



**FREEDOM OF PEACEFUL ASSEMBLY
IN SOUTH KOREA AND INTERNATIONAL
HUMAN RIGHTS STANDARDS**

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INTRODUCTION

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 21 of the International Covenant on Civil and Political Rights (1966)

**“(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.
(2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized. [...]”**

Article 21 of the Constitution of the Republic of Korea (1987)

Freedom of peaceful assembly is a human right, the respect and protection of which is essential for a society in order to ensure that people can come together to collectively express, promote, pursue and defend their common interests and views or political opinions. Assemblies play a crucial role in forming public opinion, enabling people to express their views on public matters. For marginalized political and social groups, assemblies are often the only effective means to voice their concerns on the public policy that affects them. Thus, assemblies are vital to the protection and fulfilment of other human rights.

While freedom of peaceful assembly is guaranteed in the Constitution of South Korea, other domestic legislation and practice governing assemblies falls short of international human rights law and standards. A burdensome notification process, the absence of a legal provision allowing spontaneous and urgent assemblies, the wide

range of options for authorities to entirely ban certain assemblies or to impose far reaching restrictions and placing undue burden on organizers – **all these elements in the Assembly and Demonstration Act**, as well as excessive use of force during assemblies and lack of accountability for law enforcement officials, as illustrated in the case of Baek Nam-gi, are in contradiction with the obligations of South Korea to facilitate the full enjoyment of the right to freedom of peaceful assembly.

After his visit, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur on peaceful assembly and association) expressed his concerns about “a series of inconsistencies and divergence from international human rights law standards of implementation of the law arising because:

- (i) the legal framework does not comply with international human rights law standards in a number of key areas;
- (ii) the legal framework provides excessive discretion to authorities; and
- (iii) while exercising this discretion, authorities do not pay sufficient attention to the obligations to respect, protect and facilitate assembly and association rights.”¹

In the following sections, this briefing aims to provide an overview of international human rights standards on the right to freedom of peaceful assembly that are relevant to the situation in South Korea, and calls upon the authorities to take the necessary measures required to ensure the full enjoyment of this right in law and in practice by all people in South Korea.

1. The state's obligation to facilitate the right to freedom of peaceful assembly.

Everyone has the right to freedom of peaceful assembly. An assembly, which can be defined as “an intentional and temporary gathering in a private or public space for a specific purpose”, can take many forms including indoor meetings, demonstrations, strikes, marches or sit-ins.² Regardless of their specific form, all peaceful assemblies enjoy protection under international human rights law. Two United Nations’ Special Rapporteurs noted that in determining whether an assembly deserves this protection, “the peacefulness of an assembly should be presumed, and a broad interpretation of the term ‘peaceful’ should be afforded.”³

Organization for Security and Co-operation in Europe / Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Guidelines on Freedom of Peaceful Assembly⁴

“1.3 Only peaceful assemblies are protected. An assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.”

International human rights law, including the International Covenant on Civil and Political Rights, requires states to respect, protect and fulfil this right. The state's obligation to ensure full enjoyment of this right includes the positive obligation to protect and facilitate peaceful assemblies, and a negative obligation not to place undue restrictions.

The state's duty to facilitate peaceful assemblies requires authorities to actively assist organizers and participants of an assembly in exercising their right. According to the Special Rapporteur on peaceful assembly and association, the authorities should make an effort to enable people to have their voice heard within “sight and sound” of the intended target audience and provide them with access to public space including public streets, roads, and squares.⁵

According to the Organization for Security and Cooperation in Europe (OSCE), the right to freedom of peaceful assembly does not require specific legislation to be realized, but in cases where the state chooses to enact such legislation its purpose “should never be to inhibit the enjoyment of the constitutional rights to freedom of peaceful assembly but, rather, to facilitate and ensure its protection.”⁶

LEGAL FRAMEWORK REGARDING THE FREEDOM OF PEACEFUL ASSEMBLY IN SOUTH KOREA

The right to freedom of peaceful assembly is enshrined in Article 21 of the Constitution of the Republic of Korea. The Republic of Korea (South Korea) is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and Article 6(1) of the Constitution of South Korea also provides that “Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.” Thus, the Constitution recognizes international human rights treaties that South Korea has ratified such as ICCPR as well as other international human rights norms which have attained the status of customary international law to be part of the domestic law and therefore to be directly applicable in South Korea.

In South Korea, assemblies are regulated under the Assembly and Demonstration Act (ADA).⁷ Article 1 of the ADA stipulates the purpose of the ADA as achieving “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.”

The way the ADA is formulated is problematic because it puts conditions on the protection of a peaceful assembly depending on the “lawfulness” of the assembly. This reflects the overall approach in the ADA, turning the right to freedom of peaceful assembly into a privilege that can be restricted at the discretion of the authorities.

Upon his visit to South Korea, the Special Rapporteur on peaceful assembly and association expressed his concern that “using national laws as the determinant for ‘lawfulness’ in order to guarantee rights is problematic because it suggests that the right to peaceful assembly is granted by national law”, and further pointed out that “Internationally recognised human rights are inherent lawful entitlements, requiring authorities to take steps to respect and fulfil them. Their validity is not dependent on the discretion of lawmakers or of security agencies.”⁸

Amnesty International calls upon the South Korean authorities to:

- initiate a comprehensive revision of the ADA bringing it in line with the obligations of South Korea under international human rights law including to specify the role of government authorities as facilitators of the right to peaceful assembly;
- ensure the full enjoyment of the right to freedom of peaceful assembly and in particular, express in law a clear presumption in favour of holding assemblies.

2. The exercise of the right to freedom of peaceful assembly should not be subject to the permission of authorities.

Freedom of peaceful assembly is a right, not a privilege. Anyone who wishes to hold an assembly should be able to do so without requiring the authorities’ permission or authorization. States may require prior notice of assemblies, but the purpose of such notification must be to facilitate peaceful assembly and in order to enable the authorities to take measures to protect public safety and order or the rights of others, and such notification regimes should not be unduly bureaucratic.⁹

What constitutes unduly bureaucratic notification?

The OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly, which was established in 2006 and consists of ten independent experts from OSCE participating States, suggests that a notification is unduly bureaucratic if any of the following requirements is imposed on the organizers:

- that there be more than one named organizer;
- that only registered organizations are considered as legitimate organizers;
- that formal identity documents, such as passports or identity cards, be produced;
- that identification details of others involved in the event, such as stewards be provided;
- that reasons for holding an assembly, bearing in mind the principle of non-discrimination, be given;
- and that the exact number of participants, which is difficult to predict, be given.¹⁰

In cases where a notification regime is put in place, **failure to comply with notice requirements** should not be subject to criminal sanctions or administrative sanctions resulting in fines or imprisonment.¹¹ As the Special Rapporteurs on peaceful assembly and association and on extrajudicial, summary or arbitrary executions have emphasized, the mere fact that the assembly is not notified “does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly.”¹²

The authorities should make all feasible efforts to protect and facilitate **spontaneous assemblies** in the same way as assemblies which have been planned in advance. This applies in particular to any notification system in place: exceptions should be made for spontaneous assemblies which occur in response to a certain incident or event where it may be impractical to meet the notification requirements, or other assemblies which occur without an identifiable organizer, e.g. as a result of mobilization through social media.

NOTIFICATION SYSTEM IN THE ADA

Although prior authorization of peaceful assemblies is clearly prohibited by the Constitution of South Korea¹³ in accordance with international human rights law and standards, the notification regime in the ADA functions de facto as an authorization regime in the sense that it leaves no room for spontaneous assemblies and makes it a criminal offence to organize an outdoor assembly¹⁴ without notifying the authorities. Outdoor assemblies that are not notified are considered ‘unlawful’ assemblies, and may be subjected to a ban or forceful dispersal with participants facing possible criminal sanction.¹⁵

In addition to the requirements of prior notification, the ADA prohibits the organizer of an assembly from committing any “act that obviously breaches the bounds of the notified objectives, date, time, place, manner, etc.”¹⁶ Assemblies that deviate from notification are subjected to dispersal¹⁷, and the organizer of such an assembly can face imprisonment or fine.¹⁸ This in effect alters the nature of the notification regime, turning it into an authorization regime.

A notification regime must only serve to facilitate peaceful assemblies, not as a tool for banning or restricting assemblies or for criminalizing those who exercise their rights to freedom of peaceful assembly. In this regard, Amnesty International is concerned that the way the notification regime operates under the ADA, with penalties for organizers of assemblies which are not notified or which deviate from the terms notified, turns the right to freedom of peaceful assembly into a privilege that can be restricted at the discretion of the authorities.

Amnesty International calls upon the South Korean authorities to:

- ensure that the primary purpose of the notification regime is to facilitate peaceful assemblies;
- amend relevant provisions of the ADA including Articles 16(4)(3), 20(1)(5) and 22(3), to ensure that assemblies that are not notified are not subjected to immediate dispersal or criminalization;
- make exceptions for spontaneous assemblies under the current notification regime.

3. Any restriction on freedom of peaceful assembly should be established in law, and it must be necessary and proportionate to the legitimate purpose.

While international human rights law and standards allow certain restrictions to be imposed by states, Article 21 of the ICCPR clearly states that only those restrictions are permissible that are *‘imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others’*. The restriction must also be proportionate to the legitimate purpose it intends to achieve. No limitation should be imposed in a way that infringes the essence of the right.¹⁹

The principle of **legality** means that any restriction must be based in law and that the laws or regulations restricting the right must be clearly formulated without any ambiguity so that people could anticipate the possible consequences of their actions.

The principle of **necessity** requires states to prove that the restrictions are needed so as to serve legitimate purposes. In other words, restrictions should only be imposed when there is “pressing social need” for the interference.²⁰ The authorities must show a direct and immediate connection between the restriction and the protected interest. In order to meet the requirements of **proportionality**, any restriction being imposed must be appropriate to achieve an intended legitimate aim, it must be the least intrusive instrument among those which might achieve the desired result, and it must be proportionate to the interest to be protected.²¹ In addition, it must be noted that the test of necessity and proportionality of any particular restriction requires a case-by-case analysis of the assembly in question with consideration given to all of the circumstances such as nature, purpose, manner and place.

Restriction of freedom of peaceful assembly on the ground of public order

OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly provides useful guidance in determining what falls under the category of permissible grounds for restriction of freedom of peaceful assembly. According to the Guidelines, “neither a hypothetical risk of public disorder nor the presence of a hostile audience are legitimate grounds for prohibiting a peaceful assembly” and “prior restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate”. In determining whether a certain assembly is likely to be violent, “compelling and demonstrable evidence is required demonstrating that those organizing or participating in the particular event will themselves use violence”, and “in the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity for rebuttal by submitting evidence that the assembly will be peaceful.”²²

Content-based restrictions are not recognized as lawful restrictions under international human rights law and standards except in the case of those forms of expression that states must prohibit under Article 20 of the International Covenant on Civil and Political Rights – that is, propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²³ Limitations can be made to “time, place and manner” of an assembly, but such restrictions must pass the test of necessity and proportionality as described above.²⁴ In such cases, the authorities should always give preference to the least intrusive means. Even in cases where certain restrictions to time, place and manner of an assembly are imposed, the authorities should make an effort to facilitate such an assembly by offering reasonable alternatives.²⁵ As a general rule, assemblies should be facilitated within “sight and sound” of their target audience.²⁶

In determining the least intrusive restriction to achieve the purpose, the authorities should consider a range of measures, with prohibition a last resort. In this regard, the Special Rapporteur on peaceful assembly and association and the Special Rapporteur on extrajudicial executions pointed out that blanket bans on specific places or particular times, are “intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.”²⁷

RESTRICTION/PROHIBITION OF ASSEMBLIES IN THE ADA: TIME, PLACE AND SMOOTH FLOW OF TRAFFIC

Article 10 of the ADA prohibits anyone from holding an outdoor assembly between sunset and sunrise while providing for exceptions which can be made with the permission of the head of the competent police authorities. While parts of this provision lost their effect due to decisions of the Constitutional Court²⁸, the authorities have attempted in a newly drafted bill to maintain a categorical ban on the holding of assemblies during a specific time period (between midnight and 7am) in this provision.²⁹ In addition to the ban on this specific time period, Article 11 of the ADA places a total ban on assemblies in vicinity of particular places including the Presidential Office, all levels of courts and diplomatic offices.

Assemblies, whether they take the form of demonstration or candlelight vigil, are held to convey a certain message to an intended audience, and in this regard, the authorities should facilitate assemblies so that those who wish to hold an assembly can do so within “sight and sound” of the target audience. The blanket bans provided in Articles 10 and 11 of the ADA constitute an undue interference to the right to freedom of peaceful assembly as they fail to provide for the case-by-case analysis which is required to pass the test of necessity and proportionality. As the Special Rapporteur on peaceful assembly and association has well pointed out, “imposing bans on the time or location of assemblies as the rule and then allowing exceptions inverts the relationship between freedom and restrictions; it turns the right into a privilege.”³⁰

Besides categorical bans on time and place, the ADA also grants broad discretion to the authorities to restrict or ban assemblies on various grounds such as tranquillity of life, simultaneous assemblies at the same location and obstruction of traffic.

The most frequent ground cited by the authorities for banning assemblies is to ensure smooth flow of traffic, which is based on Article 12 of the ADA.³¹ It prescribes that the authorities may ban or restrict an assembly on a main road of a major city. If the organizer of such an assembly assigns “stewards (people who are tasked with maintenance of order)” the assembly may not be subjected to such a ban, nonetheless if such an assembly is deemed to cause serious inconvenience to traffic it can be subjected to a ban.

Banning assemblies solely on the ground of smooth flow of traffic is not regarded as a permissible restriction under international law. It is worthwhile to note that use of public space, including the roads, for the purpose of assemblies is as legitimate as is traffic use, and the two UN experts have noted “a certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.”³²

Special Rapporteur on peaceful assembly and association, U.N. Doc. A/HRC/23/39 (2013)

“Access to public space means concretely that organizers and participants should be able to use public streets, roads and squares to conduct (static or moving) peaceful assemblies. The Special Rapporteur believes that spaces in the vicinity of iconic buildings such as presidential palaces, parliaments or memorials should also be considered public space, and peaceful assemblies should be allowed to take place in those locations. In this regard, the imposition of restrictions on ‘time, place and manner’ should meet the aforementioned strict test of necessity and proportionality. [...]”³³

In this regard, Amnesty International is concerned that Article 185 of the Criminal Code (General Obstruction of Traffic) is frequently used to criminalize organizers or participants of assemblies. The view of the Special Rapporteur on peaceful assembly and association is that charging them with such offenses “de facto criminalizes the right to peaceful assembly.”³⁴ No one should be subjected to punishment solely on the ground that the person has exercised the right to peaceful assembly.

Furthermore, the state’s obligation to protect peaceful assemblies also applies to simultaneous assemblies or counter-protests, and the prohibition of a public assembly solely on the basis that it is due to take place at the same time and location as another public assembly is likely to be disproportionate.³⁵

Amnesty International calls upon the South Korean authorities to:

- lift blanket bans of assemblies at specific times and in certain places by amending the relevant provisions in the ADA, including Articles 10 and 11;
- ensure that any restriction that may be imposed is necessary and proportionate to the legitimate purpose on a case-by-case basis and not on the basis of purely abstract considerations formulated in law;
- ensure that assemblies are not pre-emptively banned on the sole ground of ensuring smooth flow of traffic;
- refrain from prosecuting participants and organizers of assemblies on the charges of obstructing the flow of traffic under Article 185 of the Criminal Code.

4. There should be no undue burden on organizers of assemblies.

Organizers can be expected to “make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly”.³⁶ In doing so they may choose to appoint stewards to facilitate the conduct of the assembly, but should not be required to do so.³⁷ The primary responsibility of maintaining public order lies with relevant law enforcement agencies, not organizers or stewards of the assemblies. Organizers should never be held responsible for the unlawful behaviour of others; to do so would violate the principle of individual liability and, among other things, discourage potential assembly organizers from exercising their rights.³⁸ While individuals who commit an offence or fail to follow lawful directions of the law enforcement officials may be subjected to criminal or administrative sanctions, “no person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.”³⁹

BURDENSOME RESPONSIBILITIES ON ORGANIZERS OF ASSEMBLIES

The provisions of the ADA set certain responsibilities on organizers of assemblies. Article 16(1) of the ADA provides that “the organizer of an assembly or demonstration shall conduct the assembly or demonstration in an orderly manner”, and Article 16(3) further prescribes that “when the organizer of an assembly or demonstration fails to maintain such order as referred to in paragraph (1), he/she shall declare that the assembly or demonstration is concluded.” While failures to comply with these provisions are not subjected to criminal sanctions, these provisions are widely cited in civil lawsuits brought against organizers of assemblies as grounds to establish the liability of the organizers.

As stated above, it is the relevant law enforcement agencies, not organizers of assemblies, which bear the responsibility of maintaining public order. Holding organizers of assemblies responsible for the orderly conduct of an assembly and liable to compensate any damage caused by the participants on the ground of these provisions of the ADA unduly shifts the responsibility of the authorities to the organizers.

In addition, as noted above, organizers of assemblies are often charged with certain criminal offenses such as

general obstruction of traffic. Criminalization of organizers of assemblies for organizing “unlawful assemblies” and for other offences, combined with blanket bans on assemblies at certain times and places, and the wide-ranging discretion given to the authorities under the current provisions of the ADA, all have the effect of shrinking the space for freedom of peaceful assembly.

Special Rapporteur on peaceful assembly and association, U.N. Doc. A/HRC/32/36/Add.2 (2016)

“The case of Mr Park Lae-oon exemplifies the intimidation and harassment that organisers of peaceful protests face. Mr. Park is a member of the Coalition 4.16, which consists of families and supporters of the Sewol Ferry Disaster victims. He was indicted on charges of organizing an unlawful protest, destruction of public goods, general obstruction of traffic, (and) defamation among other charges. The Seoul Central District Court on 22 January 2016 sentenced Mr. Park to three-years imprisonment with four-years probation and 160 hours of community service. He has appealed the decision.”⁴⁰

Amnesty International calls upon the South Korean authorities to:

- ensure that the responsibility of maintaining public order is not placed on organizers/stewards of assemblies, and that they are not held responsible for actions of other participants of assemblies, by amending relevant provisions of the ADA, including Articles 16 and 17;
- ensure that organizers are not subject to criminal or administrative sanctions for the mere act of organizing peaceful assemblies.

5. The overall approach to policing of assemblies should be guided by the concept of facilitation of the assembly and should not from the outset be shaped by the anticipation of violence and use of force.⁴¹

In policing assemblies, the first and foremost responsibility of the authorities is to facilitate and protect peaceful assemblies. As long as organizers have expressed their peaceful intention, the peacefulness of the assembly should be presumed,⁴² and handling of assemblies by the authorities should be guided by an approach of facilitation of the assembly, rather than the anticipation of violence and use of force.

An important aspect in facilitating peaceful assembly is to make public space available for organizers and participants. Often times, participants of assemblies find it frustrating that they are being blocked from holding the assembly within “sight and sound” of the target audience. This may contribute to an escalation of tension at the scene, often resulting in clashes between assembly participants and law enforcement officials who stand between the protestors and the intended target audience. In that respect, it should be noted that use of public space for the purpose of holding an assembly is “an equally legitimate use as commercial activity or the movement of vehicles and pedestrian traffic”. This “requires some measure of coordination to protect different interests, but there are many legitimate ways in which individuals may use public spaces.”⁴³

The policing of assemblies should always seek to prevent the need to resort to force. As a rule, there is no room for the use of force in assemblies, except when dealing with individuals committing offences or seeking to

prevent the assembly from taking place.⁴⁴ When violence occurs in assemblies, it should, to a certain extent, be considered as a failure of the state: it has failed in facilitating the assembly, failed in preventing violence, failed in protecting those who wished to participate peacefully and failed to effectively engage in a conflict resolution process with those who were likely or even intending, to engage in violence.⁴⁵

In managing assemblies, law enforcement agencies should protect the safety and rights of assembly participants as well as monitors and bystanders.⁴⁶ Policing of assemblies should be carried out in a way to reduce and de-escalate tension with the purpose of preventing violence while avoiding the use of force as much as possible. In this regard, the authorities should keep in mind that the physical appearance of the police during an assembly should not contribute to creating or increasing existing tensions.⁴⁷ This may be the case especially when a large number of riot police are deployed at a generally peaceful assembly.

Furthermore, in response to incidents of violence, it is important for authorities to bear in mind that the right to freedom of peaceful assembly is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature and authorities remain obliged to seek as much as possible to facilitate their exercise of the right to peaceful assembly.⁴⁸

USE OF BUS BARRICADE IN POLICING ASSEMBLIES

The use of buses as barricades at large assemblies is a tactic widely employed in the policing of assemblies in South Korea. This, along with the deployment of a large number of riot police at assemblies, can cause or heighten tension among participants of assemblies rather than to prevent or reduce it. The way bus barricades are regularly being used in South Korea for the alleged reason to prevent violence or other unlawful behaviour but de facto block the passage of participants or prevent them from holding the assembly within sight and sound of the target audience – is “antithetical to authorities’ obligation to facilitate assemblies.”⁴⁹

Any action taken by the police in handling assemblies should be carried out in a way to reduce and de-escalate tension; however, bus barricades do the contrary. Very often, they have caused frustration for participants wishing but unable to approach an intended audience, resulting in anger and violence on some occasions. All this is often exacerbated by the large number of police officers deployed in assemblies even when there is no indication that would justify the anticipation of violence or disorder. Similar to the erected bus barricades, the deployment of such large numbers of police officers sends a clear message to participants, that their assembly is considered as something that disturbs and that participants are considered potential trouble makers to be countered by police action at the earliest sign. Overall, the appearance of the police during public assemblies is highly intimidating, displays hostility rather than a facilitative approach and is not in line with international standards of human rights compliant policing. This together with the bus barricades immediately creates a hostile environment that can only exacerbate and escalate tensions and is actually the contrary of a facilitative approach.

Moreover, pre-emptively blocking the movement of assemblies using bus barricades based on the mere suspicions that an assembly may evolve into a violent one seriously violates participants’ right to peaceful assembly.

Amnesty International calls upon the South Korean authorities to:

- ensure that the overall approach in policing assemblies is to facilitate peaceful assemblies;
- drop the intimidating appearance through deployment of excessive numbers of police officials and visible heavy anti-riot equipment which is likely to increase tension and public anger possibly leading to violence, and instead to adopt a facilitative and supportive approach;
- refrain from using bus barricades in policing assemblies unless there is compelling and demonstrable evidence that those organizing or participating in the assembly will use violence, and that this is a necessary and proportionate measure to contain it.

6. Any decision to disperse an assembly should be taken only when strictly unavoidable and carefully in line with the principles of necessity and proportionality.

As an internationally recognized right, peaceful assemblies enjoy strong protection under international law. As long as assemblies are peaceful they should generally not be subjected to dispersal; the dispersal of peaceful assemblies is strictly limited to exceptional circumstances. A decision to disperse peaceful assemblies should only be made when there are no other means available to protect legitimate aims which outweigh the right of people to assemble. The mere fact that an assembly is regarded as “an unlawful assembly” under domestic laws and regulations – an assembly for which notification was not given in advance or that deviates from what was notified - does not serve as a legitimate ground for dispersal as long as the assembly remains peaceful. Likewise, “a certain level of disruption of ordinary life caused by assemblies must be tolerated”⁵⁰ and should not be a reason for dispersal.

In general, the dispersal of assemblies should be resorted to only when strictly unavoidable, for example “it may be considered where violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and protect participants from harm.”⁵¹ But even in cases where some participants act in a violent manner during an assembly, this does not turn the whole assembly into a violent one. “Before countenancing dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly and differentiate between violent individuals in an assembly and others” so that others may continue to assemble peacefully.⁵² In cases where the dispersal of an assembly is deemed necessary, the assembly and participants should be clearly and audibly informed, and should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further, and if they do so should seek to avoid the use of force as much as possible, and ensure that any force used is only what is necessary and proportionate in the circumstances.

Dispersal of peaceful assemblies

As an internationally recognized human right, freedom of peaceful assembly enjoys protection. International law only allows for the dispersal of peaceful assemblies under exceptional conditions. For example, a peaceful assembly which advocates national, racial or religious hatred constituting incitement to discrimination, hostility or violence, may be subjected to dispersal if lesser means of managing the situation have failed. Likewise, an assembly which prevents access to essential services such as blocking an emergency entrance to a hospital or seriously interferes with traffic or the economy for a prolonged period, for example, blockage of a major highway for days, may be dispersed. Failure to notify authorities of an assembly is not a sufficient justification for dispersal.⁵³

In this regard, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides clear guidance on the use of force in dispersing such assemblies: “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary [Principle 13].”

DISPERSAL OF “ILLEGAL” ASSEMBLIES

In South Korea, assemblies can be dispersed on various grounds in accordance with Article 20 of the ADA. While an assembly which “clearly poses a direct threat to public peace and order by inciting collective violence, threats, destruction, arson, etc.”⁵⁴ does not enjoy protection under international law and thus can be subjected to dispersal, some of the criteria set for the dispersal of assemblies under the same provision are not in line with international law and standards. For example, failure to notify the authorities, breaching the bounds of what was notified in advance, or “clear threatening the maintenance of order such as the smooth flow of traffic”⁵⁵ are not justifiable grounds for the dispersal of peaceful assemblies.

Considering the broad range of prior restrictions imposed on assemblies in the ADA – for example, a total ban on a particular time and location or the burdensome notification regime resulting in a de facto authorization regime - many assemblies which may be lawful under international law can be deemed “unlawful” in South Korea. Given that these “unlawful” assemblies may be subjected to forceful dispersal, the provision regarding dispersal in the ADA could seriously violate people’s right to assemble peacefully.⁵⁶

Amnesty International calls upon the South Korean authorities to:

- refrain from dispersing assemblies simply on the ground that the organizers have failed to comply with notification requirements or are disrupting flow of traffic;
- ensure that any decision to disperse an assembly is only made if this measure is strictly unavoidable and is in line with the principles of necessity and proportionality, and in particular that the law enforcement authorities do not use force to disperse assemblies merely because they are considered unlawful under national law;
- amend Article 20 of the ADA, in accordance with relevant international standards, so that the dispersal of assemblies is only allowed in exceptional situations.

7. Any use of force in policing assemblies must conform to the requirements of necessity and proportionality.

In policing assemblies, the law enforcement authorities should always seek to prevent the need to resort to force. Where the use of force is unavoidable, it must be guided by the principles of legality, necessity, proportionality and accountability. In this regard, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles), along with the UN Code of Conduct for Law Enforcement Officials, establish clear standards in relation to the use of force in general.

The power to use force needs to have a formal basis in domestic legislation (**legality**). The law governing the use of force must clearly stipulate legitimate objectives for which force can be used, and of course such law must be in line with international law and standards.

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

[Principle 4] Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

[Principle 5] Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved. [...]

The use of force can only be deemed necessary when a legitimate objective is pursued. The principle of **necessity** requires the authorities to consider the qualitative, quantitative and temporal aspects of necessity before using any force. If the same objective can be achieved by peaceful means, such means should always be given preference as stipulated in Basic Principle 4 (qualitative necessity). If it is necessary, the level of force used should be limited to the minimum that could achieve the intended result (quantitative necessity). The final aspect is when it becomes unnecessary. The use of force must be stopped once the intended result is achieved or is no longer achievable (temporal necessity).⁵⁷

The principle of **proportionality** requires the authorities to balance the benefits of the use of force and the possible harm brought by it. No force should be used where the harm caused by the use of force outweighs its benefits, “even if it might otherwise be deemed ‘necessary’ to achieve the legitimate aim.”⁵⁸ It should be noted that the end does not justify all means.

Law enforcement officials may use their weapons and equipment to protect themselves and others. When using force in response to violence, law enforcement officials must distinguish between the individuals who are engaged in violence and those who are not (e.g. peaceful demonstrators or bystanders) and carefully aim such force only at those engaged in violence. The violence of a few individuals must not lead to a response which treats the entire assembly as violent. If some individuals engage in violence, this does not affect the right of others to peacefully continue with the assembly. A necessary and proportionate response must therefore focus on the few violent individuals.⁵⁹

In dealing with violence, however, any weapon use must also be subjected to the aforementioned principles. There should be differentiated approaches and guidelines for use of each weapon according to their characteristics and intended result. For example, a water cannon should not be used in a situation where only a small number of people behave violently. It has an indiscriminate effect by nature, and may affect not only those acting in a violent manner but also bystanders and peaceful participants. High-pressure water can cause both direct and indirect injuries such as trauma directly to the body or injuries from forced falls.⁶⁰ Use of water

cannon for the purpose of policing assemblies should meet the strict test of proportionality. It may only be used in a situation where it is strictly necessary to contain or disperse individuals or a group participating in a public assembly and when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly focusing on violent individuals only.⁶¹

USE OF FORCE, IN PARTICULAR THE USE OF WATER CANNON IN POLICING ASSEMBLIES

Under the South Korean legal framework, water cannons are classified as “lethal police equipment”. The use of water cannons is regulated by Article 10 of the Act on the Performance of Duties by Police Officers and other relevant regulations including the Regulation on the Standards for Use of Lethal Police Equipment etc., and the Guidelines for Operating Water Cannon Vehicles.

While Article 10(4) of the Act on the Performance of Duties by Police Officers⁶² provides that “the use of lethal police equipment shall be restricted to the necessary minimum”, rules and regulations regarding the use of water cannon lack certain aspects of necessity and proportionality requirements. For instance, the Guidelines for Operating Water Cannon Vehicles provides that water cannon can be used in a “dispersed spray” in a situation “where protestors are illegally occupying roads etc. and not dispersing”. As pointed out earlier, the mere fact protestors have taken public roads, while this may be unlawful under domestic legislation, cannot be regarded as legitimate grounds for dispersal under international human rights law and standards. In addition, there are insufficient operational standards and criteria established in the guidelines such as a lack of minimum distance to be observed when this equipment is used.

In addition to these gaps in the regulations, the way water cannons are used in practice in assemblies puts individuals at grave risk of injury. As was pointed out by the Special Rapporteur on peaceful assembly and association, in some instances brought to his attention “the water cannon was used against largely peaceful crowds” and “in certain cases, lone individuals were targeted, a use difficult to justify.”⁶³ Baek Nam-gi, a 69-year-old farmer who participated in the People’s Rally on 14 November 2015, was knocked down by the jet spray of a water cannon and suffered brain damage (traumatic subdural haemorrhage) and remained in a coma for 10 months until he died on 25 September 2016. The water cannon was fired from a very close distance at a high pressure, and it directly struck Baek Nam-gi in the head. Video footage of the incident shows that use of water cannon continued even after he had fallen to the ground and also targeted individuals who tried to assist the unconscious Baek Nam-gi. The way it was used against him and those trying to help him did not meet necessity and proportionality requirements.

Amnesty International calls upon the South Korean authorities to:

- ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and all law enforcement officials are properly trained accordingly;
- ensure that any use of force by law enforcement officials during assemblies meets the requirements of necessity and proportionality;
- revise the existing regulations for the use of water cannons in conformity with international human rights standards, ensuring that water cannons may be used only when violence is so serious and widespread that it is not possible anymore to deal with violent individuals, with clear instructions as regards the pressure and direction in order to prevent excessive harm to any individual, and that they should only be operated by trained personnel; effective control over the use of the water cannon (when and for how long to use, when to stop, distance, degree of pressure, direction of jet) must be ensured at all times to prevent uninvolved persons being hit, excessive harm as a result of too high pressure or too close distance, or hitting particularly vulnerable persons.

8. Any law enforcement official who is responsible for unlawful use of force must be held accountable.

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

[Principle 7] Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

[Principle 22] Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11(f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

[Principle 24] Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

[Principle 25] Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

[Principle 26] Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

The powers vested in the law enforcement officials, including the power to use force, can be easily abused, and for this reason an appropriate mechanism for accountability needs to be established.⁶⁴ In this regard, the UN Basic Principles require states to hold law enforcement officials who use force in an arbitrary or abusive manner, i.e. when the decision to use force is not based on the criteria established by law but on other criteria such as discriminatory or other personal considerations, subject to criminal sanction (Basic Principle 7). In addition, those using unnecessary, excessive or otherwise unlawful use of force must likewise be held accountable.

In cases where the use of force during assemblies results in death or injury, it must be reported to superior officials immediately (Basic Principle 6). Effective reporting and review procedures must be established (Basic Principle 22) “to address any incident in relation to an assembly during which a potentially unlawful use of force occurs”.⁶⁵ There must be an independent, thorough and effective investigation regarding such incidents to ensure accountability. If the law enforcement officials are found to have resorted to unlawful use of force, they should face civil and/or criminal liability, as well as disciplinary action.⁶⁶ Such investigations should involve all officers from the lowest to the highest in the chain of command, and they should be held responsible for any failings or unlawful orders. In this regard, the UN Basic Principles stipulate that superior officers should be held responsible for their inaction to prevent, suppress, or report the unlawful use of force (Basic Principle 24).

Special Rapporteur on peaceful assembly and association, and Special Rapporteur on extrajudicial executions, U.N. Doc. A/HRC/31/66 (2016)

“States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial. In addition, the procedural component of the right to life requires States to investigate any alleged unlawful or arbitrary killing. The failure of a State to properly investigate suspected unlawful or arbitrary killing is a violation of the right to life itself (A/70/304). Likewise, lack of accountability for violations of the rights to bodily integrity may itself constitute a violation of those rights. Effective investigation includes the following factors: an official investigation initiated by the State; independence from those implicated; capability of determining whether the act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.”⁶⁷

“While police investigations and police internal affairs offices, together with the criminal justice system are essential parts of the system of accountability”, these measures alone “will often be insufficient to meet the state’s international obligation”.⁶⁸ Thus it is considered as good practice to enable external oversight body to investigate at least the most serious incidents, which involve death or serious injury, irrespective of any ongoing criminal investigation.⁶⁹

The authorities should make sure that orders made by superior officers are not admitted as justifiable grounds for their actions when death or serious injury occurs as a result of the manifestly unlawful use of force (Basic Principle 26). In order for this to be possible, any law enforcement official who refuses to obey an unlawful order to resort to the use of force or who reports such use should be exempted from criminal or administrative sanctions for their refusal (Basic Principle 25).

All decisions to use force must be kept on record, and any officers deployed at assemblies must be individually identifiable, either with visible identification number or name tag, to ensure accountability.⁷⁰

LACK OF ACCOUNTABILITY FOR UNLAWFUL USE OF FORCE

In South Korea, the use of force by law enforcement officials is in general governed by the Act on the Performance of Duties by Police Officers.⁷¹ In addition, the Criminal Code⁷² and the Act on the Aggravated Punishment, Etc. of Specific Crimes⁷³ also prescribes criminal sanctions for the arbitrary and otherwise unlawful use of force.

As a State Party to a number of international human rights conventions including the ICCPR, South Korea has an obligation to bring those responsible for the unlawful use of force to justice as “failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant”.⁷⁴ However, in practice law enforcement officials who have resorted to the unlawful use of force in policing assemblies are rarely held accountable partly due to the “difficulty in identifying individual police officers”,⁷⁵ as well as to the lack of an independent investigation process for such allegations. The case of Baek Nam-gi demonstrates the failure of the South Korean authorities to bring those responsible to justice in a timely manner. Almost a year has passed since the incident in which he was fatally injured, but the investigation has been unduly delayed with no one formally indicted so far. It is also regrettable that the investigation by the National Human Rights Commission into this incident has been restricted due to the ongoing criminal investigation.⁷⁶

As pointed out by the Special Rapporteur on peaceful assembly and association, the difficulty of identifying individual officers due to a lack of identification tags is also a cause of concern, as it effectively prevents accountability of officers for the unlawful use of force.⁷⁷

Amnesty International calls upon the South Korean authorities to:

- ensure that an independent, impartial, effective and prompt investigation is conducted when death or injury is caused as a result of the use of force by law enforcement officials;
- ensure that any law enforcement official responsible for the unlawful use of force, as well as their superior officer(s), are brought to justice and subjected to disciplinary action;
- ensure that all law enforcement officials deployed for managing assemblies are clearly and individually identifiable, for example by displaying nametags or identification numbers;
- allow an external oversight body such as the National Human Rights Commission to investigate incidents where death or serious injury result from the use of force by law enforcement officials regardless of any ongoing criminal investigation by amending relevant provisions in the National Human Rights Act.

9. Any use of force during assemblies should be subjected to an effective review process to identify lessons for the future.

Ensuring accountability should not be limited to individual law enforcement officials, but to the law enforcement agencies as a whole. An effective review process should also include an evaluation process to improve the overall function of law enforcement agencies as well as policies and regulations. At a minimum, such a lessons-learned process should be mandatory for any incidents involving death or injury caused by the use of force by law enforcement officials to prevent such casualties in the future. This could improve the functioning of law enforcement agencies as well as relevant policies.⁷⁸

Such a process could also benefit from an independent external oversight body which is capable of influencing broader police policy as it “can often be well-placed to propose reforms directed at having a long-term deterrent effect”.⁷⁹

Amnesty International calls upon the South Korean authorities to:

- ensure that there is a mandatory review process for incidents, where death or injury is caused as a result of use of force by law enforcement officials, to review the entire police operation and to conclude with recommendations, which as a general rule should be binding and which should be implemented in a timely manner, on the changes necessary to prevent repetition of such incidents in the future;
- ensure that the result of such a review process is made public to allow for public scrutiny.

RECOMMENDATIONS

Amnesty International calls upon the South Korean authorities to:

- initiate a comprehensive revision of the ADA bringing it in line with the obligations of South Korea under international human rights law including to specify the role of government authorities as facilitators of the right to peaceful assembly;
- ensure the full enjoyment of the right to freedom of peaceful assembly and in particular, express in law a clear presumption in favour of holding assemblies;
- ensure that the primary purpose of the notification regime is to facilitate peaceful assemblies;
- amend relevant provisions of the ADA including Articles 16(4)(3), 20(1)(5) and 22(3), to ensure that assemblies that are not notified are not subjected to immediate dispersal or criminalization;
- make exceptions for spontaneous assemblies under the current notification regime;
- lift blanket bans of assemblies at specific times and in certain places by amending the relevant provisions in the ADA, including Articles 10 and 11;
- ensure that any restriction that may be imposed is necessary and proportionate to the legitimate purpose on a case-by-case basis and not on the basis of purely abstract considerations formulated in law;
- ensure that assemblies are not pre-emptively banned on the sole ground of ensuring smooth flow of traffic;
- refrain from prosecuting participants and organizers of assemblies on the charges of obstructing the flow of traffic under Article 185 of the Criminal Code;
- ensure that the responsibility of maintaining public order is not placed on organizers/stewards of assemblies, and that they are not held responsible for actions of other participants of assemblies, by amending relevant provisions of the ADA, including Articles 16 and 17;
- ensure that organizers are not subject to criminal or administrative sanctions for the mere act of organizing peaceful assemblies;
- ensure that the overall approach in policing assemblies is to facilitate peaceful assemblies;
- drop the intimidating appearance through deployment of excessive numbers of police officials and visible heavy anti-riot equipment which is likely to increase tension and public anger possibly leading to violence, and instead to adopt a facilitative and supportive approach;
- refrain from using bus barricades in policing assemblies unless there is compelling and demonstrable evidence that those organizing or participating in the assembly will use violence, and that this is a necessary and proportionate measure to contain it;
- refrain from dispersing assemblies simply on the ground that the organizers have failed to comply with notification requirements or are disrupting flow of traffic;
- ensure that any decision to disperse an assembly is only made if this measure is strictly unavoidable and is in line with the principles of necessity and proportionality, and in particular that the law enforcement authorities do not use force to disperse assemblies merely because they are considered unlawful under national law;
- amend Article 20 of the ADA, in accordance with relevant international standards, so that the dispersal of assemblies is only allowed in exceptional situations;
- ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and all law enforcement officials are properly trained accordingly;
- ensure that any use of force by law enforcement officials during assemblies meets the requirements of

necessity and proportionality;

■ revise the existing regulations for the use of water cannons in conformity with international human rights standards, ensuring that water cannons may be used only when violence is so serious and widespread that it is not possible anymore to deal with violent individuals, with clear instructions as regards the pressure and direction in order to prevent excessive harm to any individual, and that they should only be operated by trained personnel; effective control over the use of the water cannon (when and for how long to use, when to stop, distance, degree of pressure, direction of jet) must be ensured at all times to prevent uninvolved persons being hit, excessive harm as a result of too high pressure or too close distance, or hitting particularly vulnerable persons;

■ ensure that an independent, impartial, effective and prompt investigation is conducted when death or injury is caused as a result of the use of force by law enforcement officials;

■ ensure that any law enforcement official responsible for the unlawful use of force, as well as their superior officer(s), are brought to justice and subjected to disciplinary action;

■ ensure that all law enforcement officials deployed for managing assemblies are clearly and individually identifiable, for example by displaying nametags or identification numbers;

■ allow an external oversight body such as the National Human Rights Commission to investigate incidents where death or serious injury result from the use of force by law enforcement officials regardless of any ongoing criminal investigation by amending relevant provisions in the National Human Rights Act;

■ ensure that there is a mandatory review process for incidents, where death or injury is caused as a result of use of force by law enforcement officials, to review the entire police operation and to conclude with recommendations, which as a general rule should be binding and which should be implemented in a timely manner, on the changes necessary to prevent repetition of such incidents in the future;

■ ensure that the result of such a review process is made public to allow for public scrutiny.

ENDNOTE

- ¹ Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, U.N. Doc. A/HRC/32/36/Add.2, 15 Jun. 2016 (Maina Kiai Report on South Korea, Jun. 2016), para 90.
- ² Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27, 21 May 2012 (Maina Kiai Report, May 2012), para 24.
- ³ Christof Heyns and Maina Kiai, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, U.N. Doc. A/HRC/31/66, 4 Feb. 2016 (Joint SR Report, Feb. 2016), para 18. Explanatory Note: Special Rapporteurs are independent experts mandated by the UN to promote human rights and facilitate states' compliance with their obligations under international human rights law. Their mandate is set forth in resolutions adopted by member states of the UN Human Rights Council which explicitly call on UN member states to take their views, guidance and recommendations, which include authoritative interpretations of international human rights law, into account when adopting laws, setting policies and taking or not taking specific actions. They are recognized experts on their matter of competence and as such provide an authoritative source of interpretation of international law.
- ⁴ The Guidelines on Freedom of Peaceful Assembly was produced by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly and the Council of Europe's European Commission for Democracy through Law (Venice Commission) to which South Korea is a member. Furthermore, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association stated in his first report that he considers the OSCE/ODIHR guidelines the most advanced set of good practices available at that time (see Maina Kai Report 2012, footnote 7)
- ⁵ Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/23/39, 24 Apr. 2013 (Maina Kiai Report, Apr. 2013), paras 60, 65, 66.
- ⁶ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para 11.
- ⁷ Act No.13834, 27. Jan. 2016, Partial Amendment.
- ⁸ Maina Kiai Report on South Korea, Jun. 2016, para 21.
- ⁹ Maina Kiai Report, May 2012, para 28.
- ¹⁰ Maina Kiai Report, Apr. 2013, para 54.
- ¹¹ Joint SR Report, Feb. 2016, para 23.
- ¹² Joint SR Report, Feb. 2016, para 23.
- ¹³ Article 21(2) of the Constitution of the Republic of Korea provides that "Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized."
- ¹⁴ Article 6 of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016., Partial Amendment. The requirement of prior notification is only applied to outdoor assembly or demonstration. As the generally accepted definition of an assembly includes demonstration as one form of an assembly, the term "assembly" is used to refer both "assembly" and "demonstration" in this document.
- ¹⁵ Maina Kiai Report on South Korea, Jun. 2016, para 20.
- ¹⁶ Article 16(4)(3) of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016., Partial Amendment.
- ¹⁷ Article 20(1)(5) of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016, Partial Amendment.
- ¹⁸ Article 22(3) of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016, Partial Amendment.
- ¹⁹ Human Rights Committee, General Comment No. 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 2004 (Human Rights Committee, General Comment No. 31, 2004), para 6.
- ²⁰ Maina Kiai Report, May 2012, para 17.
- ²¹ See: Human Rights Committee, General Comment No. 27 Article 12 (Freedom of Movement), U.N. Doc. CCPR/C/21/Rev.1/Add.9, 1999, para 14.
- ²² OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, paras 71, 73.
- ²³ Article 20 of the International Covenant on Civil and Political Rights.
- ²⁴ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para 99.
- ²⁵ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para 45.
- ²⁶ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, 3.5 and para.33; Joint SR Report, Feb. 2016, para 24.
- ²⁷ Joint SR Report, Feb. 2016, para 30.
- ²⁸ 2008 Hun-Ga-25, 24 Sep. 2009; 2010-Hun-Ga-2, 27 Mar 2014.
- ²⁹ On 3rd Jun. 2016, the Korea National Police Agency pre-announced A Bill to amend the Assembly Demonstration Act. (KNPA Notice no. 2016-19). The bill places total ban of any outdoor assemblies from midnight to 7am without allowing any exception. The bill is not yet introduced to the National Assembly as of end of October 2016.
- ³⁰ Maina Kiai Report on South Korea, Jun. 2016, para 30.

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- ³¹ According to the data disclosed by the Korea National Police Agency on 2nd Aug. 2016, following the request for disclosure of information by Amnesty International Korea, total of 846 assemblies were banned from 2012 to end of June 2016. Out of total number of banned assemblies, 401 were banned on the ground of smooth flow of traffic.
- ³² Joint SR Report, Feb. 2016, para 32.
- ³³ Maina Kiai Report, Apr. 2013, para 66.
- ³⁴ Maina Kiai Report on South Korea, Jun. 2016, para 42.
- ³⁵ See OSCE/ODHR *Guidelines on Freedom of Peaceful Assembly* 4.3, 4.4; see also Joint SR Report Feb 2016 para 24.
- ³⁶ Joint SR Report, Feb. 2016, para 26.
- ³⁷ See Joint SR report 2016, para. 49(f).
- ³⁸ Joint SR Report, Feb. 2016, para 26.
- ³⁹ Joint SR Report, Feb. 2016, para 27.
- ⁴⁰ Maina Kiai Report on South Korea, Jun. 2016, para 40.
- ⁴¹ In regard to the use of force in policing assemblies, this document extensively refers to Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, developed by Amnesty International. Amnesty International, The Netherlands, Police and Human Rights Programme, Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Sep. 2015 (Amnesty International Netherlands, Use of Force Guideline, Sep. 2015), https://www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force.pdf . Chapter 7 of those Guidelines deals specifically with the use of force in public assemblies.
- ⁴² Maina Kiai, May 2012, para 25.
- ⁴³ Joint SR Report, Feb. 2016, para 32.
- ⁴⁴ See, Amnesty International Netherlands, *Use of Force Guidelines*, Sept. 2015, Guideline 7 and 7(a),
- ⁴⁵ Amnesty International Netherlands, *Use of Force Guidelines*, Sep. 2015, p150
- ⁴⁶ Joint SR Report, Feb. 2016, para 41.
- ⁴⁷ Amnesty International Netherlands, *Use of Force Guidelines*, Sep. 2015, p151.
- ⁴⁸ Joint SR report 2016 para. 20
- ⁴⁹ Maina Kiai Report on South Korea, Jun. 2016, para 37.
- ⁵⁰ Joint SR Report, Feb. 2016, para 32.
- ⁵¹ Joint SR Report, Feb. 2016, para 61.
- ⁵² Joint SR Report, Feb. 2016, para 61.
- ⁵³ Joint SR Report, Feb. 2016, para 62.
- ⁵⁴ Article 5(1)(2) of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016., Partial Amendment.
- ⁵⁵ Article 20(3) of the Assembly and Demonstration Act, Act No.13834, 27. Jan. 2016., Partial Amendment.
- ⁵⁶ Maina Kiai Report on South Korea, Jun. 2016, para 20.
- ⁵⁷ Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN. doc. A/HRC/26/36, 1 Apr. 2014 (Christof Heyns Report, Apr. 2014), paras 59 – 62.
- ⁵⁸ Christof Heyns Report Apr. 2014, para 66.
- ⁵⁹ See: Amnesty International, Netherlands, *Use of force guidelines* p. 148, 153.
- ⁶⁰ Physicians for Human Rights and International Network of Civil Liberties Organizations, Lethal in disguise: the health consequences of crowd-control weapons, 2016, p59.
- ⁶¹ Amnesty International Netherlands, *Use of Force Guidelines*, Sep. 2015, Chapter 7.4.2.
- ⁶² Act On the Performance of Duties by Police Officers, Act No.13825, 27. Jan. 2016, Partial Amendment.
- ⁶³ Maina Kiai Report on South Korea, Jun. 2016, para 33.
- ⁶⁴ Christof Heyns Report, Apr. 2014, para 23.
- ⁶⁵ Joint SR Report, Feb. 2016, para 64.
- ⁶⁶ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para 182.
- ⁶⁷ Joint SR Report, Feb. 2016, para 90.
- ⁶⁸ Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Study on police oversight mechanisms, U.N. Doc. A/HRC/14/24Add.8, 28 May 2010 (Philip Alston, Study on police oversight mechanisms, May 2010), paras 24, 25.
- ⁶⁹ Amnesty International Netherlands, *Use of Force Guidelines*, Sep. 2015, Chapter 3.4.
- ⁷⁰ Joint SR Report, Feb. 2016, para 65.
- ⁷¹ Act No.13825, 27. Jan. 2016., Partial Amendment.
- ⁷² Article 123 and 125. Act No.14178, 29. May 2016., Partial Amendment.
- ⁷³ Article 4-2(2). Act No.13440, 24. Jul. 2016., Amendment by Other Act.
- ⁷⁴ Human Rights Committee, General Comment No. 31, 2004, para 18.
- ⁷⁵ Maina Kiai Report on South Korea, Jun. 2016, para 43.

⁷⁶ Article 32(1)(5) of the National Human Rights Commission Act (Act No.14028, 3 Feb. 2016, Partial Amendment), provides that the Commission shall reject petition if “[...] the criminal investigation by an investigation agency or the procedures for remedies for infringement of rights under any other Act are in progress or terminated with respect to the fact causing the petition [...].”

⁷⁷ Maina Kiai Report on South Korea, Jun. 2016, para 43.

⁷⁸ Amnesty International Netherlands, Use of Force Guideline, Sep. 2015, Chapters 3.1 and 7.5.


⁷⁹ Philip Alston, Study on police oversight mechanisms, May 2010, para 44.



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FREEDOM OF PEACEFUL ASSEMBLY IN SOUTH KOREA AND INTERNATIONAL HUMAN RIGHTS STANDARDS

While the right to freedom of peaceful assembly is guaranteed in the Constitution of South Korea, other domestic legislation and practice governing assemblies falls short of international human rights law and standards. A burdensome notification process, the absence of a legal provision allowing spontaneous and urgent assemblies, the wide range of options for authorities to entirely ban certain assemblies or to impose far reaching restrictions and placing undue burden on organizers – all these elements in the Assembly and Demonstration Act, as well as excessive use of force during assemblies and lack of accountability for law enforcement officials, as illustrated in the case of Baek Nam-gi, are in contradiction with the obligations of South Korea to facilitate the full enjoyment of the right to freedom of peaceful assembly.

This briefing aims to provide an overview of international human rights standards on the right to freedom of peaceful assembly that are relevant to the situation in South Korea, and calls upon the authorities to take the necessary measures required to ensure the full enjoyment of this right in law and in practice by all people in South Korea.