

Police Raided the Citizen's Network for General Election of 2016 for alleged violation of Public Official Election Law

21 June 2016

- The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- The UN Special Rapporteur on the situation of Human Rights Defenders

1. Background

On 16 June 2016, offices and staffs of the Citizen's Network for General Election of 2016 (Change 2016) were seized and searched by the police, for the alleged violation of Public Official Election Law. The investigated organisations include People's Solidarity for Participatory Democracy (PSPD), an NGO with ECOSOC consultative status, and South Korean Civil Society Organizations Network, which consists of more than 500 South Korean NGOs. They were leading organisations of the Change 2016. Below is the list of police confiscation.

Name	Title	List of confiscation
Mr. Jin-geol AHN	<ul style="list-style-type: none">• Co-Chair of Steering Committee, the Change 2016• Co-Secretary-General, People's Solidarity for Participatory Democracy (PSPD)	Cell phone, office desk and computer, house
Mr. Jae-keun LEE	<ul style="list-style-type: none">• Co-Secretary General, the Change 2016• Director of Policy and Management Team, People's Solidarity for Participatory Democracy (PSPD)	Cell phone, office desk and computer, house
Mr. Seung-hoon YI	<ul style="list-style-type: none">• Co-Secretary General, the Change 2016• Secretary-General, South Korean Civil Society Organizations Network	Office desk and computer, external hard drive, house
Mr. Gwang-ho LEE	<ul style="list-style-type: none">• Member of Steering Committee, the Change 2016• Secretary-General, Incheon Network for Peace and Welfare	House
Mr. Nam-soo KIM	<ul style="list-style-type: none">• Web Programmer who designed Change 2016 website	Laptop

During the General Election of April 2016, more than 1,000 South Korean civil society organizations collectively established Change 2016 to conduct online blacklist campaigns and to encourage voters to participate in the election. Change 2016 conducted online campaign where voters could identify 10 worst candidates and choose 10 most urging pledges during election. Also, Change 2016 held a series of press conferences in front of the offices of the worst candidates selected by the voters.

On 24 April 2016, Seoul Election Commission filed a complaint against Change 2016 for violating Article 93(1) and Article 108(1) of Public Official Election Law. The search and seizure of 16 June were conducted based on this complaint with search warrant. The latest attack on Change 2016 in the form of sudden police search and seizure is rather arbitrary and clearly has the ulterior political motive of threatening and repressing the works of the South Korean civil society. On 21 June 2016, the Commissioner General of Korean National Police Agency, Sin-myeong KANG, said as below at the press briefing: "Regarding allegations of violating Public Official Election Act, it is important to identify conspiracy and joint principal offenders, who actually initiated and instigated such an action. Therefore, we searched and seized relevant people's house and offices as a minimum measure to find out abovementioned issues."

2. Relevant Domestic Laws

In the Republic of Korea, freedom of expression offline during the election campaign period (180 days before election) is not fully guaranteed. Initially, the law even prohibited freedom of expression both offline and online, but in 2011, the Constitutional Court ruled that this article is partially unconstitutional, and freedom of expression online during the election campaign period should be guaranteed. The law was then revised according to the ruling, but freedom of expression offline is still restricted. Article 93(1) of the Public Official Election Act reads as follow.

Public Official Election Act Article 93(1) Prohibition of Unlawful Distribution or Posting, etc. of Documents and Pictures

(1) No one shall distribute, post, scatter, play, or run an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party (including the preparatory committee for formation of a political party, and the platform and policy of a political party; hereafter the same shall apply in this Article) or candidate (including a person who intends to be a candidate; hereafter the same shall apply in this Article) or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provisions of this Act, from 180 days before the election day (the time when the reason for holding the election becomes final, in case of a special election) to the election day: Provided, That the same shall not apply to acts falling under any of the following subparagraphs: <Amended by Act No. 5412, Nov. 14, 1997; Act No. 5537, Apr. 30, 1998; Act No. 6663, Mar. 7, 2002; Act No. 7189, Mar. 12, 2004; Act No. 7681, Aug. 4, 2005; Act No. 9974, Jan. 25, 2010>

1. Cases where any candidate or any person falling under any of the subparagraphs of Article 60-3 (2) (including the chief of an election campaign liaison office, in cases falling under subparagraph 2, and, in such cases, "preliminary candidates" shall be deemed "candidates") personally hands out the name cards of a candidate under Article 60-3 (1) 2 during the election campaign period;
2. Ordinary political party activities under Article 37 (2) of the Political Parties Act during a period, other than the election period.

Also, the Public Official Election Act Article 108(1) prohibits a public opinion poll as follows:

Public Official Election Act Article 108(1) (Prohibition, etc. of Publication of Public Opinion Poll)

(1) No one shall publish or report, by quoting, the details or results of a public opinion poll (including a mock voting or popularity poll; hereafter the same shall also apply in this Article) that makes it possible to predict the approval rating of each political party or the successful candidate in an election, during a period between six days before the election day and the closing time of balloting on the election day. <Amended by Act No. 5412, Nov. 14, 1997; Act No. 7681, Aug. 4, 2005>

3. Alleged violations raised by the Election Commission

1) Violation of Article 93(1) of the Public Official Election Law

The Election Commission argues that Change 2016 violates Article 93(1) of Public Official Election Act because we held series of ‘protest’ condemning specific candidates in front of the candidate’s office. However, it was not a protest but a press conference, and we never specified the candidate’s name or used his/her picture during this press conference. To avoid violating this law that prohibits voter’s freedom of expression during the election period, we used a board with a hole replacing the candidate’s name rather than explicitly mention candidate’s name.



During the press conference, we used a board with a hole, so that we can effectively express our view without explicitly mentioning the candidate’s name, within the boundaries of law.

2) Violation of Article 108(1) of Public Official Election Law

Legal and polling experts have confirmed that the online campaign that Change 2016 conducted was indeed not a public opinion poll. Unlike the usual opinion poll targeting specific constituencies, the online campaign on the Change 2016 website allowed people to voluntarily visit the website and reply to the online campaign, and it was a legitimate exercise of voter's freedom of expression. Therefore, it is not appropriate for Election Commission consider it a public online poll.

4. Human Rights Violations

1) Freedom of Expression during Election Campaign Period

Although the Public Official Election Act in its present form severely inhibits voters' freedom of expression, Change 2016 has been organizing its campaigns within the boundaries of the law in compliance with the opinion of the National Election Commission. Legal and polling experts have confirmed that the online campaign that Change 2016 conducted was not a public opinion poll. Moreover, Change 2016 never displayed the names and photographs of the candidates in front of their campaign offices. Although the present Public Official Election Act restrains voters' freedom of expression, Change 2016 operated within the boundaries of the law. The latest attack on Change 2016 in the form of sudden police search and seizure is rather arbitrary and clearly has the ulterior political motive of threatening and repressing the works of the South Korean civil society.

2) Collection of information which was not specified in the warrant

While confiscating the office of the South Korean Civil Society Organizations Network, the police extensively collected information, which was not even specified in the search warrant. They seized two hard disks and one external hard drive which were not used during General Election period therefore irrelevant to the current complaint. Also, the police confiscated four bank accounts related to the works of South Korean Civil Society Organizations Network without specifying the search period. Also, the tablet PC of the Secretary-General of South Korean Civil Society Organizations Network was seized as a whole without specifying relevant files.

5. Who is submitting information?

This information is submitted by:

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Annex. Press Statement of Change 2016

[Press Statement]

Police Seizes and Searches PSPD and Change 2016 Office We Condemn Repression of Legitimate Voter Actions!

(16 June 2016, Seoul) On 16 June 2016, the South Korean police seized and searched the office of the People's Solidarity for Participatory Democracy (PSPD), which has been used as the office of the Citizens' Network for General Elections of 2016 (Change 2016), and the homes of involved activists, on the alleged charges that Change 2016 has violated the Public Official Election Act of South Korea. Change 2016 strongly condemns the police's seizure and search.

Although the Public Official Election Act in its present form severely inhibits voters' freedom of expression, Change 2016 has been organizing its campaign within the boundaries of the law in compliance with the opinion of the National Election Commission. Nevertheless, alleging that Change 2016 has been "meticulously and intently" violating the Public Official Election Act, the South Korean police set out disproportionate investigation and raid. Such police action obviously constitutes repression of voters' legitimate exercise of their freedom of expression.

The police claim that Change 2016 has conducted "a public opinion poll in the guise of an innocuous survey," and held press conferences in front of the offices of "the 10 Worst Candidates" who were chosen by voters are acts of crime that go against the Public Official Election Act.

Legal and polling experts, however, have confirmed that the survey that Change 2016 conducted was indeed not a public opinion poll. Moreover, Change 2016 has never displayed the names and photographs of the candidates in front of their campaign offices. Although the present Public Official Election Act curtails voters' freedom of expression, Change 2016 has made sure to operate within the boundaries of the law. The latest attack on Change 2016 in the form of sudden police search and seizure is rather arbitrary, and demonstrates the political motive of threatening and repressing the works of the South Korean civil society.

We, at Change 2016, hereby demand that the South Korean police immediately stop its arbitrary investigation of Change 2016. Why should the government abuse its power in this way to silence voters, when it should do more to guarantee and respect voters' rights to freedom of expression? All civil society organizations affiliated with Change 2016 will work together to fight this abuse of legal enforcement.