

# **The Stakeholder Opinion of Korean Civil Society Regarding the ICC-SCA**

## **Review of the NHRCK in May 2016**

### **Introduction**

First of all, we, Korean civil society organizations, would like to express our sincere gratitude to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (hereafter the ICC) for your commitment and contributions to the promotion and protection of human rights across the world.

National human rights institutions are certainly the most authoritative and effective body in preventing human rights violations, providing remedies for the victims, holding those responsible accountable, and promoting and protecting human rights. Since its establishment in 2001, the National Human Rights Commission of Korea (hereafter the NHRCK) has also been significantly contributing to the promotion of human rights in Korea and was once recognized as having one of the best practices in Asia and the entire international community. However, there have been increasing concerns over its independence and effectiveness since the inauguration of former chairperson Hyun Byung-chul in 2008 and consequently, the reaccreditation of the NHRCK was deferred by the ICC's Subcommittee of Accreditation (hereafter the ICC-SCA) three times in a row in March and October 2014, and March 2015. These three consecutive deferrals were unprecedented in the ICC-SCA's history. Each time the same concerns were cited as the grounds for deferral: the lack of diversity in its commissioners' composition; the lack of transparency in selecting and appointing commissioners without the full participation of civil society guaranteed; and the absence of functional immunity for its members. The ICC-SCA even reiterated its recommendations to address these concerns by amending its enabling law.

The NHRCK is to receive its fourth review at the ICC-SCA in May 2016. The NHRCK and the Korean

government have conducted various efforts to implement the ICC-SCA recommendations by amending the NHRCK Act. However, Korean civil society organizations see the measures and actions that the NHRCK and the Korean government took as being far from having achieved full implementation of the recommendations. All of the newly appointed commissioners; including the current chairperson Lee Sung-ho, who took office in August 2015, since the ICC-SCA's first deferral of the NHRCK's reaccreditation in March 2014, have failed to meet the ICC's recommendations in regards to transparency, diversity, and the guaranteed participation of civil society. The amendment bill of the NHRCK Act, which passed the National Assembly on January 8, 2016, does not provide functional immunity for its commissioners and staff to conduct investigations and/or make independent decisions free from outside pressure. The NHRCK remains very poor in responding to the most urgent and critical human rights issues in Korea such as violations against the freedom of association and assembly, as well as human rights violations and discriminatory acts against people with disabilities and/or sexual minorities.

Regarding the ICC-SCA's upcoming review of the NHRCK's reaccreditation in May 2016, Korean civil society organizations wish to deliver our continuing concerns about the NHRCK as follows. We hope the next ICC-SCA session will provide an opportunity to fully discuss and address these concerns of Korean civil society regarding the NHRCK and subsequently to encourage the NHRCK to become a genuine human rights mechanism contributing to the protection and promotion of human rights not only in Korea but also around the world.

**The selection process of commissioners has failed to achieve any improvement for the last two years after its reaccreditation deferral**

The concerns over the poor selection process of the NHRCK's commissioners, including that of the chairperson Lee Sung-ho who took office on August 13, 2015, have been subject to consistent

criticism both within and outside of Korea even to the point of being singled out at the Concluding observations in the fourth periodic report of the Republic of Korea issued by the International Covenant on Civil and Political Rights on November 6, 2015.<sup>1</sup> The concluding observation recommended "The State party should adopt the legislation necessary to ensure a fully transparent and participatory process for the selection and appointment of members to the National Human Rights Commission of Korea at all stages of the process, to establish an independent committee to nominate candidates, and to guarantee the independence of the members of the Commission."

Since the ICC-SCA first deferred its decision of re-accrediting the NHRCK in March 2014, there have been six commissioners who were newly appointed, reappointed, or remained in office. However, not a single commissioner was appointed in compliance with the ICC-SCA recommendations regarding their selection and appointment.

The entire process of the nomination and appointment of commissioner Choi E-woo, who was first appointed as a non-standing commissioner after the ICC-SCA's deferral (appointed by the President on Nov. 3, 2014), was done behind closed doors. Moreover, his qualification as a human rights commissioner was severely challenged as he was well-known for his position against the guaranteeing of sexual minority groups' human rights by publicly resisting the enactment of an anti-discrimination act. Non-standing commissioner Lee Eun-kyung (appointed by the National Assembly-the ruling Saenuri Party on Feb. 5, 2015) and standing commissioner Lee Kyung-sook (appointed by the National Assembly-the leading opposition Minjoo Party of Korea on Mar. 16, 2015) were also selected and appointed without any process guaranteeing the participation of civil society such as the establishment of an independent committee to nominate candidates. More importantly, commissioner Lee Eun-kyung's appointment raised strong resistance from human rights defenders of sexual minorities as she had no professional knowledge of and/or experience with human rights matters, and; moreover, served as a deacon of a conservative church which has been

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<sup>1</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KOR/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KOR/CO/4&Lang=En)

at the forefront of questioning the human rights of sexual minority groups and opposing an anti-discrimination act. She has been under constant suspicion of abusing her authority as a commissioner to prevent petitions related with sexual minority groups' human rights from achieving positive decisions or remedies.

In March 2015, the ICC-SCA decided to defer the review of the NHRCK for the third time in a row, specifically awaiting the selection process of the NHRCK's new chairperson. It encouraged the NHRCK to, "publicize vacancies broadly, maximize the number of potential candidates from a wide range of societal groups and educational qualifications, promote broad consultation and/or participation in the application, screening and selection process, and assess applicants on the basis of pre-determined, objective and publicly-available criteria." However, the selection of chairperson Lee Sung-ho, who was nominated on July 20, 2015, passed the National Assembly's personal hearing on August 11, 2015 and took office on August 13, 2015, was done completely behind closed doors. Among the four requirements recommended by the ICC-SCA, none, other than a public announcement of the vacancy made on the official website of the NHRCK, was implemented. Moreover, chairperson Lee's qualifications were also questioned as he had no direct experience with human rights matters though he had served as a long standing judge.

When, the then candidate, Lee Sung-ho was asked about his own selection process at his personal hearing before the National Assembly, he said, "It is difficult to revoke the decision already made." He further added his commitment to improving the selection and appointment process of the NHRCK commissioners, by saying, "If I take office, I will work for the establishment of appropriate selection process guaranteeing the compliance with international standards as well as the independence and diversity of commissioners. I will prepare an amendment bill for the NHRCK Act providing such selection process and make sure the NHRCK be reaccredited its "A" status at the next ICC-SCA review."<sup>2</sup> However, there was no improvement in the selection process.

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<sup>2</sup> [http://www.hani.co.kr/arti/politics/politics\\_general/704036.html](http://www.hani.co.kr/arti/politics/politics_general/704036.html)

There were two other positions whose term ended around the same time Lee was appointed as the new chairperson. Commissioner Han Wee-soo (appointed by the Supreme Court) was reappointed one day before the personal hearing for the new chairperson without any participatory process.<sup>3</sup> In addition, commissioner Kang Myeong-deok (appointed by the National Assembly-the Minjoo Party of Korea) remains at the position for more than five months now even though his term was officially over on August 12, 2015, after the candidate nominated by an independent committee with the participation of civil society was rejected by the National Assembly. It clearly demonstrates that all of the appointing bodies – the President, the National Assembly, the Supreme Court- as well as the NHRCK have failed to fulfill their responsibilities. It is also in violation of the NHRCK Act which prescribes that a successor should be appointed within 30 days of the date of a vacancy.<sup>4</sup> Moreover, standing commissioner Yoo Yeong-ha (appointed by the National Assembly-the Saenuri Party) resigned on January 12, 2016 with the aim of running for the general election even though his term is due to last until next year as he took office in March 2014.

### **The Amendment of the NHRCK Act, far from ensuring diversity and transparency in the selection of the NHRCK members**

The amendment bill of the NHRCK Act, prepared by the NHRCK and motioned by the government on October 7, 2015, passed the National Assembly on January 8, 2016. The NHRCK issued a press

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<sup>3</sup> The roundtable for the transparent selection process of the chairperson of the NHRCK, Statement, "We condemn the reappointment of commissioner Han Wee-soo again behind closed doors." Aug. 10, 2015.

<sup>4</sup> Article 7 (Term of Office of Chairperson and Commissioners) (2) of the NHRCK Act states, "in the event the position of a commissioner is vacated, the President of the Republic of Korea shall appoint a successor within 30 days of the date of such vacancy." However, the NHRCK and the President are abandoning their obligation by abusing the provision of Article 5 (6) of the same Act, "In the event the term of office of a commissioner expires, he/she shall continuously perform his/her duties until his/her successor is appointed."

release, saying, "The passage will be positive for the next ICC-SCA review as the bill reflected the ICC recommendations."<sup>5</sup> However, when reviewing the content of the amendment, we cannot help but observe that it fails to ensure either diversity or transparency in the selection of the NHRCK members and can even go so far as to question whether either the NHRCK or the government understand the ICC recommendations.<sup>6</sup>

First of all, the amendment limits the qualifications for a commissioner to those who have a minimum 10 years of career teaching in a university as a professor, working in the legal profession, or participating in the human rights field. Restricting the qualifications for commissioners to specific job categories, such as being a professor or in the legal profession, goes directly against the ICC recommendation on expanding the diversity of its commissioners' composition, especially given the fact that it has been criticized for the lack of diversity and plurality as seven of the eleven commissioners, including the chairperson, come from legal backgrounds. Moreover, regarding the requirement of human rights advocate career, the amendment restricts the qualification to only those who have worked at a registered non-profit organization, legal entity, or international organization; thereby depriving a number of human rights defenders and citizens with work experience at different organization types of the opportunity to be selected as a commissioner. This is nothing less than the NHRCK Act restricting the right to equality.

Second, though the ICC recommended that the cooperation with and participation of civil society should be guaranteed in the selection process, the amendment bill which passed the National Assembly only provides that, "The National Assembly, the President, or the Chief Justice of the Supreme Court shall nominate and appoint a commissioner after having diverse social groups

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<sup>5</sup> NHRCK Press release, "The passage of the amendment bill of the NHRCK Act at the National Assembly enhances the possibility of its reaccreditation at the ICC-SCA's first session in 2016." Jan. 8, 2016.

<sup>6</sup> The NHRCK Watch, statement, "The amendment bill is a complete sham, pushing the NHRCK which is already on the verge of degrading off a cliff." Jan. 9, 2016.

nominate candidates or deliver their opinions in order to ensure diverse social groups related with the promotion and protection of human rights to be represented.”<sup>7</sup> It does not articulate a transparent selection process with criteria on which candidates are assessed, inevitably resulting in commissioners appointed by the arbitrary decision of the appointing body. In other words, the repeatedly criticized practices of appointing those who had somehow contributed to the appointing body for a commissioner as a kind of payback behind closed doors are likely to continue. Moreover, it is clear that the amendment failed to establish a legally binding process of receiving recommendations or opinions on candidates even after the “Guidelines for the Principle and Procedure of Selection and Appointment of the NHRCK Commissioners” which was prepared by the NHRCK and delivered to the three appointing bodies of the National Assembly, the President, and the Supreme Court were confirmed not to be implemented in the selection process due to their lack of legally binding power.

The provision for immunity in the amendment is also hardly seen as the implementation of the ICC recommendation. When the ICC encouraged the NHRCK to, “advocate for the inclusion in its enabling law of express provisions that clearly establish the functional immunity of its members,” it was to, “protect members from legal liability for acts undertaken in good faith in their official capacity,” so that the NHRCK can exercise its investigations on human rights violations and engage in critical analysis and commentary on human rights issues free from interference. However, the amendment provides immunity only to commissioners for their remarks and decisions while no functional immunity is guaranteed for its other members including investigators who actually conduct investigations. Therefore, some have expressed concerns over the possibility that the

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<sup>7</sup> Since the NHRCK first released its amendment bill, it was criticized for distorting the meaning of “civil society” in the ICC-SCA’s recommendation by replacing the term with “diverse social groups.” Nevertheless, in the final amendment that passed the National Assembly, “civil society” is missing and, “diverse social groups” remains.

provision, which misinterprets the ICC recommendation for securing the independence of not only its commissioners, but also its members in their operation, will end up protecting unqualified commissioners even when they make remarks or decisions which ultimately compromise human rights.

Last, the government and the National Assembly neither communicated with civil society nor fully reflected on the opinion of civil society when amending the NHRCK Act. Korean civil society repeatedly delivered its concerns and positions on the amendment bill prepared by the NHRCK through a variety of different channels, but only in vain. The amendment bill, submitted by Rep. Jang Ha-na of the Minjoo Party of Korea on behalf of Korean civil society in 2013, was not even placed on the table.

### **The NHRCK, remaining silent to urgent human rights issues**

Diversity and plurality in the NHRCK commissioners' composition, transparency in the selection of commissioners, and functional immunity for its members were the main grounds for the ICC-SCA's deferral of the NHRCK's reaccreditation and the subsequent recommendations. They are also prerequisites for a national human rights institution to substantially and effectively respond to urgent and important human rights matters and contribute to the promotion and protection of human rights. However, even after its reaccreditation was deferred at the ICC-SCA, the NHRCK remained silent or inactive about many significant human rights issues in Korean society, including the infringement on the freedom of association and assembly and continued discrimination against people with disabilities and/or sexual minority groups.

### **Freedom of assembly and association- crackdown on commemoration rallies for the victims of the Sewol Ferry Tragedy**



Regarding restrictions over the freedom of assembly and association, for the last two years, the police's brutal crackdown over people's assemblies commemorating the victims of the Sewol Ferry Tragedy by deploying police bus barricades, banning assemblies, and using water cannons has been a continuing human rights concern.

On April 16, 2014, the Sewol Ferry sank nearby Jindo Island in South Jeolla Province. 304 passengers, including 250 high school students, ended up dead or missing. Citizens who are outraged at the government's incompetent response and commemoration of the victims have gathered and demanded the truth. However, these assemblies were only suppressed. The police banned assemblies, forcibly dispersed people, installed bus barricades, shot water cannons at demonstrators, and arbitrarily arrested participants. For example, all of the 60 assemblies of June 9, 2014 were banned by advance notification on the grounds that they were to be held near the Blue House (the President's residency) even though some of them were more than 1 km away from the Blue House.<sup>8</sup>

Regarding the excessive prohibition of assemblies and human rights violations against participants due to the brutal crackdown and arrest by the police, human rights NGOs, including the NHRCK Watch along with the victims of the police's brutal crackdown, filed a class action complaint to the NHRCK in June 2014. However, the NHRCK failed to conduct any proper investigations. Not a single petition was accepted while the complainants were not properly informed about dismissed cases. While the NHRCK was abandoning its responsibility, the Seoul Administrative Court declared the banning of assemblies nearby the Blue House to be unlawful on October 22, 2015.

Moreover, the NHRCK deliberately deleted items on human rights violations in relation to the Sewol Ferry Tragedy from the Information Note submitted to the UN International Covenant on Civil and Political Rights. The original draft, submitted to the Plenary Committee of the NHRCK, contained a

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<sup>8</sup> In Korea, every assembly should be notified to the relevant authority in advance. Any assembly in the immediate vicinity of the Blue House had been banned in the past, but it was a first to ban assemblies in such a comprehensive area.

number of important human rights issues in Korean society including the Sewol Ferry Tragedy and hateful and discriminatory acts against sexual minority groups. However, about half of the items were either removed or reduced from the final version of the Information Note after the Plenary Committee meeting.<sup>9</sup>

The strict crackdown over assemblies commemorating the Sewol Ferry Tragedy continued in 2015. On the one year ceremony of the tragedy on April 16 and the May Day assembly on May 1, 2015, the police closed every road going in the direction of the Blue House with police bus barricades and shot water cannons containing capsaicin at citizens and bereaved families of the victims, leaving a number of people injured. According to the "Status of Water Cannon and Capsaicin in Use" prepared by the National Police Agency, and submitted to Rep. Jeong Cheong-rae (the Minjoo Party of Korea), the police used 40,000ℓ of water cannon to crack down the May 1 assembly, more than nine times the total amount of water used for the two years prior, 2013 to 2014.<sup>10</sup> In addition, the police confirmed that the water cannon spray contained tear liquid of 0.3% PAVA. PAVA contains a highly dangerous material- Nonivamide 10.7%. According to "Material Safety Data Sheets", Nonivamide is, "very hazardous in case of skin contact, of eye contact," and "severe overexposure can result in death."<sup>11</sup> In addition, the police fired water cannons directly at people, which is a clear violation of its own internal regulations regarding water cannon use, leaving a number of people injured after falling down as a result of being directly hit by water cannon spray. The families of the Sewol Ferry Tragedy victims filed a constitutional appeal on the excessive use of water cannon and human rights NGOs requested the NHRCK to present an opinion to the Constitutional Court.

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<sup>9</sup> Standing commissioner Yoo Yeong-ha directed the change. He had been questioned for his political partiality as he had no experience with human rights matters and was deeply involved in the current President Park Geun-hye's presidential election campaign before he was appointed as a commissioner. On January 12, 2016, he resigned one year prior to his term expiration date, allegedly to run for the general election.

<sup>10</sup> [http://www.hani.co.kr/arti/society/society\\_general/690790.html](http://www.hani.co.kr/arti/society/society_general/690790.html)

<sup>11</sup> <http://www.aversiontech.com/media/1041/nonivamide-msds.pdf>

However, the NHRCK took no action.<sup>12</sup>

While the NHRCK was sitting on its hands, a tragic accident involving an elderly farmer who was shot by water cannon and collapsed, unconscious, took place. Paek Nam-ki, a member of the Catholic Farmers' Community participated in a pan-people assembly in protest against the government's agricultural policies on November 14, 2015. He collapsed as a result of being directly hit by water cannon and is still in a coma. The NHRCK, however, remains silent about the continued usage of water cannon.

### **Discrimination- sexual minority groups and people with disabilities**

Seoul Queer Culture Festival's parade, scheduled to be held on June 28, 2015, was banned by the Seoul Metropolitan Police Agency, and the application for a venue for Daegu Queer Culture Festival expected to be held on July 4, 2015 was rejected by the Daegu Jung-gu District Office. The organizing committees requested emergency remedies to the NHRCK on June 3, 2015. Regarding the Seoul Queer Culture Festival parade, the NHRCK continuously postponed the decision and dismissed the request on June 25, long after the Seoul Administrative Court's decision to suspend the effect of the police's ban on June 16. The NHRCK explained that, "the case was dismissed as the Seoul Administrative Court suspended the effect of the prohibition of the parade by the police on June 16, and; therefore, it falls under the reasons for dismissal of petition by the NHRCK Act."<sup>13</sup> It has not yet made a decision on the emergency remedy request regarding Daegu Queer Culture Festival. The petition was included in the agenda for the Plenary Committee meeting on November

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<sup>12</sup> Article 28 of the NHRCK Act prescribes that, "In the event a trial, which significantly affects the protection and promotion of human rights, is pending, the Commission may, if requested by a court or the Constitutional Court or if deemed necessary by the Commission, present its opinions on *de jure* matters to the competent court or the Constitutional Court."

<sup>13</sup> The NHRCK, Press Release, "The NHRCK statement on Queer Culture Festival", Jun. 25, 2015.

17, 2015 as a closed discussion item, but no decision was made. The complainant requested the disclosure of the meeting's minutes. However, the NHRCK effectively refused the disclosure by presenting the minutes after, "deleting the entire text of discussion" on December 28, 2015.<sup>14</sup>

A complaint against the NHRCK's chairperson and director of Discrimination Investigations was filed to the NHRCK in 2015 as the NHRCK did not publicize the result of a research study on discrimination practices based on sexual orientation and gender identity conducted in 2014. GongGam Human Rights Law Foundation, which conducted the research on behalf of the NHRCK, explained the reason for the petition as, "the prolonged delay of publicizing the research result on sexual minority groups' human rights status without reasonable grounds except the fear of criticisms by anti-sexual minority groups and conservative Christian groups is unfavorably treating a particular group, based on sexual orientation, in the supply or use of goods and services; therefore, constituting a discriminatory act violating the right to equality by a state agency prohibited by the NHRCK Act."<sup>15</sup> The NHRCK refused the official request of the information by lawmakers, postponed the mutually agreed to announcement schedule of September 23, and finally held a conference publicizing the research result only on November 10, 2015, after the inspection of the administration conducted by the National Assembly was over. The complaint against the chairperson and the director is still pending as of January 2016.

Discrimination and hate speech against sexual minority groups are very serious human rights issues in Korean society, so much so as to be mentioned in the Concluding Observations on the Fourth Periodic Report of the Republic of Korea by the International Covenant on Civil and Political Rights. On November 6, 2015, the ICCPR issued the concluding observations after reviewing the fourth periodic report of Korea, where it expressed concerns over, "the widespread discrimination against

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<sup>14</sup> The disclosed minutes left only the list of participants and agenda with every remark and discussion deleted.

<sup>15</sup> <http://www.yonhapnews.co.kr/bulletin/2015/09/15/0200000000AKR20150915125400004.HTML?input=1179m>

lesbian, gay, bisexual, transgender and intersex persons, including violence and hate speech.” Specifically, the Committee was concerned about “the authorization of the use of the buildings of the National Assembly and of buildings of the National Human Rights Commission to host so-called ‘conversion therapies’ for lesbian, gay, bisexual and transgender persons.”<sup>16</sup> However, the “Chairperson’s statement on the UN ICCPR’s concluding observations” issued by the NHRCK on November 9, 2015, misled public opinion, disregarding the comment and instead claimed that, “the majority of the ICCPR’s concluding observations are in line with what the NHRCK recommended and presented its opinions on to the government.”<sup>17</sup> More importantly, the NHRCK has not taken any appropriate actions such as presenting opinions, at least in regards to hate speech, though the concluding observations clearly mandated that, “the State party should clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity, including the propagation of so-called ‘conversion therapies’, hate speech, and violence.”

The NHRCK’s position in dealing with human rights violations and discriminatory acts against people with disabilities was already condemned by the UN Human Rights Council in March 2014. In her report of the Mission to the Republic of Korea at the 25<sup>th</sup> session of Human Rights Council, Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, expressed concerns over the death of Woo Dong-min, a disability-rights defender who caught pneumonia during a sit-in protest on the NHRCK’s premises due to the suspension of electric power and heating and died two weeks later.<sup>18</sup> However, in its written and verbal reply to the Human Rights Council, the NHRCK

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<sup>16</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KOR/CO/4&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KOR/CO/4&Lang=En)

<sup>17</sup> The NHRCK, Statement, “Chairperson’s statement on the UN ICCPR’s concluding observations” Nov. 9, 2015.

<sup>18</sup> <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>. For two days from December 2, 2010, a group of disability-rights defenders staged a peaceful sit-in in the NHRCK’s premises demanding the resignation of the chairperson and the improvement of three disability laws. During the sit-in, the electric power and heating was suspended and the entry of food and access of the defenders’ assistants was restricted.

condemned disability-rights defenders as thugs, claiming that, “[they] staged a sit-in protest in office areas of the NHRCK, severely obstructing the work of the NHRCK... [and] used physical power against several staff members” and tried to avoid its responsibility by making a false argument that, “the NHRCK did not in any manner suspend electric power or heating... In the case of heating, the NHRCK does not have any access to control the heating system, because the NHRCK has been renting only some parts of the building.”<sup>19</sup>

The NHRCK has shown no improvement even after its repeated deferral of reaccreditation at the ICC-SCA. Rather, it seems to be regressing. Recently, the NHRCK conducted a *suo moto* investigation on human rights violations in Seongbo Rehabilitation Center, a social welfare facility in Daegu, including forced labor, exploitation, and embezzlement. The investigation showed that there were serious enough human rights violations committed by the representatives of the facility to constitute criminal cases: the chairperson of the board and the director forced the residents to work without payment for about 20 years; traveled abroad with the money meant to pay to the residents for their work; embezzled the legacy of a resident who died without family or friends; and operated the heating system only 30 minutes a day in winter while the accounting books were fabricated to indicate payment of a large sum of money to a nearby gas station in advance. However, the NHRCK did not issue strong recommendations such as the revocation of permission to operate, or the closure of, the facility even after confirming the existence of these serious human rights violations. Instead, it only recommended the Daegu Buk-gu District Office to, “take administrative measures for operation improvement.” In protest, disability-rights defenders held a press conference

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As a result of the extreme weather and low temperatures, Mr. Woo Dong-min caught pneumonia and died two weeks later.

<sup>19</sup> <http://webtv.un.org/search/clustered-id-sr-on-torture-and-human-rights-defenders-16th-meeting-25th-regular-session-of-human-rights-council/3322907989001?term=shim>. However, the NHRCK’s explanation about the limited access to the electric power or heating system was found not true, resulting in even more criticism about its attitude.

in front of the NHRCK building on Christmas Eve of 2015.<sup>20</sup> The disability-rights defenders also requested a meeting with three commissioners of the Discrimination Remedy Committee (a sub-committee of the NHRCK), but the NHRCK did not answer.

### **Conclusion**

On March 25, 2015, the ICC-SCA deferred the review of the NHRCK to its first session in 2016 and recommended the following: "A clear, transparent and participatory selection and appointment process for the selection of commissioners must be included in relevant legislation, regulations, or binding administrative guidelines, as appropriate... to ensure the independence of, and public confidence in, the senior leadership of an NHRI"; and "NHRI legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity," noting that, "external parties may seek to influence the independent operation of a NHRI by initiating, or by threatening to initiate, legal proceedings against a member." However, as mentioned above, since the ICC-SCA's deferral, not a single selection process including the selection and appointment of chairperson Lee Sung-ho complied with the ICC recommendations. The amendment bill of the NHRCK Act, which passed the National Assembly on January 8, 2016, also fails to fulfil the ICC recommendations in every aspect of diversity, transparency in the selection of its commissioners, and immunity provision for its members.

In 2010, Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommended that, "the NHRCK will continue to be proactive in examining human rights violations promptly, and, as recommended by the SCA, to 'consider issuing

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<sup>20</sup> Solidarity against Disability Discrimination, Disability and Human Rights in Action, the NHRCK Watch, Press release, "We condemn the NHRCK for recommending only administrative measures in the case of exploiting and ill-treating residents of Seongbo Rehabilitation Center." Dec. 24, 2015.

public statements and reports through the media in a timely manner to address urgent human rights violations.”<sup>21</sup> However, the NHRCK failed to make any proactive decisions even for cases submitted to it, and, needless to say, failed to present timely opinions on urgent human rights issues such as the violations of the right to freedom of assembly and association such as the brutal crackdown over the Sewol Ferry Tragedy commemorations, and discriminatory practices against sexual minority groups and/or persons with disabilities while the concerns over the independence and effectiveness of the NHRCK have only deepened after its reaccreditation was deferred three times in a row by the ICC-SCA.

The cooperation with civil society is one of the most valued requirements for a NHRI by the ICC as seen in the fact that the ICC-SCA specifically requested the NHRCK to provide information on its engagement with civil society including any formal and informal mechanisms, the organizations with which it has regular engagement, and the frequency of that engagement when informing that consideration of the reaccreditation of the NHRCK be deferred to the next session from the second session of 2014. There was almost no engagement with civil society under the former chairperson Hyun Byung-chul, and though a few meetings have resumed since the inauguration of the new chairperson Lee Sung-ho, they remain superficial. For example, civil society organizations, including the NHRCK Watch, had a meeting with chairperson Lee on September 22, 2015, but no substantial discussions or outcomes were made at the meeting. Moreover, the four improvement tasks suggested by the NHRCK Watch at the meeting were not implemented. The four tasks were the replacement of secretary-general; development and distribution of guidelines on hate speech and acts; enhancement of its operational transparency including disclosure of its minutes; and promotion of civil society engagement. However, there was no implementation of such recommendations, as clearly demonstrated in the case of effectively refusing the disclosure of information by disclosing

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<sup>21</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/34/PDF/G1112134.pdf?OpenElement>



blank pages after deleting every remark and discussion of the Plenary Committee meeting of November 17, 2015. On December 7, 2015, the NHRCK's Policy and Education Bureau held a roundtable meeting to explain its 2016 work plans which was also suspended during chairperson Hyun's term; however, it only confirmed that the NHRCK has no plan to promote the human rights of sexual minority groups though it is one of the most urgent issues currently facing Korean society. In fact, the term, sexual minority was never even mentioned in the work plan.

Regarding substantial engagement with civil society, disability-rights defenders demanded the resignation of high officials who are responsible for suspending the electric power and heating system in 2010 which resulted in the death of Mr. Woo Dong-min. However, chairperson Lee Sung-ho did not provide any answer about personnel renewal requests, and only said he would consider making an apology for the death of Mr. Woo.

Also, on January 8, 2016, the amendment bill of the NHRCK Act passed the National Assembly without any communication with civil society and despite opposition by civil society. Nevertheless, the NHRCK expressed its expectation that, "the passage will be positive for the next ICC-SCA review." We, Korean civil society, understand that the ICC-SCA deferred the consideration of the NHRCK's reaccreditation three times in a row and repeatedly recommended the amendment of the NHRCK Act to ensure diversity and plurality in its commissioners' composition, the transparent and participatory selection process of its commissioners, and functional immunity for its members with the belief that they are the minimum prerequisites for a NHRI to fulfil its mandates of truly protecting and promoting human rights. However, the current moves of the NHRCK make us question whether it actually aims to enhance its independence and effectiveness for the substantial protection and promotion of human rights. Its only apparent goal seems to be the achievement of its reaccreditation at the ICC-SCA. In this regard, Korean civil society organizations have serious concerns that the NHRCK's receiving an "A" status might lead to the problematic practices of the past being repeated and leaving no opportunity to ensure the independence of the NHRCK,

enhance the transparency and democracy in its operation, and guarantee the participation of, and cooperation with, civil society. We expect the ICC-SCA make a wise decision by taking these concerns into account.

### **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 Kyungbuk Women's Association United, Daegu Women's Association, Disabled People's International Daegu (DPI Daegu), Daejeon Women's Association for Democracy, Democratic Workers' Solidarity, the Minority Rights Committee of 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.