

Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
1211 Geneva 10  
Switzerland

11 December 2012

**Re: Freedom of Opinion and Expression, Freedom of Peaceful Assembly and of Association in the Republic of Korea**

Dear Mr. Frank La Rue, Mr. Maina Kiai, Ms. Margaret Sekaggya,

The Korean NGOs' Association for Freedom of Expression<sup>1</sup> is sending a joint letter to you regarding situation of human rights defenders in the Republic of Korea focusing on their enjoyment of freedom of opinion and expression, freedom of peaceful assembly and of association. It is to share our grave concerns and update Special Rapporteurs on the situation, as a follow-up to the report submitted by Mr. Frank La Rue to the UN Human Rights Council in 2011.

## **1. Defamation**

The Government has taken no actions regarding the Special Rapporteur's recommendation to remove defamation as a criminal offense. The Republic of Korean government continues to apply defamation on political issues. In June 2012, the Korea Resource Corporation is planning to file a defamation suit against Professor Park Chang-geun of Kwandong University, who has been critical of the Four Major Rivers Project.

## **2. Freedom of opinion and expression on the Internet**

1) Although **Article 47(1) of the Framework Act on Telecommunications**<sup>2</sup> has been ruled unconstitutional by the Constitutional Court on 28 December 2010, backlash was followed. The Ministry of Justice and the Supreme Prosecutor's Office immediately expressed intention of proposing alternative legislation while several parliamentarians have proposed new legislations. In March 2011, the Police declared that spreading 'false' information regarding the landing of nuclear material due to the Japanese nuclear plant accident will result in penalties and filed a case against people accordingly. In November 2011, the Prosecutor's Office declared that people who spread false information on Social Network Service (SNS) or the Internet in order to oppose the KORUS FTA will be detained in principle.

2) **Regulating online contents** by intermediaries still continues. The Government has taken no actions to improve the situation and rather, it has demanded Internet Service Providers (ISPs) to

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<sup>1</sup> The Korean NGOs' Association for Freedom of Expression is a network of human rights defenders, lawyers, and academics who support freedom of opinion and expression in the Republic of Korea. As of 8 December 2012, 26 NGOs are members of this network and it has collected cases of violation of freedom of opinion and expression in the country. It also presented alternative policies to enhance enjoyment of freedom of opinion and expression in the Republic of Korea.

<sup>2</sup> Article 47(1) of the Framework Act on Telecommunications: A person who has publicly made a false communication over the telecommunications facilities and equipment for the purpose of harming the public interest shall be punished by imprisonment for not more than five years or by a fine not exceeding fifty million won.

strengthen filtering against cyber bullying since the decision by the Constitutional Court to strike down the real-name registration system on the Internet.

3) **The Korea Communications Commission(KCC) and the Korea Communications Standards Commission(KCSC)** continue to restrict freedom of expression by regulating ‘unlawful information’. In May 2011, the decision to block a twitter account whose account name is suggestive of profanity against the president (2MB18nomA) stirred up controversy.<sup>3</sup> Unfortunately, the case on the twitter account lost at the lower courts and in February 2012, the Constitutional Court also ruled that such administrative measure by the KCC and KCSC was constitutional. However, in October 2012, during the Universal Periodic Review(UPR) Working Group session, abolishing online censorship by the KCSC and transfer the functions of the KCSC into an independent commission was recommended in line with the Special Rapporteur’s recommendation.

4) **The Internet real-name registration system** under the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. was ruled unconstitutional by the Constitutional Court in August 2012. However, the real-name registration system is still effective under the Public Official Election Act(POEA). As a result, online media related to election that refuse to adopt the real-name registration system continue to be fined under this law. Also, under the reason to protect minors, all internet game users are subject to the real-name registration system.

5) While intelligence agency such as the **National Intelligence Service(NIS)** is monitoring the entire Internet network, the National Assembly and the Judicial bodies do not monitor this properly. It further intimidates freedom of opinion and expression in the cyberspace.

### 3. Freedom of opinion and expression before elections

In December 2011, the Art 93 (1) of the POEA<sup>4</sup> that has been restricting online election campaign was ruled partially unconstitutional by the Constitutional Court. As a result, the POEA was revised in February 2012 and it became possible to conduct online election campaign. In addition, the online real-name registration system was ruled unconstitutional and the National Election Committee (NEC) submitted recommendation to revise the POEA to that effect to the National Assembly. However, due to ‘concerns’ that online election campaign might become overheated, revision of the POEA, made in February 2012, authorised the NEC to request ISP to handover identity of certain online article writers.

Offline campaign for an election is also widely restricted. The POEA still restricts human rights defenders from expressing opinions on election related issues, even if they are mere repetitions of the organization’s previous stance. For example, human rights defenders against the KORUS FTA have been indicted for peacefully expressing anti-FTA agenda by peaceful gathering and collecting

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<sup>3</sup> The New York Times, *Korea Policing the Net. Twist? It’s South Korea*, 13 August 2012, [http://www.nytimes.com/2012/08/13/world/asia/critics-see-south-korea-internet-curbs-as-censorship.html?Pagewanted=all&\\_r=1&](http://www.nytimes.com/2012/08/13/world/asia/critics-see-south-korea-internet-curbs-as-censorship.html?Pagewanted=all&_r=1&)

<sup>4</sup> Article 93(1) of the Public Official Election Act: No one shall distribute, post, scatter, play or run an advertisement, letter of greeting, poster, photograph, document, drawing printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party (including the preparatory committee for formation of a political party, and the platform and policy of a political party; hereafter the same shall apply in this Article) or candidate (including a person who intends to be a candidate; hereafter the same shall apply in this Article) or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provision of this Act, from 180 days before the election day (the time when the reason for holding the election becomes final, in case of a special election) to the election day.

petitions against a candidate who supported FTA during the General Election.

#### 4. Freedom of Peaceful Assembly and Demonstration

1) The Government is not complying with the Special Rapporteur's recommendations to revise **the Assembly and Demonstration Act** and make law enforcement agencies adhere to the United Nations Code of Conduct of Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Assembly and Demonstration Act still bans peaceful assemblies with vague reasons and operate as a de facto authorization system. The police sprayed water mixed with tear gas to peaceful but unregistered human rights defenders. The police also use excessive physical power to forcibly disperse peaceful assemblies. Meanwhile, the police do not carry name tags to identify them and even if they have, they wear various protective devices which make it difficult to verify their name and identity. On 26 April 2012, the Supreme Court ruled that it is unlawful to forcibly disperse peaceful assemblies even if it is not registered. Regardless, the police continue to apply broad measures to forcefully disperse unregistered assemblies.

#### 2) Peaceful Assemblies against the KORUS FTA

On 14 November 2011, approximately 1,200 human rights defenders gathered in the Yeouido, where the National Assembly is located, in order to demonstrate against the KORUS FTA. When about 900 participants tried to occupy the streets, the police requested to disperse and warned that they would use water cannon. The police used 12,000 litres water on five occasions. In the process, Ms. Heejin PARK, a joint representative of the Korean Youth Solidarity suffered from a ruptured eardrum because the police aimed water cannon above her chest. Ms. Kangsil LEE, a co-representative of the Korea Progressive Solidarity, fell on her back due to the water pressure and had a minor concussion. She is in the process of suing the Government for compensation. Average temperature of November in the Republic of Korea is 6 degree Celsius and in November 2011, the Meteorological Administration issued cold wave warning at the time. This meant that human rights defenders had to suffer from severe cold when water cannons were used against them. The human rights defenders who suffered from excessive use of police force filed a complaint to the National Human Rights Commission of Korea (NHRCK). On 27 September 2012, the NHRCK decided that using water cannon in winter critically lowers body temperature and is a great threat to life. Therefore, it is an excessive use of equipment by law enforcement officers. The NHRCK recommended the police to establish a standard for using water cannon that takes weather into account and there should be executive orders or legislation to that effect.

#### 5. National Security Act

1) Since 2008, arbitral interpretation of the National Security Act has increased. According to the data provided by the Supreme Prosecutors Office, cases that violate the National Security Act were 46 (16 detention) in 2008 but increased to 56 (18 detention) in 2009, 97 (32 detention) in 2010, 90 (19 detention) in 2011. According to the police data, people who were arrested for violating the National Security Act has increased from 35 in 2006 to 150 in 2010 but only 60 of them were actually indicted (40% indictment rate).

	2005	2006	2007	2008	2009	2010
Arrest	33	35	39	40	70	151
Indictment	32	33	36	37	33	60
Rate (%)	97	94	92	93	47	40
Detention	12	8	12	11	15	21
Rate (%)	36	23	31	28	21	14

\*Source: Ms. Jeong-hee Lee, Member of Parliament in 2010, Data submitted by Police Authority

Of special note is the increase of the violation of the Article 7 of National Security Act which is on praise and incitement. In particular, the number of people who were charged for violating the Article 7 by making North Korean related comments on the Internet has increased from 5 in 2008 to 82 in 2010. A number of websites that were forced to shut-down as they contained 'pro-North Korean' contents has increased from 18 in 2009 to 85 in 2010, and to 178 as of October 2011. Also, the police requested to delete 80,449 online articles in 2010 and 67,269 in 2011 under the reason of pro-North tendencies. This is a huge increase from 1,793 in 2008 and 14,430 in 2009.

2) On 23 August 2011, the Seoul Central District Prosecutors' Office indicted five people for violating the Articles 3 and 9 of the National Security Act by organizing anti-State organization called "Wangjaesan." Prosecutors claimed that these people are linked to the Unit 225 of North Korea which is notorious for espionage since the early 90's, organized the subversive organization "Wangjaesan," and had plans to destroy military facilities in 2014 in order to use Incheon as a violent revolutionary foothold. The Prosecutor's Office reported these allegations before trial and as a result, the "Wangjaesan" suspects were branded as pro-North Korea leftists' subversive dissidents and suffered from losing livelihood. The National Intelligence Service summoned over 130 people as witnesses and human rights violations such as threatening and placating were happened during the investigation process. On 23 February 2012, the Seoul Central District Court pronounced not guilty to the forming of anti-State organization and currently, the appeal process is ongoing as the Prosecutor's Office appealed the case.

3) On January 11, 2012, Mr. Jung-geun PARK, a photo studio owner, was arrested for retweeting a post from a North Korean twitter account "uriminzokkiri". He also posted a satire about North Korean leaders on his twitter. On 31 January 2011, He was indicted for violating the National Security Act and was bailed on 20 February 2011. On September 2011, his photo studio was searched for over 10 hours and his computer hard disk was copied for further investigation. The search warrant said "as of July, Mr. Park has more than 2,000 twitter followers. The twitter is a SNS service that can be a powerful propaganda tool even if there are just 4 followers." However, Mr. Park is not a supporter of North Korea and is a member of the Socialist Party, which is critical to North Korea. He stated that he does not agree with North Korea's political system but he was interested in their culture while insisting that he has a right to information and freedom of expression. On 21 November 2011, Mr. Park was sentenced to 10-month imprisonment with a stay of execution of 2 year for violating the Article 7 of the National Security Act.

4) Civil societies are also oppressed through the National Security Act. Since 2011, there has been a wide ranging of searching, seizure and investigations of organizations including the Korean Progressive Federation, the Korean Teachers and Education Worker's Union, Solidarity for Peace and Reunification of Korea, and the Federation for Peaceful Reunification.

## **6. Public Officials**

Since the Special Rapporteur's report in 2011, there have been no changes to the Public Officials Regulations (Code of Conduct), which bans all criticisms against the Government policies, and the State and Local Public Officials' Act, which bans all forms of political expression. The Government continues to broadly interpret the Constitutional duty of political neutrality to limit freedom of political expression of public officials. In particular, with the Presidential election will be held on 19 December 2012, the Government bans civil servants from participating in election campaign or political party related activities, based on the State and Local Public Officials' Act and the Public Officials' Trade Union Act. In addition, based on provisions of the Political Party Act, the Political Fund

Act and the POEA that bans public officials from joining, funding and promoting political parties, public officials' trade unions are banned from participating in political activities which is crucial for promoting rights of union members.

## **7. Teachers**

On 6 May 2010, 183 teachers and 90 public officials were indicted for joining the Democratic Labour Party and paying party membership fee. This was few weeks before local election which was held in June 2010. Among 134 teachers who were working at public schools at that time and were indicted by the Prosecutors' office, the Ministry of Education expelled 50 teachers who also joined political declarations, and dismissed the rest (84 teachers). For most indictments, the Seoul Central District Court pronounced not guilty or acquittal based on lack of evidence or passing of the statute of limitation. For financially supporting a small amount to the Democratic Labour party, most were sentenced around 350,000KRW(350USD). As a result, it seemed that indictment against 273 people was improper. However in July 2011, the Prosecutor's Office indicted 1,352 teachers and 295 public officials for the same charges. This was the largest number of indictment for a single case.

## **8. Media Independence**

The president of various mass media including KBS, MBC, YTN, and The Yonhap News Agency have all been replaced by supporters of President Lee Myung-bak under his administration. As a result, Korean media's independence has deteriorated and news critical of the Government are not properly covered by media. Workers of five media went on strike from January to July 2012 calling for fair reporting and resignation of parachute appointment by the Government. As a result, 448 media workers were fired or received disciplinary measures. Despite such struggle, the "parachute" presidents have not resigned and the media's autonomy has not been restored. It was reported that regarding the upcoming presidential election, the Assemblymen from the Saenuri Party(ruling party) visited three major broadcasting companies and requested to allocate more time to broadcast ruling party.

In July 2009, amendments to the Act on the Promotion of Newspapers, etc. and Broadcasting Act were adopted and in February 2012, the Media Rep Act was adopted. These legislations, passed exclusively by members of the ruling party, allow cross ownership of newspapers and broadcasting, resulting in increased monopoly of public opinion and gave birth to "media representatives" that are controlled by large broadcasting companies.

## **9. National Human Rights Commission of Korea (NHRCK)**

On 16 July 2012, the National Assembly hearing was held for re-appointing Mr. Hyun Byeong-chul as the Chairman of the NHRCK. The hearing revealed that while Mr. Hyun served as the Chairman of the NHRCK, he endangered the autonomy of the NHRCK; frequently meeting with several insiders of the Presidential office; his way of running the NHRCK was undemocratic. Even one disabled person was dead while demonstrating for the autonomy of the NHRCK due to pneumonia. Mr. Hyun gave orders to shut down elevators and heating facilities during demonstration (other demonstrators were criminally charged). Despite opposition from the National Assembly and civil societies, President Lee Myung-bak re-appointed Mr. Hyun as the Chairman of the NHRCK.

## **10. Soldiers**

1) Since the Special Rapporteur's report in 2011, there has been no change in policy regarding

banning of certain books within the military units and barracks. The Ministry of Defense continues to designate certain books as “seditious” and blocks soldiers’ access to those materials. In addition to books, soldiers were reported to be blocked from certain smart phone applications or twitter accounts that were considered ‘critical to the Government’ or ‘pro-North Korea’. Also, soldiers who post critical comments about President Lee Myung-bak have been criminally charged. According to the data submitted by the Ministry of Defense to the National Assembly Legislation and Judiciary Committee, 50 soldiers have been criminally prosecuted with insult or defamation on SNS since 2010.

## 2) ‘Seditious’ application in the military.

On February 2012, several smart phone applications, including ‘Naneun Ggomsuda’, ‘Count Down President’s Term’, ‘Southern Headquarters of National Federation for Unification’, ‘Patriotic Front’, ‘Smart Candlelight’, were designated as seditious material and off-limit to military personnel. Currently, there are no legal conditions to limit soldiers’ freedom of expression enacted by the National Assembly. Instead, there is a regulation that specifically limits the fundamental rights of soldiers such as the freedom of expression (e.g. The Article 16(2) of the military code of conduct: restrictions on reading and carrying seditious books). Even though access to books and information is a Constitutional right that cannot be limited by legislation, it is in fact limited by provisions of an executive order, which is lower than the Constitution or legislations. The idea of seditious smart phone applications is an extension of banning seditious books.

## 3) Criminal prosecution of a captain for insulting President Lee

On December 2012, Army Captain A(aged 28) posted a critical message on his twitter about the President regarding the Government’s plan to privatize the Incheon Airport and referred the President as a rat. He also posted a message about allegations concerning the fraud and misappropriation of funds in the process of purchasing the President’s retirement home. The military Prosecutor’s Office charged Captain A with defamation about the senior officer. The case is currently pending at the Military Court.

## **11. Detainees**

On February 2012, the Constitutional Court ruled that the Art 65(1) of the Enforcement Ordinance of Administration and Treatment of Correctional Institution Inmates Act, which requires all letters sent from correctional facilities to be submitted unsealed, is unconstitutional. The Court pointed out “if letters are submitted unsealed, it would facilitate security checks by correctional officers. However in the process, correctional officers have easy access to the contents of the letters. One cannot freely express or exchange his/her opinion and emotions if he/she knows that the letters will be read by others. This will refrain detainees from expressing their opinion and emotions and this has same effects as censoring contents of the letters”

On September 2012, the Ministry of Justice announced revised proposal to the enforcement ordinance of Administration and Treatment of Correctional Institution Inmates Act in order to keep in line the Constitutional Court’s decision. However, while the proposed revision allows sealing of letters in principle, it also provides broad exceptions. Therefore, many people claim that it will actually invalidate the Constitutional Court’s decision.

## **12. Workers**

The ILO Committee on Freedom of Association and the UN Committee on Economic, Social, and Cultural Rights repeatedly recommended to either stop criminalizing obstruction of business, or applying obstruction of work charges against workers who are under strike as it breaches workers’

right to collective action. The Article 314(1) of the Criminal Code is on the obstruction of business. However, criminalising obstruction of business continues to serve to restrict workers' strike. On March 2011, the Supreme Court ruled that "strike as a collective action is not always considered as obstruction of business. Obstruction of business applies only when the strike was unexpected and causes a great confusion or monetary loss to employer's business operation to the degree where it can be said that employer's free will to continue business operation has been oppressed." This new judgment is more favorable to worker's strike. However, the criteria are still vague and the possibilities of criminalizing strikes still remain.

### **13. Youth**

Freedom of expression of youth is still in a stalemate in the Republic of Korea. Laws regulate youth's participation in election and political party activities. In April 2012, one youth had to delete his twitter post endorsing a candidate for General Election after receiving warnings from the National Election Commission. Also, due to legal limitation against youths becoming political party members, one party was required to expel its youth members. Participating in local politics is also limited. As a result, many youths are barred from becoming active subject of local self-governance.

There are also no institutional measures to include youths in school management. Most school rules exclude students from participating in its management, require permission for students' assembly and have penalties for violations.

### **14. Youth protection and contents regulation**

1) Starting from 20 November 2011, the shut-down system was implemented, which requires all online game websites to shut down accounts belong to under 16 from 0 to 6 AM. Game companies are required to register real name of users to implement this measure. These regulations limit youth's right to cultural activities and expression.

2) The Ministry of Gender Equality and Family has strengthened censorship for music under the reason to protect youths. Most of these cases are censoring lyrics related to alcohol or smoking, without any consideration of the context. After the singer Psy became famous globally, the Ministry decided to delist over 300 of his songs from the list of unwholesome media for juveniles. This shows that the listing unwholesome media for juveniles have been highly arbitrary. Since the amendment of the Article 50 of Promotion of the Motion Pictures and Video Products Act, there has been renewed censorship of music videos.

### **15. Movies**

Recently, the movie, "Self Contradiction: Zeitgeist and Participation" received "limited viewing" rate. If a movie receives limited viewing rate, the movie can only be played in special theatres and all types of promotion of the movies are banned. Currently, there is only 1 theatre (120 seats) that are allowed to show such movies and even that theatre is near bankruptcy due to promotion limitation. As a result, receiving such rate is tantamount to banning the movie. The problem with this system is that it limits adults from seeing certain non-pornographic movies and that the criteria for rating are vague. In this movie, the reason for designating limited viewing was because it contained a scene where a mannequin resembling a presidential candidate Ms. Geun-hye PARK is beheaded. That scene was considered to be "unacceptably violent." Considering that other movies contain many beheading scene but still do not receive the limited viewing rate, it suggests that such labelling was done on political motives. This shows that the limited viewing system can be used to limit political expression

in movies.

We would like to call on your continued attention to the situation of human rights defenders in the Republic of Korea, especially restrictions on freedom of opinion and expression, and freedom of peaceful assembly and of association. If you have any further questions or need a clarification, please do not hesitate to contact us at any time. We do hope this letter will contribute to your work.

Yours Sincerely,

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