

Response of the Government of the Republic of Korea on the Communication from Special Procedures

1. In regards to the communication dated 5 April 2018 by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, the government of the Republic of Korea submits its response as follows.

2. The Independent Expert expressed concern and asked for a response from the government of the Republic of Korea to the allegations of the weakening legal and institutional human rights framework, including the recent decision of the Council of South Chungcheong Province to repeal the Human Rights Ordinance on 3 April 2018, calls from some religious groups for other cities and provinces to repeal human rights ordinance and the amendment proposed to remove reference to ‘sexual orientation’ as a ground for discrimination in the National Human Rights Commission Act.

The Independent Expert particularly asked the Republic of Korea to provide additional information and comments on the impact of the decision of the Council of South Chungcheong Province to repeal the 2014 Human Rights Ordinance and on the current status of other legislative proposals at the national level, to provide information on any legislative measures or public policies to protect LGBT persons against hate speech, violence and discrimination and to provide information on measures taken to implement the recommendations made by international human rights mechanisms in this regard.

Decision of the Council of South Chungcheong Province to repeal the Human Rights Ordinance

3. The South Chungcheong Human Rights Ordinance has been the legal basis for the operation of human rights organization of the South Chungcheong Province, such as the Human Rights Center, Human Rights Commission and the Human Rights Promotion Team and for the Province’s human rights policies including human rights training programs, fact-finding on human rights situation – particularly of vulnerable persons – and human rights cultural events. In this regard, the South Chungcheong Human Rights Ordinance has contributed to the protection and promotion of human rights of its citizens, including by

helping the development of the local society's human rights culture and the prevention of human rights violation and discrimination.

In order to maintain the Human Rights Ordinance and continuity of human rights policies, the South Chungcheong Province requested that the Council reconsider its decision to repeal the South Chungcheong Human Rights Ordinance on 26 February 2018 and requested that the Supreme Court suspend the execution of the above-mentioned decision on 16 April 2018. The final decision of the Court to suspend the execution may take some time, but policies implemented on the basis of the Ordinance can be normalized if the decision to suspend the execution is upheld.

Furthermore, in order to ensure sustainability of the human rights policies, the South Chungcheong Province held consultations with the National Human Rights Commission, Metropolitan Council for local government human rights commissions and human rights organizations and discussed ways to cope with the decision to repeal the Human Rights Ordinance and to further develop human rights policies. Such consultations activated interactions between the local human rights organizations, the National Human Rights Commission and other local human rights commissions and provided opportunities to discuss ways to pursue new human rights policies and to further consolidate the foundation for human rights policies. It especially served as an opportunity to deliberate on the methodology and challenges for local governments in pursuing human rights policies, by checking whether a social consensus was formed on the contents and the enactment procedure of the Ordinance and whether human rights policies were balanced in its substance, agents and targets of the policy.

Current status of other legislative proposals at the national level

4. With regard to the draft amendment proposed by assembly members to remove the reference to 'sexual orientation' as a ground for discrimination in the National Human Rights Commission Act, the amendment was proposed in September 2017 but was neither submitted to the concerned standing committee nor did it pass through any additional legislative procedures.

Two draft amendments to the Criminal Act proposed by the assembly members to criminalize hate speech based on gender and other grounds are currently pending before the National Assembly. In addition, a bill to regulate hate speech by empowering the National Human Rights Commission of Korea to issue corrective orders was proposed on February 2018 but the proposal was withdrawn due to strong opposition from some religious groups.

There have been discussions among academics, civil societies and governmental bodies over the seriousness of hate speech and necessity for regulation. Still, social consensus was not reached concerning key issues such as the definition and scope of hate speech and the specific measures of regulation.

Legislative measures or public policies to protect LGBT persons against hate speech, violence and discrimination

5. Psychological or physical violence against others that constitutes a criminal offense under the Criminal Act is deemed a crime. Not only the use of physical force against an individual but also intentional infliction of emotional distress through the multiple and repeated use of insulting languages may constitute a crime under the Criminal Act.

Expression of hate towards a specific group alone does not constitute a criminal offense. However, if such expressions come under insult or defamation stated in the Criminal Act or the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., these may incur criminal punishment. Moreover, such motives as hatred based on sexual orientation or sexual identity result in dire impact on sentencing.

Even if the psychological or physical violence against others does not make a criminal case, victims may claim compensation for damages from the offenders in civil suit.

6. Every LGBT person who has experienced discrimination committed with no reasonable ground by state agencies, corporations, organizations or individuals can file a petition to the National Human Rights Commission of Korea pursuant to the National Human Rights Commission Act. The Commission may recommend the respondents or supervisory institutions to take disciplinary actions against those accountable for discriminatory acts, remedies or institutional improvement.

7. Based on the Rules on Broadcast Review(Rules No.123 of Korea Communications Standards Commission) in accordance with Article 33 of the Broadcast Law, the Korean Communications Standards Commission reviews expressions and statements on broadcast media that show hatred against or that caricatures, mocks or degrades sexual minorities and ensures that broadcasting business operators abide by relevant laws and regulations. Relevant provisions include those related to protection of human rights (Article 21) and gender equality (Article 30) of the Rules on Broadcast Review, which stipulates that broadcast media shall not violate human rights and that it shall not negatively or aversively describe or distort a certain gender.

Measures taken to implement the recommendations made by international human rights mechanisms

8. With a view to enacting a general anti-discrimination law, the Korean government has collected opinions from various spheres of society and conducted case studies of other countries since 2006; the anti-discrimination bill submitted by the government to the National Assembly in 2007, two anti-discrimination bills proposed by assembly members at the 18th National Assembly (2008-2012) and three other anti-discrimination bills proposed by assembly members at the 19th National Assembly (2012-2016) have all been discarded due to either the withdrawal of proposals or the expiration of sessions.

The government has devoted considerable efforts to draw a social consensus on the general anti-discrimination act. In 2013, the government set up a task force composed of legal practitioners, law professors and experts in legislation to work on the anti-discrimination act and conducted studies on foreign legislations and their jurisprudence. However, social controversy over the prohibited grounds for discrimination hindered the enactment of the general anti-discrimination act.

Notwithstanding, the government incorporated 'the improvement of anti-discrimination legislations and regulations to fulfill the right to equality' into the agenda of the Third National Action Plan for the Promotion and Protection of Human Rights. The government

will continue its research and opinion-gathering process regarding this matter.

9. On February 2015, the government developed and issued standardized sex education materials to provide systematic and inclusive sex education that matches the stages of development of students, through which the government has continued its efforts to help students build a right sense of values, sexual awareness and attitude. End.