

*K-Identification  
and  
Human Rights*

*amidst COVID-19*

November 2021

**K-Identification and Human Rights amidst COVID-19**  
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**Institute for Digital Rights**  
23, Dongnimmun-ro 8-gil,  
Seodaemun-gu, Seoul,  
Republic of Korea  
03745

Edited by Chang Yeo-kyung  
Translated by Ko Aram  
Sponsored by Human Rights Foundation SARAM

**Contact**  
<https://idr.jinbo.net/category/english>  
[idr.sec@gmail.com](mailto:idr.sec@gmail.com)



## Contents

<b>Introduction</b>	<b>5</b>
<b>Exposure and Discrimination of Sexual Minorities</b>	<b>7</b>
<b>Discrimination and Exclusion of Foreigners and Migrants</b>	<b>10</b>
<b>Tracing and Group Management Issues in Disease Control Policies</b>	<b>12</b>
<b>Discrimination and Exclusion of the Homeless</b>	<b>15</b>
<b>Restrictions on Freedom of Assembly and Demonstration, and Tracing Participants</b>	<b>18</b>
<b>Digital Tracing that Promotes Overcriminalization</b>	<b>21</b>



## INTRODUCTION

The crisis of Coronavirus disease 2019 (COVID-19) has continued for more than a year. Although it is clear that COVID-19 is a crisis to the right of health in society as a whole, human rights activists have paid attention to the reality where more human rights violations occurred to those vulnerable to the abuse of human rights.

Korea's so-called "K-Disease Control" policy is characterized by its sophisticated tracing based on digital identification. Sometimes, group-specific disease control policies have been implemented. However, these advanced identification, tracing, and group differentiation may threaten the human rights of those vulnerable to social discrimination, such as sexual minorities, migrants, and the homeless. Moreover, the workers and people's rights to protest continue to be suppressed in the face of this crisis of survival. Rally participants are punished and organizers are arrested. The Infectious Disease Control and Prevention Act (IDCPA) generally treats confirmed patients and their contacts as criminals.

The Korean disease control policies have always required accurate identification. On top of digitally integrated information from credit cards, transportation cards, and QR-code-based entry logs (or KI-PASS), mobile phones that can only be issued with real-name verification based on resident registration numbers are used as the basis of the disease control policies. A situation where identification is required constantly on- and offline can lead to infringement of rights to personal data and privacy for individuals and discrimination against specific groups.

In retrospect, the past year was filled with doxing and malicious comments about confirmed cases of COVID-19 whose movements were traced and disclosed through mobile phones (refer to the issue report of [\*Covid 19 and the right to Privacy an analysis of South Korean Experiences\*](#)). People of sexual minorities became targets of hatred when their club visits were exposed, and participants of political and religious rallies were traced easily as well.

Our society is transforming into a society where it is easy to trace someone for disease control. With public policies based on individually owned cell phones, social exclusion and discrimination are becoming natural for those who cannot verify their identities. People in self-quarantine (regardless of their infected state) without smartphones who could not install government apps were forced into government facilities. Digital certificates, such as KI-PASS and COOV (for inoculation), only work on smartphones that have been issued under one's real name. Homeless people who fail to verify themselves without mobile phones have been denied access, and those who want to use soup kitchens must obtain and possess electronic membership cards.

A society that can constantly check a person's identity online or offline can distinguish groups that individual belongs to and easily implement specific policies for each group. Exclusion of those not registered or identified can be taken for granted. The authorities responding to the pandemic have discriminated against migrants and other particular groups in the provision of public masks and emergency relief funds, and have enforced COVID-19 tests that target migrant workers. Although the Korea Disease Control and Prevention Agency (KDCA) guarantees vaccination even for undocumented migrant workers, some local governments have excluded them. For the homeless to use welfare services, they are required to provide "a COVID-19 test result from within 7 days." In particular, amid the COVID-19 crisis with scarce social resources, people have begun to use AI and other new technologies to rigorously evaluate the eligibility of welfare recipients and detect fraudulent behaviors.

There may be a need to manage specific groups according to disease control policies. As a matter of fact, the health authorities have systematically managed targets of "active monitoring" by categorizing them into groups, such as high-risk occupations, entrants by country, August 15 Gwanghwamun Bus, and

XXXX Church. Yet, to prevent discrimination, perpetual and reflective examination is required to determine how groups are formed and whether such grouping was absolutely necessary.

Policies that identify and track individuals and distinguish them by group are likely to continue as policies that discriminate and violate human rights in different parts of society even after the COVID-19 crisis. It is possible that access and use of many facilities, workspaces, and public transportation may be differentiated depending on the possession of a vaccine certificate. The City of Bucheon is developing an intelligent epidemiologic system that tracks confirmed patients and their contacts with face recognition through street CCTVs and base stations. They have stated that they will use this technology to track people in the streets even after COVID-19.

To ask for national action in a crisis of disaster is a demand for human rights. Nevertheless, disease control measures that include sophisticated identification, tracing, and grouping distinction need critical reflection from a human rights perspective. However, there are still concerns about what human rights alternatives are possible, and our society must take part in the journey to find the answer.

This issue report contains the contents of the reality experienced by Korean activists who have been contemplating COVID-19 and human rights issues in the fields of sexual minorities, migrants, health care, homeless people, demonstrations, and the law in a trace-based disease control environment. We would like to share awareness of issues with human rights activists at home and abroad and initiate social dialogues for disease control policies and social solidarity that guarantees human rights even in the midst of a global pandemic.

**Institute for Digital Rights**

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# Exposure and Discrimination of Sexual Minorities

Lee Jong-geol

Activist, Korean Gay Men's Human Rights Group "Chingusai"  
Participated in publishing the *Whitepaper on the Queer Action against COVID-19 Activity*

## Case of mass infection in Itaewon

On May 7, 2020, the Kukmin Ilbo exclusively covered the mass infection in Itaewon under the title of "A Confirmed Patient Visited an Itaewon Gay Club." This article was cited in about 40 other reports. When human rights groups and various other fields criticized how the identity of a particular LGBTQ was specified, the article deleted the word "gay." However, the stigma of hatred toward the infected who are sexual minorities was already widespread in Korean society. Even before this incident, there were concerns over issues of outing and hatred due to one confirmed case from a Guro call center in March visiting a gay community establishment in Jongno. This news spread through a bulletin board on a gay community site.

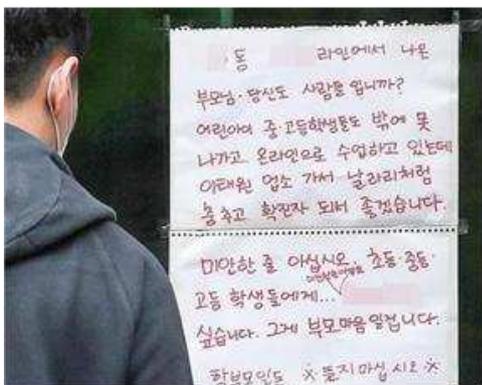
Comments full of hate and related articles gushed out soon after. At the time, many people were already going out with the transition into "Distancing in Daily Life" and the holidays. Moreover, Jongno and Itaewon are areas with a history of LGBTQ communities. What is more, nobody took note of the wrongful way the particular club was coined a gay club.

The company name of where the first confirmed patient in Yongin worked was revealed and is still spreading online, even though it has been over a year. Below are some of the extreme scenes this incident induced: a hateful post by a resident at the apartment entrance of where the confirmed patient who visited the Itaewon club lived in Bucheon (bottom left) and the lacquer graffiti, "gay," vandalizing the club entrance door in Itaewon (bottom right).

## Response from the disease control authorities

Human rights groups for LGBTQ and HIV saw the urgent need to respond to the situation. The vast experience over the years in human rights movements for sexual minorities and people with HIV became their foundation. They promptly established a the "Queer Action against COVID-19" and carried out activities from May to June 2020. The disease control authorities and the LGBTQ communities needed to coordinate so that people of sexual minorities who emerged as subjects for examination could cooperate with quarantine. In particular, the Seoul Metropolitan Government (SMG) allocated a budget to promote testing.

▼ Hateful post at an apartment entrance



Hate message in graffiti at an Itaewon club entrance ▼



However, the initial response of the local government disease control authorities was disastrous. Incheon Metropolitan City called a human rights organization, to find out the contact information of LGBTQ people in Incheon. The SMG inquired information on sexual minorities to a AIDS prevention organization. They even mentioned that the mayor wanted to personally visit the venue where LGBTQs meet every week to encourage screening. They seemed to think sexual minorities were separate from ordinary citizens. Nevertheless, the Queer Action against COVID-19 continued to meet with local governments and the Central Disease Control Headquarters (CDCH) to point out the problems and persuade them to respond according to the principle of human rights. Through this process, sexual minorities could get tested with anonymity, and it was encouraging that the prime minister and mayor announced messages that "hate and discrimination do not help prevent diseases" at briefings. Furthermore, promoting testing to the community as part of a cooperative project funded by the SMG was quite meaningful to the LGBTQ movement.

However, on the other hand, the SMG, which has established such a relationship with the Queer Action against COVID-19, took a two-week log file of more than 10,000 data from a cell phone base station near the club before the confirmed case outbreak for the purpose of checking only those who visited the Itaewon club during the night time. Local governments, including Gyeongsangnam-do, issued an administrative order to report their visits to Itaewon and continued to disclose the movement paths of confirmed patients exposing the clubs they visited and stimulating fear and anxiety among LGBTQs. These measures lacked earnest consideration about the relationship between human rights and disease control. There are still concerns about how the LGBTQ community should form a relationship with the disease control authorities and what standards are required to ensure that local governments comply with their human rights responsibilities.

On the other hand, there were also concerns that LGBTQ people may have suffered outings due to problematic media reports, or that a confirmed LGBTQ person may have suffered damage in their work life. When a confirmed

case occurred at an establishment for resting, a space for gay communities, some media again attempted to incite hate, but the LGBTQ rights movement, including the Queer Action against COVID-19, responded effectively. The disease control authorities, who have continuously communicated with the human rights movement, created an atmosphere to organize LGBTQ people as cooperating agents for the success of disease control. They also came to the conclusion that hatred is not helpful for disease control.

### **Incident regarding the Incheon academy instructor**

An academy instructor in Incheon was arrested for failing to notify the fact he visited Itaewon during the mass infection, and was convicted and sentenced in criminal court. In this case, an individual was placed excessively responsible for the transmission of the infectious disease. The individual who was a sexual minority feared revealing his sexual identity to those around him when the infection was announced. So, he could not easily disclose his job in the epidemiological investigation. However, criticisms poured in, deleting all such contexts. Due to this confirmed patient, the transmission went on for seven stages. There were reports that dozens of people were infected, but the specific process and the validity of the causal relationship were not verified. It was also frustrating that the fact he appealed continued social criticism.

Prior to the first trial sentencing, the Queer Action against COVID-19 jointly signed a petition for mercy and submitted it to the court. However, the question remains whether the only thing the human rights movement should talk about in this case is to ask for mercy. Obviously, these activities were the best in considering the situation of the person concerned, but the position of the human rights movement needs to be clear in front of the state that continues to hold the individual confirmed patients accountable through criminal punishment and the right to indemnity. We need to handle the situations in which individual accountability of transmitting COVID-19 goes beyond social criticism and becomes punishment.

## **Disease control policies that take human rights into consideration**

We need much consideration and discussion about what human rights principles should be protected even in the face of COVID-19. However, based on the experience of the LGBTQ rights movement, the communities must properly establish the systems that protect human rights. If local governments had discussed and cooperated from a perspective of information human rights when disclosing movements of confirmed patients or managing information collected during epidemiological investigations, the fear of identity exposure would have been greatly reduced. If it was possible to intervene in the quarantine policies with human rights viewpoints, a policy that considers human rights principles as well as the effectiveness of radio wave blocking in self-quarantine or cohort isolation could have been feasible.

Yet, in reality, there is no system in place to mediate quarantine and human rights, and it always becomes an afterthought. Although some local governments have systems for human rights, their roles do not go beyond discrimination investigation and aid. We need to demand human rights systems to intervene, recommend and suggest alternatives so that the principles of human rights can be applied to overall policies, including disease control at the local government levels.

This role is required not only at the level of local governments, but also at the level of the overall government. In order to eliminate hate and discrimination against sexual minorities, undocumented immigrants, and socially marginalized and stigmatized groups, it is very important to prepare measures that go beyond disease control to eliminate discrimination itself. To that end, the Comprehensive Anti-Discrimination Act, which has been delayed for nearly 15 years so far, should also be enacted within 2021.

# Discrimination and Exclusion of Foreigners and Migrants

**Ko Gi-bok**

Activist, JCMK-Joint Committee with Migrants in Korea

## **Expansion of information collection for sojourn of foreigners**

Since December 10, 2020, the Ministry of Justice (MOJ) has implemented an accommodation reporting system for foreigners visiting for a short term. According to this system, in case of an infectious disease crisis warning or terrorist warning such as COVID-19, foreigners “eligible to stay for a short term” in Korea, which is for 90 days or less, must present their passports or travel documents to the place of lodging when staying at an accommodation.

According to the Immigration Act, all foreigners entering the Republic of Korea were already presenting their scheduled accommodation upon arrival. Moreover, all foreigners coming into Korea (excluding diplomats and foreigners under 17) have been providing the Korea Immigration Service (KIS) of the MOJ with fingerprints and facial information since 2012 under the pretext of suppressing, tracing, and managing foreign crimes.

However, with this Immigration Control Act amendment, the arrival card system--requiring foreigners to fill out and submit a form--has been upgraded from an “enforcement decree” to an “act”, allowing foreigners to be fined 500,000 won or less for submitting a false disembarkation form. In addition, the amended law expands the utilization scope of biometric data collected to not only the automatic immigration check, but also to identity verification throughout the immigration process. Accordingly, the airline transmits the passport and biometric data to the MOJ from the check-in phase through an unmanned kiosk for the foreigners during the security screening and departure screening stages. The MOJ uses the data in the “One-ID integration management system” that decides boarding ticket issuance after verification. Also, the biometric data

collected in this manner has been provided for AI learning to improve the biometric recognition function of domestic companies since 2019.

In addition to this dense and systematic monitoring and tracing system for foreigners, Korea has all foreigners report their sojourn status through lodging establishments. It is discriminatory in that it only targets foreigners, even if it is a preemptive measure for epidemiological investigation and prevention of infectious diseases. It is an idea that can lead to violation of basic rights. The foreigner lodging report system only means to take advantage of the xenophobia and prejudice that is prevalent in Korean society after COVID-19. Above all, considering that there are virtually no short-term visitors that the MOJ can receive accommodation reports from after COVID-19, this should be seen as preparatory work to perpetuate foreigner identification and tracing after COVID-19. It is likely to cause side effects such as human rights violations in the future when applied to future long-term foreign visitors and receive criticism for being a policy based on the ministry's self-interest since it will lead to reinforcing the authority of foreign immigration. For the foreign lodging notification system to be sincere, it is necessary to strengthen foreign language guidance on infection prevention rules and countermeasures for suspected symptoms and make efforts such as dispatching medical staff. Above all, KCDC and local governments should be the competent authorities, not the MOJ whose purpose is foreign residence management and crackdown. It is questionable what the ruling party, which introduced the foreign lodging report system, thinks about basic civil rights, multicultural society, and human rights.

## **COVID-19 testing required only for migrant workers**

Last March, eight local governments, including

Seoul and Gyeonggi-do, implemented an “administrative order” that made COVID-19 testing mandatory for foreign workers. They would be fined if they violated this order. Many other local governments have issued similar administrative orders since then.

A mandate that targets a specific group was discriminatory in that the administrative order could stigmatize the group as a source of COVID-19 infection. Furthermore, it was an overbearing mandate that did not consider how workers in agriculture and manufacturing generally took only days off twice a month and every weekend, respectively. Despite this fact, the local governments that went forward with the testing fined people who did not comply and pressed to exercise their right to indemnity in case of an infection outbreak.

Unlike Koreans, migrants could only get hired when their employers verified their negative PCR test results. This was discrimination in terms of equity compared to domestic job seekers and an excess of administration. In the early days of COVID-19 outbreak in 2020, the central and local governments did not allow migrant workers the opportunity to purchase publicly-distributed face masks and did not think twice about discriminating against them regarding relief funds. Meanwhile, they were busy controlling or excluding migrant workers and other foreigners and rationalizing their coercive administrative power. Local governments continue to treat every migrant worker or foreigner as an infection source in the name of disease control.

### **Unregistered migrant workers excluded from vaccination**

The Korean government plans to provide additional booster shots for COVID-19 inoculation. However, it is not easy for unregistered migrant workers to obtain information about reservation nor to proceed with reservations. To improve vaccination accessibility for undocumented migrant workers, the anxiety about their residence status should be resolved above all else, yet the government is not making any efforts to do so.

Contrary to common belief that viruses do not discriminate against people, discrimination and

exclusion occurred frequently at sites of disease control since the pandemic of COVID-19. The central government and various local governments set up a principle that prioritized Koreans and sidelined foreigners. When administrative offices needed a scapegoat, they emphasized the existence of foreigners for their convenience. Amid excessive criticism of the infected after the COVID-19 outbreak, migrants were particularly treated as a source of infection and a target of hatred. Yet when considering the efficiency of distributing resources for disease control, they were dismissed as if they did not exist. If the mandates for a full investigation of foreigners carried out in the past or still implemented by various local governments—a preemptive measure for the people vulnerable to group infection—is a representative case of xenophobia, COVID-19 vaccination is a typical example of exclusion based on residence status.

On July 13, Hwaseong-si in Gyeonggi-do sent an official letter to businesses hiring foreigners with the title of “(Urgent) COVID-19 Vaccination Demand Survey for Foreign Workers with Employment Permit” and excluded overseas Koreans (F-4 visa) and foreigners without work permits such as illegal residents. According to KDCA guidelines, even unregistered migrant workers can apply for a control number for vaccination. However, the reality is that discrimination is considered normal, as seen in the official document of the survey for voluntary inoculation demand by the local government. There are roughly 400,000 undocumented workers in Korea, which is almost 20% of the 2 million foreign residents. It is completely irrational for the disease control authorities to exclude a particular group—migrant workers—when seeking collective immunity. The excuses the authorities are using are lack of vaccine supply and identification such as resident registration number. However, disease control will surely fail if we tolerate local governments that customarily exclude unregistered migrant workers.

In disaster situations, there should be a human rights disease control rule based on human dignity and rights to vaccinate the people vulnerable to infectious diseases first and inoculate fairly without discrimination.

# Tracing and Group Management Issues in Disease Control Policies

**Choi Hong-jo**

MD, PhD, Globalization and Health Research Center, People's Health Institute  
Participated in publishing the *People's Report on the COVID-19 Pandemic in South Korea*

Identification and tracing of individuals are unavoidable in the process of stopping the spread of infectious diseases. Yet, it is difficult to simply conclude that identification and tracing are needed or inevitable when you consider the details of time, space, targets, guarantee of individual voluntariness and how to deal with the principles of dignity and human rights. In this article, we will discuss the legitimacy of identification and tracing, and intervention of governmental authorities—or reservation of human rights—in disease control policies. This article will be raising issues rather than presenting solutions.

## **Who are the targets of identification and tracing?**

The word “isolation” is familiar to the public in infectious diseases. However, not all isolations are the same. There are mainly two types of people in the process of responding to infectious diseases—those who are sick and those who may get sick. The ones who are sick are confirmed patients, and those who could get sick are contacts. The recommended “isolation” for the two groups is different. Isolation is recommended for those who are sick, and quarantine for those who can get sick, but use isolation for both. The two terms will be distinguished in this article for the sake of convenience. Isolation is the separation of infected people (the sick) from others who are healthy. Quarantine is the restriction of movement or separation from others for those who may have been exposed to an infectious disease (the ones who might get sick). The reason for explaining the difference between the two terms is because the measures for disease control are different for the two processes, isolation and quarantine.

Epidemiological investigations are only for those who are in the first group, in other words, those who are sick. The subject of epidemiological

“investigation” is only the sick people, and the people who can get sick are not. The key goal of epidemiological investigations is to determine the extent of contacts. The point of epidemiological investigations is to determine whether there are contacts with a possibility of additional infection, and if so, how many contacts there are, and if those contacts are significant. The results of epidemiological investigations decide people who can get sick; they are not the subject of epidemiological investigations. Quarantine (so-called self-quarantine) is recommended, and they need to be separated until the maximum incubation period of an infectious disease

The targets of identification and tracing in epidemiological investigations are now clear. It is limited to sick people. Justifying identification and tracing of potentially sick people in relation to epidemiological investigations—for example, criticizing a contact for interfering with an epidemiological investigation—is a lie. The process of additional identification and tracing is not necessary for someone who might get sick because there is a greater chance that person is not yet sick (confirmed). In addition, it is quite difficult to define who can get sick. The World Health Organization (WHO) proposes the range of COVID-19 contacts as those who have been within one meter of confirmed cases for more than 15 minutes, who had direct physical contact, and those who cared for a confirmed patient without personal protective equipment. Cases that meet the strict definition of a contact are less common than one might think. However, currently, we classify too many people as “suspicious of infectious disease,” that is, people who can get sick, and justify their identification and tracing. We have not even started a social discussion on how to determine the identification and tracing that go beyond the scope of epidemiological investigations.

### **When is identification and tracing necessary?**

When is identification and tracing required? The answer was already provided. It is necessary in the epidemiological investigation process of sick people. Also, the most vital purpose of identification and tracing is to find and protect others who are sick or possibly sick. The government and media have been promoting the so-called “tracing the movement of confirmed patients within 10 minutes” since the early days of COVID-19 last year. Paradoxically, this publicity makes the confirmed people appear as if they can hide their movements deliberately. It can make a sick person at the starting line of an epidemiological investigation look like a sick person who is not trustworthy with information to hide. However, the “relationship” between the epidemiological investigator and the sick person determines everything in an actual epidemiological investigation.

According to a report analyzing the interview results with epidemiological investigators, tracing the movement of a confirmed patient within 10 minutes is not the starting point of an epidemiological investigation. Most epidemiological investigations are based on the statements of confirmed cases. Very few people intentionally lie about their routes. But there are cases where their memories are not accurate. In the “cooperation” process to find fragments of memory, epidemiological investigators and confirmed patients can receive help from ICT. There is no reason not to conduct an epidemiological investigation based on an individual’s consent. Ultimately, the perception that compulsory identification and tracing are the default for epidemiological investigations has become a power. One can say it is the result of distorting the public’s understanding of the epidemiological investigation process.

The transitional process of the governmental principle of revealing movement routes is a case in point to understand how the logic that coercive identification and tracing were inevitable worked as a power. Until the first edition of the Information Disclosure Guidelines on Movement Paths of Confirmed Patients came out in October of last year, the disclosure guidelines went through at least three revisions. The National Human Rights Commission of Korea (NHRCK) also pointed out the excessive

disclosure of information. However, local governments continued to release excessive movement information. Quite some time has passed since last October, when the government banned disclosing unnecessary and excessive movement routes and presented guidelines that coincide with the purpose of epidemiological investigations. The public now understands that there is no problem with disease control even if the government does not release broad and specific information on routes. It is an example of civil society in solidarity with human rights at its center going beyond the state (or local government) power that only emphasized public authority. This case holds the possibility that we can build a disease control and prevention system that prioritizes consent-based tracing and identification, cooperative epidemiological investigations with confirmed patients, and voluntary disease control to protect the communities. Now is the time to change the question from “When is identification and tracing necessary?” to “How can we create cooperative epidemiological investigation and disease control?”

### **How far can the government justify its intervention for disease control?**

Governmental authority intervenes in various ways according to each stage and target of disease control measures. According to the IDCPA, the government punishes those who interfere with epidemiological investigations, the communication process with sick people (confirmed patients). Those who are suspected of an infectious disease, including some of their contacts, will be subject to legal measures of violating self-quarantine. They may receive punishment for violating the administrative order for testing. The public authorities intervene in the disease control process as well for reasons such as violation of the gathering ban

In a recent report, we looked at the current status and issues of legal processing related to COVID-19. The “basic trend of severe punishment, such as the principle of zero tolerance, investigation under custody, and the claim for the right to indemnity” were pointed out from the major issues raised. Moreover, we conducted a full investigation on cases that were ruled in violation of the IDCPA from February 2020 to June 2021. The reanalysis

results of the original data are as follows.

Taking only the initial trials into account, 603 cases were included in a total of 535 rulings. There were 412 suspected cases, 10 confirmed cases, and 182 other cases. As of 12:00 am on June 1, 2021, the number of confirmed patients is approximately 140,000. The ratio of people who were convicted of obstructing epidemiological investigations was 0.0% (10 people). Although the number of tests does not accurately reflect the number of suspected cases, the ratio of self-quarantine violations (suspected cases) to the total number of tests is 0.0% (412 people). There were 0 cases of punishment for violating the administrative order of testing.

It is difficult for the analysis of court cases to reflect all the various situations that occur in society. However, we can at least deduce the following implications. Cases of obstructing epidemiological investigation are very rare or almost do not exist. Violation of self-quarantine is very rare or almost non-existent among all suspected cases. Violation of the administrative order for testing is very rare or almost non-existent among all suspected cases. This is the reason why we need to ask, nitpick, and discuss in what context the principle of public intervention and severe punishment is helpful for disease control and whether it is a process for disease control and prevention.

### **Social discussion needed on the level and scope required for disease control**

Tracing and group management are needed in the process of disease control. However, the current identification and tracing measures are beyond the level and scope required for disease control. Despite this fact, there is barely any social discussion. Furthermore, the disease control policies that emphasize coercion and governmental authorities instead of the disease control process through voluntary cooperation, takes precedence. Restoring the relationship between these forces will be the starting point of establishing correct policies for disease control.

# Discrimination and Exclusion of the Homeless

**Hyeong-Jin**

Activist, Homeless Action

Participated in publishing the *Factual Survey of COVID-19 Vaccination for the Homeless*

## **The gap in welfare and excess in disease control**

When talking about the characteristics of the homeless policy in Korea, it is impossible not to mention the concept of “facility centrality.” As such, facilities occupy a very unique and absolute position throughout the homeless policy. On the one hand, it is the only path and essential condition for the homeless to use social services. This is because the legal system itself was designed with facilities as its default. In fact, among the various welfare services stipulated by the Act on Support for Welfare and Self-reliance of the Homeless, Etc. (Homeless Welfare Act), there are very few services they can use without going through a facility for the homeless. Core services such as housing and medical services are no exception. According to the Homeless Welfare Act, all housing support services are stipulated to be provided “in consideration of the opinions of the head of a facility for the homeless,” and the target of medical support is limited to “persons who have been admitted to a facility.” On the other hand, facilities are also institutions that operate with their own internal logic. In response to the demand for the right to food for the homeless on the streets, a city government official said, “Support for the homeless on the street is important, but if the number is increased too much, a situation may arise where they prefer the street to a homeless facility. So, there must be a balance between self-reliance and protection.” This and the guidelines from the Ministry of Health and Welfare (MOHW) to provide meals only to “those who wish to enter facilities” clearly demonstrate the aspect of the homeless facilities as a system that serves as a benchmark to deny their rights and treat them as inferiors. In this sense, it would be right to say that these facilities are not just a part of the homeless policies, but rather a general principle that constitutes and sustains them.

As such, the facility-centered homeless policies, which put the rights and needs of people staying outside the facilities as secondary, resulted in a wide welfare vacuum during the COVID-19 pandemic. The need for social services increased with living spaces difficult to implement even the minimum disease control guidelines, further reduction of minimum-wage jobs, and the cessation of private assistance that included food and supplies. Yet, the facility-centric policies and support system had no effect on the overall situation. Instead, the response to the situation headed toward technically excluding those in need of adequate protection from infectious diseases. In the name of quarantine, measures were taken to inquire about eligibility to use social services, identify dishonesty through digital gatekeepers, and raise the threshold of supporting organizations. This article, which introduces the case of administration by the city of Seoul, is a report on the motives and outcomes of these series of measures.

## **Introduction of electronic RFID membership cards for the indoor meal service center at Seoul Station**

With the enactment of the Homeless Welfare Act in 2011, the legal basis for providing meal services was prepared. However, 10 years later, there are almost no public meal services. There are only four homeless facilities for meal services installed in accordance with the law, and even those are concentrated in the metropolitan area. In a reality where it is difficult to expect stable meal services unless they are admitted to a facility, most of the homeless had to use meal services by private and religious organizations for relief and charity. In a way, it was only natural that the COVID-19 pandemic led to the so-called “meal crisis for the homeless” in this situation. Demand for meal services soared as private organizations stopped operations one after another. Yet, it was

impossible to meet the actual demands in the long run at a time when the supply itself was far from sufficient.

The situation was the same for Seoul, which was evaluated as relatively well-equipped with a homeless support system. However, as the situation showed signs being extended, the city chose to control the demand for meal services through “recipient selection.” A case in point is the restriction on the user qualifications for the soup kitchen at Seoul Station (Seoul City-run Warm Chaeumteo) and the introduction of electronic membership cards.

The indoor meal service center at Seoul Station opened in 2010 for the purpose of eradicating provision of food in the streets. For operations, the city provided a venue to private and religious organizations, and in return, they brought pre-cooked meals to the location and provided them to the homeless. The ambiguous name of “meal service center” also stems from this particular operating method, and the Seoul Metropolitan Government (SMG) continuously emphasized that this meal service center at Seoul Station is not a facility for meal services that fall under the Homeless Welfare Act for the homeless, and therefore, is not subject to report as a venue of group meal service under the Food Sanitation Act. In fact, before the COVID-19 pandemic, the city did not limit the use of the soup kitchen at Seoul Station to “homeless people, etc.” under the Homeless Welfare Act. During the early days of the opening, the soup kitchen was even promoted as an administrative achievement, saying that it was not only for homeless people, but also for various classes such as “jjokbang (flophouse) residents, senior citizens living alone, etc.”

The atmosphere suddenly changed as the number of people using the meal service center at Seoul Station largely increased in the aftermath of COVID-19. In early September 2020, the SMG posted a notice on the outside of the Seoul Station meal service center stating, “meals are not provided to those 65 and older.” When it raised issues, they revised the notice saying, “only ‘the homeless, etc.’ determined by the Homeless Welfare Act can enter.” In mid-September, they abruptly ceased to provide breakfast due to infectious disease prevention and introduced an electronic membership card

(RFID) system, which presupposes inquiry of homelessness history, registration in the comprehensive homeless support system (welfare information system), and photo registration.

At that time, the office of primary concern at the SMG justified it as a measure to reinforce disease control management. The SMG asserted that there was no appropriate solution other than to issue RFID membership cards because the users often had difficulties writing in the manual disease control log and took a long time, and they rarely had contact information (mobile phones) for the purpose of tracing movements of confirmed patients. The city added that the use of electronic membership cards will improve the population density and the number of simultaneous users in the facility, and at the same time, enhance the convenience for users as well.

However, blaming the vulnerability of disease control management on the users’ situation is a very unilinear way of thinking. The disease control problem at the indoor meal service center at Seoul Station was due to the significantly increased number of users because private organizations stopped their services. It had nothing to do with “difficulties writing the manual log. The assertion that the introduction of electronic membership cards will lead to improved user convenience is also hard to understand. Considering the reality where the history of homelessness and record of welfare service use are utilized to limit support or filter out recipients, the electronic membership card is more likely to act as a barrier in using services for those who are concerned about the disadvantages of registering with the information system.

In addition, limiting users and using digital technologies for tracing and identification are not the only methods to reduce population density and reinforce disease control measures in the facility. On the other side of the long waiting time and high density is the reality where there is an absolute shortage of public meal services available for the homeless. Therefore, the administration should have intervened and expanded in this area of meal service that was excessively burdened on the private sector. For instance, diversifying support methods beyond

group meal services, normalizing abnormal operations that do not comply with legal standards, increasing the number of frequency and location of meal services for decentralization and other social policy approaches should have been considered before introducing digital technology.

In the end, the attempt of SMG to introduce electronic membership cards was canceled. Of course, this does not mean the city accepted the demands for improvement in the meal service policy. The reasons the city cited were the budget, procedures, and the logic of “balance of self-reliance and protection.” This is where we ask the very crucial question. “Social policy-based measures require so many decision-making processes and procedures. Then why are digital technology-based measures that identify and select subjects for social policy decided unilaterally without any consultation and discussion?”

#### **Mass infection incident of the homeless at Seoul Station and After the Incident**

In December 2020, the SMG announced the “Special Protection Measures for the Homeless and Flophouse Residents during Winter.” They revealed that it would operate an emergency lodging for the homeless on the premise of social distancing. In response, the civil society groups pointed out that operating group-clustered facilities that are vulnerable to preventing infectious diseases during COVID-19 would only aggravate the crisis. Instead, they requested measures to reestablish in the direction of assisting individual housing with independent sanitation facilities. However, the city was only eager to promote their policy emphasizing that there is no problem in operating emergency accommodation for the homeless even when the first confirmed case occurred in one facility. Through the media, the SMG went on to point out that the problem lies with not using the emergency facility, when they have made sufficient preparation. Meanwhile, the mass infection spread rapidly, and eventually resulted in about 100 confirmed cases and 200 close contacts. At the beginning of the incident, the city took issue with the “lack of wearing masks by the homeless.” Yet, considering that the first confirmed patient was a worker who was required to follow strict disease control

rules and the emergency accommodations were the center of transmission, it was self-evident that the setup of “emergency lodging” was the cause of mass infection.

We should take note that in the process of resolving this apparent policy failure, the SMG has again been consistent with technical prescriptions. When the spread of the mass infection reached its peak at the end of January, the city set a policy to allow only “those who reported negative for COVID-19 within 7 days” to enter the municipal support organization for the homeless. As stated at the beginning of this article, since it is impossible to apply for and use welfare services without passing through a homeless facility, the SMG measures were in effect disqualifying homeless people who did not receive regular COVID-19 tests from using welfare services. The homeless who do not have COVID-19 test results within 7 days cannot use meal services, receive hospital treatment, or even consult with social workers. This situation greatly reduced the accessibility of welfare services for the homeless. The change in the number of users at Seoul Station's soup kitchen is a prime example. The average number of people using the facility for a free meal in January 2021, before the measures were implemented in earnest, was 318.1 people; the average number of users from February to May was 107.9 people. Compared to January, the number dropped to almost 1/3.

Temporarily suspended homeless facilities resumed operation as the spread of mass infection subsided, and Seoul City opened shelters to escape the heat--another version of “emergency lodging”--before the summer heat wave arrived. It appeared as if everything was returning to normal, but the reality of needing “COVID-19 test results within 7 days” for the homeless to use welfare services still remains the same. Kim, who uses the free meal service center at Seoul Station every day, is now waiting for his 34th COVID-19 test. This is why we cannot help but ask who we were trying to protect through strengthened disease control.

## Restrictions on Freedom of Assembly and Demonstration, and Tracing Participants

### Ranghee

Activist, Human Rights Movement Space "Hwal"

& South Korean NGOs Coalition for Law Enforcement Watch

Participated in publishing the *Issue Report on COVID-19 and the Right to Assembly and Demonstration*

The Seoul Metropolitan Government (SMG) designated Gwanghwamun Square and other major downtown areas as places banned from assembly on February 21, 2020. The government raised the COVID-19 crisis alert level to the highest (Level 4) on February 23, and the National Police Agency (NPA) announced that the spread of an infectious disease can be a reason to ban rallies.

Following the notification by the SMG, the local government heads of metropolitan cities, counties (gun), and districts (gu) across the country designated places where gatherings are prohibited with administrative orders. In June 2020, the government unified the disease control system with social distancing and applied stages according to the degree of spread. Assemblies were classified as "meetings and/or events" in social distancing, but were always required to be one step higher than the distancing for other social activities. Local governments maintained the venues where gatherings were prohibited and imposed restrictions on the number of people. At the same time, they issued administrative orders to ban assembly at specific gatherings. Except during the social distancing of Level 1 (from October 12 to November 23, 2020), all gatherings of 10 or more people were prohibited in all areas of Seoul before July 2021. All rallies have been banned since July 2021 when Level 4 of social distancing started.

The head of a local government issues an administrative order to ban assemblies in accordance with Article 49(1)2 of the Infectious Disease Control and Prevention Act (IDCPA), and the police apply Article 5(1)2 of the Assembly and Demonstration Act (ADA). In case a person violates the order of prohibiting assemblies, the individual is subject to a fine of 3 million won or less under Article 80-7 of the IDCPA, and also punishable for violating the ADA.

### Identification of assembly participants - tracing - reinforced punishment

Until now, the method the police collected evidence for investigation and punishment of illegal assemblies was mainly through video recordings of the assemblies and the location of base stations. They included CCTV footage, social media, etc.

After the spread of the COVID-19, identification and tracing of all participants were carried out on the grounds that disease control measures were needed in addition to the investigation of existing illegal assemblies. They identified participants through mass information accessing specific base stations, inquiries of credit or transportation card details, and lists of assembly participants. These participants were issued administrative orders for diagnosis and self-quarantine. Together with the police, local governments traced and punished those who did not comply with administrative orders. The disease control authorities say that the tracing participants through such information gathering is conducted as epidemiological investigations to determine the exact infection routes and movement paths of confirmed patients. However, the participants who are traced were accused, investigated or punished for violating the assembly ban under the IDCPA, interfering with epidemiological investigations, violating self-quarantine, violating the ADA, and obstructing general traffic.

### Gwanghwamun assembly case on August 15, 2020

On August 12, there was a confirmed patient at Sarang Jeil Church. Twenty-six organizations including the group led by the senior pastor of the church (Jeon Kwang-hoon) were planning a rally criticizing the government in downtown Seoul on August 15. The Seoul Metropolitan

Government was concerned about the spread of infection and issued an administrative order that banned the rally to the assembly organizers. The city disclosed plans to accuse the organizers and participants and claim the right to indemnity for occurrence of confirmed cases. Thousands of protesters flocked to the two venues on August 15 when the court allowed two rallies that filed an injunction to suspend the execution of the assembly ban. The crowd at the rally venue grew dense, and some participants did not wear masks and some shared food. On the day of the assembly, 59 confirmed cases were verified from Sarang Jeil Church.

On August 18, the first confirmed result came out to a participant not related to Sarang Jeil Church. The local governments nationwide then issued an administrative order for diagnostic tests on the participants and asked chartered bus drivers, guides, and bus company officials to submit passenger manifests. The SMG requested the assembly organizers to submit their list. At the request of the police and disease control authorities, the three mobile carriers submitted a list of 50,000 people who accessed base stations near Gwanghwamun on the day of the rally. The Central Disaster and Safety Countermeasures Headquarters (CDSCHQ) informed the 50,000 people about the diagnostic test via text message and relayed the list to local governments. Along with the police, each local government conducted forced investigations by tracking people who did not take diagnostic tests. They seized and searched churches that did not submit a list of participants and commissioned investigations on charges of epidemiological investigation obstruction. Those who did not comply with the diagnostic tests were charged and fined.

#### **Workers' convention case on August 15, 2020**

The Korean Confederation of Trade Unions (KCTU) and the "August 15 National Independence Congress" promotion committee prepared for a smaller rally concerned about the spread of the COVID-19. Yet, the SMG issued an administrative order to ban the assembly. The '8.15 National Independence Congress' changed the venue to indoors, but the KCTU decided to move forward with the workers' convention as scheduled by strengthening the

disease control rules. Although the police blocked the area near the assembly site on August 15, the KCTU moved the venue to Jonggak Station and held the assembly with about 1,900 participants. They handed out masks and face shields and measured body temperature.

On the same day, when a confirmed case was verified from the assembly including Sarang Jeil Church in nearby Gwanghwamun, the KCTU voluntarily finalized the screening policy for all participating union members and collected the results. The SMG demanded the KCTU to submit the rally participant list, and the KCTU stated their stance that "requiring information submission of name, age, and address is excessive." On August 22, one member of the KCTU tested positive. The Central Disease Control Headquarters (CDCHQ) requested the mobile carriers for information from base stations around Jonggak Station where the KCTU press conference was held. On September 1, the KCTU submitted the COVID-19 test results from 99% of the participants and the list of rally-goers. No additional confirmed cases were found according to test results.

#### **National workers rally case on July 3, 2021**

For the "July 3rd National Workers Rally," a group of nine KCTU people each reported for assembly in 40 locations around Yeouido in line with the phase of social distancing. The SMG and the Yeongdeungpo Police Station notified them of the assembly ban. On July 3, the police mobilized 213 units in downtown Seoul to build temporary checkpoints, barriers (about 500 police buses), and fences to block the rallies. In the end, the workers' rally moved its location to Jongno 3-ga, and 8,000 people proceeded with the event informally.

From July 16 to 17, the CDSCHQ requested a list of the assembly attendees when three of the participants tested positive for COVID-19. The Korea Disease Control and Prevention Agency (KDCA) issued an administrative order for COVID-19 diagnostic testing for the participants. On July 26, the disease control authorities announced that the three people who tested positive were unrelated to the rally and that they were infected at local restaurants. However,

the politicians and media criticized the workers rally as if it was the epicenter of the fourth wave of COVID-19, and some media outlets even exposed the residence of conformed patients. On July 27, the KCTU submitted to the authorities the COVID-19 test results of 4,701 rally participants and that there were no additional confirmed cases. The chief of the KCTU, Yang Kyung-soo, was arrested and charged with violating disease control rules on September 16.

### **Every assembly became illegal with the crisis of COVID-19**

In the case of outdoor assembly, wearing a mask and keeping distance will significantly reduce the possibility of COVID-19 transmission. However, the experience of spreading the infection at the Gwanghwamun rally led to the perception that rallies play a role in spreading infections and active tracing is needed when transmission occurs. Gathering information and tracing, such as collecting base station data for participants in the Gwanghwamun assembly, required the same tracing every time a confirmed case was found at a subsequent rally. Yet, it is necessary to review the identification of participants and information collection that discourages the exercise of the right of assembly.

In particular, as restrictions and bans on assembly continue for a long period of time after the COVID-19 outbreak, the hardship of those who require assembly have also increased. The organizers have no choice but to bear punishment in situations where there is no choice but to hold an assembly that is illegal. Asking to hand in a list of every rally participant containing their personal information in such situations adds fear to the participants. Especially in situations where local governments and the police work together to trace and investigate suspected cases, it is only natural to be anxious about how personal information will be used.

# Digital Tracing that Promotes Overcriminalization

**Suh Chae-wan**

Lawyer, MINBYUN-Lawyers for a Democratic Society  
Participated in publishing the *Issue Report on COVID-19 and the Criminalization*

Under the circumstances of COVID-19, it is necessary for the state and local governments to actively exercise the authority to guarantee human rights. However, that authority by the state and local governments should be exercised solely for the realization of human rights, not to unfairly restrict human rights and cause discrimination for administrative efficiency. In the face of an infectious disease crisis known as COVID-19, the active authority of the state should be exercised to protect people's lives and health, and especially in its effort to introduce special measures to fully realize the human rights of the vulnerable. Yet, the active exercise of authority by the state and local governments in Korea focuses on broadly limiting individual inviolable human rights rather than realizing them.

The Korean response of disease control during COVID-19 is characterized by active diagnostic tests, epidemiological investigations, and quarantine measures on the premise of tracing and monitoring using digital technology. Note that diagnostic tests, epidemiological investigations, and quarantine measures using tracing and monitoring technology are not only performed on "patients of infectious disease," but also for "suspected cases of infectious disease," a newly introduced concept during COVID-19. Suspected infectious disease patients is a concept that includes "persons concerned about infection," and virtually can become a "suspected case of infectious disease" in a large-scale spread of infectious diseases such as COVID-19. In addition to diagnostic tests, epidemiological investigations, and quarantine measures for suspected infectious disease cases, the state and local governments are taking coercive administration measures, such as prohibiting gatherings. In case of violation, criminal and economic sanctions, such as criminal punishment and fines are imposed according to the so-called "principle of zero tolerance."

Compared to the numerous compulsory measures taken by the state and local governments, measures to protect vulnerable people who have to accept them are being taken passively. The economic and medical support necessary for those who are vulnerable to the COVID-19 situation, such as migrants, the disabled, women, children, the elderly, and non-standard workers, are recognized as a favor rather than an obligation to be immediately fulfilled by the state and local governments. In the context of COVID-19, we are silent about the discrimination, hate, and leakage of privacy that occur against foreigners, sexual minorities, and religious groups.

## **Legislature and administration focusing on strengthening sanctions**

The Korean National Assembly began to actively revise the current legislation, including the IDCPA, from the beginning of the spread of COVID-19. Most of the amendments concentrated on expanding the subjects and targets to exercise the authority of coercive measures, widening the scope of sanctions in case of violation, and raising the level of sanctions. The amendments were made without in-depth discussion or public participation, and they were justified with the fear of COVID-19.

The current laws dealing with infectious diseases, such as the IDCPA, do not strictly control the abuse of authority by the state and local governments. The basic requirements needed to control the abuse of authority by the state and local governments--such as the principles of proportionality, non-discrimination, and subsidiarity--are not stipulated. In addition, there is no procedure established to supervise this either in advance or afterward. The state and local governments may arbitrarily take unfair measures, and those who violate them may be severely punished.

Digital technology is introduced and used for disease control by the central and local governments without special verification for monitoring and tracing even though there is no law that permits it. The indiscriminate use of digital technology in this manner resulted in the acceptance of sanctions such as criminal punishment for individuals. The state and local governments can use digital technology to identify even cases where there is no risk or unavoidable violations of coercive measures. The personal and private information collected are available for investigative agencies at any time.

The state and local governments established principles of zero tolerance instead of tolerance and humanitarianism when criminal and economic sanctions against individuals became easier. Violations of compulsory measures without considering the severity or risk are prosecuted. Individuals who violate coercive measures are not only penalized with criminal or economic sanctions, but also excluded from various types of support such as relief funds. They are holding individuals responsible for the spread of COVID-19, something no one can take responsibility for.

### **Problem of overcriminalization during COVID-19**

International human rights law (IHRL) recommends that countries minimize sanctions against individuals introduced during COVID-19. According to IHRL, actions to protect oneself in COVID-19 situations should not be punished; sanctions should be implemented humanely; individual economic and social circumstances should be fully considered in sanctions. However, as we witnessed earlier, the National Assembly, the central and local governments are establishing and implementing laws and policies that go against the request of IHRL, imposing tighter sanctions on individuals.

In particular, the right to punishment is severely abused. From when the first COVID-19 outbreak occurred in South Korea in February 2020 to July 6, 2021, legal action was taken against a total of 6,976 people: 4,836 people for violating the assembly ban, 1,718 people for violating quarantine measures, 278 people for obstructing epidemiological investigations, and 144 people for other violations. Most received fines or more

severe sentencing. Violating the prohibition of gathering is punished with a fine of 3 million won or less; violating quarantine measures can receive imprisonment for up to one year or a fine not exceeding 10 million won; obstructing epidemiological investigations can be sentenced up to two years in prison or a fine of 20 million won or less. Violating quarantine measures, in particular, will be subject to aggravated punishment if the individual spreads an infectious disease by gross negligence, even if it is not intentional. Such punishment for being “a carrier of transmission” that causes hatred and stigma on the infected person violates IHRL.

From February 2020 to June 2021, we analyzed 566 court decisions. Various problems were identified as a result of the analysis. An above-average fine was imposed on minor cases where there was no risk of spreading infectious diseases, such as deviating 20 meters or leaving for 7-9 minutes during self-isolation. Departure from quarantine for the death of a family member, medical treatment, purchase of daily necessities, work order, and criminal damage report are also punishable, in addition to people with dementia and mental illness history. This shows that the judiciary that supposedly protects basic human rights is applying the law in a perfunctory manner, leading to overcriminalization.

Moreover, although revealed specifically in rulings, the circumstances described in the written judgments demonstrate an unfair tendency of punishment for socially and economically vulnerable people. The vulnerable who are in environments in which they cannot comply with isolation or quarantine rules--people who have no choice but to leave because of work orders, daily necessities, and their livelihoods--are subject to punishment. Furthermore, almost all of those who were punished tested negative for COVID-19. In other words, individuals who do not pose a direct risk of spreading infectious diseases are being punished.

### **Surveillance and tracing by digital technology that promotes overcriminalization**

The introduction and use of digital technology adopted in the name of disease control is

justified with the fear of COVID-19, even if there is insufficient or unproportional legal basis. Calling them indispensable for disease control, the central and local governments are introducing and implementing digital technology that enable monitoring, tracking, and identification without strictly verifying the negative effects they will cause.

The problem lies with the fact that private secrets and personal information collected by digital technology are not used only for the purpose of disease control but extensively for investigation purposes. According to the analysis of court rulings, the confidential and personal information collected are used as evidence to prove the vulnerable people guilty. Information such as immigration status, CCTV photos, on-site photos, base station communication, and movement location data analysis can identify even the smallest deviance that was impossible to punish before.

Criminal sanctions in Korea, which are implemented with zero tolerance not considering individual circumstances, end up being discriminatory or harsh punishment. This is because most coercive measures, such as quarantine measures and prohibition of gathering, are particularly easy to violate with poor economic and living conditions. Ultimately, the introduction and implementation of digital technology that identifies even minor deviations will lead to overcriminalization of the vulnerable in COVID-19 situations when combined with the zero-tolerance principle of the government and investigative agencies.

The vast amount of personal data and privacy secrets, such as location information, the state and local governments collect through reckless use of digital technology as they do now should not be used extensively in investigations and trials for punishment. The broad collection of unnecessary personal information itself is naturally a problem from the perspective of the right to privacy, including the self-determination right to personal data. However, the larger problem is that private and personal information collected during an infectious disease crisis, such as COVID-19, facilitate discriminatory and cruel punishment.

### **Need for control according to the basic principles of IHRL**

IHRL states that even the simple accessibility to personal data (such as location information) by the state interferes with privacy rights and should be controlled closely. It is probably a basic principle established because the possibility of state access to personal information can lead to unjust investigation and profiling. Also, the introduction of digital technology that expands the government's access to personal data can bring about interference with privacy rights.

However, the central and local governments in Korea have recklessly introduced and used digital technology for monitoring and tracing without considering the negative impact might be incurred by the COVID-19 situation. This goes against the basic principle of IHRL that strictly regulates the accessibility of a state to personal data.

Furthermore, as previously discussed, the wide range of personal data and private secrets collected through digital technology by the state and local governments are promoting the overcriminalization of vulnerable people during COVID-19. In other words, surveillance, tracing, and identification through digital technology are the foundation for overcriminalization in the context of an infectious disease crisis. In this context, we need to establish a legal system to strictly control surveillance, tracing and identification using digital technology in Korea.

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