

[Joint Commentary by the Korean NGO Coalition for the 2nd Cycle of the UPR on the Republic of Korea]

Republic of Korea Needs to Show More Commitment to Improving Human Rights

(31 October 2012, Seoul) On 25 October 2012, the Republic of Korea was reviewed under the Universal Periodic Review (UPR), which is a process to review the overall human rights situation and records of all 193 UN Member States. Unfortunately, the Government did not make a positive response to most recommendations made during the UPR session, except the withdrawal of reservation on Article 21(a) of the Convention on the Rights of the Child and taking concrete steps to ratify the Palermo Protocols. Korean civil society organizations are deeply concerned that the Government did not show its full commitment to improve human rights during the UPR session and urge the Government to work in conformity with the objective of the UPR, which is to improve the human rights situation within the country.

Sixty-seven States raised questions about the human rights situation in the Republic of Korea and made recommendations accordingly. The recommendations cover various issues including the enactment of the Anti-Discrimination Act, guaranteeing freedom of opinion and expression, preventing sexual violence and domestic violence, protecting and promoting rights of the child and juveniles, revising the birth registration system, ratifying two core international human rights treaties (ICRMW, CPED), optional protocols, and four ILO Core Conventions, withdrawing reservations, and protecting and promoting rights of migrant workers. Most of all, abolishing the death penalty, revising/repealing the National Security Act, and providing an alternative to military service for conscientious objectors were repeatedly recommended by the international society as was the case during the 1st cycle of the UPR in 2008. Rather than sincerely showing its efforts to improve the human rights situation on the ground, the Government has been consistently repeating the same replies to these recommendations.

France and Poland raised concerns on the violation of freedom of peaceful assembly and association, and excessive use of force against peaceful protesters. In response, the Police Agency said that “the assemblies and demonstrations are limited only for the purpose of the national security and maintenance of public order and as for the act of violence during assemblies and demonstrations, police force is mobilized in compliance with international human rights standards.” On the contrary to this response, in Gangjeong Village, Jeju Island, excessive use of police force against and arbitrary arrests of peaceful protesters opposing the construction of naval base are ongoing. On 30 May 2012, the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association, and on human rights defenders sent an allegation letter to the Government asking for clarification on the continuously reported human rights violations in Gangjeong Village. As of yet, the Government has not sent replies. Having said that, it is clear that the reply made by the Police Agency does not reflect what happens on the ground. The Police Agency should answer on what international human rights standards that it is following while mobilizing police forces, and the violence that peaceful protesters and Gangjeong Villagers have used to justify its excessive use of force.

The United States of America made the recommendation “to review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military”. In response, the Ministry of National Defense mentioned that “the Article 92(5) of the Military Criminal Act, which stipulates sodomy and sexual molestation acts be punished, is intended not for discrimination against homosexuality but for the public interest, that is to encourage a wholesome environment and discipline in the military society. Therefore, it is inappropriate to repeal or revise such provision at this point.” The Ministry of National Defense clearly affirmed that homosexuality brings a negative impact to the wholesome environment and public interest while arguing that the Ministry is doing its best to protect the rights of LGBTs in the military. It is a self-contradictory attitude.

The United States of America, Germany, and six other countries recommended introducing alternative services for conscientious objectors. The Ministry of National Defense replied that due to special national security circumstances of the Republic of Korea and since there is no social

consensus, limitations do exist in introducing alternative military service for conscientious objectors. In 2007, the Government said that they would introduce an alternative military service for conscientious objectors, but there have been no further updates on this matter. Currently, more than 100,000 people are already serving in public services instead of military service according to the criteria defined in the Military Service Act. The criteria include physical or mental deficiencies, level or quality of academic achievements, special family circumstances, or being skilled in a special or unusual profession. However, the alternatives to military service include four weeks of mandatory basic military training, which makes it difficult for conscientious objectors to accept. Considering the current situation, it is hard to say that conscientious objectors, who are only around 600 people per year, affect national security. The Government must immediately introduce forms of alternative service for conscientious objectors.

Eight countries including Japan and the United Kingdom recommended the Government to guarantee freedom of opinion and expression. The Korean Communications Commission (KCC) replied that the Korean Communication Standards Commission (KCSC) is an independent and non-governmental organization, and the corrective orders issued by the KCSC are mailed in the form of recommendation which does not have any legal force to service providers. However, statistics show that almost all online articles that received corrective orders by the KCSC between 2008 and 2010 were removed from the web. This shows that the KCSC's corrective orders exert a significant degree of authority over intermediaries in regulating online contents. Mr. Frank La Rue, the UN Special Rapporteur on Freedom of Opinion and Expression, also made the recommendation in his report that the KCSC should be transferred to an independent body which is free from any political, commercial, or other unwarranted influences.

The abolition of the death penalty has been repeatedly recommended by the international society to the Government and was raised again during the 2nd cycle of the UPR Working Group by 19 countries including Belgium, Slovenia, and Argentina. In response to this, the Ministry of Justice said that death penalty required a broad consensus at the national level and various aspects should be considered in a comprehensive manner, such as criminal justice, social conditions, and public opinion. This is the exact same reply given by the Government during the 1st cycle of the UPR. It is a clear example exposing the unwillingness of the Government in abolishing the death penalty.

Revising or repealing the National Security Act was also recommended by several governments. The National Security Act is a typical unjust law that threatens freedom of expression. The Government again repeated the same reply it gave during the 1st cycle of the UPR; that it affirmed the National Security Act should not be misused or interpreted arbitrarily. The Government also shared that the average number of people who are detained under the National Security Act is around 20 per year. However, the Government failed to account for a number of people who have been charged under the National Security Act. It has increased from 40 in 2008, 70 in 2009, and 151 in 2010. This proves that the Prosecutor's Office misuses the National Security Act and applies it arbitrarily. Most of all, the number of websites that were closed down under the reason of violating the National Security Act have increased four times over the last four years. There is no doubt that the National Security Act threatens freedom of expression on the Internet.

In addition to the above-mentioned recommendations, eight countries including Chile made the recommendation to adopt a comprehensive Anti-Discrimination Act that covers all discrimination criteria including sexual orientation. Four countries including Australia recommended ensuring the National Human Rights Commission is fully mandated and resourced. Also, concerns and recommendations were made on issues such as domestic violence (5 countries including Italy), marital rape (Canada, Costa Rica), sexual harassment in the workplace (Netherlands), single mothers (5 countries including Norway) and children's rights (12 countries including Germany). Most of all, 10 countries including Canada made the recommendation to review birth registration system to prevent secret adoption and child-trafficking, and to protect rights of the child regardless of their parents' legal status.

Eleven countries including Indonesia showed great concerns on the poor human rights situation of migrants and migrant workers. The Government was also recommended to ratify human rights treaties including the Palermo Protocol on the prevention of trafficking in persons especially women and children, the Convention on the Rights of Migrant Workers, the OP-CAT, the Hague

Convention on Intercountry Adoption, the Third OP on the CRC on communications, and the UN Convention on Transnational Organized Crimes. Above all, the ILO Core Convention No. 29, 105(forced labor) and No. 87, 98(right to organize) are not ratified yet while it was one of the Government's voluntary pledges and commitments in 2006 and 2008.

Korean civil society organizations deeply deplore the response of the Government during the UPR Session, as it did not show its full commitment to improve the human rights situation on the ground. The Government did not share implementation status of laws and policies, and presented statistics selectively that gives only partial information about reality of the human rights situation in the country. Since the Government is going to run for the 2013 UN Human Rights Council election, it must make more effort to promote and protect human rights in the country and improve the human rights situation by accepting recommendations made during the UPR session. Korean civil society organizations will continue its efforts to urge the Government to accept recommendations given during the UPR by following up its implementation, holding meaningful national consultations, and suggesting polices to implement recommendations.

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