies and have forcibly dispersed or issued prior bans on the latter.
- In addition, expressing public opinion against government agencies is being greatly limited due to blanket ban. Assemblies taking place within 100m of institutions[5] such as the courts,

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(3) If it is decided that the outdoor assembly or demonstration that has been reported under paragraph (1) will not be held or staged, the organizer of the assembly or demonstration shall notify the head of the competent police authority of such decision before the scheduled date of the assembly or demonstration as specified in the report.
(4) If the head of the competent police authority, upon having received the notification as provided for in paragraph (3) has banned any assembly or demonstration under Article 8 (2), the police authority head shall forthwith notify such fact as referred to in paragraph (3) to the organizer of such assembly or demonstration who was issued with a notice of ban.
(5) The organizer of the assembly or demonstration who has been notified under paragraph (4) may hold the assembly, or stage the demonstration, of which the ban was notified in the same manner as was reported originally: Provided, That in cases where such event has failed to keep to the scheduled time due to the notice of ban, etc., a new date and time may be arranged for the same assembly or demonstration to be held or staged, subject to a report to the head of the competent police authority on the holding of such event 24 hours before it takes place.

[4] Constitutional Court decision of 28 January 2014 (2011Hun-ba174)

[5] Assembly and Demonstration Act (Places Prohibited for Outdoor Assembly and Demonstration) Article 11: No person may hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences:
1. The National Assembly building, all levels of courts, and the Constitutional Court; 2. The Presidential residence and the official residences of the Speaker of the National Assembly, the Chief Justice of the Supreme Court, and the Chief of the Constitutional Court; 3. The official residence of the Prime Minister: Provided, That the same shall not apply in cases of a parade or procession; and 4. Diplomatic offices or residences of heads of diplomatic missions in Korea: Provided, That the same shall not apply if it is presumed that an assembly or demonstration, which falls under any of the following items, may not interfere with the functions or security of diplomatic offices or residences of heads of diplomatic missions:
(a) Where the assembly or demonstration is not directed at the diplomatic offices or residences of heads of diplomatic missions;
(b) Where the assembly or demonstration would not escalate into a large-scale assembly or demonstration; and

National Assembly, and Cheong Wa Dae (Presidential residence) are entirely banned. Additionally, excessive restrictions placed on the level of noise allowed during assemblies have lead to further constraints on assembly participants' ability to communicate amongst themselves and with other citizens.[6]

2) General Obstruction of Traffic (Criminal Act Article 185)

- Article 185 (General Obstruction of Traffic) of the Criminal Act states that "A person who damages, destroys or blocks a road, water-way, or bridge, or obstructs traffic by other means, shall be punished by imprisonment for not more than ten years or by a fine not exceeding fifteen million won." Due to the abstract and general nature of the expression "other means" in the General Obstruction of Traffic provision, there is much room for interpreting all acts taking place on road to be included in the definition, which violates the principle of legal certainty.
- Moreover, there is a significant difference in terms of legality between minor inconveniences and dangers to one's life and body caused by traffic flow obstruction. Therefore, imposing the same punishments to minor traffic hindrances and to dangers to one's life and body is an excessive application of the law, as it goes against the principle of proportionality. Although there have been occasional applications of the provision in the past, since 2008, it has been actively applied whenever assemblies involve road marching.
- The ADA does not punish those who merely participate in assemblies, and Article 23 of the ADA stipulates punishments for night-time outdoor assembly participants as fines up to 500,000 KRW (around 500 USD), misdemeanour imprisonment, or minor fines. Article 200-2 paragraph 1 of the Criminal Procedure Act states that, in cases "punishable with a fine of a maximum amount not exceeding 500,000 won, misdemeanour imprisonment, or a minor fine", *in flagrante delicto* arrests can only be made if the offender has no fixed dwelling. In order to avoid this provision, the police attempt to apply General Obstruction of Traffic, which allows *in flagrante delicto* and emergency arrests for the occupation or use of roads during assemblies and demonstrations. When Article 185(General Obstruction of Traffic) of the Criminal Act is applied to assembly and demonstration participants, minor offences turn into serious offences and participants are criminalized.
- According to the current reasoning of the Supreme Court, even if assemblies are conducted in a peaceful manner, but involve the occupation of roads and sidewalks, they are considered "unlawful" assemblies under the ADA and are punishable for General Obstruction of Traffic. Assemblies and demonstrations are ways to express opinions through the occupation of roads. The application of General Obstruction of Traffic to assemblies that cause traffic hindrances

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(c) Where the assembly or demonstration takes place on a holiday when diplomatic offices are off duty.

[6] Assembly and Demonstration Act Article 14 (Restriction on Use of Loud Speaker, etc.): (1) No organizer of any assembly or demonstration shall be permitted to produce any noise which causes serious harm to others by using such devices or instruments as loud speakers, drums, small or large gongs, etc. (hereafter in this Article, referred to as "loud speaker, etc.") and which is beyond the noise levels determined by Presidential Decree. (2) If the organizer of any assembly or demonstration is causing harm to others by producing any noise that is beyond the noise levels under paragraph (1), the head of the competent police authority may order the organizer to reduce such noise levels or to suspend the use of such loud speaker, etc. or may take necessary measures, including the temporary seizure of the loud speaker, etc.

(traffic flow obstruction, traffic congestion) is the same as telling people not to conduct assemblies and demonstrations.

3) Act on Performance of Duties by Police Officers

- The police block off main subway exits and paths used by people to reach assembly areas and conduct stop-and-questions under the Act on the Performance of Duties by Police Officers to reduce the size of assemblies. According to Article 3 of the Act on the Performance of Duties by Police Officers, police officers are required to identify themselves and provide reasons for stop-and-questions and to let go those who refuse to cooperate. Yet in practice, the police do not identify themselves nor do they allow people who refuse to cooperate with stop-and-questions to pass through. The police sometimes cite Article 6 of the Act on the Performance of Duties by Police Officers, which allows police officers to prevent acts of crime about to be committed in his/her presence, but this reasoning criminalizes the participation in peaceful assemblies and violates both the freedom of assembly and the freedom of movement.
- In addition, the police have cited Article 6 of the Act on the Performance of Duties by Police Officers as the grounds for using bus blockades. However, Article 6 of the Act states that "If a police officer deems that a crime is about to be committed in his/her presence, he/she may issue a warning to interested persons to prevent such crimes, and may prevent them from committing such criminal act in cases of emergency in which such crime is likely to inflict harm on people's life or body or grave damage to property." Thus, it is not applicable to peaceful assemblies. This is also an unlawful violation of the freedom of assembly and of movement.
- Article 10 (Use, etc. of Police Equipment) of the Act on the Performance of Duties by Police Officers includes a general provision that states "Police officers may use police equipment in performing duties" and specifies that the use of equipment be "restricted to the necessary minimum". A Presidential Decree further regulates the details on the use of equipment. However, the Presidential Decree and Police Agency Decree merely list safety procedures for minimum use and do not provide for specific situations in which equipment such as water cannons trucks may be used. As a result, the police have used lethal equipment arbitrarily and unlawfully at the discretion of the officer-in-charge at assembly sites.

3. Current Situation

1) Punishment for Non-Reported Assemblies

- One-person protests conducted by two or more people, flash mobs, performances, press conferences, etc. are being punished for violating Article 6 paragraph 1 of the ADA for not filing assembly reports in advance. According to the "Assembly and Demonstration Law Enforcement Manual" created by the police, one-person protests conducted by two or more people, flash mobs, performances, press conferences, etc. are to be dealt with through measures such as dispersal orders as they are unlawful and non-reported assemblies under the ADA. The Supreme Court ruled that if press conferences have the purpose of jointly expressing opinions by gathering in a public space, they are outdoor assemblies and should be reported to the

police.[7]

Case 1. Picketing by 3 human rights defenders at Gwanghwamun Square

- At around noon of 10 May 2015, three human rights defenders engaged in picketing using pickets containing the message "Ensure the freedom of expression"; they were standing 6-7 meters apart from each other at Gwanghwamun Square. At 12:30, the police gave three rounds of warnings to disperse and proceeded to take the human rights defenders into the Jongno Police Station for violating the ADA. Two human rights defenders was indicted for violations of the ADA (Article 20 Paragraph 2 Subparagraph, Article 22 Paragraph 2, Article 6 Paragraph 6, Article 24 subparagraph 5, noncompliance with dispersal order against non-reported assembly).In July 2015, the Supreme Court sentenced one human rights defender to a fine of 300,000 KRW(around 300 USD).

Case 2. Performance by Youth Community Union

- On 28 March 2013, the Supreme Court sentenced Young-kyung Kim, former head of the Youth Community Union, to a fine of 700 thousand KRW. This was due to a flash mob held in 2010 in Myeongdong, Seoul demanding the resolution of youth unemployment and the recognition of the establishment of the Youth Community Union; the event was found to be in violation of the ADA. The Supreme Court ruled that flash mobs with the purpose of criticizing government policies are unlawful if not reported in advance.

Case 3. Press conference in front of Cheong Wa Dae (Presidential residence)

- On 17 February 2014, the Organizing Department Director of the National Union of Mediaworkers organized a press conference in the parking lot of the Cheongun-Hyoja Community Service Center located in Jongno-gu, Seoul near Cheong Wa Dae(President residence). The press conference was titled "Press Conference to Denounce the Reneging on Election Pledges to Improve the Governance Structure of Public Broadcasting and to Encourage Participation in the Nationwide Strike" and was attended by 20 Union members. Later, the prosecution indicted the Director for holding a non-reported outdoor assembly, and the Supreme Court ruled that even though the gathering "appeared" to be a press conference, it was in fact an outdoor assembly.

Case 4. Third People's Rally on 19 December 2015

- Although the Third People's Rally on 19 December 2015 was conducted in the form of a cultural festival, Young-ho Kim, head of the Korea Farmers League, was sent a summons for failing to report an assembly in advance.

Case 5. Sale of Left21 Newspaper on the streets

- On 7 May 2010, activists and members of the Workers' Solidarity were arrested for violating

[7] Constitutional Court Case number: 2015Do12320

the ADA for selling the biweekly newspaper "Left21" near Gangnam Station in Seoul. The newspaper criticized the government for promoting a national security crisis with the ROKS Cheonan sinking. On 14 November 2013, the Supreme Court sentenced one person with a suspended sentence and five were acquitted.

2) **Increase in Assembly Ban Notices**

- The number of assembly ban notices has been significantly increasing. According to the "Statistics on Assembly and Demonstration Ban Notices of the Seoul Metropolitan Police Agency", the Seoul Metropolitan Police Agency banned 199 out of 42,283 assembly reported from January to July 2014. This exceeds the total number of bans (157) for 2013. While there have been approximately 200 bans each year, there were some 200 bans in the first half of 2014, which is the highest ever. Unlike reasons for bans in the past, such as simultaneous assemblies or traffic flow, there have been 70 ban notices issued for "concerns of disrupting the peace and quiet of life. This is a fourfold increase compared to the 13 ban notices in 2013.
- In particular, there has been a noticeable increase in ban notices after the 16 April 2014 Sewol Ferry incident and related assemblies. During the first two months after the Sewol Ferry incident, ban notices were issued for 112 out of 239 assemblies reported. Ban notices were mostly based on Article 8 paragraph 3 subparagraph 1 (infringement of privacy), Article 8 paragraph 3 subparagraph 2 (school areas), and Article 12 paragraph 1 (Restriction on Assembly or Demonstration for Smooth Flow of Traffic) of the ADA.
- Reports for assemblies near Cheong Wa Dae are entirely prohibited. On 13 May 2014, an assembly report was submitted to hold the 18 May "Cheong Wa Dae People's Assembly" at 10 sites near Cheong Wa Dae, but the police issued ban notices for all 10 sites. Also, on 7 June 2014, an assembly report was filed to the Jongo Police Station to hold the "10 June Cheong Wa Dae People's Assembly" at 61 sites near Cheong Wa Dae, which had the purpose of holding the government responsible for the Sewol Ferry incident, but assemblies at all sites were banned.
- In addition, the police interfere with one-person protests near Cheong Wa Dae. The front of Cheong Wa Dae is an area where all assemblies and demonstrations are prohibited under Article 11 of the ADA. Since assemblies are prohibited within a 100-meter radius from the boundary of Cheong Wa Dae, only one-person protests may be conducted. Despite the fact that one-person protests are conducted by a single individual standing and holding a picket and the act has no threatening characteristics, the police interfere and limit the freedom of expression.

Security guards follow an individual attempting to stage a one-person protest in front of the Cheong Wa Dae water fountain and use umbrellas to cover the messages.

The police immediately surround and give dispersal orders as a one-person protest is about to take place at Gyeongbok Palace station Exit No. 4 located near Cheong Wa Dae.

- During the First People's Rally on 14 November 2015, the police prohibited marches near Cheong Wa Dae and Gwanghwamun, and in the Second People's Rally on 5 December, the police initially banned the assembly but the assembly was able to take place due to the court's "suspension of effect" ruling on the ban notice.

3) Increase in Assembly Participants Hauled into Custody

- From January to June 2014, 19 people were arrested in assemblies and demonstrations, which is a 216.7%[8] increase compared to the number of those arrested from January to June 2013 (six people). The number of indictments without detention increased 74.1% from 1,143 to 1,990. The number of judicial actions for assemblies and demonstrations were 1,389 and 2,323 respectively for January-June 2013 and the same period in 2014, which is an increase of 934 people (67.2%). Particularly, in regards to single issues for assemblies, commemoration assemblies for the Sewol Ferry incident took place most frequently from May to June 2014 in downtown Seoul. The police have arrested 354 participants of Sewol Ferry related assemblies and are conducting investigations for 347 of those arrested. Among those under investigation, six are in detention and 341 are undergoing investigation without detention. These participants have been charged with noncompliance with dispersal orders (ADA), General Obstruction of Traffic, and Special Obstruction of Public Duty (Criminal Act). The numbers of those hauled into custody are 119(17 May), 97(18 May), 30(24 May), 5(31 May), 69(10 June); regardless of the size of the assembly, a high number of participants are hauled into the police station. In the process of the cracking down on assemblies and hauling participants into the police station, many injuries occur due to police violence.

4) Infringements on the Freedom of Assembly from the Application of General Obstruction of Traffic (Criminal Act Article 185)

- In the 2008 US beef candlelight protests, 1,258 individuals were indicted. Among the 627 people who requested a formal trial, 551(88%) were indicted for General Obstruction of Traffic and most were sentenced to fines of 1-2 million KRW.[9]
- In recent years, the application of the General Obstruction of Traffic has been the main method used by the prosecution and police to suppress assemblies. Due to the Criminal Procedure Act, it is difficult to haul into custody those who are sentenced to fines under 500 thousand KRW, such as organizers of non-reported assemblies or assembly participants, so the police apply Article 185 (General Obstruction of Traffic) of the Criminal Act as it stipulates higher fines and allows in flagrant delicto arrests. Recently, the prosecution has been imposing fines of 3~5 million KRW.
- In many cases, even if assembly participants are not arrest *in flagrant delicto* at the assembly site, they are later summoned and indicted through the use of evidence gathered by indiscriminate photographing, and are usually sentenced to fines ranging from 1 to 5 million KRW. In March and July 2014 respectively, the Representative of the Solidarity Against Disability Discrimination and the President of the Arbeit Workers Union were imposed with fines for General Obstruction of Traffic during assemblies, and later decided to undergo hard labour as they were unable to pay the fines.
- General Obstruction of Traffic has been extensively applied to participants of assemblies such as the 2008 candlelight protests, 2011 Hanjin Heavy Industries labour union protests, 2014-

[8] The Hankyoreh, "Judicial action against assemblies and demonstrations increase…..Confessions of a 'No Communication' government?", 15 July 2014

[9] MINBYUN-Lawyers for a Democratic Society, "MINBYUN Candlelight White Paper", 2010, p.30

2015 Sewol Ferry assemblies, and 2015 People's Rally.

- Moreover, it is expected that punishments for General Obstruction of Traffic will increase as the Supreme Court ruled that General Obstruction of Traffic is applicable even if assembly participants occupied one lane of the road for only 4 minutes.[10]
- Despite these trends of restrictions, the police, prosecution, and court have not collected data on the number of bookings, indictments, and convictions for General Obstruction of Traffic.

5) Blocking and Isolating Assemblies and Demonstrations by Using Bus Blockades

- Bus blockades refer to barriers created using police buses or "wall vehicles" to block off assembly areas, isolate the assemblies, or block marches. Bus blockades are mainly used in assemblies taking place in downtown Seoul and are set up at Gwanghwamun Square. Using bus blockades to seal off access to assembly areas or to block marching routes makes it impossible to conduct assemblies in reported areas. Along with its arbitrary ban notices, the police use bus blockades to deny access to assembly areas.
- Despite the fact that there is no legal basis for the use of bus blockades, the police claim that the legal basis is Article 6 (Prevention and Control of Crimes) of the Act on the Performance of Duties by Police Officers. However, peaceful assemblies cannot be considered "cases of emergency in which such crime is likely to inflict harm on people's life or body or grave damage to property."
- Even though the Constitutional Court ruled that the use of bus blockades should be "relied on only as a last resort when there is imminent, clear and grave danger that cannot be prevented by granting conditional permission or by ordering termination or dispersal of assembly" (2009Hun-MA406), the police continue their regular use.
- Bus blockades separate assembly participants from other citizens. Participants become intimidated and feel that they are being monitored, and passersby become wary of the assembly. As a result, bus blockades turn the assembly site into an isolated area and render powerless those who gathered to express their opinions. Moreover, bus blockades have the effect of preventing visual messages such as banners, pickets, etc. from being seen by the public, thus making it difficult to adequately convey messages and the way in which the assembly is conducted.

On 18 April 2015, in the assembly for the repeal of the Enforcement Decree of Sewol Special Act, the police used 470 vehicles including 18 "wall vehicles" and safety fences to set up multiple layers of police lines at Gyeongbok Palace, Gwanghwamun Square, and Sejong-ro Intersection.

[10] Supreme Court Case number: 2014Do15030

6) Passage Restrictions to Prevent Participation in Assemblies

- In order to prevent people from reaching assembly areas, the police block paths or "kettle" those who attempt to go to assembly areas. Above all, there has been a trend of excessive passage restrictions near Gwanghwamun Plaza and Seoul City Hall, which is due to efforts to prevent assemblies near and marches to areas near Cheong Wa Dae. Due to these restrictions, not only is there friction between the police and assembly participants, but there have also been complaints by local residents since there are cases in which they are unable to return home or to carry out their business.

Case 1. Passage restrictions during the Sewol Ferry assemblies

- On 18 April 2015, in the assembly and march for the repeal of the Enforcement Decree of Sewol Special Act, most roads and sidewalks in Gwanghwamun, Cheongye, Anguk, and Gyeongbok Palace leading to Cheong Wa Dae were under passage restriction by the police. Cars were not able to pass through roads in Gwanghwamun, Jongno, Anguk, and Gyeongbok Palace and even people were restricted from moving on sidewalks. Citizens heading to Gwanghwamun Plaza to commemorate the Sewol Ferry victims and residents of the Gyeongbok Palace and Anguk Station areas were unable to access the roads and sidewalks. In Jonggak and Anguk Station, even the subway users were not able to pass through since the exits were closed off.

Jonggak Station exit blocked by the police on 18 April 2015

Case 2. Ochetuji(full bowing) blocked by the police

- During the "*Ochetuji*(Buddhist-style prostration protest) for the reinstatement of the Ssangyong Motors workers and abolition of layoffs" on 11 January 2015, the police blocked participants who were heading to the Cheongun-Hyoja Community Service Center near Cheong Wa Dae. After the police gave a dispersal order in front of the Central Government Complex, the marchers laid face down asking the police to allow the march to continue. Citizens who heard of the situation came to the area deliver blankets and rugs to the marchers, but the police did not allow this to happen. Eventually, the marchers who had planned to end their protest with a press conference at Cheongun-Hyoja Community Service Center had to spend the night on the streets in front of the Central Government Complex.

Marchers blocked the police in front of the Central Government Complex in Gwanghwamun, Seoul

7) Evidence Collecting for the Monitoring and Punishment of Assemblies and Demonstrations

- "Evidence collecting" refers to the act of photographing, recording, etc. any unlawful acts that can be used as evidence during assemblies. However, the police have engaged in extensive evidence collecting regardless of the presence unlawful acts. In addition, the police even photograph citizens who are not participating in assemblies, and recently, they have used traffic CCTVs to monitor assembly participants.
- The police use material gathered through evidence collecting to later punish assembly participants. Evidence collecting leads to the issuance of summons and the gathered material has been used as main evidence in trials. The issuance of summons has a chilling effect on assembly participation as one may be subject to investigation and have to pay a fine for merely participating in an assembly.
- According to data collected by the police with its own criteria, even though the number of "unlawful and violent" assemblies has been decreasing, the number of cases of evidence collecting has increased. Despite this situation, the National Police Agency's budget for evidence collecting, including for evidence collecting equipment, has increased 5.2 times from this year's 679 million KRW to 3.456 billion KRW next year.

Number of cases of evidence collecting and unlawful protests by year

Category	2011	2012	2013	2014		June 2015	Total
Number of cases of evidence collecting	3,417	4,003	5,324	4,170		5,433	22,347
Bookings through evidence collecting	1,077	1,102	974	1,148		340	4,641
Unlawful and violent protests	45	51	45	35		12	188

* Data received by the Office of MP Nam-chun Park (New Politics Alliance for Democracy) from the National Police Agency for the 2015 parliamentary inspection

- Evidence collecting by the police has no legal basis and the police only cite National Police Agency Established Rule 495 (Rules on Evidence Collecting) as grounds for its use. The police also argue that its evidence collecting is based on superior laws such as Article 3[11] of the Police Act, Article 2[12] of the Act on the Performance of Duties by Police Officers, and Article 196[13] of the Criminal Procedure Act, but there are no rules on evidence collecting in these laws. The police collect evidence for the prevention and investigation of crime according to Article 3 of the Police Act and Article 2 of the Act on the Performance of Duties by Police Officers. This also makes possible the indiscriminate evidence collecting in assemblies. Furthermore, the rules on evidence collecting made by the police states that evidence may be collected for "illegal or closely related acts", however, the definition of "closely related acts" is vague and can be used to abuse evidence collecting.
- There have been cases in assemblies in which police officers were caught collecting evidence by posing as journalists or assembly participants. Due to these practices of undercover police officers, there have been disputes regarding filming and suspicions raised among assembly participants.

Case 1. Illegal evidence collecting

- On 7 January 2015, during the *Ochetuji*(Buddhist-style prostration protest) for the reinstatement of the Ssangyong Motors workers and abolition of layoffs, a undercover police officer was caught collecting evidence by posing as OhMyNews journalist. Mr. Choi of the Information Division of the Guro Police Station was photographing the assembly without

[11] Article 3 (Duties of National Police) of the Police Act
The duties of the national police shall be as follows:
1. Protection of people's lives, body and property; 2. Prevention, suppression and investigation of crimes; 3. Performance of guard duty, security escort of very important persons, and counter-espionage operations; 4. Collection, preparation and distribution of information on public security; 5. Traffic control and prevention of danger and injury; 6. Maintenance of public peace and order, etc.

[12] Article 2 (Scope of Duties) of the Act on the Performance of Duties by Police Officers
Police officers shall perform the following duties:
1. Protection of people's lives, body and property; 2. Prevention, suppression and investigation of crimes; 3. Performing guard duties, guard of important persons, and performance of counter-espionage and counter-terrorist operations; 4. Collection, preparation and distribution of information on public peace and order; 5. Traffic control and traffic injury prevention; 6. International cooperation with foreign governments and international organizations; 7. Maintenance of public peace and order.

[13] Article 196 (Judicial Police Officers) of the Criminal Procedure Act
(1) Investigators, police administrative officers, police superintendents, superintendents, police captains, or police lieutenants shall receive instructions from a prosecutor with regard to all investigations, while serving as senior judicial police officers. (2) Where senior judicial police officers recognize that a person is suspected of having committed a crime, they shall launch and conduct investigation into the offender, the facts of the offense, and the evidence. (3) Judicial police officers shall comply with a prosecutor's instructions. Details of the prosecutor' instructions shall be determined by Presidential Decree. (4) Where senior judicial police officers have investigated a crime, they shall send, without delay, the relevant documents and evidence to the prosecutor. (5) Police sergeants, senior patrol officers, or patrol officers shall assist in the investigation of crimes, as junior judical police officers. (6) Judicial police officers other than persons prescribed in paragraph (1) or (5) may be determined by Acts.

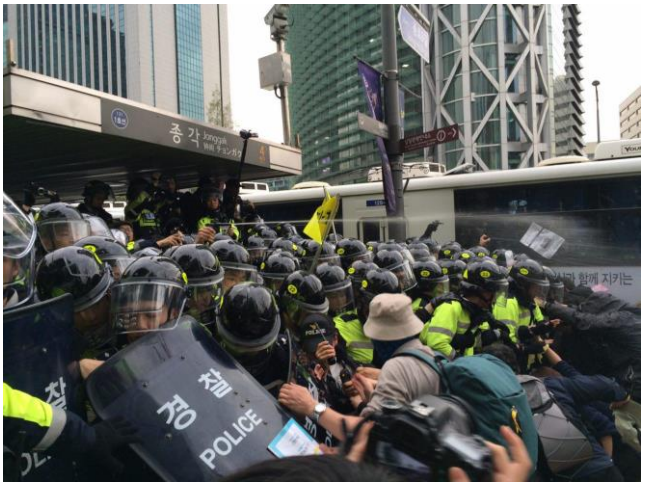
consent and the marchers who saw this asked him to identify himself out of suspicion; he answered that he was a journalist. However, after asking a number of detailed questions, Mr. Choi was unable to prove his identity. Yong-chul Lee, head of the Guro Police Station Information Security Division, witnessed the situation and took Mr. Choi and left the site quickly after saying, "members of the Information Division have the right to engage in evidence collecting," and "the evidence collecting was part of a lawful gathering of public order information".

8) Lethal Use of Water Cannons and Tear Gas Solution

- Water cannons trucks are used by the police to fire water cannons, which are similar to fire hoses in pressure, in order to suppress and disperse assembly participants. The tear gas solution used by the police in assemblies contains capsaicin and is used to induce pain and temporarily control behavior. Tear gas is fired by using sprayers or is loaded into water cannons. Sprayers usually take the form of either spray guns or backpacks and are fired at people's faces, especially their eyes, from a 1-2 meter distance.
- The police use lethal equipment in assemblies at their own discretion. In practice, the police do not limit the use of force when violence occurs, but use water cannons or sprayers when people step over police lines, occupy roads, protest against the interference of the police, or do not comply with dispersal orders.
- The police use sprayers loaded with tear gas solution and aim at assembly participants' eyes. Tear gas solution containing capsaicin causes much pain and makes people unable to open their eyes. It also causes coughing, difficulty in breathing, vomiting, and in serious cases blisters. This may lead to greater dangers as crackdowns and arrests occur when people are hit with tear gas and are unable to see.

Case. Excessive Use of Water Cannons

- On 10 November 2011, Hee-jin Park suffered from a ruptured eardrum and Kang-sil Lee suffered from a concussion due to being shot by police waters cannons when they were participating in the protest against the Korea-US FTA.
- In the First People's Rally on 14 November 2015, participant Nam-gi Baek was hit with a water cannon and suffered a brain hemorrhage; he has yet to gain consciousness as of 30 December 2015.
- On 18 April 2015, Journalist Yong-wook Kim from News Cham (online newspaper) was shot by water cannon directly on his right eye, while covering stories on the protest site. He was 3 meters away from the water cannon. At that time, his glasses and camera were crashed and he was diagnosed "iris muscle is damaged and pupil is not moving properly. High possibility of suffering from sequelae".



18 April 2015, the police fire tear gas with sprayers as people protest the closing of the Jonggak Station exit during the assembly for the repeal of the Enforcement Decree of Sewol Special Act.

Water cannons being fired directly at a participant who is simply standing. At the 1st People's Rally on 14 November 2015, most water cannons were loaded with mixtures of water and tear gas solution and were fired directly at participants.

9) Anonymous use of police force and impunity

- The police do not wear identification including nametags at assembly sites. As a result, when attempts are made to raise issues or take legal action against the unlawful use of force, investigations stop because they are unable to identify the police officers responsible. Basic fact finding, which is the first step in punishment and preventing recurrence, cannot even take place.
- Although the police have stated that they have made possible the identification of the names and units of police officers by attaching nametags on uniforms, in practice, this has little to no effectiveness as the police officers wear vests or other protective equipment on top of their uniforms. In addition, officers who exercise force do not reveal their names or units when asked.
- The government has already acknowledged the importance of police identification. It has stated in its 4th periodic report to the Human Rights Committee that, during the candlelight

protests, “Since most of complaints or accusations of assault by the police are lodged against police officers whose names are not reported, it is difficult to specify and identify the accused, which in turn has prolonged the investigations.” [14].

- Whenever police violence occurs, there are calls for investigations by an independent investigative body. However, the National Human Rights Commission of Korea does not have the authority to conduct mandatory investigations, thus it is impossible to conduct investigations to impose civil and criminal responsibilities for police violence. The prosecution has continuously dropped charges stating that they cannot specify an individual perpetrator.

Case 1. Deaths of farmers Yong-chul Jeon and Deok-pyo Hong in 2005

- In Yeoido, Seoul on 15 November 2005, two farmers were killed by excessive police force in an assembly to deter rice negotiations. The National Human Rights Commission of Korea acknowledged that there was excessive use of force in the crackdown process and requested the prosecution to conduct an investigation on the particular police unit. However, Jong-woo Lee, who was the head of the Seoul Metropolitan Police Agency task group (deputy assistant) and officer-in-charge at the site, was reinstated as the Deputy Commissioner of the Gangwon Provincial Police Agency after several months. Jun-young Heo, who resigned as the Commissioner of the National Police Agency, maintained his position that the use of force was lawful. Three years after the incident in October 2008, the prosecution ordered a suspension of indictment on grounds that “a perpetrator cannot be specified and it is difficult to secure evidence”.

Case 2. Death of Pohang Regional Construction Workers’ Union member Jung-geun Ha in 2006

- During sit-in protests at the POSCO headquarters, a support rally for the Pohang Regional Construction Workers’ Union strike was held on 16 July 2006. In this assembly, union member Jung-geun Ha was hit by a police shield and suffered a laceration on the back of the head and later died from head trauma (coup contrecoup injury). The National Human Rights Commission of Korea made a decision that the police used force that violated various rules on the use of equipment, and the forced dispersal by the police was excessive as Jung-geun Ha was killed in the process. The Commission requested the prosecution to conduct an investigation and recommended that the police take disciplinary action against those responsible. However, Commissioner Shi-young Yoon, the officer-in-charge at the site at that time, simply transferred from the Gyeongbuk Provincial Police Agency to the Daegu Metropolitan Police Agency, and no individuals were punished or received disciplinary action. The police, who took over the case, did not continue investigations, but rather arrested 58 union members who were conducting sit-in protests.

Case 3. Candlelight Vigils in 2008

- In regards to the 2008 US beef candlelight protests, the 19 suits and complaints filed by

[14] Consideration of reports submitted by States parties under article 40 of the Covenant Fourth periodic reports of States parties due in 2010 Republic of Korea, para. 302 (CCPR/C/KOR/4)

MINBYUN-Lawyers for a Democratic Society for the punishment of police officers were either dismissed by the police or issued "stay of indictment" by the prosecutor's office, and there were no punishments. In contrast, 1,184 assembly participants were indicted. After an incident in which Narae Lee, a female university student, had her head was trampled by the police, the former police commissioner Cheong-soo Eo and other police executives were charged and sued, but were later acquitted or had their cases dismissed. Only three riot police officers directly involved in the assault were subject to summary indictment with a fine.

Case 4. Yongsan Forced Eviction Incident in 2009

- On 20 January 2009, members of the National Alliance of Evictees were staging a sit-in protest on the roof of Namildang building (Hangangno 2-ga, Yongsan District, Seoul). In the crackdown process, five evictees and one police officer died in a fire that broke out on the rooftop watchtower. The police sent the SWAT team up to the watchtower, where paint thinners and flammable gases were present, and flames began to shoot up around the same time. The prosecution announced its investigation findings on 9 February 2009. While the prosecution indicted 21 protesters and 7 security company employees, they did not hold the police criminally liable. In response, the victims' families requested the Seoul High Court to hold a retrial. The National Human Rights Commission sent an written opinion to the Seoul High Court stating that the use of police force on the day of the incident was an excessive measure going against the principle of police balance, which resulted from a lack of due diligence. However, the High Court dismissed the request for retrial.

10) Civil Lawsuits against Protest Organisers or Participants

- Since Lee Myung-bak administration in 2008, government officials or agencies have frequently used strategic lawsuits against public participation. Most of all, organisers and participants of protests are facing compensation lawsuits which result in heavy fine. This creates chilling effects in exercising freedom of peaceful assembly.
- Regarding the candlelight vigils against Korea-USA FTA in 2008, the police requested around 500 million KRW (around 5 million USD) for damages and in 2015, the police again requested around 90 million KRW (around 90,000 USD) for damages. Both cases are still under trial. On the People's Rally which was held on 14 November 2015, the police announced that they established a legal task force team within the police to prepare compensation lawsuit against participants and organisers. Since exercising the right to freedom of peaceful assembly is one of the ways to express voices of voiceless, series of civil lawsuits against participants and organisers constrict people's rights.

11) Impose Responsibility on Protest Organiser for Other People's Violent Actions during Protest

- The Prosecutor's Office and the police make protest organiser responsible for all violent actions during protest, regardless he/she was not directly involved in nor has he/she knew about the incident. In practice, it is not possible for organiser to control huge crowd during protest.

Case. Mr. Lae-goon Park, an organizer of Sewol ferry protest, was indicted for being responsible for other people's violent actions during the protest

- Mr. Lae-goon Park is a standing steering committee member of the Coalition 4.16 for the Sewol Ferry Disaster (4.16 Coalition). The Coalition consists of Sewol victims' families, civil society organisations, and individual supporters to find the truth about the disaster and establish a safer society. Mr. Park was detained since 17 May 2015 and was released on bail on 2 November 2015. He was officially indicted on charges of: organising 'illegal' protest; refusing to disperse (articles 6 and 21 of the Assembly and Demonstration Act); general obstruction of traffic; special obstruction of public duty; invalidity of public documents; destruction of public goods; and defamation. (articles 141, 144, 185 and 307 of the Criminal Code). However, there was no clear evidence that he incited any violent actions during the protests and it is not fair that organizer of peaceful protests bear any responsibility for the unlawful behaviour of others participants in the assembly. The Prosecutor's Office had requested the Court to sentence Mr. Park five-year imprisonment and the Seoul Central District Court will announce a verdict on 22 January 2016.

12). Major Cases of Assemblies

Assemblies following Sewol ferry disaster (2014)

- From April 2014 to July 2015, the police arrested 539 individuals from the Sewol ferry disaster related assemblies, and the cases of 526 who were brought in were referred to the prosecution. Also, arrest warrants were requested for 22 individuals and 13 warrants were granted. In addition, from 1 April 2014 to 23 February 2015, the police issued summons to 352 people. A total of 1,371 Sewol ferry related assemblies had been reported, and among these reports 117 were banned and 14 were required to be changed or restricted. The proportion of bans against Sewol ferry related assemblies is 8.5%, which is about 8 times higher than that of bans against all assemblies in 2013 (0.15%). Around the one year anniversary of the Sewol ferry disaster in 2015, people gathered to participate in protests to seek the truth behind the disaster, and the police used water cannons, loaded with water mixed with tear gas, and bus blockades against people and also brought in many to police stations. The police said that they would seek compensation for damages caused by the Sewol ferry disaster one year anniversary assemblies (90 million KRW, approximately 90,000 USD).

Protests against the High-voltage Electronic Transmission Tower in Miryang (2005~Present)

- The Korean Electric Power Corporation (KEPCO) pushed ahead with the construction of transmission towers without consultation with Miryang residents. These events followed plans to build a new nuclear power plant and send the generated electricity to major cities. As the violence committed by KEPCO and constructors against residents protesting the construction became more severe, in January 2012, one resident carried out self-immolation in protest. Since then, the construction had continued on and off and when the construction resumed in May 2013, the use of governmental authority began. In particular, when construction had

been continuing. In October 2013, 3,000 police officers were dispatched to block all paths leading to the construction site and guarded the site for 24 hours, preventing residents from entering the site. During the 10 month period up to June 2014, the 4 sit-in protest sites were forcibly removed and to do this, a police force of 380,000 were deployed per year and this incurred a cost of 10 billion KRW (approximately 100,000,000 USD). Currently, more than 40 residents have received fines adding up to 100 million KRW (approximately 100,000 USD) altogether and are being subject to judicial action.

No Naval Base Campaign in Gangjeong (2007~Present)

- During the period of 2 years from August 2011 to the end of August 2013, the police deployed approximately 202,620 personnel per year to suppress residents and human rights activists peacefully protesting against the construction of a naval base in Gangjeong village, on Jeju Island. Most of the residents and human rights activists blocked the entry of construction vehicles by picketing and engaging in one-person protests. In order to hold back these efforts, the police dragged residents by their legs, hurting their heads in the process, caused injuries by picking them up by their limbs and dropping them, and committed serious physical violence such as kicking and bending joints. As of 2015, there are a total of 53 cases in which over 210 Ganjeong village residents and peace activists (including individuals involved in multiple cases) are awaiting trial for Obstruction of Performance of Official Duties. 50 criminal cases where decisions have been made, the fines paid by each individual ranged from 150,000 to 10,000,000 KRW (approximately 150 to 10,000 USD), and the total amount of fines is estimated at 100 million KRW (approximately 100,000 USD). The fines from criminal trials are expected to reach 200-300 million KRW (approximately 200,000-300,000 USD), with minor offense fines excluded. Excessive fines are being imposed on village residents and activists as the constructors of the naval base have filed a claim for damages of 200 million KRW (approximately 200,000USD) against the chief of the village.

People's Rally (November 2015)

- Before the People's Rally was held on 14 November 2015, the police issued a highest alert to Seoul, Gyeonggi, and Incheon National Police, denied registration of protests and march, and warned that they would build bus barricade. On the day, the police dispatched around 20,000 police officers from 248 squadrons, 19 water cannon trucks, 679 police buses, 580 pepper spray, and 102 cameras to take photos on the site. The police used 'build bus barricade and use water cannon' strategy which was pre-emptive and aggressive. Even before protesters who were peacefully marching arrived on the site, the police established 2~3 layers of bus barricade near Gwanghwamun square. When the protesters were stopped by the bus barricade and started to protest, the police used water cannon against participants. Water cannon mixed with tear gas liquid was sprayed from 16:55 to 23:10, and the police used 202 ton of water, 440 litter of PAVA on the day only which is the highest amount in the last 5 years. When using water cannon, it was targeted and direct shooting, and people could not breathe nor open their eyes properly as PAVA was too strong. Many people were injured on the day, and Mr. Nam-gi Baek who was shot by water cannon has been unconscious until today (18 January 2016). Unfortunately, the police did not apologise nor investigate the case. Instead, the police

identified People's Rally as 'illegal violent' protest and has focused on identifying and indicting participants. After the People's Rally, the police dispatched around 1,200 police officers to further investigate. According to the police report of 6 December 2015, the police has chosen 1,531 individuals to be investigated and filed lawsuits against 585 people whose identities were verified.

4. Suggested Recommendations

- The police should respect and protect 'peaceful' protest, not 'legal 'protest.
- The National Assembly should amend the Assembly and Demonstration Act which has been operated as de facto permit system, by 1) abolishing criminal charges on organizer of 'un-notified' assemblies 2) no blanket ban 3) release restrictions on noise 4) reduce main roads and areas where the police can prohibit assemblies.
- The police and prosecutor's office should not indict participants of peaceful assemblies under the charge of obstruction of traffic, and the court should not apply obstruction of traffic charges on participants of peaceful assemblies.
- The police should immediately stop using the bus barricade.
- The police should always wear ID badges so that assembly protesters can identify their ID. These badges should be always visible even when the police wear riot gear or vest.
- The police should not use hazardous non-lethal weapon such as water cannon and pepper spray.
- The police should stop indiscriminately taking photos of peaceful protesters, and should limit it to violent actions during the protest.

Freedom of Peaceful Assembly – The Youth

1. Background

- In the Republic of Korea, young people's freedom of assembly is fundamentally limited by their status as "minors". For example, if an adolescent attends an assembly or submits a notice to hold an assembly, the police have been known to visit the person's school or parents without any clear legal basis for doing so, and to question and intimidate the individual. There is little social awareness that adolescents too have the civil and political right of assembly and association.

2. Relevant Laws

- Adolescents have the right to freedom of assembly and there are no explicit laws discriminating against or restricting this. However, many school regulations prohibit students from attending assemblies.[15]

3. Current Situation

- Many school regulations prohibit student rallies. In addition, police restrict adolescent's freedom of assembly and association through verbal and physical intimidation. Adolescents face particular disadvantage if taking part in activities which are critical of government policies. The ruling party and the majority of the press have no qualms about encouraging such restrictions and often call for measures to be taken against adolescents' political assemblies and group activities by making groundless accusations that the participating adolescents have been manipulated by adults. [16]
- Additionally, most schools view student participation in rallies as "rebellious" and punish them as such. Many schools have regulations explicitly punishing such participation. High school students were recently punished for participating in rallies opposing plans for the state

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[15] Examples of school regulation prohibiting freedom of assembly: Punishment for "students who create disorder by inciting other students", or "students who attend or lead an unlawful assembly, or are involved in politics." There are also examples such as "students are forbidden from participating in outside activities without permission from the school head." 2012 article from "Voice of the People": http://www.vop.co.kr/A00000574102.html)

[16] Kukmin Ilbo editorial http://news.kmib.co.kr/article/view.asp?arcid=0005670079&code=11171111
"The first approval for an assembly inside school is no small problem. Assemblies within schools are only limited by school regulations to the bare minimum. They allow for students to refuse to attend classes and to participate in political rallies outside school. Allowing assemblies inside school will lead to the anti-educational result of politicized teachers encouraging students to rally inside school in accordance with their teacher's own political views."
Donga Ilbo editorial http://news.donga.com/3/all/20091219/24925428/1
"It is curious what the motivation could be for approving the right of students to rally outside class time. Students, whose bodies and wisdom are still in the process of development, cannot enjoy rights and freedoms at the same level as adults."
Donga Ilbo editorial http://news.donga.com/3/all/20080508/8575760/1
"In addition, we must find and send to court those people lurking in the background who fill horror in the hearts of children with all manner of rumour and myth, and who then make use of these children in demonstrations. And we must ask those people: "would you even stand your own children in front of the protestors with such pickets?""

authorship of history textbooks, and middle school students were punished for "inciting students and creating disorder" after they distributed leaflets criticizing school regulations and sent texts to other students suggesting they gather and protest together against the school.

Case 1.

- In Busan, a high school attempted to punish students who participated in rallies opposing plans for state authorship of history textbooks. The school summoned the students, questioned them, reviewed their social media history and held a disciplinary committee on the grounds of "student incitement". (Busan Daily article, 8 November 2015).17

Case 2.

- After the majority of students at a high school in Gyeonggi Province attended the 14 November 2015 People's Rally, police visited their families without any evidence of criminal wrong-doing and held interviews about the student's participation in the rally. (Media Today article, 3 December 2015).[18]

Case 3.

- In 2008 the police visited the school of a high school student who had submitted a report for a rally opposing government plans to import US beef. The National Human Rights Commission of Korea recommended improvement of the student being called out of class and questioned without any evidence of criminal wrong-doing and the refusal to allow the student to run for the position of student president.[19]

Case 4.

- In a school in Daejeon, a student was required to perform duties around school as punishment for "inciting students and creating disorder" after distributing leaflets criticizing rules about student attire and sending text messages to other students calling for a group protest. [20]

4. Suggested Recommendations

- The Government should confirm that the freedom of assembly is a human right for school

[17] "The reason for punishing attendees of a rally against plans for state authorship of history textbooks?" http://news20.busan.com/controller/newsController.jsp?newsId=20151109000080

[18] "Frightening investigations, "your son in an illegal, violent demonstration…": controversy over the indiscriminately targeted investigations of the 2nd general national general rally… even to the extent of visiting student's schools and family homes." http://www.mediatoday.co.kr/news/articleView.html?idxno=126423

[19] National Human Rights Commission case number 08Jinin1739: violation of human rights by police questioning of a student during class etc (3 July 2008); case number 09Jincha889 - restrictions on candidacy for position of student president because of activities regarding amendment of school regulations etc (14 December 2009).

[20] Article in 'Good Morning Chungcheong', 20 November2015.
"Will the student be punished for shouting "liberalize hairstyle regulations" outside school? – Chungnam middle school wants to punish "inciting students and creating disorder" with duties around school, student claims "human rights violation"" http://www.goodmorningcc.com/news/articleView.html?idxno=34528

students, and should guide schools to amend any regulation which arbitrarily infringes upon this right.

- The Government should raise awareness and provide training across all public bodies, including schools and the police, on adolescents' freedom of assembly and association and on civil and political rights in general.
- Politicians and the press should restrain from public comments denigrating the civil and political rights of adolescents; press guidelines for the promotion of human rights should be prepared, and legislation amended where necessary.

Freedom of Peaceful Assembly – Persons with Disabilities

1. Background

- There are no laws explicitly discriminating against or restricting persons with disabilities' right to the freedom of assembly. However, the police infringe upon not only the right to participate in assemblies, but also liberty of the person when they forcefully move persons with disabilities without their consent, take their assistive devices without consent, and subject them to abusive language.

2. Relevant Laws

- There are no laws explicitly discriminating against or restricting persons with disabilities' right to the freedom of assembly.
- The Act on the Prohibition of Discrimination Against Disabled Persons, Remedy Against Infringement of their Rights, Etc. was passed in 2012. According to Article 4 of this Act, acts of discrimination include taking away assistive devices from person with disabilities; [21] nonetheless, there are reports of police doing just this when breaking up assemblies.

3. Current Situation

1) The reckless grabbing of assistive devices (electric wheelchairs) and forced movement of persons with disabilities

- The police are known to hold the assistive devices of persons with disabilities so as to prevent them from participating in marches. This is done by holding and pulling on the back of the wheelchair or by blocking it from the front. Such assistive devices can be crucial for the movement of persons with disabilities, to the extent that it can be regarded as an extension of their physical self. Accordingly, the police's actions can be compared to the act of grabbing and tugging on the back of the collar or even the act of holding the throat of a person without disabilities.

[21] Article 4, paragraph 1, subparagraph (vi), Act on the Prohibition of Discrimination Against Disabled Persons, Remedy Against Infringement of Their Rights, etc,: "Interfering with the rightful use of guide dogs or auxiliary equipment for disabled persons, etc., or committing any act prohibited under subparagraph 4 against guide dogs or auxiliary equipment for disabled persons, etc."

At the end of July 2015, persons with disabilities gathered at Sinrim Junction and called for the scrapping of the Disability Rating and Obligation of Family Support system in a "greenlight demonstration" (whereby the protest takes place on a pedestrian crossing when the green light shows). The police hold the back of a participant's wheelchair on the sidewalk and prevent him from moving.

2) Forced control of assistive devices

- If the police deem that it is difficult to control persons with disabilities by only grabbing assistive devices, they implement the practice of switching wheelchairs from electric to manual control, which limits persons with disabilities from moving. This practice is included in the official training of crowd-control police.[22] Since it makes it more difficult for the person with disabilities to move themselves, this can amount to a more severe infringement than pulling on assistive devices. Also, these actions are often taken when persons with disabilities are on the road and the police are putting them in a more dangerous situation on grounds of crowd-control.

At the 20 April day of struggle for the elimination of discrimination against persons with disabilities, police divide the marching line into two by lifting the limbs of protesting participants and carrying them.

[22] Issuance of full training instructions regarding rallies and persons with disabilities (Seoul Metropolitan Police Agency public document, 20 April 2014).

On 4 June 2015, members of organizations such as the Uijeongbu Solidarity Against Disability Discrimination occupied Uijeongbu City Hall. Having requested for several years for the right of mobility in Uijeongbu city and for activity assistance, participants felt they had no choice but to occupy the mayor's office after the city authorities would not listen to the protestor's petitions. However, the police and city authorities had not properly fixed the elevator between the 1st and 2nd floors, so in the end decided to quash the occupation by physically carrying away the participants. The person in this photo was subsequently rushed to hospital because of shock.

On 4 June 2015, during a "greenlight demonstration" in Uijeongbu city, police forcefully carry off a participant after switching his wheelchair from electric to manual mode.

3) Comments belittling persons with disabilities attending rallies

- There have been occasions where the police make belittling comments to persons with disabilities participating in a rally. For example, the Section Chief of Security at Jongro Police Station said to protestors who were complaining to the police who had suddenly cut off their procession on 20 April 2015: "It's a day of persons with disabilities, we could call it the birthday of persons with disabilities;" "anyone of us police officers could become a person with disability due to a sudden accident;" "we understand sufficiently your feelings and are considerate of your position." When these comments were reported in the press, the police did not try to make amends for what they had said, just saying that "we know that police officers could at any time become persons with disabilities too, and we try to understand the position of those protesting as if they are our family, and accordingly have taken a calm and measured response." Meanwhile the police have in many cases talked down and made

derogatory comments to those assembled such as “if we’ve got five people we can carry that (referring to a person in a wheelchair) away”.

4. Suggested Recommendations

- Police actions which constitute discrimination under the Act on the Prohibition of Discrimination Against Disabled Persons (such as recklessly stopping assistive devices, turning off those devices, taking them away from persons with disabilities etc) should be prohibited even where there is a need to maintain order within an assembly, and special protective measures should be applied.
- Specific and practical measures should be adopted to ensure that the rights of persons with hearing or developmental disabilities are violated when participating in assemblies.

Freedom of Peaceful Assembly – LGBTIs

1. **Background**

- LGBTI people are invisible in the Korean society in terms of both recognition and customs/practices. Instead, hatred towards sexual minorities grows stronger with each passing day. Hate groups blatantly hurl insults in public when sexual minorities hold an assembly, and the Government encourages the expansion of hate groups by turning a blind eye.

2. Relevant Laws

- There are no laws that expressly restrict the right of sexual minorities to freedom of assembly.

3. Current Situation

- LGBTI people celebrated the Korea Queer Festival since 2000. Participants of the festival peacefully conducted marches on the main roads of Seoul and publicized the existence and voice of sexual minorities in the society.
- The Korea Queer Festival confronted fierce opposition from hate groups from 2014. Approval of assembly was revoked as hate groups imposed pressure on government agencies administering the assembly report (Seoul Namdaemun Police Station, Seoul Metropolitan Police Agency, and Seodaemun-gu Office) by various means such as making phone calls and filing complaints etc. Also, the police did not prevent the violence of hate groups nor did they protect the safety of sexual minorities when the parade took place. As a result, sexual minorities risk facing violence from hate groups when holding an assembly.

Case 1. Infringement of the right of sexual minorities to freedom of assembly

- The Korea Queer Festival organized by the 2014 Korea Queer Festival Organizing Committee was scheduled to be hold at Sinchon, Seodaemun-gu, Seoul. Although the use of place for the event was approved in advance, the Seodaemun-gu Office revoked approval of the event 2 weeks prior to the parade, citing “strong public opposition to the Korean Queer Festival”. The queer parade that took place after the festival was an event for which an assembly report was submitted beforehand. The Seodaemun-gu Office approved the assembly and cultural events of homophobic groups at the same location, and the police failed to take any actions except for broadcasting warnings over twenty times. Queer parade participants were drenched in water, slapped in the face, and even punched by homophobic hate groups.
- The 2015 Korea Queer Festival Organizing Committee was supposed to submit an assembly report for the Korea Queer Festival parade. However, the Seoul Namdaemun Police Station disregarded the lawful procedure of submitting the report to the competent police station one month in advance (May 28) to the assembly date (June 28), and announced on its website that it will accept registrations for assemblies on June 28 on a first-come, first-served basis. To hold the queer parade scheduled on June 28, the 2015 Korea Queer Festival

Organizing Committee submitted assembly reports to the Seoul Namdaemun Police Station and the Seoul Metropolitan Police Agency, but received an outdoor assembly ban notice for the reason that “part of the march route overlapped with 4 sections of the route of another organization (an organization against homosexuality and the queer culture festival) that submitted an assembly report earlier, and also that the route was part of the main roads of the city, which may cause continuous inconveniences for other citizens and disruption of traffic flow”. The parade took place later, following the ruling of the Seoul Administrative Court that the outdoor assembly ban notice is invalid.

4. Suggested Recommendations

- Ensure the right of sexual minorities to freedom of peace assembly and educate and campaign public officials and administrative agencies including the police etc. about the human rights of sexual minorities and civil and political rights in general.
- To affirm and declare the rights of sexual minorities, and take a firm stance on homophobia.

Freedom of Association – Trade Union Rights

1. **Background**

- While the Constitution guarantees right to independent association, collective bargaining and collective action(Article 33), the Trade Union and Labour Relation Adjustment Act(TULRAA) which is not in conformity with the international labour standard imposes excessive restriction on the exercise of the 3 basic labour rights. On the surface it looks everyone can form or join unions but too many workers are denied their right to organize in some provisions of the TULRAA and other special laws.
- Unionization rate is 10.3% as of December 2014, which is the most important indicator for the extent of protection of the right to organize[23]. Especially, the unionization rate for non-regular workers who account for the half of whole working forces is merely 2.2%[24] .
- Although the right to independent association is a Constitutional right, various category of workers including cargo truck operators(owner-drivers), home-visit tutors, etc, who are in disguised employment relationships are categorized into "self-employed and regarded as "non-worker" who are not able to form or join unions, according to the Ministry of Employment and Labour(MoEL)'s administrative interpretation of the law. Teachers and public officials are covered by special laws('Act on the Establishment, Operation, etc. of Trade Unions for Teachers' and 'Act on the Establishment, Operation, etc. for Public Officials' Trade Unions), however these act exclude some category of teachers and public officials such as fire fighters and correction officials. The unemployed and job-seekers are not eligible for right to organize.
- As for the right to collective bargaining, 'the forced bargaining channel unification system' which introduced along with 'the union pluralism at enterprise level'(July 1, 2011) invests the majority unions with full authority of negotiation, sign and strike and the minority unions are not able to exercise those rights, which is the core part of trade unions. Meanwhile, employers abuse this system and support the establishment of yellow unions and strategically discriminate unions in favour of yellow unions on the purpose of incapacitation of independent and democratic unions. In many cases, specialized labour relation consulting firms provided such a strategy and this violates freedom of association severely.
- As for the right to strike, the TULRAA limits 'labour dispute' to 'any controversy or difference arising from disagreement between the trade union and employer or employers association concerning the determination of terms and conditions of employment such as wages, working hours, welfare, dismissal, other treatment, etc' and this makes it impossible for workers to strike on political issues such as government policy on labour or revision of labour law as well as 'lay-offs/factory shutdown' which have a huge impact on wage and working conditions but are classified as 'matters of management rights'. In public sector, the range of essential services is defined in broad sense which is not in line with the international labour standard and it is almost impossible to strike lawfully. For this reason, once workers go on a strike, it is

[23] Ministry of Employment and Labour, < Annual Review of Trade Union Organization, 2014>

[24] Korea Labour & Society Institute, <The Scale and Reality of Non-regular Workers(August, 2015)>

regarded as 'illegal strike' by the government and criminal charge based on the Criminal Act article 314(Obstruction of Business) or civil lawsuit for compensation of damage/provisional seizure of assets follow. .

- Recently, the government and the ruling party have been unilaterally promoting the regressive 'labour reform' to extend working hour, to reduce ordinary wage, to expand fixed term employment and labour dispatch, to reduce unemployment benefits, to make it easier for employer to fire workers and to allow employers to change work rule without union's consent. It will deteriorate working conditions and incapacitate trade union power. The president of the Korean Confederation of Trade Unions and other officials and members are detained on the ground that they led or joined the collective action/protest against it.
- The Republic of Korea hasn't ratified the ILO Convention 87 and 98 (Freedom of Association and the Right to Collective Bargaining) and reserves the Article 22 (Freedom of Association) of the ICCPR.

2. Relevant Laws

1) Trade Union and Labour Relation Adjustment Act (TULRAA)

- According to the Article 33(1) of the Constitution on guarantee of the right to independent association, the Trade Union and Labour Relation Adjustment Act (TULRAA) stipulates "Workers can freely form or join a union". In this regard, a system in which the administrative institution authorize establishment of trade unions is a fundamental violation of right to independent association and thus, unconstitutional. The Act provides that administrative agencies shall issue a certificate of trade union establishment report or return it after screening the report to see whether the trade union to be established is qualified or not(Prior Screening System).[25] And the enforcement decree of the Act stipulates that after a trade

[25] TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT (Act No. 10339, jun 4, 2010)

Article 2 (Definition)

The terms used in this Act shall be defined be as follows: 4.The term "trade union" means an organization or associated organizations of workers, which is formed in voluntary and collective manner upon the workers' initiative for the purpose of maintaining and improving their working conditions and enhancing their economic and social status: Provided, That an organization shall not be regarded as a trade union in cases falling under any of the following subparagraphs:

(a) Where an employer or other persons who always act in the interest of the employer is allowed to join it;

(b) Where most of its expenditure is supported by the employer;

(c) Where its activities are only aimed at mutual benefits, moral culture and other welfare undertakings;

(d) Where those who are not workers are allowed to join it: Provided, That a dismissed person shall not be regarded as a peson who is not a worker, until a review decision in made by the National Labor Relations Commission when he has made an application to the Labor Relations Commission for remedies for unfair labor practices;

(e) In case where its aims are mainly directed at political movements;

Article 7 (Requirements for Protection of Trade Union)

(1)Trade unions which are not established pursuant to this Act shall not make an application for adjustment of industrial disputes and for the remedy of unfair labor practices to the Labor Relations Commission.

(2)Paragraph (1) shall not be construed as denying the protection of workers as referred to in subparagraphs 1, 2 and 5 of Article 81.

(3)No one other than trade unions established pursuant to this Act shall use the title of trade union.

Article 10 (Report on Establishment of Trade Union)

(1)Any person who intends to establish a trade union shall submit a report stating the following matters, accompanied by its bylaws provided for in Article 11 to the Minister of Employment and Labor in cases of the trade union in the form of the

union has been delivered a certificate of report of establishment, there arise such grounds for returning the written report of establishment as falling under Article 12 (3) 1 of the Act, the administrative agencies shall demand correction within the specified period of 30 days, and if the correction is not performed within the period, they shall notify the trade union in question that it shall not be regarded as a trade union provided for under this Act[26](Notification of outlawed trade union). These two factors involves a possibility of violation of the principle of 'free establishment of trade unions'.

- The article 2 of the Act defines 'worker' as 'a person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job'. 'Trade union' means in the Act 'an organisation or associated organisation of workers which is formed in voluntary and collective manner upon the workers initiative for the purpose of maintaining and improving working conditions, or improving the economic and social status of workers'. It stipulates that

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associated organization and the unit trade union extending over not less than two Special Metropolitan City, Metropolitan Cities, Dos and Special Self-Governing Province, to the Special Metropolitan City Mayor, Metropolitan City Mayors and Do Governors in cases of the unit trade union extending over not less than two Sis/Guns/Gus (referring to an autonomous Gu), and to the Governor of a Special Self-Governing Province and the head of a Si/Gun/Gu (referring to the head of an autonomous Gu; hereafter the same shall apply in Article 12 (1)) in cases of any other trade unions

Article 12 (Issuance of Certificate of Report)

(1)Upon receiving a report on establishment as referred to in Article 10 (1), the Minister of Employment and Labor, the Special Metropolitan City Mayor, Metropolitan City Mayors, Do Governors, the Governor of a Special Self-Governing Province or the head of a Si/Gun/Gu (hereinafter referred to as "administrative agencies") shall issue a certificate of report within three days, except for cases provided for in the former part of paragraph (2) and paragraph (3).

(2)When the administrative agencies deems it necessary that a report on establishment or bylaws of a trade union needs to be supplemented because of any omission or other reasons, they shall order a supplement thereof within a specified period of up to twenty days, as prescribed by Presidential Decree. In such cases, a certificate of report shall be issued within three days after receiving the supplemented report on establishment or bylaws.

(3)When a trade union which made a report of establishment falls under any of the following subparagraphs, the administrative agencies shall return the report of establishment they received:

1.When it falls under any item of subparagraph 4 of Article 2;

2.When it fails to supplement a report or bylaws within the specified period, notwithstanding an order of supplement issued pursuant to paragraph (2).

(4)When a trade union receives the certificate of report, it shall be deemed to have been established at the time the Minister of Employment and Labor received the report of establishment.

[26] ENFORCEMENT DECREE OF THE TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT

Article 9 (Request, etc. for Supplementation of Report of Establishment)

(1) Where a report on the establishment of a trade union pursuant to Article 12 (2) of the Act falls under any of the following cases, the Minister of Employment and Labor, a Special Metropolitan City Mayor, a Metropolitan City Mayor, a Do Governor, or the head of a Si/Gun/Autonomous Gu (hereinafter referred to as "administrative agencies") shall request that the report be supplemented:

1.Where the report of establishment is not accompanied by the bylaws or where there exists any omission or false facts in the entries of the report or bylaws;

2.Where the procedure for the election of executives or for the enactment of the bylaws violates Article 16 (2) through (4) or 23 (1) of the Act.

(2)Where, after a trade union has been delivered a certificate of report of establishment, there arise such grounds for returning the written report of establishment as falling under Article 12 (3) 1 of the Act, the administrative agencies shall demand correction within the specified period of 30 days, and if the correction is not performed within the period, they shall notify the trade union in question that it shall not be regarded as a trade union provided for under this Act.

(3)The administrative agencies shall, where they have delivered a certificate of report of establishment to a trade union or have notified pursuant to paragraph (2), without delay notify the competent Labor Relations Commission and the employer of the business or the workplace in question or the employers' association thereof.

the organization shall not be regarded as a trade union where those who are not workers are allowed to join the organisation. 'Employer' is defined as 'a business owner, a person responsible for management of a business, or a person who works on behalf of a business owner with respect to matters relating to workers in the business. Hence, workers in disguised employment relationship or 'employees in special forms of works''[27] who are not regarded as 'worker' in the Act are denied their fundamental labour rights. The indirectly employed workers who are employed by an employer and work for another business owner [28] cannot enjoy their rights as the 'real employers' avoid their responsibility as 'employer'.

- With regard to the right to strike, the TULRAA defines 'industrial action' in the article 2-6. as 'actions or counter-actions which obstruct the normal operation of a business, such as strikes, sabotage, lock-outs, and other activities through which the parties to labour relations intend to accomplish their claims' and in the Article 3 reads "When an employer has suffered damages due to collective bargaining or industrial action under this Act, he shall not claim damages against a trade union or workers" and the Article 4 reads the industrial actions which are conducted to achieve the purpose of collective bargaining[29] corresponds to the justifiable activities in the Article 20 of the Criminal Act.[30]. However, the Article 37 reads "Any industrial action shall not be inconsistent with the Acts and subordinate statutes or other social order with respect to its purpose, method and procedure." and "No member of a trade union shall take part in any industrial action which is not led by the trade union" which restrict the exercise of right to strike. The court has ruled that "an industrial action by workers can be justified when it is conducted by those who can be a party in collective bargaining, on the purpose of building up a voluntary negotiation between labour and management on concrete issues for improvement of working conditions, after going through all the legal procedure such as decision by union member's vote in case that the employer rejects to negotiate on the issues and in harmonization with the employer's property right without using any violence, etc." According to this case law, any strike for protecting employment security against mass lay-offs and factory closure or against government police and revision of laws which affect working conditions cannot be justified and protected.

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[27] Operators of ready-mix cement truck, dump truck, fork-lane, and cargo truck, home-visiting tutor, motor cycle dispatch rider, chauffeur service provider, insurance sales person, caregivers, caddie, etc are workers who are supervised by certain company, commute in regular basis and live on the incomes earned in pursuit of their work. However, the government and the employers 'organizations maintain that these workers are the self-employed on the ground that their wages are 100% based on the performance or that they have 'subcontract' not 'employment contract' with the companies, or that they are not paid by the customers not by the company. Based on this, the freedom of association and other fundamental labour right for them are totally denied.

[28] Being provided labour under the subcontract or outsourcing contract with external enterprises (subcontracting company, outsourcing company, labour dispatch company, labour procurement provider, subsidiary, management in trust, etc) instead of hiring workers directly. In that case, the external enterprises who have the employment relations with the workers have no real authority to those workers but the real business owners (original contractor or building owner, etc) are influential over the workers on all the matters of labour relation. However, these business owners are avoiding their legal responsibility as 'employer' stipulated in the TULRAA.

[29] Supreme Court Decision (2002do5577 May 25, 2006)

[30] CRIMINAL ACT Article 20(Justifiable Act) An act which is conducted in accordance with Acts and subordinate statutes, or in pursuance of accepted business practices, or other action which does not violate the social rules shall not be punishable.

- The article 42-2[31] defines 'Essential Business' where industrial actions are restricted in broad sense (the business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public) and this makes it almost impossible for workers in public sector to strike. While the international labour standard define the area where right to strike could be restricted in strict sense by 'service', the current law define it by 'business'

2) ACT ON THE ESTABLISHMENT, OPERATION,ETC.,OF TRADE UNIONS FOR TEACHERS(AEOTUT)

- Teachers in elementary and secondary school are covered not by the TULRAA but the AEOTUT which prohibits dismissed workers from being members of the trade union.[32]
- Any kinds of industrial action by teachers are prohibited. (Article 8)

3) ACT ON THE ESTABLISHMENT AND OPERATION OF PUBLIC OFFICIALS' TRADE UNIONS (AEOPOTU)

- Public officials employed by state and local government are not covered by the TULRAA but by the AEOPOTU and the article 6 of this act limits the scope of the public officials eligible for union membership. Public officials who engage in correction services, fire fighters, general public officials of grade 5 and higher, of grade 6 who exercise the right to direct and supervise other public officials or engage in the overall management of the affairs of other public officials, etc are not eligible for union membership. According to this restriction, more than 25$ of whole public officials and 65% of those of grade 6 are excluded from the freedom of association. Dismissed workers are prohibited from being members of trade union.
- Article 8-1 stipulates that matters concerning policy decisions the State or local governments are authorized to make under Acts and subordinate statutes, etc. and matters concerning the

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[31] **Article 42-2 (Restrictions on Industrial Actions Affecting Essential Business)**
(1)The term "essential business" in this Act means the business whose suspension or discontinuance may seriously endanger the safety of the lives, health or bodies of the public and the daily life of the public and which is prescribed by Presidential Decree, from among the essential public-service businesses provided for in Article 71 (2).
(2)The acts of stopping, discontinuing or impeding the justifiable maintenance and operation of the essential business shall be the prohibited industrial actions.
Article 71 (Scope, etc. of Public-Service Businesses)
(1)For purposes of this Act, the term "public-service businesses" refers to businesses falling under any of the following subparagraphs, all of which are closely related to daily life of the public at large or have enormous effect on the economy of a nation
1.Passenger transport business and airline business for regular routes;
2.Tap-water business, electricity business, gas business, petroleum refinery business and petroleum supply business;
3.Public sanitation business, medical service business and blood supply business;
4.Banking and mint business;
5.Broadcasting and telecommunications businesses.

[32] ACT ON THE ESTABLISHMENT, OPERATION,ETC.,OF TRADE UNIONS FOR TEACHERS
Article 2 (Definition) The term "teacher" in this Act refers to a person prescribed in Article 19 (1) of the Elementary and Secondary Education Act : Provided that any dismissed persons who have requested a remedy for unfair labor practices to the Labor Relations Commission under the Article 82 (1) of the Trade Union and Labor Relations Adjustment Act shall be regarded as teachers until a review decision is made by the National Labor Relations Commission under Article 2 of the Labor Relations Commission Act (hereinafter referred to as "National Labor Relations Commission).

management and operation of the organization, such as exercising the right to appointment, etc., but not directly related to working conditions shall not be subject to the bargaining.

- Any kinds of industrial actions by public officials are prohibited. (Article 11)

4) Criminal Act Article 314 "Obstruction of Business"

- Although the Article 33 of the Constitution guarantees the right to strike and the TULRAA provides the impunity for justifiable industrial action, in reality the article 314 of the Criminal Act (Obstruction of Business) is being applied to punish union officials and members who join strikes.[33] The court has ruled that a simple collective refusal to labour service can be seen as constituting a crime of obstruction of business only in case such an action is carried out at a time period unforeseeable by the management, in light of surrounding circumstances and details, and caused serious or disastrous damage to the management's business operations to the extent that the management's free will concerning the continuance of its business can be acknowledged as suppressed and/or confused..[34]

3. Current Situation

1) Excessive Intervention by the Government in Free Establishment and Operation of Trade Unions

- As the TULRAA provides that administrative agencies shall issue or return a union establishment certification report after screening the report in advance and its enforcement decree stipulates that after a trade union has been delivered a certificate of report of establishment, there arise such grounds for returning the written report of establishment, the administrative agencies shall demand correction within the specified period and if the correction is not performed within the period, they shall notify the trade union in question that it shall not be regarded as a trade union, the government excessively intervene in establishment and operation of trade unions too often.

2) Administrative Intervention on Collective Bargaining Agreement

- The Ministry of Employment and Labour(MoEL) published an official plan on April 15, 2015, to take administrative measures to revise or correct collective bargaining agreements in belief that certain clauses in the existing CBAs that provide trade unions a voice in managerial decisions are either 'illegal' or 'unreasonable'. The government's position, that CBA clauses freely negotiated requiring management to consult with unions on personnel decisions, are unreasonable is contrary to Korean jurisprudence on collective bargaining. The administrative measures to limit the scope of collective bargaining is an abuse of authority and have been found to fun afoul of Convention 98 of the ILO. (KCTU, FKTU and ITUC filed a complaint on this matter to the ILO Committee of Freedom of Association and registered as the Case No.3138.)

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[33] CRIMINAL ACT Article 314(Obstruction of Business) (1) A person who obstructs the business of another by the method of Article 313 or by the threat of force, shall be punished by imprisonment for not more than five years or by a fine not exceeding fifteen million won.

[34] Supreme Court en banc decision(2007do482 on March 17, 2011)

Case 1. Returning of Establishment Report of Korean Professors Trade Union(KPU) (ILO CFA Case No. 2707/ Report No. 357, June, 2010)

- The KPU is a trade union composed of university professors under the High Education Act who work under the supervision of each university. An establishment report of the union was submitted to the Minister of the Employment and Labour on April 20, 2015 but it was returned on April 23, 2015 on the ground that (1) the TULRAA Article 5- proviso excluded the public officials and teachers in the application of the Act (2) the AEOTUT (Article 2) limit the scope of the teachers eligible for being a member of trade unions to a person prescribed in Article 19 (1) of the Elementary and Secondary Education Ac. No one other than trade unions established pursuant to this Act shall use the title of trade union.(TULRAA Article 7(3)

Case 2. Decertification of Korean Teachers and Education Workers Union(KTU) (ILO CFA Case No. 1865/Report No. 371, March)

- The Minister of Employment and Labour notified that the KTU are not regarded as trade union under the AEOTUT any more on Oct 22, 2013. The union was established on May 28, 1989 and legalised on July 1, 1999) on the ground that the union which represents 60,000 teachers has 9 dismissed teachers as its members, in violation of the Article 2 of the AEOTUT. The constitutional court ruled the article is constitutional according to the opinion of 8 out of 9 judges that teachers trade union cannot but be organized as industrial or regional union on its characteristics but it is not an excessive restriction to exclude those who are not teacher in the membership as the working conditions of teachers stipulated in the act or the ordinance. The union file a lawsuit seeking a withdrawal of the notification and the final hearing at the Seoul High Court will be held on January 21, 2016(2014nu54228)

Case 3. Return of the Establishment Report of the Korean Government Employees' Union (ILO CFA Case No. 1865/ Report No. 371, March, 2014)

- The Minister of Employment and Labour return the establishment report of the KGEU on August 2, 2013 on the ground that the unions' constitution stipulates in the article 7(2) - proviso that the decision of the qualification of specific members is based on the Article 27(2)-7. (Interpretation of the constitution of the Central Executive Committee) and it could still be interpreted to allow dismissed workers to retain membership. The union whose establishment report have been repeatedly returned revised its constitution to stipulate that in case a union member is dismissed or the effectiveness of his/her dismissal is in dispute, he/she may keep union membership according to related laws, with the proviso that determination of his/her eligibility to join the union depends on the central executive committee (article 27(2)(G)) and anyone who are not within the scope of public officials eligible for the membership in the Article 6 of the AEOPOTU, the ministry returned the report after screening not only the contents of the constitution but also its operation.

3) Union Busting Action by Private Labour Relation Consulting Firm, Planned Violence against Trade Unionists by Private Security Companies and Unfair Investigation & Punishment

- In 2012, a labour relation consulting firm deeply engaged with labour management relations at enterprise level to bust democratic labour unions and to suppress targeted union offices at various workplaces. On September 26, 2012, the Standing Committee on Environment and Labour of the National Assembly held a public hearing on <Violence by Private Security Forces at Workplaces> and revealed that "Changjo Consulting", a labour relation consulting firm had played a pivotal and extensive role in oppressing trade unions by △supporting establishment of yellow unions △ deployment private security forces in labour dispute △ repression on union offices through lawsuit for compensation of damage- provisional seizure of union asset, disciplinary measure △embracing the Ministry of Labour, the Prosecution, and the police.

Case 1. Deliberated Union Busting against the Korean Metal Workers Union(KMWU) YPR Local

- The KMWU Deajeon-Chungnam Regional Branch YPR Local (hereafter "YPR Local") went on a passive industrial actions including boycott of overtime work and holiday work demanding abolition of night shift since March, 2011. The management of the YPR contracted with the 'Changjo Consulting' on May 6, 2011 and launch a 'union busting campaign'. The management deployed a group of private security forces and conducted an aggressive plant lockout.(Union members got injured in the course). When the workers successfully put the private security force out of the plant and went into a sit-in, more than 3,000 polices are deployed in the plant to disperse protesting workers on May 24. Since then the private security force stayed in the factory and block the workers from entering the union office. Even though the YPR local officially declared to return to the work on June 14, the management continued the lockout and blocked the workers from entering the plant. Many union members got injured while they are trying to enter. The court found it illegal the continuation of the lockout after the union declared to return to the work. The management followed the Chang-jo consulting's advice and led the establishment of yellow union. The management conducted mass layoffs targeting the Local members and threaten the workers to withdraw their union membership. The management committed unfair labour practice by temping the KMWU members to move to the yellow union to avoid dismissal and disciplinary measure. They discriminated the KMWU members by leaving them out of the overtime/holiday work and humiliate them by designating in weed hole or painting. The management also discriminated two unions in collective bargaining or wage bargaining in favour of the yellow union. They also surveil the KMWU members through micro camera set in changing rooms, consents, and emergency light,etc. KMWU changed the company for unfair labour practice based on the TULRAA but the prosecutors decided not to indict the management at the end of a poor investigation. However the court accepted the unions request to review the decision in 2014 and the case is now pending in the district court. During the long period or labour disputed, none of the management have been detained while 19 workers have been arrested and detained.

Case 2. Deliberated Union Busting against the Korean Metal Workers Union(KMWU) Valeo Local

- In the Valeo Electrical System Korea, in 2009, when a new CEO took his office, the

management submitted to the union a list of 32 demands for derogation of the collective bargaining agreement (in particular provisions on benefits), demanded outsourcing of services (canteen workers, security guards, cleaning workers, drivers), and demanded reduction of union security (trade union rights and activities). On February 4th, 2010, the employee category of the security personnel was changed, and security duties were outsourced. On February 5th, 2010, the union decided to go on a collective action (rejection of over-time work and go-slow) by a union ballot. On February 16th, 2010, the management began a lockout during the Lunar New Year's holidays (all KMWU members were blocked off all entrances to the factory. From March 30th to May 4th, 2010, the company held 8 sessions of 'counter-labor dispute strategy meetings' with <Changjo Consulting>. On April 20th, 2010, some of the union members who individually returned to their duties and formed a Members Gathering for Members(MGM)On early May 2015, the company delivered the 'Call for an extraordinary session of general assembly and request for nomination of a convener for it', 'Minutes of general session to change the organization form and establish enterprise union', 'An appeal to call an extraordinary general session to change the organization form!', and 'Valeo Electrical System Co., Ltd. Labor Union Constitution', all of which had been written by <Changjo Consulting>, to the MGM and supported the establishment of a separate labor union. On June 7th, 2015, general assembly passed the resolution to leave from KMWU collectively and a separate labor union was established. 2010.5.25 the lockout was lifted according to the court injunction. A court injunction was granted to prevents the interference with the labor union activities, such as prohibiting the entry to the office of the KMWU local, electricity and water shutoff, etc. 2015.6 National Labor Relation Committee determined "Discriminative compensation for KMWU granted according to low performance review grade recorded against the union members on purpose by the management, constitutes an unfair labor practice" As of 2015, a total of 25 suits have been filed. In particular, it was revealed in an Parliamentary investigation on state administration and a public hearing in 2012 that the company had signed a consultation contract with <Changjo Consulting> and interfered with labor union activities. The company and the company CEO were indicted in March 2015 under the charge of violating the Trade Union and Labour Relation Adjustment Act(Unfair Labour Practice) according to the prosecution of the Daegu High Court. The trial is currently underway, and <Changjo Consulting> has been indicted under the charge of abetting unfair labor practices. Prior to the issuance of the en banc decision by the Supreme Court of Korea on the effectiveness and validity of the Member Assembly of the KMWU Valeo Local that passed the resolution to withdraw from Korea Metal Workers Union(KMWU) (the courts of the first and the second instance found in favor of the labor union), the HQ announced that "depending on the court decision, we may consider the shutdown of our Korean business," (2015.1.28 Korea Economy Daily).

4) Non-Regular Workers Who are not Eligible for Freedom of Association (ILO CFA Case No. 2602 and No. 3047)

- According to the Statistics Korea's optional survey on the economically active population

(March, 2015) the number of dispatched or outsourced workers is 850,000. The number of 'in-house subcontracting workers (in enterprises employing 300 or more), according to the MoEL's Public Notification of Employment Status, is 870,000 who are classified as 'regular workers' in the survey. In that sense, the total number of 'indirectly employed' workers in Korea is estimated to 1,720,000. According to the survey, the number of workers in disgusted employment relation is 490,000.

- 'Workers in special forms of work'(workers in disguised employment relation) are not regarded as 'worker' defined in the TULRAA and are prohibited from establishing or joining trade unions and collective bargaining and strike is not legally allowed to those workers. Using this legal limitation, the government frequently threat the <Korean Public Services and Transport Workers Union-Truck Drivers' Solidarity Division> and the <Korean Construction Workers Union> to notify that these union shall not be trade unions provided for under the Act. In addition to this, the employers in this industries follow the ministry's attitude and have filed lawsuit on the 'illegality of omissions' against the Ministry of Employment of Labour to press it to notify the unions above- mentioned that they are not regarded as trade union.
- Indirectly employed workers are vulnerable to employment insecurity and discrimination on wage and working conditions but it is almost impossible for these workers to fully exercise their fundamental labour rights. When the subcontracting workers form or join the union the original company can easily fire those workers by terminating the subcontract and exclude union members in succession of employment. The daily activity of trade union can easily intervened by the original employers when they leave the subcontracting workers out of the site. Working conditions (wage, employment, working hour) and trade union activity of the subcontracting workers (time-off for union activity, full time union officials) are guaranteed when the contractor/original company reflect the costs for then in the contents of the contract but the original companies can easily avoid its legal responsibility as 'employers' because they don't have employment relation directly with those workers. (-> incapacitation of right to collective bargaining), The contractors can easily employ substitutes for strikers by contracting with another subcontractor and the right to strike of subcontracting workers are easily violated.
- The ILO recommended the government of Republic of Korea to fully guarantee the fundamental labour rights 4 times but no measure have been taken by the government.

Case 1. Repression and legal action against cargo truck driver of Pulmuone

- The members of the Korean Public Service and Transport Workers' Union Cargo Truckers Solidarity Division (KPTU-TruckSol) Pulmuone chapter are cargo truck drivers who are working for Pulmuone a food company are categorized as 'person who are engaged in special forms of work'. The Pulmuone drivers rate have been frozen for the last 20 years. They have to drive for more than 15~19 hour a day and in addition this, loading/unloading the cargos are their tasks. To continue the contract with Pulmuone they can't take sick leave. The workers joined the TruckSol in 2014 to get out of this reality. At the end of the 2 times strike, the workers successfully concluded a labour-management agreement for a safe and decent working conditions. However, the management of Pulmuone repeatedly delayed

the implementation of the agreement to incapacitate the trade union because these workers are not regarded as 'workers' under the TULRAA but 'independent contractors' and the agreement are not protected as a collective agreement from unilateral breach by the employer.

- Pulmuone forced the drivers to buy cargo trucks with the Pulmuone logo on it and sign on a written pledge to maintain the painting including the logo otherwise the company will not allocate any task. The written pledge is in fact full of provisions which restrict trade union activity including putting union stickers or banners.
- The Pulmuone chapter have tried to solve the issues for more than half year since March, 2015 but failed to reach an agreement with the company. The workers went on a strike in protest of a risky working conditions of Pulmuone non-implementation of the labour - management agreement and non-recognition of trade union since September 4, 2015. However, the company surveilled union activity through CCTV and Drone, illegally employed private security forces and lynched the union members to incapacitate the strike. The management didn't change its mind while 5 sessions of negotiation were held. The two parties failed to reach an agreement.
- On Oct 24, 2015, on the 51st day of the strike, 2 union member launch an high altitude protest on top of a billboard in Yeo-i-don. On November 6, the police raided the KPTU office with the pretext of investigation of the protest, with one week ahead of the Nov 14 people's mass mobilization. So far 7 Pulmuone drivers and 2 central officers of TruckSol are detained in relation to the strike and the high altitude protest.

Case 2. Repression of Korean Construction Workers Union

- On September 19, 2000, 9 ready-mix cement truck(Remicon) drivers established the Korean Construction Transport Workers Union and got issued a certification of trade union establishment report. As the organisation was expanded and in 2003 the MoEL Seoul Southern District Office reissued a certification. Later dump truck drivers join the union and it had maintained an actual labour-management relations with Remicon companies and construction companies. The union successfully concluded collective bargaining agreement at the end of lawful industrial actions, in 2007, since the workers in civil engineering, and tower crane operators and joined and the union was reorganized to the Korean Construction Workers Union, in the current form and the MoEL district office issued a new certification of establishment report on March 2, 2007. However, on October 15, 2008, several employers association in the industry such as the Korean Construction Industry Association suddenly filed a complaint to the Ministry maintaining that the union allow the dump truck drivers and remicom drivers who are not regarded as "workers" but "independent contractors" in violation of the TULRAA. The Ministry ordered the union to exclude these workers from union membership on December 31, 2008.
- In July, 2014 the JunKyong Tower, a tower crane rental company filed a lawsuit of 'illegality of omission' claiming that while the union failed to correct the violation of the TULRAA provision within 30 days the Ministry didn't notify that the union is outlawed, which

constitutes 'illegality of omission'. The Seoul administrative Court dismissed the case(2014guhap63282)

- The same company charged the 5 union members of the KPTU Towercrane Operators' Division for 'blackmailing' under the Act on Punishment, etc., of Violence. The Tower crane operators' division of the union concluded CBAs and wage agreement with 142 rental companies. However, JunKyong Tower which rejected to participate in the negotiation and the demands of trade unions in the negotiation constitute "blackmailing'. The prosecutors decided not to indict the workers at the first instance of investigation on August 1, 2015, but on Nov 15, at the time of intensive crackdown on the KCTU in relation to the Nov 14 demonstration, 5 union members were detained.

5) Application of Criminal Act (the Article 314-Obstruction of Business)

- The TULRAA defines the justifiable strike narrowly and it is almost impossible for workers to lawfully strike to press their employers in effective way. Almost of all the strike are regarded as illegal strike and in that case provisional seizure of assets, damage claims, criminal sanction and disciplinary measures including dismissal follow automatically.
- The Committee of Freedom of Association of the ILO have considered for a long time that not only the collective demand of occupational interest or improvement of working conditions but also the economic and social police of the government directly related to the workers livelihood and finding solutions for the managerial issues are justifiable objective of strikes. With regard to the problems with the application of the article 314 of the Criminal Act pointed out by the CFA, the government responded that the case law has been changed and "there is no case where the court decided a passive rejection of providing labour is illegal strike". However, whether right to strike is really guaranteed in reality is another thing and in practice the investigation agency always indict any striking workers at first.

Case 1. The government declared the generals strike called by the KCTU in protest of the 'regressive labour reform' in 2015

- KCTU called general strike for April 24, and July 15, 2015, in protest of the government-led retrogressive labour reform. It expressed its intention to stage a strike once again in December in case the National Assembly deliberate the revision of 5 labour laws in question and realised the strike on December 16. Trade union can stage a protest actions against the government policy and a strike could be an option of such actions and it is a right of trade union. However, the government decided that the strikes illegal even before the strike happened. Mr. Lee, Ki-kwon, the Labour Minister announced that the government policy or revision of laws are not justifiable objective of strike and the April 24 strike called by the KCTU is illegal strike. He declared "as the competent minister I will prevent any damage by the illegal strike". Almost at the same time, the prosecutors publicized its policy to punish KCTU leadership and union members at workplace level who join the strike according to the Article 314 of Criminal Act "Obstruction of Business" and to investigate the leaders of the

strike under detention. In fact, on April 24, on the day the KCTU members went on a strike, the Korean Employers Federation changed the KCTU president Han, Sang-gyun of the "Obstruction of Business" and the police summoned him with the accusation. Although the Supreme Court en Banc change the case law on the issue of Obstruction of Business, the practice of investigation agencies has never been changed. Apart from the fact whether the strike cause real damage on the business, the April 24 strike has declared as early as January of 2015 and it did not happen at a time period unforeseeable by the management. The illegality of a strike should be decided by the judicial authority, not the government. To summon the leader of ongoing strike/protest is an actual interference of the strike/protest.

Case 2. Arrest of KCTU president Han, Sang-gyun for Masterminding 'Illegal Assembly'

- Apart from the accusation of "obstruction of business" the investigation agency pointed out the KCTU president Han, Sang-gyun as an actual mastermind of illegal actions' during the rally to commemorate the 1st anniversary of the Sewol Ferry Tragedy on April 16, 2015. and the police publicized the accusation in advance and the media reported as if he planned the 'illegal assembly'. Mr. Han informed that he will appear to the police at the time convenient for him. However the prosecution applied for a arrest warrant and the court dismissed it. Then the prosecution blamed the dismissal by the court and applied for an arrest warrant once again and this was accepted. Mr. Han from then on was wanted by the police since June, 2015. On Nov 14, 2015, at 13:00 he held a press conference in front of the Seoul Press Center to express his position on the regressive labour reform and joined the peoples' mass mobilization organised by various civil society organisations. Since then he stayed the Jokye Buddhist Temple. On December 10, 2010 when he left the temple the police arrested him. On January 15, the prosecution indicted him for 8 different kind of charges.

Situation of Investigation against the KCTU members and officials in relation to the Nov 14 Demonstration (as of January 19, 2016)

Pre-trial Detention	Rejection of detention warrant	Arrest Warrant	Summon of non-participants	False accusation	Under police investigation (suspect/ testifier)
18	8	1	6	6	420/11

6) Damage Claims and Provisional Seizure of Assets as a Means of Union Repression

- As of January, 2015 the total amount of the damage claims filed against trade unions affiliated to the KCTU in 25~30 workplaces is no less than KRW 125,108,700,325. The total amount of assets of trade union or individual union members including bank account and wage is at least KRW 17,900,000,000.
- According to a research by the KCTU, the amount of damage claims has sharply increased since

Oct, 2003 (= KRW 57,500,000,000). The reason is that employers are strategically use the damage claims and provisional seizures as a means of trade union repression. The damage claim is being conducted deliberately on the purpose of financial attack, effective control and incapacitation of trade unions.

- Under this practice, freedom of association is severely violated. Workers has no choice but leave trade unions or even their job to get out of the heave burden when they face damage claims by their employers. This practice is a serious violation of basic human rights including right to live.

Amount of Compensation of Damage Claimed against the trade unions affiliated to the KCTU and Provisional Seizure(Unit: KRW, Source: KCTU)

Organization	Amount Claimed		Including Delay Charge	Excluding the Discharged
	Damage Claim	Provisional Seizure		
KMWU	82,765,269,462	4,127,220,000	82,765,269,462	82,709,269,462
KPTU	22,700,000,000	11,600,000,000	22,700,000,000	22,700,000,000
NUM	19,510,220,000	2,200,000,000	19,510,220,000	19,510,220,000
KCTU-HQ	133,210,863		200,836,909	52,200,000
Total	125,108,700,325	17,927,220,000	125,176,326,371	124,971,689,462

4. Suggested Recommendations

- The government should ratify the ILO Convention No. 87 and 98 on the freedom of association and withdraw the reservation of article 22(freedom of association) of ICCPR;
- The government should improve the law and institution so that all the workers, especially the workers in disguised employment relations and indirect employment relation can fully enjoy the fundamental labour rights;
- The government should revise the law provision on justifiable industrial action to bring it in line with the principle of the freedom of association. Especially, the government policy and legislation or mass lay-offs and restructuring which are directly related to working conditions should be acknowledged as justifiable objective of industrial action;
- The government should improve the law and institution to ban on damage claims and provisional seizure for any damage caused by collective bargaining, collective action or other kind of trade union activities. The government and the enterprises should withdraw all the damage claimed for trade union activities.
- The government should improve the implementation practice o the Article 314 of the Criminal Act (Obstruction of Business) in conformity with the principle of the freedom of association.
- The Government should repeal the provisions in the TULRAA, the AEOTUT and the AEOPOTU

which prohibits dismissal workers from being members of the trade union. The government should withdraw the notification of outlawed union to the KTU and recognize the KGEU, as repeatedly recommended by the ILO and UN.

- The government and the investigation agencies should stop the unreasonable investigation on the KCTU's campaign adjacent the government-led regressive labour polices of 2015 and immediately release the KCTU president Han, Sang-gyun and all the detained/imprisoned workers.

Freedom of Political Association and the Dissolution of Political Party

1. Background

- The Constitutional Court ruled on 19 December 2014 that the Unified Progressive Party sought the introduction of North Korean-style socialism through violent means, and thus violated the fundamental democratic order. The party was consequently dissolved and deprived of all five of its seats in the National Assembly.
- The Government and the Constitutional Court regarded a lecture held by Seok-Gi Lee and other members of the Unified Progressive Party in May 2013 as the gathering of a revolutionary organization, and asserted that the party was inciting and plotting insurrection, actions that violate Article 7 of the National Security Act. The Constitutional Court ruled that the charter and the platform of the party were identical or similar to North Korea's ideology and policy and on this basis determined that the party was following North Korea.

2. Relevant Laws

- Article 8 of the Constitution of the Republic of Korea states that if the purposes or activities of a political party are contrary to the fundamental democratic order, the political party shall be dissolved in accordance with the decision of the Constitutional Court. [35]
- There are no special procedures to be followed for cases regarding the dissolution of a political party; the Constitutional Court is obliged to apply the provisions of laws and regulations relating to civil procedures.
- Article 7 of the National Security Act allows for the punishment of any person who praises, incites, or propagates the activities of an anti-government organization (which includes North Korea). [36]

3. Current Situation

- The Unified Progressive Party was not a threat to the fundamental democratic order. It did not mobilize violent means, had no such intention to do so, and accordingly there was no clear

[35] Article 8 of the Constitution of the Republic of Korea: 1) The establishment of political parties shall be free, and the plural party system shall be guaranteed. 2) Political parties shall be democratic in their objectives, organization and activities, and shall have the necessary organizational arrangements for the people to participate in the formation of the political will. 3) Political parties shall enjoy the protection of the State and may be provided with operational funds by the State under the conditions as prescribed by Act. 4) If the purposes or activities of a political party are contrary to the fundamental democratic order, the Government may bring an action against it in the Constitutional Court for its dissolution, and the political party shall be dissolved in accordance with the decision of the Constitutional Court.

[36] Article 7, Paragraph 1 of the National Security Act: "Any person who praises, incites or propagates the activities of an anti-government organization, a member thereof or of the person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for not more than seven years."

danger to the fundamental democratic order. The Constitutional Court dissolved the party without proper evidence, and only with the "possibility" that the Unified Progressive Party could at any time become a threat to the fundamental democratic order.

- For example, Seok-Gi Lee and other members of the Unified Progressive Party who held the lecture in May 2013 – which formed the basis of the dissolution decision - were all under trial in restraint. They could not impose any threat to the fundamental democratic order at the time of the Constitutional Court's decision. In short, there was no emergency situation for the Constitutional Court to hasten its ruling, but it did so two months before the Supreme Court's conclusion of a concurrent criminal trial regarding the allegations of plotting insurrection. Although the Supreme Court later partially reversed the Constitutional Court's ruling, stating that there was no conspiracy of a rebellion by the Unified Progressive Party, this did not change the decision of dissolution.
- The Constitutional Court's decision also violates the principle of last resort. There were political solutions less invasive than dissolution, such as disciplinary measures within the National Assembly. The Unified Progressive Party recorded a 4.3% approval rate in the 4 June 2014 local elections and a 10.3% approval rate in the 2012 general elections.

4. Suggested Recommendations

- Discard the dissolution decision and conduct a retrial in accordance with international human rights standards including the International Covenant on Civil and Political Rights.
- Provide compensation for all damages arising from the decision to dissolve the Unified Progressive Party.

Freedom of Political Association and Election Law

1. Background

- It is difficult to find in other democratic countries such specific requirements for party establishment as are found in the Political Parties Act of the Republic of Korea. Contrary to the original meaning of "party" as citizens' voluntary political association, the overly specific requirements are functioning as a barrier to citizens' political participation.

2. Relevant Laws

- In order to establish a political party under the current Political Parties Act, applicants must have the central party in the capital(Seoul), five or more city or provincial parties, each with at least one thousand party members (Articles 3, 17, 18 of the Political Parties Act).[37] Also, the central party must be registered with the National Election Commission.
- Even after establishing a political party, the party must report to the National Election Commission if it slips on any of the above requirements. Failure to report can result in up to two years in prison or a fine of up to 2,000,000 KRW. The party has a grace period to try and meet the conditions again (three months from the day of the defect; if the deficit occurs less than 3 months before the election, the grace period is extended to 3 months after the election). If the condition is not met within the grace period, the political parties' registration will be revoked (Articles 35 and 44 of the Political Parties Act).

3. Current Situation

- Partial restriction on the establishment of political parties is acceptable, but it is irrational to have the central party located in the capital. In the case of parties that aim to engage in local politics, there is no reason to have its central party in the capital. In addition, there are no grounds to require at least one thousand party members in each of at least five cities or provinces without any consideration for each city or province's population.
- In the past, there was a regulation that revoked party registration and banned the party from using its name until the next election if the party failed to obtain parliamentary seats and had less than a 2% polling rate. Because of this regulation, parties such as the Green Party and the Youth Party that had less than 2% polling rates were automatically dissolved in the 19th general election. On 28 January 2014, the Constitutional Court ruled this regulation as unconstitutional

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[37] The Political Parties Act states:
Article 3 (Composition): "Political parties shall be comprised of a central party located in the capital, and City/Do [province] parties located respectively in the Special Metropolitan City, and in each Metropolitan City and Do [province]
Article 17 (Statutory Number of City/Do [province] Parties): "Political parties shall have five or more City/Do [province] parties."
Article 18 (Legal Numbers of Members of City/Do Parties):
(1) City/Do [province] parties shall have at least 1,000 party members.
(2) The statutory number of party members under paragraph (1) shall have residential addresses within the districts under the jurisdiction of the relevant City/Do [province] parties.

because it infringes the freedom to establish political parties.

- There are many voluntary organizations in local areas, but they are not being established as "political parties" due to exacting political party establishment requirements. During the 2014 local elections, civil groups in Gwacheon made efforts to move away from the existing political parties' closed, exclusive decision-making and nomination system, and recommended two candidates, both of whom were elected. However, these candidates had to run as independents because the civil groups were not recognized as proper political parties.
- In the Republic of Korea's current political situation, in which two large parties dominate political power, the current Political Parties Act retains the two parties' exclusive status by restricting the emergence of new political parties.

4. Suggested Recommendation

- Repeal Article 3 of the Political Parties Act.
- Significantly relax requirements for political party establishment in Articles 17 and 18.

Freedom of Association during Election Period

1. Background

- The Public Official Election Act comprehensively infringes the voter's freedom of association and election participation by placing restrictions on election period, primary agent, and methods.

2. Relevant Laws

- Article 101 of the Public Official Election Act forbids campaigners from influencing the election by airing their personal views, holding a debate meeting, or discussion meeting outside of officially prescribed events during the tightly controlled election period.[38]
- Other restrictions are that "no one shall form a group in excess of five persons and march along the street or salute the multitude of electorates" (Article 105(1)), or obtain signatures from voters (Article 107, Public Official Election Act).
- Also, "no one shall hold a meeting of hometown friends, clan gathering, alumni meeting, rally to strengthen the unity, picnic or other assemblies and meetings during the election period, with the aim of influencing an election" (Article 103(3) Public Official Election Act).

3. Current Situation

- As election time approaches, it is natural for free debates to occur both on and offline about the election, candidates, and major policies. But the Public Official Election Act of the Republic of Korea includes a provision that restricts the freedom of speech during the election period, which discourages the activities of voters. There has been partial progress in online freedom of speech as in December 2012 the Constitutional Court allowed electioneering by social media, but the basic rights of voters are still infringed upon as many major offline methods of policy campaigning such as handouts, speeches, assemblies, processions, and signature-collecting campaigns are still subject to restriction.
- As the Public Official Election Act prohibits speeches, assemblies, processions, and signature-collecting campaigns, it is almost impossible to gather the public opinion of voters and raise them for discussion in the political sphere. In particular, the vague clause "with the aim of influencing an election" allows the National Election Commission and the prosecution to control and indict during election time in an arbitrary manner.

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[38] Public Official Election Act, Article 33 (Election Period):
(1) The election period for each election shall be as follows: <Amended by Act No. 6663, Mar. 7, 2002; Act No. 7189, Mar. 12, 2004> 1. 23 days for the presidential election; 2. 14 days for the election of the National Assembly members, the local council members and the head of a local government; and 3. Deleted. <by Act No. 6663, Mar. 7, 2002> (2) Deleted. <by Act No. 7189, Mar. 12, 2004> (3) The term "election period" means the period as specified in the following subparagraphs: <Amended by Act No. 10981, Jul. 28, 2011> 1. In cases of presidential elections: from the day following the deadline for candidate registration to the election day; 2. In cases of the elections of National Assembly members, local council members, and heads of local governments: 6 days from the deadline for candidate registration to the election day.

Case. Restrictions on Freedom of Association During Election Time

- A case in point involves activities in 2010 against the Four Major Rivers Project. The National Election Commission classified the Four Major Rivers Project as an election issue, and thereby restricted related group activities. Activists from environmental organizations that held photo exhibitions, signature-collecting campaigns, and processions against the project were charged with violation of the Public Official Election Act for criticizing candidates who supported the project. They were found not guilty because their activities were regular activities and not election campaigns for or against specific candidates. Although the Supreme Court found these individuals "not guilty", cases such as this have a chilling effect on organizations' policy campaigns and instil self-censorship.

4. Suggested Recommendations

- Repeal Articles 101, 103-3, 105, and 107 of the Public Official Election Act, which restrict freedom of association during election time.

NGOs' Freedom of Association

1. Background

- Civil society organizations in the Republic of Korea are able to establish themselves as non-profit voluntary organizations, non-profit private organizations, corporations, foundations, etc. The collection of donations and tax relief operate through a registration system. It is relatively easier to register as a non-profit voluntary organization or a non-profit private organization, but there is an advantage in registering as a corporation despite the strict requirements because corporations have a higher social credibility and thus find it easier to attract donations.
- To establish a corporation, the organization must receive approval from central and local government and follow several procedures. The corporation must also place itself under the supervision of competent authorities. There are reported cases of local governments and government ministries refusing to register civil society organizations which take a critical position towards the government.
- Civil organizations in the Republic of Korea often rely on donations from their members to support their activities. There are cases where the government arbitrarily interprets the Act on Collection and Use of Donations to investigate and indict representatives of organizations that collected donations.

2. Relevant Laws

- Act on Collection and Use of Donations: This Act is limited in that it was created to control, not to encourage donations. Recently, amendments to this law have been proposed to encourage donations and their transparent management. Article 4 Paragraph 1 of the Act states that "any person intending to engage in the collection of donations prescribed by Presidential Decree, the value of which is at least ten million won, shall prepare a plan for the collection and use stating the following matters to register himself/herself with the Minister of Security and Public Administration, a Special Metropolitan City Mayor, a Metropolitan City Mayor, a Provincial Governor, or the Governor of a Special Self-Governing Province (hereinafter referred to as "registration office"), as prescribed by Presidential Decree." Article 4 Paragraph 2 states that "registration shall be made with two or more registration offices for the identical businesses: international aid activities; relief and aid activities for victims of natural calamities or disasters equivalent thereto; philanthropic activities, including a campaign for helping the poor, etc.
- "
- Article 32 of the Civil Act (Incorporation of Non-profit-making Juristic Person and Permission thereof) states: "An association or foundation relating to science, religion, charity, art, social intercourse, or otherwise relating to enterprises not engaged for profit or gain, may be formed as a juristic person subject to the permission of the competent authorities."
- Article 5(2) of the Assistance for Non-Profit, Non-Governmental Organizations Act states: "The Minister of Government Administration and Home Affairs or Mayor/Provincial Governor may provide necessary administrative assistance and financial support determined by this Act to

non-profit, non-governmental organizations that participate in public-interest activities."

3. Current Situation

	Non-Profit Organizations	Non-Profit Private Organizations	Corporations	Foundations
Statutory Basis for establishment	None required.	None. Organizations that seek assistance under the Assistance for Non-Profit, Non-Governmental Organizations Act must register with administrative departments according to the Act.	Article 32 of the Civil Act	Article 32 of the Civil Act
Requirements for establishment	The act of establishment itself	Compliance with Article 2 of Assistance for Non-Profit, Non-Governmental Organizations Act [39]	The purpose of business must be non-profit; establishment authorization must be received from competent authorities; Registration must be made	The purpose of business must be non-profit; establishment authorization must be received from competent authorities; Registration must be made
Eligible to receive donations	Yes	Yes	Yes	Yes

1) Rejection of Applications from Organizations Critical of the Government

- Although corporations are required to receive authorization from both central and local governments and have stricter establishment requirements, they have higher social credibility compared to other forms of organization and have an advantage in earning external trust in its public-interest activities. It is also more convenient in enjoying tax privileges and dealing with

[39] Article 2 (Definitions) of the Assistance for Non-Profit, Non-Governmental Organizations Act states: "For the purposes of this Act, the term "non-profit, non-governmental organization" means a non-governmental organization whose main purpose is not to make a profit, but to perform public-interest activities, satisfying the requirements falling under the following subparagraphs: 1. Direct beneficiaries of its business shall be many and unspecified persons; 2. No profit shall be distributed among its members; 3. It has not been actually established or operated primarily to back or support any specific political party or candidate in election or to spread a creed of any specific religion; 4. The number of its regular members shall be at least 100; 5. It has actual results from public-interest activities for the preceding one year or more; 6. Where it is not a juristic person but an organization, it shall have a representative or manager."

financial and commercial transactions.[40]

- However, government departments are rejecting more and more applications, stating that their ministry is not the relevant department or lacks competency.

Case 1. Rejection of Sexual Minority Foundation "Beyond the Rainbow Foundation's" Application

- On 10 November 2014, sexual minority foundation "Beyond the Rainbow Foundation" applied for corporate status to the Human Rights Department of the Ministry of Justice. On 19 November 2014, the Department replied by telephone that "it cannot approve "Beyond the Rainbow Foundation's" establishment because the foundation deals with a single issue and the Ministry of Justice only handles universal human right issues." In January 2015, the Ministry of Justice repeated that it cannot approve establishment and requested a face-to-face meeting with "Beyond the Rainbow Foundation."
- "Beyond the Rainbow Foundation" requested an official response in writing, but the Ministry of Justice delayed its response until April and repeated that there were additional matters to be considered.
- On 4 March 2015, "Beyond the Rainbow Foundation" filed an administrative appeal. On 29 April 2015, the Ministry of Justice sent an official document rejecting corporate status on the grounds that: "the Ministry of Justice establishes, generalizes, and modifies policy related to universal human rights. 'Beyond the Rainbow Foundation' aims for the enhancement of the human rights of social minorities and differs from organizations that are qualified for establishment by the Ministry of Justice."
- "Beyond the Rainbow Foundation" filed a suit to revoke the Ministry of Justice's rejection. On 20 November 2015, the legal representative of the Ministry of Justice argued that "since 'Beyond the Rainbow Foundation' works for sexual minorities, the Ministry of Justice that handles universal human rights is not its competent Ministry and even if it were the competent Ministry, it cannot approve its corporate status." The next trial is expected to take place in mid-January 2016.

Case 2. Rejection of Corporate Status for '4.16 Sewol Families for Truth and A Safer Society'

- In May 2015, "4.16 Sewol Families for Truth and A Safer Society," formed by the surviving family members of the Sewol Ferry incident, submitted an application for corporate status to the Ministry of Maritime Affairs and Fisheries, the competent Ministry of the Sewol Special Act. In the application, "4.16 Sewol Families for Truth and A Safer Society" stated its purpose of establishment as follows: "to ascertain the facts in relation to the causes, management processes, and follow-up actions; to investigate liability and hold the right persons in charge responsible; to recover the bodies of missing persons; to support the survivors and their families; to provide proper compensation and support such as psychotherapy; to maintain the personal and social honour of victims and their families; to remember the Sewol Ferry

[40] "Preparation for establishing as a non-profit organization – Help and Guidance on the Legal Requirements. Customer Service Planning Department Head, Mr. Bang Sun-jin" http://bit.ly/1R9xMxv

incident and commemorate the victims; and to improve social policies and laws to create a safer society." In addition, it wanted to create a legal space for survivors and their families to come and act together.

- "4/16 Sewol Families for Truth and A Safer Society" sought advice from Ansan City and Gyeonggi provincial authorities on applying for corporate status and were advised that the Ministry of Maritime Affairs and Fisheries is the most competent department. However, the Ministry of Maritime Affairs subsequently rejected the application for corporate status, stating that it was not in fact the competent department, and that the aims of the group did not fit the purpose of the Sewol Special Act. [41]

2) Arbitrary Application of the Act on Collection and Use of Donations

- The Act on Collection and Use of Donations has very strict requirements. All those who wish to collect more than 10 million KRW have to register without exception. However, this requirement makes the Act function as a system of authorization. The arbitrary application of the Act makes it difficult for organizations with a critical position towards the government to collect donations. In addition, there are cases when one must register for each individual project to receive donations, but it is difficult to predict in advance whether the donations collected for each project will surpass 10 million KRW.
- Article 16 of the Act stipulates that if one collects donations without registration, or collects an amount that surpasses the limit, one can face up to three years in prison or a 30 million KRW fine. Even if the purpose of the donation collection is socially beneficial, one can be punished if not registered, or surpasses 15% of the limit amount.
- According to an article published in "Hankyoreh 21" in 2012, there are 29,132 donation organizations and 3,164 public-interest organizations registered with the government. However, there are only 97 cases where organizations registered their donation activity in advance. In 2010, the Republic of Korea's total annual amount collected in donations surpassed 10 trillion KRW, but the amount donated through pre-registered donation activity was only 115.4 billion KRW, which is slightly more than 1% of the entire donation amount.[42] These statistics show that pre-registration of donation activity is not effective.
- In addition, this Act is not applied to ten laws such as Political Funds Act, Community Chest of Korea Act, Culture and Arts Promotion Act, and Act on the Establishment, Etc. of Korea Student Aid Foundation, etc. There is a problem of equity because donation collections for government-driven projects or government policies are very easy.

Case 1. Gangjeong Village Sued for Violating Act on Collection and Use of Donations

- Since 2007 when Gangjeong village was chosen as the construction site for a new naval base,

[41] Public Document from the Ministry of Maritime Affairs and Fisheries

[42] "This is not a 'donation'", Hankyoreh21, 31 August 2012, http://bit.ly/1PxVxj0

the Gangjeong Village has acted against the decision. In May 2012, the police investigated the president of the Assembly for violating the Act on Collection and Use of Donations saying that the Gangjeong Village did not register for donation activity but still put up its account number online and collected money from unspecified individuals. In December 2013, the president of Gangjeong Village was sentenced to a 7 million KRW fine which he appealed against.

- During the investigation, the Gangjeong Village stated that it registered with the authorities of Jeju Province its plan of collecting 500 million KRW in donations for ”supporting activities towards a democratic settlement of the naval base problem.” But the Jeju Provincial authorities, after consultation with the Ministry of the Interior (former Ministry of Security and Public Administration), rejected the application on the basis that the Assembly’s plan did not fall under the eleven public-interest areas listed in Act on Collection and Use of Donations. Gangjeong Village reasoned that its donation activity applies to three areas of the Act: environmental conservation, citizen participation, and public services. But the Ministry replied that “public services work must be approved and supported by the majority, but consensus has not been reached on the work of Gangjeong Village and its work may increase conflicts. It is undesirable to collect donations from unspecified individuals with regards to such an issue.”
- In 2014, Gangjeong Village requested the Constitutional Court to rule on the constitutionality of Article 16 (1)(i) and Article 4 (1) of the Act on Collection and Use of Donations, which stipulate the registration of donation collecting organizations and punishment regulations. The decision has not been made yet.

Case 2. Miryang Power Towers Opposition Committee Sued for Violating the Act on Collection and Use of Donations

- In December 2013, the secretary general of the Miryang Power Towers Opposition Committee came under investigation for violating the Act on Collection and Use of Donations, and the Task Force’s bank records were seized and searched. The Miryang Power Towers Opposition Committee had already disclosed information about the collection and use of donations, including information on donors, donation reasons, donation amounts, and the specific use of donations during more than 120 candlelight rallies which took place for two years from 2011. But it fell under investigation for not registering its donation activity in advance and for collecting donations from unspecified individuals.
- In August 2012, the Miryang Power Towers Opposition Committee registered its donation activity with Gyeongnam Province, the relevant local government, but its registration was rejected because “its activity is non-profit, non-political, and non-religious, is difficult to be seen as environment conservation work, and differs from conventional public services work.”

3) Arbitrary Application of Assistance for Non-Profit, Non-Governmental Organizations Act

- Organizations registered according to the Assistance for Non-Profit, Non-Governmental Organizations Act may receive financial assistance. The Public-Interest Business Selection Committee organized under the Ministry of the Interior selects businesses and organizations to

assist, based on Article 7 of the Act.

- However, in the "2009 Budget and Fund Operation Guidelines," created and distributed by the Ministry of Strategy and Finance in December 2008, it is stated that "assistance will be limited for organizations that lead or actively participate in illegal demonstrations." Based on this, organizations that participated in candlelight rallies against US beef imports in 2008 were marked as organizations involved in illegal violent assemblies and demonstrations, and their assistance from the government was terminated. The Ministry of Strategy and Finance redistributed the guidelines in 2010 and 2011. Even in the 2015 Budget and Fund Operation Guidelines, it is stated that "organizations that hold or lead illegal rallies must be deprived of assistance" and that "in cases where organizations use assistance for different purposes (including activities like illegal rallies), its assistance can be partly or fully deprived." It even says that "the same conditions are applied to cases where the head of the local government assists private organizations using central government budgets."
- In practice, such acts terminate assistance to organizations that oppose the government's policies because assemblies and demonstrations that are not reported in advance to the authorities (in reality, "approved") are defined as "illegal". The situation is more severe to small organizations that heavily rely on governmental assistance.

4. Suggested Recommendations

- Examine the current policy that allows the administrative authorities to make arbitrary decisions on organization registrations. Revise the law and relax the requirements for the establishment of non-profit organizations, in spirit of Article 21 of the Constitution that ensures freedom of association.
- Examine the abolition of the Act on Collection and Use of Donations as it began as a policy to ban and restrict donations and there are controversies on its constitutionality.
- Minimize restrictions on the collection and use of donations and improve policy and law so that the donors' intentions are more respected.
- Withdraw the guidelines put forward by the Ministry of Strategy and Finance which restrict provision of financial support to organizations which have participated in 'illegal' rallies, and ensure that decisions on providing financial assistance are not made arbitrarily.

Freedom of Association – The Youth

1. Background

- Young people's political activity is taboo in the Republic of Korea. The government and ruling party alike have publicly expressed their position that 'the political activities of minors should not be permitted'. The prejudiced belief that young people are too immature to make political judgments blocks young people from being involved in party political activities.

2. Relevant Laws

- The POLITICAL PARTIES ACT (Article 22 (1))[43] states that only those who have the rights to elect members of the National Assembly are eligible to be a member or a promoter of a political party. The PUBLIC OFFICIAL ELECTION ACT (Article 15 (1))[44] stipulates that only nationals of 19 years of age or above shall have the right to vote. Therefore, according to these two articles, young people below 19 years of age cannot join political parties. In 2014, the Constitutional Court decided[45] in regards to Article 22(1) of the POLITICAL PARTIES ACT that young people were prohibited from joining political parties, giving the reason that "minors have insufficient mental and physical autonomy and must receive a value-neutral education."

3. Current Situation

- Political parties are one of the most important forms of association in a democratic society. The government refuses to acknowledge the freedom of young people today to join these parties. Even though the question of who can become a member of a political party should be one for each political party to judge by themselves, because of the POLITICAL PARTIES ACT which regulates this area, young people's civil and political rights are violated intrinsically. Their inability to participate in political parties also impedes their ability to discuss their rights and interests, and to reflect on their opinions. The entry of young people into political parties must be left to the judgment of political parties themselves.

4. Suggested Recommendations

- The Government and National Assembly should revise the POLITICAL PARTIES ACT and the PUBLIC OFFICIAL ELECTION ACT concerning the age requirement so that young people can join political parties.

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[43] Article 22 (1) (Promoters' and Party Members' Qualifications) states: "Whoever who has the right to elect members of the National Assembly may become either the promoter or a member of a political party, notwithstanding the provisions of other Acts and subordinate statutes that prohibit them from joining any particular political party or being involved in political activities by reason of their being public officials or their holding other relevant social positions."

[44] Article 15 (1) (Voter's Rights) states: "A national of 19 years of age or above shall have a voting right for the elections of the President and the members of the National Assembly."

[45] Reference Number: 2012Hun-Ma287

Situation of Freedom of Peaceful Assembly and Association in the Republic of Korea

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