

Full text of the press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, after the conclusion of his visit to the Republic of Korea

Seoul, 17 May 2010

I visited the Republic of Korea from 6 to 17 May 2010 at the invitation of the Government of the Republic of Korea and went to the cities of Seoul and Gwang-ju. Prior to this visit, I had previously visited the Republic of Korea in October 2009, where I learned that the Republic of Korea has one of the highest broadband Internet connectivity in the world.

I am grateful for the invitation extended to me by the Government of the Republic of Korea, on the basis of its standing invitation, and for the cooperation provided to me throughout my visit with a view to examine the situation of the right to freedom of opinion and expression in the country where the use of the Internet has become widespread, and assess progress in promoting and protecting the right since my predecessor visited the country fifteen years ago.

However, I would like to express my deep disappointment given the critical importance of freedom of opinion and expression in building strong democratic States that I could not meet with the President, the Prime Minister, nor a single Minister of Government. In addition, despite my requests, I was unable to meet with the Prosecutor General nor members of the National Intelligence Service, despite the fact that I came to the country on an official invitation. My disappointment is not a personal matter, but it is due to the importance of the issues that are entrusted to me by the Human Rights Council in the exercise of my mandate. While I always welcome meetings with technical experts who have substantive and detailed knowledge of the issues, I believe that it is also important for a Government to convey its political commitment to human rights and to freedom of expression by arranging meetings with individuals in decision-making positions. I am also disappointed by the fact that despite numerous requests, I was unable to meet collectively with the Commissioners of the National Human Rights Commission of Korea (NHRCK).

Nevertheless, my twelve-day visit was incredibly rich and extensive, comprising meetings with sixteen State institutions. I met the Secretary-General to the Prime Minister, Vice Minister for Foreign Affairs and Trade, Vice Minister of the Ministry of Culture, Sports and Tourism, and officials from the Ministry of Justice, Ministry of Education, Science and Technology, the Ministry of Public Administration and Security, Ministry of National Defence, and the National Police Agency. I also met with officials from the Constitutional Court, Supreme Court, the National Election Commission, Korea Film Council, Korea Communications Commission, Korea Communications Standards Commission, and members of the National Assembly. I also visited the Seoul Detention Centre to meet with individuals who have been accused of violating laws related to my mandate, and thank the Government for facilitating this visit.

During my stay in Gwang-ju, I visited the Mangwol-dong national cemetery, which constitutes a memorial for those who gave their lives for democracy in the Republic of Korea exactly thirty years ago in May 1980. I also met with officials from the National Tax Service and officials of the Gwang-ju Metropolitan City and the May 18 Foundation.

In both cities, I met with representatives of civil society, including human rights organisations, journalists and writers' associations, trade unions, academics, women's organisations, and the Korea Bar Association. I also met with individuals who are facing criminal or civil charges for what they believe constituted a legitimate exercise of their right to freedom of opinion and expression. However, in this press statement, due to space limitations, I will only mention some cases that serve as examples in highlighting my concerns on various issues. I would however before continuing like to thank the United Nations High Commissioner for Refugees for facilitating some of the logistical aspects of my mission.

The Republic of Korea has come a long way since the restoration in 1987 of a multi-party political system following decades of authoritarian and military regimes. It now plays a key economic role in the region as a member of the Organisation for Economic Cooperation and Development (OECD), and will host the G20 summit in November of this year. In addition, it plays an active role internationally including as a member of the Human Rights Council, and has ratified the majority of international human rights treaties, including those allowing for individual complaints.

The Constitution of the Republic of Korea recognises fundamental human rights, including the rights to freedom of expression and the press, and freedom of assembly and association, which is guaranteed in article 21 of the Constitution. Freedom of expression is not only important in its own right, but is also a vehicle to promote and protect other human rights, and generally to ensure justice, accountability, and transparency, fundamental to true democracy. Respect for human rights, and in particular the right to freedom of expression, is thus the measure of democracy in any country.

I am concerned that in recent years, there has been a shrinking space for freedom of expression in the Republic of Korea, primarily due to new and more restrictive interpretations and application of existing laws. For the Republic of Korea to be a leader internationally, it must not only show the world its economic and technological prowess, but also its commitment to a truly democratic model of governance with full respect for human rights.

I have been struck that many of the debates surrounding issues related to the right to freedom of opinion and expression are highly politicised. However, as I have stated throughout my mission, human rights, like justice, have no ideology. Human rights transcend political ideologies, and its respect should constitute a common aspiration for all individuals in the country.

Due to concerns among certain sectors of society regarding "unregulated" and "harmful" expression, I would like to highlight that international human rights law does recognise that the exercise of the right to freedom of expression comes with certain responsibilities, and that it can be limited under certain exceptional situations. However, any limitation must be strictly within the parameters of articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights (ICCPR). Any limitation must first be established by law, which is clear and unambiguous; second, it must be necessary for the intended purpose and must have the demonstrable effect of protecting that purpose; and third, the restriction must be proportionate to the aim it seeks to achieve.

I am fully aware of the fact that the courts in the Republic of Korea have played an important role in upholding the right to freedom of expression in cases where there have been limitations to the right. However, I would like to caution that the increasing number of prosecutions creates a chilling effect to exercise the right to freedom of expression, regardless of the outcomes of the decisions by the courts.

Freedom of expression on the Internet

As mentioned previously, the Republic of Korea has one of the highest levels of Internet connectivity in the region and the world, where more than 80 percent of households have access to fast, broadband Internet connection. I have been impressed by the level of active “Netizens” in the country and the emergence of an active and vibrant online culture, including the exchange of diverse views and opinions on online discussion forums. The Internet has thus become an indispensable tool to exercise the right to seek, receive, and impart information and ideas and to mobilize social change. However, I am concerned that in the last few years, there have been increasing criminal prosecutions and restrictions on freedom of expression on the Internet, which I will now briefly outline.

Prohibition to spread false information

Article 47 of the Framework Act on Telecommunications prohibits individuals to make a “false communication” over the Internet with the intention of harming the public interest, punishable by imprisonment of up to five years or a fine of up to fifty million won. Although this legislation had not been used for decades, in January last year, blogger Park Dae-sung, known as “Minerva”, was arrested for violating this provision after he posted online articles predicting the economic crisis and criticising the Government’s economic policy. He was accused of “posting fraudulent information on the Internet that harmed public welfare by negatively influencing South Korea’s foreign exchange markets”. Although he was found innocent, the Prosecutor’s Office has appealed this decision. The case has been put on hold until the Constitutional Court gives a ruling on the legality of this provision.

There are two concerns that I would like to raise in relation to this issue. First, terms such as “false communication” and “public interest” are not clearly defined and are thus subject to undue limitations on the exercise of the right to freedom of expression. Second, no one should be prosecuted for the mere expression of opinions, even though it may be incorrect. In this regard, the United Nations Human Rights Committee has expressed that the prohibition by law of untrue and unverified information constitutes a disproportionate restriction on the right to freedom of expression. I would also like to point out that had the press played a more active role in investigating and criticising the role of financial institutions, the impact of the global financial crisis might have been mitigated. I recommend the Government of the Republic of Korea to abolish this provision.

Arbitrary procedures for the deletion of information on the Internet

Based on the Act on Promotion of Information and Communications Network Utilisation and Information Protection (hereafter “Network Act”), any person alleging a violation of his or her privacy or reputation by information disclosed to the public through the Internet may request the Internet Service Provider (ISP) to immediately delete or temporarily block access to the information for up to thirty days.

The Korea Communications Standards Commission (KCSC), established in 2008 and considered to be an independent private body, assesses Internet content on various grounds including obscenity, defamation, threats to national security, and recommends ISPs and notice board operators to undertake correctional measures, such as deletion of postings. If the ISPs reject the recommendation by the KCSC, the KCSC can issue administrative orders to suspend the websites, and thus cases of non-compliance are rare.

I am concerned that there are no clear provisions to determine whether the information on the Internet violates another person's right or reputation, or other non-permissible grounds, and that the ISPs and the KCSC are given the discretionary power to make that decision. Moreover, the KCSC essentially operates as a censorship body, and there is a risk that information that is critical of the Government may be deleted on the grounds of privacy violation or defamation through an opaque process. According to the statistics of the KCSC, since its establishment, over 2,000 posts have been deleted on the grounds of defamation, and over 1,500 posts have been deleted for violating the National Security Act.

In addition, article 44(7) of the Network Act, which lists the types of information that can be deleted or censored on the Internet, can encompass a broad range of crimes, including the obstruction of business, which itself is problematic. This has been illustrated in the case of 24 members of a boycott campaign who posted a list of companies putting advertisements in three newspapers, which they believed were biased towards the Government. On the basis of article 44(7) of the Network Act, the KCSC ordered the deletion of 58 postings which allegedly encouraged the boycott, and some of the individuals involved were sentenced to imprisonment, or were fined.

I have also been informed that Mr. Choi Byung-sung posted articles on the Internet exposing that the cement used by certain companies contains electronic waste products with carcinogenic substances. The KCSC ordered the deletion of these articles on the ground that they defamed the cement companies, despite the fact that as a result of his articles, the National Assembly deliberated on this issue and requested a national audit to be conducted, which has resulted in improved safety standards. In this case, the public interest and the obligation of the Government to protect the health of its population should outweigh the protection of the reputation of a particular company. I am also aware that other types of online information that are in the public interest have been recommended for deletion by the KCSC.

I would like to stress that States should never delegate the responsibility to private entities on such matters. Any guidelines and the decision to determine what articles can be deleted or temporarily blocked should be made by an independent State body.

Real name identification system

The Network Act requires identity verification in order to post messages on websites with more than 100,000 visitors per day. The Public Official Election Act also stipulates that online newspaper notice boards must register users and confirm their real names before they can post messages prior to elections, to prevent the spread of false information or slander, which risks undermining the freedom of expression of political views during the election period, when public debate is essential.

In February 2004, the NHRCK adopted a decision that the real-name identification system “clearly qualifies as pre-censorship, restricts freedom of Internet-based expression rooted in anonymity, inhibits public opinion formation, and contravenes freedom of expression”.

Although the specific details of the real name identification have been changed since July 2007, I am concerned that the real name identification system has the potential to undermine individuals’ right to express opinions, particularly criticisms of the Government, as well as the right to privacy. While there are legitimate concerns regarding crimes that are perpetrated via the Internet and the responsibility of the Government to identify such persons, I recommend the Government to consider other means to identify a person and only after a crime has been committed, rather than a prior requirement, so as to minimize the infringement of human rights.

Defamation

In the Republic of Korea, defamation is a criminal offence under the Criminal Code and an “unlawful act” under the Civil Code. Although criminal prosecutions have decreased, the filing of civil defamation suits and accusations of criminal defamation exert a significant chilling effect on freedom of expression.

During my visit, many cases of defamation have been brought to my attention. This includes the case of four producers and one scriptwriter from the Munwha Broadcasting Corporation (MBC)’s investigative programme, *PD Notebook*, who reported on the alleged risk of mad cow disease associated with beef import from the United States of America and criticized Government officials who were in charge of negotiations. As a result, they were arrested and charged with defaming Government officials from the Ministry of Agriculture in 2009. Although the Central District Court acquitted all staff in January 2010, the Prosecutor’s Office has appealed, and the case is currently pending.

In another case, Mr. Park Won-soon, director of a non-governmental organisation, was sued for allegedly defaming the “nation” by stating in an interview that the National Intelligence Service (NIS) is pressuring corporations not to financially support civil society groups. This is an unprecedented case in that the “nation” itself has filed a lawsuit as a plaintiff and is claiming two hundred million won in damages.

As stated in article 19(3) of the ICCPR, the protection of the reputation of individuals is a legitimate ground for limiting the exercise of the right to freedom of expression. However, to fulfill the criteria of necessity and proportionality, there are specific conditions that need to be met.

First, the statement must be intentionally false, and must injure another person’s reputation. Secondly, public bodies and public officials of all kinds – including all individuals of the legislative, executive or judicial branches of Government or who otherwise perform public functions – should be prohibited altogether from bringing defamation actions. Public office entails public scrutiny, as part of checks and balances of any democratic system. Thirdly, States should abolish all criminal defamation laws. The threat of harsh criminal sanctions, especially imprisonment, exerts a profound chilling effect on freedom of expression, which cannot be justified particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals’ reputations. Such measures include an issuance of apology, correction or reply, or publication of any judgment which finds statements to be defamatory.

Hence, I recommend the Government to remove the crime of defamation from its Criminal Code, and to promote a culture of tolerance regarding criticism. Moreover, I would like to emphasize the principle that defamation cannot be brought by a third party or a State institution as a plaintiff.

Freedom of assembly

The right to freedom of expression includes the right to collective expression in the form of peaceful assemblies. In the Republic of Korea, this right is guaranteed in Article 21 of the Constitution, which explicitly prohibits a license system for assemblies. However, although the Assembly and Demonstrations Act stipulate that individuals should only report assemblies beforehand to the police, there is a de facto license system whereby assemblies may be banned and deemed illegal in advance for fear of traffic disruption and probable violence. I would like to highlight the June 2009 statement made by the former Chairperson of the NHRCK that “the Government claims to protect peaceful assemblies and demonstrations and only prohibits ones that may give rise to illegal and violent actions. Yet, by presuming that certain demonstrations will become violent and cracking down on them before violence occurs, the Government violates the fundamental right to freedom of assembly and demonstration.”

In addition, the use of Seoul Square and Gwang-hwa-moon Square for assemblies, including press conferences, requires approval from the Seoul City Government, and acted upon by the National Police.

I welcome the decision by the Constitutional Court that the prohibition of assemblies after sunset and before sunrise in the Assembly Act is unconstitutional. The National Assembly has thus been requested to revise this law by June 2010.

While I recognize efforts made by the National Police Agency to investigate allegations of the use of violence by riot police officials, I am concerned that investigations and prosecutions of allegations of excessive use of force is hindered by the fact that there are no visible name badges, identification numbers or any other identifiable information on the uniform of riot police. I have also been informed that the police do not wear badges, which makes it impossible to bring individuals to account. I therefore call upon the Government to ensure that all law enforcement officials must wear some form of identification that is clearly displayed during assemblies and demonstrations to prevent impunity.

Freedom of expression before elections

Article 93 of the Public Officials Election Act prohibits individuals to distribute or post photographs, documents, drawings, printed matter, “or the like”, which contains contents supporting or opposing a political party or candidate with the intention of influencing the election from 180 days before the election day to the election day. At the same time, article 58 of the Act provides that a simple statement of opinion or manifestation of an intention on the election do not constitute an election campaign and is thus allowed.

On 26 April 2010, the National Election Commission (NEC) issued guidelines entitled “Announcement on the activities of various organizations with respect to election issues”, which prohibits organizations, including non-governmental organizations (NGOs) and religious groups, from installing, posting or distributing advertisements, posters,

photographs, documents “or the like” on the main election issues. Hence, some of the activities of NGOs and religious groups have been restricted, as they are not permitted to disseminate information or hold a rally on key election issues such as the “Four Major Rivers Restoration Project” and “Free School Meals”.

I am concerned that the restrictive interpretation of the provisions of the Public Officials Election Act in the recent guidelines may limit communication on key election issues and public policies. I am also alarmed by the fact that such activities are prohibited six months ahead of elections.

National Security Act

I am very much aware of the security concerns faced by the Republic of Korea, particularly in light of the recent Cheonan incident, and believe that all States have the legitimate right and obligation to have national security laws in place to protect its population. However, any national security law that restricts the right to freedom of expression must fulfill the criteria that I have mentioned previously, including the requirement that the law must be clear and drawn narrowly. Thus, while I welcome the fact that the number of charges and prosecutions on the basis of the National Security Act has decreased, I would like to reiterate the recommendations made by my predecessor fifteen years ago, by the UN Human Rights Committee, and by the NHRCK to revise article 7 of the National Security Act, as it remains vague and can be misinterpreted.

In addition, the Human Rights Committee has found the use of the National Security Law to be in breach of the right to freedom of opinion or expression in three individual cases (Mr. Tae Hoon Park, Mr. Keun-Tae Kim, and Mr. Hak Chul Shin). However, I have been informed that the measures have not been taken to give effect to the Human Rights Committee’s Views, including two other cases where the Human Rights Committee found a violation of article 19 of the ICCPR (Mr. Jong-Kyu Sohn, Mr. Yong-Joo Kang), and the dialogue remains open in all five cases. I hope that the Government will demonstrate its commitment in upholding international human rights standards by implementing the Committee’s Views.

Although this case is not directly related to the National Security Act, I would like to draw attention to the banning of 23 books by the Minister of National Defence in the military in July 2008, as these books were considered seditious. Seven military judicial officers filed a Constitutional Complaint regarding this prohibition, and as a consequence, two were expelled from the military on the grounds that they did not adhere to internal regulations and procedures of the military. Currently, the case is pending before the administrative court, as well as the Constitutional Court. I would also like to stress that the right to seek and receive information includes the freedom to select the types of books one may read. As the NHRCK stated in its decision of September 2009, “one’s status as a human being takes precedence over one’s status as a soldier in uniform”. The banning of books is an undemocratic practice in any part of the world.

I would like to underscore that the strongest nations of the world are those that are truly democratic and protect the fundamental rights and freedoms, and therefore encourage the Republic of Korea to ensure that its national security policies go hand in hand with the respect of human rights.

Public broadcasting

There are also signs that the independence of the public broadcasting corporations and the diversity of the media are being undermined in the Republic of Korea. I would like to stress that to ensure the independence of public broadcasting corporations, there must be an effective appointment procedure which ensures that its head and management does not change from one administration to the next. I am aware that the Act on Development of Newspaper, etc., and the Broadcasting Act were proposed by the ruling party and adopted in July 2009 by the National Assembly in breach of regular deliberation procedures. I am concerned that these legislation allow conglomerates, newspaper companies and foreign capital to enter the broadcasting sector, which is contrary to the principles of diversity and plurality of the media.

National Human Rights Commission of Korea

Since the establishment of the NHRCK in 2001, it has played an active role in advocating for the promotion and protection of human rights in the Republic of Korea. I welcome the decisions of the NHRCK in finding a violation on thirteen cases related to freedom of opinion, expression and assembly between 2004 and 2009.

However, I am disappointed that since the appointment of new Commissioners in February 2010, the majority has allegedly maintained that the Commission should not adopt a decision on three key cases involving violations of the right to freedom of expression on the basis that the Commission should wait until the cases are resolved in the courts. This includes the defamation lawsuits filed against the producers of MBC's *PD Notebook*; the prohibition of assemblies and demonstrations after sunset; and the case of Mr. Park Wonsoon. However, it is my understanding that the Founding Act of the Commission stipulates that it has the power to submit its opinion to the courts even when the cases are still pending. Given the crucial role of the Commission to enhance human rights protection in the country, I hope that the Commission will play a more proactive role to adopt decisions in the future.

I also look forward to the improvement of the appointment process of the Commissioners, and note that the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights stated in its most recent report that the process of appointing Commissioners does not provide for formal consultation in the recruitment and scrutiny of candidates nor for the participation of civil society. I would also like to add that the appointment of Commissioners with human rights expertise is essential in ensuring a strong and independent NHRCK.

The right to freedom of opinion and expression of public officials

I am concerned that public officials, including Government officials and teachers of public schools, are prohibited from expressing their opinions on the basis that they should remain politically neutral. However, based on the principle of neutrality, I would like to emphasize that no one should be prohibited from expressing an opinion including public officials, especially on an individual basis and after working hours, even if they are members of trade unions.

Concluding Remarks

As I have stated throughout my mission, my objective is to always compare the current situation of the country with its past, rather than to compare the situation with other countries. International human rights standards serve as a yardstick to measure whether the country is advancing or regressing in its human rights record.

Although the Republic of Korea has achieved significant gains in human rights since 1987, I would like to express my concern that since the candlelight demonstrations, the full respect for human rights, and in particular the right to freedom of opinion and expression, has been diminishing. I hope that I can continue to engage constructively and openly with the Government of the Republic of Korea to reverse this trend, and my mandate stands ready to provide any assistance as may be required.

To conclude, I will present my full report on this mission to the United Nations Human Rights Council in June 2011, which will include a more detailed and exhaustive analysis of my preliminary findings. I therefore welcome any additional information from the Government, individuals and civil society groups even following my departure.
