International Coordinating Committee Sub-Committee on Accreditation (ICC-SCA) – National Human Rights Commission of Korea (NHRCK)
Stakeholders’ Submission

Submission by:
The Asian NGO Network on National Human Rights Institutions (ANNI)*

Submitted on 30 June 2014

* The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006. It is a network of Asian NGOs and human rights defenders working on issues relating to National Human Rights Institutions (NHRIs). ANNI is composed of members that are national organizations from all over Asia. ANNI currently has 30 member organizations from 17 countries or territories. The work of the ANNI members focus on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC).

The Asian Forum for Human Rights and Development (FORUM-ASIA) is the Secretariat of ANNI. FORUM-ASIA has Consultative Status with the ECOSOC (UN Economic and Social Council) since 2004.

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Introduction

This stakeholder information is submitted by the Asian NGO Network on NHRIs (ANNI) for the accreditation review of the National Human Rights Commission of Korea (NHRCK). This submission focuses on the selection and appointment process of members of the NHRCK, the effectiveness of the NHRCK in relation to pressing and urgent human rights situations and issues in the country as well as the NHRCK’s deteriorating relationship with civil society.

Activities conducted by the ANNI with regard to the NHRCK include the following:

- A mission of inquiry in 2008 at the outset of alleged government intervention/retaliation at the NHRCK;¹
- Written communications to the relevant stakeholders from the Republic of Korea government to the International Coordinating Committee (ICC);
- A side event jointly organized with People’s Solidarity for Participatory Democracy (PSPD) at the 25th session of the Human Rights Council after the UN Special Rapporteur on the situation of Human Rights Defenders (SR HRD), Mrs. Margaret Sekaggya, concluded her official visit in 2013;
- Annual assessment reports of the NHRCK in the ANNI Report on the Performance and Establishment of NHRIs in Asia.²

ANNI also notes that recommendations made by the ICC-SCA from the previous accreditation review in 2008 continue to be unimplemented.³ This submission is based on information gathered from the annual ANNI Reports as well as the interaction and interface between the NHRCK and civil society organizations.⁴

Overview

The NHRCK had previously been considered a model institution and example for the rest of its Asian counterparts. However, since the Commission was reconstituted following a series of actions by the government that undermined the Commission in 2009, the NHRCK has not been able to perform its role as an independent and effective body in the promotion and protection of human rights.

It also continues to suffer from a lack of public legitimacy, confidence and perception of independence by civil society. A declaration of non-cooperation by civil society in 2009 effectively severed any working relationship with the NHRCK. It has instead since continued to suffer more injury to its reputation.⁵

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³ See Annex 1 for Summary of List of Recommendations by the ICC-SCA to NHRCK.
⁴ Korean House for International Solidarity (KHIS, ANNI member in South Korea) and PSPD are FORUM-ASIA members.
⁵ The most recent incident involves a national coalition of NGOS ("NHRCK Watch") that publicly rebuked the NHRCK for its position at the Human Rights Council. Demands included the resignation of the Chairperson as well as a public apology from the NHRCK.
The human rights situation in South Korea has seen a recent and rapid decline that threatens to erode the democratic progress made since its transition from authoritarian rule in the late 1980s. Certain groups of human rights defenders in the country, including journalists and media workers, trade unionists and labour rights defenders, environmental rights defenders, migrants’ rights defenders, students’ rights defenders, whistle-blowers and those defending the rights of lesbian, gay, bisexual and transgender persons face particularly challenging problems and are not able to operate in an environment that is conducive for their legitimate human rights work and activities.

Given the deteriorating human rights situation, alarming lack of protection and increasing pattern of reprisals particularly against HRDs, it is imperative that the NHRCK is held accountable for its abject performance on the ground.6

Issues that undermine the effective work and functioning of the NHRCK:

Selection and Appointment of Members of the Commission

The selection and appointment process continues to fall short of the minimum standards set out in the Paris Principles because of the non-inclusive and non-transparent manner it is conducted. The ICC-SCA had repeatedly made recommendations “to adopt procedures that ensure a broad and transparent appointment process through public advertisement and a broad consultation procedure”. However, this has not been the case. Changes made were only cosmetic and failed to adequately broaden the process. The selection process is still marked by the complete absence of public consultation and participation of civil society. This is particularly worrying since NHRIs are supposed to be protectors of HRDs on the ground and further exacerbates the already fractious relationship the NHRCK has with civil society.

The appointment process of its Chairperson and Commissioners is based on nominations from the President, the National Assembly (both parties) and the Chief Justice of the Supreme Court. It does not comply with the standards listed in the Paris Principles to achieve a merit-based and participatory selection process that reflects pluralism from diverse segments of society.

In addition, the President and ruling party are entitled to 5 (out of 11) nominations, including the Chairperson, which renders the process susceptible to politicization and raises questions over the independence of members in the NHRCK. The ICC-SCA has emphasized that decision-making by the Executive regarding appointment of members to NHRIs risks losing credibility and independence.

The selection process also exposes the lack of competence and capacity in the NHRCK’s members. Since 2012, amendments were made to the selection process to allow for a “confirmation hearing” for the appointment of the Chairperson. However, the re-appointment of Byung Chul Hyun highlights the inadequacies of the process. According to civil society, while the confirmation hearing further

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6 A/HRC/25/55/Add.1
exposed and confirmed his lack of proven competence, knowledge and experience in human rights, he was reappointed for a second term. The NHRCK, under his leadership, has consistently suffered from a lack of public confidence and legitimacy.

Under the incumbent leadership, conspicuous lapses or oversight by the NHRCK include alleged orders to cease operation of the heating system and elevator during a sit-in/protest by disability rights defenders against the NHRCK in the winter of 2010; as well as the blocking of commissioners from submitting an opinion to the High Court relating to a prominent forced-eviction case.

While the confirmation hearing represents a minor step forward, it is still not a robust safeguard to ensure the membership of the Commission meets the good practices listed in General Observations 1.8 pertaining to selection and appointments. Furthermore, the hearing is only designated for the Chairperson and reinforces the perception that it is a window-dressing measure. Eight of the eleven members of the NHRCK come from the legal profession, further highlighting the shortcomings of the process and the inability to address the lack diversity and pluralism in the NHRCK.

**Effectiveness and Fulfillment of Human Rights Mandate**

The government has in recent times increasingly clamped down on the exercise of peaceful assembly especially by environmental rights defenders and affected communities due to large-scale development projects. Prominent examples include the mass protests against the construction of the naval base in Jeju island and the building of power transmission towers in Miryang.

They typically involve the excessive use of force by security personnel and mass arrests of HRDs on spurious charges (obstruction of business, obstruction of justice, trespass). Recently on 11 June 2014, the government again launched a crackdown on peaceful protestors, many of whom were elderly citizens residing in the Miryang community, which led to arrests and casualties.

To its credit, the NHRCK had initiated various investigations and made recommendations concerning police action in handling peaceful demonstrations. The NHRCK, in the information provided to the Human Rights Council during the Interactive Dialogue with the SR HRD, has also firmly defended its position on withdrawal/dismissal/processing of complaints. It cites compelling statistics that appear to attest to its effectiveness.

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8 These include staging sit-ins and picketing the NHRCK as well as media statements to condemn the NHRCK, among others.


10 This is in relation to the Jeju Island case.
However, such statistics warrant closer scrutiny. Most of the NHRCK’s actions, particularly in the aforementioned “emblematic” cases, revolve around ensuring that medical attention and necessities are provided. They however do not amount to effective protection and remedies to victims.\textsuperscript{11} Their response to individual management of cases does not address the scale and recurrence of such crackdowns.

At the time of writing, activists in all encampment areas protesting the construction of a high-voltage power towers in Miryang have been forcibly dispersed by 2000 police officers in a crackdown that turned violent. On the Miryang case, the NHRCK has continually failed to make timely pronouncements or condemn the heavy-handed approach employed by the authorities and law enforcement personnel.

It is thus disingenuous for the NHRCK to suggest that it “strives in the field of Business and Human Rights...as well as the "Report on Business and Human Rights" in February 2013.”\textsuperscript{12} While it is commendable that the NHRCK sends monitoring teams to public assemblies, the lack of timely interventions, quality of responses and absence of a systematic follow-up plan or collectively address larger systemic issues in the country and that can lead to institutional change in the country is worrying. Given the systematic and worsening nature of crackdowns by the authorities, the NHRCK must also focus its attention on advocating for a safe and enabling environment for HRDs and affected communities.

Another obvious example is the NHRCK’s problematic position on the increasing trend of invoking the National Security Law (NSL) to curtail the enjoyment of the right to freedoms of expression and association. The NHRCK had in 2012 backtracked from its earlier position of calling for the abolition of the NSL. Instead, it now called for a reduction in human rights violations in applying NSL.

It is in these cases that the NHRCK is expected to work in tandem with defenders to assess the human rights situation on the ground and ensure accountability for human rights violations, hence becoming an essential actor in the fight against impunity.

In fact, it can be inferred that the NHRCK steers away from making timely and critical pronouncements on issues that are particularly sensitive or antagonistic to the government. The NHRCK has not adequately displayed integrity, moral courage and competence in the exercise of sound judgement and discharge of their duties. It has also not exhibited sufficient independence from executive influence to warrant any public credibility.

\textbf{Relationship with Civil Society}

The relationship between civil society and the NHRCK today is frayed and antagonistic. The considerable efforts by civil society were instrumental to the
establishment of the NHRCK in 2001. Its formation was widely-praised as an important institution and ally to HRDs in the national human rights protection infrastructure.

However, the NHRCK today suffers a significant loss of public confidence. This is variously indicated from the refusal to engage with the NHRCK, seek recourse in the NHRCK, and even staging protests or condemning the Commission. NHRCK Watch issued a statement alleging that the NHRCK had lied during their report at the 25th session of the Human Rights Council this year.13

A tacit admission by the NHRCK of this fractured relationship is also revealed in the low attendance records of the meetings it convenes and unsatisfactory level of communication with the civil society. Approval ratings have also dropped significantly since the current Chair assumed office.14 A lack of legitimacy is also reaffirmed by repeated calls for the resignation of the Chair as well as demands of apology from the NHRCK.

Recommendations to the Government of Korea:

1. Refrain from unduly interfering with the independence and autonomy of national human rights institutions;

2. Amend existing provisions in the NHRCK enabling law to allow for public participation in the nomination and appointment process of Commissioners and to grant the Commission full autonomy in selecting its own staff.

Recommendations to the NHRCK:

3. Implement the recommendations of the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions in order to strengthen its independence and effectiveness;

4. Raise awareness about the existence of a focal point for defenders within the Commission and ensure that the views of defenders are taken into account;

5. Ensure accessibility of the NHRCK to all citizens and actively engage with all groups of human rights defenders and widely work and consult with appropriate actors, including civil society, in the design and implementation of programs and activities;

6. Make timely investigations and pronouncements on systemic human rights violations, in particular on the issues of freedoms of expression, peaceful assembly and association;

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13 See Annex 2 for English version of NHRCK-Watch statement “The National Human Rights Commission of Korea insults disability rights defenders with fabricated report at the UN Human Rights Council”.
7. Advice and make recommendations to the government on legislation that have been abused to restrict and suppress the work of HRDs, particularly the National Security Act, defamation laws and the Penal Code, in order to avoid criminalization of HRDs;

8. Advise the government and parliament on draft and existing legislation or submit recommendations to Parliament to resolve pressing human rights issues.
### ANNEX 1: Summary of List of Recommendations

**Republic of Korea: National Human Rights Commission of Korea (NHRCK)**

- November 2008: The SCA recommended that the NHRCK be re-accredited with **status A**.
- March 2014: The SCA recommended that consideration of the re-accreditation of the NHRCK be **deferred** to its second session of 2014.

<p>| <strong>Selection and appointment</strong>&lt;br&gt;* refer to Paris Principle B.1 and ICC-SCA General Observation 1.8 on ‘Selection and appointment of the decision-making body’ | <strong>Recommendations</strong>&lt;br&gt;To have more autonomy to appoint its own staff in a manner that does not unnecessarily delay the fulfilment of the NHRCK needs (2008)&lt;br&gt;For the legislation to provide a clear, transparent and participatory selection process in compliance with the Paris Principles (2008 &amp; 2014)&lt;br&gt;To advocate for the formalization of a process that includes requirements to: (2008 &amp; 2014)&lt;br&gt;- Publicize vacancies broadly;&lt;br&gt;- Maximize the number of potential candidates from a wide range of societal groups;&lt;br&gt;- Promote broad consultation and / or participation in the application, screening, selection and appointment process;&lt;br&gt;- Assess applicants on the basis of pre-determined, objective and publicly available criteria; and&lt;br&gt;- Select members to serve in their own individual capacity rather than on behalf of the organization they represent |
| <strong>Pluralism (Diversity)</strong>&lt;br&gt;* refer to Paris Principle B.1 and ICC-SCA General Observation 1.7 on ‘Ensuring pluralism’ | <strong>Recommendations</strong>&lt;br&gt;To advocate for the inclusion of provisions in its enabling legislation to ensure diversity in its membership and staff (2014) |
| <strong>Functional immunity and</strong> | <strong>Recommendations</strong>&lt;br&gt;To promote functional autonomy from the Government as |</p>
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<tr>
<th>independence</th>
<th>constitutionally entrenched (2008)</th>
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<td>* refer to Paris Principle B.3 and ICC-SCA General Observation 2.3 on ‘Guarantee of functional immunity’</td>
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<td>To include provisions to promote (2014):</td>
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<td>- Security of tenure;</td>
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<td>- The NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;</td>
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<td>- The independence of the senior leadership; and</td>
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<td>- Public confidence in the NHRI</td>
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<td>General</td>
<td>To consider issuing public statements and reports through the media in a timely manner to address urgent human rights violations (2008)</td>
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<td>To advocate for the inclusion in its founding legislation of provisions that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties (2014)</td>
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Statement

The National Human Rights Commission of Korea insults disability rights defenders with fabricated report at the UN Human Rights Council

In condemnation of the NHRCK that submitted a fabricated communication to the Human Rights Council

Has the National Human Rights Commission of Korea (NHRCK) no shame? How can an institution holding the label of “human rights” distort facts so extensively and insult disability rights defenders? On March 10, at the 25th session of the Human Rights Council (HRC), the NHRCK distorted facts even worse than the government.

The response submitted by the NHRCK during the present HRC session, requested by Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders, who visited the Republic of Korea in May 2013, was packed with distortions and lies. Most serious amongst them was the misrepresentation of disability rights defenders. During the investigations in last May, disability rights defenders appealed that they had been oppressed not only by the police but also by the NHRCK. On the International Day of Persons with Disabilities, December 3, 2010, disability rights defenders occupied the NHRCK building demanding the resignation of Chief Commissioner Hyeon Byeong-chul and improvements in disability issues, such as the revision of the Welfare of Disabled Persons Act and the abolishment of the obligation of support borne by family members. In response, the NHRCK mobilized the police, as well as a number of its staff, and inflicted violence against the defenders: in addition, it suspended the supply of electric power and heating, and restricted the entry of personal assistants. Elevators also stopped operating, meaning those in wheelchairs were essentially confined inside. These proceedings were well publicized during the confirmation hearing on the Chief Commissioner when he sought a consecutive term.

Even so, in its communication submitted to the Human Rights Council, the NHRCK reported that disability rights defenders “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… In the duration of the sit-in protest, 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… In addition, it needs noting that partial restriction of the access of activists to prevent diffusion of the sit-in protest was inevitable…” However, although the building has a central heating system, individual heating is possible if needed: this fact was also later revealed during the confirmation hearing. As proof, heating was provided during a previous sit-in protest by disability rights defenders, yet the NHRCK did not request that heating be provided for the protest on December 3, 2010. The falsity is reinforced by the NHRCK’s actions of disallowing the use of heating equipment.

Furthermore, the NHRCK’s depiction of disability rights defenders as bullies, who
inflicted violence against the NHRCK staff, is astounding. The clash between the defenders and the NHRCK staff was a result of the NHRCK’s mobilizing its own staff in stopping the defenders. Before the clash in 2010, there had been no such orders to staff members to stop the sit-in protesters, causing a clash between the defenders and the NHRCK staff. The NHRCK, which should serve as the haven for social minorities, instead infringed upon the rights of social minorities, who were demanding for better protection.

Some disability rights defenders, whose health was negatively affected due to the shut off, were taken away in ambulances. However, the NHRCK was busy to make excuses even regarding one of such defenders, the late Woo Dong-min who passed away as a result of a worsened pneumonia, stating that “… he reportedly participated in another sit-in protest on the road in front of the National Assembly on 8 December 2010, when his health quickly deteriorated, resulting in pneumonia that led to his death on 2 January 2011.” Rather than self-reflection on the cause of his pneumonia, the NHRCK just continues to search for excuses.

In addition, the NHRCK attempted to cover up its neglect of key human rights violations, by reporting that it is processing complaints in a timely manner, that the rate of processed cases has increased, and that it is actively engaging in the areas ICT and human rights, business and human rights. However, the NHRCK’s report is not true. For example, in 2010, when Kim Jin-suk was carrying out an aerial protest in a tower crane, demanding the withdrawal of the layoffs by Hanjin Heavy Industries, the NHRCK dismissed her request for emergency remedy; regarding this case, it lied that it dismissed the case on the grounds that it had been settled through the NHRCK’s mediation with the company. However, there had been two requests for emergency remedy, the first of which ended through the NHRCK’s arbitration with the company but the second of which was dismissed by a vote at the NHRCK’s Plenary Committee. The latter case was tabled at the Plenary Committee by the three Commissioners, including Jang Hyang-sook, as the company did not comply with the agreed conditions of the first arbitration. It is well-known fact through media that at the Plenary Committee discussing the case, Han Tae-shik, non-standing Commissioner retorted, “what human rights for an illegal protestor?”

The NHRCK also distorted the request for emergency remedy regarding Miryang case, saying that the case had been settled through mediation with the police. This report comes at a time when the Committee against the Construction of the Miryang Power Transmission Tower is organizing one-man protests in front of the NHRCK, in response to the repeated dismissals by the NHRCK without proper investigations and after prolonged administrative processing.

The NHRCK is already notorious in Korean society, receiving criticism from the civil society due to its neglect of human rights violations or discriminations committed by public authorities, not to upset the government. The NHRCK is responsible for numerous deaths as it neglected human rights violations by dismissing complaints
repeatedly such as human rights violations in the construction of the power transmission tower in Miryang and violations of the right to life of patients, threatened by the shutdown of the Jinju Medical Center. Instead of self-reflecting on its faults, the NHRCK is publicly distorting the truth by providing a fabricated communication to the international community. A national human rights institution that infringes upon human rights is no longer needed. We request Chief Commissioner Hyeon Byeong-chul, together with unqualified Commissioners to resign immediately and the NHRCK to apologize!

March 11, 2014

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