

Constitutional Complaint

Petitioners: Do-Hyun KIM and 18 teenagers (Members of Youth 4 Climate Action)

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Respondents

1. The National Assembly of the Republic of Korea

2. The President of the Republic of Korea

Filed on March 13, 2020 to the Constitutional Court of the Republic of Korea

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Claims

The Petitioners hereby request the judgments of the Constitutional Court as follows:

1. Article 42 Section 1 Subparagraph 1 of the Framework Act on Low Carbon, Green Growth (as enacted on Jan. 13, 2010) is unconstitutional.
2. The Exercise of governmental power by the President of the Republic of Korea in abolishing the “2020 Greenhouse Gas Reduction Target” as set out in Article 25 Section (1) of the Enforcement Decree of the Framework Act on Low Carbon, Green Growth (as enacted on April 13, 2010) is unconstitutional. The target was abolished when Article 25 Section (1) of the Enforcement Decree of the Framework Act on Low Carbon, Green Growth was amended on May 24, 2016.
3. Article 25 Section (1) of the Enforcement Decree of the Framework Act on Low Carbon, Green Growth (as amended on Dec. 31, 2019) is unconstitutional.

Infringed Rights

The right to live, to pursue happiness and to resist human extinction (Article 10 of the Constitution, the basic rights of human dignity), the right of the next generation to live in a healthy and pleasant environment (Article 35 of the Constitution, the environmental right), the inequality between the adult generation who can enjoy the relatively pleasant environment and the youth generation who must face a potential disaster from climate change (Article 11 of the Constitution, the equal right protection), the obligation of State to prevent disasters and to protect the citizens from the dangers of environmental disasters (Article 34 of the Constitution, the right to live a humanly life), the prohibition of blanket delegation to the lower regulations (Article 75 of the Constitution, the nondelegation doctrine), the protection of environmental rights backed by law (Article 35 Section 2 of the Constitution), the prohibition of the underprotection of the basic rights by the State, etc.

Exercise of Governmental Power Causing the Infringement of Right

First, Article 42 Section 1 Subparagraph 1 of the Framework Act on Low Carbon, Green Growth (as enacted on January 13, 2010, hereinafter “Low Carbon Act §42(1)1”)¹ gives a blanket authority to the Government (President) to set the greenhouse gas reduction target (hereinafter “GHG Reduction Target”) without providing any scope specifically defined for the GHG Reduction Target. The same article fails to designate any specific legal procedure or form of lower executive regulation. This blanket delegation to the Government violates Article 75 of the Constitution of the Republic of Korea (hereinafter the “Constitution”)²

¹ Article 42 of the Low Carbon Act

(1) The Government shall set up medium and long-term targets attached to each particular phase for the following matters and seek for measures necessary for accomplishing the targets in order to cope with the global reduction of greenhouse gases actively and to promote low carbon, green growth efficiently and systematically:

1. Greenhouse gas (GHG) Reduction Target

² Article 75 of the Constitution

which prohibits such blanket delegation. In turn, it also violates §35(2) of the Constitution that stipulates environmental rights should be determined by Act legislated by the National Assembly. Thus, the Low Carbon Act §42(1)1 infringes on the constitutional rights including environmental rights and the right to life of the Petitioners. (Claim #1, Unconstitutionality of the Low Carbon Act §42(1)1)

Second, the abolishment of the 2020 GHG Reduction Target by the President of the Republic of Korea (hereinafter “President”) infringes on the constitutional rights of the Petitioners. On May 24, 2016, the President amended Article 25 Section (1) of the Low Carbon Decree (as amended on May 24, 2016, hereinafter “2016 Low Carbon Decree §25(1)”) to abolish the 2020 GHG Reduction Target (approximately 543 Mt CO₂eq in 2020, 1 Mt = 1 million ton) as set up by the Article 25 Section (1) of the Enforcement Decree of the Low Carbon Act (as enacted on April 13, 2010, hereinafter “2010 Low Carbon Decree §25(1)”). In effect, the President arbitrarily abolished the 2020 GHG Reduction Target which the government was failing to meet. This action by the President infringes on the constitutional rights of the Petitioners including environmental rights and the right to life. (Claim #2, Unconstitutionality of the Abolition of the 2020 GHG Reduction Target)

Third, Article 25 Section (1) of the Low Carbon Decree as amended on December 31, 2019 (hereinafter “2019 Low Carbon Decree §25(1)”) resets the 2030 GHG Reduction Target of Korea as “The total national greenhouse gas emission in 2030 shall be reduced by 24.4 percent of total greenhouse gas emission in 2017 (approximately 709 million ton in 2017 and 543 million ton in 2030).” The 2030 GHG Reduction Target of Korea set up by the 2019 Low Carbon Decree §25(1) is not effective and sufficient. It cannot meet the minimum reduction goal agreed upon in the Paris Accord to contain the increase of the atmosphere temperature “well below 2°C and strive for 1.5°C,” and thus infringes upon the constitutional rights of the Petitioners including environmental rights and the right to life. (Claim #3, Unconstitutionality of the 2019 Low Carbon Decree §25(1))

In sum, (i) the Low Carbon Act §42(1)1, (ii) the abolition of 2020 GHG Reduction Target by the President, and (iii) the 2019 Low Carbon Decree §25(1) are all exercises of governmental power that directly infringe upon the fundamental constitutional rights of the Petitioners, the youth generation of Korea, and fall under the legitimate subject matters of the Constitutional Complaint as set forth in Article 68 (1) of the Constitutional Court Act.

Reason for the Claims

I. Overview of the Case and the Governmental Actions to be Adjudicated

A. Overview of the Case

1. A Constitutional Petition from the Youth Generation to the Adult Generation

The Preamble of the Constitution makes a solemn oath that the Constitution will protect and guarantee the safety, freedom, and happiness of “We (us)” and “Our Descendants,” now

The President can issue presidential decrees concerning matters delegated to him/her by Act with the scope specifically defined and also matters necessary to enforce Acts.

and forever.

This Constitutional Complaint is an earnest and urgent request from the aforesaid “Our Descendants” of the Constitution, the younger generation comprised of the daughters, sons, and the grandchildren of Korea, whom the Constitution promises to protect, toward the aforesaid “We,” the adult generation comprised of the fathers, mothers, and the grandparents, who are the obligors of such constitutional duty. As a request to protect the next generation, this Complaint is as an “inter-generational petition” through the process and by the substantial rights under the “Constitution.”

The Petitioners in this Constitutional Complaint are the active members of the “Youth4ClimateAction,” a group of mostly teenagers living in and growing up in Korea, who are at risk of present and permanent loss of safety, freedom, and happiness of life due to the continuing accumulation of greenhouse gas emissions and rapid temperature rise.

And the two Respondents in this Constitutional Complaint are the National Assembly of Korea and the President of Korea (hereinafter “Korean government” when referred together), both of whom have the constitutional duty to enact and enforce effective and sufficient measures against climate change risk and global warming by legislating statutes, regulations and by enforcing government actions of such statutes, regulations and actions under the Constitution, relevant domestic laws, and complying with international treaties including the Paris Accord.

2. Fatal Risk of Climate Change – Non-disputable Facts between the Petitioners and the Respondents

“The fatal risks of global warming due to the continuous accumulation of greenhouse gas emissions” equate to “non-disputable facts or not-disputed facts between parties” in this case. Under the Korean jurisprudence of evidence law, when both parties of a litigation agree upon certain facts there is no need to prove the facts by further evidence or proofs.

In this case, every information and knowledge about the risks of climate disaster perceived and asserted by the Petitioners, currently teenagers living in Korea, all came from the officially identified and acknowledged information and documents by the Korean government: (i) the Paris Accord which Korean government ratified, (ii) the reports of the “Intergovernmental Panel on Climate Change” (hereinafter “IPCC”) which Korean government officially participated and signed to the Executive Summary of each report, and also (iii) the official documents produced and made public by the Korean government including the “2019 Second Masterplan to deal with Climate Change” (Appendix 1, hereinafter “2019 Masterplan”) and the “2015 Second National Measures to Respond to Climate Change” (Appendix 2, hereinafter “2015 National Measures”).

Therefore, the Petitioners find it unimaginable and incredulous that the Respondent Korean government, who was attempting to educate the Petitioners about climate change disasters through its law, treaties, intergovernmental documents (IPCC Report) and intragovernmental documents of Korea (2015 National Measures and 2019 Masterplan), would change its position abruptly and deny the “fatal danger of climate change”. Such an action would violate the doctrine of estoppel.

The following is a brief summary of the basic facts concerning the risk of climate change recognized by the Paris Accord, by the IPCC reports, and by the official documents of the Korean government.

Emission of greenhouse gases, including carbon dioxide (CO₂), leads to higher density concentrations of greenhouse gases within the atmosphere. This greenhouse gas creates a greenhouse effect that holds the heat that the Earth emits in the atmosphere like the inside of a plastic greenhouse, and prevents such heat from leaving the Earth. Since the Industrial Revolution began, the Earth has been getting hotter and hotter as more and more greenhouse gases have been released and accumulated in the atmosphere over the past one century and a half. Since the start of the Industrial Revolution, the Earth's temperature has risen by about 1.1°C, and the biggest increase in temperature has occurred in the last 40 years since the 1970s, when Korea actively entered into the race of industrialization. The climate science community represented and recognized by IPCC and the international community of governments, including Korean government, agreed through the Paris Accord “the increase in temperature caused by global warming should be contained at most 2°C (well below 2°C)”, and further agreed that “the governments should strive to maintain the rise in temperature below 1.5°C”.

Scientists predict that the greenhouse gases that have already been emitted and accumulated in the atmosphere up to now are enough and sufficient to cause serious climate change. The “well below 2°C” temperature target agreed in the Paris Accord was suggested only as the minimum necessary defense line to prevent catastrophic environmental disasters. Rising global temperatures have already resulted in extremely catastrophic environmental disasters, such as extreme heat, extreme droughts, severe rainfall, and further ecosystem collapses that jeopardize food supplies, and rising sea levels caused by melting glaciers and polar ice caps. All this climate change threatens the life, health, welfare, and living conditions of many citizens around the world including Korea, in the future as well as today. (cf. the official summary of Netherland Supreme Court Judgement on Urgenda case rendered on December 20, 2019)

The serious problem is that this worsening climate environment is becoming increasingly “irrecoverable”, causing “irreparable” damage to all the citizens but especially fatal to the next generation as the main victim. The Petitioners, in this case, are among the very victims of the climate change, pleading and demanding action for the survival and safety of the younger generation represented by their “Youth4ClimateAction” group of Korea.

In December 2009, the 15th Conference of the Parties (COP15) of the UN Framework Convention on Climate Change (hereinafter “UNFCCC”), the Fifth Conference of the Kyoto Protocol, and the Climate Change Summit held in Copenhagen, Denmark adopted the “Copenhagen Accord”. Article 1 of the Copenhagen Accord had internationally “recognized” the scientific consensus that “the rise of the atmosphere temperature should be contained at most 2°C.”

In the following year in 2010, the 16th UNFCCC Conference of Parties (COP16) held in Cancun, Mexico, reaffirmed the minimum goal of 2°C and further studied the seriousness of the need to prevent temperature increases to the level of 1.5°C. In the same year Korean government enacted the Low Carbon Act (Framework Act on Low Carbon, Green Growth)

and designated the “2020 GHG Reduction Target” by enacting §25(1) of the 2010 Low Carbon Decree as “30% reduction from the 2020 BAU (estimated GHG emission at Business As Usual)”. The 2020 GHG Reduction Target of Korea set up by the 2010 Low Carbon Decree was approximately 543 MT CO₂eq.

In 2014, IPCC presented the concept of “Carbon Budget”, which is the most important premise to prevent climate disasters by the IPCC 5th Comprehensive Assessment Report (hereinafter “IPCC 5th Report”). IPCC 5th report warned that the risk of climate disaster is far greater than as was discussed at the Copenhagen Conference (2009) or the Cancun Conference (2010) and that even the 2°C ceiling of the temperature rise recognized at the Copenhagen Conference (COP15) and the Cancun Conference (COP16) would not be able to guarantee human safety and climate catastrophe. With such concern, IPCC 5th Report (2014) introduced the concept of “Carbon Budget” as the Maginot Line to prevent the climate disaster from temperature rise.

The premise of the Carbon Budget is as follows: (i) humankind have limited budget for the absolute amount of greenhouse gas emission (“Carbon Budget”), (ii) greenhouse gas accumulated in the atmosphere above this absolute amount will inevitably produce the catastrophe of climate disaster (“Climate Disaster”), (iii) therefore, every nation, every generation and every constitutional institution including the Respondent National Assembly and Respondent President of Korea must work with its utmost and genuine responsibility to reduce the GHG emission so as not to exhaust the remaining Carbon Budget (“Duty to Act”). For humankind in the 21st century since the signing of the Paris Accord, the prevention of the exhaustion of the Carbon Budget became almost an epochal mandate which can be well understood as a mathematical axiom.

Therefore, in 2015 at the UNFCCC 21st Conference (COP21) in Paris, France, participant governments agreed on the Paris Accord and set the minimum goal of preventing global temperature rise to at most 2°C (well below 2°C) and to strive to keep it below 1.5°C (Article 2 Clause 1 of the Paris Accord). The Korean government, a participant of the Paris Accord, also confirms the temperate rise limit on page 14 of the 2019 Masterplan as below. (Appendix 1)

- (Target) Control the global temperature to below 2°C (well below 2°C) compared to the time before industrialization and strive to keep it within 1.5°C.
- ※ The goal of 2°C is the temperature at which humans can withstand climate change caused by greenhouse gases.

In accordance with COP21, Korean government and other governments of the UNFCCC parties submitted voluntary national goals for reducing greenhouse gas emissions (Nationally Dedicated Contributions, hereinafter “NDC”) by 2030. But it is reported that even if every country complies with their NDCs, the global temperature rise will not be contained within the 2°C increase, but rather exceed more than 3°C increase. According to the IPCC Reports and the UNEP Reports, this may not be regarded as an avoidable “possibility”, but as an unavoidable arithmetic “certainty”.

In the Special Report of IPCC in 2018 (SR 15: Special Report on Global Warming of 1.5°C, hereinafter “IPCC 1.5 Special Report”), adopted at the conference held in Songdo,

Incheon, Korea, Section D.1.1. reports that "The pathways to reflect current national reduction targets by 2030 have generally been assessed for approximately 3°C increase of global warming until 2100". And according to the 2018 UNEP Emission Gap Report (page 10 of the Executive Summary), it is also reported that global temperatures will rise by more than 3.2°C by the end of the 21st century even when current NDCs are carried out.

Because the Respondent Korean government also acknowledges that "the atmosphere temperature will rise 2.4°C by the middle of the 21st century and 3.0°C by the latter half of the 21st century compared to the current period (1981-2010)" (Annex 2 National Measures p.39.), this is a "non-disputable fact" between the Petitioners and the Respondents in this Constitutional Complaint.

Therefore, the looming problem facing us is this: while the global temperature, which has already risen 1.1°C compared to the pre-industrial period, is almost certain to add a further 0.4°C to 0.9°C and reach 2°C ceiling of temperature rise within a short period of several decades (Appendix 2 National Measures p.39, IPCC 1.5 Special Report, and UNEP 2018 Report Executive Summary p.10), the Korean NDC and other NDCs as a whole are clearly not sufficient to prevent such catastrophic atmospheric temperature rise.

3. The "Irrecoverable Damage" to be Suffered by the Younger Generation

The risk of rising global temperatures which continue to accumulate and are heading toward collapse is, unfortunately, and inevitably, discriminatory between the two generations under Korean Constitution: "We", the adult generation of the parents and "Our Offsprings", the youth generation of the children who should be protected by the Constitution. This is a sad, but a real, situation because of the following reasons:

The adult generation is suffering and will suffer from the present and accumulating climate change over the next 20 to 30 years of their lifespan. However, the real possibility of experiencing the environmental collapse of catastrophe within their remaining lifetime should be much lower than the younger generation. But the younger generation of teenagers who are filing this Complaint will surely live for at least 60 or 70 more years on average. Therefore, it is only reasonable that the younger generation should be concerned they will likely experience and face an environmental disaster from climate change during their lifetime. Unfortunately, this serious concern of the younger generation may not be shared by the adult generation.

Considering the intimate and caring relationship between parents and their children, as well as the historical cooperation of the successive generations within a country which collectively cooperate and inherit the tradition, the legacy, and the natural and economical assets of a society, we find it an unusually miserable and tragic situation in which the interest of the parents' generation and the fate of the childrens' generation regarding the damage that can be caused by climate change are at such discord and conflict.

Also, while the dangers and fear of the climate disaster felt by the youth generation in Korea, including the Petitioners, are perceived as very "real" and "desperate", the sense of crisis of climate catastrophe psychologically felt by the adults who are collectively in charge of the constitutional institutions of Korea does not appear to be realistic. What the adults feel is a "long-term" possibility or a "wait-and-see" probability. The interpretation of the

unconstitutionality of a governmental action or the illegality of civil misconduct is influenced not only by the immutable legal maxims of perpetuity, but also, substantially reflects the legal consciousness of the time. This generational difference of the sense of imminence is another subjective fear of the Petitioners in connection with this Complaint. This is in addition to the objective fear of the danger from the disasters wrought by climate change.

4. Is the GHG Reduction Target of Korea Sufficient to Prevent the Catastrophe of Climate Change?

South Korea is a member of the Paris Accord to prevent global warming and is the fifth-largest emitter of greenhouse gases among all the OECD countries. It is the 11th largest greenhouse gas emitter, and the 7th largest carbon dioxide emitter in the world (Appendix 1 2019 Masterplan p.31). The level and size of Korea's economy and the vast amount of greenhouse gas emissions indicates that Korea is no longer able to avoid its responsibility for the climate crisis with the weak excuses befitting an undeveloped country. In spite of this, the Korean government is still trying to position itself as a leading figure in the efforts to develop countermeasures against global warming, both domestically and internationally.

However, given the crisis of global warming reviewed above, the question remains: “Is the Korean government, especially the National Assembly of Korea as the legislative body and the President of Korea as head of the executive government, adopting responsible and genuine legislation and administrative actions? Are they effective and sufficient to prevent global temperature increases and to enable the generational survival of Korea’s youth generation?” The Petitioners of this case, with fear and pain, sincerely request the Respondents for accurate and candid answers.

The Petitioners’ opinion on the question above is that the National Assembly and the President of Korea have not shown responsibility for the legitimate setting and execution of the GHG Reduction Targets. Based on its duty under the Constitution, the Paris Accord and relevant Korean laws, it appears that the Korean government is ignorant and irresponsible in protecting the rights of the younger generations to survive and thrive.

Based on the Constitution, Korean government has the constitutional obligation to protect the fundamental rights of the citizens, including the right to life, the environment right, and the right to pursue happiness by living in a normal and pleasant environment. This obligation is to citizens in general and to the younger generation of youth who will inherit this land and society. This constitutional obligation is the responsibility vested in all the constitutional institutions of Korea, including the National Assembly of Korea, the President of Korea, the Judiciary of Korea and especially, the Constitutional Court of Korea presiding over this case.

As the Korean Constitution specifies the environmental rights as one of the fundamental constitutional rights and the Paris Accord stipulates that each government, including the Respondent Korean government, should establish and implement the greenhouse gas reduction target, the Korean National Assembly enacted the Low Carbon Act in 2010 and the President enacted and twice amended the Low Carbon Decree (2010, 2016, 2019).

However, the problems of such legislation and enforcement of the GHG Reduction Target are that the Low Carbon Act §42(1)1 (i) did not provide for any specific GHG Reduction Target, and (ii) simply gave the “Government (executive branch, i.e. President)” a

blanket delegation that the Government can set up any GHG Reduction Target arbitrarily and in any legal form, whether by executive regulation or public notice, omitting any guidelines or scope. This is like a blank check from the National Assembly to the President regarding the GHG Reduction Target. A toothless Act with the President being permitted to do anything is totally incongruous with the Korean Constitution and the constitutional jurisprudence of Korea. This is an absolute irregularity of legislation and a clear violation of Article 75 of the Korean Constitution, which stipulates the principle of nondelegation.

- Article 42 (Low Carbon Act)

(1) The Government shall set up medium and long-term targets attached to each particular phase for the following matters and seek for measures necessary for accomplishing the targets in order to cope with the global reduction of greenhouse gases actively and to promote low carbon, green growth efficiently and systematically:

1. Greenhouse gas (GHG) Reduction Target (...)

- Article 75 (Constitution)

The President can issue presidential decrees concerning matters delegated to him/her by Act with the scope specifically defined and also matters necessary to enforce Acts.

The goal of reducing greenhouse gas emissions under the Low Carbon Act must be effective in realizing the responsibility of protecting the right to life and the right to the environment for the next generation. However, the National Assembly has taken irresponsible actions against the citizens and youth generation's environmental rights by comprehensively giving the government (administrative government) a blank sheet of paper during the enactment of the Low Carbon Act in 2010 and to the present.

Such irresponsible legislation of the National Assembly regarding the GHG Reduction Target inevitably led to equally irresponsible and unchecked actions (enacting, amending and abolishing the presidential decrees) of the President in setting the GHG Reduction Target.

At first, the President, the "Government" in the Low Carbon Act §42(1)1 enacted in 2010, set its first GHG Reduction Target for the year 2020. It was stipulated as "30% reduction from the 2020 BAU" by the 2010 Low Carbon Decree, which is approximately 543 million tons.

However, the GHG emission of Korea continuously exceeded the GHG Reduction Target projection and the President of Korea did nothing to prevent such GHG emission increase. He also did nothing to prevent the failure of the 2020 GHG Reduction pathways during the period from 2010 to 2020.

In 2016, the President of Korea, without any public notice or explanation about the status of 2020 GHG Reduction Target which was valid for more than five years (2010-2016), abandoned and discarded the existing 2020 GHG reduction target by simply introducing a new GHG Reduction Target for 2030 by the amendment of the 2016 Low Carbon Decree. The new target is about the same number (536 million ton) as the abolished 2020 GHG Reduction Target (543 million ton), with only a promise to perform at a later time.

As such, a very clear and grave constitutional violation was committed through the

amendment of the 2016 Low Carbon Decree. This is a logical and inevitable result of the blanket delegation from the Low Carbon Act with the combination of the President's irresponsibility in protecting the fundamental right of the citizens in regards to the environment and the climate change. This is the constitutional failure of the National Assembly of Korea.

Now, if we focus on the actions of the President of Korea dealing with the GHG Reduction Target, then we can find the same irresponsibility and ignorance of the Executive government about their duty to reduce the Greenhouse gas and protect the fundamental rights of the citizens and younger generation.

As we have discussed above, the President of Korea, by amending the Low Carbon Decree §25(1) on May 24, 2016, arbitrarily and irresponsibly abolished the "2020 GHG Reduction Target" stipulated in the previous 2010 Low Carbon Decree §25(1). This action of the President shows the fatal unconstitutional act of betraying the constitutional right of the citizens and the duty of the State to protect the fundamental right of the citizens including their environmental right and the right to life.

If the arbitrary abolition of the 2020 Reduction Target by the amendment of the Low Carbon Decree in 2016 is regarded as constitutional and legal without any constitutional check, then the President can have an absolute free pass to do anything about GHG Reduction Target in the future. The President can revise or alter the target number and target year or abolish the current 2030 GHG Reduction Target of Korea altogether by another arbitrary revision of the Low Carbon Decree. Even the 2030 GHG Reduction Target, as amended on Dec. 31, 2019, has no solid constitutional and legal foundation as the President can simply decide to ignore the 2030 Reduction Target. This is a total anarchy of legislation and inaction. The President of Korea showed total ignorance and constitutional irresponsibility towards the fundamental right and safety of the citizens by abandoning the 2020 GHG Reduction Target.

Lastly, let us check the actual number of 2030 GHG Reduction Target (536 million tons) of the 2019 Low Carbon Decree §25(1), whether it guarantees the minimum safeguard to prevent catastrophic climate disaster or whether it is far from preventing upcoming climate disaster for the younger generation.

Although the Korean Government amended the Low Carbon Decree §25(1) on Dec. 31, 2019, the number of the 2030 GHG Reduction Target (536 million ton) in the 2019 Low Carbon Decree §25(1) is actually the same number with the 2030 GHG Reduction Target (536 million ton) in the 2016 Low Carbon Decree §25(1). Essentially, the 2019 amendment of the Low Carbon Decree did not touch or change the absolute target amount of 536 million ton, but only changed the method of describing the formula: "37 percent reduction from estimated 2030 emission (2016 Decree)" to "24.4 percent reduction from the actual 2017 emission (2019 Decree)". However, the resulting target number is the same 536 million tons. This is just window-dressing the 2030 GHG Reduction Target without any meaningful development or enhanced protection.

The problem of this 2030 GHG Reduction Target of Korea is as follows.

The 2030 GHG Reduction Target set by the 2019 Low Carbon Decree (536 million tons)

is almost the same number as the 2020 GHG Reduction Target set by the 2010 Low Carbon Decree (543 million ton). The difference is only ▼7 million tons, representing a 1.3% higher target for 2030 compared to 2020.

In the meantime, the President of Korea has made no effort to achieve 2020 GHG Reduction Target (543 million ton) during the period from 2010 to 2020. The GHG emission of Korea has actually increased from 2010 to 2020 without any control or effort from the President so that the actual amount of Korean GHG emission in 2017 has already exceeded 709 million ton (30.5 percent higher than the 2020 Target of 543 million ton) and the GHG emission of Korea in 2020 is expected to increase further to reach 783 million ton (44.2 percent higher than the 2020 Target 543 million ton).

The interpretation of the Presidential actions regarding GHG reduction is: “No more reduction for the 10 years (2020~2030), but let us buy 10 years of more time (2020→2030) and just fulfill the same number.” There was only a change of title from the original “2020 GHG Reduction Target (543 million ton)” to “2030 GHG Reduction Target (536 million ton)”. The 2016 amendment of the Low Carbon Decree is simply delaying the reduction effort by 10 years, which effectively raises the risk of rising global temperatures and the dangerous consequences of climate change. This is clearly unconstitutional abandonment of the minimum duty and responsibility of the State to protect the fundamental right of the citizens.

Additionally, and most importantly, the 2030 GHG Reduction Target of Korea set forth in the 2019 Low Carbon Decree §25(1) clearly falls short even to meet the minimum target to prevent the temperature increase to at most 2°C (well below 2°C) agreed by Korea through the Paris Accord. We can find this fact through the 2019 Report of the UN Environment Program (hereinafter “UNEP”) as follows: according to Section XVIII (18) of the UNEP 2019 Report, while the total sum of NDCs for 2030 is 56 billion tons (56 GtCO₂eq), the total target emission amount for 2030 to contain the temperature rise to at most 2°C or below is 41 billion ton. Because of this gap, according to the UNEP 2019 Report, the greenhouse gas emission target for 2030 should be lowered by 27% or more, and also Korea's greenhouse gas emission target for 2030 should be further reduced to 391 million ton, at least 27% less than the 536 million ton set forth in the 2019 Low Carbon Decree §25(1).

Table ES.1. Global total GHG emissions by 2030 under different scenarios (median and 10th to 90th percentile range), temperature implications and the resulting emissions gap

Scenario (rounded to the nearest gigaton)	Number of scenarios in set	Global total emissions in 2030 [GtCO ₂ e]	Estimated temperature outcomes			Closest corresponding IPCC SR1.5 scenario class	Emissions Gap in 2030 [GtCO ₂ e]		
			50% probability	66% probability	90% probability		Below 2.0°C	Below 1.8°C	Below 1.5°C in 2100
2005-policies	6	64 (60–68)							
Current policy	8	60 (58–64)					18 (17–23)	24 (23–29)	35 (34–39)
Unconditional NDCs	11	56 (54–60)					15 (12–18)	21 (18–24)	32 (29–35)
Conditional NDCs	12	54 (51–56)					12 (9–14)	18 (15–21)	29 (26–31)
Below 2.0°C (66% probability)	29	41 (39–46)	Peak: 1.7–1.8°C In 2100: 1.6–1.7°C	Peak: 1.9–2.0°C In 2100: 1.8–1.9°C	Peak: 2.4–2.6°C In 2100: 2.3–2.5°C	Higher-2°C pathways			
Below 1.8°C (66% probability)	43	35 (31–41)	Peak: 1.6–1.7°C In 2100: 1.3–1.6°C	Peak: 1.7–1.8°C In 2100: 1.5–1.7°C	Peak: 2.1–2.3°C In 2100: 1.9–2.2°C	Lower-2°C pathways			
Below 1.5°C in 2100 and peak below 1.7°C (both with 66% probability)	13	25 (22–31)	Peak: 1.5–1.6°C In 2100: 1.2–1.3°C	Peak: 1.6–1.7°C In 2100: 1.4–1.5°C	Peak: 2.0–2.1°C In 2100: 1.8–1.9°C	1.5°C with no or limited overshoot			

The table below shows the calculation of how Korean 2030 GHG Reduction Target exceeds the “well below 2°C Goal” of Paris Accord when we apply UNEP 2019 Report to the 2019 Low Carbon Decree §25(1) of Korea.

(Unit: Billion TonCO₂eq)

	2030 GHG Emission	Emissions Gap	Necessary Reduction Ratio	2030 GHG Reduction Target (Korea)
NDCs total	56			536 Million Tons

Below 1.5°	25	32	▼57% (32/56)	230 Million Tons
Below 2°C	41	15	▼27% (41/56)	391 Million Tons

The difference between the minimum target “Well Below 2°C” for GHG reduction required by the Paris Accord and the 2030 GHG reduction target of the 2019 Low Carbon Decree §25(1) of Korea will be further explained in detail by a separate Supplementary Complaint to be submitted at a later date.

As such, (i) the Low Carbon Act §42(1)1, (ii) the Abolition of 2020 GHG Reduction Target by the President, and (iii) the 2019 Low Carbon Decree §25(1) are all unconstitutional and are infringing on the fundamental constitutional rights of the Petitioners, the youth generation of Korea, with their ambiguity of legislation, the irresponsibility in changing and abolishing GHG Reduction Target, and the clear shortcomings of the actual reduction goals. The Petitioners, the youth generation of Korea, who want to live and thrive on this land, and to fulfill the responsibility for Korea and the world when they become adults, sincerely and eagerly request the Constitutional Court of Korea to hear their petition, not to treat their requests and pleas lightly, and to carefully review this claim and render a serious and meaningful judgment.

B. Governmental Actions to be Adjudicated

1. Low Carbon Act §42(1)1

- Article 42 (Low Carbon Act)

(1) The Government shall set up medium and long-term targets attached to each particular phase for the following matters and seek active measures necessary for accomplishing the targets in order to cope with the global reduction of greenhouse gases and to promote low carbon, green growth efficiently and systematically:

1. Greenhouse gas (GHG) Reduction Target (...)

2. “Abolishment of the 2020 GHG Reduction Target” by the President

On May 24, 2016, the President abolished the 2020 GHG Reduction Target established by the 2010 Low Carbon Decree §25(1) through the amendment of the 2016 Low Carbon Decree §25(1).

- Article 25 (2010 Low Carbon Decree, newly enacted on April 13, 2010)

(1) A target for the reduction of greenhouse gas emissions referred to in Article 42 (1)1 of the Low Carbon Act shall be to reduce total nationwide emissions of greenhouse gases in 2020 by 30 percent below the estimated greenhouse gas emissions (BAU) in 2020.

- Article 25 (2016 Low Carbon Decree, amended on May 24, 2016)

(1) A target for the reduction of greenhouse gas emissions referred to in Article 42 (1)1 of the Low Carbon Act shall be to reduce total nationwide emissions of greenhouse gases in 2030 by 37 percent below the estimated greenhouse gas emissions (BAU) in 2030.

3. 2019 Low Carbon Decree §25(1)

- Article 25 (2019 Low Carbon Decree, amended on December 31, 2019)

(1) A target for the reduction of greenhouse gas emissions referred to in Article 42 (1)1 of the Low Carbon Act shall be to reduce total nationwide emissions of greenhouse gases in 2030 by 24.4 percent of the country's total greenhouse gas emissions in 2017.

II. Argument: Unconstitutionality of Specific Laws and Decrees

A. Summary

The Paris Accord and the IPCC report warn of global warming from the cumulative emission of greenhouse gases and the resulting occurrence of abnormal weather and climate disruption. Korea is one of the fastest temperature rising countries in the world, already facing the serious damages influenced by such rapid temperature increase and climate change, including subtropicalization, i.e. the shortening of the season of spring and autumn, increase of sea temperatures and sea level, frequent droughts and floods, the increase of fine dust in the air, and the occurrence of nationwide respiratory diseases. **(The imminent and serious damages from climate change and temperature increase)**

The Constitution of Korea guarantees the right to life and health, the right to pursue happiness and the environmental right, i.e., the right to live in a normal, sustainable, and pleasant environment for the citizens in general and for the younger generation. Therefore, the government has the duty to protect these basic and fundamental rights of the citizens. Through the Paris Accord, the Korean government and other participating countries agreed to reduce greenhouse gas emissions to contain the temperature increase to at most 2°C (well below 2°C), and as such the Korean government has the duty to prevent the Parousia (The Judgment Day) of the “climate catastrophe,” which will endanger all life. **(The governmental duty to protect the environmental right and other fundamental rights)**

However, the greenhouse gas reduction target of Korea as stipulated by the Low Carbon Act and the Low Carbon Decree, is far short of the reduction target necessary to contain atmospheric temperature increase to well below 2°C as agreed by the Paris Accord. As the too passive greenhouse gas reduction target currently established by the Korean government is unable to prevent the potential catastrophe of climate disaster, the Korean government is worsening the present and future life of the younger generation and infringing their environmental rights (Article 35), the right to life and health (Article 10), the right to live in a humanly condition (Article 34), and other fundamental rights protected by the Korean Constitution. **(Infringement of the environmental right and fundamental rights of the Petitioners)**

The Korean Government should exercise the necessary and reasonable minimum efforts to fulfill its duty to protect the citizens' right to live in a healthy and pleasant environment. If a statute or governmental action by the government does not constitute the minimum efforts to protect the fundamental right of the citizens, then such governmental action should be announced as unconstitutional. This is the constitutional principle of “prohibition of undersized protection or, more simply, prohibition of underprotection” which is the jurisprudence accepted by the Korean Constitutional Court (Constitutional Court Decision No. 2018-hunma-730, December 27, 2019). The governmental actions accused in this Complaint, the Low Carbon Act §42(1)1, the 2019 Low Carbon Decree §25(1), and the abolition of the 2020 GHG Reduction Target, all constitute violations of the constitutional principle of “prohibition of underprotection”. **(The violation of the constitutional principle of**

“prohibition of underprotection”

Furthermore, the provisions of the Low Carbon Act §42(1)1 and the 2019 Low Carbon Decree §25(1), which stipulate the targets for reducing greenhouse gas emissions in Korea, have gross procedural defects. They are in violation of Article 75 of the Constitution, which prohibits blanket delegation from Act (law legislated by the National Assembly) to the lower executive regulation. This unconstitutionality of the Low Carbon Act §42(1)1 and the Low Carbon Decree §25(1) can be constitutionally corrected only by the judgment of the Constitutional Court declaring the unconstitutionality of the above provisions and ordering the National Assembly and the President to amend the Low Carbon Act and the Low Carbon Decree with scope specifically designated in accordance with the international and national standards as set forth in the Paris Accord (well below 2°C). **(The violation of the constitutional principle of “nondelegation”)**

B. Procedural Unconstitutionality – Violation of the Principle of Nondelegation

- Article 42 (Low Carbon Act enacted on January 13, 2010)
(1) The Government shall set up medium and long-term targets attached to each particular phase for the following matters and seek for measures necessary for accomplishing the targets in order to cope with the global reduction of greenhouse gases actively and to promote low carbon, green growth efficiently and systematically:
 1. Greenhouse gas (GHG) Reduction Target (...)

This Low Carbon Act §42(1)1 is (i) in violation of Article 75 of the Korean Constitution, the principle of “nondelegation or prohibition of blanket delegation” , and (ii) also in violation of Article 35 Section (2) of the Constitution. While the latter specifies that “the environmental rights shall be protected by Act”, this Low Carbon Act is clearly insufficient legislation to insure the environmental right regarding the GHG reduction.

1. The Violation of the Prohibition of Blanket Delegation Principle

Firstly, the Low Carbon Act §42(1)1, the foundational provision of Korean law regarding the setting of GHG Reduction Target, is unconstitutional in a direct and clear violation of Article 75 of the Korean Constitution.

- Article 75 (Constitution)
The President can issue presidential decrees concerning matters delegated to him/her by Act with the scope specifically defined and also matters necessary to enforce Acts.

According to Article 75 of the Constitution, the President can only enact presidential decrees concerning matters (i) explicitly delegated to the presidential decree by Act and (ii) with the scope of the subject matter specifically defined in Act. Therefore, there can be no presidential decree allowable when Act gives a blanket delegation of a legislative subject matter to the President without giving any “scope specifically defined” for the substantial contents of the presidential decree or specifically designating the “presidential decree” as the legal form of delegation. This is a well established constitutional principle of the Korean Constitutional Court, referred to as the principle of “prohibition of blanket delegation.”

The Constitutional Court explains that “the scope specifically defined” in Article 75 of

the Constitution means that “from the scope and mandate already specified in Act, anyone could predict the basic contents and kernel scope of the provision which will be stipulated in the presidential decree”. (Constitutional Court decision No. 2011-hunba-390, August 29, 2013, which declared Section 35 (1) of the Employment Insurance Act as unconstitutional)

Here, the Low Carbon Act §42(1)1, through the absolute blanket delegation provision, (i) firstly, provides the President with an extreme and unlimited discretion to enact GHG Reduction Target through whatever form the President chooses, whether it would be by presidential decree or lower ordinances, or any other form of administrative action such as public notice or just a presidential statement, and (ii) secondly, provides no scope, criteria or standard for setting up the GHG Reduction Target.

Therefore, the Petitioners hereby assert that the provisions of the Low Carbon Act §42(1)1 are clearly in violation of Article 75 of the Korean Consitution, the constitutional principle of the prohibition of blanket delegation, and therefore, there is a sufficient and solid ground for the Constitutional Court to declare that the Low Carbon Act §42(1)1 is unconstitutional and void.

Furthermore, if the provision of the Low Carbon Act §42(1)1 is unconstitutional and void in violation of Article 75 of the Constitution, then certainly the Low Carbon Decree §25(1), which was enacted and amended on the basis of the Low Carbon Act §42(1)1, must also be construed and declared as unconstitutional and void.

2. The Violation of Article 35 (2) of the Constitution (protection of the environmental rights by Act)

Secondly, if the provisions of the Low Carbon Decree §25(1) are unconstitutional and the GHG Reduction Targets established by the Low Carbon Decree §25(1) are also void, then, by corollary, the Low Carbon Act §42(1)1 does not provide any protection regarding the greenhouse gas reduction, neither in the contents of the Low Carbon Act itself nor in the contents of the (lower) Low Carbon Decree. This will also constitute a constitutional violation of Article 35(2) of the Korean Constitution, which requires the protection of the environmental rights by Act.

Article 35 (1) of the Korean Constitution stipulates that all citizens have environmental rights and then Article 35(2) elaborates that "the substance of the environmental right shall be determined by Act."

● Article 35 (Constitution)

- (1) All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.
- (2) The substance of the environmental right shall be determined by Act.

These environmental rights form the foundation for the protection of the freedom of life and body and ultimately aim to secure quality of life (Constitutional Court Decision No. 2016-hunma-45 and Constitutional Court Decision No. 2018-hunma-730). The citizens can exercise their right not to be infringed upon by the State (freedom and right from State actions) and, in certain cases, can request the State to protect and secure the right of the citizen to live in a healthy and pleasant environment (freedom and right to demand certain

State actions). As such, the environmental right has the characteristics of a comprehensive, all-around fundamental right (Constitutional Court Decision No. 2018-hunma-730).

Furthermore, according to the Constitutional Court, "when there is no law at all to protect the environmental rights or there is a law enacted but the contents of the law is significantly insufficient as to infringe the environmental rights of the citizens, then the citizens can ask the Constitutional Court to give remedy for such unconstitutional omission to legislate or insufficient level of legislative action". (Constitutional Court Decision No. 2018-hunma-730 and Constitutional Court's Decision No. 2006-hunma-711)

The Low Carbon Act §42(1)1 is an "Act" that is designated to define the content and exercise of Petitioners' environmental rights in relation to the goals of reducing greenhouse gases to stem global warming and climate change. The Low Carbon Act is based on the environmental right under the Article 35(1) of the Korean Constitution, the Paris Accord and relevant Korean laws.

Therefore, through the provisions of the Low Carbon Act §42(1)1, the legislature should have provided the contents of the Petitioners' constitutional environmental rights in relation to the greenhouse gas reduction, specifying the proper and necessary standard of Article 2 of the Paris Accord, i.e., at least the minimum target of 2°C (well below 2°C). Nevertheless, the Low Carbon Act §42(1)1 does not explicitly define greenhouse gas reduction target in itself, nor does it provide any specific criteria for greenhouse gas reduction targets to be applied by the lower regulation. This Low Carbon Act §42(1)1 has never changed since 2010 when the Low Carbon Act was first enacted, even after 2016 when the Paris Accord was signed and ratified by the Korean Government.

Therefore, the Petitioners hereby assert that the Low Carbon Act §42(1)1 is clearly an unconstitutional provision that violates Article 35(2) of the Korean Constitution, which requires the protection of environmental rights by Act. The violation is through a legislative inaction or insufficient action regarding the greenhouse gas reduction necessary to prevent devastating temperature increase and the catastrophe of adverse climate change.

3. Constitutional Remedy through the Declaration of Unconstitutionality (by the Decision of Constitutional Unconformity)

Thirdly, the unconstitutional situation of the Low Carbon Act §42(1)1 and the Low Carbon Decree §25(1) can be remedied by and through the declaration of unconstitutionality (in the form of the decision of constitutional unconformity) by the Constitutional Court, which would order the Respondent National Assembly and the President to legislatively correct the unconstitutionality of the legal form and substantial contents of the Low Carbon Act and the Low Carbon Decree within a certain period of time.

As mentioned earlier, the Respondent National Assembly enacted the Low Carbon Act §42(1)1 in 2010 in violation of the "Prohibition of Blanket Delegation Principle", giving a blank check to the President in regard to the setting up of the GHG Reduction, so that (i) the Respondent President passively set the 2020 GHG Reduction Target in the Low Carbon Act §42(1)1 of 2010, (ii) during the period from 2010 up to 2016, the Korean government has never seriously implemented the 2020 GHG Reduction Target by neglecting and overlooking the excessive increase of Korea's GHG emissions (reached 692.3 million ton in 2015) far

beyond the 2020 Reduction Target (543 million ton), and (iii) in order to avoid or conceal the “2020 GHG Reduction Target failure” situation, the President abruptly revised the Low Carbon Decree §25(1) in May of 2016 and introduced GHG Reduction Target for 10 years later, simply abandoning and abolishing the existing and never performed 2020 GHG Reduction Target without any explanation or excuse, and (iv) the President, who has been authorized with the absolute and unlimited delegation by the Low Carbon Act §42(1), can and may arbitrarily change, abandon, or abolish the 2030 GHG Reduction Target at any time, by amending the Low Carbon Decree, or even by making another 2040 GHG Reduction Target and simply throwing away the 2030 GHG Reduction Target again at anytime, now or in the future. This messy and uncontrollable situation of the law (Act) and regulation (Decree) in regard to the GHG Reduction Target of Korea is clearly a violation of the rule of law (due process of law) and can be called an absolute legal anarchy.

However, this unconstitutional situation can be clearly corrected by the Constitutional Court through the declaration of unconstitutionality (in the form of constitutional unconfirmity decision) on the Low Carbon Act §42(1) and the Low Carbon Decree §25(1), ordering the Respondent National Assembly to (i) directly incorporate the GHG Reduction Target into the Low Carbon Act itself based on the “well below 2°C” standard of the Paris Accord, or (ii) indirectly, delegate the establishment of GHG Reduction Target explicitly to the “Presidential Decree”, and explicitly specify the scope and criteria of the GHG Reduction Target in the Low Carbon Act such as “well below 2°C” target of Paris Accord. With such decision of the Constitutional Court and the following legislation by the National Assembly and the President, Korea can easily correct the unconstitutional and procedural mess in proper time, certainly clarifying the criteria for setting up the GHG Reduction Target in a more responsible and constitutional way.

C. Substantial Unconstitutionality – the Infringement of Environmental Right and Right to Life (the violation of the Prohibition of Underprotection Principle)

1. Climate Disasters in Korea and Specific Damages to Petitioners

(1) Abnormal Weather in South Korea

As mentioned earlier, continuous emissions of greenhouse gases and rising global temperature due to the atmospheric accumulation result in extremely catastrophic environmental disasters, such as extreme heat, severe drought, severe rainfall, and, in turn, the rise of sea levels caused by melting of glaciers that could endanger food supplies. This global warming also results in sudden and comprehensive climate change across the planet and in certain parts of the globe. All of this is jeopardizing the lives, health, welfare and living conditions of many citizens around the world, including Korea. These disasters are not just damages or disasters that will occur in the distant future, but are already serious damages occurring in the air, sea, land and natural environment of Korea today.

According to the official documents from the Korean government, many of the results of global climate change have already manifested itself as worsening conditions around Korea are much faster than other parts of the globe. This is in many forms, including the more rapid rise of atmosphere temperature, subtropicalization, rising sea temperatures and increasing

extreme weather conditions.

The Korean government officially reported that the effects of the temperature increase in the Korean atmosphere due to global warming are already much steeper than the average global warming. Just based on the official research by the Korea Meteorological Administration in the 2015 National Measures (Appendix 1, p.38. "The Climate Change Status on the Korean Peninsula") the effects from climate change in Korea are even more serious and worrisome.

■ Climate change on the Korean Peninsula is evident, such as rising temperatures and increasing precipitation fluctuations

- South Korea's annual average temperature increased by 1.2°C (0.41°C/10 years) over the past 30 years (1981-2020)
- North Korea's annual average temperature increase trend (0.41°C/10 years) is 1.3 times higher than South Korea's (0.36°C/10 years).

■ Rising sea temperature and sea level above the global average

- In the past 46 years (1968-2013), sea temperatures around the Korean Peninsula have risen by about 1.19°C. This is more than three times higher than the global average surface temperature increase of 0.37°C (National Fisheries Research and Development Institute 2014).
- In the past 30 years (1981-2010), the average annual sea level increase rate in the waters around Korea was 2.64mm. This is higher than the global average (2.00mm) over the same period (National Oceanographic Research Institute, 2014).

■ Increasing extreme weather phenomena and deepening regional bias

- The annual average number of heatwave days and tropical night days in the past 30 years (1981-2010)
 - Average annual heatwave days (days above 33°C) differ in local areas from 23.2 days in Daegu, 16-23 days in the inland areas of North and South Jeolla provinces, and 6.6 days in Seoul and metropolitan areas.
- Despite the trend of temperature increase, cold waves have increased in the winter months in succession over the past 10 years (from 2009 to 2010 and 2012 to 2013) and the record of updating existing extreme values has occurred consecutively and the longest snowfall in 103 years (December 2014). Data: Korea Climate Change Assessment Report 2014: Scientific evidence of climate change.

(2) Present and Concrete Damages to the Petitioners and the Citizens in General Due to the Abnormal Changes in Weather Conditions of Korea

The 2019 Masterplan (Appendix 1) announced by the Korean government reports the details of damage that the Korean citizens including Petitioners are suffering, due to the abnormal weather conditions and changes in weather conditions in Korea, as follows:

First, the average temperature in Korea has risen by 1.8°C over the past 106 years (1912-2018), much faster than the global average temperature increases of 1.1°C, since the Industrial Revolution (Appendix 1, p.7). These facts show that the crisis of temperature increase in Korea is much more serious than the average global warming crisis, that the greenhouse gas reduction efforts of Korea should be much more serious and intense than the

average and general global greenhouse gas reduction efforts, and that the greenhouse gas reduction goal in the Republic of Korea should be much more active and effective than in other countries.

Due to this change in weather conditions, Korea continues to experience strong cold weather and record heat waves, and property damage and human casualties due to heavy rains, typhoons, and heavy snow caused by the climate change. According to data released by the Korean Meteorological Administration based on the statistics from the Ministry of Public Administration and Security, the property damage and loss of life caused by the climate change in the last 10 years (from 2008 to 2017) is as follows (Appendix 1, p.8);

○ Socio-economic damage caused by abnormal weather

※ Source: Korea Meteorological Administration, the status of weather accidents and damages over the past 10 years, statistics from the Ministry of Public Administration and Security.

■ Property and loss of life due to heavy rain, typhoon, and heavy snow caused by climate change

○ For the last 10 years (2008-2017) weather disasters have caused 152 casualties and about 200,000 victims, with 10.7 trillionKRW in economic losses from property damage and restoration.

○ In particular, damage caused by typhoons and heavy rains reached 89.4 percent of the total damage, accounting for the largest portion of weather accidents.

Weather disasters over the last 10 years		Damaged by Weather Accident	
Damage	Number	Causes of Climate Disaster	Total damages (million KRW)
Death and disappearance (persons)	152	Typhoon	1,587,731
People losing homes (persons)	202,467	Heavy Rain	1,494,031
Infiltration area (million won)	35,356	Heavy Snow Fall	226,236
Property damage (million won)	3,486,432	Strong Winds/Storms	81,712
Recovering cost (million won)	7,781,259	Earthquake	96,423

In addition, forest and ecosystem damage caused by climate change is increasing the risk of living habitats due to the increase in large forest fires and landslides. And the area of forest damage increased from 336 cases and 1,368 ha in the 1990s (1990-1999) to 3,746 cases and 5,318 ha in the 2010s (2010~2018). Australia's recent massive wildfires, which began in September 2019 and wiped out 120,000 km² of forest, larger than the entire area of South Korea (99,373 km²), are not merely a remote disaster occurring far away, but a disaster that

can occur anytime in Korea.

The loss of biodiversity can also make us more vulnerable to Covid-19, Avian Influenza, and MERS.

The 2019 Masterplan (Appendix 1, p.89) specifically reports the current situation and damages of the agricultural and fisheries sectors in Korea that are occurring due to such climate change.

■ Increasing threats to land and marine ecosystems exacerbate the environment of agricultural production environment

- Increase in the instability of primary industry damage and food supply due to the reduction of the cultivated land of major plantations, changes in catch, and increase of disease and risky lives

- Due to increased frequency of drought, continuous damage such as water drying and withering of field crops, etc.

- * Drought frequency increase: 25 times between 1904 and 2000 (0.36 times/year)→13 times between 2001 and 2008 (0.67 times/year)

■ Agricultural production vulnerability and increased risk due to aging infrastructure

- Aging agricultural repair facilities and the recent rapid increase of climate instability will reduce the ability of disaster response and pose serious risks to related industries

- * Out of 17,289 reservoirs (as of end-2017), 14,059 reservoirs (81.3%) have been built more than 50 years ago.

Health damage to the Korean citizens, including the Petitioners, caused by climate change in Korea, is also reported as follows (Appendix1, 2019 Masterplan, pp.93-94).

■ Increased health risks due to climate change such as temperature rise, heatwaves and disasters.

- IPCC 5th Report predicts that the risk of disability, extreme weather, mental health, and worker health will increase continuously until the end of this century.

- Estimated continuous increase in health impact costs related to climate change as health damage increases, such as disease and death caused by disasters, and abnormal weather conditions.

- * Prediction of health damage from heatwave

- Average annual average of 1,132 heat-related patients and 11 deaths (2011-2017) → 4,526 heat related patients and 48 deaths (2018), an increase of more than four times

- The risk of malaria is expected to increase by 10.8% to 20.8% depending on the region when the temperature rises by 1°C.

The above details of the Korean government's investigation and reports show that environmental damages caused by global warming in Korea is already not a matter of distant countries, not a matter of distant future or an abstract world, but specifically, today's reality in the lives of citizens in Korea. The climate change damages in Korea is more serious than the average global damage. These damages in Korea specifically threaten the basic rights of the Korean citizens, (including Petitioners): the right to live, the right of health and other

fundamental human rights. The fact that the Petitioners' actual and specific damages have occurred is a non-disputable fact between Petitioners and the Respondent Korean government, which has officially investigated and published all the above information about the current damages caused by the climate change specifically in Korea, and which the Petitioners trust.

2. The Prohibition of Underprotection Principle (Constitutional Court Decision No. 2018-hunma-730, December 27, 2019)

In regard to the question of how to fulfill the State's "duty to protect the basic rights of the citizens", in principle, it is within the scope of the legislator's responsibilities. But the Constitutional Court can review whether the State is adequately performing such duty to protect. In such review, "Prohibition of Underprotection Principle", i.e. whether the State has taken at least adequate and effective minimum protective measures to protect rights of the citizens, is applied as the standard of constitutional review (Constitutional Court Decision No. 2006-hunma-771).

Regarding the above principles, the Constitutional Court of Korea recently rendered a significant decision on December 27, 2019, declaring a statute as unconstitutional infringement of the environmental right of citizens in violation of the aforesaid "Prohibition of Underprotection Principle". The case was also a constitutional complaint case, challenging a statute for direct infringement of environmental right. The legal principles argued in that case are identical to this case. Therefore, the Petitioners would like to quote some findings from the aforesaid Constitutional Court decision.

○ Summary of the Judgment

When the Constitutional Court reviews whether the State has fulfilled its duty to protect the citizens' right to live in a healthy and pleasant environment, it should be based on the violation of the so-called "prohibition of underprotection principle", whether the State has taken at least appropriate and efficient minimum protection measures to protect the basic rights of the citizens. (...)

In light of Article 35(3) of the Constitution, which imposes on the State the obligation to strive for a good environment for the citizens to live in, the statute under review violates the Constitution because it infringes on the Petitioner's right to live in healthy and pleasant environment as the State underperforms the duty to protect the basic rights of the citizens by not taking appropriate and effective minimum protective measures.

○ Constitutional guarantee of the right to live in a healthy and pleasant environment

Article 35(1) of the Constitution stipulates, "All citizens have the right to live in a healthy and pleasant environment, and the State and the citizens must strive for the preservation of the environment." With the above clause, the Constitution imposes on the State the obligation to make efforts to ensure the citizens' environmental rights and to maintain a good environment for the citizens to live in a healthy and pleasant environment. This environmental right forms the foundation for the protection of the freedom of life and body and ultimately aim to secure the "quality of life" (cf. Constitutional Court Decision No. 2016-hunma-45).

In exercising the right to the environment, the citizens can exercise their right to be free from

infringement by the government of their freedom to enjoy a healthy and pleasant environment, and in certain cases, the right to demand the government to protect and provide the right to live in a healthy and pleasant environment. Therefore, the right to the environment is a comprehensive and all-around fundamental right.

Article 35(2) of the Constitution requires the content and scope of such environmental rights to be stipulated by Act legislated by the National Assembly. This is to ensure that the legislature incorporates constitutional environmental right of citizens into law so that it conforms to the purpose of the Constitution. When there is no law at all to protect the environmental rights or there is a law enacted but the contents of the law is significantly insufficient as to infringe the environmental rights of the citizens, then the citizens should be allowed to resort to seeking a remedy before the Constitutional Court. (cf. Constitutional Court Decision No. 2006-hunma-711)

○ Standard of Constitutional Review – Prohibition of Underprotection Principle

Even if the State has an obligation to protect the citizens' right to live in a healthy and pleasant environment, the answer to the question of “how should the State's obligation to protect the basic rights by the legislator or its delegated executive be realized”, in principle, falls within the scope of the responsibility of the legislator. After all, the legislator is directly granted democratic legitimacy by the citizens and who is politically responsible for her decision, according to the principles of separation of power and the principle of democracy. The Constitutional Court can review the “implementation of the protective obligation” by legislators or their delegated enforcers of the State on a limited basis.

When the Constitutional Court reviews whether the State has fulfilled its obligation to protect the citizens' rights to live in a healthy and pleasant environment, the Constitutional Court should use the criteria of the so-called “Prohibition of Underprotection Principle”, whether the State has fulfilled its appropriate, efficient and minimum duty to protect the basic rights of the citizens (cf. Constitutional Court decision No. 2006-hunma711).

In the following section, the Petitioners would like to apply the constitutional principle of the “Prohibition of Underprotection” as explained in the recent 2018-hunma730 Decision to this case, reviewing the Low Carbon Act §42(1)1, the 2019 Low Carbon Decree §25(1), and the President's action of abolishing the 2020 GHG Reduction Target, whether the Korean government has exercised its appropriate, efficient and minimum obligation to protect the citizens' environmental rights dealing with the setting up and enforcing the GHG Reduction Target of Korea.

3. Low Carbon Act §42(1)1

- Infringement of Environmental Right and Right to Life (a violation of the Prohibition of Underprotection Principle)

Contrary to the image the Korean government tries to portray itself as one of the leading countries dealing with the global climate change issues, the Korean government in reality is not exercising appropriate, efficient and minimum obligation to protect the citizens' environmental rights, due to the fatal defect of the Low Carbon Act §42(1)1. This Low Carbon Act §42(1)1 is the reflection and the basis of the irresponsibility of the legislature

(National Assembly) and executive branch (President) of Korea, and is one of the major reasons why the State of Korea is so ignorant and infringes the citizens' environmental right with respect to greenhouse gas reduction.

As mentioned earlier, if greenhouse gas emissions are not actively reduced to contain the atmosphere temperature rise to the well below 2°C level, then the next generation of youth will surely face the devastating climate disaster with the inevitable exhaustion of carbon budgets. Therefore, the constitutional institutions of Korea, especially the Korean National Assembly (legislature) and the President (executive branch), should be responsible for establishing and implementing effective legislation and enforcement to reduce greenhouse gas emissions with maximum urgency.

However, the Respondent National Assembly of Korea, by enacting the Low Carbon Act §42(1)1 in 2010, authorized the President with a blanket delegation which has no guarantee or guideline to force the President to act responsibly and appropriately to protect the right to life and the environmental right of the citizens (the 1st aspect of Underprotection), has not implemented any legislative supplementary measures or amendment of revision even after the ratification of the Paris Accord in 2016 and to the present 2020 (the 2nd aspect of Underprotection), and perhaps will not try to make any meaningful amendment of the Low Carbon Act §42(1)1 as of now or for the coming 10 or 20 years (the 3rd aspect of Underprotection). These actions and omissions infringe the fundamental right of the citizens including the environmental rights to be protected by the appropriate and meaningful GHG Reduction Target.

This is clearly a violation of the citizens' constitutional rights by the National Assembly, by underperforming and abandoning its minimum constitutional obligation to protect the citizens' basic human rights through legislative activities, and thus it falls under the finding of the Constitutional Court Decision No. 2018-hunma-730 that "the State (the Respondent National Assembly) has not taken adequate and effective minimum protection measures to protect the citizens environmental rights."

4. The Abolition of 2020 GHG Reduction Target by the President

- Infringement of the Environmental Right, Right to Life and Equal Rights Protection

(1) Abolition of the 2020 GHG Reduction Target and the Violation of the Prohibition of Underprotection Principle

In 2016, the President of Korea, without any public notice or explanation about the status or future of the 2020 GHG Reduction Target (approximately 543 million ton) as set up by the 2010 Low Carbon Decree §25(1), which was valid for more than five years (2010-2016), abruptly abandoned and discarded the existing 2020 GHG Reduction Target. The President introduced a new GHG Reduction Target for 2030 by the amendment of the 2016 Low Carbon Decree §25(1). By this abolishment of the 2020 GHG Reduction Target, the President of Korea violated the Constitution of Korea and abandoned the environmental rights of the citizens in regard to the reduction of Korean GHG emission to below 543 million tons by 2020.

As the 2020 GHG Reduction Target is approximately 543 million ton and the 2030 GHG Reduction Target is 536 million ton, both being similar, there is no reason or ground that the “2020 GHG Reduction Target” shall be regarded to have less constitutional weight or gravity to be protected for the sake of the citizen environmental right and the right to life. If the 2030 GHG Reduction Target of 536 million tons is constitutionally viable, then the 2020 GHG Reduction Target of 543 million tons should be equally viable. If the 2020 GHG Reduction Target of 543 million tons is constitutionally unimportant to be protected, then the 2030 GHG Reduction Target of 543 million shall be also unimportant and vulnerable enough to be abandoned.

On the contrary, had the “2020 Reduction Target” of Korea not been completely abandoned by the President and the original goal fully implemented (543 million ton in 2020), the “2030 Greenhouse Gas Reduction Target” of Korea could have been much more lower, effective and more aggressive than the current 2030 reduction target (536 million ton). In this manner, the President of Korea have taken away the basic rights of the citizens without performing the “minimum, adequate, appropriate and efficient” measures to protect the basic right of the citizens. This is a literal textbook example of “Underprotection”, and is clearly a violation of the Prohibition of Underprotection Principle, which was applied in the 2018-hunba0730 Decision.

Of course, this Petitioners’ argument does not claim that the 2020 greenhouse gas reduction target (543 million ton), which was abolished by the President of Korea, was sufficient to prevent climate disaster in itself. However, the Petitioners and the Korean citizens have the right and interest that at least the actual 2020 GHG emission of Korea be reduced to under 543 million ton as set by the Korean President. Now, the anticipated 2020 GHG emission is 783 million tons, 240 million tons higher (▲44.2%) than the abandoned 2020 GHG Reduction Target. The President, by throwing away 2020 GHG Reduction Target like old shoes, has discarded the 240 million tons of environmental right protection from the Korean citizens.

Below, the Petitioners would like to explain specifically how the President’s arbitrary abolition of the 2020 GHG Reduction Target without implementing the 2020 Target violates the environmental rights of the Petitioners and the Korean citizens, by referring to page 22 of the 2019 Masterplan (Appendix 1), a public document of the Korean government:

□ GHG emissions above the reduction path in 2020 road map

* In 2009, the President had set up a national greenhouse gas reduction target for 2020 at 30% below 2020 emission forecast (776.1 million ton) by establishing a 2020 road map (January 2014) to implement the emission target (543 million ton) by 2020.

○ From 2010 onwards, emissions exceeded the target emission by 2.3 to 15.4% year-on-year, and the excess amount (overdischarge rate) continued to increase.

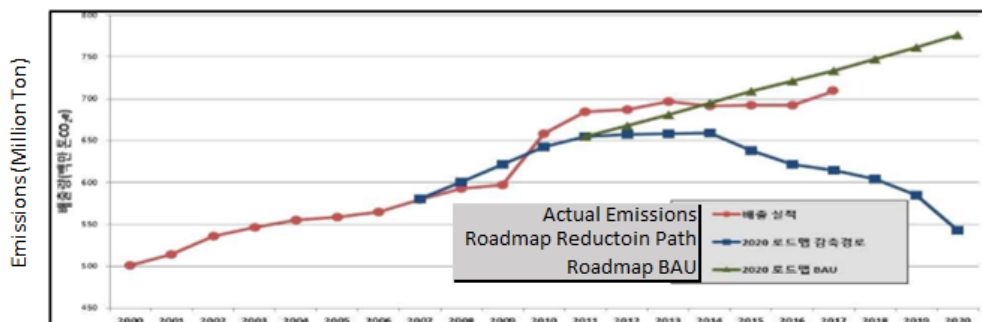
※Overdischarge rate: 2.3% (2010) → 4.5% (2012) → 4.9% (2014) → 11.5% (2016) → 15.4% (2017)

○ Over the period of 2010 to 2013, emissions is higher than the emission outlook over the reduction path

○ From 2014, the increase in emissions slowed and maintained the 2016 level (over-emission rather than reduction path) but turned to rising trend from 2017.

※697.0 million ton (2013)→691.5 million ton (2014)→692.3 million ton (2015)→692.6 million ton (2016)→709.1 million ton (2017)

2020 GHG Emissions: Actual Vs. Target



Emissions (Million Ton)	배출량 (백만 톤CO2e)	'07	'10	'12	'13	'14	'15	'16	'17
Actual Emissions	배출 실적(A)	579.5	657.4	687.1	697.0	691.5	692.3	692.6	709.1
Roadmap Reduction Path	로드맵 감축경로(B)	580.7	642.8	657.4	658.6	659.1	637.8	621.2	614.3
Difference	차이(C=A-B)	-1.2	14.6	29.8	38.4	32.4	54.5	71.4	94.8
Ratio	(비율(D=C÷B))	(-0.2%)	(2.3%)	(4.5%)	(5.8%)	(4.9%)	(8.5%)	(11.5%)	(15.4%)
Estimated Emissions	배출전망 BAU(E)	Same as Roadmap Reduction Path		668.0	680.9	694.5	709.0	720.8	733.4
Difference	차이(F=A-E)			19.1	16.1	-3.0	-16.7	-28.2	-24.3
Ratio	(비율(G=F÷E))			(2.9%)	(2.3%)	(-0.5%)	(-2.3%)	(-3.7%)	(-3.3%)

As we can see from the above government data, the government's 2020 GHG Reduction Target has never been seriously followed or implemented. If the President effectively complied with and implemented the above 2020 GHG Reduction Target, Korea's greenhouse gas emissions would have decreased to 543 million ton in 2020, and if the graph path of above was extended to 2030, the greenhouse gas emissions in 2030 could have been reduced much more to well below 400 million ton or even 300 million ton.

Because the Korean government has not implemented its 2020 reduction target, greenhouse gas emissions of Korea have already exceeded 700 million tons as of 2017, far exceeding the amount of 2020 target path. And the 2030 GHG Reduction Target (543 million ton) by the amendment of the 2016 Low Carbon Decree §25(1) was just a postponement of

the original 2020 GHG Reduction Target (536 million ton) for ten more years (from 2020 to 2030), loosening the State's duty and liberating the State's burden of underperforming the 2020 target.

As such, the President of Korea wasted and vaporized 10 years (2020-2030) and the citizens of Korea have lost 10 years of invaluable time. That time could have been used to reduce GHG emissions and preserve the remaining carbon budget to decrease the risk of the climate disaster. The serious problem is that losing 10 years in this way should not be considered a ten-year extension of time but a fatal loss of opportunity for the citizens and especially the younger generation in urgently coping with the risk of the impending environmental disaster.

In sum, the President's arbitrary act of abolishing the 2020 GHG Reduction Target constitutes an exercise of unconstitutional power in violation of the basic rights of the citizens, as the government underperformed its obligation to protect the citizens' basic rights without any minimum protection measures. The President's action is clearly an unconstitutional infringement of the environmental right in violation of the Prohibition of Underprotection Principle.

(2) Abolition of the 2020 GHG Reduction Target and the Violation of Equal Rights Protection

This decade-long delay in the greenhouse gas reduction goal to limit global and Korean temperature increases due to cumulative greenhouse gas emissions - a decade of retreat - will result in an "irrecoverable damage" that will cause the next generation to miss the golden time to act on greenhouse gas reduction.

With a limited "carbon budget", if the current generation delays greenhouse gas reduction and continues to exhaust the remaining carbon budget, all the technical, financial and social burdens and challenges of preventing climate disaster will be disproportionately transferred to the next generation. And the economic, physical, and social burdens of the next generation (after they grow up to manage the State) will significantly increase. The irresponsibility and the ignorance of the current generation, which was shown through the abandonment of 2020 GHG Reduction Target, will ultimately make it impossible for the next generation to succeed in preventing the climate catastrophe.

It is clear that the next generation will suffer disproportionately if the current generation continues to emit an irresponsibly ever higher amount of carbon dioxide into the atmosphere without doing its fair share of preventing dangerous climate change, such as this abolition of the greenhouse gas reduction target for 2020 by the President of Korea.

● Article 11 (Constitution)

(1) All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.

Eventually, this relates to the issue of the "generational equality" of damage from the climate disasters. One is that, although climate disaster damage is current damage accumulating to the future, there is an "inequality on a scale of damage" between the adult

generation who are now in charge of the State, and the younger generation who will take charge of the society after several decades in the center of climate catastrophes, and the other is the “inequality between the sowing generation and the reaping generation” because the adult generation will continue to produce (emit) the cause (GHG) of climate disaster and the younger generation unwillingly has to bear the bitter fruit of consequences (climate disaster) which the former generation has given as a tragic present to the next generation. This “unfairness” between the generation of cause and the generation of consequences constitutes the equal rights violation of Article 11 of the Korean Constitution.

5. The Unconstitutionality of the 2030 GHG Reduction Target

- 2016 Low Carbon Decree §25(1)

- Article 25 (2019 Low Carbon Decree, amended on December 31, 2019)

(1) A target for the reduction of greenhouse gas emissions referred to in Article 42 (1) 1 of the Low Carbon Act shall be to reduce total nationwide emissions of greenhouse gases in 2030 by 24.4 percent of the country's total greenhouse gas emissions in 2017.

(1) The Threat of the Exhaustion of the Carbon Budget and the Excessive Temperature Rise

As mentioned above, at the UNFCCC 21st Conference (COP21) in Paris, France, participant governments agreed to the Paris Accord and set the minimum goal of containing the global temperature rise to at most 2°C (well below 2°C) and to strive to keep it below 1.5°C (Article 2 Clause 1 of the Paris Accord). The Korean government, a participant of the Paris Accord, also confirms the temperature rise limit on page 14 of the 2019 Masterplan (Appendix 1).

- (Target) Control the global temperature to below 2°C (well below 2°C) compared to the time before industrialization and strive to keep it within 1.5°C.
- ※ The goal of 2°C is the temperature at which humans can withstand climate change caused by greenhouse gases.

According to IPCC 5th Report, (i) humankind have budget for limited absolute amounts of greenhouse gas emission (“Carbon Budget”), (ii) greenhouse gas accumulated in the atmosphere above this absolute amount (carbon budget) will inevitably produce the catastrophe of climate disaster (“Climate Disaster”), and (iii) therefore, every nation, every generation and every constitutional institutions including the Respondent National Assembly and Respondent President of Korea must work with its utmost and genuine responsibility to reduce the GHG emission not to exhaust the remaining carbon budget (“Duty to Act”).

In accordance with COP21, the Korean government and other governments of the UNFCCC parties submitted voluntary national goals for reducing greenhouse gas emissions (NDC) by 2030. But it is reported that even if every country complies with their NDCs, the global temperature rise will not be contained within the 2°C increase, but rather exceed 3°C increase. The Respondent Korean government also acknowledges that “the atmosphere temperature will rise 2.4°C by the middle of the 21st century and 3.0°C by the latter half of the 21st century compared to the current period (1981-2010) (Annex 2 National Meseasures p39.). The point that “the atmosphere temperature will rise by at least more than 2°C (well

above 2°C) with the current NDCs including that of Korea” is also a solid and “non-disputable” fact between the Petitioners and the Respondents in this Constitutional Complaint.

According to Section XVIII (18) of the UNEP 2019 Report, while the total sum of NDCs for 2030 is 56 billion tons (56 GtCO₂eq), the total target emission amount for 2030 to contain the temperature rise at 2°C or below is 41.0 billion ton. Because of this gap, according to the UNEP 2019 Report, the greenhouse gas emission target for 2030 should be lowered by 27% or more, and also the Korea's greenhouse gas emission target for 2030 should be further reduced to 391 million ton, at least 27% less than the 536 million ton set forth by the 2019 Low Carbon Decree §25(1).

<Table: UNEP Global Emissions Gap (Unit: Billion TonCO₂eq)

	2030 GHG Emissions	Gap	Necessary Reduction Ratio	2030 GHG Reduction Target (Korea)
NDCs total	56			536 Million Tons
Below 1.5°	25	32	▼57% (32/56)	230 Million Tons
Below 2°C	41	15	▼27% (41/56)	391 Million Tons

*UNEP 2019 Report, Emission Gap Report, p, XVIII

Furthermore, the President simply adjusted the formula for defining the existing 2030 GHG Reduction Target in the amended 2019 Low Carbon Decree §25(1) (536 million ton). Thus, the 2030 GHG Reduction Target (536 million tons) is just delaying and prolonging the time of the reduction effort by 10 years, which is effectively raising the risk of rising global temperatures and increasing the danger of climate disaster. This is clearly unconstitutional abandonment of the minimum duty and responsibility of the State to protect the fundamental rights of the citizens and the next generation belonging to the youth.

(2) Korea's Overwhelming Temperature Rise and Korea's Underwhelming GHG Reduction Efforts

In reviewing whether the Korean government, with the 2030 GHG Reduction Target, has taken appropriate, efficient, and minimum protection measures in accordance with the “Prohibition of Underprotection Principle”, we need to note and compare the two factors (i) that the temperature increase in Korea is significantly higher and overwhelming compared to the average global temperature increase, and (ii) that the GHG Reduction Target of Korea is extremely passive and underwhelming among the global GHG reduction efforts.

Page 13 of the Korean government's 2019 Masterplan (Appendix 1) predicts changes in the domestic climate based on the Korea Meteorological Administration's 2018 Climate Change Forecast Report. It warns that "when greenhouse gas emissions are released at the current trend, the abnormal weather phenomenon will worsen by the end of the 21st century" and particularly the temperature in Korea will rise by 1.8°C to 4.7°C.” We have also learned from the Government’s 2019 Masterplan (Appendix 1, page 7), that the average temperature of Korea has risen by 1.8°C over the past 106 years (1912-2018). Therefore, as the temperature of Korea has risen by 1.8°C from 1912 to 2018 and an additional 1.8-4.7°C from

now to the end of the 21st century, the atmosphere temperature of Korea will rise by at least 3.6°C compared to the beginning of the 20th century, much higher than the threshold of the (well below) 2°C agreed on at the Paris Accord. The Korean warming is more severe and scary than the global warming. As such, the predicted climate collapse will arrive in Korea much faster than the other areas in the globe.

Now, the problem is; “With such overwhelming temperature increase, the government of Korea should be more active than other countries in reducing the greenhouse gas and in protecting the environmental rights of the citizens. Then, in practicality, is the Korean government objectively making such appropriate and responsible reduction efforts?” This is the serious question before us all.

If we look at the document and the data reported in the Korean Government's 2019 Masterplan (Appendix 1), we can see that that the objective answer to this question is “No.” The 2019 Masterplan of Korean government shows other countries’ GHG Reduction Targets in the table of “National greenhouse gas reduction goal” (page 129), which shows that Korea's greenhouse gas reduction goal is ranked at the lowest level in the world.

The effectiveness of the greenhouse gas reduction target should be judged by not only a simple figure of reduction percentage (%) or target number (ton), but also the "reference point (year)", the year to be compared. The latter reference point (year) is more important. Global greenhouse gas emissions have been growing rapidly over the last 30 to 40 years, so the earlier we put the reference year, the more we can aim to reduce the greenhouse gas emissions.

According to the table on page 129 of the 2019 Masterplan, the European Union's reduction target is at least 40% reduction from 1990 by 2030. In Korea, the greenhouse gas emission in 1990 was 292.22 million tons (using the statistics of the greenhouse gas emission trend table on the 11th page of Appendix 2, 2015 National Measures). So, if we set the target of reducing greenhouse gas emissions by at least 40 percent from 1990 based on EU standards, Korea's greenhouse gas emission target in 2030 should be 175.33 million tons. From this we can know that Korean 2030 Target is 3 times higher than the EU target.

Many European countries, such as Switzerland and Norway, have reduced their emissions by 40 to 50 percent from 1990. This is very significantly different from Korea. And even Russia aims to reduce its emissions by 25 to 30 percent from 1990. So, if we apply Russia's emissions reduction standard to Korea, Korea’s 2030 GHG Reduction Target should be 204.55 million ton (30 percent decrease) or 219.16 million ton (25 percent decrease), both of which are less than half of the current 2030 GHG Reduction Target of Korea.

Brazil, which has a lower level of economic development than Korea, aims to reduce its greenhouse gas emissions by 37% by 2025 compared to 2005. As Korea’s GHG emission was 561.8 million ton in 2005, if we apply Brazil’s formula of 37% reduction by 2025, then Korea's target reduction in 2025 would be 353.93 million ton, which is also nearly 200 million ton less than the current GHG target of 536 million ton. For this reason, in 2019 the Republic of Korea was ranked 58th place among 61 countries in terms of response to climate change. This is according to a joint assessment (“CPI”) presented by organizations that assess the level of climate change response in major countries around the world.

Why is Korea, the world's 10th largest economy, the industrial power of the 21st century that ranks fifth in the world in terms of trade volume only after the U.S., China, Germany and Japan, and the fifth largest greenhouse gas emitter among the OECD countries and seventh in the world in terms of carbon dioxide emissions, so underwhelmingly and passively responding to the climate change and failing to make genuine GHG reduction efforts?

While the “excuses of undeveloped country” can no longer be applied to Korean government, and while Korea’s local temperature increase is at a much steeper pace than the average global temperature rise, why is the Korean government sitting idly on such a passive and underwhelming greenhouse gas reduction target and continuing to retreat even by delaying the 2020 GHG Reduction Target (543 million ton) to 2030 GHG Reduction Target (536 million ton), reducing only 7 million ton over 10 years (543 million ton in 2020 minus 536 million ton in 2030)?

Through this Complaint, the Petitioners respectfully demand an honest and genuine answer from the Respondents, the National Assembly of the Republic of Korea and the President of the Republic of Korea.

In sum, unlike the outer appearance of the “2030 GHG Reduction Target,” which was set up by the 2016 Low Carbon Decree §25(1) and slightly window-dressed to the 2019 Low Carbon Decree §25(1), the “2030 GHG Reduction Target” of Korea set up by the 2019 Low Carbon Decree §25(1) actually is one of the world's lowest level of greenhouse gas reduction targets in one of the major greenhouse gas emitters. Therefore, the 2019 Low Carbon Decree §25(1) infringes the citizens’ environmental right and the right to life and health, and it also violates the Prohibition of the Underprotection Principle.

D. International Progress of Constitutional Litigation on Climate Change

1. Urgenda Judgment – Finalized by the Supreme Court of the Netherlands (Dec 20, 2019)

The Supreme Court of Netherlands has issued a final ruling on a suit against climate change by an environmental group called “Urgenda (the combination of the “Urgent” and “Agenda”)” on December 20, 2019 to confirm an internationally significant ruling which ordered the Dutch government to set and enforce a 2020 greenhouse gas reduction target.

The Urgenda ruling in the Netherlands Court ordered the administration to raise its emissions reduction goal to 25% by 2020. The District Court ruling cited the State’s “duty of care” as the legal basis for its decision that the Netherlands government acted unlawfully in not pursuing a more ambitious emission reduction goal, whereas the Court of Appeals cited Article 2 (right to life) and Article 8 (private life, family life, home, and correspondence) of the European Convention on Human Right (ECHR) as the legal basis for upholding the District Court judgment. The function of the ECHR in this case is akin to that of a constitution; therefore, one could say that the ruling of the Court of Appeals in Urgenda case is similar to that of a constitutional challenge in the context of Korea.

Once the final judgment was rendered from the Dutch Supreme Court, Urgenda ruling has gotten worldwide attention and was regarded as the first successful constitutional

litigation on the climate change issue in the world. The Urgenda ruling, obtained by the Petitioners, is largely a good reference to the comprehensive issues of constitutional climate change litigation, as a “legal interpretation of the climate change science” and answering diligently many common constitutional questions including the issue of each country's joint responsibility for climate change. As a reference to this Complaint, the Petitioners submit the final decision of Urgenda case and its Korean translation for your Honor’s reference.

2. A German Case Filed before the Federal Constitutional Court of Germany in February 2020

A similar constitutional petition was recently filed to the Federal Constitutional Court of Germany in the middle of February 2020, just one month before the filing of this Complaint in Korea. Interestingly, just several months after the Urgenda ruling by the Netherlands Supreme Court in December 2019, two constitutional lawsuits on climate change have been filed simultaneously in different quarters of the globe. One case was filed before the Federal Constitutional Court of Germany, which is regarded as the most active and leading Constitutional court in Europe Continent, and the other case was filed before the Constitutional Court of Korea, which is also regarded as the most active and leading Constitutional court in Asia Continent. This coincidence reflects the urgent need to respond to the climate change and also the strong expectation toward the constitution and to the constitutional court who may and can be the most worthy safeguard to protect and ensure the fundamental rights of the citizens living in the new era of serious and fearful apocalyptic climate crisis.

In particular, it seems important that the case before the Korean Constitutional Court and the case before the German Constitutional Court both focus on the same or similar constitutional principles. While the Korean Constitutional Court recently rendered a significant decision of constitutional unconfirmity on the ground of the violation of the prohibition of the underprotection principle applied to a statute infringing the environmental right, the German constitutional complaint also focuses on the environmental protection with the German constitution's "Untermaßverbots" principle, which is the same word for the “과소보호금지원칙 (prohibition of underprotection principle)” which also applies to the Korean constitutional case. In this regard, the Petitioners would like to obtain the relevant documents from German constitutional litigation, and report it to the court for your Honor’s reference.

III. Standing - The Legality of this Complaint (Summary Translation)

A. Subject Matter of the Constitutional Complaint

Article 68 of the Constitutional Court Act stipulates "exercise or non-exercise of public power" shall be the subject of the constitutional complaint. Exercise of public power in this case include (i) legislative action, such as the Low Carbon Act §42(1)1, (ii) the abolition of the 2020 GHG Reduction Target by the President and (iii) the Low Carbon Decree §25(1).

Specifically, the Constitutional Court has established through precedents that legislation and administrative rules that directly and presently infringe fundamental rights without any measures of execution shall be subject to a constitutional complaint under Article 68 of the

Constitutional Court Act.

First of all, with the Low Carbon Act §42(1)1, the National Assembly has (i) delegated its entire legislative authority, (ii) failed to stipulate the contents of the environmental right through legislation, and (iii) failed to prescribe the minimum level of protection required to meet the State's obligation of protection, and thus directly and presently violates the fundamental rights of the plaintiffs including the right to life and the right to environment.

In the Low Carbon Decree §25(1), which set up the 2030 GHG Reduction Target, the President, by authorizing the amendment which stipulates the emissions reduction target insufficient to attain the minimum level of protection against climate change in violation of its constitutional obligation to protect the fundamental rights of the people, directly and presently violates the fundamental rights of the Petitioners.

Same applies to the abolition of the 2020 GHG Reduction Target, which was implemented by the President.

Therefore, the subject matter of this Complaint satisfies the requirements under Article 68 of the Constitutional Court Act.

B. Legal Relevance of Infringement of Basic Rights

1. Direct Harm

According to the Constitutional Court, when a legislative act is the subject matter of a constitutional complaint, it must (i) in principle, "directly affect the liberty, rights, obligations, or legal status without any measures of execution" (ii) or as an exception, "even when there is a measure of execution involved, such a complaint would be allowed if legal remedies are not available against such measures or it would be unnecessarily burdensome for the plaintiff."

The Low Carbon Act §42(1)1 directly affects the fundamental rights of the plaintiffs because the National Assembly has delegated the entirety of its authority without setting any boundaries on how much reduction of GHG should be achieved through administrative rules. National Assembly has therefore violated its constitutional obligation to protect the fundamental rights of the people by doing so, and such "legislative omission" directly violates the fundamental rights of the plaintiffs by depriving them of the constitutional protection they are entitled to. Also, when the unconstitutionality question involves both the legislation and the subsequent administrative rule, the Constitutional Court has consistently held both the legislation and the administrative rule shall be the subject of the constitutional review.

The abolition of the 2020 GHG Reduction Target directly violates the Petitioners' fundamental right because the failure to achieve the 2020 GHG Reduction Target and the abolition of the 2020 GHG Reduction Target exposes the Petitioners to climate risks that would have been mitigated by maintaining and achieving such target, without involving any measures of execution.

The 2030 GHG Reduction Target directly violates the Petitioners' fundamental right because the emission of 2030 GHG under the 2030 GHG Reduction Target would result in

disastrous level of climate change which will cause significant violations of the Petitioners' right to life, health and environment. Therefore, the Presidential Decree setting the 2030 GHG Reduction Target directly violates the fundamental rights without any measures of execution.

Furthermore, the Petitioners cannot practically dispute the individual measures of execution for the legislation and the Presidential Decree – which would include various administrative decisions and dispositions related to emissions trading system, emissions allowance allocation, emissions target management, etc. Therefore, the Petitioners have no available legal remedy for the execution measures and should be allowed to dispute the legislation and the administrative rule itself.

2. Present Harm

The Constitutional Court requires (i) in principle, the harm to constitutional rights be present, and (ii) as an exception, even when the harm is expected in the future, if it is certain that such harm would occur, constitutional complaint would be allowed under future harm.

The harm argued in this case is present because the Petitioners are “currently” deprived of the protection of their fundamental rights under the current laws and regulations that do not provide sufficient reduction of greenhouse gases.

Further, it is certain that disastrous level of climate change will occur if the GHG emissions are allowed in accordance with the current reduction targets. Therefore, this Constitutional Complaint should be allowed on the certainty of “future harms” as well.

3. Subjective Relevance

The Constitutional Court requires that the Petitioners be the counterparty of the disputed “exercise of public power.” The Petitioners of this case are the direct counterparty of the disputed laws and regulations as 2030 GHG reduction target is directly relevant to the Petitioners' right to life, health and environment, which would be violated by the harms of climate change.

C. Exhaustion of Remedy

The Constitutional Court has consistently held that a constitutional complaint against legislation or rule based on direct harm is permitted as the relevant procedural laws do not allow any remedy in the Court to dispute such harm.

Therefore, the Petitioners have satisfied the exhaustion of remedy requirement for this Claim.

D. Statute of Limitation

Article 69 of the Constitutional Court Act requires that the complaint be filed within 90 days from the day the Petitioner became aware of the violation, and within 1 year from the occurrence of such violation.

For the 2030 GHG Reduction Target, the Presidential Decree was announced on 31 December 2019. Therefore, this Constitutional Complaint is filed appropriately on time.

For the abolition of 2020 GHG Reduction Target in 2016, and the legislation of 2010, questions may be raised on whether this Constitutional Complaint has failed to meet the time limit set by the Constitutional Court Act.

First, the Constitutional Court Act also states that such limitation shall not apply when the Petitioner has a “justifiable reason” for the failure. In this case, most of the Petitioners were at a very young age when the laws and rules went into effect. It is unfair and unjustifiable to require the Petitioners to consider the state of their constitutional rights and seek applicable remedies during this period. The Petitioners are submitting their claim to the Court as soon as they have become aware of the constitutional issue related to the laws and regulations of this case.

Secondly, for the claims based on future harms, the Constitutional Court has consistently held that “statute of limitation shall not apply” because the period only begins at the time of the harm. In this case, statute of limitation shall not apply for the claims based on the future harm of climate change.

IV. Conclusion

The Low Carbon Act §42(1)1, the Abolition of 2020 GHG Reduction Target by the President, and the 2030 GHG Reduction Target set up by the 2019 Low Carbon Decree §25(1) infringes Petitioners’ constitutional right to life, health and environment. They are substantially unconstitutional as they violate the prohibition of the underprotection principle and procedurally unconstitutional as they violate the prohibition of the blanket delegation principle.

Therefore, Petitioners respectfully request the Court to declare the said law, decree, rule and actions unconstitutional and to order the Respondents to correct the unconstitutional situation.

Exhibits

Exhibit 1	2nd Masterplan for Climate Change Response in 2019	(“2019
Masterplan”)		
Exhibit 2	2nd National Climate Change Adjustment Measures 2016	(“2016 National
Measures”)		

Reference Material

Reference 1	Netherland Supreme Court Case (Urgenda)
Reference 2	Korean Translation of Reference 1

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Submitted to the Constitutional Court of the Republic of Korea