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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by MINBYUN - Lawyers for a Democratic Society, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Korean NGOs response to the mission report to the Republic of Korea

Minbyun - Lawyers for a Democratic Society (“Minbyun”), a Korean NGO in special consultative status with the UN ECOSOC, welcomes the official mission to the Republic of Korea undertaken by Mr. Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (“Special Rapporteur”) in May, 2010 and the subsequent Mission Report (“the Report”) which was submitted to the 17TH of the Human Rights Council.

Minbyun concurs with his concern expressed in the Report that since the candlelight demonstrations of 2008, restrictions on individuals’ right to freedom of opinion and expression have intensified, primarily due to a rising number of prosecutions, based on laws that are often not in conformity with international standards, of individuals who express views which are not in agreement with the position of the Government. Further, Minbyun wishes to highlight a number of important facts regarding the Report and makes additional recommendations.

Defamation

The Report noted, *inter alia*, that:

- defamation is a criminal offence under the criminal code in the Republic of Korea;
- a new special provision was introduced under the Network Information
- the regulation of online content is carried out by a government agency whose independence from the influence of the President and the dominant political party is not guaranteed; and
- criminal defamation proceedings are used to persecute those who publicly express criticisms against the Government and Government officials.

The Special Rapporteur expressed his concern regarding the above issues and recommended that the Government remove defamation as an offence from the Criminal Code. Minbyun concurs with the Special Rapporteur's concerns and welcomes his recommendation.

Freedom of assembly

The Special Rapporteur drew attention to the fact that although the freedom of assembly in the Republic of Korea is guaranteed de jure in Article 21 of the Constitution, it is subject to a de facto authorization system under the Assembly and Demonstration Act. The Report noted examples of specific instances of excessive use of force by the law enforcement agencies including the candlelight demonstrations and the “Yongsan incident”. Minbyun welcomes the recommendations by the Special Rapporteur and exhorts the Korean Government to amend the provisions containing the de facto authorization system in the Assembly and Demonstration Act (specifically, Articles 5, 6, 8, 11, 12, 20, 22, 23 and 24) to ensure the right of all individuals to freedom of assembly and freedom of expression. In particular, there should not be any restrictions imposed by the Assembly and Demonstration Act on the diverse forms of peaceful expression of opinion such as press conferences, memorials, cultural festivals, and one-person demonstrations. Furthermore, all criminal prosecution and punishment meted out to human rights defenders for breach of the

Assembly and Demonstration Act must cease completely. Minbyun also expresses its opposition against the policies to increase the police armoury and the relaxation of restrictions on the use of weapons by the police in order to strengthen the police power to suppress assembly and demonstrations. As pointed out by the Special Rapporteur, it urges the Korean Government to take measures to ensure that law enforcement authorities comply with the UN Code of Conduct of Law Enforcement Officials and the basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Restrictions on freedom of opinion and expression on the basis of national security

The Special Rapporteur drew attention to the recommendations already made by the UN Human Rights Committee, by the former Special Rapporteur following his official visit to Korea in 1995, and also by NHRCK regarding the National Security Act (NSA). He urged the Korean Government to abolish this provision. He also expressed concern over the designation and prohibition of the so-called “seditious books” by the Ministry of National Defense; and the seven military judicial officers who filed a constitutional complaint regarding this prohibition and who subsequently suffered severe disciplinary action as a result.

However, the issue with NSA is not limited only to Article 7. The entire legislation suppresses freedom to express democratic ideals and conscience and even now, arrests and prosecutions continue for alleged breaches of NSA based on Article 3, 4, 6 and Article 8. Therefore, NSA must be abolished urgently in its entirety and all political prisoners must be released. Additionally, the Korean Government must retract the disciplinary action against the military judicial officers with regard to the “seditious books” incident and must compensate them for their material loss as well as for pain and suffering.

Right to freedom of opinion and expression of public officials

The Special Rapporteur expressed particular concern over the persecution of the members of the Korea Teachers and Education Workers Union (KTU). He affirmed that public school teachers are entitled, as individuals, to their right to freedom of opinion and expression outside of their official duties on matters of public interest and recommended that the Korean Government must take actions to guarantee their rights. Minbyun believes the recommendation does not go far enough but nevertheless supports the call to protect of right of public school teachers. Minbyun believes that the Special Rapporteur should also draw attention to and make additional recommendations regarding the other restrictive measures taken by the Government against the right of government employee to freedom of expression: namely, the Government’s refusal to recognize the freedom of association which is a pre-condition to freedom of expression, the disciplinary action taken against 57 union members and the dismissal of 18 union officials, including the president of KGEU, on the ground of their participation in the newspaper campaign “Public Servants to Serve the People, Not the Government” and the “Citizens’ Campaign to Restore Democracy and Revive the People”; the police raid on the offices of the KGEU; and shutting down of the website of KGEU.

Further, the Korean Government must take all steps to implement the recommendations by the Special Rapporteur to guarantee the right of government employee to freedom of expression and must cease the sanctions and disciplinary action it has imposed on the KGEU.

Independence of the media

In the Report, the heads of various broadcasting corporations were replaced by supporters of the new President Lee Myung-bak. He stressed the need for effective appointment procedures which guarantees the independence of the media, and in particular, of the heads and management of public service broadcasting corporations.

Minbyun notes that in addition to the public broadcasting corporations mentioned in the Report, the head of Moonhwa Broadcasting Corporation (“MBC”), one of the three largest public broadcasting corporations in Korea, has also been replaced by a supporter of the incumbent President, and since then, MBC has discontinued a current affairs program (“Who Plus”) which was often critical of the Government, and also attempted to suspend a program of “PD Notebook” which dealt with problems of engineering work of the Government. Minbyun believes that these incidents also merit the attention of the Special Rapporteur and would like to draw them to his notice.

NHRCK

The Special Rapporteur expressed concern over the fact that the NHRCK did not adopt decisions on the crucial cases related to the violations of the freedom of expression since the new administration took office. Furthermore, it decided to wait until the cases are first resolved in the courts, notwithstanding the fact that the NHRCK Act specially allows the Commission to present its opinion on de facto and de jure matters to the courts, including the Constitutional Court. On 1 November 2010, 2 former standing commissioners, Moon Kyung-ran, Yu Nam-young resigned as a protest against its regressive decision and lack of its independency, and subsequently 67 special counsels or advisers of the NHRCK also stepped down calling for the resignation of the Chairperson. Therefore, Minbyun urges the Korean Government to ensure the independence of NHRCK and to take a comprehensive measure on commissioner appointment process which guarantees participation of civil society, the independence of the Commissioners and expertise on human right, as the Special Rapporteur recommended. In addition, Minbyun wishes NHRCK to carry out its own duties in conformity with the Paris Principles, investigating immediately on the cases of infringement of human rights by the Government, remedy of victims, expression its concerns and decisions.

Recommendation

Minbyun urges the UN Human Rights Council to firmly demand the Korean Government to implement fully all the recommendations made by the Special Rapporteur. In addition, it calls upon the Korean Government to take all necessary measures to implement fully the recommendations made by the Special Rapporteur as befits the status and role of a Member state of the UN Human Rights Council and a member of the G20 nations, and in doing so, as emphasized above, to take fully into account the requests and recommendations made by Minbyun