



# MISSION FAILED

POLICING ASSEMBLIES IN SOUTH KOREA

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*Cover photo: Police line during a protest on 25 February 2014.*  
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# 1. INTRODUCTION

**“...the use of water cannon (sometimes with capsaicin mixed into the water, which has similar effects to tear gas) and bus barricades triggers increased tensions. The way in which such tactics are used, coupled with massive deployment of force, is almost guaranteed to increase tension between police and protestors, who interpret such actions as unprovoked attacks. That kind of aggression begets more aggression.”**

Maina Kiai, Special Rapporteur on the rights to freedom of assembly and of association<sup>1</sup>

While freedom of peaceful assembly is guaranteed in international law and the Constitution of South Korea, domestic legislation and practice governing assemblies falls short of international human rights law and standards.<sup>2</sup> Despite recent positive developments under the Moon Jae-in administration, the South Korean police have long maintained a restrictive approach and tactics in policing assemblies, specifically with assemblies within the vicinity of the Presidential Office.

International human rights law, including the International Covenant on Civil and Political Rights, requires states to respect, protect and fulfil the right to freedom of peaceful assembly. The state's obligation to ensure full enjoyment of this right includes the obligation to protect and facilitate peaceful assemblies.<sup>3</sup> Public assemblies are held to convey a message to a particular target person, group, institution or government body. Therefore, it is essential that the authorities guarantee the right to hold assemblies within sight and sound of an intended audience. However, in a number of assemblies in South Korea participants have not been able to achieve their goals, specifically when these assemblies were intended to take place near the Presidential Office in central Seoul.

Beginning in 2013, a number of major demonstrations took place to raise grievances and aspirations on a number of issues including mass worker dismissals at SsangYong Motor, the 2015 South Korea-Japan “comfort women” agreement, proposed labour reforms that labour unions believed would increase deregulation and labour casualization, failure to uphold price guarantees for rice producers and opposition to exclusive state control over the content of history text books. In particular, following the Sewol ferry tragedy in

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<sup>1</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, U.N. Doc. A/HRC/32/36/Add.2, 17 Nov. 2016 (hereinafter: Maina Kiai, Report on South Korea, Nov. 2016), para. 31.

<sup>2</sup> Amnesty International, Freedom of peaceful assembly in South Korea and international human rights standards (Index: ASA 25/5099/2016) (hereinafter: Amnesty International, Freedom of peaceful assembly in South Korea). The term ‘assembly’ used in this briefing refers to any type of outdoor assembly including demonstrations.

<sup>3</sup> Amnesty International, Freedom of peaceful assembly in South Korea, p.5.

2014 in which more than 300 people, mostly children, lost their lives, bereaved family members launched a series of major protests calling for government accountability.

During the period from 2013 to 2016, the South Korean police regularly imposed bans and restrictions on assemblies that organizers notified authorities would be held near the Presidential Office. Assemblies to be held within a 100-meter radius of the Presidential Office were banned on the basis of Article 11 of the Assembly and Demonstration Act (ADA), while assemblies in areas beyond this radius were banned under Article 12 of the ADA in regard to preserving smooth flow of traffic.<sup>4</sup> In addition, police employed a range of excessive measures including the use of bus barricades, which were provocative as they had the effect of preventing participants from reaching their intended destination or communicating their message within sight and sound of their target audience. In addition to the use of bus barricades, police have also at times resorted to the unnecessary and excessive use of water cannons and chemical irritants.

The overall attitude of the police towards assemblies played an important role in determining how these assemblies played out. The police have at times not only arbitrarily restricted the exercise of the right to freedom of peaceful assembly, but in many cases taken actions which directly exacerbated tensions which in turn increased the likelihood of an outbreak of violence. More recently, when the police have chosen to adopt a less restrictive approach, major assemblies have taken place entirely peacefully.

The effect of this approach has been most evident in how the candlelight protests calling for the resignation and then the impeachment of former President Park Geun-hye over allegations including corruption and abuse of power unfolded. Beginning on 29 October 2016 and lasting every Saturday until 11 March 2017, a series of major protests took place across the country. The police refrained from using water cannons and adopted a generally less restrictive approach. Possibly the largest assembly in South Korean history took place on 12 November 2016 and was held overwhelmingly peacefully with a reported 1.3 million people gathering on the streets of central Seoul out of a total of 1.7 million across the country.

However, even during these protests, the police continued to ban assemblies near the Presidential Office, citing the ADA. While demonstrations were able to take place 100 meters from the Presidential Office from 2 December 2016 onwards, this was allowed to happen only after the Seoul Administrative Court overturned police bans following injunctions submitted by organizers.

After the impeachment of Park Geun-hye, President Moon Jae-in came to office following the presidential election on 9 May 2017. As a presidential candidate, he had made a commitment to ensure the full enjoyment of the right to freedom of peaceful assembly, in particular to promote an expression in law of a clear presumption in favour of holding assemblies and to ensure that the overall approach in policing assemblies will be to facilitate peaceful assemblies.<sup>5</sup>

On 26 May 2017, a representative of the Korean National Police Agency (KNPA) announced that the police were considering establishing a policy of in general no longer deploying bus barricades or water cannons at assemblies.<sup>6</sup> This was reaffirmed in part by the announcement of the Commissioner General of the KNPA on 16 June 2017 in which he promised that “the police will not deploy water cannon in ordinary assemblies. The use of water cannon will be limited as strictly as possible. This will be fully enforced by institutionalizing it as matter of presidential decree in the Regulations on the Standard of Usage of Lethal Police Equipment.”<sup>7</sup>

On 16 June 2017, a Police Reform Committee of external experts was formed to make recommendations for police reform. The Committee comprises three subcommittees, each of six members. The Human Rights Protection Subcommittee is mandated to improve control over the exercise of police powers in managing public assemblies.<sup>8</sup> On 7 September 2017, the Commissioner General of the KNPA announced his acceptance of a set of recommendations made by the Committee called ‘Measures to Guarantee Freedom of Peaceful Assembly and Demonstration’. The recommendations address several important issues including a shift in the overall approach to policing to include a presumption that assemblies will be peaceful and protection of spontaneous and other urgent peaceful assemblies. In addition, they include stricter criteria for dispersing assemblies, and for police use of bus barricades and water cannon, including not using water cannons to police assemblies. However, the recommendations do not adequately address blanket bans on

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<sup>4</sup> Assembly and Demonstration Act, Act No. 13834, 27 Jan. 2016, Partial Amendment.

<sup>5</sup> Amnesty International, 5 Presidential Candidates Respond to Amnesty International’s 8-point human rights agenda (Press release, 20 April 2017) (in Korean). See also: Amnesty International, 8-point human rights agenda for presidential candidates (Index: ASA 25/5785/2017).

<sup>6</sup> Park Su-ji, Hankyoreh, ‘Police announce plans to cease use of police bus barricades and water cannons at demonstrations’, 28 May 2017, [http://english.hani.co.kr/arti/english\\_edition/e\\_national/796485.html](http://english.hani.co.kr/arti/english_edition/e_national/796485.html).

<sup>7</sup> YTN, ‘Commissioner General Lee Chul-sung makes public apology over change in cause of death for late Baek Nam-gi’, 16 June 2017, [http://www.ytn.co.kr/\\_In/0103\\_201706161524422479](http://www.ytn.co.kr/_In/0103_201706161524422479) (in Korean).

<sup>8</sup> Korean National Police Agency, ‘The Beginning of Strong Police Reforms’, Official Launch of the Police Reform Committee, (Press release, 16 June 2017), <https://www.police.go.kr/portal/bbs/view.do?bbsId=B0000011&nttlId=19436&menuNo=200067> (in Korean).

specific times and places under Articles 10 and 11 of the ADA. The National Assembly must incorporate these recommendations into law to prevent a repetition of previous practices, and revise the ADA to bring it into line with international law and standards.

Another notable development is that no assemblies were banned in May or June 2017 in Seoul.<sup>9</sup> On 30 June, the Korean Confederation of Trade Unions (KCTU) held a 'Social General Strike' march in Gwanghwamun which was attended by an estimated 50,000 participants. The police did not employ a single bus barricade or water cannon. By guiding traffic and the demonstrators, they facilitated the march through downtown Seoul. No clashes were reported.

The police also confirmed to Amnesty International in July that they are evaluating how to strengthen regulations on the use of water cannon – in particular that they are considering tightening the regulations governing the use of water cannon in situations where social order cannot be sustained.<sup>10</sup>

While Amnesty International welcomes these moves by the South Korean authorities to reform the policing of assemblies, it is vital that such changes are institutionalized in order to prevent a regression to past practices and to ensure that police can be held accountable in view of clearly formulated regulations. The authorities must carry out reforms to the ADA and internal regulations on policing assemblies and governing the use of force as soon as possible to bring domestic law into conformity with international human rights law and standards.

Between February and March of 2017, Amnesty International interviewed 32 individuals who participated in or organized assemblies between 2013 and 2016. Twenty-six of the assemblies the interviewees participated in took place in Seoul and three took place outside of Seoul. One doctor, one journalist and nine former and current professional police officers and conscripted or auxiliary police officers, men who are carrying out their compulsory 21-month long military duty by serving as police, were also interviewed over the same period. In addition a meeting was held with the Korean National Police Agency on 14 July 2017. To protect their identities, the names of some interviewees have been replaced by pseudonyms in this briefing paper.

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<sup>9</sup> Data disclosed by the Korea National Police Agency on 25 July 2017 in a written response to a request for disclosure of information by Amnesty International Korea.

<sup>10</sup> Amnesty International meeting with KNPA on 14 July 2017.



# 2. BANNING ASSEMBLIES WITHIN SIGHT AND SOUND

**“The police say that it is banned for smooth flow of traffic, and suggest that we march instead for an hour, or an hour and a half more in the opposite direction around downtown Seoul. That actually creates more problems for traffic across many intersections... I know this, and the police know this very well. They’re not really banning assemblies because of traffic.”**

Moon Byong-ho, director of the Organization and Collective Action Department of the Korean Confederation of Trade Unions<sup>11</sup>

Assemblies and demonstrations in South Korea are governed by the ADA. This law falls short of international human rights law and standards in several ways and allows the police the discretion to impose a number of restrictions on assemblies.

For example, anyone who wishes to hold an assembly should be able to do so without requiring the authorities’ permission or authorization. Under international human rights law and standards, it is accepted that states may require a notification. However, the purpose of such notification must be to facilitate peaceful assembly and in order to enable the authorities to take measures to protect public safety and order or the rights of others. Freedom of peaceful assembly is a right, not a privilege. In the report he submitted to the UN Human Rights Council in November of 2016 after visiting South Korea, Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai pointed out that the notification regime operated under the ADA amounts to a de facto authorization regime.<sup>12</sup>

In addition to an onerous notification system, this law also grants broad discretion to the authorities to restrict or ban assemblies on various grounds such as protecting privacy and the right to learn at the request of a resident of a specific place or administrator of facilities, simultaneous assemblies at the same location and

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<sup>11</sup> Amnesty International interview with Moon Byong-ho on 20 March 2017.

<sup>12</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, U.N. Doc. A/HRC/32/36/Add.2, 17 Nov. 2016 (hereinafter: Maina Kiai, Report on South Korea, Nov. 2016), para. 26.



obstruction of traffic.<sup>13</sup> Under international human rights law and standards, any restriction on the exercise of the right to freedom of peaceful assembly should be exceptional rather than the rule, and is permissible only if it is demonstrably necessary and proportionate in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.<sup>14</sup>

## 2.1 BANNING TO ENSURE SMOOTH FLOW OF TRAFFIC

The ground most frequently cited by the authorities for banning assemblies is to ensure smooth flow of traffic, which is based on the Article 12 of the ADA.<sup>15</sup> It prescribes that the authorities may ban or restrict an assembly on a main road of a major city. If the organizer of such an assembly assigns “stewards” (people who are tasked with maintaining order) the assembly may not be subjected to such a ban. Nonetheless, if such an assembly is deemed to cause serious inconvenience to traffic, it can still be subjected to a ban.

The use of public space including roads for assemblies is no less legitimate a use as traffic and therefore banning assemblies solely on the ground of ensuring the smooth flow of traffic is not a permissible restriction under international law.

Amnesty International’s interviews found that out of 11 organizers who had notified the relevant police authority in advance, eight received ban notices and one was subjected to a last-minute restriction on site. Of the 18 organizers interviewed by Amnesty International, four other organizers didn’t notify the police because they didn’t believe they were holding assemblies and three held spontaneous assemblies or assemblies without prior notification. Eight out of the nine organizers who received ban and restriction notices said these were based on the flow of traffic.

According to the KNPA, a total of 662 assemblies were banned in Seoul from 2013 to the end of 2016. Out of the total number of banned assemblies, 335 (53.6%) were banned on the ground of smooth flow of traffic under Article 12(1).<sup>16</sup>

## 2.2 DE FACTO NO-GO ZONE FOR ASSEMBLIES

Article 11 of the ADA places a blanket ban on assemblies within a 100-meter radius of certain buildings including the Presidential Office, courts and diplomatic offices. Although the total ban area provided by the ADA only extends 100 meters away from the Presidential Office, through discretionary use of police powers under Articles 8(5) and 12(1) of the ADA, the larger surrounding area was also turned into a de facto no-go zone for assemblies preventing them from being held within sight and sound of intended targets in this area.

### CHEONGUN HYOJA-DONG COMMUNITY SERVICE CENTER INTERSECTION

The Cheongun Hyoja-dong Community Service Center intersection is located approximately 100 meters beyond the 100-meter radius from the Presidential Office. Between July 2012 and June 2016 a total of 23 notifications were made for assemblies at the community center and at the crossroads in front of the building. However, in only one case was an assembly able to take place at the intended location. One of the 23 notifications was withdrawn by organizers. Of the remaining 22, twelve assemblies were banned on the ground of privacy of residents under Article 8(3)(1) and eight on the ground of smooth flow of traffic under Article 12(1) of the ADA.<sup>17</sup> Another of the assemblies was banned under Article 11 of the ADA even though it was to be located more than 100 meters away from the Presidential Office.<sup>18</sup> Another assembly was to be in the form of a march which would have passed directly in front of the Presidential Office and this was also banned under Article 11 of the ADA.

The organizer of the assembly which was not subjected to a ban at the point it was notified was Ryu Ha-kyung, a lawyer with the Lawyers for a Democratic Society who succeeded in making a notification for an assembly with nine colleagues on 29 April 2014; however, he was subsequently visited by an officer of the

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<sup>13</sup> Articles 8(5)1, 8(5)2, 8(2) and 12 of the Assembly and Demonstration Act.

<sup>14</sup> See Amnesty International, Freedom of peaceful assembly in South Korea, pp. 8-9.

<sup>15</sup> Article 12(1) of ADA: “The head of the competent police authority may ban an assembly or demonstration on a main road of a major city as determined by Presidential Decree, or may restrict it, specifying conditions for the maintenance of traffic order if it is deemed to be necessary for smooth flow of traffic.”

<sup>16</sup> Data disclosed by the KNPA on 2 August 2016 and 25 July 2017 in a written response to Amnesty International Korea.

<sup>17</sup> ADA was amended by Act No. 13834, 27 January 2016. Article 8(3)1 in former ADA is the current Article 8(5)1.

<sup>18</sup> Data disclosed by the KNPA on 4 August 2016 in a written response to Amnesty International Korea.

police intelligence division of Jongno Police Station who explained that a mistake had been made and asked him to withdraw the notification.

*“It seemed that a new police officer on duty accepted the assembly notification as he was supposed to. So on Monday, an intelligence officer came and said, ‘You know, we’ve never accepted a notification for an assembly near the Presidential Office. Please withdraw the notification and hold a press conference instead. We’ll let you do it like an assembly.’”<sup>19</sup>*

He and his colleagues refused to withdraw it and continued to have an assembly at the site as planned. They were also given a restriction notice on site by the police on the ground of Article 8(5)1 of the ADA, citing privacy of local residents, and which initially limited the area in which they could assemble.<sup>20</sup> Despite this, as the number of participants was too large to fit inside the cordoned area, the assembly was able to take place as the organizers had originally planned.

#### **MAY 2014: POLICE BAN 13 ASSEMBLIES NORTH OF GWANGHWAMUN PLAZA**

On 3 May 2014 Oh Jin-ho, an executive committee member of South Korean NGOs Network to Establish a Society without Irregular Workers and others tried to notify the relevant police station of three separate assemblies planned for 8 May near the Presidential Office to call for government accountability for the Sewol ferry tragedy. All three assemblies were banned. On 6 May 2014, they returned and submitted another 11 notifications for the same date, 8 May. This time, 10 of the assemblies were banned. All of the banned assemblies were to be held in locations between the north end of Gwanghwamun Plaza and the Presidential Office. (refer to Figure1) All of the locations were beyond the 100-meter radius from the Presidential Office.<sup>21</sup> The police permitted one assembly, advising them to hold it at the Government Complex or at Gwanghwamun Citizens’ Open Square. Both of these sites are located in areas with a much higher volume of traffic than the original location, and out of sight and sound of the Presidential Office. Oh Jin-ho said:

*“It doesn’t make sense to ban an assembly here and allow another there for the exact same reason. I thought that the police had already decided to ban any assembly except those in the two places they recommended. It was a political decision. There’s no other way to interpret that.”<sup>22</sup>*

#### **10 JUNE 2014: 61 ASSEMBLIES BANNED**

It is common for organizers of major assemblies to submit notifications for multiple assemblies for the same date. Notifications for 61 individual assemblies were submitted for 61 different locations near the Presidential Office for 10 June 2014. All of these assemblies were banned. (refer to Figure1) The police cited both residents’ privacy and flow of traffic as grounds for the bans.

Jung Jin-u, vice-president of the Labour Party, helped others to submit several notifications for demonstrations in relation to the Sewol ferry tragedy in June 2014. When he visited Jongno Police Station on 7 June to make notification for assemblies planned for 10 June, he was told by a police officer that assemblies in certain areas more than 100 meters from the Presidential Office would be banned.

*“The police officer drew lines on the map to show where assemblies are banned, saying, ‘It’s not okay from here to there,’ ‘Assemblies are effectively banned from the Cheongun-dong Community Service Center to the north of the Government Complex.’ He explained that no matter how I submit a notification for an assembly, [it will be banned] because of an order from above.”<sup>23</sup>*

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<sup>19</sup> Amnesty International interview with Oh Jin-ho on 15 March 2017.

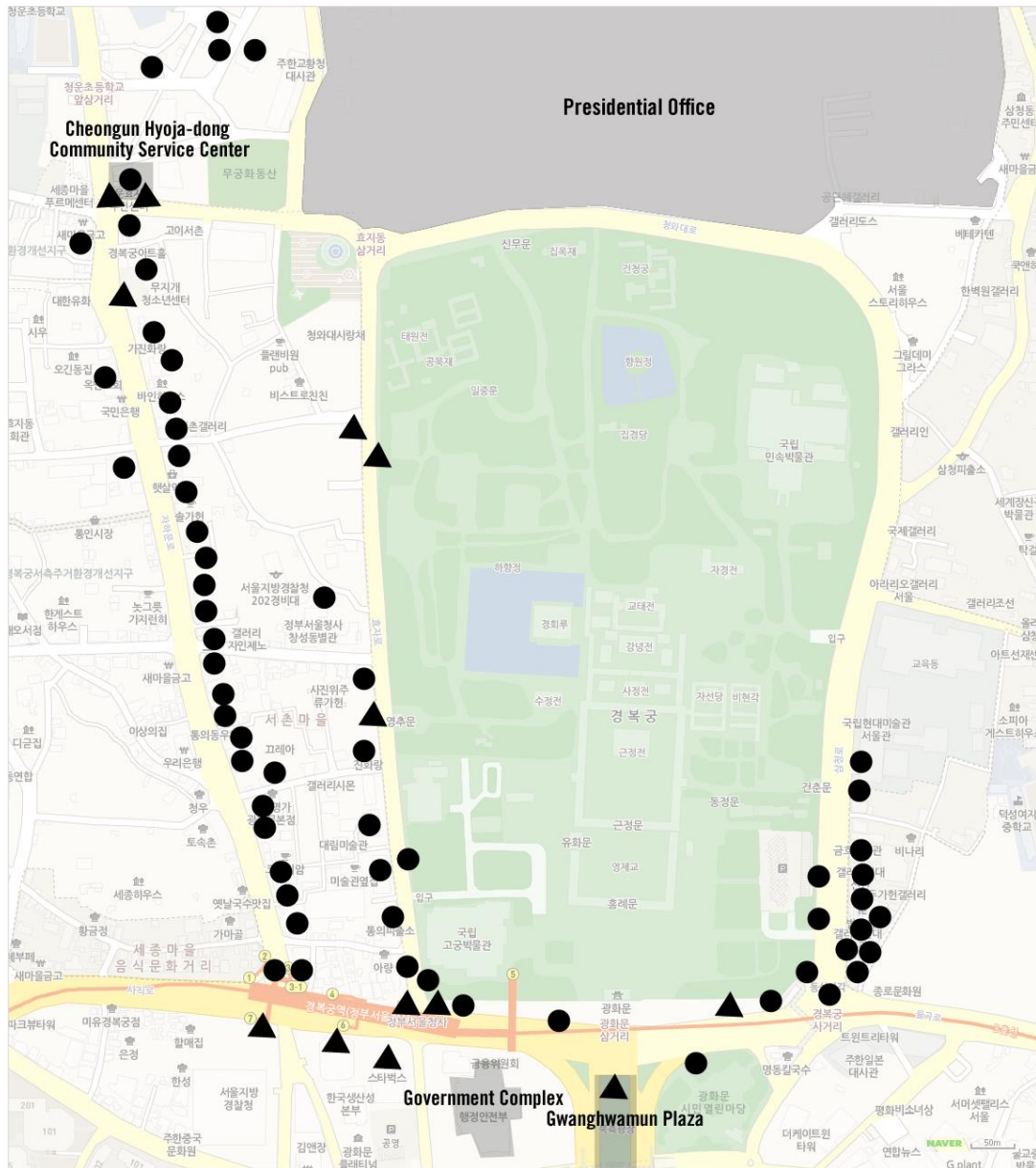
<sup>20</sup> The ADA was amended by Act No. 13834 on 27 January 2016. The content of Article 8(5)1 was Article 8(3)1 at the time.

<sup>21</sup> Two of the banned assemblies were notified to take place at the Cheongun Hyoja-dong Community Service Center intersection and therefore included in the statistics previously mentioned.

<sup>22</sup> Amnesty International interview with Oh Jin-ho on 15 March 2017.

<sup>23</sup> Amnesty International interview with Jung Jin-u on 9 March 2017.

FIGURE 1 – MAP OF BANNED ASSEMBLIES



- ▲ Banned assemblies notified for 8 May 2014
- Banned assemblies notified for 10 June 2014

# 3. EXCESSIVE AND UNNECESSARY USE OF FORCE

In policing assemblies, law enforcement authorities should always seek to prevent the need to resort to force. When it is unavoidable, any use of force must meet the principles of legality, proportionality, necessity and accountability in accordance with international human rights law and standards as established in the UN Basic Principles on the Use of Force and Firearms (UN Basic Principles) and the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct).

## **LEGALITY**

Police<sup>24</sup> use of force should be based in domestic law, serve a legitimate objective as established in law and be in line with international human rights standards (UN Code of Conduct Article 3; see also UN Basic Principle 1)

## **NECESSITY**

The police must determine that the legitimate objective cannot be achieved without use of force and, if so, deploy the minimum level of force needed to achieve this objective (UN Basic Principle 4)

## **PROPORTIONALITY**

The harm caused by the use of force should not outweigh the anticipated harm the use of force seeks to prevent (the legitimate objective) (UN Basic Principle 5)

## **ACCOUNTABILITY**

Police and commanding officers must be held accountable for any excessive or unnecessary use of force, victims must have access to redress and compensation for human rights violations, and steps should be taken to prevent recurrence of such violations.

The police should differentiate between violent and peaceful individuals or groups in assemblies. While violent individuals may be removed from an assembly, the right to freedom of assembly for the peaceful majority should be protected and facilitated and the assembly itself should not automatically be subject to dispersal. In cases where there is a legitimate need to use force, police should always minimize the risk of harm by employing the minimum force necessary for the shortest possible time needed to achieve their legitimate objective.

One area of particular concern to Amnesty International is how the South Korean police have used water cannon. The use of water cannon carries inherent risks such as the potential to cause serious injuries and even death. In particular, the use of water cannon can cause eye injuries (either by being directly hit by the

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<sup>24</sup> Police here is used synonymously with the term 'law enforcement officer' as used in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

jet, or if items on the ground fly up as a result of the jet) and other bodily harm resulting from falls caused by being either being struck by the jet or due to the slippery ground.<sup>25</sup> Therefore, it must be very carefully regulated.



## BAEK NAM-GI

While participating in the 'People's Rally' on 14 November 2015, 69-year-old farmer Baek Nam-gi was critically injured by police water cannon and later died. His case raises serious concerns about the regulations governing the use of force and the lack of accountability for police involved in the excessive use of force.

Baek Nam-gi joined the demonstration as a member of the Korean Catholic Farmers' Movement to protest the government not living up to its promise to protect domestic rice prices. At 6:56pm he was struck in the head at close range by the direct jet of a police water cannon which knocked him head-first to the ground, causing severe injuries including brain damage (traumatic subdural haemorrhage).

He remained in a coma for 317 days before dying on 25 September 2016.

The way in which a water cannon was used when he was injured did not meet international law and standards for the use of force and firearms by law enforcement officials. The police operated the water cannon at too close a distance, too high a strength, and struck the head of Baek Nam-gi which failed to meet even the police's own guidelines.<sup>26</sup>

On that day, the police preemptively set up bus barricades in two areas, Jongno and Gwanghwamun, to prevent assembly participants from moving towards the Presidential Office, resulting in frustration and an escalation of tensions. A small number of participants in front of Jongno District Office intersection placed stickers on the police buses in protest and erected ladders against a police barricade, to which the police responded by using water cannons. In response to the police bus barricades set up in Gwanghwamun, a small number of participants pulled on ropes they had tied to the buses in attempts to move them. The police responded by using water cannons.

Nineteen police water cannon trucks were deployed, of which 10 were used to discharge 202 tons of water and 440 liters of the chemical irritant Pelargonic Acid Vanillylamide (PAVA) on participants for over six and a half hours.<sup>27</sup>

The police banned 15 of the 63 'People's Rally' assemblies notified for 14 November for which they received notifications and on that day mobilized a large number of anti-riot personnel, bus barricades, water cannons and chemical irritants to prevent participants from reaching the Presidential Office, their intended destination.<sup>28</sup>

Baek Nam-gi's family accused seven police officers of attempted murder and a violation of the Act on the Performance of Duties by Police Officers on 18 November 2015 and also filed a separate civil lawsuit against the state on 22 March 2016. The civil case is still pending at the time of writing. None of the law enforcement officers involved have faced any charges in relation to his death, and his family has not been compensated.

The police's Operational Guidelines for the Use of Water Cannon Vehicles lacks certain aspects of the essential requirements of necessity and proportionality. It provides that "where protesters are illegally occupying roads etc. and not dispersing," a "dispersed spray", a jet dispersed over a larger area, may be used.<sup>29</sup> Water cannons are weapons with indiscriminate effects which should only be used to disperse a crowd when there is a generalized level of violence which lesser means have failed to contain. The mere fact that protesters have occupied public roads, even if this is unlawful under domestic legislation, cannot be

<sup>25</sup> Amnesty International Netherlands, Use of force: guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2015, p.158 (hereinafter: Amnesty International Netherlands, Use of force).

<sup>26</sup> Amnesty International, Republic of Korea: Protestor seriously injured by water cannon (Index: ASA 25/4503/2506).

<sup>27</sup> This information was provided by the KNPA on 23 Nov. 2015 in a written response to national assembly member Jung Chung Rae.

<sup>28</sup> This information was provided by the KNPA on 19 Jan. 2016 in a written response to then national assembly member Lim Su Kyung.

<sup>29</sup> This information was provided by KNPA on 8 Dec. 2015 in a written response to then national assembly member Lim Su Kyung.

regarded as legitimate grounds under international human rights law and standards for using water cannons for dispersal. Furthermore, the Operational Guidelines lack a minimum distance to be observed when using water cannon.

The Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE— ODIHR) explicitly stipulates that water cannons should never be used to disperse peaceful protests.<sup>30</sup> Moreover, the application of the principle of necessity set out in the UN Basic Principles means that their use must cease immediately when people stop being violent and/or start to disperse.<sup>31</sup>

However, Kim Woo who participated in ‘2 Days and 1 Night’ Sewol Ferry Demonstration on 1 May 2015 described how the police used water cannon against peaceful protesters.

*“People were not in direct contact with the bus barricades. I don’t think there was any problem because the buses and demonstrators had some space between them. No one was cursing the police or throwing plastic water bottles at them, as would happen sometimes on other occasions... But the water cannon was aimed at me specifically. It was not a chance splash. The water cannon moved on to target others, and began directly shooting at three people holding flagpoles.... I was facing the police in the beginning. But they began shooting water mixed with capsaicin, and I had to turn away because I couldn’t breathe. I was hit by the waterjet from head to toe. My back was somehow covered by my backpack, but my buttocks and thigh were hit really badly.”<sup>32</sup>*

According to information provided by the KNPA, over the night from 10pm on 1 May to 2am on 2 May 2015, 40 tons of water mixed with 45 liters of chemical irritants were used.<sup>33</sup>

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<sup>30</sup> OSCE/ODIHR, Human Rights Handbook on Policing Assemblies, 2016, p. 77. The OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly was established in 2006 and consists of ten independent experts from OSCE participating States.

<sup>31</sup> Amnesty International Netherlands, Use of Force: Guidelines for the Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 2015, p.159.

<sup>32</sup> Amnesty International interview with Kim Woo on 12 April 2017.

<sup>33</sup> This information was provided by the KNPA on 8 Dec 2015 in a written response to then national assembly member Lim Su Kyung.



# 4. USE OF BUS BARRICADES: POLICE FAIL IN THEIR MISSION TO FACILITATE ASSEMBLY

**“Some people would break the windows of the buses, but that doesn’t happen in the beginning. They push the buses first, then the police shoot water cannons, and this makes demonstrators angrier. The police set up four lines of bus barricades on that day. They made it so difficult for demonstrators to reach where the bereaved families were holding a sit-in. I think the police barricades only made people more indignant. That high-handedness makes people think, ‘We have to be more militant to meet the bereaved families.’ I think the police failed to manage the assembly.”**

Kim Yong-uk, Journalist<sup>34</sup>

Bus barricades have been widely used by the South Korean police during assemblies. Rather than maintaining public order, bus barricades have contributed to increasing tensions. There are cases of protesters trying to pull buses away or to climb over bus barricades. Amnesty International does not defend such behavior. However, what is clear is that the police strategy of placing bus barricades has seriously contributed to the subsequent disorder. In combination with other moveable barriers, buses in large number – up to hundreds -- have regularly been pre-emptively placed bumper to bumper around assemblies, preventing participants from being in sight and sound of their intended target. If participants are constantly

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<sup>34</sup> Amnesty International interview with Kim Yong-uk on 22 February 2017.



faced with this situation, it is obvious that this will at some point lead to a sense of great frustration and result in an escalation of tensions.

Jihyun participated in an assembly in 2014 in support of a sit-in being held by bereaved family members of the Sewol Ferry tragedy who were calling for a meeting with the president. On 22 August, the police set up bus barricades in front of Cheongun Hyoja-dong Community Service Center where bereaved family members held a sit-in calling for government accountability, preventing other demonstrators from reaching them.

As Jihyun recounted, the buses only served to exacerbate tensions:

*"I think the police created avoidable friction by hampering communication. Stopping the demonstrators, setting up bus barricades, and so on. They only fuelled the anger of the people there, even those who simply thought, 'I just want to meet the bereaved families of the Sewol tragedy.' I think the event would have been more peaceful if the police hadn't stopped the demonstrators from moving and if there weren't bus barricades..."<sup>35</sup>*

The UN Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai, characterized this use of bus barricades as "antithetical to authorities' obligation to facilitate assemblies."<sup>36</sup> Furthermore, he pointed out that, in combination with water cannons, bus barricades led to a cycle of escalation.<sup>37</sup>

The police told Amnesty International that the KNPA doesn't agree with the view of the Special Rapporteur and used these measures proportionately in situations of unlawful and violent assemblies.<sup>38</sup> However, most of the assemblies were held entirely peacefully and Amnesty International is not aware of any assembly during the period from 2013 to 2016 in which there was violence from the outset. In any case, even if there were some individuals engaged in violence at the early stages of an assembly, none of the assemblies were characterized by such large scale violence from the outset that would have justified the means chosen by the police.

The core mission of the police is to ensure public order, and, in this context, to ensure the right to peaceful assembly. The police's general approach of preventing protestors from reaching their target audience, allegedly to prevent violence, had the opposite effect, providing a potential cause for disorder. When the use of bus barricades in combination with water cannons leads to an outbreak of violence this means the police have failed their mission to maintain public order.

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<sup>35</sup> Amnesty International interview with "Jihyun" on 28 February 2017.

<sup>36</sup> Maina Kiai, Report on South Korea, Nov. 2016, para. 37.

<sup>37</sup> Maina Kiai, Report on South Korea, Nov. 2016, para. 31.

<sup>38</sup> Amnesty International meeting with KNPA on 14 July 2017.

# 5. DISPERSAL OF PEACEFUL ASSEMBLIES

Peaceful assemblies in South Korea are often dispersed by the police. Of those individuals interviewed by Amnesty International, at least 26 were involved in largely peaceful assemblies which were dispersed.

A decision to disperse an assembly should be made only when it is “strictly unavoidable”, such as in the case of serious and widespread violence where it has not been possible to identify and isolate violent individuals from the main assembly so as to enable it to continue.<sup>39</sup> Peaceful assemblies are protected under international law and as a general rule should not be subject to dispersal, which is permitted only in rare cases which meet the principles of necessity and proportionality, such as if an assembly prevents access to an emergency entrance of a hospital or blocks a highway for a prolonged period and if other means of managing the situation have failed.<sup>40</sup>

The ADA allows the police wide scope for their discretion, and certain grounds for dispersal laid out in the ADA do not conform to international law and standards. In particular, Article 20 allows for the dispersal of peaceful assemblies falling within the blanket ban areas or times, on the grounds of obstruction of the smooth flow of traffic deemed to be a clear and direct threat to the maintenance of public order, and failure to notify the authorities of an urgent or spontaneous assembly.

Under international law and standards, spontaneous assemblies, where prior notice is impracticable, should be exempt from notification requirements, and in any case the fact that notification of an assembly was not made in advance is not in itself a legitimate ground for dispersal. All peaceful assemblies, even without prior notification, including spontaneous and other urgent assemblies are protected under international law and therefore should not be dispersed solely on those grounds.<sup>41</sup>

However, under Article 20(1)5 of the ADA, assemblies which have not been conducted in an orderly manner due to “obviously breaching the bounds of the reported objectives, date and time, place, method, etc.” may be dispersed, even if they remain peaceful.

Yong Hye-in, a staff member of the Labour Party was arrested on 18 May 2014 after participating in a spontaneous peaceful assembly in Gwanghwamun Plaza calling for a transparent investigation into the Sewol Ferry tragedy. Following a notified silent march ending nearby at 7pm, 150 of the participants decided to move on to the plaza to hold an additional spontaneous assembly. After the police initially blocked their access, they began a silent sit-in protest in the center of the plaza at around 9pm. Following this, the police broadcasted a dispersal order.

Yong Hye-in explained that they had not expected the police to order dispersal of their peaceful protest as they had remained entirely peaceful throughout the assembly.

She related how the police also arrested participants and some who were no longer part of the protest or who told the police, following the order to disperse, that they would go home:

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<sup>39</sup> Christof Heyns and Maina Kiai, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, U.N. Doc. A/HRC/31/66, 4 Feb. 2016, para. 61 (hereinafter: Christof Heyns and Maina Kiai, Joint report).

<sup>40</sup> Christof Heyns and Maina Kiai, Joint report, para. 62.

<sup>41</sup> Christof Heyns and Maina Kiai, Joint report, para. 23.

*“The police completely surrounded us in a circle, with only one opening that led to the anti-riot bus on one side of the square. They began taking us one after another through the opening or a passage they formed to the bus. When the police ordered us to disperse, some people told the police they were going home. But the police arrested them, too. There were others who told the police, before the isolation, that they were not protesting any longer and stood outside the group. They, too, were arrested watching us.”<sup>42</sup>*

On 17 May 2014, Lim Mi-ri, a researcher, was part of an assembly held in front of the Hyundai building in Gye-dong, Seoul. The authorities had been previously notified of the assembly but some of the participants deviated from the notified course of the march in order to get closer to the Presidential Office. After police set up a barricade preventing the assembly from moving towards the Presidential Office, the participants sat down on the road.

Despite retaining a peaceful character, the assembly was ordered to disperse by the police, followed by a mass arrest of participants. Lim Mi-ri was able to climb over the fence and avoid arrest but sustained a 4cm-long cut to her hand for which she had to be treated by a doctor. She described the events:

*“The police rushed towards us right after the last order to disperse. There was a police unit in front of the demonstrators, and I think there was another one inside the parking lot of the Hyundai building. They all came pouring out... As they chased us, I went into an alley on the left side of the Presidential Office, along with 30 to 40 demonstrators. We kept running, and found an empty space and a fence for construction. Many got over the fence. Those who couldn't were all arrested together.”<sup>43</sup>*

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<sup>42</sup> Amnesty International interview with Yong Hye-in on 13 March 2017.

<sup>43</sup> Amnesty International interview with Lim Mi-ri on 13 March 2017.

# 6. CRIMINALIZATION OF PARTICIPANTS AND ORGANIZERS

During the period from 2013 to 2016 Amnesty International received numerous reports of assembly participants being subject to criminal proceedings simply for exercising their right to freedom of peaceful assembly. In some cases, participants and organizers have faced criminal sanctions for violating provisions of the ADA which themselves fail to meet international human rights standards, including for holding or taking part in assemblies that authorities were not notified of in advance. At the same time, some participants have been charged with obstruction of traffic under Article 185 of the Criminal Act.<sup>44</sup> This overall culture of the criminalization of the exercise of peaceful assembly has a chilling effect on the exercise of this right.

Hong Seung-hee, an artist, participated in an assembly on 15 August 2015 calling for a more transparent investigation into the Sewol ferry tragedy. She shared how she felt after being charged with obstruction of traffic.

*"[It's like saying,] 'Don't take part in an assembly.' Obstruction of traffic means you plan meticulously to occupy the roads illegally to obstruct the flow of traffic. It is such a huge burden for a participant, not an organizer of an assembly, to be summoned for an accusation like this."<sup>45</sup>*

Two UN Special Rapporteurs, in a joint report on managing assemblies, have stated that where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.<sup>46</sup> The OSCE/ODIHR also points out that: "Organizers of assemblies should not be held liable for the failure to perform their responsibilities if they have made reasonable efforts to do so. Furthermore, organizers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizers did not intend or directly participate in."<sup>47</sup>

In this connection it is important to note that use of public space, including the roads, for the purpose of assemblies is as legitimate as is traffic use, and the two UN Special Rapporteurs have noted that "there are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance."<sup>48</sup>

In addition to being charged with obstruction of traffic, peaceful protesters have been charged with offences under the ADA. Fifteen of the 31 individuals interviewed for this briefing were charged with criminal offences for their involvement in assemblies, including obstruction of traffic under the Criminal Act and/or violations of the ADA. None of these 15 individuals were charged with committing violent acts. Of the 15 who faced

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<sup>44</sup> Criminal Act, Act No. 14415, 20 Dec. 2016, Partial Amendment.

<sup>45</sup> Amnesty International interview with Hong Seung-hee on 9 March 2017.

<sup>46</sup> Christof Heyns and Maina Kiai, Joint report, para. 23.

<sup>47</sup> OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 112.

<sup>48</sup> Christof Heyns and Maina Kiai, Joint report, para. 32.

criminal charges, 6 included charges under the ADA for non-compliance with a dispersal order despite being only involved in peaceful assemblies. Special Rapporteur Maina Kiai explicitly stated in his report on Korea that: “Charging assembly participants with certain criminal offences, such as the general obstruction of traffic, de facto criminalizes the right to peaceful assembly.”<sup>49</sup>

Article 22(3) of the ADA provides for criminal sanctions (of up to one year imprisonment or a fine of up to one million won) (USD887) for organizers who violate Article 16(4)3 for “obviously breaching the bounds of the reported objectives, date and time, place, method, etc.”

Article 24-5, which applies to failure to comply with an order to disperse provides for up to six months imprisonment, a fine of up to 500,000 won (USD444), penal detention (imprisonment without labour) or a minor fine.

In other cases, such as that of Han Sang-gyun (see below), organizers have been imprisoned after being held responsible for the actions of others.

According to the two UN Special Rapporteurs: “While organizers should make reasonable efforts to comply with the law and encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”<sup>50</sup> Furthermore, the Special Rapporteur on the right to freedom of assembly and of association has underlined in other reports, including in his report on Korea, that the principle of individual liability means that organizers cannot be held criminally or civilly liable for any unlawful acts of other participants.<sup>51</sup>



## HAN SANG-GYUN

The most high-profile case of an organizer being held accountable for the actions of others is that of Han Sang-gyun, president of the Korean Confederation of Trade Unions (KCTU) who has remained in prison since he was arrested in December of 2015.

Han Sang-gyun has been held criminally responsible for his role in organizing a series of anti-government protests in 2014 and 2015. He was found guilty of general obstruction of traffic, and violation of the ADA including violation of Article 16 (Matters to be Observed by Organizers) during this period. In addition, he was held responsible for others’ unlawful actions. For example, he was held accountable for the violent actions of others which resulted in injuries to 108 police officers on 14 November 2015. In its verdict at the court of first instance, the Seoul Central District Court stated that Han Sang-gyun was complicit in others’ violent actions because he did not take appropriate action to prevent such actions on that day.<sup>52</sup>

On 13 December 2016, the Seoul High Court reduced Han Sang-gyun’s original 5-year sentence to 3 years on appeal. This ruling was upheld by the Supreme Court on 31 May 2017.

The UN Working Group on Arbitrary Detention has described Han Sang-gyun’s detention as “arbitrary”. The Working Group stated that “the appropriate remedy would be to release Mr. Han immediately, and accord him an enforceable right to compensation and other reparations, in accordance with international law” and called on the South Korean government to “ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Han, and to take appropriate measures against those responsible for the violation of his rights.”<sup>53</sup>

<sup>49</sup> Maina Kiai, Report on South Korea, Nov. 2016, para. 42.

<sup>50</sup> Christof Heyns and Maina Kiai, Joint report, para. 26

<sup>51</sup> Maina Kiai, Report on South Korea, Nov. 2016, para. 95(d).

<sup>52</sup> Seoul Central District Court, 2016 Go-Hap-12, 4 July 2016, p. 126 (in Korean).

<sup>53</sup> UN Human Rights Council Working Group on Arbitrary Detention, Opinion No. 22/2017 concerning Han Sang-gyun and Young-joo Lee (Republic of Korea), para. 80.

# 7. CONCLUSION AND RECOMMENDATIONS

It is the role of the police to facilitate the right to freedom of peaceful assembly while maintaining peace and order. Yet all too often between 2013 and 2016 the South Korean police instead acted to stifle the exercise of this right by approaching assemblies at the outset as something to slap restrictions or bans on, or to be met with bus barricades and water cannons. When a repressive policing approach fueled and increased anger and frustration, leading to the outbreak of violence and disorder, the police achieved the opposite of their stated goal. In these situations, the police failed in their mission.

While the KNPA's acceptance of the recommendations made by the Police Reform Committee in September 2017 indicates their willingness to consider policing reform, it is too early to judge how effectively these recommendations will be implemented. Importantly, the recommendations do not adequately address blanket bans on specific times and places under Articles 10 and 11 of the ADA. In the context of such reforms, it is crucial that the South Korean authorities adopt and institutionalize a clearly regulated framework for policing assemblies and for the use of force. This must include revising elements of the ADA as well as the different laws and regulations governing the use of force to ensure that policing practices and domestic law conform to international human rights law and standards.

Amnesty International reiterates the recommendations already voiced in its briefing *Freedom of Peaceful Assembly in South Korea and International Human Rights Standards*<sup>54</sup> which call on the government of South Korea to:

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

Amnesty International calls on the command leadership of the Korean National Police Agency to:

- convey a clear message to all law enforcement officials involved in policing assemblies that their task is to facilitate and not to restrict a peaceful public assembly and this must be clearly understood by all law enforcement officials taking part in the management of the assembly;
- ensure that the overall approach to policing assemblies should be guided by the concept of facilitation of the assembly and should not from the outset be shaped by the anticipation of violence and use of force;
- ensure that tactics in policing assemblies should emphasize de-escalation tactics based on communication, negotiation and engagement.

For this, Amnesty International urges the Korean National Police Agency to include the following its operational regulations for managing assemblies and to also call on the National Assembly to include them in the relevant laws as well:

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<sup>54</sup> Amnesty International, *Freedom of peaceful assembly in South Korea*.

- the peacefulness of an assembly should be presumed as long as the organizers have expressed their peaceful intention;
- a prior notification system must be operated to serve its primary purpose to facilitate peaceful assembly, restrictions on assemblies must remain the exception rather than the rule, assemblies should not be pre-emptively restricted on the sole ground of ensuring smooth flow of traffic, protecting privacy or the right to learning, and the relevant rules and regulations must specify that a proportionality assessment must be included in any decisions relating to restrictions;
- exceptions to requirements of prior notification must be made for spontaneous and other urgent assemblies;
- law enforcement officers should refrain from using bus barricades in policing assemblies unless there is compelling and demonstrable evidence that those organizing or participating in the assembly will use violence, and that this is a necessary and proportionate measure to contain it;
- clear criteria and practical guidance must be provided to law enforcement officials detailing the circumstances that may warrant dispersal in accordance with international human rights law and standards, specifying all steps (including de-escalation measures) which are required to be taken before a decision to disperse, who may issue a dispersal order, that any decision to disperse an assembly may be taken only if this measure is strictly unavoidable and is in line with the principles of necessity and proportionality, and in particular that the law enforcement authorities must not use force to disperse assemblies merely because they are considered unlawful under national law;
- the authorities should refrain from charging participants and organizers of assemblies for obstructing the flow of traffic under Article 185 of the Criminal Act, and organizers and participants must not be subject to criminal or administrative sanctions for the mere act of organizing or participating in peaceful assemblies.

Furthermore, the regulation of the use of force in the policing of assemblies, as well as in other law enforcement situations, must be brought in line with international human rights law and standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Amnesty International calls the Korean National Police Agency to establish a comprehensive framework that regulates the use of force in a detailed manner:

- establishing the principles of legality, necessity and proportionality as the fundamental principles governing any use of force in law enforcement;
- requiring law enforcement officials to take measures to prevent situations in which they might have to resort to the use of force, to apply non-violent means before resorting to the use of force, to minimize harm and to respect and protect life;
- regulating the type of weapons and equipment to be used in law enforcement in general and in the policing of assemblies in particular, with clear criteria and thresholds as to when these weapons and equipment may or not be used, how they are to be used and by whom - permitting their use only by those police officers who have been successfully trained and certified in their use;
- establishing a thorough and effective system of supervision, control, reporting and accountability that enables the detection and investigation of any excessive or otherwise unlawful use of force and ensures that police officers, including commanding officers where relevant, are held accountable;
- specifically with regard to the use of water cannon, developing detailed operational guidance as follows:
  - water cannons may only be used when violence is so serious and widespread that it is no longer possible to deal only with violent individuals, with clear instructions when and for how long to use them, when to stop, the minimum distance to be maintained as well as the permitted degree of pressure in order to prevent excessive harm to any individual;
  - effective control over the use of the water cannon, including the direction, pressure and duration of the jet, must be ensured at all times to prevent hitting uninvolved or particularly vulnerable persons or causing excessive harm as a result of too high pressure or too close distance.

Amnesty International has developed Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>55</sup> and expresses the hope that these Guidelines will also serve the authorities in Korea, in particular the Korean National Police Agency, in establishing a legal and operational framework for the use of force in law enforcement that duly reflects international human rights law and policing standards.

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<sup>55</sup> Amnesty International Netherlands, Use of force.






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# MISSION FAILED

## POLICING ASSEMBLIES IN SOUTH KOREA

In the period 2013 to 2016 the South Korean police employed a range of practices in policing assemblies that fell short of international human rights law and standards. During this period, the police used their discretion under existing domestic law to ban, restrict and disperse a number of peaceful assemblies. In particular, the police exacerbated tensions by setting up bus barricades and at times resorted to excessive use of force.

With a change in government in May 2017 and the establishment of the Police Reform Committee shortly after, there are positive signs that the police are committed to reforming their approach to and practices in how they police assemblies. However, until these changes are legislated into law and written into internal police guidelines, there is the real risk that the police will return to their former practices.

This briefing details those areas where the police failed in their mission to facilitate, protect and promote freedom of peaceful assembly between 2013 and 2016. It also makes recommendations to the police and lawmakers on how to ensure these recent improvements are consolidated into law and practice.