

**ELECTION  
FRAUD**

**REPORTS**

THE SOUTH KOREA APRIL 15,  
2020 ELECTION  
INTERNATIONAL  
HUMAN RIGHTS LAW  
CONSIDERATIONS

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## **Executive Summary:**

South Korea is a democratic success story. It has held generally well-managed elections for thirty years under an established legal framework and process that its own citizens have by and large considered legitimate and fair. The Republic of Korea's national election law (Public Official Election Act) is generally well drafted and reflects and implement international standards as defined in international law and treaties.

However, South Korea's most recent election, held on April 15, 2020 to elect members of the national assembly produced an unprecedented number of lawsuits alleging irregularities – to include claims of fraud– in the electoral process. The allegations were widespread and serious enough to undermine public confidence in some quarters in the entire electoral system.

This report examines the April 15, 2020 election from the standpoint of international human rights law by which the South Government is bound.

The report lays out 15 specific areas of interest where the South Korean electoral process -- in practice -- potentially contravened the government's legal obligations related to the conduct of the election.

These allegations implicated nearly all phases of the electoral process. To include: claims of 'partiality' by the election management body, issues with polling station operations, voting and vote counting, and the handling of ballots. Other claims covered ballot 'chain of custody' – with a detailed examination of South Korean postal service delivery records alleging a large number of potential 'ghost votes'.

The accuracy and availability for examination of electoral lists is also considered, as are issues concerning the reliability and security of electronic voting technologies used in the election. A common thread in many of the allegations is the question of adequate 'transparency' into the electoral process that is essential to ensuring public confidence.

Also at issue is the post-election ability of claimants to seek redress and to have claims handled expeditiously, as well as related issue of access to and preservation of evidence.

The role of the media in the electoral process is also highlighted – along with allegations of official impediments to media operations – before, during, and after the election.

Importantly, this report does not attempt to determine the validity of the specific allegations. The issues arising from the April 15, 2020 election should not be partisan issues, but instead touch on the fundamental soundness of – and public trust in – the South Korean electoral system.

One fairly notes that all nations' electoral processes need constant tending, no matter how advanced the country or how experienced it is at holding elections.

After assessing the allegations from the perspective of international law, this report suggests that further examination of the South Korean electoral process is desirable.

International law and custom encourages the presence of domestic and international observers.

Moreover, all nations can benefit from outside observers casting a fresh eye on the electoral process. And this can be mutually beneficial, as there is much to learn from South Korea's three decades of experience holding hard-fought democratic elections that have allowed for peaceful transfers of power – that have earned a favorable reputation domestically and internationally.

Towards this end, dispatching international observers to future South Korean elections is, as noted, an idea worthy of consideration.

## ***INTERNATIONAL HUMAN RIGHTS LAW ISSUES RAISED BY THE 4.15 ELECTION***

### **Human Rights Law Issue #1**

*South Korea's National Election Commission (NEC) – a question of partiality*

### **Human Rights Law Issue #2**

*The incumbent Democratic Party possibly obtained unfair advantage during the election campaign*

### **Human Rights Law Issue #3:**

*South Korea's Early Voting system vulnerable to manipulation*

### **Human Rights Law Issue #4:**

*QR Codes affixed to 'early voting' ballots threatened voter 'secrecy'*

### **Human Rights Law Issue #5:**

*Uncertainties regarding electronic counting machines used in the April 15, 2020 South Korean election*

### **Human Rights Law Issue #6:**

*Cyber Security of the Electoral Network*

### **Human Rights Law Issue #7:**

*Issues concerning the electoral list*

### **Human Rights Law Issue #8:**

*Polling station operational issues*

### **Human Rights Law Issue: #9:**

*Irregularities with the actual voting that potentially warrant further examination*

**Human Rights Law Issue #10:**

*Issues arising from Ballot Counting*

**Human Rights Law Issue #11:**

*Problematic ballot papers*

**Human Rights Law Issue #12**

*Ballot chain of custody issues and potential 'ghost votes'*

**Human Rights Law Issue #13:**

*Delayed review of election related court challenges*

**Human Rights Issue #14**

*NEC laxity with preserving evidence needed to adjudicate electoral challenges*

**Human Rights Law Issue #15:**

*Impediments to free operation of the media*

**Key Sources**

Universal Declaration of Human Rights (UDHR)

International Covenant on Civil and Political Rights (ICCPR)

UN Committee on Human Rights, General Comment 25

UN Committee on Human Rights, General Comment 29

UN Committee on Human Rights, General Comment 31

UN Committee on Human Rights, General Comment 32

United Nations Convention Against Corruption (UNCAC)

Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, Commemorated at United Nations, New York, October 27, 2005

Declaration on Criteria for Free and Fair Elections, Inter-Parliamentary Union, Paris, March 26, 1994

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (29 June 1990)

Guidelines for Reviewing a Legal Framework for Elections, 2d Edition, OSCE/ODIHR: (2013)

International-IDEA: International Obligations for Elections, Guidelines for Legal Frameworks, 2014

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Handbook for European Union Election Observation, 2008

Human Rights and Elections, United Nations, New York and Geneva, 1994

Handbook for the Observation of New Voting Technologies, OSCE/ODIHR, 2013

EU: Compendium for International Standards for Elections, 4<sup>TH</sup> Edition

Organization of American States (OAS) Electoral Integrity Analysis, General Elections in the Plurinational State of Bolivia, October 20, 2019

UN General Assembly, *Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization: resolution / adopted by the General Assembly, 8 March 2010*

## **ROK April 15, 2020 Election: Potential irregularities and international human rights law**

### *Introduction*

South Korea is a democratic success story. It has held generally well-managed elections for thirty years under an established legal framework and process that its own citizens have by and large considered legitimate and fair. The Republic of Korea's national election law (Public Official Election Act) is generally well drafted and reflects and implements international standards and treaty requirements applying to elections.<sup>24</sup>

However, South Korea's most recent election, held on April 15, 2020 to elect members of the national assembly resulted in an unprecedented number of lawsuits complaining of irregularities – and even fraud – in the electoral process. The allegations were widespread and serious enough to undermine public confidence in some quarters in the entire electoral system.

This report examines some of the key issues from the standpoint of international human rights law, international custom, and jurisprudence that form the framework for genuine, free, and fair elections. As a signatory or 'state party' to the various United Nations (UN) treaties that establish international legal standards applying to elections, the Republic of Korea is obliged to enact national laws that reflect compliance with international standards. As noted, South Korea's electoral law does largely meet such standards.

However, even the most advanced democracies with long experience holding elections need to constantly tend their electoral processes and practices as controversies (large and small) manifest themselves during actual elections. The recent US Presidential election in November 2020 abundantly demonstrates this point.

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<sup>24</sup> This report focuses on issues arising from the April 15, 2020 election that potentially contravene international human rights law as applied to elections. As such, it does not directly assess potential violations of South Korea's domestic electoral law. However, **Annex 12** is an independent assessment conducted by a South Korean specialist that raises a number of potential violations of the domestic Public Official Election Act.

Also of note, the documents listed in **Annex 13** and enclosed in the 'supporting documents' section of the overall report include three translated court documents related to the ROK election. The documents are plaintiffs' pleadings. These documents provide good details of the claims, supporting evidence, and legal arguments put together by South Korean lawyers on behalf of plaintiffs that allege electoral wrongdoing.

Attached as **Annex 14** is a translated assessment prepared by a South Korean attorney detailing specific alleged violations of South Korean domestic law arising from the April 15, 2020 election. The allegations include improprieties in the introduction and use of electronic voting technologies and QR codes, as well as claims regarding the existence of irregular ballots, counting procedures, obstruction of poll watchers, and chain of custody issues.

One should also remember no country's elections are flawless, and that human error, and indeed human imperfection, is not automatically evidence of fraud and should not be interpreted as such.

So with this in mind that we highlight issues that may warrant further examination – and thus offer the potential to improve South Korea's electoral process. And as a 'next step we suggest the dispatch of international election observer teams to future South Korean elections should be considered.

### *International Human Rights Law and Elections*

The standards for fair elections are ultimately enshrined in international human rights law. Such standards derive from two fundamental sources: The UN originated Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). As a member of the United Nations and a signatory to the ICCPR, the Republic of Korea explicitly and implicitly is bound by the referenced Declaration and Covenant and attendant international standards.

Although most readers are well versed in these specific provisions of international law, we nonetheless cite the key provisions for reference:

#### **Universal Declaration of Human Rights**

##### Article 21

3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **International Covenant on Civil and Political Rights (ICCPR)**

##### Article 25

Every citizen shall have the right and the opportunity...

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

Summarized in plain language:

People have the right to vote (with their choice a secret) in genuine (fair and honestly run) and periodic (held regularly and not just once) elections. The vote must be universal (open to as many people as possible) and equal (each vote of equal value). The ultimate test of a genuine election is that the outcome reflects what the voters (free of coercion) intended.

To ensure the integrity of the electoral process, other basic human rights – mandated by international law – are necessarily brought into play. These include: freedom of expression, freedom to receive and impart information, freedom of thought and opinion, and freedom of movement and assembly.

International electoral jurisprudence includes a number of other matters and actions needed to secure the integrity of the electoral process. This includes not only secret votes, but that the ballot counting process is secure, honest, and transparent. Towards this end, the entire process should be freely observable to candidates, party representatives, and independent observers.

Also required is a certain ‘equality of opportunity’ for people and parties contesting the election. Thus, no party – especially the party of an incumbent government – should have undue advantage by virtue of access to or the use of government resources.

International human rights law and jurisprudence also declares that the media has a vital role to play in the electoral process – particularly as regarding the voters’ right to receive information and to make informed judgments that reflect their genuine, free will. An unfettered media also potentially exposes issues and behaviors that threaten overall electoral integrity.

The entire electoral process is to be managed by an Electoral Management Body (EMB) that is impartial and transparent – and competent.

Voters and candidates – as part of the human right to ‘take part in the conduct of public affairs’ – are entitled to raise complaints about the electoral process and to have them fairly and promptly adjudicated.

Towards this end, an independent judiciary is also required to ensure electoral laws are properly enforced and to resolve disputes arising from the electoral process.

And finally, international law and custom encourages the presence of domestic and international observers – to help ensure the fairness of the entire electoral process and to bolster public confidence.

This is all simple in concept, but is not so easy in practice. Elections take place in political, cultural, and historical contexts that vary from country to country. And the simple act of carrying out an election – especially in a country of over 50 million people such as South Korea – is never as easy as it sounds.

South Korea's April 15, 2020 election produced claims involving alleged irregularities that potentially contravene international human rights standards and obligations – as discussed in the body of this report. These may warrant additional examination and the dispatch of international observers to future South Korean elections is perhaps deserving of consideration.

## Human Rights Law Issue #1

### *South Korea's National Election Commission (NEC) – a question of partiality*

South Korea's National Election Commission (NEC) has several decades of experience conducting and managing national elections, and operates under a generally well-written election law. However, the April 15, 2020 election produced allegations that the NEC showed favoritism for the Democratic Party (DP) of the incumbent Moon Jae-in administration.

The allegations raise the issue of potential contravention of the international legal requirement that an Election Management Body (EMB) carry out its mandate impartially. Also implicated is the requirement that a party contesting an election – particularly that of an incumbent administration – should not have unfair advantage in the electoral contest by virtue of access to and use of governmental resources.

UN Human Rights Committee, International Covenant on Civil and Political Rights (ICCPR), General Comment 25, paragraph 20 states:

“An independent electoral authority should be established to supervise the electoral process and to ensure it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”<sup>25</sup>

International-IDEA commentary further notes that “...CCPR has adopted a combined reading of ICCPR articles 25 and 26...(to conclude that)...”the unilateral abuse of state resources for campaign purposes violates the Covenant.”<sup>26</sup> This implicitly refers to an incumbent administration by virtue of incumbents having the natural benefits of incumbency.

Given the NEC's central role in conducting South Korea's elections, partiality – in reality or perception – can skew the entire electoral process. Thus, the issue deserves particular attention.

The specific irregularities alleging favoritism or lack of impartiality on the part of the NEC during the April 15, 2020 election are detailed in the following sub-sections:

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<sup>25</sup> (UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, available at: <https://www.refworld.org/docid/453883fc22.html> [accessed 15 December 2020])

<sup>26</sup> International-IDEA, *International Obligations for Elections*, 2014, page 44

***Subsection #1: A senior NEC official has excessively close ties to the Democratic Party and the incumbent administration***

The NEC's executive director, Cho Hae-ju is a close associate of President Moon Jae-in. That in itself is neither unusual nor on its face problematic. Presidents often select for key positions people they know and are comfortable with. However, Cho's career pattern raises potential issues from a 'impartiality' standpoint.

Specifically, he was already a longtime NEC official before leaving the NEC to assist with President Moon's presidential campaign in 2016. After Moon was elected, he appointed Cho as the top civilian official in the NEC. So, in effect, Cho moved from the NEC to playing a key role in partisan politics and then moved back to the NEC – after appointment by the victorious administration, and presumably at least in part for helping Moon achieve victory.

Cho is also alleged to have a longstanding and close relationship with the Democratic Party, such that he reportedly wrote a major policy report on the use of 'Big Data' with Ko Han-seok, Deputy Director-General of the Democratic Research Institute – the Democratic Party's official think-tank.<sup>27</sup>

One should of course avoid assuming improper motivations in cases such as this. However, the primary issue deserving examination is ultimately the appearance of inappropriate partisanship – in an organization that is at least by the spirit of the law and by societal ethics obligated to be non-partisan. This potentially undermines public confidence in the NEC – and by extension the entire electoral process.

***Subsection #2: The NEC allegedly gave preference in selecting as poll observers members of a Democratic Party-linked support group, People's Eye, even though ROK election practice calls for such observers to be independent and not affiliated with a political party.***

According to South Korea's electoral practice, poll watchers are chosen according the following proportions:

The incumbent party chooses 20% of the observers and the opposition party chooses 20%. The other 60% are chosen directly by the NEC. The 60% are intended to be unaffiliated with party organizations.

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<sup>27</sup> Annex 15 provides additional details.

However, it is alleged the NEC selected ‘unaffiliated’ poll observers disproportionately from lists of hand-picked candidates prepared by People’s Eye – an avowedly partisan organization closely tied to the Democratic Party.<sup>28</sup>

Such preference for a given organization, if true, would also disadvantage other citizens by limiting their right to participate in public affairs as guaranteed in ICCPR Article 25.

### *Regarding People’s Eye*

People’s Eye is a leftist civil society organization with around 50,000 members and reputed close ties to the incumbent Democratic Party. It was formed in 2016 as an independent organization but derived from within an organization called, ‘The People’s Wings’ that was formed in 2015 by an individual who is regarded as an extreme leftist, Moon Sung-guen.<sup>29</sup> People’s Eye’s avowed objective is the ‘driving towards the victory of democratic, liberal progressives’ and it was founded with the purpose of helping Moon Jae-in win election.<sup>30</sup>

Despite People’s Eye’s avowed objectives and an ideology suggesting a rather partisan organization at one far end of the political spectrum, an NEC report written in 2017 and entitled “A Study on the Expansion of Citizens’ Participation in Securing Trust in Election Management” stated that People’s Eye does not support any particular party. The report, written by a regional NEC regional official, was part of a larger collection called “Election Research”.

Beyond questions of domestic South Korean electoral law, this is also an issue under international human rights law. The issue of NEC partiality – to include in selecting poll observers is of fundamental importance to the perceived integrity of the entire electoral process. As such, it perhaps deserves further examination in order to defuse the allegations – even if they are based only on perceptions.

### ***Subsection #3: Offices leased by NEC for unclear purposes during the election campaign***

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<sup>28</sup> Article 10, Section 1, Paragraph 4 of the Public Official Election Act lays out the basic requirement that ‘unaffiliated’ observers not be closely tied to a particular party or candidate. “An organization established for the purpose of supporting a specific candidate shall not be engaged in the drive for a fair election.”

<sup>29</sup> Moon Sung-geun is a South Korean actor with strong extreme left wing beliefs. He reportedly visited North Korea secretly in 2003 as a special envoy. A well-known left-wing journalist, Kim Eo-joon, also plays a prominent role in People’s Eye. As public figures, Kim Eo-joon and Moon Sung-geun regularly support the Moon administration on television and the media. As noted, while this is certainly not unlawful, it does suggest a degree of partisanship that is contrary to standards for selecting ‘independent’ electoral observers.

<sup>30</sup> Far-left South Korean media outlets, such as ‘DAS BWE-YIDA’ are said to actively promote people joining People’s Eye. Once again, this goes to the issue of partisanship.

A South Korean investigative reporter uncovered evidence of at least nine offices – leased by the NEC throughout South Korea. The reporter stated that an NEC official was reportedly assigned to each office (in addition to other staff)<sup>31</sup>, and that there were computer linkages to the NEC regional offices (and possibly linked to the overall electoral network). When presented with documentary evidence of the offices – that had no signage naming the NEC – the NEC admitted that the information was correct. Additional details are provided as **Annex I**.

The actual purpose of these offices is unknown. However, the potential irregularity could be perceived as bearing on the issue of NEC impartiality, as well as the fairness of the overall election. This might also impinge on the rights of other candidates and members of the electorate to compete fairly and to participate in public affairs.

#### ***Subsection #4: Alleged lack of NEC transparency and responsiveness in responding to electoral challenges***

Well over 100 lawsuits were filed challenging and alleging irregularities in the April 15, 2020 electoral process. The lawsuits have requested the NEC provide various data, information, and access. Yet, the NEC has not been particularly responsive. Reportedly, the NEC declared ‘private’ all data and evidence such as electronic counting machines, software, server log files used for the elections. Being private it is not subject to release.

The NEC has reportedly also resisted court orders to release the requested materials.

As one example, a lawyer representing a candidate challenging the election outcome described to this report’s researchers the NEC’s resistance to providing information as follows:

After making a total of 21 requests in writing during the preparatory investigative stage and at the first hearing, a request was also made once through the judge.

According to the lawyer, the 21 written requests (made once every week after the lawsuit was filed) asked for the integrated voters’ list, but the requests were all denied. The court ordered the NEC to submit the integrated voters’ list, and once again, on October 23 the court ordered the NEC to submit it on the date of its first hearing.

Ultimately, the NEC privately submitted the voters’ list to the court only – not to the petitioner – on the grounds it contained trade secrets and would violate privacy laws. The lawyer noted that because it was submitted privately, no one can access it and only the courts are aware of its contents. Thus, the lawyer and the petitioner were unable to conduct an inquiry or investigation.

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<sup>31</sup> Whether other individuals at these offices were affiliated with organizations besides the NEC could not be conclusively ascertained, despite rumors that they were from People’s Eye.

In summary, the NEC's alleged behavior potentially violates international human rights law requirements that guarantee the right to an effective remedy (implicitly including the right to raise electoral challenges) (ICCPR 2 (3)); the right to receive information (ICCPR 19 (2)); and the right to have a prompt resolution (CCPR GC 31, paragraph 15.2; and CCPR GC 32, paragraph 27).

Also potentially implicated is the obligation of impartiality by the electoral authorities that is discussed earlier, given the possible perception of governmental influence being responsible for the NEC's alleged tardiness.

The basic concept of 'transparency' that is mentioned throughout international electoral jurisprudence and that is necessary to ensure the effective right to raise and pursue claims, appears to be lacking in the present case. One notes without the fullest possible transparency, public confidence in the electoral process tends to suffer.<sup>32</sup>

The NEC's apparent resistance to complying with court orders is also contrary to the concept that human rights are to be protected by the rule of law (as explicated in the UHDR preamble and CCPR GC 25 and CCPR GC 13). An implicit corollary is that the electoral process is guaranteed by the rule of law rather than individuals, parties or organizations.

As noted by the United Nations Centre for Human Rights: "... (E)lections must be subject only to the rule of law, and not to the whim of the existing Government or any single political party."<sup>33</sup>

#### ***Subsection #5: Supreme Court justice retires but stays as head of the NEC***

In South Korea, the head (chairman) of the National Election Commission is always one of the Supreme Court justices. If the justice who is the chairperson of the NEC retires from the Supreme Court, he or she also resigns as the head of the NEC. But former Justice Kwon Soon-il, continues as the head of the NEC even after he quietly retired from the Supreme Court on September 8<sup>th</sup>, 2020 (without a retirement ceremony). This has never happened before in South

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<sup>32</sup> The UN Convention Against Corruption (UNCAC) is also used to bolster and fill in gaps in ICCPR and other statutory law concerning elections. In particular, UNCAC Articles 5.1 and 13.1 deal with the citizens' right to transparency in governmental affairs. 'Governmental affairs' is interpreted under legal jurisprudence as including elections.

<sup>33</sup> Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, Centre for Human Rights, 1994. (Paragraph 78)

Korea – a retired justice continuing as the head of the NEC, and a justice retiring without a retirement ceremony.<sup>34</sup>

Of course, there may be quite legitimate and unobjectionable reasons for the newly retired Supreme Court justice remaining in place at the NEC. However, the electoral authority in any country arguably should go the extra mile to avoid even the appearance of something untoward. This is another potential irregularity arguably deserving attention in order to clarify any misunderstanding or misconceptions.

## **Human Rights Law Issue #2**

### ***The incumbent Democratic Party possibly obtained unfair advantage during the election campaign***

The incumbent party and its candidates almost unavoidably have an advantage, but international law and practice mandates that this advantage is minimized to the fullest extent possible.

International-IDEA guidelines state: “To ensure a level playing field for electoral candidates, the CCPR has adopted a combined reading of ICCPR articles 25 and 26, stating that States Parties ‘should treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities’. The CCPR has thus clarified that unilateral abuse of state resources for campaign purposes violates the Covenant.”<sup>35</sup>

CCPR, General Comment 25, paragraph 19 also states that:

“Voters should be able to form opinions independently, free of violence, compulsion, inducement or manipulative interference of any kind.”

Irregularities along these lines are alleged to have occurred during the April 15, 2020 election.

For example, in a potential case of ‘inducement’, one day before early voting commenced, the South Korean government sent a text message nation-wide announcing that the citizenry would receive a subsidy of 1 trillion won, or an average of 1 million won per person, and the amount

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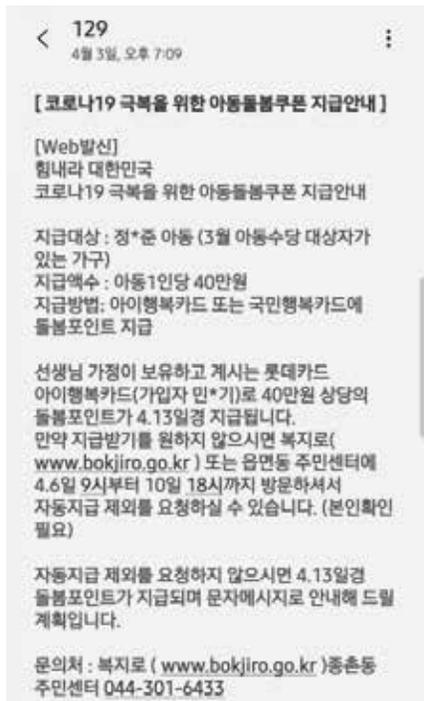
<sup>34</sup> September 9, 2020. Statement by Attorney of the Election Invalidation Team, The April 15<sup>th</sup> Peoples’ Fight Against Rigged Election Headquarters (Standing Representative, Min Kyung-Wok.)

<sup>35</sup> I-IDEA International Obligations for Elections, 2014, p.44.

was disbursed over 2 days on April 11 and 12. Reportedly, certain incumbent party candidates stated that if citizens voted for them, a second round of payments would be made. (See Annex 2 for additional information).

Additionally, on April 3, 2020 the Ministry of Health and Welfare sent text messages nationwide saying that Child Care subsidy coupons (for children under 5 years old) would be distributed on April 13<sup>th</sup> – after ‘early voting’ began and before election day. Ultimately about 2.3 million children (representing 1.77 million guardians – presumably of voting age) received the subsidies.

A copy of the text message announcing the Child Care subsidy follows:



These payments to the general public were arguably proper allowances provided to compensate for economic losses to the citizenry owing to the Covid-19 virus that was spreading in South Korea. However, given the timing it perhaps raises an issue deserving of further review.

Along these lines, I-IDEA International Electoral Standards (2002) p. 67 further notes that: “The legal framework (for elections) should provide that all State resources used for campaign purposes, such as state media, buildings, property and other resources, are also made available to all electoral participants on an equitable basis.”<sup>36</sup>

<sup>36</sup> Bolstering the idea of equal access to state resources, I-IDEA International Electoral Standards (2002) states: “The legal framework should ensure that:....”No party or candidate (especially the ruling party) is favoured,

This statement of legal standard arguably applies to the aforementioned subsidy payments, but is also possibly implicated in the following potential case of the Democratic Party making arguably unfair use of government resources: specifically, the Party reportedly signed pre-election deals with local governments and South Korean telecommunications companies to obtain personal data of residents and customers respectively.

Besides the legality issues, ethical issues, and unfair advantage of an incumbent administration signing such deals with local governments and private (but government regulated and licensed) companies there are concerns that the information received potentially violated South Korean personal privacy laws – and ‘international’ standards of privacy protection as well.

***Subsection #1: Disruption or restrictions on campaign meetings or rallies, including refusals to grant authorization***

OSCE standards frown on government imposed the limitations on campaigning by candidates and their parties. And international human rights law also holds such measures in disfavor.

CCPR, General Comment 25, paragraph 8:

“Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.”<sup>37</sup>

CCPR General Comment 25, paragraph 19 further states:

“Persons entitled to vote must be free to vote for any candidate for election...and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”

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financially or otherwise through the availability or use of state resources, over the other parties and all stakeholders in the election process have an equal chance of success.” (pp. 55-56).

<sup>37</sup> A more detailed explication of this concept is that political propaganda, voter education activities, political meetings and rallies, and partisan organizations are all common elements of the electoral process and must operate without unreasonable interference. Of course, what constitutes ‘unreasonable interference’ is open to debate.

It is alleged that during the April 15, 2020 election that the South Korean government banned all political rallies on the grounds of Covid-19, but that rallies of pro-ruling party civic groups were permitted.

In one notable case of claimed governmental favoritism or intimidation (depending on one's perspective) Jeon Kwang-hoon, who led a Moon Jae-in impeachment rally in February, was imprisoned for violating the election law because he asked people to not vote for the Democratic Party. Jeon Kwang-hoon was not a candidate for office.

<https://en.yna.co.kr/view/AEN20200224004000315>

<http://www.christianitydaily.com/articles/9195/20200224/rev-jeon-kwang-hoon-representative-christian-council-korea-arrested.htm>

This may perhaps have been a technical violation of domestic law, but is arguably contrary to international human rights law and jurisprudence that calls for the fullest possible protections of 'political speech.'

This also potentially infringes on a number of other fundamental human rights, including freedom of speech, assembly, movement, and right to be informed to make up one's mind, and for the election to reflect voters' informed, free will.

Covid-19 caused immense disruption in South Korea – as in many other nations – and there may indeed be justifications for the restrictions on electoral campaigning on the grounds of public health and safety.

However, the allegations of unfairly applied standards that disadvantaged the opposition party and its candidates throughout the electoral process, should arguably warrant a review of South Korean electoral procedures and their application to the electoral campaigning process.

### **Human Rights Law Issue #3:**

#### ***South Korea's Early Voting system***

Various methods of 'early voting' prior to 'election day' voting exist in many countries. And these practices are not prohibited by international human rights laws related to elections, or by relevant legal jurisprudence.

Introduced in 2013, the South Korean electoral system provides for ‘Early Voting’ which allows two days of voting four or five days before Election Day voting. Voters are allowed to vote ‘early at the polls. If the polling site is outside their registered district, they are issued a ballot, then they mark it for their chosen candidate, and put it into an envelope. The envelope is then mailed to their ‘home’ district for counting. Ballots from early voters voting in their ‘home’ district remain at the polling site.

The NEC has in previous years provided public demonstrations to explain the processes and working of the early voting system.

Early voting opportunities are arguably beneficial for expanding voter access – which is in line with the human rights law calling for voting to be ‘universal’ – in other words, available to as many voters as possible. And the early voting system is also advantageous from the perspective of simple convenience.

However, it also raises concerns of increased opportunities for fraud – particularly in the absence of strict controls – given the time gap between voting and the actual counting and the potential for manipulating and/or manipulating early votes. This potentially violates the principal of ‘equality’ of votes and security (and sanctity) of the voting process.

Another concern is the possibility that early voters might cast their ballots before additional information about respective candidates might emerge that potentially limits their ability to make an informed decision. This arguably undercuts the international legal requirement and objective that the election represents the free will and intention of the electorate.

In the April 15, 2020 election, most of the objections – to include the allegations of ‘statistical improbability’ indicating possible fraud in the voting process centered on the ‘early votes.’

Early voting remains a topic of global discussion and debate. Other nations may find it useful to examine the South Korean early voting system and the National Election Commission’s experience at managing and carrying out the system as part of the overall electoral process.

The bi-partisan Carter – Baker Report (2005)<sup>38</sup> – jointly headed by former US President Jimmy Carter and former US Secretary of State, James Baker examined a number of issues affecting US elections – to include early voting – and offered a number of modifications to improve voter confidence in the electoral process.

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<sup>38</sup> Building Confidence in US Elections: Report of the Commission on Federal Election Reform (September 2005)  
<https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf>

Regarding ‘early voting’ the Commission reached no firm conclusion:

“The evidence on “early” voting is similar to that of vote by mail. People like it, but it does not appear to increase voter participation, and there are some drawbacks. It allows a significant portion of voters to cast their ballot before they have all of the information that will become available to the rest of the electorate. Crucial information about candidates may emerge in the final weeks or even days of an election campaign. Early and convenience voting also detracts from the collective expression of citizenship that takes place on Election Day.

Moreover, the cost of administering elections and of running campaigns tends to increase when early and mail-in voting is conducted in addition to balloting on Election Day. Early voting should commence no earlier than 15 days prior to the election, so that all voters will cast their ballots on the basis of largely comparable information about the candidates and the issues.”

The Commission also devotes space to discussion of vote by mail – and potential for fraud. Noting that in some jurisdictions it works well – with proper safeguards – and with little evidence of fraud. However, in other states: vote by mail is likely to increase the risks of fraud and of contested elections in other states, where the population is more mobile, where there is some history of troubled elections, or where the safeguards for ballot integrity are weaker.

The report ultimately concluded: “the Commission encourages further research on the pros and cons of vote by mail and of early voting.”

The South Korean electoral ‘early voting system’ might deserve further study and assessment to examine its strengths, weaknesses, and overall compliance with international human rights law as applying to the electoral process. Towards this end, international election observers might apply a fresh set of eyes to the subject.

#### **Human Rights Law Issue #4:**

##### ***QR Codes affixed to ‘early voting’ ballots threatening voter secrecy***

The QR Code raises potential issues concerning the compromise of the voter’s right to cast a ‘secret’ ballot as stated in both the UHDR and ICCPR Article 25, and as further reinforced by CCPR General Comment 25.<sup>39</sup>

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<sup>39</sup> OSCE (Organization for Security Cooperation in Europe) election observer guidelines contain the following question for observers to watch for: “Do the ballots contain any unusual marking intended to violate the secrecy of the vote?” <https://www.osce.org/files/f/documents/5/e/68439.pdf>

It may not be ‘intended’ to violate the secrecy of the vote, but there is nonetheless a perception that might affect public perceptions of the election’s fairness and legitimacy.

As background, the South Korean electoral process allows for two days of ‘early voting’ that occur starting five days before the actual ‘election day.’ Voters are able to vote at any polling location, even if outside the voter’s home district. Upon presenting identification at the polling site, poll officials print a ballot for the voter.

The ballot is marked with a QR Code. It should be noted that only ‘early voting’ ballots have QR Codes affixed. ‘Election Day’ ballots do not.

Another potential concern is that the QR Code potentially exposes the electoral process to manipulation by malign parties through hacking or otherwise manipulating QR codes or, as some commentators claim is more likely, the tabulating software. This potentially subverts the principle of ‘equality’ of votes (by diluting legally cast votes), as well as the requirement that a fair election accurately reflect the will of the electorate.

Moreover, the QR Code and the uncertainty over what data it actually contains potentially risks exposing voters’ personal information – thus violating the elector’s right to privacy under both domestic and international law. Support for a ‘right to privacy’ related to a person’s personal information is found in a collective reading of ICCPR, Article 2(2), UNCAC Article 10, and CCPR, General Comment 16, paragraph 10.

#### *Domestic challenge to QR Code unsuccessful*

The use of QR codes in South Korean elections has been challenged as a violation of the ROK Public Official Election Law. To date, challenges have been unsuccessful. However, the potential contravention of international human rights law on the several grounds stated above remains an issue.<sup>40</sup>

To avoid controversy, South Korean electoral authorities at the National Election Commission (NEC) might have sought to preemptively ‘cure’ such objections to the QR Codes by allowing all parties, candidates, and even independent observers full access to examine the QR Codes and related source codes before, during, and after the election.

However, this opportunity for enhanced transparency does not appear to have been taken advantage of by the NEC. And as noted earlier this report, repeated requests made by a certain plaintiff’s lawyer following the April 15, 2020 election to disclose the contents of the software that created the QR Code and all related software, have been rejected by the NEC.

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<sup>40</sup> The use of QR codes in the April 15, 2020 elections is treated in a detailed report entitled ‘QR Code Used in Early Voting by Mr. Cho Cheng-yeol. This report is attached as **Annex 3**.

The perceived air of secrecy arising from National Election Commission’s reluctance or even refusal to allow independent examination or to release the requested QR Code information has fed suspicions of something malign having occurred – such as the voter’s choice being revealed, personal information being leaked, or the actual vote being manipulated contrary to the voter’s intentions.

And the fact the QR codes are only affixed on the ‘Early Vote’ ballots and not on ‘Election Day’ ballots further heightens suspicions – justified or unjustified.

We note that several scholarly papers discuss the issues of using QR codes and other ballot marking devices in elections and usefully cover the pros and cons of the issue.<sup>41</sup>

However, this report does not intend to try to resolve the issue of QR codes being lawfully or unlawfully used as a matter of South Korean electoral law in the April 15, 2020 election. Rather, this report highlights that the use of QR codes – and particularly only on ‘early vote’ ballots – raises an issue of ballot secrecy that has international human rights law implications, and potentially diminishes public confidence in the electoral process if not handled with adequate transparency.

As such, this is a potential issue for examination by international organizations and possibly international election observers.

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**<sup>41</sup> QR Steganography: A Threat to New Generation Electronic Voting Systems**

By Jordi Cucurull, Sandra Guasch, Alex Escala, Guillermo Navarro-Arribas and Victor Acin

<https://ieeexplore.ieee.org/document/7509529>

**Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters**

Andrew W. Appel, Richard A. DeMillo, Philip B. Stark (December 27, 2019)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3375755](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375755)

**Going from Bad to Worse: From Internet Voting to Blockchain Voting (draft)**

By Sunoo Park, Michael Specter, Neha Narula, Ronald L. Rivest (November 26, 2020)

<https://people.csail.mit.edu/rivest/pubs/PSNR20.pdf>

## Human Rights Law Issue #5:

### *Uncertainties regarding electronic counting machines used in the April 15, 2020 South Korean election*

Electronic electoral hardware – such as voting and ballot counting machines – are widely used around the world. And the attendant debate, if not tension, between convenience and security is part and parcel of the debate over whether and how to use ‘voting technologies.’

The use of electronic voting technologies potentially implicates nearly every key aspect of the human rights law requirements for a genuine election: These include, the right to cast a secure, secret ballot, and to have it accurately tabulated as is necessary for a genuine election that reflects the free will of the electorate. And all of this underpins citizen confidence on the entire system – if not the nation’s government itself.

I-IDEA International Electoral Standards (2002), p.78 states the basic requirements for employing voting technology:

“The legal framework should provide safeguards where technology is used to count ballots. The legal framework must make possible the independent verification of the accuracy and soundness of hardware and software used for counting ballots.”<sup>42</sup>

Before, during, and after the April 15, 2020 election, candidates and other parties complained of inadequate NEC public disclosure regarding the electronic systems and limited or no opportunities to examine the electronic hardware, software, source codes and related computer hardware used in the ECMs.

Whether a given system or piece of hardware can be hacked or manipulated is a question that is hard to conclusively resolve. Thus, perhaps the more useful matter is the issue of providing adequate transparency for candidates, parties, and appropriate outside observers to examine and understand the electronic voting technologies used in the election. As noted earlier, enhanced transparency can defuse in advance allegations and suspicions of wrongdoing an electoral fraud

In the case of the April 15, 2020 South Korean election, The NEC apparently could have been more transparent and forthcoming regarding requested technical details at all stages of the electoral process

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<sup>42</sup> I-IDEA International Obligations for Elections (2014) also states: “...(s)afeguards are required where technology is used to count or aggregate votes. The legal framework must provide for independently verifying the accuracy and soundness of the hardware and software used to count ballots. Whether manual, mechanical or electronic counting is used, supervision procedures are necessary to ensure accuracy, reliability and transparency.” p.251.

It is alleged that neither the software nor hardware used in this election was publicly demonstrated in advance. Prior to the 2020 elections (in previous elections), the NEC reportedly disclosed which equipment would be used according to set procedure. However, no information was disclosed in advance for this election.

In previous elections the NEC held public displays and demonstrations of the early voting process, to include ballot sorting and ballot counting devices. However, as far as is known in-depth pre-election (or post-election) examinations of electronic electoral hardware and software has not been permitted by parties, candidates, or independent reviewers.

Following the April 15<sup>th</sup> election, when questions are raised over electronic voting technologies, a limited public demonstration was held, but only the hardware was revealed. Nonetheless, it was possible to identify specific components that are found in supercomputers, such as a Xilinx chip, etc. and that there was also a communication device embedded in the hardware. However, there reportedly has been no official statement or announcement of exactly what software was used in the referenced hardware – nor an opportunity to examine it. **(See Annex 4 for additional details)**

The following are examples of the public demonstrations of the early voting system and attendant hardware in previous elections:

- Public demonstration of the counting process for the 18<sup>th</sup> presidential election in 2012
- < <https://www.nocutnews.co.kr/news/4302606>>
- Public demonstration of the 2014 local elections
- < <http://www.siminilbo.co.kr/news/articleView.html?idxno=353513>>
- Public demonstration for the 2016 general election
- < <https://www.inews365.com/news/article.html?no=435568>>
- Public demonstration for the 2017 presidential election
- < <http://www.m-i.kr/news/articleView.html?idxno=302211>>

As noted elsewhere in this report, the NEC has also refused post April 15<sup>th</sup> election requests to release ‘voting technology’ details and to provide access to the ‘voting technologies’ themselves so interested parties can examine them.

In addition to the human rights law issues raised by the use of Electronic Counting Machines in the April 15, 2020 election, the Organization of Security Cooperation in Europe (OSCE)

ODIHR<sup>43</sup> calls for particular openness and transparency when it comes to ‘voting technologies’. This owes in no small part to the difficulties of observing – and even understanding – what given ‘voting technologies’ actually are doing.

The OSCE/ODIHR Handbook For the Observation of New Voting Technologies (also including so-called ‘ICT’ – information and communication technologies) that reflects international standards states:

“NVT (New Voting Technologies) are often implemented in a manner that makes direct physical observation of some important procedures difficult. Also, NVT may not be widely understood by the typical observer.” (OSCE/NVT handbook p. 1)

The Handbook further notes that effective observation of NVT:

“Requires specific, technical expertise – and should be the primary responsibility of an NVT Analyst on an EOM (Election Observer Mission). But NVT issues are also closely tied to the legal, political, and administrative aspects of the election process.” (p.2)

The OSCE/ODIHR New Voting Technologies observer’s handbook, Annex B, offers a usual checklist that describes standards for transparency regarding ‘voting technologies’. It is useful to consider the specific requirements in Annex B in light of the aforementioned alleged reluctance of the NEC to provide access:

Annex B:

- \* Has the NVT system been certified in a transparent process by a qualified independent body, under both national legislation and international good practice?
- \* Has the NVT system and its components been comprehensively tested prior to introduction and periodically thereafter?
- \* To what extent are voters, election administrators and observers capable of understanding and using the system?
- \* Are any individuals or groups, including political parties and domestic observers, permitted by law to conduct their own tests, assessments or reviews of documentation?

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<sup>43</sup> The Republic of Korea is one of the OSCE’s ‘Partners for Cooperation’ and thus is arguably obligated to follow OSCE standards.

\* Do international observers have full access to the process and to documentation, including certification, testing, verification and audit reports?

\* To what extent is there public confidence that the use of NVT in the election in question is conducted in accordance with democratic principles?

\* Does the legal framework take full account of the implications of new technologies, including adequate provision for access of observers, system audits and other transparency measures, as well as the possibility for recounts, mandatory audits of results and legal challenges to election results?”

Whether the April 15, 2020 election offered adequate transparency to candidates, parties, and other appropriate observers to examine electronic systems is an issue that seems to warrant further examination.

## **Human Rights Law Issue #6:**

### ***Cyber Security of the Electoral Network***

Protecting the integrity of electronic systems is just as important as protecting paper ballots and other ‘physical’ parts of the election system. Irregularities and potential vulnerabilities on the cyber front can affect the public perception of a fair, impartially run election as required by international human rights law.

But beyond perceptions are the practical risks to accurate electoral rolls, secure voting and honest tabulation of votes that guarantee the rights of the electorate and are part and parcel of a genuine election.

The South Korean electoral network configuration is relatively straightforward. In simple terms it has one or more central servers at the NEC that are connected to each of the polling stations. Claims were raised before during and after the election over the security of the servers and the vulnerabilities of ECMs and the laptops used with the ECMs. Also, claimants assert that the NEC central server was improperly located at the NEC main office rather than the GCCC – Government Central Computer Center – as is usually done.

The OSCE/OHIDR Handbook for the Observation of New Voting Technologies stresses the importance of securing electronic voting technologies. This presumably is not limited to electronic voting and ballot counting machine, but to all the electronic communications equipment, software, and networks associated with the electoral process.

The handbook also calls on election observers to consider:

“Are security requirements and procedures in place at each level of the system? Do these, in practice, ensure protection against external intervention, internal manipulation and technological failure. (NVT handbook p. 70)”

This appears to implicitly mandate a high level of transparency in order to ensure the security of electoral electronic communications systems (and thus the security of the vote itself, the counting process, and confidence in the overall electoral process.

Yet, allegations were made that pre-election, during the election, and post-election opportunities for parties, candidates, and appropriate parties (particularly experts) to examine network security have been lacking. Indeed, some observers commented on the lack of access to the source code of the servers and/or other hardware and software – with NEC citing ‘confidentiality’ as the reason for not releasing it.

These challenges potentially warrant further examination to assess the level of transparency surrounding the South Korean electoral network systems – and whether appropriate parties in fact are provided adequate opportunity to examine the networks and attendant security measures.

Such enhanced transparency may be helpful in preempting later claims of electoral shortcomings and fraud.

## **Human Rights Law Issue #7:**

### ***Issues concerning the electoral list***

There were reported issues with the South Korean electoral list arising from the April 15, 2020 election. In particular, parties requesting access to the electoral list in order to pursue claims of electoral irregularity have reportedly been denied such access.

Electoral lists, or electoral rolls, are fundamental to a genuine, fair, election representing the will of the electorate – and ensuring all eligible voters are able to cast votes securely and to ensure equality of individual votes (and not ‘debased’ by illegal votes), and to have one’s vote counted accurately and fairly tabulated.

This is of course essential to ensuring the election reflects the free will of the electorate as well as maintaining public confidence in the electoral process. And an accurate electoral list that is available for examination has obvious uses; particularly when investigating potential electoral irregularities or fraud when such claims arising from the electoral process are made.

Stressing the importance of the electoral list,

International-IDEA International Obligations for Elections (2014) p. 310 distills the legal standards derived from ICCPR Article 25 for maintaining an updated, accurate electoral list:

“The systematic compilation and periodic updating of voter registers, in order to keep them accurate and inclusive, promotes confidence among electoral stakeholders. An accurate and up-to-date voter register is also indispensable for ensuring the right to equal suffrage...”

And it adds regarding the question of access (derived from ICCPR 19.2 and UNCAC 13.1):

“Making voter registration information, data and procedures legally available to stakeholders for inspection, while safeguarding data privacy, will allow electoral participants and voters the opportunity to review their accuracy.”

Also, Inter-Parliamentary Union<sup>44</sup> Declaration 1994 states:

1. (2): In addition, States should take the necessary policy and institutional steps to ensure... ‘Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate.’”

The NEC is obligated by domestic law to maintain and preserve the electoral list and to disclose it when ordered by the court to do so. Under international human rights law, ICCPR 19.2 (access to information) and UNCAC 13 (10), and ICCPR 2(3) form the legal basis for the obligation to allow relevant parties to have access to the electoral list.

However, after the April 15, 2020 election the NEC has reportedly refused to release details of the electoral role, and has ignored court orders to produce the electoral roll.

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<sup>44</sup> South Korea is a member of the Inter-Parliamentary Union. While this organization’s declarations may not be binding, they do state a standard and carry a certain moral suasion.

As described earlier, the attorney representing a plaintiff (an unsuccessful candidate) suing over the election results requested the election roll from the NEC, and was turned down repeatedly.

The lawyer made a total of 21 requests in writing during the preparatory investigative stage of the case and at the first hearing, a request was made directly to the court.

Despite 21 written requests (made once every week after the lawsuit was filed) asking for the integrated voters' list, each request was refused. The court ordered the NEC to submit the integrated voters' list – and the order was not complied with. On October 23, 2020 the court once again ordered the NEC to submit the electoral list on the date of its first hearing.

The NEC is reported to have privately submitted the materials to the court – not to the lawyer – citing the need to protect trade secrets and the danger of violating privacy laws. Additionally, the NEC revealed that the integrated voters list had been damaged.

The petitioner's lawyer noted that because the electoral list was submitted privately to the court, only the courts are aware of its contents – and the lawyer is unable to access it and is thus unable to conduct an inquiry or investigation.

One reasonably suggests that the various allegations involving the South Korean electoral list and related international human rights law issues deserve additional review.

## Human Rights Law Issue #8:

### *Polling station operational issues*

Polling and counting stations are by their nature busy places, with sometimes frenetic activity involving poll workers, election officials, observers of many types, and the voters themselves. One should avoid assuming that inevitable hiccups or disturbances in trying to carry out a complex activity mean that wrongdoing or fraud is taking place.

However, in the April 15, 2020 South Korean election, a number of issues arose – reported anecdotally – that raise concerns and deserve mention, and potentially warrant further examination.

These reputed irregularities raise potential issues involving the citizens' right to participate in public affairs, as well as the right to receive information and to meaningfully observe the electoral process – as mandated by the body of international electoral jurisprudence.

Moreover, issues of electoral process transparency and the need to ensure genuine and fair elections also come into play.

As mentioned previously, allegations were made that the 60% of 'independent' poll watchers to be selected by the NEC – was reportedly heavily stacked in favor of pro-incumbent party activists. This would arguably be contrary to ROK election law, not to mention violating at least the spirit of international law governing elections – and mandating equitable competition.

Citizens reported numerous instances of poll watchers (both independent and affiliated with the opposition party) being obstructed in performing their duties. Some of the instances, as described, appear to border on 'intimidation' – that international law and commentary regarding elections prohibits – as a violation of human rights and also on the grounds it potentially distorts the election as representing the free will of the electorate.

OSCE election observer guidelines<sup>45</sup> list a number of issues for observers at polling stations to watch for. However, the fundamental requirement is that election observers are allowed to freely 'observe'.

Simply stated:

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<sup>45</sup> The OSCE Election Observation Handbook, 6<sup>th</sup> Edition, 2010 is a useful compendium for ascertaining the numerous practical procedures and measures required to conduct a genuine election that meets international legal standards. <https://www.osce.org/files/f/documents/5/e/68439.pdf>

“Are observers able to clearly see all aspects of the counting, including marks on ballots?”

The following clip purportedly shows election observers at a ballot counting office being prevented from taking photos and videos (as permitted by law) in order to verify and memorialize electoral activities.

< <https://www.youtube.com/watch?v=liZXwiYeV78> >

Another fundamental requirement is to verify the security of the physical ballots. Towards this end, the OSCE guidelines state:

“Are unused ballots secured, cancelled or destroyed after being counted?”

Post-election, certain citizens groups followed garbage trucks from the National Election Commission and filmed videos of the observers going through the garbage at the dumpsite located in Siheung and finding destroyed ballots. The NEC claims those were unused ballots, though ballots appear to be marked as would happen in the course of voting.



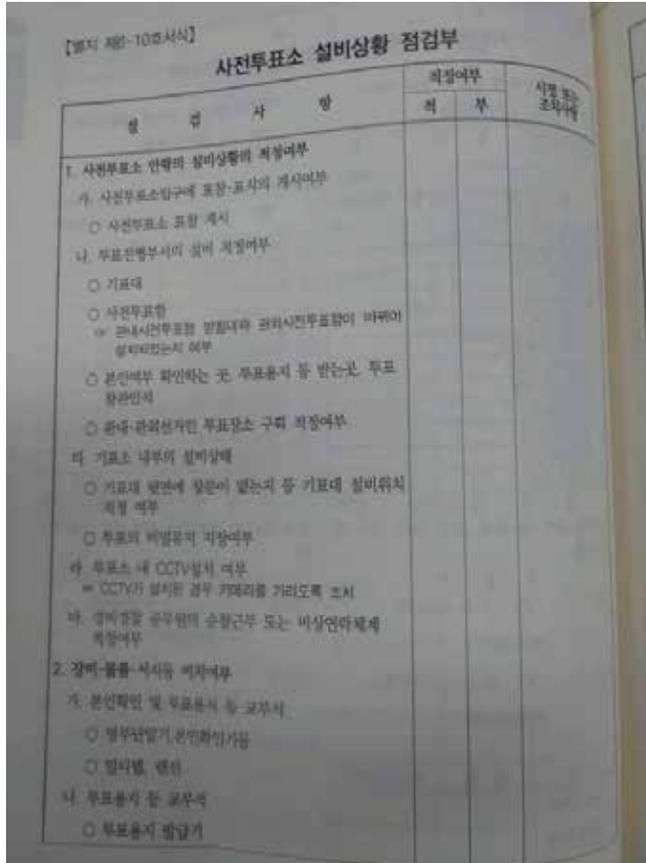
***Subsection #1: CCTV's (closed circuit televisions) reportedly covered up at Early Voting locations***

The NEC's reported explanation for covering the CCTV's was to protect voter privacy. However, it is claimed that CCTV's were not covered at polling stations on Election Day – where there presumably is equal concern for voter privacy.

The early voting station inspection list from the Official Election Procedures Manual for the April 15, 2020 election states that it is required to cover the camera if a CCTV is installed at the polling station.

<http://www.logosian.com/news/articleView.html?idxno=1115>

<https://www.youtube.com/watch?v=m-U3CTt-btE&t=654s>



It is of course necessary to balance privacy with the need for security and integrity of the electoral process. But this possible irregularity potentially restricts the transparency needed to ensure fairness, as well as raising concerns over the integrity of the voting process. And there is also the international human rights legal requirement for ‘equality’ for all votes – as the absence of CCTVs potentially eliminates a method for comparing and verifying the number of voters with the number of votes cast.

Finally, the CCTV issue may impinge on the right set by ICCPR 2.3 to an effective remedy for electoral violations – in that it potentially makes it difficult or impossible to obtain necessary evidence to prove (or disprove) allegations. Also it raises an issue of denying petitioners’ access to information (ICCPR 19.2).

All in all, we are not opining on the legitimacy of the allegations raised, but are suggesting that the claimed irregularities warrant further examination of the South Korean electoral process to clarify matters, resolve misperceptions, and/or to identify areas for improvement.

## **Human Rights Law Issue: #9:**

### ***Irregularities with the voting process that potentially warrant further examination***

Reflecting international standards, International-IDEA guidelines cite the “Need to ensure integrity of ballots through appropriate measures to prevent unlawful and fraudulent voting.” This requirement, that is clearly stated in both ICCPR and CCPR General Comment 25, underpins the entire notion of a fair election reflecting the free will of the electorate.

The April 15, 2020 election was hard-fought and the turnout was high. The total number of reported votes cast was over 29 million, or about 66% of eligible voters. But analysis of government statistics reveals some potential irregularities that may deserve a closer look:

#### ***Subsection #1: Improbably fast voter ‘throughput’ at voting locations***

For example, at the polling station in Shinju-dong, Buyeo, 18,210 people are reported to have voted in ‘early voting over the course of two days. However, according to calculations this would require each voter to complete their voting in an average of 4.7 seconds – assuming 18,210 people voting over the course of two days – with voting for 12 hours each day from 6 am to 6 pm.

Besides the physical challenge of processing a voter every 4.7 seconds, photographic and observer evidence revealed that the polling station was in fact a rather quiet location.

(Source: Former National Assemblyman, Min Kyung-Wook)

As a point of comparison, during the 2017 ROK presidential election, it reportedly took an average of over 99.3 seconds to ‘process’ each voter at the polling stations during ‘early voting. This also did not take into account the need to distribute and for voters to put on plastic gloves owing to Covid-19 precautionary measures during the April 15, 2020 election.

The following summary table of 17,799 polling stations nationwide (3,480 locations for early voting, 14,319 locations for Election Day voting) reveals that:

According to this table, 63.76% of the voters at the early voting polling stations took less than 60 seconds to complete the voting process. And 84.71% of the total number of early voters took less than 120 seconds (2 minutes) to vote.

## 전국 투표소별 1인당 투표시간 현황

1인당 투표시간	계		관내사전 투표		당일 투표	
	계	%	투표	%	투표	%
~ 5초 미만	1	0.0%	1	0.0%		
~10초 미만	19	0.1%	19	0.5%		
~15초 미만	203	1.1%	179	5.1%	24	0.2%
~20초 미만	1,130	6.3%	423	12.2%	707	4.9%
~30초 미만	5,229	29.4%	756	21.7%	4,473	31.2%
~40초 미만	3,475	19.5%	423	12.2%	3,052	21.3%
~50초 미만	1,870	10.5%	232	6.7%	1,638	11.4%
~60초 미만	1,133	6.4%	186	5.3%	947	6.6%
~120초 미만	3,121	17.5%	729	20.9%	2,392	16.7%
120초 이상~	1,618	9.1%	532	15.3%	1,086	7.6%
계	17,799	100.0%	3,480	100.0%	14,319	100.0%

One notes that early voting generally takes longer than on Election Day. This is because the ballot is printed out at the polling station and is then handed to the voter, unlike Election Day voting when the ballot is already printed before the voter arrives at the polling station. 4.7 seconds seems very fast.

The potential irregularities cited above could impact the entire electoral process and could have produced a questionable result. This seems to warrant further examination.

Attached as **Annex 5** is a narrative and graphic depiction of the steps involved in early voting.

### *Subsection #2: 40 electoral districts with more votes than voters*

As depicted in the following chart based on NEC data, in 40 electoral district (16% of South Korea's 253 districts) the number of votes cast exceeded the number of eligible voters. This included portions of Paju, Yeoncheon, and Cheolwon counties that are adjacent to the Demilitarized Zone (DMZ) and fall within the Civilian Control Zone (CCZ), 5km to 20m south of the DMZ. In these controlled areas civilians are not permitted to enter, other than for the local residents engaged in agriculture. Yet, in each area the number of 'excess votes' was between 50 to 100.

This obviously raises potential concerns from a number of human rights law perspectives – such as the genuineness of election, equality of votes, incorrect vote tabulations – and ultimately the election not reflecting the free will of the electorate.

The referenced chart follows:

Districts	# of voters	population	population			
			3/2020	4/2020		
서울동작구	노량진2동	12,783	8,575	12,711	12,674	
파주시	진동면	201	181	159	159	
파주시	군내면	617	513	580	578	
연천군	중면	206	161	195	198	
평택시	통북동	4,353	2,811	4,139	4,163	
안성시	고삼면	2,157	1,655	1,930	1,937	
하남시	신장1동	6,593	4,190	6,440	6,474	
대전중구	유천1동	6,906	4,228	6,754	6,758	
대전동구	중앙동	5,055	3,018	5,080	5,033	유보
세종시	연기면	2,776	1,782	2,605	2,596	
충주시	성내.충인동	3,047	2,055	2,803	2,814	
보령시	대전2동	7,103	5,200	7,065	7,026	
부산중구영도구	광복동	1,175	820	1,117	1,117	
부산남구	용호제3동	13,777	10,461	12,768	12,728	
대구달성군	하빈면	3,843	2,670	3,752	3,726	
경주시	보덕동	2,029	1,582	1,824	1,820	
경산시	중앙동	6,976	4,498	6,706	6,708	
상주시	화북면	1,474	1,070	1,256	1,250	
영주시	영주2동	3,800	2,854	3,653	3,640	
구미시	원평1동	3,941	2,098	3,898	3,898	
구미시	원평2동	3,879	2,681	3,401	3,387	
김천시	봉산면	3,231	2,431	3,247	3,221	유보
마산합포구	가포동	923	722	672	672	
거창군	남하면	1,758	1,413	1,428	1,426	
거창군	마리면	2,048	1,554	1,996	1,988	
거창군	주상면	1,580	1,245	1,559	1,560	
함안군	산인면	3,015	2,251	2,769	2,756	
밀양시	내일동	3,322	2,307	2,900	2,884	
사천시	축동면	1,753	1,283	1,681	1,667	
통영시	명정동	3,380	2,418	3,128	3,100	
철원군	근북면	233	209	111	112	
강릉시	중앙동	5,529	3,835	5,116	5,107	
강릉시	옥전동	3,700	2,515	3,392	3,387	
속초시	영랑동	4,702	3,182	4,703	4,684	유보
춘천시	교동	3,610	2,471	3,624	3,603	유보
춘천시	신동면	2,891	2,164	2,584	2,588	
원주시	중앙동	3,085	1,846	2,846	2,851	
서귀포시	정방동	2,447	1,458	2,243	2,238	
여수시	화정면	1,815	1,241	1,334	1,330	
군산시	중앙동	3,355	2,410	2,907	2,900	

유보 : 3월인구>선거인수 and 4월인구<선거인수

### Subsection #3: Audit trail shortcomings

Directly related to the essential issue of security of the vote, it appears that vote audit procedures have certain shortcomings.

While ‘recounts’ are sometimes ordered, the South Korean electoral system does not appear to have either electronic voting systems with a voter verified paper audit trail or other effective manual-audit capacity. Nor does it appear that the integrated electoral list is used as a ‘reference’ to help ensure vote and electoral integrity to the extent that it might be utilized – particularly as concerning ‘early votes.’

This at least raises issues that appear to warrant further examination of the South Korean electoral process.

## **Human Rights Law Issue #10:**

### ***Issues arising from Ballot Counting***

The importance of the actual ballot count to a fair election is obvious. For starters, it implicates the human right to equal suffrage – and the right to have one’s vote counted and with equal value as all other votes – as well as the overall genuineness of the election as reflecting the will of the electorate. This necessarily raises potential issues with the level transparency in the vote counting process and its basic security, and the adequacy of ‘observation’ by outside observers.<sup>46</sup>

International-IDEA International Electoral Standards (2002) states:

“A fair, honest and transparent vote count is a cornerstone of democratic elections” and “(the) entire process needs to be fully and completely open to public scrutiny” (p.77)

David Carroll, the director of the Carter Center's Democracy Program, also explains that transparency at every stage of the tabulation process is critical to the integrity of elections.

"The key to addressing concerns about manipulation of vote tabulation is to provide maximum transparency at every stage of the process, as well as consistent meaningful access for international and domestic citizen observer groups, party representatives and others, both at polling locations during the voting process and for the counting of ballots at all intermediate levels, where polling station results are tabulated into high-level summaries, as well as at the national level election headquarters.”

[https://www.koreatimes.co.kr/www/culture/2020/10/135\\_289523.html](https://www.koreatimes.co.kr/www/culture/2020/10/135_289523.html)

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<sup>46</sup> ICCPR Article 25 and CCPR General Comment 25 provide the legal basis for the aforementioned rights, standards, and obligations.

### ***Subsection #1: Concerns about reliability of ECM – electronic counting machines***

While election ballots are sorted into bundles by hand, they are in fact counted using so-called electronic counting machines (ECM) provided by the South Korean company, Hantle. South Korea-made electronic and counting machines have been the subject of controversy both in South Korea and overseas<sup>47</sup> owing to alleged issues of reliability and claimed vulnerability to external manipulation.

The April 15, 2020 included allegations of ECM manipulation that included videos of ECM blank ballots being counted as Democratic Party (DP) votes and ballots with United Freedom Party (the main opposition party) votes being counted as votes for the DP.

<https://www.youtube.com/watch?v=jY4uWptmgWc>

In another reported incident, an election observer at a voting site in Buyeo noticed an ECM producing an unlikely vote count in favor of a widely unpopular DP candidate. The counting was stopped at the observer's insistence – and the machine turned off and restarted. When restarted, the vote was reversed in the UFP (opposition party) candidate's favor.

[https://www.youtube.com/watch?v=YVoBj6\\_U5kc](https://www.youtube.com/watch?v=YVoBj6_U5kc)

<https://news.naver.com/main/read.nhn?mode=LSD&mid=shm&sid1=100&oid=011&aid=0003737493>

<http://www.fntoday.co.kr/news/articleView.html?idxno=216942>

### ***Subsection #2: April 15, 2020 voting machines potentially vulnerable to manipulation***

Experts claim the ECMs used in the April 15<sup>th</sup> election can be hacked or manipulated, to include via remote access. One expert's examination indicated the ECM's are in fact, high-performance

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<sup>47</sup> South Korean-made voting machines and ballot counting machines are widely used overseas., though they have a mixed reputation. Somewhat unusual for an electoral management body, the NEC founded an organization in 2011 known as A-WEB. Its ostensible purpose is to promote good election practices globally. However, it appears to be equally focused on promoting the sales of South Korean made election hardware. Concerns over the rigging of Korean-made machines' were such that citizens' groups in the Democratic Republic of Congo protested against the machines being used in their 2018 election, and Congolese citizens living in Korea protested directly to the NEC.

The Westminster Foundation for Democracy (WFD) conducted a detailed examination of South Korean-made voting and ballot counting machines in the Congo, and made a number of suggestions – both technical and procedural for improving security and transparency in the use and operation of the machines. <https://www.ceni.cd/assets/bundles/documents/voting-machine-review-wfd-ceni.pdf>. Although the models used in the Congo are from a different manufacturer than those used in the 4.15 election, many of the issues uncovered in the WFD review are said to apply to the 4.15 hardware as well.

machines capable of far more than just sorting and counting ballots as claimed. The technical expert, Benjamin P. Wilkerson, did not have full access to the machines, but was able to make a useful assessment based on his expertise and experience.

Mr. Wilkerson's assessment: "Election Fraud: 2020 South Korean 21<sup>st</sup> General Election" is enclosed as **Annex 4**.

Of course, in theory almost any system can be hacked with adequate resources and under optimal conditions – that can vary greatly from an actual polling site on voting day. So the fact a system can in theory be hacked is not proof that it was hacked – nor even conclusive evidence against using electronic counting machines or electronic voting machines.

Thus, while the arguably 'excessive' capability of the ECM's raises understandable concerns, we do not attempt to resolve this issue in this report.

### *The key issue concerning the ECMs*

Beyond the question of whether the ECM's 'could' be hacked and thus facilitate fraud in the April 15, 2020 election, there is an equally or even more important issue: Specifically, whether the ECM's and the attendant components (laptop computers, printers) and software used in the April 15, 2020 elections were adequately and thoroughly open for examination by candidates, parties, and appropriate outside examiners – before, during, and after the election?

Such transparency would be in line with international legal standards and also help to ensure confidence in these systems that are an integral part of the entire electoral process.

We note that election jurisprudence strongly encourages the of opening electoral electronic hardware to inspection and examination.<sup>48</sup>

### ***Subsection #3: Election observers reportedly obstructed***

While international law, standards, and practice call for – or at least favor – the practice of observers (domestic and international) monitoring the counting process, anecdotal examples exist of observers being prevented from fully performing their duties during the April 15, 2020 ROK election. In one such case, an observer at one election counting sites found a ballot box with a loose seal and no lock, the NEC took steps to dismiss the observer.

[https://www.youtube.com/watch?v=R\\_6ceFKV6kU](https://www.youtube.com/watch?v=R_6ceFKV6kU)

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<sup>48</sup> OSCE/ODIHR Handbook For the Observation of New Voting Technologies is a useful resource regarding the standards relating to verification and observation of electronic electoral devices.

<http://www.fntoday.co.kr/news/articleView.html?idxno=219079>

In another reported instance, at a counting office, an election observer who objected to the changing of the seal's signature on a ballot box was ejected from the room and blocked from re-entering. The observer who was removed was interviewed by YouTubers and others and the YouTuber was later accused of obstructing the election.

<https://www.youtube.com/watch?v=0HbIKLva104>

NEC reported to the prosecutors that the claim was false.

[http://news.jtbc.joins.com/article/article.aspx?news\\_id=NB11946735](http://news.jtbc.joins.com/article/article.aspx?news_id=NB11946735)

[http://imnews.imbc.com/news/2020/politics/article/5773309\\_32626.html](http://imnews.imbc.com/news/2020/politics/article/5773309_32626.html)

***Subsection #5: Unusually high number of invalid ballots in the 4.15 election***

OSCE election observer standards caution election observers to be alert the number invalid ballots seeming inordinately high.

During the April 15, 2020 election the number of invalid ballots was 1,226,532 – nearly double the number 669,769 invalid ballots during the previous election in 2017. This was the highest number ever in a South Korean election.

<Comparison of invalidated votes from past general elections>

Sequence of general elections	Year	Votes cast	Invalid votes	Percentage
17/th	2004	21,581,550	295,566	1.37%
18/th	2008	17,415,920	284,383	1.63%

19/th	2012	21,806,798	474,737	2.18%
20/th	2016	24,430,746	669,769	2.74%
21/st	2020	29,126,396	1,226,532	4.21%

There may indeed be good reasons for this anomaly, but it is nonetheless an issue that appears to warrant a closer examination of the overall electoral process and certain specifics of it in order to explain the large number of invalid ballots.

***Subsection #6: Statistical analysis raises questions about tabulated vote totals***

Although statistical analysis of voting that has already happened is an after-the-fact assessment, it potentially offers insights into possible voting irregularities suggesting fraud – and thus affecting the genuineness of the election.

Of note, the Organization of American States’ report on the October 2019 Bolivian national election mentions statistical improbability as one basis for its finding of electoral fraud. It states:

“The statistical analysis conducted that the first-round victory of Evo Morales was statistically improbably and the result of a massive and inexplicable increase in the number of votes for MAS (the ruling party) in the final 5% of the votes counted.”<sup>49</sup>

The unusual voting patterns in the South Korean April 15<sup>th</sup>, 2020 election that consistently ‘tilted’ close district races in the incumbent party candidates’ favor once ‘early votes’ results came in (note: ‘early votes’ were counted last) raised suspicions with some observers who were otherwise inclined to accept the election outcome, even if they personally had supported losing candidates.

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<sup>49</sup> OAS Electoral Integrity Analysis / General election in the Plurinational State of Bolivia, October 20, 2019. (p.8)

These individuals included highly respected statistics experts – including Park Sung-hyun, a former president of the Korea Advanced Institute of Science and Technology (South Korea’s MIT) who first tried to verify that the NEC issued voting statistics were correct and not the result of human manipulation. He ultimately declared that his review indicated the results were ‘artistic’ and suspect. Professor Park’s assessment is attached as **Annex 6**. Another South Korean expert, Professor Park Young-ah was similarly incredulous about the results, comparing it to “(t)hrowing a stone a thousand times and hitting the target each time.”

Additionally, a leading international expert on election fraud, Professor Walter R. Mebane Jr., of the University of Michigan (Department of Political Science and Department of Statistics) concluded in his paper “Anomalies and Frauds in the Korea 2020 Parliamentary Election, SMD and PR Voting with Comparison to 2016 SMD”<sup>50</sup> that there was significant ‘fraud’ in the election. Professor Mebane cited the ‘early voting’ results as being particularly noteworthy from his perspective.

Mebane is clear, however, the ‘fraud’ his assessment refers to does not necessarily mean illegality (though he also does not rule out the possibility), but that something very unusual has appeared in the election results and that further investigation is warranted.<sup>51</sup>

Regardless, each of these eminent professionals has made their findings public and open to further review, challenge, and rebuttal.

The issues raised by statistical research suggesting irregularities potentially implicate the human rights statutes and laws covering nearly every aspect of the electoral process: including ‘equality’ of votes, security of the voting and counting procedures, accuracy of electoral lists, validation of electronic hardware and software used in the election, and ultimately, the genuineness of the electoral process.

Further examination of the aforementioned irregularities would appear to be in order.

One might argue that having relevant government officials conduct proper investigations into allegations of electoral impropriety is implicitly required as part of the obligation to ensure international human rights law is followed and enforced to ensure genuine and fair elections.

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<sup>50</sup> Professor Mebane’s report is included in the ‘supporting documents’ section to overall report of which this report is one part.

<sup>51</sup> Some observers have explained the overwhelmingly ‘pro-incumbent’ early-voting results as owing to large numbers younger voters (who tend to support the Democratic Party) simply going to the polls early. However, official government statistics reveal that nearly half of early voters were over 50 years of age – a cohort that tends to ‘vote conservative’ (or for the opposition in this case.) (**Early voting statistics can be found in Annex 7**).

## Human Rights Law Issue #11:

### *Problematic ballot papers*

The security and ‘sanctity’ of paper ballots used in the election are fundamental to ensuring the voters’ right to a free, genuine election, where each vote counts – and counts equally.

OSCE election observer guidelines caution observers to be observant of the “Lack of accountability at any stage of the ballot production or distribution process.”

The guidelines also caution that observers watch for the “(l)ack of or inadequate safeguards surrounding sensitive materials, including ballots or envelopes”

The South Korean April 15, 2020 election and the broader electoral process raise issue along these lines. One observer stated that ballot papers used in South Korean elections have no standard safeguard measures to distinguish between fake and genuine ballots. For example, there are reportedly no set standards for using watermarks, special inks, signatures on paper, and types of paper.

<https://www.yna.co.kr/view/PYH20200330160200063?input=1196m>

Given the importance of this issue, additional review of ballot security measures is perhaps warranted.

### *Subsection #1: Pristine ballots*

OSCE guidelines for election observers warn observers to be alert for ‘evidence or indication of ballot box stuffing’ <https://www.osce.org/files/f/documents/5/e/68439.pdf>

During the 4.15 South Korean election claims were raised of ‘pristine’ ballots arriving for counting. The potential irregularity arises from the nature of the South Korean voting process. Specifically, completed ballots are invariably folded before being placed in the ballot box. Yet, according to the claimants, a poll observer noticed unfolded, stiff, crisp ballots bundled together in ballot boxes delivered for counting. Reportedly, all votes were for the ruling party.

As one example:

The following is a stack of ‘marked’ ballot papers for early voting found at the polling station in Namyangju. (See **Annex 8** for additional examples and explanations)

Attorney Park Ju-hyun who included this evidence in his report on election irregularities noted

that in light of South Korean voting customs it is highly irregular to find this many unfolded, ‘stiff as new dollar bill’ ballots.



Other cases included ballot papers that had different colors.

<https://www.hankyung.com/politics/article/2020052842837>

Also, ballots with different shapes and irregular margins were reportedly observed.

<https://www.youtube.com/watch?v=I1j6NAXMdCs>

### ***Subsection #2: Multiple ballots with the same QR code number***

Private citizens reported finding multiple copies of the same ballot with the same QR code number.

<http://www.fntoday.co.kr/news/articleView.html?idxno=225558>

### ***Subsection #3: Oddly worded ballots:***

And another election observer discovered a number of ballots with unusual spelling for several key words – unlike found on ‘standard’ ballots.

The observer spoke publicly about this:

<https://www.youtube.com/watch?v=oSjjSrFWo3Y&feature=youtu.be>

The observer is testifying that the name of the ruling party printed on many ballots is slightly different from the actual name: 더불어민주당 -> 더블어민주당 ("불" -> "블")

Additionally, the observer states that the event name ("Congressional Election Vote") is misspelled in many ballots:

국회의원선거투표 -> 국회의원선거두표 ("투" -> "두")

\*\* 국회의원 = congressional/ 선거 = election/ 투표 = vote

These words are common words for Koreans, such that Koreans are most unlikely to misspell them. This raises suspicions that the ballots were not created or printed in South Korea. A picture follows:



OSCE standards stress the importance of ‘accountability at all stages of the ballot production or distribution process. One fairly suggests that this is an area where enhanced transparency by NEC officials will be beneficial – particularly in allowing candidates, their representatives, and other election observers to closely monitor the production and distribution of ballots.

The various incidents mentioned herein are anecdotal but raise questions about electoral integrity that would seem to warrant additional review of the South Korean electoral process concerning ballot production and handling and related safeguards against tampering. This is particularly important as the alleged irregularities potentially affect the legitimacy and equality of the vote and the election as representing the free will of the electorate.

One notes that with enhanced transparency it is often possible to defuse issues before they can fester into larger suspicions.

Indeed, ensuring all parties and independent observers are fully apprised and have as unfettered access as possible may do much to ensure elections meet international human rights law standards. Such transparency may seem troublesome, but the broad confidence it engenders in the electoral process and the electoral outcome – regardless if one is on the winning or losing side – is essential for stability in a consensually governed society.

## **Human Rights Law Issue #12**

### ***Ballot chain of custody issues and alleged ‘Ghost Votes’***

International obligations are clear regarding the importance of ballot handling during the electoral process:

I-IDEA International Electoral Standards (2002) (p.72) lays out the basic standard:

“(National electoral law should) (r)equire all ballots and voting materials be adequately safeguarded before, during, and after voting.”

This so-called ‘chain of custody’ is integral to ensuring fundamental trust in the fairness of the entire electoral process and the right to have one’s vote counted in a fair, honest and transparent tabulation.

The April 15, 2020 South Korean election produced numerous claims of chain of custody violations as ballots were moved to polling sites and then to counting stations and finally to storage locations. These alleged irregularities included: unsecured storage locations, irregular ballot storage boxes and the use of non-tamper proof seals, and cases in which seals and verifying signatures appeared to have been tampered with.

Of course, elections are complex affairs and there will inevitably be issues and even mistakes surrounding the handling and movement of ballot. This should not be considered as automatically indicating fraud, wrongdoing, or lack of good faith on the part of election officials and electoral staff.

Nonetheless, there is always room for improvement and review of electoral processes and procedures, no matter where an election takes place.

For reference, the following are examples of potential ‘chain of custody’ irregularities. Collectively, these suggest that a follow-on examination may be in order to consider electoral processes and standards for ballot handling and security (at all stages) and also the standards for appropriate observers to monitor and verify ballot handling measures.

The following are a number of instances of alleged flaws in chain of custody for electoral materials:

YouTuber Han Young-min of the ‘I Can Do It’ channel found election-related materials and seals at a dumpsite next to a warehouse in Namyangju on May 16, 2020.

<https://www.youtube.com/watch?v=g7gVrE2IY50>,

<https://www.youtube.com/watch?v=uxU3Kgvsv8Y>

<https://www.youtube.com/watch?v=EhLPSKuy7h8>

<https://www.youtube.com/watch?v=WdJyVY6YvAE>

YouTube channel ‘Hover Lab’ tested the adhesiveness of the seal tape. They found that the tape wasn’t a special seal but was like a post-it tapes and that it did not leave any residue on the box.

<https://www.youtube.com/watch?v=rUAQ3d2KBV0>

Hover Lab channel covered the process of moving the ballot boxes in the recount district and caught that the ballots were in a Samlip baking company bread box.

<https://www.youtube.com/watch?v=TBcZkfYyw8w>

<https://youtu.be/LQYM4m3fxAg>

At another district, the Cheongju Seowon district, ballots were found in a blue plastic box for moving, not in a NEC standard box.

<https://www.youtube.com/watch?v=Xm5Ya07xJcw>

Citizens found seal stamps that were either stamped improperly or double stamped. They also found seals that were torn or boxes with holes in them.

<https://www.youtube.com/watch?v=Nk2UaPX5Vrg>

Citizens also found ballot boxes with no seals and even found ballots from different districts in one box.

[https://www.youtube.com/watch?v=T9WboEK4\\_gc](https://www.youtube.com/watch?v=T9WboEK4_gc)

Buyeo district ballots were found by citizens at a junk shop in Siheung, Gyeonggi-do, a different district.

<https://news.joins.com/article/23829312>

YouTuber Han Young-min requested to the NEC provide specific CCTV footage and after analyzing the video found a scene of NEC employees fixing signatures on the ballot boxes or signing new signatures.

[https://www.youtube.com/watch?v=EuOUj0v\\_Rxo](https://www.youtube.com/watch?v=EuOUj0v_Rxo)

Additionally, and perhaps just as coincidence, between April 15, 2020 and May 13, 2020, 77 fires broke out across South Korea at warehouse locations that stored election materials – including one at a warehouse in Gunpo where an Electronic Voting Machine was being stored.



***Subsection #1: Chain of custody examinations of ‘mail votes’ delivery records raises suspicions of a huge number of ‘ghost votes’***

One notable claim of potential irregularities is a post-election chain of custody examination of ‘mail-in’ ballots conducted by a respected South Korean lawyer.

His findings raise potential issues raise a number of possible issues under international human rights law. These include issues about the genuine and fair nature of the election, the sanctity and equality of each voter’s vote, as well as concerns of distorted tabulations.

The South Korean postal service’s registered delivery records for ‘early’ and ‘mail votes’ are transparent and available for review. However, a detailed examination by South Korean attorney, Park Ju-hyun, formerly of the Inspector’s Office of the Blue House, of the mailing and delivery logs for moving ‘early’ and ‘mail in’ votes by ground transport indicates the possibility of widespread anomalies after comparing ‘time/distance’ records for delivery that are physically impossible in term of travelling a set distance in the time claims.

Also, the lawyer’s review reveals delivery routes that crisscross the country to travel what should be a matter of just a few miles via the most direct route. This raises concerns of delivery records compiled ‘in isolation’ and possibly by individuals unfamiliar with South Korea and its geography.

Beyond the time and distance problems, the review uncovered suspect documentation and wording on the post office’s ballot receipt records. All in all, the review suggests that over 1.1 million votes cannot be adequately vouched for.

Park Ju-hyun’s investigation would suggest additional inquiries are warranted to consider the findings and potential irregularities in the electoral process that could have led to possible election fraud

Attorney Park’s entire report is attached as **Annex 7**.

### **Human Rights Law Issue #13:**

#### ***Delayed review of election related court cases***

Following the April 15, 2020 election, well over 100 lawsuits (an unprecedented number) were filed alleging electoral impropriety. In earlier elections such suits were typically handled and resolved within 35 days or so. However, as of this writing the vast majority have not been taken up by the court, and only a few have proceeded to the initial stages. Legal requirements call for such cases to be heard and adjudicated within 180 days. Yet, that limit has passed.

**Annex 8** leads the reader to a listing of court cases filed after the April 15, 2020 election and the status of the individual cases as of September 2020 – five months after the election.

This ‘delayed justice’ raises international human rights law issues over the guaranteed right to appeal and to obtain prompt resolution of claims arising from an election. This too is an essential part of the overall process of a genuine election, fairly run, and perceived as legitimate. Challenges not addressed properly or at all undermine the notion of an election as representing the free will of the electorate.

Regarding the right of review and prompt resolution:

ICCPR 2(3) is the basis of this right to an effective remedy, or in other words, the right to raise a legal claim.

I-IDEA International Electoral Standards (2014), p. 43 further elaborates: “The legal framework should make provision for a mechanism to process, adjudicate, and dispose of electoral complaints in a ‘timely’ manner.”<sup>52</sup>

Additionally, the OSCE Election Observers Handbook advises that observers watch for: “The prolonging of the process of reaching a decision to the point that it denies complainants access to effective remedies?”

A related aspect of the delayed and tardy handling of lawsuit is that court orders may not be enforced. This undermines a fundamental pillar of a genuine, legitimate election – i.e. the rule of law and the separation of powers, with the courts ultimately responsible for determining the legality of given actions by electoral authorities and others.

Moreover, as time drags on there is the practical effect of petitioners becoming exhausted as well as problems retaining and securing evidence. And public attention wanes – thus potentially losing an opportunity to correct shortcomings in the electoral process and system – that may reappear at a later date – damaging public confidence. It is better to correct anomalies and other issues as they occur.

Another issue raised that is related to the requirement of prompt, fair hearing of complaints is the potential intimidation of petitioners.

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<sup>52</sup> CCPR General Comment 32 also states: ‘(a)n important aspect of the fairness of a hearing is its expeditiousness.’

Reportedly, the cell phone and laptop of Rep. Min Kyung-wook, a candidate who filed a lawsuit challenging the election outcome were seized and searched by authorities. Also, an informant who provided evidence to Rep. Min was arrested.

Also, civic groups and YouTubers as well as the litigation counsels of other petitioners were also investigated by authorities. Civic leaders and private citizens who led rallies protesting allegedly fraudulent elections have been arrested, and also the personal information such as mobile phone numbers of participants in the rallies was collected.

<http://news.kbs.co.kr/news/view.do?ncd=4452566&ref=A>

<http://news.kbs.co.kr/news/view.do?ncd=4454022&ref=A>

[http://news.jtbc.joins.com/article/article.aspx?news\\_id=NB11984439](http://news.jtbc.joins.com/article/article.aspx?news_id=NB11984439)

Citing one example, a reputed an NEC document that was found at the Siheung junk shop was reported to have ordered investigations of lawyers and YouTubers who were claiming election fraud.

<http://www.fntoday.co.kr/news/articleView.html?idxno=223958>

Once again, we are not opining on the merits of the cases but are noting potential irregularities involving both domestic law and international human rights law concerning the electoral process and attendant human rights obligations. These may warrant further review.

## **Human Rights Issue #14**

### ***Preservation of evidence***

The April 15, 2020 election produced an unprecedented number of lawsuits challenging the electoral process and electoral outcome. This has also given rise to allegations the NEC has not preserved evidence required to adjudicate the lawsuits, and it is also claimed evidence has in fact been destroyed.

The preservation of evidence (or ‘electoral materials’) is essential to ensuring the judicial process works fairly and without hindrance, and that the individual citizen’s human right to raise electoral claims and to have fair adjudication are protected. And as importantly, the ultimate objective is for voters to cast votes that are counted and to ensure the will of the electorate is reflected in the electoral outcome. (ICCPR 2(3); ICCPR 19 form the basis for the aforementioned rights)

I-IDEA International Electoral Standards (2002), p. 80 states:

“The law must provide for secure storage of all ballots and election materials until either the deadline for making legal challenges to the certified results has passed or, in case a legal challenge is made, the final adjudication of such a challenge is pronounced.”

Professor Emeritus of Kyungnam University, Jinki Yoon, wrote a detailed discussion of the domestic legal issues surrounding the NEC’s alleged failure to preserve evidence, particularly the computer servers used as part of the April 15<sup>th</sup> election network. His report<sup>53</sup> is accessible via **Annex 9**.

Other South Korean April 15, 2020 election allegations concerning preservation of evidence include:

Private citizens reportedly finding destroyed ballots – even though more than 100 court cases across the country had been filed with accompanying requests to preserve electoral materials as evidence.

<http://www.fntoday.co.kr/news/articleView.html?idxno=223293>

Another reported instance alleges that while NEC’s ballot counting equipment, designated as evidence, was being kept at a distribution center in Gunpo, people who are suspected to be NEC employees entered the facility immediately before the evidence was to be verified.

<http://www.fntoday.co.kr/news/articleView.html?idxno=243776>

<http://www.fntoday.co.kr/news/articleView.html?idxno=243776>

Attorney Park Ju-hyun describes apparent irregularities in regards to his requests to the NEC to preserve electoral materials as part of ongoing lawsuits challenging the April 15<sup>th</sup> electoral process.

He states in part:

“The NEC has failed to provide the integrated voter list yet and is destroying key evidence that is subject to verification such as the server, ballot paper printers, electronic ballot count machines and voter list. Former assembly member Min Kyung-wook and his lawyers have issued a statement pointing out the fraudulent mail-in voting. Since then, the postal office has been making changes to its digital data that is stored in the server. The NEC shut down the homepage that has data related to the election, from Sept. 29 to Oct. 4, and changed its server ahead of the

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<sup>53</sup> “Legal Aspects of the Transfer of the NEC’s Server During the Election Litigation in Korea” (November 24, 2020)

recount.”

See **Annex 7** for a broader discussion of this issue by Attorney Park.

## **Human Rights Law Issue #15:**

### ***Impediments to free operation of the media***

Some observers claim that South Korea’s media was under government pressure from even before the April 15, 2020 election – and that such restraint on the media’s free operations continued during and after the election. The role of the media – active and unobstructed – is covered in the human rights law, and is widely mentioned in commentaries on electoral jurisprudence.

This raises potential issues over the conflict between alleged South Korean government restraints on press activity, to include domestic libel laws running afoul of international human rights law mandating the freedom of the press – particularly as part of the electoral process. It is considered an essential right that voters have the fullest possible access to information in order to make informed decisions necessary for the election to represent the free will of the electorate.

One also notes that a free, inquisitive media is an implicit check on electoral misconduct by any and all parties.

The fundamental statutory support for media activities is found in:

ICCPR: Article 19:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.<sup>54</sup>

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<sup>54</sup> Support for the media’s role in ensuring genuine and fair election is found widely in the body of electoral jurisprudence. We cite, for example, the plain language of the Inter-Parliamentary Union, 1994, Declaration on Criteria for Free and Fair Elections that states:

Additional specific mention of the press and media is found in:

CCPR, General Comment 25

“...the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”<sup>55</sup>

The UN Human Rights Council has also stated that speech directed towards public figures is deserving of even greater protection from restriction:

CCPR, General Comment 34

“...the (Human Rights) Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties...”<sup>56</sup>

Additionally, Internet based media is mentioned as falling under the international human rights law protections via CCPR General Comment 34, paragraphs 13 and 43).

Regarding the previously mentioned alleged South Korean governmental restraints on the domestic media, observers have cited the use of South Korea’s punitive libel laws that allow for criminal prosecution – even if the statements are true. Also, there are allegations of threats of revoked licenses and tax audits against news and media outlets that criticize the administration.

<https://eastasiaresearch.org/2018/11/25/suppression-of-freedom-of-the-press-in-south-korea-whats-so-special-about-a-tablet-pc-that-a-journalist-is-in-jail/>

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3. (3): Everyone individually and together has the right:

- To express political opinions without interference;
- To seek, receive and impart information and to make an informed choice;

Note: South Korea is a member of the Inter-Parliamentary Union. While its declarations may not be legally binding they are a clear statement of expected international standards and practice. And they at least have a certain moral suasion.

<sup>55</sup> The importance of a free press is also stated in CCPR, General Comment 34, p. 13: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.”

<sup>56</sup> CCPR General Comment 34 notes that “...public figures may also benefit from the provisions of the Covenant.” Arguably this allows limitations (and even sanctions) on political speech if it damages ‘rights and reputations’ of the subject individual. However, a close reading of the statutes suggests that speech is to be permitted to the broadest extent possible – to include even ‘insulting’ speech.

<https://eastasiaresearch.org/2018/11/04/youtube-phenomena-in-south-korea-demand-for-freedom-of-expression-and-the-efforts-to-suppress-it/>

Post-election claims of government pressure on media outlets and reporters<sup>57</sup> that have criticized the incumbent administration – and the April 15, 2020 election in particular – include:

The arrest of three journalists — Byun, Hee-jae (Media Watch), Kim, Woong (KBS), Woo, Jong-chang (Chosun Ilbo), Lee, Dong-jae (Channel A)

< <https://www.mediawatch.kr/news/article.html?no=254906>> **See Annex 10.**

A six-month broadcasting ban imposed in October 2020 by the Korea Communications Commission (KCC) on the MBN network starting May 26, 2020.

< <https://view.asiae.co.kr/article/2020112715565945092>> **See Annex 11.**

The punishment is said to be based on an issue with the broadcasting company’s shares over a decade ago.

The following is an article in the South Korean media outlet, Finance Today, criticizing the press for only representing the NEC’s position and acting in accordance with government directions.

<http://www.fntoday.co.kr/news/articleView.html?idxno=218705>

Finance Today reported on the number of articles on alleged election fraud. In response it is claimed the government, removed 34 media outlets, including Finance Today, from portal sites to prevent them from appearing as search results.

<http://www.mediatoday.co.kr/news/articleView.html?idxno=210317>

Our report does not seek to determine the truth or falsity of the aforementioned allegations.

However, the claims raised suggest that further review of the role of the press in South Korean elections – such as the April 15<sup>th</sup>, 2020 election – is deserving of consideration. And as noted earlier, it may be helpful to clarify the apparent tension between South Korean domestic laws covering press activity (to include use of punitive libel laws)<sup>58</sup> and international human rights

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<sup>57</sup> South Korea has an active ‘internet’ media, sometimes referred to as ‘YouTubers’, that conduct political reporting. CCPR, General Comment 34 specifically mentions websites, blogs, and other internet-based systems and states that restrictions should be narrowly limited, and criticism of the government is inappropriate grounds for restricting internet media activities.

<sup>58</sup> South Korean libel laws are considered by some observers to be excessively restrictive owing to being criminal in nature and also having a narrow ‘truthfulness’ defense. The tension between domestic libel laws that potentially restrict (and criminalize) political speech – and international human rights laws favoring freedom of expression (by

laws and obligations concerning the operation of the media as part of the electoral process – and the international statutory preference to permit ‘political’ speech to the fullest extent possible.

***Recommendation: Dispatch International Observers and/or an Election Observation Team to observe future South Korean elections***<sup>59</sup>

This assessment and the issues arising from the April 15, 2020 election are not partisan issues, but touch on the fundamental soundness of the South Korean electoral system. All elections need constant tending – no matter how advanced the country or how experienced it is at holding elections. Moreover, all nations can benefit from outside observers casting a fresh eye on the election process.<sup>60</sup> The United States, for example, routinely invites international observer teams – such as from OSCE and OAS (Organization of American States) to observe its elections and report on their observations and findings.

Indeed, this tends to be mutually beneficial. In South Korea’s case, the hosting nation would benefit from an objective third-party assessment of the ROK electoral process – highlighting both strengths and areas needing attention.

Meanwhile, foreign observers and other nations have much to learn from South Korea’s 30 years experience holding hard-fought democratic elections that have by and large reflected the will of the electorate and allowed for peaceful transfers of power.

International Election Observer Teams have apparently never observed South Korean elections. The A-WEB organization does manage an Election Visitor Program that brings foreigners to South Korea, and sometimes when an election is being held. However, these appear to be familiarization and information sharing events – rather than observer missions as commonly understood.

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individuals and the media) – to include in the context of the electoral process raises an issue worthy of closer examination.

<sup>59</sup> As defined in the United Nations endorsed Declaration of Principles for International Election Observation (October 27, 2005), “International election observation missions are: organized efforts of intergovernmental and international nongovernmental organizations and associations to conduct international election observation.” Also, observer team missions have limited mandates, and are “...process oriented and not concerned with an particular result.”

<sup>60</sup> The UN endorsed Declaration of Principles cited above states: “International election observation has become widely accepted around the world and plays an important role in providing accurate and impartial assessments about the nature of electoral processes.”

South Korean observers have occasionally travelled overseas to view elections and referendums (such as to Sri Lanka, Ecuador, and El Salvador in recent years) but these seem to be more along the lines of ‘familiarization’ trips rather than full-scale observer efforts.

International law does not mandate that a nation accept foreign election observers. However, international electoral observers are considered desirable and the dispatch of such missions is a well-developed international practice.

The United Nations endorsed Declaration of Principles for International Election Observation (October 27, 2005)<sup>61</sup> explains the justifications and benefits of election observer missions:

“International election observation expresses the interest of the international community in the achievement of democratic elections, as part of democratic development, including respect for human rights and the rule of law.”

“International election observation has the potential to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes. It can promote public confidence.... It also serves to enhance international understanding through the sharing of experiences and information about democratic development.”

In conclusion, in light of the various issues discussed in this report, we submit that the dispatch of international observers to future South Korean elections is an idea deserving favorable consideration.

//end

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<sup>61</sup> The endorsing organizations for the declaration include the UN Secretariat, OSCE, and the Inter-Parliamentary Union. South Korea is a member or affiliate of each of these organizations.

## Annex (1)

### NEC Temporary offices

<<https://www.gongdaily.com/news/article.html?no=23774>> taken from Dr. Gong Byung-ho's article.

On October 21, Gong Byung-ho TV, 24 Live News, MediaA and Vasilia TV all made urgent reports. On September 30, it was shocking in and of itself that during the unreasonable move of the NEC servers from Gwanak to Gwacheon, an abundant number of documents were discarded. All 9 regional election commissions had set up temporary offices some distance away from them and these offices operated from February until mid-April after the election was over. According to the evidence obtained, given that 9 temporary offices have been identified, it is highly likely that the regional election commissions across the country operated these temporary offices. The regional election commission doesn't have a nameplate on it, set up temporary offices at a considerable distance, set up a dedicated line between the regional election commission, and it's not easy to reasonably or sensibly understand that only a small number of people were allowed to enter.

[붙임 1]

### 선거정보통신망 임시사무소 설치 요청 내역

● 서울특별시 송파구선거관리위원회

구분	세부내용
설치기간	2020. 2. 7 (화)
사용기간	2020. 2. 10 (화) ~ 2020. 4. 17 (금)
설치장소	서울특별시 송파구 송파대로 472, 보명빌딩 4층
담당자	
문의일자	2020. 4. 17 (금)
신청내역	송파구선거관리위원회 *** 송파구선거관리위원회 임시사무소 30Mbps 전용회선 1회선 및 L3 스위치 임대(별도 계약)
특이사항	정리 전용 시 통신망 유지보수(02-504-0271) 연락 후 작업 진행

※ 사용기간 종료 후 재차 확인하시기 바랍니다.

● 서울특별시 구로구선거관리위원회

구분	세부내용
설치기간	2020. 2. 11 (화) 16:00부터
사용기간	2020. 2. 22 (수) ~ 2020. 4. 17 (금)
설치장소	서울특별시 구로구 가마천로 23길 13, 한일빌딩 5층
담당자	
문의일자	2020. 4. 17 (금)
신청내역	구로구선거관리위원회 *** 구로구선거관리위원회 임시사무소 30Mbps 전용회선 1회선 및 L3 스위치 임대(별도 계약)
특이사항	정리 전용 시 통신망 유지보수(02-504-0271) 연락 후 작업 진행

※ 사용기간 종료 후 재차 확인하시기 바랍니다.

Details of the Seoul Metropolitan Songpa-gu Election Commission's request to set up a temporary office for election information and communication

Period of Usage: February 10, 2020 (Mon) ~ April 17, 2020 (Fri)

Set-up Location: Bomyung building 4th floor, Songpadaero 472, Songpa-gu

Details of Application: Songpa-gu Election Commission <-> Temporary office of the Songpa-gu Election Commission

Lease of one 10Mbps (10 megabytes per second, rate of transmission per second) dedicated line and L3 switch

The following is a temporary office that was set up. The distance between the regional election commission and the local office is in parenthesis.



- (1) Temporary office of the Gangbuk-gu Election Commission (260 meters)
- (2) Temporary office of the Seongbuk-gu Election Commission (831 meters)
- (3) Temporary office of the Gangdong-gu Election Commission (808 meters)
- (4) Temporary office of the Songpa-gu Election Commission (224 meters)
- (5) Temporary office of the Seongbuk-gu Election Commission (831 meters)
- (6) Temporary office of the Guro-gu Election Commission (280 meters)
- (7) Temporary office of the Dongjak-gu Election Commission (3100 meters)
- (8) Temporary office of the Gyeongbuk Election Commission (238 meters)
- (9) Temporary office of the Daegu Dong-gu Election Commission (1600 meters)

Based on the data above, regional election commissions across the country have made temporary offices invisible and was operating until April 17 after the election was held. If these temporary offices were in operation for three months, it was likely used as a training facility for counting officials, voting observers and counting observers. The distance between the regional election commissions and the temporary offices, assuming normal operation of these temporary offices, is too far. I even suspect that employees didn't know the existence of these temporary

offices. I can only presume that they kept the temporary offices away from the regional election commissions was meant to not expose the existence of these temporary offices.

It is not easy to accept that these temporary offices were meant as a space for normal operational purposes. People wonder what kind of special purpose it's tasked to perform to secure a space like that. Ever since the end of the general election, there has been constant talk that this is a third location where digital manipulation was made possible.

Furthermore, a dedicated line was installed between the temporary office and the regional election commission, and these private lines were also operating during early voting and counting. These dedicated lines were operating during April 12 of early voting, April 15 of counting until April 17.

The temporary office had no physical security devices except for a number key for entry. There were no signs indicating the location of the temporary office, such as signboards. Even the residents of the building where the temporary office was located were not aware of the election-related temporary offices. The witnesses who provided testimonies such as, "That place was an election-related temporary office," were only those who provided meals on a meal order.

Most of the buildings where the temporary offices were located at are old buildings, so it was no surprise that there were no CCTVs installed to check the ins and outs. I even suspect that they deliberately chose such buildings. With a dedicated line between the regional election commission and the temporary office, people in the temporary offices could do two different tasks if they wanted to. Regardless of whether the work was carried out or not, it is technically possible to do two different tasks.

First of all, it's possible to interfere with early voting as much as possible of an early voting ballot machine (self-identification machine, ballot printer, laptop) is installed at the temporary office.

Second, voting results can be generated in real time by monitoring the voting situation at the temporary office on the day of counting.

The use of the number key indicates that only a small number of people had access. If it was a small number of people, you can expect that only a small number of people have done what they needed to know.

Why did the regional election commission operate the temporary office secretly?

What tasks were carried out at the temporary office?

Evidence obtained to establish fair elections may be used to present doubts, suspicions, questions and possibilities. Details of what really happened should be revealed through investigation.



# 朝鮮日報

연세 002-314-3114 주력 배달 000-000-0033

1949년 1월 1일 창간 100 2020년 4월 11일 수요일

## 굳이... 선거전날 지원금 꺼내든 대통령

"추경 없이 미리 신청받으라" 지시  
뒤, 오토나 지원금 내었고 유세  
지자체도 일제히 신청서 현금  
환 "추악한 예표행위 규권선거"

최종이 총 추경액	13일 이틀 22000억에 4000억
보조금지원	13일 이틀 22000억에 4000억
총액	13일 이틀 22000억에 4000억
대상	13일 이틀 22000억에 4000억
추진 책임자	13일 이틀 22000억에 4000억

4-10 총선을 하루 앞둔 14일 정부-여  
당의 각종 지원금 파주(가) (가) (가)  
후보들의 막대한 논란이 뒤따르며  
물었다. 이러한 보도는 긴급재난지원금  
신청 마감 기한을 손에 쥐고 지지할  
소스였다. 여당(민주당)은 "국민  
을 추악한 예표행위"라며 "정리  
실정"을 부각시켰다.  
민주당과 원만한 모두에서  
"책임 논란"은 수습과 혼도-부  
자의 책임을 물을 것으로  
판 사원 부실들이 애초 회고지를



The front-page article from Chosun Ilbo titled “The President who brought out support funds on the eve of the election” reported on the 14<sup>th</sup> that during a Cabinet meeting, President Moon Jae-in ordered, “don’t wait for the National Assembly to draft and deliberate a secondary supplementary budget for the coronavirus and to just get applications from those who are eligible for emergency disaster assistance,” and was criticized him for “giving out orders to receive applications for subsidies from the bottom 70% of the income bracket without a draft of the budget from the government.”

Source : Media Today(<http://www.mediatoday.co.kr>)

### **Annex (3)**

#### **QR Code Used in Early Voting**

By Mr. Cho, Cheng-yeol

This report discusses the use of QR Codes on ‘early voting’ ballots in the April 15, 2020 election, to include the domestic legal aspects.

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

**Annex (4)**

**“Election Fraud: 2020 South Korean 21<sup>st</sup> General Election”**

by Benjamin P. Wilkerson

This is a detailed technical assessment of the Electronic Counting Machines and attached hardware used in the April 15, 2020 election. Mr. Wilkerson did not have full access, but was able to make a useful assessment nonetheless.

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

**Annex (5)**

The following is an educational graphic provided by the NEC to explain the early voting process. The early voting order is divided into six stages:

1. Show your ID, they will tell you where to go.
2. Show your ID.
3. Write your name or take your hand stamp.
4. Get the ballot (In the case of early voting, unlike the Election Day’s ballot, it is printed out and delivered on the spot.).
5. Enter the voting booth and put a stamp on the ballot, to cast your vote (There is a guide to fold the ballot in half.).
6. Place the ballot in the ballot box.

**1인당 투표시간 순위별 사전/당일 투표소 현황**

순위	~10위	~20위	~30위	~40위	~50위	~60위	~70위	~80위	~90위	~100위
1인당 투표시간(초)	~8.82초	~9.97초	~10.88초	~11.36초	~11.65초	~12.14초	~12.38초	~12.81초	~13.15초	~13.25초
관내사전 투표소 (개)	10	10	9	10	10	9	10	10	9	8
당일 투표소(개)			1			1			1	2

출처:또하아범네이버블로그



Photo source: National Election Commission

Source: “Finished in 15 seconds/ Early voting time required” [Kong Byong-ho TV]

[https://www.youtube.com/watch?time\\_continue=1&v=A32fO2bBkvU&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=1&v=A32fO2bBkvU&feature=emb_logo)

One is reminded of the interview with the Korean singer BoA during the South Korean presidential election in 2017: He cautioned the voters that “It takes 5 minutes to participate in early voting, don't forget your valuable vote.”

(<http://www.asiae.co.kr/news/view.htm?idxno=2017050407592594687>)

Cited in: White Paper by Hak Min-kim

## Annex (6)

Professor Park Sung-hyun's statistical assessment of voting patterns

### **Very Strange Statistics: (April 15<sup>th</sup> Pre-Vote Results that are Statistically Difficult to Understand)**

By: Park Sung Hyun

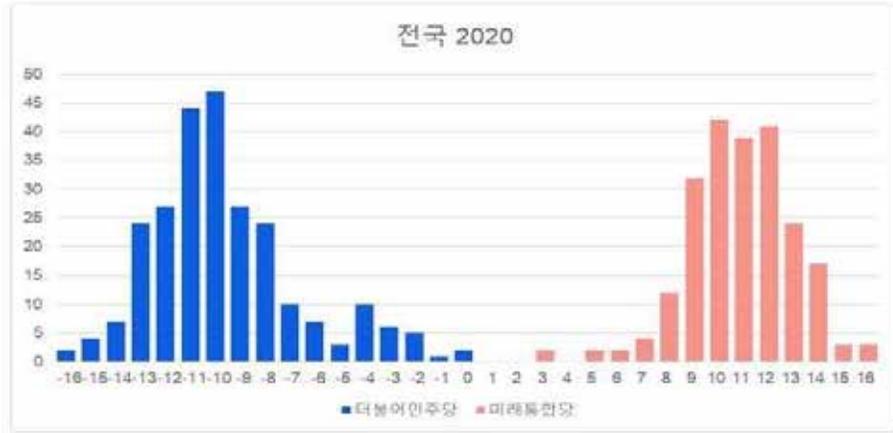
Honorary Statistics Professor, Seoul National University, Dean of Korean Academy of Science and Technology

#### **1. A huge divergence between the results of early-voting and voting on election day.**

According to the National Election Commission, over 11.74 million of the total 43.90 million voters pre-voted in the past general elections on April 15<sup>th</sup>, an extremely high pre-vote rate of 26.7%. Since the on-site voting rate was 39.5%, the voting rate of this election is very high at its 66.2%, making the ratio of the number of pre-votes and the number of on-site votes about 40:60. Looking at the voting rates of the Democratic Party of Korea (hereinafter the Democratic Party) and the United Future Party (hereinafter the UFP), there is a big difference between the results of early-voting and the on-site voting in all 253 constituencies. In the pre-vote, the Democratic Party gained 56.3% and the UFP 34.9%, the Democratic Party winning by a landslide. During the on-site voting, the Democratic Party gained 45.6% and the UFP 46.0%, the UFP winning by a thread. However, as the Democratic Party created a wide gap during the pre-voting, constituency elections ended with a record victory for the Democratic Party.

But what is statistically unusual is that in 253 national constituencies, the Democratic Party received an average of 10.7% less votes than the pre-votes during the on-site voting, and the UFP received an average of 11.1% more votes during the on-site voting than during the pre-voting. <Figure 1> shows the histograms of the difference in votes the two parties gained during the pre-voting and the on-site voting. The fact that the two-party histograms do not overlap at all is evidence that the same pattern occurs in all districts.

On the other hand, the 20th general elections in 2016 shows the histogram shown in <Figure 2>. Because there are overlapping histograms, the Democratic Party could have gotten a better turnout during the on-site vote than the pre-vote, and the UFP (Saenuri Party at the time) also could have gotten a better turnout on the pre-votes than the on-site votes according to the constituencies. It is fully possible because averages between the two parties are not too great, as the average of the Democratic Party's histogram is about -2%, and the average of the UFP about 3%.

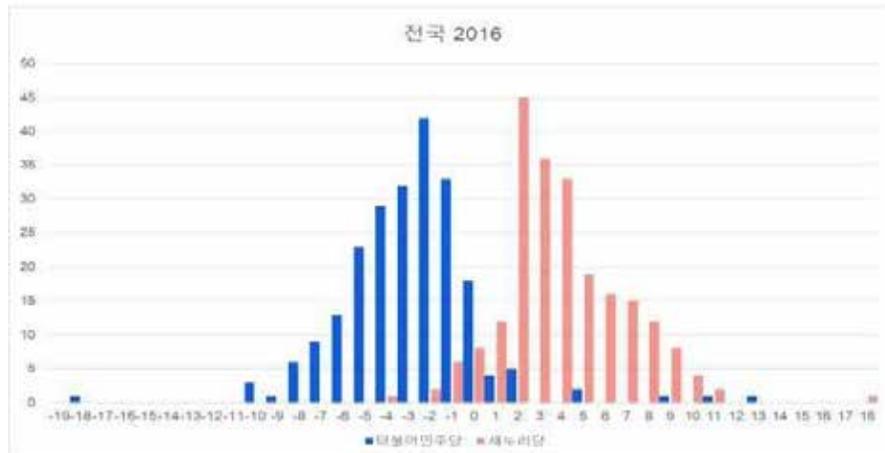


2020 Nationwide

<Figure 1> Histogram of 21<sup>st</sup> General Elections in 2016 showing the difference of voting rates according to constituencies.

Vertical axis (x-axis): (rate of on-site voting - rate of pre-voting)

Horizontal axis (y-axis): Frequency of constituencies within the section

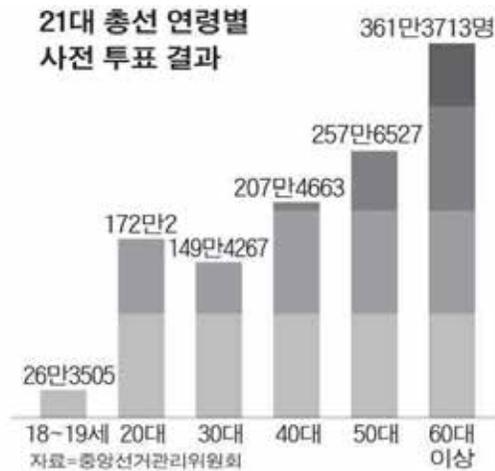


2016 Nationwide

<Figure 2> Histogram of the 2016 20<sup>th</sup> General Elections showing the difference in the percentage of votes by constituencies

So why did this happen in the 21st elections? In general, it is possible to think that many young people participated in the pre-voting and leaned towards the Democratic Party. However, the age distribution of the voters who participated in the pre-voting (April 10-11) is shown in <Figure 3>. Looking at the ratio of voters by age, those in their 60s and above accounted for highest percentage of 30.8%, followed by 21.9% in their 50s, and 52.7% in their 50s and above

combined. In fact, seniors 50 years old or older participated in the pre-voting more than young people in their 20s and 30s. According to the polls, this does not explain why the Democratic Party's support is high in the pre-voting because the elderly has high support for the UFP. Statistically speaking, the entirety of nationwide voters is one population; even when this population is considered to have voted in two randomly divided groups (pre-voter group and on-site voter group), it is difficult for these groups to have a great difference between them. The huge gap between pre-voting and on-site voting is statistically difficult to understand.



21<sup>st</sup> General Election Pre-vote Results by Age

263,505 / 1,720,000 / 1,494,267 / 207,004,663 / 257,006,527 / 361,003,713

<Figure 3> Number of voters by age in the 21st General Elections

## 2. Is the statistical hypothesis that Democratic supporters have flocked to early voting true?

In local pre-elections, the Democratic Party won by a landslide with 56.3% against the UFP's 34.9%, whereas on the day of the vote, the UFP won by narrow margin over the Democratic Party, 46.0% to 45.6%. In order to explain a phenomenon such as this, the hypothesis that Democratic supporters flocked to the pre-elections more than UFP supporters must be formed. Let us statistically verify this hypothesis. In <Figure 4>, the x-axis depicts the total percentage of Democratic votes (pre- and on-site votes) and in the 1,537 neighborhoods, towns, townships, and villages in Seoul, Gyeonggi, Incheon, Gangwon, Daejeon, and Busan (hereinafter referred to as neighborhoods), whereas the y-axis depicts the percentages of pre-votes (total number of pre-votes/total number of votes) by neighborhood. If the hypothesis that many Democratic supporters came out to vote for the pre-elections is true, then the higher the total percentage of Democratic votes in the x-axis, the higher the percentage of Democratic pre-votes should be. In other words, the graph should show a positive correlation as well as a positive slope (+). However, we can see that this is not the case in <Figure 4>. Conclusively speaking, the

hypothesis that Democratic supporters flocked to the pre-elections by the mass is not statistically proven to be true.



<그림 4> 민주당 총득표율: 동네별 사전투표율 산점도  
(자료: 와세다대학 정치경제학부 정훈교수 제공)

*Title: Percentages of Total Democratic Votes and Total Democratic Pre-Election Votes By Neighborhood*

*(1,537 neighborhoods, towns, townships, villages in Seoul, Gyeonggi, Incheon, Daejeon, and Busan)*

*Y-Axis: Pre-Election Percentages by Neighborhood (Pre-Election Votes/Total Votes)*

*X-Axis: Percentages of Total Democratic Votes (Pre- and On-Site)*

*<Figure 4> Democratic Total Amount of Votes: Scatter Plot of Pre-Election Votes by Neighborhood*

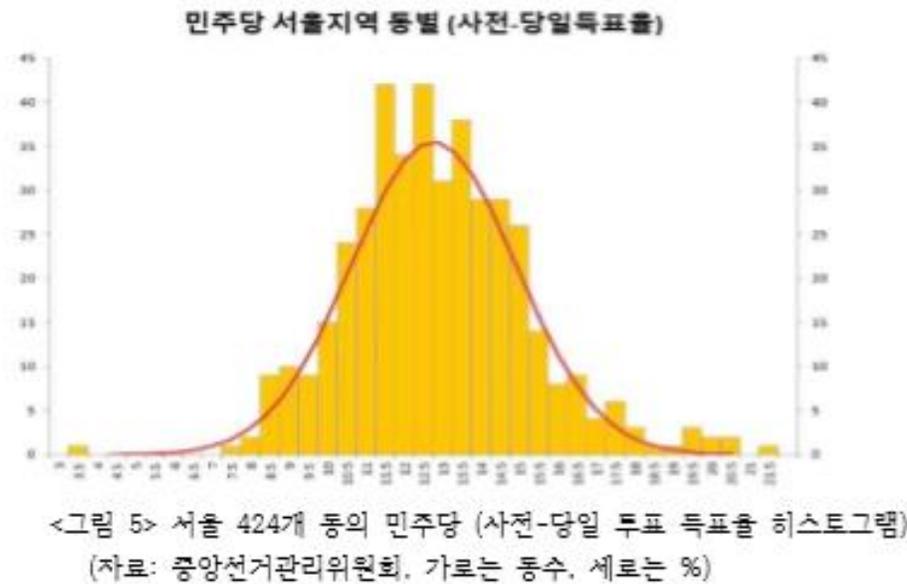
*(Source: Provided by Professor Jung Hoon from Waseda University's Department of Economics and Political Science)*

### **3. Highly similar patterns found in 49 constituencies and 424 neighborhoods of Seoul statistically difficult to understand.**

As all 49 constituencies of Seoul each have their own candidates they prefer to support, it is common for the rates of candidate support to variously differ. However, the fact that the

percentages of pre-votes and on-site votes are nearly the same in all constituencies is a phenomenon so strange that it is statistically hard to believe. The Democratic candidate received a greater percentage of votes in the pre-elections rather than on-site, and the UFP experienced the very opposite. But in the last 2016 general elections, the average difference between pre-election and on-site percentages was but approximately -3% for the Democratic Party and +3% for the then-Saenuri Party, therefore leading to an overall gap of roughly 6% between the two parties. This is a gap that, statistically speaking, is fully possible. However, this 21<sup>st</sup> General Elections saw only large negative differences in the Democratic Party (10%~16%), recording an average of 12%. On the other hand, the UFP recorded only big positive differences that amounted to an average of about 12%. The resulting average differences of both parties then becomes the enormous value of 24%. What can especially be a statistically strange phenomenon is that the same pattern was found in all 49 constituencies.

Seoul is comprised of 424 total neighborhoods; the differences between the Democratic pre-votes and on-site votes were plotted as a histogram shown in <Figure 5>. The differences show an average of 12% and has a small standard deviation of 2.4%. It is a statistically odd phenomenon that Democratic pre-vote percentages are higher than on-site percentages in all 424 neighborhoods, coupled with an unusually small standard deviation. Even though each of the 424 neighborhoods should have their own characteristics, to have such a uniform result as this is difficult to understand statistically.



*Title: Democratic Votes by Neighborhood in Seoul (Pre- and On-Site Vote Percentages)*

*<Figure 5> Democratic Votes of Seoul's 424 Neighborhoods (Pre- and on-site voting percentages histogram)*

*(Source: Central Election Management Committee, vertically the number of neighborhoods, horizontally the percentages)*

## Annex (7)

### *Mail-in Vote Manipulation and Other Fraud and Outside Interference in South Korea's April 15, 2020 Election*

*by Park Ju-hyun (October 5, 2020)*

This is attorney Park's detailed assessment of 2+ million early votes that were move by mail across Korea.

“This is why I have decided to investigate every piece of registered mail used in the early voting. We tracked the history of 2,725,843 pieces of mail and saved all related shipping information such as sender and recipient, delivery date, delivery status, mail origin, date and time, deliveryman and actual recipient. After checking the post office's tracking system, we categorized the irregular activity into 31 categories. A total of 1,110,672 cases were confirmed as irregular votes, and this accounts for 40.4 percent of the total mail-in votes, or 2.72 million.”

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

## **Annex (8)**

### **List of cases filed that are alleging irregularities in the April 15, 2020 election.**

This is the listing of many of the cases filed to challenge the April 15, 2020 electoral process. The document was prepared in September 2020 – five months after the election. However, only a few cases had moved to, much less beyond, the early stages – despite legal requirements that claims for redress are adjudicated expeditiously. The vast majority of the cases had not even moved to the initial hearing stage.

After previous elections such claims were typically been addressed in a matter of weeks.

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

## **Annex (9)**

### **“Legal Aspects of the Transfer of the NEC’s Server During the Election Litigation in Korea” (November 24, 2020)**

by Professor Emeritus of Kyungnam University, Jinki Yoon

This is a good in-depth discussion of the domestic legal issues involved in the NEC’s alleged failure to preserve evidence required as part of post-election lawsuits.

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

## Annex (10)

Media Watch (<https://www.mediawatch.kr/news/article.html?no=254906>)

### **A string of arrests of journalists from Byun Hee-jae, Kim Woong, Woo Jong-chang and Lee Dong-jae, who's next?**

3 journalists arrested just this year...freedom of expression of the general public is greatly reduced

Reporter Lee, Woo-hee; Article uploaded July 20, 2020 15:29:01

The arrests of journalists are becoming an everyday routine in free Korea. It has become a reality that even ordinary people are being punished for posting Internet postings and hand-written posters criticizing the administration.



Gong Byung-ho TV screen capture of reporter Woo, Jong-chang.

On the morning of the 17<sup>th</sup>, the judiciary of the Moon Jae-in administration sentenced False & Truth main reporter Woo Jong-chang (former reporter for Chosun Ilbo, Monthly Chosun) 8 years in prison for defamation. He reported through a YouTube broadcast that former Minister Cho

Kuk, during his time as senior secretary of the Presidential Civil Affairs, had dinner with the presiding judge of state affairs and manipulation Kim Se-yoon and attorney Choi Kang-wook, who was retired from public office at that time, and that this was ‘defamation by false information’.



Channel A screen capture of reporter Lee, Dong-jae.

That night, former Channel A reporter Lee Dong-jae was also arrested for attempted coercion. As Lee was covering the alleged ‘Silagen scandal’ which involved a large number of influential figures in the administration, he allegedly threatened former CEO of Value Invest Korea, Lee Chul, that if he doesn’t report on the corruptions of Yoo Si-min, chairman of the Roh Moo-hyun Foundation, he will be subject to criminal penalties.



Media Watch's advisor Byun, Hee-jae. (Source = Media Watch DB)

The Moon administration's judiciary fired the signal to arrest journalists on May 30, 2018 by first arresting Byun Hee-jae, this newspaper's main advisor, for defamation. On December 10 of the same year, Hwang Ui-won, this newspaper's CEO, was also arrested for the same charge and was sentenced to one year in prison during the first trial. Two journalists from the editorial department were also sentenced in six months in prison (two years' probation) and fined.



Screen capture from Reporter Kim Woong TV of Kim Woong.

On July 8, 2020, Lion N Fox CEO Kim Woong was sentenced to six months in prison in the first trial for attempted blackmail and then imprisoned. Kim worked for Reuters, the Kyunghyang Shinmun, and as a reporter for KBS, and at the time of his arrest, he was freelance journalist and YouTuber. He was arrested after raising various suspicions about Sohn Suk-hee, president of JTBC, which is known as a pro-Moon media station.

The arrests of journalists were hard to imagine before the Moon administration came into power. It is especially hard to find a case in advanced OECD countries where active journalists were arrested on defamation charges. Other than totalitarian states, there aren't many countries that define defamation as a crime and punish it under criminal law. When criticizing public figures, freedom of expression is widely more guaranteed.

The Moon administration is going the opposite direction of the global trend, and in order to control the critics, they are using criminal charges of defamation as if they were playing one's trump card. In order to punish critics, the government is also actively utilizing provisions such as trespassing on construction materials and obstruction of justice.

The police even raided the headquarters of TV Chosun on April 25, 2018 because they were covering and reporting the 'Druking incident'. The court also issued a search warrant for the media company, which the police had requested for at the time.

The Moon administration is also punishing, not only the media, but students and citizens for their free use of ‘freedom of expression’. The police entered the home of a member of a university student group, ‘Jeon Dae Hyeop’, without a search warrant in April 2019 because he allegedly made and posted hand-written posters that satirize and criticize the Moon administration. On December 26, 2019, the prosecutor’s office imposed a 1 million won fine on a Jeon Dae Hyeop member on the charge of trespassing on construction materials for putting up posters criticizing President Moon on the Dankook University campus.

On the 16th, Chairman Jung of a North Korean human rights advocacy group was arrested on charges of obstruction of justice and trespassing for throwing a shoe at President Moon at the National Assembly. The police requested an arrest warrant for Chairman Jung. Fortunately, the warrant was rejected on the 19th.

Influential figures of the administration are making indiscriminate accusations against journalists and the people. On March 7, 2018, former Minister of Justice Cho Kuk even sued two elderly people in their 70s because they posted a slanderous post of him on a blog when he was serving as senior secretary of the Presidential Civil Affairs. The First Circuit Court fined 3 million won to Mr. Hwang, in his 70s, on March 19, 2019. The appellate court also found Mr. Hwang guilty on October 25.

Prior to this, in 2019, 20 foreign intellectuals who are pro-Korean released a statement about how they are greatly concerned about how Korea’s freedom of expression is declining and sent it to the Blue House. At the time, they stated that, “We are greatly disappointed in the president (Moon Jae-in) and his administration in the fact that he’s using the same defamation laws to suppress his critics and political opponents,” and listed the history of defamation charges brought on by Moon Jae-in and his administration.

*“For example, as a presidential candidate, the president sued **former Minister of Foreign Affairs Song Min-soon**. Former Minister Song disclosed that in 2005, when the UN voted on a resolution on the North Korean human rights issues, the president once asked about the North Korean government’s intention. A representative of the president’s party had continuously threatened to take legal action against those who criticized or slandered the president. The Moon administration **prosecuted attorney Ko Young-ju**, a former prosecutor, who called the president a communist. Also, **Dr. Ji Man-won** was prosecuted for raising issues with former Chief of Staff Im Jong-seok’s view on North Korea. **Journalist Byun Hee-jae was sent to prison for questioning the evidence behind the president’s impeachment of his predecessor. In particular, Byun Hee-jae was arrested in advance while the trial was in progress.** **Kim Hye-kyung**, wife of Gyeonggi governor Lee Jae-myung, was investigated by the police because she criticized the president on the Internet while defending her husband’s innocence of criminal charges. Recently, the police **conducted internal investigations of charges of defamation because posters were found satirizing the president’s economic and North Korean policies on college campuses.**”*

## Annex (11)

Asia Economy (<https://view.asiae.co.kr/article/2020112715565945092>)

### **MBN, starting May 26 of next year ‘6-month suspension of broadcast’**

Article uploaded November 27, 2020 15:54

Voted for conditional re-approval of MBN,  
but will suspend broadcast for 6 months starting next May 26



(Photo source from Yonhap News)

[Asia Economy reporter Koo, Chae-eun] The Korea Communications Commission voted for a 3-year conditional re-approval of MBN. However, they received a disciplinary action of a ‘6-month suspension of duties’ back in October from the KCC and it looks like they won’t be able to broadcast anything for 6 months beginning May 26 of next year.

On the 27th, the KCC voted for a ‘3-year conditional re-approval’ for MBN. The approval is valid from December 1 until November 30, 2023. They voted for the ‘conditional re-approval’

considering that the company submitted plans for improvement, such as management transparency and beneficial outsourcing.

However, MBN's conditional re-approval is to be carried out separately from the 6-month work suspension. Previously, the KCC asked the prosecutor's office to investigate MBN's alleged illegal capital provision last November, was convicted and sentenced to 'suspension of work for 6 months.' The grace period is six months and ends on May 25 next year. During this period, unless MBN files an administrative lawsuit and the court issues a suspension to the execution of the KCC's decision, the decision to 'suspend work' is valid.

A KCC official explained that, "The period of work suspension is postponed until May 25 and the 6-month suspension of broadcast begins on May 26." Accordingly, starting from May 26 next year for six months MBN cannot broadcast any drama, entertainment programming, and definitely news reports.

During the re-approval review, the KCC included a plan that will take economic responsibility for damages caused by the '6-month suspension of work' and conditions that the largest shareholder will not be involved in the operation and personnel of the broadcasting company. The KCC will review the establishment of a dedicated organization for a thorough inspection of performance records and will also include measures to check the performance.

Standing commission member Ahn Hyung-hwan stated that, "The cable network has become more diverse than the beginning, but it's questionable whether it literally serves its role for comprehensive programming," and, "Individual business owners' positions can't be ignored, but broadcasting should function to perform public functions." Standing commission member Kim Hyo-jae mentioned that, "(MBN) should deeply reflect on what the re-approval condition states and keep its promise with the KCC." KCC's Vice Commissioner Kim Hyun said, "There was a vote for (MBN) to expedite provisions and suspend its business. There are certain things that do not meet the conditions of the approval," and that, "we urge them to faithfully implement the conditions."

KCC Commissioner Han Sang-hyuk stated, "MBN's conditional re-approval must implement responsible measures as a result of the announcement of their intent to implement plans for further improvements. I hope this decision will be an opportunity to lead public responsibility and gain more trust for their comprehensive programming."

**Annex (12)**

**“White Paper on the Fraudulent Election,”**

by Hak-Min Kim (June 6, 2020)

This report has much explanatory detail on issues arising from the April 15, 2020 election. In particular, it raises a number of potential instances in which the electoral process as conducted before, during, and after the election campaign allegedly contravened South Korea’s Public Official Election Act.

This entire document is found in the ‘supporting documents’ collection accompanying the overall report of which this report is one part.

**Annex (13)**

PRELIMINARY PLEADING FOR CASE NO. 2020 (30 June 2020)

DOCUMENT FOR PRELIMINARY BRIEFING (YEONSU-GU, INCHEON) CASE NO. 2020-30 (October 16, 2020)

COMPLAINT FILING (May 2020)

Each document can be found in its entirety in the ‘supporting documents’ section.

## Annex (14)

The following is a translation of a summary of specific alleged violations of South Korean domestic law arising from the April 15, 2020 election. The summary was prepared in January 2021 by a South Korean lawyer, Ms. Soojung Moon, who has extensively researched the ROK election and assisted plaintiffs' alleging electoral wrongdoing.

### Public Official Election Act

Article 278 (Voting and Counting by computerized system) ① The National Election Commission shall promote the computerization of office work for the accurate and prompt management of voting, counting, and other election affairs.

② In the computerization of voting management, the confidentiality of voting must be ensured, voting of the elector must be easy, observation of political parties or candidates should be guaranteed, and the correction of marking error, prevention of invalid votes, and other voting accuracy shall be ensured.

③ **In the computerization of ballot counting management, the calculation of the number of votes per party or candidate must be accurate, the voting results must be verifiable, and the observation of political parties or candidates must be guaranteed.**

④ **When the National Election Commission intends to computerize voting and counting affairs, it shall promote them by distributing notices, advertisements using media and other methods so that the elector can know, and such a decision whether they will be implemented or not shall be made in consultation with the political party that has formed a negotiation body in the National Assembly.** However, this shall not apply to the use of an identity verification device and ballot issuing device pursuant to Articles 158 (2) and (3) and Article 218-19 (1) and (2), and **a mechanical device or computerized system under Article 178 (2).**

### Article 178 (Process of vote counting)

② **The Gu/Si/Gun Election Commission may classify ballots by valid or invalid, or candidates (referring to political parties in elections for members of the National Assembly proportional representation and Local Council proportional representation) or use mechanical equipment or computerized systems necessary for calculation.**

Article 44-2 (Preparation of the Integrated voter list) ① The National Election Commission shall prepare a voter list (hereinafter referred to as the "Integrated voter list") using a copy of the computerized data of the confirmed voter list to be used at the early voting station.

② The National Election Commission shall take necessary technical measures to prevent the same person from voting more than once when creating an integrated voter list.

③ **The integrated voter list shall be prepared using the computerized system.**

According to the above legal provisions, it is stated that when voting and counting with a computerized system, it is required to consult with the party that formed the negotiation body in the National Assembly. According to the 'Rules on Voting and Counting by computerized systems,' set by the National Election Commission, this may mean a voting, counting system that replaces ballots with a touchscreen. However, these rules apply to elections by groups such as referendums and political parties that the Election Commission decides to support, and do not apply to parliamentary or presidential elections.

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<sup>1</sup> In the structure of the decree, the "rule" is similar to the "executive orders" of the United States, but Korean rules have differences that can be enacted only if they have the authorization.

Therefore, Article 178 (2) of the Public Official Election Act stipulates that a machine or computerized system can be used to 'assist' vote counting work and if machines or computerized systems are entirely used instead of having the function of only "helping", **it can be regarded as a computerized system defined in Article 278 of the Public Official Election Act.**

And when the electronic counting machine was introduced, the staff of the National Election Commission in a video to promote the machine said that 'the counting process takes place automatically' due to the use of the electronic counting machine, and the Blue House Archives also named the device 'electronic counting machine'. However, the National Election Commission called it "ballot sorter" as an official name to avoid the procedures stipulated by law.

In other words, the National Election Commission is in the position that mainly counting clerks count the votes and the electronic counting machine is basically a device that helps counting, so it is not necessary to follow the procedures stipulated by the law.

However, the National Election Commission has exported the optical ballot reader to Kyrgyzstan, widely advertising that it made 'election automation' considering that there is no room for human intervention if we use a "machine that automatically reads ballots optically" like the principle of electronic voting machines used in this general election.

If the argument of the Central Election Commission is true, the main counting work should be for the counting clerks to manually count the votes before the electronic counting machine, or to recount the votes by hand after the counting machine counted the votes, and the electronic counting machine can be said to "assist" human manual counting work when it is at the level of confirming the work of humans. But in this election, there was no election clerk who manually counted ballots while an electronic counting machine was out of order and replaced. No election clerk hand-counted ballots until the new electronic counting machine arrived; and the election manual did not specify the procedure for hand-counting. In addition, even if it was said to be a 'human visual inspection', it was carried out in an instant as if turning over the pages of a book quickly. Electronic counting machines were not "supplementary devices," but rather they were used as parts for humans to put their votes into electronic counting machines.

As such, the fact that it is difficult for humans to identify the contents of the ballot is also recognized by senior officers of the Election Commission and there is a videotape about it. In other words, this election was an election that relied solely on electronic counting machines, so the expression that the machine "supports" the counting process is not appropriate.

In addition, the Public Official Election Act stated that 'the computerization of counting management requires that the number of votes per party or candidate must be accurately

calculated, the voting results must be verified, and the party or candidate's observation must be guaranteed.' The meaning of guaranteeing the observation had to be enough to verify the voting results beyond the meaning of simply watching, but the counting speed of about 320 votes per minute allows political parties and candidates to only figure out whether the machine is working or not.

Therefore, the use of electronic counting machines was illegal because it had to be discussed with the political party that formed the negotiation body under the Public Official Election Act, but there was no such procedure, and it prevented the purpose of the observation due to excessively rapid counting speed.

In addition, one of the steps to achieve the goal of 'voting by computerized system' promoted by the National Election Commission is voting using the integrated voter list, and as shown above, Article 44-2, Paragraph 3 of the Public Official Election Act, and as shown above, Article 44-2, Paragraph 3 of the Public Official Election Act expressly stipulates that the integrated voter list is 'written using a computerized system'. Therefore, in this general election, the system in which early voting could be made without special application by using the integrated voter list was also a voting by the computerized system. It means under the Public Official Election Act its use was something that should have been discussed with the party that formed the negotiation body, but there was no such procedure. So the absence of this also is considered as a violation of the Public Official Election Act.

1. The equipment to be used for voting and software source codes, etc must be transparently disclosed and demonstrated to the public and candidates, but there was no such transparency in this election. I think this is a violation of the Korean election laws. If it is a violation, please provide the legal basis (articles and clauses).

I think securing this transparency is the process of 'consulting and making decisions with the political parties that formed the negotiation body' in Article 278 (4), which was mentioned in No. 2 above. Since the introduction of the electronic counting machine, the government and the National Election Commission have eagerly promoted the use of the electronic counting machine, but the implementation of the electronic counting machine has not been decided in consultation with the parties that formed the negotiation body.

In addition, Article 278 (3) stipulates that 'the computerization of vote counting should be accurate in calculating the number of votes by party or candidate, and the voting results must be verifiable' before or after the election, but the NEC believes that the electronic counting machine and the device operating the electronic counting machine are not computerized counting operations, so the NEC is avoiding all of these surveillance.

Under such a system, even if the NEC has been properly certified, the status of the program and the electronic counting machine at the time of certification, and the status of the program and the electronic counting machine at the time of voting can be different.

2. I would appreciate it if you could make a brief list of which clauses of the Public Official Election Act were violated in this rigged election. I guess there's already a list that the lawyers of Citizens' Anti-Fraud Alliance have made. If you send us a brief summary, we will review it and add it to the report. I don't expect more than 2~3 pages.

A. Article 278 (Voting and Counting by Computerized System)

② In the computerization of voting management, the secret of voting must be guaranteed, the vote of the elector must be easy, the observation of political parties or candidates must be guaranteed, and the correction of voting errors, prevention of invalid votes, and other voting accuracy must be ensured.

⇒ In the process of computerizing voting management, the time is recorded in the integrated voter list who voted in early voting. And if you combine this with the serial number in the QR code on the ballot, you can specify the voter's ballot. The secret of voting is not guaranteed.

③ In the computerization of ballot counting management, the calculation of the number of votes per party or candidate must be accurate, the voting results must be verifiable, and the observation of political parties or candidates must be guaranteed.

⇒ Since it relies on a machine for counting, it can be said that counting management is computerized. However, due to the speed of the electronic counting machine, which counts 320 sheets per minute, the observation became a mere formality and the NEC or Election Commission at each level formatted the laptop in the electronic counting machine and erased all the contents so that the voting results could not be verified. It is difficult to check whether the number of votes is calculated correctly or to verify the voting results.

④ When the National Election Commission intends to computerize voting and counting affairs, it shall promote them by distributing notices, advertisements using media and other methods so that the elector can know, and such a decision whether they will be implemented or not shall be made in consultation with the political party that has formed a negotiation body in the National Assembly. However, this shall not apply to the use of an identity verification device and ballot issuing device pursuant to Articles 158 (2) and (3) and Article 218-19 (1) and (2), and a mechanical device or computerized system under Article 178 (2).

⇒ It is a violation of the law because the voting and counting schedule was not decided due to the computerized system, including the integrated voter list and electronic counting machine, in consultation with the party that formed a negotiation body in the National Assembly.

B. Article 146-2 (Voting Officer and Early Voting Officer) ① Gu/Si/Gun Election Commission shall have one voting officer for each voting district and one early voting officer for each early voting station in order to manage voting-related affairs.

⇒ This time, a special early voting station was set up for quarantiners due to the Wuhan Pneumonia (COVID19), and even though the Gu/Si/Gun Election Commission had the right to have a voting officer and an early voting officer, the National Election Commission had them violating the law to prevent the concentration of power on the

NEC. In addition, party observers must be placed at the polling station, but they were not assigned to the polling station. Rather, special early voting stations were operated under the control of the National Election Commission without any observation.

C. Article 148 (Installation of early voting station) ② When establishing an early voting station pursuant to Paragraph 1, the Gu/Si/Gun Election Commission shall announce the name, location, and period of installation and operation at least 9 days before the election, and this shall be notified to the head of the election office or election liaison office, and notices shall be affixed to 5 polling stations per electoral district within the jurisdiction. The same shall also apply when the place of installation of an early voting station is changed.

⇒ Although the special early voting station for quarantiners due to Wuhan Pneumonia (COVID19) was fully expected to be installed, it was not announced 9 days before, making it difficult for voters to access the polling station, which was not only a violation of the law, but also a failure to achieve the purpose of the special early voting.

D. Article 151 ⑥ In spite of Paragraphs 1 and 5, the Gu/Si/Gun Election Commission shall have the early voting officer prepare ballot papers to be issued at the early voting station using the ballot issuer at early voting station. In this case, the serial number printed on the ballot must be displayed in the form of a barcode (referring to a bar-shaped symbol that the computer can recognize), and the bar code can contain the name of the election, the name of the electoral district and the name of the competent election commission.

⇒ The Public Official Election Act clearly stipulated that a “bar-shaped bar code” should be written, but a QR code was written. The Election Commission used QR codes saying that it was too long to include the election name, electoral district name, and the name of the competent Election Commission, but the law requires only "serial number" to be included in the barcode, so it is not necessary to use QR codes that violates such law.

E. ⑦ When filling out a ballot in accordance with Paragraph 1 or 6, a margin shall be set between each party or candidate's column, and the specific completion method shall be set as the rule of the National Election Commission.

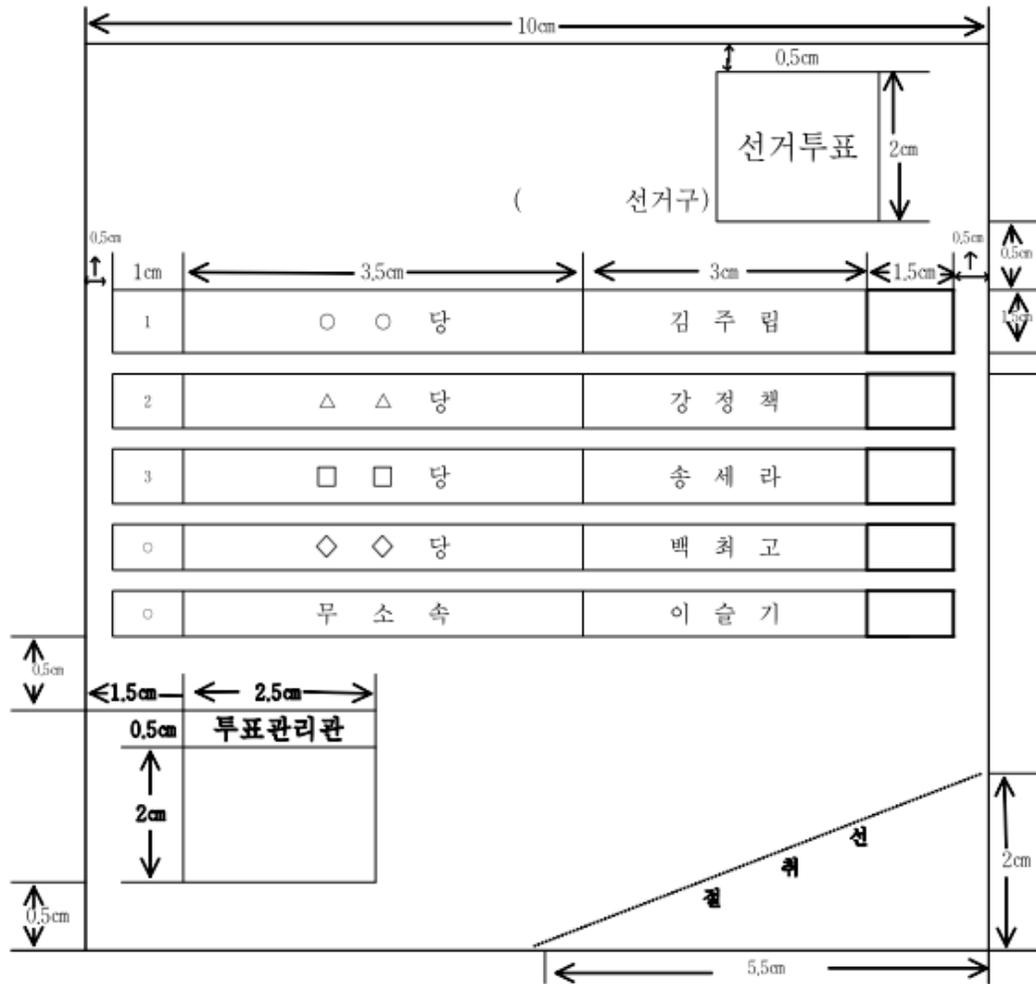
⇒ The rules of the National Election Commission stipulate the margins of the ballots in detail, and in this general election, many ballots from early voting that violate the above rules were found. Early voting ballots are printed on the spot with expensive precise printers and are verified by the NEC staff, so it is actually difficult to use ballots that differ from the standard in early voting.

Because of this, we suspect that the above ballots were printed at the factory. If not, the margin error should have been corrected in the process of printing the ballots for

early voting, but the above ballots were put into the ballot box without correcting the margin error.

I attach a picture to help you understand.

### 투표용지



(A sample of ballot paper as defined by law; margins are listed in unit(s) of 0.5.)



(Printer for issuing early voting ballots. The guide is installed, so it is unlikely that the left and right margins are printed differently.)



(Early voting ballot with too different left and right margins)

F. Article 174 (Counting Officers) ①The Gu/Si/Gun Election Commission shall have

counting clerks to assist with counting work. ②The counting clerk is commissioned from among those falling under Article 147 (9) 1 to 4 or from among those who are fair and neutral.

Article 181 ⑪ No person falling under any of the following subparagraphs shall be a counting observer. 1. A person who is not a Korean citizen

⇒ There was a case where a Chinese citizen was commissioned as a counting clerk to assist in counting. For your information, it is a part-time job position where Koreans are eager to participate because the work is not difficult and the hourly wage is generous. However, in this general election, there are not many places where the ballot counting clerk recruitment announcement is made, and the way that the clerks were selected was not transparent since the Election Commission at each level randomly contacted them and commissioned them.

Moreover, most of all, it is illegal to have a Chinese as a counting clerk because it is against the logic to have a foreigner officer who directly counts the votes when the observers who only attend the counting must be Korean.

G. Article 181 (Observation of vote counting) ⑤ Notwithstanding paragraphs (2) and (3), the Gu/Si/Gun Election Commission may, upon receipt of an application from the elector in consideration of the place of counting, the number of electors, etc., select additional vote-counters within 20/100 of the number of vote-counting observers that political parties or candidates can report pursuant to paragraph (2) and have them attend.

⑥The vote counting observer may observe the procedure for handing over and taking over the ballot box sent from the polling area and observe the management status inspecting the blockade and seal of the ballot box.

⑧The Gu/Si/Gun Election Commission shall rectify the case where the vote counting observer finds illegal matters concerning the counting and requests the correction thereof, if the request is deemed justified.

⇒ Some of the vote counting observers can be selected by the Gu/Si/Gun Election Commission, and even the process of selecting the vote counting observers was unclear. In addition, there are reports of some cases that members of the 'Civil Eyes', a left-wing election watchdog group, appeared at the counting places even if they were not the counting observers.

In many cases, when an opposition party's counting observer raised an objection, he or she was often restrained or ignored.

H. Article 184 (Classification of Ballots) When the vote counting is over, the ballots counted for each voting district shall be divided into valid and invalid, and the valid ballots shall be divided by candidates (referring to the 政黨 who recommended the 候補者 in the election of proportional representation members of the National Assembly and the election of proportional representation local council members), packaged and sealed by the chairman

of the Gu/Si/Gun Election Commission.

⇒ In this general election, it was revealed that the ballots were sealed by a staff of the Election Commission, not by the chairman of the Electoral Commission of the Gu/Si/Gun in some electoral districts. It has even been found that in some cases they did not seal it with the seal of the chairman of the Election Commission.

And when too many ballot boxes with broken seals were found, there were people who objected that the election was invalid, and some of the members of the Election Commission even admitted that the Election Commission arbitrarily broke the seal of the ballot box and checked the contents.

I attach a picture to help you understand.



- I. Article 262-2 (Protection of Election Crime informants, etc.) ①In case there is a considerable reason to suffer damage anyone who reports, complains, sues, accuses, etc., provides investigations, reports, testimonies, and other data regarding election crimes [including offenses stipulated in chapter 16 Penal Provisions (including offenses equivalent to fines under Article 261 (9)) and violations of the 「National Referendum Act」 hereinafter the same shall apply], and reports or conducts arrest activities for criminal arrest in

connection with such investigations, Articles 5, 7, 9 to 12, and 16 of the 「ACT ON PROTECTION OF SPECIFIC CRIME INFORMANTS, ETC.」 shall apply mutatis mutandis to the criminal proceedings and the investigation process of the Election Commission on such election crimes.

② No one shall inform, disclose or report to any other person the personal information or the fact that he/she is an informant of election crimes knowing that he/she is protected under paragraph (1).

- ⇒ In this general election, the voting observer appealed on the day of the counting that his signature on the seal was not his handwriting, and informed the media about this but the Seoul Election Commission accused him of interfering with the counting process.
- ⇒ In this general election, a counting observer discovered that the ballots were kept in the gymnasium, and he took out four ballots that were being kept and exposed them. However, that counting observer was accused and is currently detained.

Annex (15)

Information provided by Mr. Roy Kim:

Cho Hae-ju was also appointed as a special advisor to the Moon Jae-in electoral campaign.



<Cho Hae-ju was included in the Democratic Party's list of committees>

Moon Jae-in appointed Cho as commissioner of the NEC (after the 2016 election). The opposition party strongly opposed the appointment to the NEC. However, the Moon administration pushed ahead with the appointment without the opposition party's consent.



<Opposition party members protest the appointment of Cho>



<Moon Jae-in (right) appoints Cho Hae-ju as the new commissioner of the National Election Commission>