Additional NGO Report on the Right to Privacy in the Republic of Korea

Issue: Privacy and Children (SR's statement para. 24 to 27)
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I. Purpose of the report

1. The United Nations Special Rapporteur on the right to privacy (hereinafter "SR") has announced the Statement to the media on the conclusion of his official visit to the Republic of Korea, 15-26 July 2019 on 26 July 2019 (hereinafter "SR's statement"). In SR's statement, SR stated his assessment and view on the infringement of children's privacy in the Republic of Korea (SR's statement, para. 24 to 27).

2. In this report, NGOs aim to provide additional information on children's privacy and to convey our concerns on SR's statement on the infringement of children's privacy. Furthermore, NGOs would like to ask SR to consider the international norms of human rights and domestic circumstances of the Republic of Korea when he brings out the recommendations in his final report.

II. International Legal Framework of Children's Right to Privacy

A. Children's Right to Privacy and Child Rights Approach

3. The Right to Privacy is the right provided by Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). The UDHR and the ICCPR provide "every person" to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation (HRI/GEN/1/Rev.9(Vol. I), p. 191).

4. Children benefit from all of the civil rights enunciated in ICCPR as "*individuals*" (HRI/GEN/1/Rev.9(Vol. I), p. 193) regardless of age. This means that a child should be seen as a "*complete human being*," and should not be treated like an immature human being who only needs protection. The United Nations Committee on the Rights of the Child (hereinafter "CRC") confirms that young children, who are under 8 years old, are "*holders*" of all the rights enshrined in the Convention on the Rights of the Child (hereinafter the "Convention") and they are entitled to special protection measures and, in accordance with "*their evolving capacities*," the progressive exercise of their rights (CRC/C/GC/7.Rev. 1, para.3).

5. A child is a person who is developing, and easily exposed to vulnerable nature-structural domination and oppression which leads discrimination.[1] Therefore, there are concerns that their right to privacy is more easily restricted. In this context, the right to special measures of protection belongs to every child. And the right to special measures of protection should be fulfilled with considerations of the overall principles of the Convention at all times - Article 2 (non-discrimination), Article 3 (best interests), Article 6 (life, survival, and development), and Article 12 (right to be heard) of the Convention.

6. The promotion and protection of children's right to privacy should adopt the so-called "Child Rights Approach."[2] This approach means that children should be viewed as a "subject" of the right, not an "object" and protections and decision making should be the with the respect for children's dignity, participation and evolving capacities as para. 4 and para. 5 of this report emphasizes. In this respect, the arbitrary or unlawful interference with children's privacy cannot be allowed in principle. The interference with children's privacy for the purpose of education and protection - including interference by teachers, parents, and legal guardians - cannot be justified in principle. These interferences can be justified and admitted in a very special circumstance, only when it fulfils the overall principles of the Convention. Especially, the right to be heard of children must be ensured in every situation when their privacy matters.

7. The CRC has consistently emphasized the role of the states to promote children's right to privacy based on the "Child Rights Approach." This view of the CRC may refer to the General Comments and Recommendations:

a) "The right to privacy also entitles adolescents to have access to their records held by educational, health-care (…) States should also take all appropriate measures to strengthen and ensure respect for the confidentiality of data and the privacy of adolescents, consistent with their evolving capacities"(CRC/C/GC/20, para.46).
b) "Health-care providers have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention. Such information may only be disclosed with the consent of the adolescent, or in the same situations applying to the violation of an adult's confidentiality. Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services, including treatment"(CRC/C/GC/4, para.11).
c) "The Committee remains concerned that the right of access to medical advice and treatment without parental consent, such as testing for HIV/AIDS, may be compromised in instances where the bill for such services is sent to the parents, violating the confidentiality of the doctor-child relationship. The

[1] The definitions of 'domination' and 'oppression' may refer to Young, I. M. (1990). "Justice and the politics of difference," Princeton, N.J: Princeton University Press.
[2] The definition of "Children Rights Approach" may refer to Unicef (2018), "Presentation of the toolkit and the child rights approach,"
https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/NHRI_Introduction.pdf

Committee recommends that the State party take adequate measures to ensure that medical advice and treatment remain confidential for children of appropriate age and maturity, in accordance with articles 12 and 16 of the Convention"(CRC/C/15/Add.114, para.19).

B. Children's Right to Privacy in the Digital Age

8. Nowadays information and communication technologies (ICTs) is closely in relation to children's lives. In other words, the principles and exceptions need to be set more clearly in the digital age. The CRC recommends that States should guarantee the protection of children's rights without unduly restricting the full enjoyment of their rights laid down under the Convention as follow up to the 2014 Day of general discussion on "Digital media and Children's Right" based on the Child Rights Approach.

a) "States should guarantee the protection of children's rights to privacy in relation to digital media and ICTs and develop effective safeguards against abuse without unduly restricting the full enjoyment of their rights laid down under the Convention. States should also develop and strengthen awareness-raising programmes for children on privacy risks related to the use of digital media and ICTs and regarding self-generated content" (CRC, "Report of the 2014 Day of General Discussion 'Digital media and children's rights'[3], para. 102).
b) "The Committee moreover recommends that States ensure that all children have meaningful and child-friendly information about how their data is being gathered, stored, used and potentially shared with others. In this regard, States should ensure that age-appropriate privacy settings, with clear information and warnings, are available for children using digital media and ICTs" (CRC, "Report of the 2014 Day of General Discussion 'Digital media and children's rights'", para. 103).

9. Child Rights Approach in digital environment also appears in Concluding observations adopted by the CRC:

a) "The Committee remains concerned by the multiplicity of databases for gathering, stocking and using the personal data of children for lengthy periods and the fact that children and their parents are not sufficiently informed by education authorities of their rights to oppose the registration of personal data, or to access, rectify or erase it.(...) The Committee also recommends that the State party adopt the necessary measures so that children and their parents are duly informed about their rights to oppose the registration of personal data, or to access, rectify or erase it"(CRC/C/FRA/CO/5, para. 36-37)
b) "The Committee recommends that the State party take legislative and policy measures to protect the right of the child to privacy, including through: (a) Amending the Personal Data Protection Act to include special provisions regarding children;(b)

[3] Committee on the Rights of the Child (2014), "Report of the 2014 Day of General Discussion 'Digital media and children's rights'", https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/DGD_report.pdf

Reinforcing the Internet Code of Practice for Local Internet Access Service Providers with an aim to improving reporting for service providers regarding unsuitable content; (c) Strengthening the mechanisms for monitoring and prosecuting ICT related violations of children rights"CRC/C/SGP/CO/4-5, para. 25).

10. The opinions made by EU Article 29 Data Protection Working Party[4] is also the leading literature that can be used to promote and protect children's right to privacy on digital age, because it also emphasizes the necessity of "Child Rights Approach," and provide specific guidelines. The main excerpts of the 'Opinion 2/2009 on the protection of children's personal data' by the EU Article 29 Data Protection Working Party are shown below:

a) **Best Interest of the Child**: "The core legal principle is that of the best interest of the child. The rationale of this principle is that a person who has not yet achieved physical and psychological maturity needs more protection than others. Its purpose is to improve conditions for the child, and aims to strengthen the child's right to the development of his or her personality. Normally, the child's representatives should apply this principle, but where there is a conflict between the interests of children and their legal representatives, the courts or, where appropriate, the DPAs (Data Protection Authorities) should decide"(p. 4).

b) **Representation**: "Children require legal representation to exercise most of their rights. However, this does not mean that the legal representative's status has any absolute or unconditional priority over the child's - because the child's best interest can sometimes confer upon them rights relating to data protection which may override the wishes of parents or other legal representatives. Nor does the need for legal representation imply that children should not, from a certain age, be consulted on matters relating to them. It must be remembered that the rights to data protection belong to the child, and not to their legal representatives, who simply exercise them" (p. 5).

c) **Considering evolving capacity**: "Not only are children in the process of developing, but they have a right to this development. The way in which this process is managed in the legal system varies from state to state, but in any society children should be treated in accordance with their level of maturity." (p. 6); "Where consent is concerned, the solution can progress from mere consultation of the child, to a parallel consent of the child and the legal representative, and even to the sole consent of the child if he or she is already mature"(p. 6.); "It is also clear that children's level of physical and psychological maturity must be taken into account and that from a certain age they are able to judge matters related to them. This might be important in instances where the legal representative does not agree with the child but the child is mature enough to decide in his or her own interest, for example, in a medical or sexual context. Instances where the best interest of the child limits

[4] Opinion 2/2009 on the protection of children's personal data (General Guidelines and the special case of schools), Adapted 11 February 2009, 398/09/EN, WP 160. https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2009/wp160_en.pdf

or even prevails over the principle of representation should not be neglected, and need further consideration." (p. 9)

d) **Principle of proportionality**: "It must be recognised that in order to achieve an appropriate level of care for children, their personal data will sometimes need to be processed extensively and by several parties. But this is not incompatible with the adequate and reinforced protection of data in such social sectors, although care should be exercised when data about children is being shared. Such sharing can obscure the principle of finality (purpose limitation), and create a risk that profiles are constructed without reference to the principle of proportionality(pp. 4-5)."

e) **The Right to Access**: "The right of access is normally exercised by the legal representative of the child, but always in the interest of the child. Depending on the degree of maturity of the child, it can be exercised in his/her place or together with him/her. In some cases the child may also be entitled to exercise his/her rights alone. When very personal rights are concerned (as for instance in the health field), children could even ask their doctors not to divulge their medical data to their legal representatives." (p. 10.)

f) **Uses of CCTV**: "The capacity of CCTV to affect personal freedoms means that its installation in schools requires special care. This means that it should only be installed when necessary, and if other less intrusive means of achieving the same purpose are not available"(p. 15); "In most parts of the school, the pupils' right to privacy (as well as that of teachers and other school workers), and the essential freedom of teaching, weigh against the need for permanent CCTV surveillance (...) This is so particularly in classrooms, where video surveillance can interfere not only with students' freedom of learning and of speech, but also with the freedom of teaching. The same applies to leisure areas, gymnasiums and dressing rooms, where surveillance can interfere with the rights to privacy (...) These remarks are also based on the right to the development of the personality, which all children have. Indeed, their developing conception of their own freedom can become compromised if they assume from an early age that it is normal to be monitored by CCTV. This is all the more true if webcams or similar devices are used for distance monitoring of children during school time"(p. 16).

g) **Strive for True Culture of Data Protection: "**If our societies are to strive for true culture of data protection in particular, and defence of privacy in general, one must start with children, not only as a group that needs protection, or as subjects of the rights to be protected, but also because they should be made aware of their duties to respect the personal data of others"(p. 19); "To this end, it is crucial that they learn from an early age about the importance of privacy and data protection. These concepts will enable them later to make informed decisions about which information they want to disclose, to whom and under which conditions. This is an area where the effectiveness of empowerment can be demonstrated (p. 19.)"; "It should never be the case that, for reasons of security, children are confronted with over-surveillance that would reduce their autonomy. In this context, a balance has to be found

between the protection of the intimacy and privacy of children and their security."(p. 19).

11. To sum up, the international human rights norms emphasize the "Child Rights Approach" and under this approach, the States are requested to view a child as the subject of human rights including the right to privacy when making policies. The "Child Rights Approach" also should be emphasized in the promotion and the protection of children's right to privacy in the digital age. Therefore, the infringement of Children's right to privacy in the Republic of Korea should be assessed in a careful manner with considerations of the "Child Rights Approach."

III. Domestic Context

12. Korean society influenced by the Confucian culture has historically emphasized "Younger should give precedence to the elder or Elders first." This practice has influenced the view of children's rights, in the result, there remains widespread belief that; ensuring the rights of students will violate the rights of teachers; the use of a switch, which is called a "stick of love" in Korea, is necessary; the child is not an equal person, but rather a passive object to be taught; children are immature and apt to cause trouble, and therefore should be subject to protection. The poor perception of child as full citizen and independent from adults, has pulled societies and families down from thinking out of the 'age' box and are hesitant in perceiving child as subjects of rights.

13. That reality is a crucial reason why violations of children's right to privacy are justified in the Republic of Korea. Rights to privacy of children is judged to be less important than adults. For example, It is recognized as necessary that collecting, disclosing and controlling/managing children's private information and personal lives for university entrance examination in the name of "protection." Therefore, this particular situation in Korea should be considered in evaluating violations of children's right to privacy.[5]

IV. Concerns related to the Statement

A. The Practice of Keeping a Diary (SR's Statement, para 24)

14. The National Human Rights Commission of Korea (hereinafter "NHRCK") have already presented its opinion on the practice of schools that forces children to keep a personal diary and to examine it to the class teachers and recommended that the practice should be revised in 2005.[6] NHRCK noted that the practice infringes on the children's right to privacy and right of consciousness. NHRCK's recommendation was made for these reasons:

[5] Please refer to Children's Report to the Government's 5th and 6th Periodic Report on the Convention on the Rights of the Child (submitted in 2019) https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/KOR/INT_CRC_NGO_KOR_33136_E.pdf

[6] The NHRCK's decision is available at: https://www.humanrights.go.kr/site/program/decision/viewDecision?menuid=001003001002001&id=477# (in Korean)

a) If schools inspect the children's personal diaries, it can interfere with the children's personal freedom because the children will worry that his or her personal life will be disclosed to the public, regardless of his or her will.
b) Teachers can interfere with the formation of children's consciences by making them take teachers' evaluation into account when they write personal diaries. Children cannot narrate their inner states frankly due to worrying of being inspected.
c) Schools can get the consent of children. However, If schools force children to write personal diaries, inspect and award it, the consent of children that schools obtain is not different from forced agreement of the children. It would be difficult to see the content of the children that schools obtain as the voluntary agreement or choices.

15. SR advised, "the practice of keeping a diary can be preserved as long as the children are accurately informed of the fact that the content of the diary can and will be examined by the teacher and should it contain sensitive information related, for example to child abuse, the teacher has a duty to act upon it" in SR's statement (para. 24). However, the practice cannot be justified by simply informing children that their diaries can be examined by teachers without obtaining the consent of children. Furthermore, considering that Korean teachers generally have superiority over children, the consent of children cannot be seen as voluntary agreement or choices that children have made even if school obtains the consent of children.

16. SR also noted that the practice of keeping a diary in the Republic of Korea is a fading trend in SR's statement. It is unclear, however, whether the practice is a fading trend. Even though NHRCK's recommendation on the practice was made in 2005, the practice seems to remain in schools until recently.The reason why the practice continues to exist is probably because NHRCK's recommendation is just a non-compulsory recommendation.

17. The Children in the Republic of Korea have consistently witnessed the sufferings from the practice of keeping a personal diary. The Children reported their sufferings from the practice in 2011 by submitting Children's Report[7] to the Committee on the Rights of the Child. At the 4th Student Human Right Day celebration held by Seoul Metropolitan Government on 14 February 2019, one of elementary school students stated that the practice of keeping a diary should be abolished. According to the fact finding surveys in 2017 conducted by 17 elementary school students, 76% of the respondents (87 persons) answered that their schools still have the practice of keeping a diary.[8] Additionally, the result of the survey has found the facts that some children keep two types of diaries one is fake for submitting to school, and the other to keep privately.

18. Some people might claim that the practice of keeping a diary should be preserved because there is a possibility of detecting a child abuse by examining a diary. This claim,

[7] Please refer to Children's Report to the Government's 3rd and 4th Periodic Report on the Convention on the Rights of the Child (submitted in 2011), https://www.sc.or.kr/news/reportView.do?NO=22369
[8] Hanguk Gyeongje(Feb. 14, 2019), "Please abolish the examination of personal diaries, we write two types of personal diaries, one for submitting to school and the other to keep privately", https://news.v.daum.net/v/20190214181602132 (Kor. ver.)

however is just a vague expectation. Child abuse can be perceived through diverse ways, including periodic consultations, strengthening security, imposing an obligation to report when educators find unusual signs, and encouraging voluntary reporting of children through strengthening child abuse education. The educational effects, such as improving writing skills, that teachers claim to justify the practice, can be achieved by other measures, such as free writing, reviewing the literature, etc.

19. To sum up, the practice of keeping a diary has been violating children's right to privacy for many years. Considering the superior status of teachers over students in the Republic of Korea, students might not refuse to write and submit personal diaries to the teachers if the schools request. The practice should not be preserved because the practice is not a proportionate measure that minimizes the violation of the children's right to privacy.

B. Mandatory Installation of CCTVs in Childcare Centres (SR's Statement, para 25)

20. CCTV should only be installed when necessary, and if other less intrusive means of achieving the same purpose are not available (see para. 10. f) of this report). However, CCTVs are mandated in childcare centres under Article 15-4 (1) of the Child Care Act[9] (hereinafter "CCA") in the Republic of Korea. Under the CCA, every childcare centre is obliged to install CCTV camera that can monitor everyday not only the places, such as the entrance and the exit of the childcare centre where the violation of the right to privacy can be minimized, but also the places, such as each classroom, playground, playroom, cafeteria and auditorium within the childcare centre where the right to privacy can be violated the right to privacy disproportionately.

21. Especially everyday CCTV monitoring in the places where the young children study, play, rest and dress/undress has a significant negative impact on Children's privacy. The CCTV monitoring not only infringes the right to privacy and informational self-determination of young children but also the teachers of childcare centres and the guardians, including parents. NGOs would like to state that it is a violation of the right to privacy regardless of the safeguards, or the small number of requests to view the CCTV records, as long as The CCTV monitors and records people's lives within the childcare centres.

22. Moreover, Article 15-4 of CCA, mandating the installation of the CCTV in childcare centres, violates the principle of proportionality (See para. 10. d) of this report):

a) **The aim of the Article is not the legitimate aim**: the formal aim of the Article is the prevention of a child abuse. The genuine aim of the Article is to surveil the activities of teachers in childcare centres. During the process of examining the Article in the National Assembly, a deputy chief of Staff also indicated the problem of the Article, "[The bill will be the first case of mandating the installation of CCTV that collects the video of specific persons, not the general public (...) Therefore the necessity and the validity of the bill should be reviewed in depth." in February 2015[10]- and CCTV had

[9] Full english version of Child Care Act is available at: https://elaw.klri.re.kr/kor_service/lawView.do?hseq=42644&lang=ENG.

[10] Yeon Ho Jeong, the deputy chief of staff from the Ministry of Health and Welfare (Feb. 2015), "The Report on the Review on the bill of the Child Care Act", p. 19.

been already installed in childcare centres in which there had been a child abuse before the enactment of the Article.

b) **The Article is not an effective and necessary measure to achieve the formal aim of the Article and is not reasonable, considering the competing interests of different groups**: The installation of CCTV in the childcare centres is the measure that degrade the job pride of the teachers by regarding the teachers in the childcare centres as potential criminals. And this leads to lower the quality of childcare. In a similar context, NHRCK announced is opinion on the installation of CCTV in the school classrooms that the installation shall be prohibited because of the concerns of violating not only the children's privacy but also the teacher's right to freedom of expression and the autonomy of education in 2012.[11] Furthermore, there are movements in the National Assembly that enact the bills to mandate the installation of CCTV monitoring persons who works in the field of care, such as special education teachers, care workers, etc.

23. The Article is also problematic because it mandates the installation of CCTV in childcare centres without considering the opinions of teachers, children and guardians. The approach that the Article adopt is not a "Consent-Based Approach," the main principle in using the personal information - and means that the uses of the information should be based on the consent - even though it brings great impact on the right to privacy and informational self-determination of teachers, children and guardians. The only way to refuse the installation of CCTV is obtaining consent from all guardians (Article 15-4 (1) 1. of the CCA) so that there is no procedure that reflects the opinions of teachers, guardians, and young children when they oppose the installation - which is completely ignoring the young children's right to be heard that should be ensured in every situation (see para 6. of this report).

24. Under Article 15-4(1) 2. of the CCA, the network cameras (so-called "webcam"), can be installed. Therefore many childcare centres use the network cameras, provided by private companies. The uses of the network cameras have a significant adverse effect on the right to privacy and informational self-determination of teachers, guardians and young children. The videos from network cameras, using the Internet, can be captured. If those captured videos are stored for a long period or leaked, they can have adverse effects on young children's whole life. In particular, sensitive information, such as disabilities and health information, etc can be leaked.

25. The safeguards for CCTV were also insufficient because the CCA does not directly stipulate any sanctions for personal information breaches caused by CCTV, such as activities, such as the leak of videos, the provision of personal information to a third party, a long period retention of personal data and the leak of videos from CCTV. Even though Article 15-4 (5) of the CCA stipulates that the Personal Information Protection Act can be

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http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_U1H5F0F1G1M6K1L7O4Y8I2J0I7R9C7 (Kor. Ver.)

[11] National Human Rights Commission of Korea(2012), "The Collection of Decisions made by National Human Rights Commision," Vol. 5, pp.155-158.
http://edu.humanrights.go.kr/academy/eduinfo/eduDataView.do?bbsNo=178 (Kor. Ver.)

applied, it is questionable that the Personal Information Protection Act can cover all the various personal breaches caused by CCTV.

26. Most of all, the exposure to CCTV surveillance from early childhood can lead young children to grow with distorted notions on the right to privacy and informational self-determination. As young children's experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community (CRC/C/GC/7/Rev. 1, para. 6 (g)), it is crucial that they learn from an early child about the importance of privacy and data protection of all people. In this respect, Article 15-4 of the CCA that neglects the importance of privacy and data protection also violates the young children's right to development, which is one of the overall rights of the Convention (see para 5. of this report).

C. The Violation of Children's Right to Privacy through Media (SR's Statement, para. 26)

27. SR announced that he found out the Press Arbitration Commission's non-compulsory recommendation system and the Korea Communications Standards Commission's compulsory measures. SR stated that he will consider current system the extent to which the results in sanctions which are timely and whether any existing recommendations should be made compulsory in SR's report (para. 26).

28. Information relating to a child's involvement in the justice process should be protected especially. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process (ECOSOC RES 2005/20, para. 27). However, the system of the State to maintain children's confidentiality and restricting the disclosure of their personal information seems to be insufficient.

29. The Korea Communications Standards Commission (hereinafter "KCSC") can put sanctions on the media for the inappropriate broadcast on criminal cases by using Article 22 [12] and Article 23[13] of the Regulation on Broadcast Deliberation. The articles are used for the

[12] Article 22(Prohibition of Disclosure) (1) Broadcast shall be careful to disclose the name, address, face, voice or other contents that can identify the individual(hereinafter 'Personal contents') involved in the crime, and should not disclose the following, except the individual(if the individual is a youth, the guardians) agrees to disclose and if the broadcast is solely for the public interest.
1. Personal contents of an accused person, a suspect, a supported suspect, or a person who is sentenced criminal punishments if he or she is a youth
2. Personal contents of the victims of sexual violence crimes
3. Personal contents of guardians and relatives of the accused, suspect, a supported suspect, or a person who are sentenced criminal punishments.
(2) Broadcast cannot use personal contents of a reporters, a complainant,an accuser, an informer,a witness of a crime case and a person who is not directly related to a crime case, and the name and the address of an organization without a consent
(3) If broadcast is considered to be necessary because it is solely for the public interest, it should be considered as an exception of (2)

[13] Article 23(Broadcast of criminal cases, etc) ① Broadcast should not express to conclude an accused person or a suspect as a criminal before the final decision of the court.

broadcasts of all criminal cases, so that the sanctions that the KCSC can put on for the inappropriate broadcasts of children-involved criminal cases are based on those articles. According to the statistics that the KCSC reported to the National Assembly Research Service, there have been only 17 violations of the article 22 and 23 of the regulation in the last five years.[14] Based on these statistics, it is questionable that the KCSC's sanctions are working as timely and effective measures. Meanwhile, as seen above, the Press Arbitration Commission's recommendation system can be easily ignored by the media since the recommendation of the commission is a non compulsory measure.

30. Although the media has made various press regulations related to the protection of human rights for self-regulation, the regulations for children are in abstract form, there is no specific regulation for children. Moreover, the press seems not to have a strict procedure of obtaining official approval from the person in charge when it reports the news related to Children's human rights.

31. Considering that children are in the process of development, the violation of their right to privacy has more adverse effects on their lives. Therefore the children's right to special measures of protection must be ensured (See para 5. of this report) in the field of media coverages. As para. 27 to para. 29 of this report shows, the special measures provided by the KCSC and for the protection of children seem to be insufficient, and the Press Arbitration Commission. However, simply empowering the KCSC or the Press Arbitration Commission can bring reverse effects, such as violating the right to freedom of expression.

32. Considering the right to freedom of expression, strengthening the self regulations of media can be the ideal and proportionate way to provide adequate protection of children. In this context, NGOs think that the State should take measures to improve the media's understanding of the children's right to privacy and to strengthen the self regulation through providing special educations, concrete and specific guidelines, etc.

33. Furthermore, in the current regulations shown above, the broadcast of children's personal information can be done without the consent of children by just obtaining the guardian's consent. Media should remind that the consent of the guardians does not always promote or protect the children's privacy. The "Child Rights Approach," considering children's right to heard, best interests and evolving capacities, also should be reflected in the regulations and guidelines.

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② Broadcast shall be careful not to interfere with the social activities of the parties when dealing with a criminal case, in which a party finished the punishments or the period of prescription of a public prosecution is expired.
③ Broadcast shall be careful not to infringe the personality of an accused person or a suspect, such as using a facade and close-up shot of the person in handcuffs or wearing a embroiderer.
④ Broadcast shall be careful not to exaggerate or justify the criminal activities when it covers the contents of the accused, suspect, a supported suspect.

[14] National Assembly Research Service (1 April, 2019), "The current status of regulations on the press-reporting of sexual crimes and the measures for the improvement", p.2 http://drm.nars.go.kr:7003/sd/imageviewer?doc_id=1MdA6NG9_7t&ViewerYn=Y&type=H&fileName=KOydtOyKiOyZgOuFvOygkC0yMDE5MDQwMSnshLHrspTso4Qg67O064%2BEIOq0gOugqCDqt5zsoJwg7ZiE7ZmpIOuwjyDqsJzshKDrsKnslYgucGRm(Kor. ver.)

D. Routine Violation of Students' Privacy through School Regulations (SR's Statement, para. 27)

34. SR stated that the problem of school regulations which sanction and impose punishments for dating between students may have been largely resolved in SR's statement and announced that the facts of the matter are still being verified (para. 27). NGOs, however, would like to report the facts that school regulations violating the students' right to privacy, including the regulation sanction and impose punishments for dating between students, still exist.The facts are shown in fact-finding surveys conducted by the NHRCK and NGOs or the press release by the media:

a) According to 'The fact finding survey on the Situation of Discrimination Based on Sexual Orientation and Gender Identity' published by National Human Rights Commission of Korea in December, 2014,[15] the 19% of student-respondents reported that their schools have the policies that prohibit homosexual dating. 4.5% of student-respondents reported that they had experienced 'Gay/Lesbian censorship in school' forcing students to write down the names of the students who seemed to be gays or lesbians. The survey for 'Gay/Lesbian censorship' conducted by a school in Incheon, the Republic of Korea was disclosed through SNS.[16] The survey forced students to write down to report the students who seemed to be gays or lesbians. The survey also asked students to choose a punishment for students, gays or lesbians by providing multiple choice questions, and an 'expulsion' from a school and an 'suspension for an indefinite period' are included in the questions.
b) According to Choong-ang il-bo Tong's survey in 2015,[17] which investigated 151 coed schools across the State, 122 schools-80.8%-had the regulations that sanction and impose punishments for dating between students. For example one school prohibited physical affections between students regardless of their sex. The students were forced to write the statements and punished according to the level of physical affections.
c) According to 'The Report on the Results of the Fact-find survey on the Promotion of Human Rights of the Students in their School lives' announced by the NHRCK in 2016, most schools maintain school regulations that has the content of violating human rights. Each school didn't have a clear definition of Students Human Rights. The report pointed out that 92.6% of school regulations had provisions that violate students' right to privacy.

[15] National Human Rights Commission of Korea (Dec. 2014), 'The Fact Finding Survey on the Situation of Discrimination Based on Sexual Orientation and Gender Identity'
[16] Huffington Post Korea (9 June, 2016) "[12 Questions for Sexual Minority] What measures is the school able to take for sexual minorities in schools?" https://www.huffingtonpost.kr/entry/story_kr_10365742
[17] The Korea Daily (28 December, 2015) "The high school regulations in coed schools in the Republic of Korea, which requires written statements when female and male students communicate alone … If students get caught for holding hands three times. those students will be expelled." http://www.koreadaily.com/news/read.asp?art_id=3917665

d) In 2017, a teacher beat a student in high school for lying about whether the student is in a romantic relationship. The teacher was prosecuted and received a fine in 2018.[18]

e) In the fact-finding survey conducted by an NGO, National Association of Parents for True Education in 2018, 71.5% of schools (143 out of 200 schools) had disciplinary school regulations regarding personal relationships including dating between students.[19] The survey also found out ad the school regulations that restrict students' freedom of appearance. According to the survey, 88% of schools (176 out of 200 schools) had school regulations restricting hair styles, such as drying, bleaching and perming of hair, 82.5% schools had the regulations restricting the wearing of facial makeup or accessories.

[The excerpt of the fact-find survey conducted by the National Association of Parents for Ture Education, p 53.]

7. 인간관계와 관련된 제한이나 징계 규정이 있나요?

(예 : 이성교제, 신체접촉, 연애, 풍기문란, 타반 학생 출입 등)

지역	서울	경기	대전	세종	광주	부산	울산	충남	경북	경남	전북	전남	합계	비율
학교수	23	29	14	15	11	14	15	15	17	17	14	16	200	100%
해당 학교	14 (61%)	21 (72%)	8 (57%)	12 (80%)	6 (55%)	7 (50%)	13 (87%)	12 (80%)	15 (88%)	14 (82%)	11 (79%)	10 (63%)	143	71.5%

▶ 이성교제 등 인간관계 제한 : (최고) 울산 87%

(최저) 부산 50%

* 부산은 여학교(14개교 중 7개교)가 많아 이성교제 관련 규정이 없는 학교가 많음.

The excerpt, shown above. is the survey-result of the question "'7. Does your school have restrictions or the school regulations that restrict the relationship?" The result shows that 71.5% of the schools have restrictions.

f) The school regulations that restrict the datings between the students still and also can be found easily from the website of schools. Those regulations can be found just typing "unhealthy dating in schools" in portal sites.[20]

35. SR stated the Ministry of Education has introduced a set of official guidelines on the circumstances in which students can be disciplined and has been reported that the procedures detailed in the manual have contributed to preventing the taking of arbitrary disciplinary measures which may have been related to the student's sexual preferences and/or dating activities (para 27). However, none of them have been confirmed, and there are even guidelines distributed by the Ministry of Education and Municipal Department of

[18] Yonhap News (12 December 2018), "The teacher who beats a student for the reason that the student lied about the hetrosexual date between students." https://www.yna.co.kr/view/AKR20181130098000051?input=1195m

[19] https://www.gokorea.kr/news/articleView.html?idxno=51813

[20] Recently one of youtube channels disclosed a video clip that explains that the regulations restricting the student's datings still exist and violates the children's right to privacy(The video cip is available at: https://www.youtube.com/watch?v=FShPuU-TVYI)

Education explicitly included the contents that prohibit dating between students as following:

a) In the 'Operational Manual on School Regulations (for the Secondary schools)'[21] published by the Ministry of Education in 2014, it is introduced that "violating the school regulation that restricts dating between students" as one of the reasons to give a penalty point presented in the standard example of the "Table of Points of the School Life Rating System"
b) District-level Education Offices still present Standard for the school life regulations Regulations which stipulates "unhealthy dating between students" as the grounds for punishment. For instance, the 2017 Standard for School Life Regulations of the Gyeongsangnamdo Office of Education includes a such provision.[22]

36. As explained above, school life regulations that regulate or punish students' dating still exist. Furthermore, various school life regulations widely violate students' privacy in varying levels and degrees. However, there has been no adequate measures taken by the State to address the situation. The Elementary and Secondary Education Act and its Presidential Decree grant the authority to enact and/or amend such regulation only to the principal of the school while students are excluded from the process of enacting or amending the rules.

37. The Ministry of Education answered to the SR that students may participate in the school's operation committee to present their opinions regarding school life regulations. However, such opinions by students cannot be reflected in the works of the school's operation committee. The committee asks the student representative's opinion only when it deems necessary while such opinion is considered as a plain reference.

38. Meanwhile there have meet efforts to enact the Student Human Rights Ordinance to prevent human rights violations of students. However, only four regions out of seventeen - Gyeonggi-do, Gwangju, Seoul, and Jeolla-bukdo - enacted the Ordinance while efforts to enact it in other regions continuously failed due to attacks from hate groups of LGBTI, etc as well as lack of awareness on human rights of students. In particular, a legislative movement in Gyeongsang-namdo province, initiated by students and civil society organisations, was voted down in 2019. Furthermore, enacting Student Human Rights Ordinance does not resolve problems of violating students' right to privacy. Schools prioritize school life regulations over the effectiveness of the Student Human Rights Ordinance by stating that the regulations are based on the Elementary and Secondary Education Act.

[21] The Ministry of Education et al (2014), "Operational Manual on School Regulations(for the Secondary schools), p.84.
http://buseo.sen.go.kr/web/services/bbs/bbsView.action?bbsBean.bbsCd=94&bbsBean.bbsSeq=7188&ctgCd=209

[22]Gyeongsangnamdon Office of Eduaction (2017), "The Standard for School Life Regulations", http://www.gne.go.kr/board/view.gne?boardId=workroom&menuCd=DOM_000001050220000000&startPage=1&searchType=DATA_TITLE&keyword=%ED%91%9C%EC%A4%80&dataSid=1062064: Article 10 17.of the regulation of punishments for students punishes a student who does an unhealthy date between heterosexual students

V. Additional Comments on Reported Issues

A. Minor's Smartphone Monitoring Law and Smartphone Monitoring Apps

39. The Smartphone Monitoring law came into effect in April 2015 allows parents and teachers to monitor children's smartphone use through monitoring apps without their consent.[23] The law, introduced by the Korean Communications Commission (KCC), also requires that a minor's parents be notified if the monitoring app is disabled. While the possibility of limiting or monitoring minors' mobile phone communications is encouraged in some jurisdictions, and many commercial products are available, South Korea has gone the furthest among all countries by mandating the installation of monitoring apps. The law restricts privacy of about 5 million children between 10 - 19 years old since over 90% of children have smartphones in South Korea. However, there had been no public consultation or debate before introducing such an extensive measure. And not only the monitoring itself infringes on the right to privacy, vulnerabilities of monitoring apps endanger children's right to informational self-determination as their personal information can be easily compromised.

a) Smart Sheriff Saga: Well before the April 2015, the Korean Mobile Internet Business Association (MOIBA), an influential consortium of mobile telecommunications providers and phone manufacturers, released the Smart Sheriff - a parental-monitoring application. Smart Sheriff was developed and promoted with the support of the KCC, including funding totaling KRW 3.18 billion (approximately USD $2.7 million). Smart Sheriff allowed parents to remotely block content and monitor and administer applications that a child is able to access on their mobile device, as well as schedule the times of day that the phone can be used.
    i) Two independent security audits of Smart Sheriff were conducted in 2015 by the Citizen Lab of Toronto University. The combined audits identified twenty-six security vulnerabilities in recent versions of Smart Sheriff. These vulnerabilities could be leveraged by a malicious actor to take control of nearly all Smart Sheriff accounts and disrupt service operations.[24]
    ii) There was a second audit of the Smart Sheriff after its update to fix the vulnerabilities pointed out in the initial audit report. The audit revealed that there were numerous unresolved security vulnerabilities. Therefore, the Citizen Lab recommended immediate withdrawal of Smart Sheriff from the public market, and that existing users discontinue their use of the application. [25] MOIBA announced that Smart Sheriff would no longer be available for new users beginning on November 1, 2015.
    iii) Cyber Security Zone was released as a replacement to Smart Sheriff shortly following publication of the second security audit. However, an analysis of Cyber Security Zone showed that it is, in fact, a rebranded version of Smart

[23] Article 32-7 of the Telecommunications Business Act (TBA) & Article 37-9 of the Enforcement Decree of the TBA. Detailed analysis of legal and policy issues can be found here: https://citizenlab.ca/wp-content/uploads/2015/09/legal-appendix.pdf
[24] Each vulnerability is fully described in the technical appendix written by the Citizen Lab, https://citizenlab.ca/wp-content/uploads/2015/09/technical-appendix.pdf
[25] https://citizenlab.ca/2015/11/smart-sheriff-update/

Sheriff and has many of the same security issues that were previously disclosed to MOIBA in 2015.[26]

b) Telecoms' apps: Following the removal of Smart Sheriff from app markets, MOIBA explained that it was no longer providing the app to avoid overlap with Korean telecommunication companies that had begun to provide free child monitoring apps. In 2017, the Citizen Lab conducted a security audit on some of the monitoring apps provided by Korean telecommunication companies and found that they had critical security vulnerabilities.[27]

B. Specific Student Records and NEIS system

40. There is no guaranteed any rights to the students on information that relates to themselves. This is the key of the problem. The retention period of 'Student Life Record' collected in NEIS is not only based on administrative rules-not a law- but also is not specified at all. The administrative rules stipulates schools to keep the student life records near permanently. However, student cannot request the revision, deletion, and hatation on the use of information, even after graduation. Furthermore, all information, students records, test scores, etc collected in NEIS can be viewed by parents or persons in charge through the internet regardless of the consent of the students.

41. Recently,there has been an incident that the school life records and the profiles of the nominee of the Minister of Justice's daughter are disclosed.[28] A parliamentarian who opposes his appointment released this information and the press reported her privacy related to school in detail. That parliamentarian claim it is necessary in order to public interest and this disclosure is reasonable and proper. This incident indicates possibility of School Life Record is misused including information can be leaked, which proper management procedures considering view of student is required.

42. Article 30-6 (1) of the Elementary and Secondary Education Act regulates provision of student-related Data".[29] The school life records and the health examination records cannot

[26] https://citizenlab.ca/2017/09/safer-without-korean-child-monitoring-filtering-apps/
[27] https://citizenlab.ca/2017/11/still-safer-without-kt-olleh-kidsafe-clean-mobile-plus/
[28] http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=147833
[29] Article 30-6 (Restrictions on Provision of Student-Related Data)
(1) The head of a school shall be prohibited from providing any third person with the school life records provided for in Article 25 and the health examination records provided for in Article 7-3 of the School Health Act without the consent of the relevant student (if such student is a minor, the student and his/her guardian or parents): Provided, That the same shall not apply to any of the following cases:
1. Where any administrative agency with the authority to supervise and audit the relevant school needs such data to conduct the supervision and audit thereof;
2. Where the school life records provided for in Article 25 are provided for any school of higher level to select students to enroll therein;
3. Where such data is provided to compile statistics and conduct academic study, etc. in a form that makes it impossible to identify who is a party to such data;

be provided to any third person, and if the students are under the age of 19, the information of students can be provided to any third person with the consent of both student and their parent or guardian. However Article 30-6 (1) of the act allows lots of exceptions, such as for uses of administrative agency, for uses of whom to compile statistics and conduct academic study, etc. This doesn't fully respect the right to be heard of children in accordance with evolving capacity of children. Especially, there is no guideline to ensure 'anonymity' when someone use school life records to compile statistics and conduct academic study. Furthermore, the record can be widely available for investigation and a trial without the consent of a student or who had been a student. Considering that the school records have contained sensitive personal information, the exceptions that the act allows for provision of student-related data to any third person by the head of a school should be more severely restricted.

C. Children's Right to Personal Information

43. NGOs would like to point out that the current legislation in relation to privacy of children only establish "consent age". It is an obligation of State Party to establish procedures in the direction of realization their rights, in a manner consistent with the evolving capacities of the child. However, the Personal Information Protection Act (PIPA) requires a personal information controller processing personal information of a child under the age of 14, obtain the consent of the child's legal representative, not the child's consent. Nevertheless, the controller can collect the child's legal representative's name and contact information from the child without the consent of the legal representative.

44. While the Committee on the Rights of the Child welcomes the establishment of a State-party organized conference for children and youth to express their views, the Committee remains concerned that neither the legal processes of the State party nor its socio-attitudinal context take into account the views of the child, particularly those below the age of 15, on decisions affecting them (CRC/C/KOR/CO/3-4, para.34). Furthermore, the Committee recommends that the State party consider amending its legislation to ensure that children have the right to express their views and have these taken into consideration in all decisions affecting them, and reiterates its previous recommendation that the State party, in accordance with article 12 of the Convention (CRC/C/KOR/CO/3-4, para.35)

45. The age limit for the protection of children's personal information are only possible to the extent that they do not interfere with the realization of children's rights. Also, legal representative should exercise children's right to personal information within the best interests of the child in order to fulfill children's rights without unduly restricting the full enjoyment of their rights laid down under the Convention (see para 8. of this report). In this respect, the NGOs evaluate the current personal information system in the Republic of Korea does not compatible with the children's right to be heard and respect children's participation (see para 6. of this report).

4. Where such data is necessary to investigate any crime and to indict or to maintain the indictment;
5. Where such data is needed by the court for a trial;
6. Where such data is provided pursuant to relevant Acts.

VI. Suggested Recommendations

46. As para. 14 to 19 of this report states, NGOs would like to emphasize that the practice has been the inappropriate educational measure that has violated the children's right to privacy consistently in the Republic of Korea. Note that the educational effect of the practice cannot override the children's right to privacy, NGOs would like to suggest the following recommendations:

- The State should implement adequate measures to abolish the practice of keeping a compulsory diary and examining it in schools.

47. As para. 20 to 26 of this report states, safeguards that prevent violation of the right to privacy by CCTVs in childcare centres are significantly lacking. Acknowledging that the installation of CCTV should be proportional and there are the needs to consider the child's right to be heard and the right to development, the NGOs would like to suggest the following recommendations to the SR:

- The State should revise Article 15-4 of the CCA which stipulates mandatory installation of CCTV in all childcare centres. Decision to install CCTVs must initially be based on the assent of the children considering their age and maturity, and voluntary agreement of teacher and parents/guardians as well as in consideration of the best interest of the child. It would contribute to secure the right to privacy of the child, teacher, and parents/guardians in the end.
- The State should take all necessary measures to provide detailed explanation on the adverse effects on the right to privacy to the child, teacher and parents/guardians when CCTVs are installed in child care centres.
- The State should take all adequate measures to review whether the uses of CCTVs installed in child care centres are in compliance with the principle of proportionality by restricting the scope of the use by the third party, the objectives, the location and the period.
- The State should take adequate measures including introducing stricter safeguards on the browsing the footages and the provision of them to the third party when CCTVs are installed in child-care centres.
- The State should revise the Child Care Act which allows the use of network cameras('webcam') in child care centres.

48. As para. 26 to 33 of this report states, NGOs would like to report the situation in which protection of a child's privacy have not been done promptly nor effectively. Therefore NGOs would like to suggest the following recommendations to the SR:

- The State should take adequate measures to ensure the effectiveness of the sanctions by the Korea Communications Standards Commission and by the Press Arbitration Commission to protect the privacy of the children.

- The State should take adequate measures for reparation for the infringements of children's privacy and should conduct the specific plans to prevent and protect the repeated offenses against children.

49. As para 34 to 38 of this report states, School life regulations that violate students' privacy such as prohibition of dating still exists. Considering the violation of students' daily privacy based on the school life regulations, the NGOs would like to suggest the following recommendations to the SR:

- The State should implement adequate measures to abolish the regulations that prohibit dating between students.
- The State should take adequate measures, such as legislating the fundamental law-Student's Human Rights Act-that can comprehensively prohibit the school life regulations that violate students' right to privacy such as prohibition of dating, inspection of students' belongings without obtaining the consent, etc.
- The State should ensure students' right to directly participate in the enactment and amendment of the school life regulations to improve the violations of their rights to privacy. It is necessary to establish procedures to secure the student's rights to be heard with due consideration.
- The State should take all necessary measures to implement the Student Human Rights Ordinance over the school life regulation to promote students' right to privacy.

50. On the issue of the Minor's Smartphone Monitoring law (para. 39 of this report), the NGOs would like to suggest the following recommendations to the SR:

- The application was developed originally to protect children rather to violate the privacy of children. The State should either abolish the so-called "Smartphone monitoring law" or prepare procedures to confirm the consent of children.
- The State should present clear security standards for smartphone applications for children, and continue to monitor the security of applications to prevent the third party from misusing them.

51. On the issue of Specific Student Records and NEIS system(para. 40 to 42 of this report), the NGOs would like to suggest the following recommendations to the SR:

- The records of school life are sensitive personal information. Therefore, the child, the subject of the information, must be granted with authority to manage and control the information. Child's right to regulate personal information is also required to protect the child's privacy. In this regard, the State should ensure the student's right to browse, revise her/his school life records and to delete the record except for the minimum necessary information.
- Providing the school life records to the third party must be strictly regulated. Thus the State should minimize the legal grounds for the provision to a third party without the consent of the child. State should respect that the view of child, and best interests should be considered if the school decide to provide school life records to the third party.

- The State should reform the current law that preserves all school life record in a quasi-permanent manner. Among school life records, the state should consider separately specifying the retention period of sensitive information among student life records.

52. On children's Right to Personal Information(para 43 to 45 of this report), the NGOs would like to suggest the following recommendations to the SR:

- The State should prepare a concrete guideline for institutions that use personal information of the child including educational institutions, social welfare facilities, medical institutions and public offices, to protect the child's personal information and not to use such information outside the scope of its purpose.
- The State should reform the personal information protection system to confirm not only the consent of guardians, including parents, but also the child's consent to enhance the child's right to self determination of personal information and protection of privacy.
- The State should establish procedures to review whether such exercise of rights is in compliance with the child's right to privacy, the best interest of the child, and the child's political rights when parents/legal guardians are exercising the child's right to self-determination on personal information, .
- The State should adopt the necessary measures so that children and their parents are duly informed about their rights to oppose the registration of personal data, or to access, rectify or delete it.