

Urgent Appeal to the Special Rapporteur on freedom of peaceful assembly and of association

1. INFORMATION

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2. BACKGROUND

Yoon Suk-yeol, a new president of the Republic of Korea, relocated the presidential office from the Blue House (also known as “Cheong Wa Dae”) to the Ministry of Defense Compound in Yongsan District in Seoul and commenced his presidential term on 10 May 2022.² Before the relocation, the presidential office was located near the presidential residence in the Blue House.³

On 19 April 2022, Rainbow Action Against Sexual-Minority Discrimination (hereinafter the “Rainbow Action”)⁴ submitted an assembly noticing to the Yongsan Police Station announcing that 500 people planned to march over a 2.5-kilometer course from the plaza at Yongsan Station to a plaza in Itaewon on 14 May, 2022 to mark the International Day Against Homophobia, Biphobia, Inter and Transphobia (IDAHOBIT) on 17 May.

In response, police notified the Notice of Ban of the march on the grounds that it violates the Assembly and Demonstration Act since a portion of the course fell within 100 meters of the presidential office. The Assembly and Demonstration Act includes a provision stating that assemblies and demonstrations are barred within 100 meters of the “presidential residence”, with no mention

¹ MINBYUN – Lawyers for a Democratic Society is an NGO with special consultative status with the UN ECOSOC which strives to advocate for basic human rights and development of democracy in Korea through litigation, research and various advocacy activities since 1988.

² The Guardian, Claims of shamans and curses as South Korea’s president shuns official residence, 10 May 2022, <https://www.theguardian.com/world/2022/may/10/claims-of-shamans-and-curses-as-south-koreas-president-shuns-official-residence> (last visited on 14 May 2022).

³ Yonhap News, Cheong Wa Dae to open to public this week, 9 May 2022, <https://en.yna.co.kr/view/AEN20220509005800315> (last visited on 14 May 2022).

⁴ The Rainbow Action is a coalition of 43 NGOs in the Republic of Korea that advocate the human rights of LGBTI persons.

about the “presidential office”.⁵ Article 11 (3) of The Assembly and Demonstration Act⁶ states that:

No person shall hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences:

(3) **The Presidential residence** and the official residences of the Speaker of the National Assembly, the Chief Justice of the Supreme Court, and the President of the Constitutional Court of Korea

Rainbow Action has requested interim measures for a suspension of execution of the Notice of Ban to the Seoul Administrative Court on 25 April 2022. The Court subsequently decided suspension of the Notice of Ban on 12 May 2022 in respect of protecting the right to peaceful assembly.⁷

Despite the Court’s decision , the police have submitted an immediate appeal to the decision on 12 May 2022 and have announced on 13 May that they will continue to ban the assemblies, marches and associations within 100 meters of the presidential office as a policy(hereinafter the “banning assembly policy”).⁸

The police has also notified the Notice of Ban to other assemblies including an assembly organized by People’s Solidarity for Participatory Democracy⁹ scheduled to be held on 21 May 2022, insisting on the banning assembly policy. The IDAHOBIT rally organized by the Rainbow Action was held peacefully on Saturday, 14 May, following the court’s suspension decision on 25 April 2022.¹⁰

3. Relevant laws and alleged human rights violations

Article 21 of the Constitution of the Republic of Korea guarantees the freedom of assembly and association and stresses that “licensing or censorship of assembly and association shall not be recognized.”¹¹ On that basis, any person who wishes to hold an outdoor assembly or to stage a demonstration shall submit a report noticing such plan in advance to the police as stipulated in Article

⁵ The Hankyoreh, Will anti-discrimination march be able to pass in front of new S. Korean presidential office?, 28 April 2022, https://english.hani.co.kr/arti/english_edition/e_national/1040824.html(English) (last visited on 14 May 2022)

⁶ The full text of the Assembly And Demonstration Act translated in English is available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55727&lang=ENG (last visited on 14 May 2022).

⁷ The Hankyoreh, [S. Korean court gives anti-discrimination march OK to pass in front of Yoon’s office](https://english.hani.co.kr/arti/english_edition/e_national/1042634.html), 12 May 2022, https://english.hani.co.kr/arti/english_edition/e_national/1042634.html (English) (last visited on 14 May 2022); KBS WORLD, [Court Suspends Police Rally Ban nearby New Presidential Office](http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=169606), 12 May 2022, http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=169606 (last visited on 14 May 2022)

⁸ The Korea Times, [Police to continue banning rallies near presidential office](https://www.koreatimes.co.kr/www/nation/2022/05/113_329092.html), 13 May 2022, https://www.koreatimes.co.kr/www/nation/2022/05/113_329092.html (last visited on 14 May 2022)

⁹ People’s Solidarity for Participatory Democracy is a non-governmental organization in the Republic of Korea, founded in 1994 by activists, scholars, and lawyers who were engaged in various democratic movements for participatory democracy and human rights

¹⁰ The Hankyoreh, The first large-scale rally in front of Yongsan office... “A march to end hate and usher in a new era”(in Korean), 14 May 2022, https://www.hani.co.kr/arti/society/society_general/1042837.html (last visited on 16 May 2022).

¹¹ The full text of the Constitution translated in English is available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=1&lang=ENG (last visited on 14 May 2022).

6 of the Assembly and Demonstration Act of the Republic of Korea, and the assembly shall be held unless it is restricted by law which includes the Presidential residence.

Constitution of the Republic of Korea

Article 21

(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.

(2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized. (...)

Assembly and Demonstration Act

Article 6 (Report on Outdoor Assembly or Demonstration)

(1) Any person who desires to hold an outdoor assembly or to stage a demonstration shall, from 720 to 48 hours before such assembly or demonstration is held, submit a report on the details in all the following subparagraphs to the chief of the competent police station: Provided, That if two or more police stations have jurisdiction over such assembly or demonstration, such report shall be submitted to the commissioner of the competent City/Do police agency, and if two or more City/Do police agencies have jurisdiction over it, such report shall be submitted to the commissioner of the competent City/Do police agency exercising jurisdiction over the place where it takes place:

1. Objective;
2. Date and time (including hours involved);
3. Place;
4. The following matters concerning the organizer (in the case of an organization, including its representative), the person in charge of liaison, and moderators:
 - (a) Address;
 - (b) Name;
 - (c) Occupation;
 - (d) Contact information;
5. Organizations expected to participate and the estimated number of participants;
6. Methods of demonstration (including a route map) (...)

Article 8 (Notice of Ban of, or Restriction on, Assembly or Demonstration)(1) The head of the competent police agency who has received the report as provided in Article 6 (1) may, if such outdoor assembly or demonstration as reported to him or her falls under any of the following cases, notify its organizer of the ban of the assembly or demonstration within 48 hours after the receipt of the report: Provided, That in cases where an assembly or demonstration poses a direct threat to public peace and order by inciting collective violence, threats, destruction, arson, etc., he or she may, in respect of the remaining period of such assembly or demonstration, notify its organizer of the ban on the continuation thereof even after a lapse of 48 hours from the receipt of the report:

1. When it is deemed that such outdoor assembly or demonstration violates Article 5 (1), the main clause of Article 10, or Article 11 (..)

Article 11 (Places Prohibited for Outdoor Assembly and Demonstration)

No person shall hold any outdoor assembly or stage any demonstration anywhere within a 100-meter radius from the boundary of the following office buildings or residences: (...)

3. The Presidential residence and the official residences of the Speaker of the National Assembly,

the Chief Justice of the Supreme Court, and the President of the Constitutional Court of Korea(...)

The International Covenant on Civil and Political Rights (the “Covenant”), which the Republic of Korea ratified on 10 April 1990, establishes the obligations of States parties to respect and ensure the right of peaceful assembly. The banning assembly policy violates the Covenant because the policy does not meet the requirement that is requested by the Covenant.

A. The banning assembly policy does not meet the requirement of legality

General Comment No. 37(2020) on the right of peaceful assembly (article 21), adopted by the Human Rights Committee, states that “...Restrictions must thus be imposed through law or administrative decisions based on law. The laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.”¹²

There is no specific article that articulates a ‘presidential office’ as a place prohibited for assemblies or marches. As mentioned above, the Assembly and Demonstration Act of the Republic of Korea only states a ‘presidential residence’ as one of prohibited places for assemblies or marches, not a ‘presidential office’. That is to say that there is no sufficient and precise law that can restrict the assemblies and marches near a presidential office. Therefore, the banning assembly policy does not meet the requirement of legality and violates the Covenant.

B. The banning assembly policy violates the principle that assemblies should be presumed to be peaceful

General Comment No. 37 states that “there is a presumption in favor of considering assemblies to be peaceful.”¹³ This statement of the Human Rights Committee means that the States should not restrict assemblies in advance without clear evidence that the assemblies may create a real and significant risk. The banning assembly policy is based on the presumption that all assemblies within 100 meters of the new presidential office are not peaceful - which is opposite to the principle - without clear evidence, therefore violating the Covenant.

C. The banning assembly policy is restricting the assemblies conducted in public spaces

The right to peaceful assembly can be realized when the participants can conduct assemblies in places where they want. In this respect, the General Comment No. 37 states that “peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.”¹⁴ The General Comment No. 37 also states that courts, parliaments, sites of historical significance or other official buildings are also the public areas where the assemblies can be conducted in principle.¹⁵

¹² CCPR/C/GC/37, para. 39.

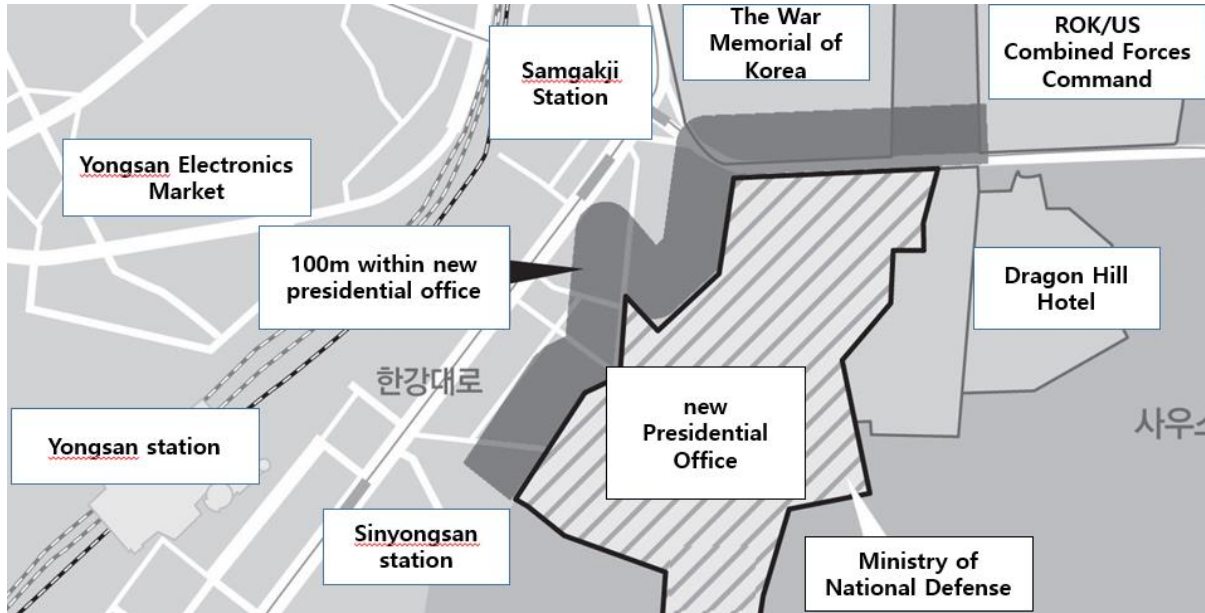
¹³ CCPR/C/GC/37, para. 17.

¹⁴ CCPR/C/GC/37, para. 55.

¹⁵ CCPR/C/GC/37, para. 56.

As shown in <Figure 1> below, the 100 meters within the new presidential office has been a public space where the public can access or should have access to hold assemblies and marches without any restrictions. In other words, the banning assembly policy is prohibiting peaceful assemblies in public spaces for a mere reason that the new presidential office is located nearby. Since the banning assembly policy restricts the peaceful assemblies in public spaces, it violates the Covenant.

<Figure 1. The scope of 100 meters within new presidential office>



D. The banning assembly policy violates the principle of necessity and proportionality

General Comment No. 37 states that any restrictions must be “necessary in a democratic society”, and they must be “least intrusive among the measures” and proportionate according to a value assessment.¹⁶

Considering that 100 meters within the new presidential office has been the space where lots of assemblies and marches were conducted, there is no clear evidence of real and significant risk to the society. Therefore, the banning assembly policy violates the principle of necessity.

The police in the Republic of Korea claim that the assemblies should be banned because of possible traffic congestion, noise and other serious public inconveniences. However, the expectation of traffic congestion and noise cannot justify the restriction, because the traffic congestion and noise during the assemblies are usually considered as an inevitable result of realizing the right to peaceful assembly, not constituting a significant risk. And the serious inconveniences are not the grounds that could justify the restrictions, because the Article 21 of the Covenant only allows the restrictions on the grounds such as: the interest of national security; public order; the protection of public health; morals; or the protection of the rights and freedoms of others.

¹⁶ CCPR/C/GC/37, para. 40.

The banning assembly policy also violates the principle of proportionality, because it can ban peaceful assemblies that are not violent and do not make any traffic congestions, noises that might harm other people. Moreover the policy can frustrate sight and sound principles¹⁷ and create a chilling effect since most NGOs have difficulties filing legal complaints to the court when the police ban their planned assemblies and rallies.¹⁸ Therefore, the banning assembly policy violates the principle of proportionality.

4. Conclusion and Request

Therefore, it is requested that Special Rapporteur on freedom of peaceful assembly and association to:

- Pay close attention to the situation of the Republic of Korea regarding the unjustifiable restrictions on the right to peaceful assembly by the police.
- Publish a press release, statement or letter to the government considering the unjustifiable restrictions on the right to peaceful assembly by the police.
- Recommend the government of the Republic of Korea to abolish the banning assembly policy that notices the ban of the assemblies, marches and associations within 100 meters of the presidential office.

¹⁷ CCPR/C/GC/37, para 57.

¹⁸ CCPR/C/GC/37, para. 36.