

The Opinions of Korean NGOs on the National Human Rights Commission of Korea to the ICC-SCA

The National Human Rights Commission of Korea Watch (the NHRCK Watch)

30, June, 2014

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Summary

1. The NHRCK's failing to comply with the Paris Principles

The National Human Rights Commission of Korea (hereafter the NHRCK) did not show many efforts to reflect on itself and implement the recommendations made by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereafter the ICC-SCA) of 2008 and 2014 even after its reaccreditation was deferred in March 2014. Rather it busied itself with making excuses to Korean civil society.

In a press release posted on its official website, the NHRCK explained that the ICC-SCA's deferral of the NHRCK's re-accreditation had no significant meaning as it was merely a result of the ICC-SCA's process to strengthen its accreditation standards. The NHRCK also argued that the implementation of the ICC-SCA's recommendations of 2014 was beyond its mandate as they all require the amendment of the National Human Rights Commission Act (hereafter the NHRCK Act). Moreover, the NHRCK defied the suggestion, saying that there had been no limits or restrictions on its staff members' human rights-related activities, though one staff member was unfairly dismissed while eleven other members faced disciplines in 2011.

In 2008, the ICC-SCA recommended the NHRCK to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations (such as Candle Light Vigils in 2008). However, the NHRCK has continued to show unwillingness or reluctance to investigate to make a decision on major human rights violation cases. Notably, though a number of citizens have been beaten, harassed, or arrested merely because they participated in protests such as marching or holding candle light vigils commemorating hundreds of victims from the ferry sinking incident which occurred on April 16th, 2014, the NHRCK has not issued a single public statement or report regarding the freedom of assembly or freedom of expression. Moreover, it neither investigated nor expressed an opinion about the police's alleged surveillance of the bereaved families. Consequently, human rights advocate organizations submitted a collective petition to the NHRCK to encourage it to take appropriate and necessary action on June 9th, 2014.

One of the reasons why the NHRCK failed to comply with its mandates prescribed in the

NHRCK Act and the Paris Principles is that its independency has been increasingly undermined and inappropriate persons have been appointed as its commissioners since 2008. Many of the commissioners are jurists who have little experience in human rights-related issues and moreover, some have even been involved in bribery scandals or human rights violations, which should make them ineligible to address human rights-related issues.

While the ICC-SCA General Observations 1.2 (human rights mandate) prescribes that all national human rights institutions should be mandated with specific functions to both promote and protect human rights and protection functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling, the NHRCK has frequently ignored human rights violations committed by the Korean government or big companies. Examples include the case of MBC news show 'PD Note' (the detail of the case will be explained later in this report) where the NHRCK disregarded human rights violations of journalists committed by the government, far less advanced than even the court judgment; and the case of 'Jinju Medical Center' (the detail of the case will also be explained later in this report) where the NHRCK's dismissal of the emergency remedy petition resulted in the deaths of dozens of patients.

The NHRCK also fails to fulfil its mandate to function as a national preventive or monitoring mechanism, prescribed in the ICC-SCA General Observations 2.9. While the NHRCK reports to the ICC and participates in the ICC meetings, it hasn't made the ICC recommendations public nor informed to relevant governmental/non-governmental agencies about them. Moreover, the Korean translated version of the ICC recommendations is not posted on the NHRCK's official website.

In addition, many of the NHRCK's meetings handling urgent human rights cases are not open to the public with the results and minutes of the meetings closed, so that it is almost impossible for Korean civil society to know the process unless someone goes to those few open meetings to observe or make a request of information disclosure. As such, the accessibility of civil society and the transparency of the NHRCK's operation are significantly limited. While the National Assembly or Korean Communication Standards Commission make the minutes of their meetings public, the NHRCK conceals the minutes from the public, making the public unable to identify on which grounds the NHRCK commissioners examine and decide complaints. Consequently, the NHRCK has lost its

credibility among human rights advocate organizations.

In response to the NHRCK moving backward, human rights advocate organizations have continuously made efforts including submitting an amendment bill of the NHRCK Act to improve the independency and effectiveness of the NHRCK. However, the NHRCK had not shown any action or submitted any action plan to implement the recommendations of the ICC-SCA since 2008, and only after the deferral of the reaccreditation was made in 2014, the NHRCK made the recommendations to public and held a meeting with civil society in June. However, the majority of civil society organizations resisted taking part in the meeting, in a protest to the NHRCK's insincere and window-dressing cooperation process. In a nutshell, the NHRCK is far from complying with the Paris Principles as shown in 1) the weakening independency, 2) the lack of democracy and transparency in its operation, 3) the inappropriate composition of its commissioners due to the absence of pre-determined appointment procedure, 4) the abandonment of its mandate as a national preventive or monitoring mechanism by disregarding important human rights-related issues, 5) the suppression of human rights defenders such as the dismissal of its staff member and denial of providing electricity and heating to disability rights defenders in a sit-in protest, and 6) the subsequent reduced engagement or cooperation with civil society.

In this regard, the UN Special Rapporteurs including Frank La Rue, the UN Special Rapporteur on Freedom of Expression and Opinion in 2010 and 2011 as well as Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders in 2014 along with international human rights organizations such as Asian Human Rights Commission, Amnesty International, and the Asian NGO Network on National Human Rights Institutions (ANNI) have expressed their concerns since 2008. Meanwhile, the UN Committee on Economic, Social, and Cultural Rights and the UN Committee on the Elimination of Discrimination against Women have expressed concerns regarding the reduction of the NHRCK human resources and the lack of its independency in 2009 and 2011 respectively.

2. Requests of Korean NGOs

○ **The Korean government should stop undermining the independency of the NHRCK and the National Assembly should establish appropriate procedures to assess and appoint the NHRCK commissioners.**

The NHRCK should be the body that the socially disadvantaged can turn to and be a practical body to promote human rights in Korean society. To that end, the NHRCK should be an independent body to prevent and monitor human rights violations committed by the authorities.

○ **The NHRCK Act should be amended in a way to guarantee its independency and transparency as well as establish appropriate procedures to assess and appoint the NHRCK commissioners.**

1) The NHRCK Act should be amended to guarantee its autonomy from the government. In order to provide it independent discretionary authority in its budget and manpower management free from the government, the State Public Officials Act and the National Finance Act should be amended accordingly.

2) Appropriate measures necessary to guarantee independency and diversity of the NHRCK commissioners, such as the establishment of a candidate recommendation committee where the civil society can be fully engaged should be arranged.

3) Without transparency, the NHRCK cannot help but being estranged from civil society. As a public institute, the NHRCK should guarantee the accessibility of citizens by making its meetings, the results, and the minutes of the meetings public.

○ **The NHRCK should investigate and express its opinion immediately on urgent and important human rights issues.**

The NHRCK should proactively deliver international standards or recommendations on important human rights-related issues such as the National Security Act; the freedom of association and assembly; and defamation to the legislative, administrative, and judiciary bodies. Moreover, as Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders recommended in her official state visit report, the NHRCK should maintain a consistent and active attitude toward addressing human rights violations

against citizens protesting against large-scale development projects such as in Miryang and Jeju Island.

Moreover, the NHRCK should comply with international standards on the freedom of expression when handling petitions or expressing opinions on governmental policies related to significant human rights violations against the freedom of expression and in the process of citizens' protest against major national development projects.

○ **The NHRCK should guarantee its investigators work independently as well as provide human rights-sensitive education and training for its members.**

The NHRCK should stop punishing its staff members simply because they have different opinions on human rights-related issues. Moreover, the surveillance on its staff members and abuse of its authority over personnel affairs which inevitably hinder its staff members from independently fulfilling their mandate as a human rights defender should be stopped. As the NHRCK staff members are the ones who actually investigate human rights-related sites and meets victims firsthand, they should be equipped with human rights-sensitivity. Therefore, regular education or a training session on international human rights standards and human rights sensitivity should be provided.

○ **Considering that the NHRCK has failed to fulfil its mandate with weakening independency, the NHRCK should not be re-accredited with status A.**

For the past six years, the NHRCK has retreated in promoting human rights and preventing human rights violations while its independency has been increasingly undermined. If the NHRCK retains status A despite the fact that it lost the confidence of civil society, it will negatively impact not only on domestic human rights situations, but also on the general missions of the NHRIs in the international community. In this regard, the ICC-SCA should degrade the status of the NHRCK to emphasize the fact that its functions as a NHRI have been weakened and to enforce it to refurbish itself, rather than re-accrediting it with status A in comparison with other NHRIs.

1. Why the NHRCK lost the confidence of civil society

The NHRCK was the meaningful outcome of continuous efforts and struggles of civil society. In 1998, the late president Kim Dae-jung promised to establish a national human rights institution in his presidential election campaign. Human rights advocate organizations were really proactive in appealing to the government and the National Assembly to that end, including organizing, "the committee to establish a national human rights institution." In particular, many Korean human rights advocate organizations staged a sit-in hunger strike on streets in order to build an independent national human rights institution, as the government's plan to place a national human rights institution under the control of the Ministry of Justice had a lack of independency. As a result, the National Human Rights Commission of Korea, with at least a certain degree of autonomy, was finally established in 2001.

However, since 2008 when the government began to abuse the fact that the NHRCK is not an "independent institution," which is constitutionally entrenched, the government's attempts to undermine its autonomy have continued and resulted in the NHRCK failing to fulfil its mandate effectively. It led to various negative outcomes: 1) the abandonment of serious human rights violations-related cases due to the lack of independency (the ICC-SCA General Observations 1.2. Human rights mandate and 2.9 NHRIs as National Preventive and National Monitoring Mechanisms) 2) the appointment of unqualified commissioners (the ICC-SCA General Observations 1.7 and 1.8) and 3) the lack of democracy and transparency in the NHRCK's operation. Due to the absence of a pre-determined appointment and assessment process of the NHRCK commissioners, it was not possible to prevent inappropriate persons from being appointed as NHRCK commissioners. Those who have no experience in dealing with human rights issues were often appointed as commissioners, among them, there were sometimes even those who had themselves been accused of human rights violations. With increasing deficits in its independency and autonomy, the NHRCK has failed to exercise its mandated authority in protecting and promoting human rights and functioning as a national preventive or monitoring mechanism. As a result of continuing non-compliance with the Paris Principles, Korean human rights advocate organizations have lost confidence in the NHRCK.

More importantly, the NHRCK committed an unprecedentedly serious human rights violation against disability rights defenders. On December 3rd, 2010 around when the

NHRCK had faced increasing criticism about its lack of independency and autonomy and resulting failures in protecting and promoting human rights, disability rights defenders staged a sit-in protest on the premises of the NHRCK, requesting the resignation of the chairperson Hyun Byung-chul, and the swift resolution of disability rights-related issues. During the sit-in protest, the NHRCK restricted entry of activity assistants for people with disabilities and suspended electric power and heating. As a result, several disability rights defenders in protest got pneumonia and were taken to the hospital in an ambulance. Later, Mr. Woo Dong-min, one of the hospitalized activists died. Such an anti-human rights action of the NHRCK forced the civil society to lose the confidence in the NHRCK. Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders, expressed her concerns about this matter in her report during her official visit to Korea at the UN Human Rights Council in March 2014.

2. The government's policies undermining the NHRCK's independency and autonomy

The former Lee Myung-bak administration (2009~2012) maintained policies to reduce the NHRCK's independency and autonomy from the period of the presidential transition committee in 2008.

The governmental policy resulted in the NHRCK being reluctant to investigate or express its opinions on major governmental policies or human rights-related cases, including cases where the freedom of expression and opinion was infringed. In February 2008, the presidential transition committee attempted to place the NHRCK under the direct control of the president. Faced with fierce domestic and international resistances, including actions by Korean human rights advocate organizations such as street campaigns, sit-in protests, and engagement with the National Assembly, along with and the official protest letter by the Office of the High Commissioner for Human Rights to the Korean government, the government finally withdrew the plan. However, later in December 2008, the government announced the plan to reduce 30% of the NHRCK human resources and close local branches. Human rights advocate organizations organized an ad-hoc committee to stop the attempt to reduce the NHRCK human resources. Its collective campaign successfully stopped the closure of local branches, but failed to stem the reduction of human resources. Consequently, the NHRCK human resources were reduced

by 21%. Furthermore, after Ahn Gyeong-hwan, then chairperson of the NHRCK resigned in a protest to the reduction in 2009, the government appointed inappropriate and unqualified persons as the NHRCK's commissioners, including the present chairperson Hyun Byung-chul, who has no experience in protecting and promoting human rights. Since then, the NHRCK effectively disregarded its mandate as a preventive or monitoring mechanism against human rights violations committed by the authorities.

While the ICC-SCA recommended the NHRCK, "to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations," including the action taken during the candle light vigils in 2008, the NHRCK has continued to ignore serious human rights violations committed by the government authorities or even provide impunity by finding them not consisting of human rights violations (e.g. dismissing the petitions).¹ As its part of efforts to avoid monitoring of civil society, the NHRCK has increasingly made its meetings closed from the public, though the NHRCK Act prescribes that, "the proceedings of the commission shall be made public," in principle. More importantly, the chairperson presided over the proceedings in a very undemocratic way, even unilaterally declaring the adjournment of the meeting to accomplish his intention. Consequently, in November 2010, You Nam-young and Moon Gyeong-ran, then standing commissioners, resigned in protest to the undemocratic operation of the chairperson Hyun and the abandonment of urgent human rights violations by the NHRCK. Meanwhile, human rights advocate organizations staged various campaigns to request the resignation of the chairperson Hyun. In addition, a total of 61 non-standing commissioners, special committee members, and advisory members resigned with the same request. However, the chairperson Hyun neither resigned nor showed self-reflection on the criticism made by civil society.

3. The inappropriate composition of the NHRCK commissioners

(2008~2014) (the ICC-SCA General Observations 1.7))

Article 5 (2) of the NHRCK Act prescribes that commissioners should be appointed, "among persons of whom possess professional knowledge of and experience with human rights matters and have been recognized to be capable of fairly and

¹ At the personnel hearing for the re-appointment of Prof. Hyun Byung-chul as the NHRCK chairperson held by the National Assembly, it was released that Prof. Hyun made unofficial visits to the Blue House some eight times. It demonstrates that the NHRCK was not independent from the government, resulting in its backward decisions on urgent human rights violations. The hearing is documented in the National Assembly record.

independently performing duties for the protection and promotion of human rights.” However, due to the absence of pre-determined process to appoint and assess commissioners, the NHRCK commissioners are, in practice, appointed by arbitrary standards of the person who has the appointive powers. As a result, the position of the NHRCK commissioner has been criticized of being given to those who made a certain contribution to the president or the political parties as a reward. More importantly, some commissioners even had past histories of committing human rights violations or receiving bribes.

In addition, the majority of the commissioners are former jurists (including legal scholars, lawyers, and judges), far from the pluralism. Consequently, there has been an increasing tendency to take practical laws, rather than international standards, as the benchmark to handle human rights-related issues. At present, eight out of eleven commissioners have their backgrounds in the legal field. More seriously, a significant number of the NHRCK commissioners have been former prosecutors who have faced continuous criticism of infringing human rights.

○ The biography of the commissioners as of June, 2014

Name	Biography	Appointed by
Hyun Byung-chul (chairperson)	Dean, College of Law, Hanyang University	The president (the second term)
Kim Young-hye (standing commissioner)	Lawyer Presiding Judge, Seoul Central District Court	The president (the second term)
Yoo Yeong-ha (standing commissioner)	Lawyer Prosecutor, Seoul Central District Attorney's Office, Northern Branch	The Saenuri Party (the ruling party)
Jang Myung- sook (standing commissioner)	Representative of Korea Differently Abled Women United	The Democratic Party (the main opposition party)
Han Tae-sik	Monk Dean, Buddhism School, Dongguk University	The president (the second term)
Yoon Nam-geun	Presiding Judge, Seoul Eastern District Court	The president

	Dean, Korean University School of Law	(the second term)
Kim Sung-young	Reverend President, Sungkyul University	The president
Kwak Ran-joo	Lawyer Prosecutor, Seoul East Regional Prosecutors' Office	The Saenuri Party (the ruling party)
Han Wee-soo	Lawyer Senior Judge, Seoul High Court of Appeals	The Supreme Court
Kang Myeong-deok	Lawyer Director-General of Human Rights Violation Investigation Bureau, the NHRCK	The Democratic Party (the main opposition party)
Lee Seon-ae	Lawyer Judge, Seoul Central District Court	The Supreme Court

Hyun Byung-chul (Chairperson, from July 20th, 2009 - present)

Hyun Byung-chul was a professor emeritus of the College of Law, Hanyang University. He had no knowledge of, or experience with, human rights matters before being appointed as the chairperson. In 2012, when the government decided to reappoint him, civil society organizations, including human rights advocate organizations, fiercely protested against the decision. However, the president pushed ahead with the decision. His unilateral close of a meeting to discuss the content of the opinions to be submitted to the court in relation with the Yongsan Incident², saying, "even though you call me a dictator, I will enforce the closing of the meeting" evoked much criticism. His anti-human rights actions and positions include suspending the operation of elevators, electric power, and heating during the sit-in protest of disability rights defenders.

Hong Jin-pyo (nominated by the then ruling party, from Feb 21st, 2011 to Mar. 6th, 2014)

Hong Jin-pyo was from the New Right movement bloc which is a Korean version of neo-conservatism. He also maintains the position that human rights issues in South Korea are

² The Yongsan Incident refers to the clash between protesters and the police at a building in Yongsan district, Seoul. On January 20, 2009, six people, including a police officer, were killed in a fire during a raid to evict protesters from a building that was going to be redeveloped. The tenants had been protesting against the project.

not serious enough, compared to that of North Korea, while ignoring the significance of humanitarian aids to, and exchanges with, North Korea. Such a position resulted in disregarding South Korean human rights violations.

Moreover, he has been involved in denying the right to the freedom of association for public servants and teachers which international treaty bodies have repeatedly recommended the Korean government recognize. In addition, at the standing committee meeting to discuss recommendations on the 'plan to improve institutions on lay-off' in January 2013, he stood opposed to the positive list approach to urgent managerial needs in order to prevent the lay-off abuses, effectively making the recommendation a mere scrap of paper. At the meeting, he also criticized the NHRCK, saying, "the NHRCK has put too much effort on lay-off issues."

Kim Young-hye (nominated by the president, the second term, from Nov. 15th, 2010 - present)

Kim Young-hye was a presiding judge at Seoul Central District Court and a member of Presidential Council for Future & Vision. In 2010, she defended the former Rep. Cho Jeon-hyeok, who infringed the right to privacy of members of the Korean Teachers & Educational Workers' Union (hereafter the KTU), by releasing its membership list without permission. Moreover, she was one of the standing representatives of a right-wing organization 'National Alliance for the Rule of Law' which was criticized for defending anti-human rights laws and practices by releasing public statements to urge restrictions on the freedom of association and assembly, the freedom of expression and opinion, and labor rights.

Yoo Yeong-ha (nominated by the ruling Saenuri Party, from Mar. 7th, 2014 - present)

Yoo Yeong-ha worked for a long time as a prosecutor, however resigned following a scandal of receiving bribes from a nightclub owner. Moreover, he was strongly criticized by human rights advocate organizations as he pleaded not-guilty for a sexual violence offender and second-victimized the victim by blaming her 'behavior.'

Han Tae-sik (nominated by the president, the second term, from Feb.8th, 2010 - present)

Han Tae-sik was a dean of Buddhism School, Dongguk University and president of the Jungto Academy. At the general meeting in 2011 to discuss the emergency remedy

request for Kim Jin-sook, who was waging a sit-in protest on a crane at the shipyard against the massive lay-off of Hanjin Heavy Industry, he condemned the Hope Bus campaign to visit the protest site as a 'desperation bus' for local citizens, saying "it (the campaign) cannot be said peaceful as it causes local citizens damage with trash. We may consider the matter of survival of Kim Jin-sook, but not other issues as they will undermine the status of the NHRCK," which is clearly against the international standards for human rights defenders. Moreover, he opposed the NHRCK's issuing a public statement on the forceful closure of the Jinju Medical Center and in regard to the forceful eviction of homeless people from the Seoul Main Station, he said, "siding only with the homeless is kind of one-sided. Maybe it would be better to rename the Seoul Station as a homeless center," raising concerns regarding his qualification as a commissioner of the NHRCK.

Kim Yang-won (nominated by the then ruling Grand National Party, from Sep. 10th, 2008 to Sep. 27th, 2011)

Kim Yang-won was the board president of Shinmangae Welfare Foundation for Persons with Disabilities. However, he resigned after he was found to have embezzled 650 million won (about 600,000 USD) of public funds. In addition, at the National Assembly inspection of the NHRCK in October 2008, welfare centers run by the foundation were criticized for encouraging and ignoring human rights violations against the residents: for example, a disabled couple who resided in a center was forced to have a sterilization operation. However, due to the failure of the operation, the wife became pregnant, and the center forced her to have an abortion.

Choi Uni (nominated by the then ruling Grand National Party, from Sep. 4th, 2008 to Jan. 2nd, 2012)

Choi Uni was a prosecutor and a dean of Konkuk University Law School. When she was appointed, human rights advocate organizations strongly protested as she was formerly a widely known prosecutor that specialized in espionage cases and national security violations and had no experience with human rights matters.

Kim Sung-young (from Sep.25th, 2011 - present)

When Kim Sung-young was appointed as the commissioner, he was under the prosecution's investigation on charges of receiving bribes worth about 90 million won

(about 88,000 USD) during his presidency at Sungkyul University. Human rights advocate organizations criticized his appointment for the position that requires the highest standard of integrity and morality. Later, the prosecution dismissed the case by reason of no right of arraignment in November of the same year, and Kim requested the media to delete related news reports on grounds of defamation.

4. The absence of the assessment process for the NHRCK commissioners (the ICC-SCA General Observations 1.7)

Article 5 of the NHRCK Act has no provision to describe through which process the commissioners should be appointed and assessed. It only prescribes who selects and nominates the commissioners: four persons selected by the National Assembly; four persons nominated by the president; and three persons nominated by the Chief Justice of the Supreme Court. As a result, those who have the appointive power often put their close associates on the position, rather than appointing qualified persons.

One positive change was made as the National Assembly Act was amended to expand the scope of high officials subjected to personnel hearings in 2012. Accordingly, the NHRCK Act was amended to have the chairperson undergo personnel hearings held by the National Assembly. However, there remains a limit that regardless of if serious deficits are found during the personnel hearings, there is no way to set back the appointment if the president enforces it. In fact, in 2012 when then president Lee Myung-bak enforced the re-appointment of Hyun Byung-chul as the NHRCK chairperson despite strong opposition by, not only domestic, but also international human rights advocate organizations including Amnesty International and the Asian Human Rights Commission after serious problems were found in relation with his qualifications as the chairperson during the personnel hearing.

Therefore, Korean human rights advocate organizations prepared an amendment bill for the NHRCK Act, providing an appointment and assessment process to guarantee pluralism by creating a candidate recommendation committee which civil society could take part in. On behalf of civil society, the opposition Democratic Party submitted the

amendment bill to the National Assembly.

5. Weakening power of the NHRCK as a major human rights defender

Whether commissioners and staff members of the NHRCK have independency, autonomy, human rights-sensitivity, and experiences with human rights matters is very important in guaranteeing the independency and autonomy of the commission, thereby fulfilling its mandate of functioning as a national preventive mechanism. However, since 2008, the government and the NHRCK have conducted unfair punishments or dismissal of some staff members, in particular, those who had been active in civil society movements.

In this regard, the NHRCK should provide effective functional immunity to the staff members who investigate human rights violations to prevent them from suffering disadvantages. In addition, there has been an increasing tendency among the NHRCK staff members to consider what their supervisors in the commission think of when dealing with human rights matters, rather than international human rights instruments. Subsequently, their human rights- and gender-sensitivity has been undermined. Therefore, the NHRCK should provide relevant education or training to its staff members.

1) Unfair punishment of the NHRCK staff (the ICC-SCA General Observations 2.4)

The NHRCK staff members are human rights defenders investigating urgent human rights issues in the frontline. Therefore, they should have the highest level of human rights sensitivity and knowledge of international human rights standards. Punishing or inspecting them for the actions and decisions that are undertaken in good faith in their official capacity impedes their functions. Since 2008, the government and chairperson Hyun have continued to attempt to intervene in independent investigations and decisions of the NHRCK staff members in urgent human rights cases. As the ICC-SCA repeated to recommend, the "provisions that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the

course of their official duties” should be included in the NHRCK Act.³

○ The members who raised questions on undemocratic operation of the NHRCK were either dismissed or punished.

In July 2011, the NHRCK punished eleven staff members based on Article 63 (Duty to Maintain Dignity) and 66 (Prohibition of Collective Activities) of the State Public Officials Act. The members had held one-man protests in front of the NHRCK building or contributed articles to the media in a protest against the unfair dismissal of Kang In-young, the vice chairperson of the NHRCK labor union in February 2011. The provisions on which the NHRCK punished the staff members have been internationally criticized for excessive restrictions on the freedom of expression and opinion of public officials. The chilling effect of the punishment has effectively impaired human rights defenders’ activities.

Kang In-young, an experienced human rights investigator, had worked for the NHRCK for more than nine years. However, in 2011, the NHRCK refused to renew the two-year contract of Ms. Kang. As the vice chairperson of the NHRCK labor union, she led the issuance of the protest statement criticizing the NHRCK chairperson Hyun’s unilateral closure of the general committee meeting regarding the Yongsan Incident. After the dismissal of Ms. Kang, some staff members held one-man protests relay picketing, “the NHRCK is in its dying bed due to self-righteousness and lack of communication,” and “the NHRCK, transforming from a vegetable commission to a human rights offender” during lunch time in front of the NHRCK building for two weeks. However, the NHRCK claimed there was no illegality in not renewing the contract.⁴

In regards to the punishment of the members, recently their appeal was rejected in the court of appeals and they are preparing to appeal to a higher court soon. In addition, they will file a complaint to the Constitutional Court to review the constitutionality of the provision ‘Duty to Maintain Dignity’ in the State Public Officials Act, as it prohibits public

3 We need to be very careful to interpret the functional immunity provision recommended by the ICC–SCA. The chairperson Hyun was accused of perjury by several lawmakers for his statement at the personnel hearing denying human rights violations against disability rights defenders during their sit-in protest. Functional immunity should not cover inappropriate and anti-human rights actions.

4 The NHRCK has maintained its policy recommendation on the improvement of job insecurity of, and discrimination against, irregular workers since 2005. Moreover it found the one-man protest should be protected under the freedom of expression and opinion in 2010.

officials from enjoying the freedom of expression and opinion as a citizen of the state. Moreover, they are preparing to take individual communication procedures of the UN Committee on Civil and Political Rights and the ILO.

○ **The government created a black list which analyzed the ideological tendencies of the NHRCK members, in particular, of those who were active in civil society movements.**

On April 8th, 2012, it was revealed that the Blue House had sent a black list which analyzed the ideological tendencies of the NHRCK members (saying that some of the members were left-leaning) to the secretary-general of the NHRCK in 2009. This clearly illustrates that the Blue House intervened in the personnel administration of the NHRCK in order to control it.

Among around ten staff members listed, the majority had backgrounds in civil society organizations. Mr. Kim was one of them, and his main activities at the NHRCK were handling the human rights issues in relation with the freedom of assembly, including writing a report on the excessive crackdown of the police during the candle light vigils of 2008. The NHRCK labor union issued a statement suggesting, "there must be some connection between the 'black list' and the dismissal, resignation, or punishment of the staff members after the chairperson Hyun Byung-chul took office," and requesting, "the chairperson should unearth the truth and explain to the members if he is determined to protect the independency and autonomy of the NHRCK."

2) The lack of gender- and human rights-sensitivity of the NHRCK commissioners and the staff (the ICC-SCA General Observations 2.9)

In terms of sexual harassment cases at work, the NHRCK is a critical body to protect the human rights of the victims and determine sexual harassment cases as it has the authority to receive petitions and investigate/address them. In fact, the number of sexual harassment-related petitions was almost 700 (between July 2012 and June 2013), the second largest, next to the disability rights-related petitions. When a case of sexual harassment takes place in a company where gender-based discrimination is prevalent and understanding on sexual harassment is lacking, it is difficult to expect a full resolution. Moreover, victims are often unwilling to report harassment in fear of disadvantages or threats. While victims risk such psychological and physical difficulties to file a petition to the NHRCK, sometimes they become victims of second-victimization or

experience confusions in solving the problem due to the 'high-handed' and 'evasive' attitudes of the NHRCK investigators.

Examples which demonstrate the absence of gender- and human rights-sensitivity among the NHRCK members can be found in cases received by the counseling center of Korean Womenlink. In June 2013, a contract worker submitted a petition of sexual harassment at work to the NHRCK. In consultation with an investigator, she said what she wanted was the sincere apology of the offender. However, the investigator tried to deter her from exercising her rights, saying "how do you know if an apology is sincere or not? I don't understand why victims always want sincere apologies. Isn't it better to ask compensation? I just don't get it. The NHRCK's mandate is limited to recommending human rights education. Requesting a public apology may cause human rights infringement of the offender." Another contract worker who was unfairly dismissed after raising an issue of sexual harassment at work was shocked by the response of the NHRCK investigator when she submitted a petition to the NHRCK in July 2013. She said, "the investigator asked me why I didn't go to the Labor Relations Committee with the unfair dismissal petition and said there is no need to raise the sexual harassment issue. It seemed that the investigator was trying to persuade me to give up rather than helping me. I thought the NHRCK would be on my side, but I was so disappointed by the response."

Such high-handed and evasive reactions of the NHRCK in human rights violation cases including sexual harassment not only discourage the victims, but also force them to give up. The problems in handling cases of sexual harassment at work such as transferring cases to other agencies or blaming victims should be addressed. At the same time, gender- and human rights-sensitivity should be improved immediately. Moreover, the NHRCK should strengthen human rights education and raise awareness across society. Receiving petitions and addressing problems in relation with discrimination and human rights violation is an urgent duty not only for the NHRCK, but also other governmental agencies such as the Ministry of Labor, the prosecution, the police, and the Anti-Corruption and Civil Rights Commission. As many victims experience secondary victimization due to the lack of gender- and human rights-sensitivity, the relevant bodies should improve the gender- and human rights-sensitivity among their employees. In this regard, the NHRCK should place more priorities on education and public awareness regarding human rights of public officials which is one of the duties of the NHRCK.

6. The abandonment of the mandate to handle with urgent human rights matters (the ICC-SCA General Observations 2.9)

By law, the NHRCK has mandates of investigation, remedy, presentation of opinions, and policy recommendation with respect to human rights violations. However, there has been an increasing tendency of abandoning such duties as its independency and autonomy has been undermined. The ICC-SCA General Observations 2.9 (Assessing National Human Rights Institutions as national preventive and national monitoring mechanisms) prescribes that depending on the instrument and the mandate of the national human rights institution, the NHRI should undertake all relevant roles and functions including "monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations."

In this regard, the ICC-SCA recommended the NHRCK "to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations" in 2008. However, the NHRCK has often ignored serious human rights violations committed by the government authorities or big companies, and sometimes even provided impunity by finding them not consisting of human rights violations (e.g. dismissing the petitions) since inappropriate and unqualified persons were appointed as commissioners in 2009.

In particular, during the former Lee Myung-bak administration, the NHRCK voted down in many human rights violation cases related with the freedom of expression and opinion. As there was a significant retreat in freedom of expression and opinion, Frank La Rue, the UN Special Rapporteur on Freedom of Expression and Opinion made an official state visit to Korea in 2010. During his visit, he asked a meeting with the entire commissioners of the NHRCK, however, the chairperson Hyun Byung-chul refused to meet him.

The followings are examples of the recent major human rights violation cases where the NHRCK made retrogressive decisions.

○ **The violation of the freedom of protest and the freedom of expression and opinion taking place during the popular protest in relation with the Sewol ferry**

sinking incident

The Sewol ferry sinking incident of April 16th, 2014 took about 300 lives. Raged citizens took to the streets, asking the government and the responsible to be held accountable. However, the government mobilized the police to crack down the protests. The police blocked the marching citizens with only chrysanthemum and pickets in their hands by force. Many were also arbitrarily arrested. Though Article 21 of the Constitution of Korea clearly describes that "licensing of assembly and association shall not be permitted," the government notified of the prohibition of assembly and association for 61 places nearby the Blue House on June 10th, 2014. Between May 17th and June 10th, more than 300 citizens were arrested and five among them were imprisoned. In addition, many were reported to be wounded during the excessive crackdown of the police. The police restricted the passage of citizens around the National Assembly and the Blue House and even checked up on passers-by who held a yellow ribbon on their chest to commemorate the victims. Moreover, the police was alleged to conduct illegal surveillance of family members of victims of the Sewol tragedy.

In the wake of the Sewol tragedy, the freedom of expression and opinion as well as the freedom of association and assembly has been seriously infringed, however, the NHRCK has not expressed any opinion on the human rights violations, needless to say, not conducting ex officio investigation. Human rights advocate organizations including the NHRCK Watch filed petitions to the NHRCK on June 10th, 2014. As of June 30th, 2014, there has been no action or expression of opinion taken by the NHRCK.

○ The dismissal of the emergency remedy requests for the right to life of patients due to the closure of the Jinju Medical Center in 2013

The governor Hong Jun-pyo of Gyeongsangnam-do (in the southeastern part of Korea) forced the discharge of the patients from the Jinju Medical Center in an attempt to close the center. Korea Health & Medical Workers' Union along with other human rights organizations collectively requested the NHRCK an emergency remedy to stop the closure which might threaten the patients' right to health and to life on March 26th, 2013 and the next day, an investigator from the NHRCK made a field visit accordingly. However, at the standing committee meeting (the standing committee decides on emergency remedies) on April 4th, 2013, the NHRCK dismissed it, claiming that "the coercive discharge of the patients at the Jinju Medical Center doesn't consist of the condition for an emergency remedy."

What is likely to cause irrecoverable damage in Article 48 of the NHRCK Act refers to the

threat to life or to health which are literally irrecoverable after the damage took place. The three patients and five family members of the patients who requested an emergency remedy took all the conditions into account and found there were present and urgent dangers to their health if they were transferred to another hospital or their treatment was stopped. However, the NHRCK held the petition didn't consist of the condition for an emergency remedy and said it would be addressed as a general petition for human rights violation. Meanwhile, the NHRCK decided to provide an emergency remedy when Ssangyong Motors suspended the electric power and drinking water to the striking workers in July 2009.

At long last after the five transferred patients died, the NHRCK acknowledged the human rights violation of the coercive closure of the center on October 22nd, 2013.

In November 2013, Korea Health & Medical Workers' Union cited the documents for the administrative audit submitted by Gyeongsangnam-do and reported that 36 out of 203 inpatients as of February 26 when the plan to close the Jinju Medical Center was announced had died. 13 of 36 dead patients died at the Jinju Medical Center and 23 died after they were forcefully transferred or discharged.

○ The dismissals and postponed proceedings of emergency remedy requests and petitions in relation with the protest against the construction and location of 765kV power transmission tower in Miryang in 2013 and 2014

There have been serious human rights violations against residents who opposed the construction of 765kV power transmission tower in Miryang, committed by the police and the Korea Electric Power Corporation (hereafter KEPCO). KEPCO frequently conducted physical and verbal assaults as well as sexual harassment against protesting residents. KEPCO employees exercised severe violence such as beating a member of the city council and hitting the genital area of a Buddhist nun. Meanwhile, two Miryang residents killed themselves in a protest.

Human rights violations committed by the police include the restriction of the passage, excessive judicial actions, investigations targeting protesters, illegal evidence collection, abuse of public power, infiltration into residents disguised in civil clothes, non-notification of the execution of official duties, prohibition of association and assembly, restriction of visit with a purpose to isolate residents, condemnation of protesters, prohibition of the entry of food, inadequate first-aid medicine and restriction of credible medical care, degrading infringement of personal liberty, and insulting and violent

treatment of residents.

Miryang residents filed a total of five petitions to the NHRCK between November 13th, 2013 and the end of April, 2014. However, most of them were either dismissed or postponed.⁵ Furthermore, it was revealed that the NHRCK didn't bring the emergency remedy request to the standing committee. In fact, after the Jinju Medical Center case, the NHRCK established internal rules to provide individual investigators the authority to decide whether an emergency remedy request is brought to the standing committee or not, which is contrary to the NHRCK Act. In accordance with the rule, the investigator in charge of the Miryang case decided not to address the request for emergency remedy filed by the Citizen's Committee against the Construction of Miryang Power Transmission Tower on October 1st, 2013. In the request, the Citizen's Committee requested 'free entrance of residents to the construction site,' 'entry of food and drinking water,' 'permission to build tents,' and 'admission of medical staff.' Later faced with the criticism after the decision not to address the emergency remedy request was reported by the media, the NHRCK expressed its opinion on the Miryang case as an effort to avoid criticism, while rejecting the petition.

○ **The dismissal of the petition on the discrimination against people with HIV/AIDS at the Sudong Yonsei Sanitarium Hospital**

In Korea, there is no long-term hospital that people with HIV/AIDS can use. Korean medical care system is divided in acute care and long-term care. However, long-term care hospitals reject to admit AIDS patients. It is mainly because of public fear of and prejudice against people with HIV/AIDS. Moreover, it is also restricted by law.⁶ In this regard, the Ministry of Health and Welfare selected the Sudong Yonsei Sanitarium Hospital as the execution organization of the long-term care project for severe/mental-illness AIDS patients and commissioned the project to the hospital in accordance with the Prevention of Acquired Immunodeficiency Syndrome Act from March 2010.

The Sudong Yonsei Sanitarium Hospital shaved head of AIDS patients despite their will, turned off the entire light at 9 pm, forced them to attend worship, monitored their use of telephone, and prohibited them from going out of the premise. 'AIDS' was a taboo

5 In principle, the investigation on a petition should be completed within three months after the petition was received.

6 Article 36 of Enforcement Regulations of the Medical Service Act prescribes that "patients with contagious diseases shall not be hospitalized at the long-term care facility," providing legal grounds for long-term care facilities to reject people with communicable diseases including AIDS patients.

word at the hospital and people with HIV/AIDS were restricted from contacting with other patients. By the end of 2012, the hospital had no caregivers for AIDS patients and those whose health condition was better than others and had received the relevant training commissioned by Korea Centers for Disease Control and Prevention. The hospital forced these fellow caregivers to monitor other patients, clean AIDS patients' ward and clothes and even wash and dress a corpse when person with AIDS died at the hospital. They had to do suctioning or changing the dressing of bed sore which are duties of medical staff. As AIDS patients and caregivers knew the hospital was the only long-term care facility to accept people with HIV/AIDS, they endured human rights violations and discriminations for years.

In August 2013, an AIDS patient in his 30s died 13 days later he was admitted to the hospital. He had an emergency surgery due to tuberculosis peritonitis at a university hospital. After two months of treatment at the university hospital, he was discharged and introduced to the Sudong Yonsei Sanitarium Hospital. When he was admitted to the Sudong Hospital, he informed the hospital that his doctor at the university hospital ordered him to have intravenous hydration treatment for a while. However, the Sudong Hospital rejected his request, saying "if you want to have an intravenous drip, go to another hospital." A few days before his death, he had difficulty in breathing and requested the hospital to transfer him to a university hospital. However, his request was denied again.

On November 15th, 2013, KNP+ (Korea Network for People Living With HIV/AIDS) filed a petition to the NHRCK, urging the Sudon Yonsei Sanitarium Hospital and Korea Centers for Disease Control and Prevention to be held accountable for the discrimination against AIDS patients and for the negligence of the duty to supervise respectively. However, the NHRCK rejected the petition, saying "the facts causing the petition doesn't consist of the condition necessary for special relief measures" on April 24th, 2014. The NHRCK explained that it considered general factors such as "Korea Centers for Disease Control and Prevention conducted an investigation on the conditions of the hospital in December 2013, found it unqualified for the project based on the inspection result, suspended the grant project in 2014, has been identifying other facilities to treat the patients, and has commissioned the supervision authority to Namyangju-si Public Health Center (the main center in the northern Gyeonggi district) which governs the area where the Sudong Hospital is located."

However, neither fact-finding investigation nor discrimination remedy was accomplished.

Moreover, the Ministry of Health & Welfare and Korea Centers for Disease Control & Prevention haven't made any contract with a new sanitarium hospital for AIDS patients even after the commissioning contract with the Sudong Yonsei Hospital was canceled in January 2014. While five inpatients were transferred to National Medical Center, 41 patients are still in the hospital without any follow-up measures. Besides, at present, many AIDS patients have nowhere to turn to after acute care at a general hospital for long-term care. Unless the NHRCK changes its position to step up with proactive actions, patients with HIV/AIDS are at the risk of deprivation of the right to life.

○ **Human rights violation against disability rights defenders (the suspension of electric power and heating)**

On December 3rd, 2010, disability rights defenders staged a sit-in protest in the premise of the NHRCK. The NHRCK stopped the operation of elevators to prevent severely disabled persons from moving, suspended electric power and heating, and restricted the entry of activity assistants. Activity assistants for severely disabled persons were admitted to the sit-in protest site only at meal time. Woo Dong-min, one of the sit-in protesters got acute pneumonia and passed away a meanwhile later.

At the personnel hearing for the reappointment of the chairperson Hyun in 2012, he denied all the above charges, saying that "the NHRCK does not have any access to control the heating system, because the NHRCK has been renting only some parts of the building." However, the document that Rep. Jang Ha-na of the Democratic Party acquired said differently.

According to the document, the building management company confirmed that electric power and heating/cooling can be controlled separately by story. In fact, heating was provided during a previous sit-in protest. Moreover, 'the Regular Internal Audit Report of November 2009' read that the NHRCK assessed its response to a sit-in protest in its premise in the past "inadequate." Measures to respond a sit-in protest in its premise described in its Sit-in Protest Manual include 'the restriction of the entry of accommodations and drinking water, prohibition of the entry of food, and restriction of the use of computer, internet, heating and telephone.'⁷

Nevertheless, when the UN Special Rapporteur on the Situation of Human Rights Defenders expressed her grave concerns over human rights violation against disability

⁷ The Regular Internal Audit Report of November 2009, the NHRCK Sit-in Protest Manual, testimonies of the former NHRCK commissioner Jang Hyang-sook, protesters, and the NHRCK employees

rights defenders committed by the NHRCK in her mission report submitted to the 25th Session of the UN Human Rights Council, the NHRCK reiterated its false argument. Moreover, the NHRCK did not respond to human rights advocate organizations asking for apology.

○ **The rejection of expression of opinion over the violation of the freedom of expression** – the case of MBC <PD Note> prosecuted for defamation

In 2008, <PD Note>, a famous TV news show of Munhwa Broadcasting Corporation (hereafter MBC) reported on the risks of mad cow disease in imported beef from the U.S. Later the prosecution indicted the five staff members of the TV show on charges of spreading false reports, defaming Minister Jeong Woon-chan of Agriculture and Forestry's reputation, and obstructing public official's duties. Charging the media with a crime of defamation against the head of the national agency because the media report criticized the work or policy of a national agency jeopardizes the freedom of the press and functions of constructive criticism of the media. In this regard, the standing commissioners and staff members of the NHRCK prepared to submit the NHRCK's opinion on the case to the court. However, due to the strong opposition from the new chairperson and commissioners appointed by the government in December 2009, the NHRCK failed to express any opinion. The newly appointed commissioners argued that "when there are two parties radically opposing to each other, it is feared that the expression of opinion by the NHRCK which may be interpreted as siding with one party will undermine the neutrality and fairness of the trial." Furthermore, the chairperson Hyun voted down the expression of opinion, while abstaining from expressing his own position.

Meanwhile, Judge Moon Seong-kwan of the Seoul Central District Court found the five defendants not guilty, saying "the reports of <PD Note> hardly consist of false reports." In 2011, the Supreme Court also declared the defendant not guilty, saying "though some part of the report consists of false report, the entire report can be considered to have enough public and social natures positively contributing to raising awareness of the public on the government's food policy."

In 2010, Frank La Rue, the UN Special Rapporteur on Freedom of Expression and Opinion expressed his grave concerns over the violation of the freedom of expression and recommended that "the government should, in line with the global trend, remove defamation as a criminal offence from the Criminal Act, given the existing prohibition of

defamation in the Civil Act. The Special Rapporteur stresses that public officials and bodies should refrain from filing defamation suits, as public office entails public scrutiny as part of checks and balances in any democratic society. He also encourages the Government to promote a culture of tolerance regarding criticism, particularly of public officials and bodies and other influential figures, which is essential for democracy.”⁸

○ **The rejection of the petition regarding the punishment-oriented abortion policy in 2010**

In June 2010, the Korean Womenlink filed a petition to the NHRCK, urging the Ministry of Health & Welfare to be held accountable for “women’s rights violations caused by the punishment-oriented abortion policy.” After postponing the proceeding, the NHRCK rejected the petition, saying “decriminalization of ‘abortion’ can be achieved only by reforming the criminal law. The NHRCK cannot hold the Ministry of Health & Welfare responsible for the fact causing the petition, as the Ministry committed to integrate the concerns in its work for 2011.” However, the UN Committee on the Elimination of Discrimination Against Women recommends every state to decriminalize abortion in its General Recommendation. In this regard, punishing women on charges of having an abortion is a clear violation of women’s rights. Nevertheless, the NHRCK postponed the proceeding and finally rejected the petition.

○ **The NHRCK’s passive attitude towards the personal information protection policy**

Due to the worst-ever leakage of personal information that occurred from the top three Korean credit card companies in January 2014, almost 104 million pieces of personal information were leaked. The leaked personal information included very sensitive kinds of information such as the person’s resident registration number and credit rating, needless to say his/her name. In the background, there is the national policy permitting financial holding companies to share its citizens’ personal information which includes their resident registration number without their consent, with the aim of enhancing the financial holding companies’ competitiveness.

In the wake of the leakage, the NHRCK issued a statement urging the strengthened protection of personal information. However, the commission maintained a passive attitude towards expressing its opinion regarding the institutional reform. Most of all, the

8 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/34/PDF/G1112134.pdf?OpenElement>

NHRCK refrained from expanding the scope of the purpose of personal information sharing that requires the consent of the person beyond the purpose of marketing. Moreover, during the debate regarding the expression of opinion, some commissioners defended financial holding companies sharing personal information for different purposes without consent.

7. The lack of transparency and democracy in the NHRCK operation

Article 14 of the NHRCK Act prescribes that “the proceedings of the Commission shall be made public.” However, the NHRCK has many of its proceedings and the results of the meeting closed to the public, by abusing the clause that “provided that they may not be made public if deemed necessary by the Commission, Standing Commissioners Committee or subcommittees,” which are arbitrary standards. The NHRCK often kept the proceedings concerning public issues, such as the National Action Plan on human rights or the freedom of expression-related cases, closed to the public. Therefore, human rights advocate organizations suggested an amendment bill of the NHRCK Act to limit the provisory clause to only instances where the privacy of petitioners will be at urgent risk of exposure.

Furthermore, names of commissioners are deleted when the minutes are made public, in particular, even when submitting them to the National Assembly. Therefore, it is almost impossible to know through which process the decisions on certain human rights matters were concluded, and who delivered comments contrary to international human rights standards, unless someone goes to those few open meetings to observe or make a request of information disclosure. Certainly, it is very undemocratic management. While other public organizations, such as the National Assembly and Korean Communication Standards Commission, make the minutes of their meetings public with the names of lawmakers or commissioners of speeches, only the NHRCK keeps the minutes closed from the public.⁹ In this regard, the NHRCK should make the entire proceedings,

⁹ There is no mechanism with which the civil society can monitor and control undemocratic management and/or anti-human rights comments of the chairperson Hyun. For example, the chairperson’s action to unilaterally close the general committee meeting, saying “even though you call me a dictator, I will enforce the closing of the meeting” in 2009 was only officially revealed after the recordings of the meeting were made public at the personnel hearing of the chairperson in 2012.

including the names of commissioners, public, in full compliance with the NHRCK Act.

8. Recommendations on the NHRCK from international treaty bodies, special procedures, and NGOs

Since 2008, a number of international treaty bodies including the ICC-SCA and the UN special rapporteurs, repeated their concerns on the weakening independency, autonomy, and effectiveness of the NHRCK.

1) Recommendations from the UN human rights bodies and other international treaty bodies

○ The ICC-SCA

At the SCA Session in November 2008, the ICC-SCA made recommendations while re-accrediting the NHRCK with status A.¹⁰ First of all, the ICC-SCA noted that "the NHRCK is considered as a 'central government institution' under the National Fiscal Act and as such does not enjoy complete functional autonomy from the government. This is in contrast to 'independent institutions,' which are constitutionally entrenched." Second, it recommended the NHRCK "the adoption of procedures that ensure a broad and transparent appointment process," noting "under article 5 of the founding act, the process of appointing commissioners, on nomination from the president, the National Assembly or the Chief Justice of the Supreme Court, does not provide for formal public consultation in the recruitment and scrutiny of candidates nor for the participation of civil society." Third, it encouraged the NHRCK "to consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations," such as the action taken during the candle light vigils of 2008. Last, the ICC-SCA stressed "the need for the NHRCK to have more autonomy to appoint its own staff," and expressed its concern about "the recent proposal to place the Commission directly under the Office of the President and subsequent interventions in the Commission's financial and administrative affairs."

¹⁰ http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2008_November%20SCA%20Report.pdf

○ The UN Special Rapporteurs

The UN Special Rapporteurs also concerned on the shrinking independency, autonomy, and effectiveness of the NHRCK.

Frank La Rue, the UN Special Rapporteur on Freedom of Expression and Opinion, visited Korea from May 6th to 17th, 2010 and submitted his report to the 17th Session of the UN Human Rights Council in March, 2011.¹¹ In this report, he regretted that “despite numerous requests, he was unable to meet collectively with the commissioners of the NHRCK,” and commended “the work of the NHRCK, particularly in finding a violation in over a dozen cases related to freedom of opinion and expression and freedom of assembly between 2004 and 2010. Given its crucial role to promote and protect the right to freedom of opinion and expression, he encourages the Government to fully implement the recommendations issued by the NHRCK, and to give effect to the recommendations made by the SCA to ensure complete functional autonomy from the Government, a broad and transparent appointment process, and more autonomy to appoint its own staff.”

Margaret Sekaggya, the Special Rapporteur on the situation of human rights defenders who visited Korea from May 29th to June 7th, 2013, expressed her concerns over the NHRCK while recognizing that “the NHRCK has played a key role in the consolidation of democracy in the Republic of Korea and the establishment of a solid human rights institutional framework.” She said “the NHRCK has lost the confidence of certain national stakeholders in recent years, including some groups of defenders,” and urged the NHRCK “to do its utmost to regain the confidence of human rights defenders and be a strong, independent institution capable of credible and impartial scrutiny of the State’s human rights obligations.” Specifically, she recommended the Korean government to “ensure the full independence and effectiveness of the NHRCK, including by amending existing provisions to allow for public participation in the nomination and appointment process of Commissioners and to grant the Commission full autonomy in selecting its own staff” and the NHRCK to “implement the recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions in order to strengthen its independence and effectiveness; raise awareness about the existence of a focal point for defenders within the Commission and ensure

11 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/34/PDF/G1112134.pdf?OpenElement>

that the views of defenders are taken into account; ensure timely interventions, responsiveness and accessibility of the institution to all citizens and actively engage with all groups of human rights defenders; and remain seized of such situations as those in Miryang and Jeju Island.”

2) International human rights advocate organizations: ANNI, the Asian Human Rights Commission, and Amnesty International

International human rights advocate organizations also have repeatedly recommended the NHRCK should improve its independence, autonomy, and effectiveness. The Asian NGO Network on NHRIs (hereafter ANNI) issued a report on the ANNI delegation’s mission to the NHRCK from May 11th to 13th, 2011.¹² The ANNI delegation reiterated its extreme concern over “the controversies enveloping the NHRCK and the consequences for the integrity and reputation of the Commission, both nationally and internationally, as well as the larger protection and promotion of human rights in South Korea.” The delegation urged: 1) the amendment of the enabling law of the NHRCK to ensure selection of Commissioners based upon human rights expertise, following consultation with civil society and the recruitment of staff based upon their human rights consciousness, 2) concrete and time-bound measures towards the independence and effectiveness of the NHRCK for e.g. through amendment of Article 18 of the NHRCK Act that enables organizational restructuring of the Commission by presidential decree, 3) the NHRCK to respond to human rights violations in a timely manner and through public statements, in line with international human rights norms and standards, 4) the entrenchment of democratic and participatory practices within the NHRCK through structured and informed consultation with all Commissioners and staff, and full transparency of decision-making processes, and 5) the NHRCK to guarantee the rights of its own staff, including their freedom of association, assembly and expression.

The Asian Human Rights Commission (hereafter AHRC) has also reiterated its concerns over the independency and effectiveness of the NHRCK through its statements, open letters and petitions since 2008. In particular, AHRC sent the public letter to the ICC-SCA, suggesting “as the NHRCK no longer complies with the Paris Principles, its status must

12 <http://nhriwatch.wordpress.com/2011/05/25/anni-delegation-concludes-mission-on-the-national-human-rights-commission-of-korea-nhrck/>

be downgraded” in 2009¹³ and again in 2011, requesting a “special review of the NHRCK’s status.”¹⁴

In 2008, Amnesty International sent an open letter to the President of South Korea, criticizing President-elect Lee Myung-bak’s plan to change the status of the NHRCK from an independent body and place it under the Presidential Office as “a setback for the promotion and protection of human rights in South Korea.”¹⁵ The organization, in its press release in March 2009, urged the Korean government to reconsider the plan to significantly re-organize and cut the staff of the NHRCK, criticizing that it would “jeopardise the Commission’s effectiveness and independence.”¹⁶ Moreover, in 2011, Amnesty International pointed out that the transparent and fair appointment process of the commissioners is critical for “an independent and fully empowered national human rights institution which enjoys the trust and confidence of civil society, particularly the local human rights community” to play “a vital role in the promotion and protection of human rights in South Korea,” while welcoming the 10th anniversary of the NHRCK.¹⁷ The organization also expressed its concerns over the proposed re-appointment of the NHRCK chairperson in 2012, urging the Korean government “to ensure that members of the NHRCK are appointed through a transparent process and in consultation with civil society groups and other relevant stakeholders, and that those appointed have relevant human rights-based knowledge and expertise.”¹⁸

9. The efforts of Korean civil society to improve the independency

13 <http://www.humanrights.asia/news/ahrc-news/AHRC-OLT-020-2009/?searchterm=NHRCK>

14 <http://www.humanrights.asia/news/forwarded-news/AHRC-FUA-011-2011/?searchterm=NHRCK>

15 <http://www.amnesty.org/en/library/asset/ASA25/001/2008/en/ba9bbd1a-c5ea-11dc-9af1-b1d22f3b300e/asa250012008eng.html>

16 <http://www.amnesty.org/en/for-media/press-releases/south-korea-cabinet-should-reject-proposed-cuts-national-human-rights-co>

17 <http://www.amnesty.org/en/library/asset/ASA25/016/2011/en/bd5e93f7-4a68-43c0-afa8-7e1498691434/asa250162011en.html>

18 <http://www.amnesty.org/en/library/asset/ASA25/003/2012/en/35b5a3c0-ddaa-4eb0-883d-1c8bd56922b0/asa250032012en.html>

and effectiveness of the NHRCK

1) Consistent monitoring

Korean human rights advocate organizations established a network, the NHRCK Watch during the struggle to stem the government's attempt to reduce the NHRCK's human resources in 2009. Since then, the NHRCK Watch has regularly monitored the NHRCK proceedings and decisions and raised questions over the lack of transparency of its management and independence in its activities.

Since 2010, human rights groups had consulted with jurists to establish an institutional improvement scheme to ensure the NHRCK fulfills its mandates. As a result, in November 2013, Rep. Jang Ha-na of the Democratic Party submitted an amendment bill of the NHRCK Act on behalf of the concerned civil society. The bill has provisions to guarantee the independency of the NHRCK, establish a fair and transparent appointment process of commissioners, limit reasons to dismiss petitions, and enhance transparency in its management.

2) The submission of an amendment bill of the NHRCK Act

After years of discussion and consultation, human rights advocate organizations submitted the amendment bill of the NHRCK Act through Rep. Jang Ha-na of the Democratic Party in 2013. The bill has provisions to guarantee the independency of the NHRCK (in managing human resources and budget, and rule-making), the transparency and democratic operation (making the meetings and the minutes public and reduction of reasons for information concealment), the enhancement of the commission's function to provide remedies for human rights violation (the reduction of reasons for dismissal), and establishment of selection and assessment procedures for commissioners (the organization of a candidate recommendation committee with participation of civil society).

○ The enhancement of the NHRCK's independence

The Korean government has lessened the independence of the NHRCK ever since the former Lee Myung-bak administration. Given that the NHRCK is not an independent constitutional body¹⁹ and that it is considered as a 'central government institution' under

¹⁹ Independent constitutional bodies include the National Assembly, the Court, the Constitutional Court and the National Election Commission. The Board of Audit and Inspection under the Presidential Office is not an independent constitutional body,

the National Fiscal Act, the government has effective power over the NHRCK. Examples include the 21% reduction of its human resources and the dismissal of its staff. As constitutional reform is unlikely at present, the amendment bill suggested including the provision to ensure its independence in the NHRCK Act, such as the Board of Audit and Inspection Act, listing the NHRCK as an independent body in the National Fiscal Act, and revising the relevant provisions of the State Public Officials' Act.

Moreover, as Article 18 of the NHRCK Act prescribes "matters necessary for the organization of the Commission shall be prescribed by Presidential Decree," the NHRCK cannot be free from the government. Therefore, the NHRCK should have the authority to make regulations like the Court and the Board of Audit and Inspection. In addition, human rights groups suggested revising Article 16 of the NHRCK to ensure the NHRCK has the authority to appoint its own staff, so that the NHRCK members will no longer be afraid of disadvantages, such as dismissal, due to expressing opinions contrary to that of the government.

○ **The enhancement of the NHRCK's functions for remedies – the reduction of reasons to reject petitions**

In recent years, the NHRCK has mainly referred to the rejection of petition provision or the provisory clauses, in avoiding urgent human rights matters or providing impunity. Therefore, human rights groups suggested limiting the scope for rejection of petition in order to prevent such abuses and enhance its functions of remedy. The amendment bill revised Article 32 (1) 4. "in the case a petition is filed after one or more years have elapsed since the facts causing the petition occurred..." to "in the case a petition is filed after three or more years have elapsed since the facts causing the petition occurred..." and it also deleted the provisory clause of Article 32 (1) 7 "in the case the Commission deems it inappropriate to investigate a petition."

10. Requests of Korean NGOs: recommendations

○ **The Korean government should stop undermining the independency of the**

however, it enjoys judicial independence.

NHRCK and the National Assembly should establish appropriate procedures to assess and appoint the NHRCK commissioners.

The NHRCK should be the body that the socially disadvantaged can turn to and be a practical body to promote human rights in Korean society. To that end, the NHRCK should be an independent body to prevent and monitor human rights violations committed by the authorities.

○ **The NHRCK Act should be amended in a way to guarantee its independency and transparency as well as establish appropriate procedures to assess and appoint the NHRCK commissioners.**

1) The NHRCK Act should be amended to guarantee its autonomy from the government. In order to provide it independent discretionary authority in its budget and manpower management free from the government, the State Public Officials Act and the National Finance Act should be amended accordingly.

2) Appropriate measures necessary to guarantee independency and diversity of the NHRCK commissioners, such as the establishment of a candidate recommendation committee where the civil society can be fully engaged should be arranged.

3) Without transparency, the NHRCK cannot help but being estranged from civil society. As a public institute, the NHRCK should guarantee the accessibility of citizens by making its meetings, the results, and the minutes of the meetings public.

○ **The NHRCK should investigate and express its opinion immediately on urgent and important human rights issues.**

The NHRCK should proactively deliver international standards or recommendations on important human rights-related issues such as the National Security Act; the freedom of association and assembly; and defamation to the legislative, administrative, and judiciary bodies. Moreover, as Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders recommended in her official state visit report, the NHRCK should maintain a consistent and active attitude toward addressing human rights violations against citizens protesting against large-scale development projects such as in Miryang

and Jeju Island.

Moreover, the NHRCK should comply with international standards on the freedom of expression when handling petitions or expressing opinions on governmental policies related to significant human rights violations against the freedom of expression and in the process of citizens' protest against major national development projects.

○ The NHRCK should guarantee its investigators work independently as well as provide human rights-sensitive education and training for its members.

The NHRCK should stop punishing its staff members simply because they have different opinions on human rights-related issues. Moreover, the surveillance on its staff members and abuse of its authority over personnel affairs which inevitably hinder its staff members from independently fulfilling their mandate as a human rights defender should be stopped. As the NHRCK staff members are the ones who actually investigate human rights-related sites and meets victims firsthand, they should be equipped with human rights-sensitivity. Therefore, regular education or a training session on international human rights standards and human rights sensitivity should be provided.

○ Considering that the NHRCK has failed to fulfil its mandate with weakening independency, the NHRCK should not be re-accredited with status A.

For the past six years, the NHRCK has retreated in promoting human rights and preventing human rights violations while its independency has been increasingly undermined. If the NHRCK retains status A despite the fact that it lost the confidence of civil society, it will negatively impact not only on domestic human rights situations, but also on the general missions of the NHRIs in the international community. In this regard, the ICC-SCA should degrade the status of the NHRCK to emphasize the fact that its functions as a NHRI have been weakened and to enforce it to refurbish itself, rather than re-accrediting it with status A in comparison with other NHRIs.

The NHRCK-Watch (86 Korean NGOs joint network)

Women's Association, Gwangju Women's Association United, Korean House for International

Solidarity (KHIS), Disability Discrimination Act of Solidarity in Korea, Center for Military Human Rights, Korea Association of Christian Women for Women Minjung, Dasan Human Rights Center, Daegu Kyoungbuk Women's Association United, Daegu Women's Association, Disabled People's International Daegu (DPI Daegu), Daejeon Women's Association for Democracy, Democratic Workers' Solidarity, Minbyun—Lawyers for a Democratic Society, Democratic Legal Studies Association, Busan Counseling Center against Sexual Violence, Busan Women's Associations United, Busan Women Education Center, Buddhism Human Rights Committee, Saewoomtuh, National Solidarity for Solving Prostitution Issues, Suwon Women's Association, Korea Women's Center for Social Research, Ulsan Women's Association, Ulsan Solidarity for Human Rights, Korea Center for United Nations Human Rights Policy, Human Rights Education Center 'Deul', Protesting against Poverty & Discrimination Solidarity for Human Rights, Sarangbang Group for Human Rights, Disability and Human Rights in Action, Information & Culture Nuri for Disabled Koreans (South Korea), Solidarity against Disability Discrimination, Jeonbuk Women's Associations United, Solidarity for Peace & Human Rights, Jeju Women's Association, Jeju Women's Human Rights Solidarity, Jeju Human Rights Center, Korean Progressive Network Jinbonet, National Association of Parents for Cham Education, Korean Catholic Women's Community for a New World, Catholic Human Rights Committee, Youth Human Rights Action Asunaro, Network of Youth Human Right Activists, Chungbuk Women's Association, Women Making Peace, Pohang Women's Association, Korean Gay Men's Human Rights Group Chingusai, Korea Sexual Violence Relief Center, Korean Women Workers Association, Korean Women's Association United, Korean Womenlink, Korea Women's Studies Institute, Korea Women's Hotline, Korean Differently Abled Women United, Women Migrants Human Rights Center, Korea Human Rights Foundation, Housewives Meeting Together Hamjumo, etc.

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