

## Mandates of the Special Rapporteur on the right to privacy

Ref.: AL KOR 1/2025  
(Please use this reference in your reply)

1 May 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution and 55/3.

In this connection, I would like to bring to the attention of your Excellency's Government information we have received concerning the application of the **Telecommunication Business Act**, for which I am concerned could allow grave violations to the right to privacy and family life during the investigation of cases. The law appears to permit prosecutors and the heads of investigative agencies the mass collection of user information without judicial approvals. These powers have allegedly been used arbitrarily to investigate government critics.

According to information received:

In 2023, it was revealed that prosecutors investigating journalists on charges of defaming the incumbent President requested user information of more than 3,000 phone users. It was reported that this was an attempt to find the journalists' sources.

It has been reported that in 2023, the three biggest telecommunication agencies in the Republic of Korea received over 850,000 requests for telecommunications subscriber information. The required information did not require a warrant for its request. Of the requests made, in 100% of the cases the information was provided by the Telecommunication Company. According to sources, since 2019, the number of requests made has been decreasing, while it increased again in 2023.

On 29 December 2023, the [Telecommunications Business Act](#) (hereinafter "the Act") was amended following a declaration of unconstitutionality by the Constitutional Court on 21 July 2022. The amendments sought to address the lack of "*ex-post* notification procedures for the acquisition of communications data". The Court had found that this vacuum resulted in a violation of the principle of due process and an infringement on the right to informational self-determination. The Court additionally found that the fact that the request for information did not require a warrant was constitutional since sending the information non-compulsory for businesses. According to the law, Telecommunication Businesses could decline the request for information and hence the provisions of the law were allowed under national law.

The Court hence granted the Government a deadline of December 2023 to amend the Act. This led to Bill N. [2125983](#) and the eventual amendment to the Act which established a notification period for users and outlined obligations on business regarding the information. This triggered amendments to the

Enforcement Act of the Telecommunications Business Act with clear demarcations of responsibility for the businesses and the need to report to the competent Ministries.

The amendment to the Act created a 30-day notification period for users, with some notable exceptions. The notification is established to include the content of the inquiry and its purpose, the receiver of the information, and the date in which the communication was provided. The notification can be deferred in cases of national security; if it posed a threat to the lives of physical safety of victims; if it posed a hinderance to the implementation of a fair judicial process; if the privacy of a suspect, victim, or related party is infringed on; and, in cases where it is likely that it could interfere with the progress of administrative procedures. For the last three causes, a maximum extension period of two three-month delays is given.

Without wishing to prejudge the accuracy of the information received, I wish to express serious concern received in relation to the Telecommunications Business Act which appears to violate the right to privacy and family life.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right to privacy, protecting individuals from arbitrary or unlawful interference with their personal life, family, home, and correspondence, as well as from attacks on their honour and reputation. The article additionally establishes the right of protection against said interference. Article 17 of the ICCPR also includes the right to the protection of personal data, which, among other things, prevents States from requiring the mass retention of personal data by companies and access to personal data outside of clearly defined circumstances and subject to safeguards. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law ([CCPR/C/GC/16](#)). The comment additionally establishes that any interference must be 'reasonable'. The term "reasonable" has been interpreted by the Human Rights Committee to mean that it "must be proportionate to the end sought and be necessary in the circumstances of any given case" (Toonen v Australia (1994), para. 8.3).

Firstly, I wish to congratulate your Excellency's government on the 2023 Amendment to the Act. The amendment is trusted to ensure that the principle of due process is more closely followed through the creation of *ex-post* notifications. I note that these notifications will increase users' ability to seek reparations and to better guarantee their right of protection of the law to the violation of the right to privacy. This additionally is sure to reinforce your Excellency's government's adherence to article 14 of the ICCPR on due process.

Though I welcome this advancement and believe it is a step in the right direction, the current allowances under the law may pose risks to the right to privacy and the right to freedom of expression. Specifically, it seems to allow the Government to compile personal information without individuals' consent, which may lead to heightened risk of surveillance.

In addition, I wish to express my concern on the lack of regulation on State authorities' use of and disposal of the information. As per my predecessor's country

visit to the Republic of Korea in 2019 ([A/HRC/46/37/Add.6](#)), between 6.4 and 9.3 million requests were made to Telecommunications Companies. As per the report, the figures “suggest that access to such data is sometimes requested casually and most probably in many cases without being really necessary” (parr. 62). In addition, the request of information of mass amounts of the population, without a clear guide on once the information was used, that it would be deleted. Further, there are concerns to whether this mass information gathering follows the proportionality principle or whether it has been used arbitrarily, violating the provisions established under international law.

The report on “Legal safeguards for personal data protection and privacy in the digital age” ([A/HRC/55/46](#)) states it is vital for States to “establish a system to safeguard the right to personal data protection so that data subjects are aware of the processing to which their personal data are subjected, can exercise proper control over their data and, in the event of a violation, can opt for a remedy with a view to the reparation or restitution of the right or compensation for the damage caused, as the case may be.”

In addition, I remain concerned that requests can be done without a judicial warrant. Impartial judicial mechanisms are crucial in the protection of the right to privacy. The judiciary plays a key role in stopping arbitrary decisions and ensuring full protection of fundamental rights.

I wish to remind your Excellency’s government of the observations made in the above-mentioned report which established that “it may be a good idea to subject these requests to judicial oversight, or very preferably the new SIPC, even if only to improve privacy protection by discouraging casual access and cutting down the sheer number of requests currently being made” (parr. 62).

In addition, I wish to recall the Concluding observations on the fourth periodic report of the Republic of Korea (CCPR/C/KOR/CO/4) from the Human Rights Committee, establishing its concern over the fact that “subscriber information may be requested without a warrant by any telecommunications operator for investigatory purposes” (parr. 42). The Committee suggested that warrants be used to ensure better compatibility between national law and the ICCPR (parr. 43).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate how the application of the Telecommunications Business Act is consistent with international human rights law, and an appropriate application in accordance with the principles of legality, transparency,

and proportionality to guarantee the right to privacy.

3. Please indicate the measures taken to prevent the misapplication of the Telecommunications Business Act against journalists, activists, human rights defenders, and political opponents.
4. Please provide an update on the retention of data taken from political critics, and the existence of investigations against them.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Ana Brian Nougrères  
Special Rapporteur on the right to privacy

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

I would like to refer your Excellency's Government to article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation, and that everyone has the right to protection of the law against such interference or attacks. Further, in its general comment No. 16 in relation to article 17, the Human Rights Committee asserted that surveillance, whether electronic or otherwise, should ordinarily be prohibited. Further, article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law.