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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Republic of Korea

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

1. The Republic of Korea has been committed to the universal periodic review, acknowledging its contribution to the promotion and protection of human rights.
2. Relevant ministries engaged in consultations under the leadership of the Ministry of Justice after the report of the Working Group on the Universal Periodic Review was adopted on 31 October 2012.
3. In the meantime, the Government had a consultation meeting with a number of human rights NGOs on 21 November. The participants expressed various opinions on the recommendations and urged the Government to accept the recommendations and review relevant policies.
4. The Recommendations were presented to the Sub-Council on National Human Rights Policy on 30 November and subsequently to the National Human Rights Policy Council for discussion on 13 December. After thorough and careful deliberation on the recommendations, the Council adopted the following position of the Government of the Republic of Korea. The opinions of the civil society were also put forward to the relevant ministries for consideration before deciding whether to support the recommendations or not.
5. While fully accepting the 42 recommendations, the Government provides explanations hereby for the recommendations of which the Government has already taken measures and for those that are difficult to accept at present for various reasons. Clarification is also made for the recommendations with factual predicates or inaccuracies. The Government assures that it will endeavor to implement the recommendations in respect of the spirit of the recommendations for better promotion and protection of human rights in the Republic of Korea.

International human rights instruments and institutional framework

6. The following recommendations enjoy the support of the Republic of Korea: **1, 8, 9, 11, 16, 17, 18, 19, 20, 45** and **46**. With regard to the **recommendation 16**, the Government wishes to note that the Republic of Korea already extended a standing invitation to all thematic special procedures of the Human Rights Council in March 2008.
7. **Recommendation 2.** The Government is currently reviewing the need for ratification and the following effects at the national level.
8. **Recommendation 3.** The Government is carefully examining the current national legislations and institutions, possible conflict between national laws and the Optional Protocol to the Convention against Torture, and the need to revise national laws and other impacts consequent to the ratification of the Optional Protocol to the Convention against Torture.
9. **Recommendation 4.** The Government is currently reviewing the need for ratification and the following effects at the national level.
10. **Recommendation 5.** A careful approach is required as the contents of the said Convention contradict the *Immigration Act* and other domestic legislations, as it guarantees free migration and protection from termination of employment for migrant workers and members of their families while providing no distinction between legal and illegal stay of the migrant worker.
11. **Recommendation 6.** Careful review is necessary since amendments to domestic legislations to punish the act of enforced disappearance and to provide for record of any person deprived of liberty are required in order to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

12. **Recommendation 7.** Some articles of the ILO Conventions are not in accordance with the national law and the situation of the country; the Government will examine measures to ratify the ILO Conventions while taking into consideration factors such as public consensus and domestic situations; in advance to the consideration of the ratification of the Convention on Domestic Workers, the current status of domestic workers should be reviewed and protective measures are required to be introduced.

13. **Recommendation 10.** The Government will consider whether the amendment to the Civil Act is necessary or not in order to withdraw the reservation to Article 16(1)(g) of CEDAW, taking social circumstances and public consensus into account ; the Government will carefully review Article 40(2) of the CRC, as it is in conflict with Article 110(4) of the Constitution and Article 534 of the *Military Court Act* which limit the right to appeal under emergency martial law. The amendments of the said laws would require public consensus and a change in the security circumstances.

14. **Recommendation 13.** All forms of acts which fall under 'torture' as defined by Article 1 of the Convention against Torture are criminalized and can be punished according to the *Criminal Act*. The Government will carefully consider the need to insert a distinct definition of torture in the *Criminal Act*.

15. **Recommendation 14.** The independence of the National Human Rights Commission is ensured by statute and a sufficient budget is allocated for its management. The Government will continue efforts to strengthen the independence of the National Human Rights Commission.

16. **Recommendation 15.** The Government will positively consider the recommendation.

17. **Recommendation 29.** According to the *Act on the Registration, Etc. of Family Relationship*, when the father or the mother cannot register the birth of a child, relatives living with the child or the doctor or midwife involved in his/her delivery is required to do so, and a fine is imposed when the registration is delayed; as such, the government is making efforts to guarantee accurate birth registration. The birth registration of foreign children born in the Republic of Korea can be made through their respective countries' embassies in the Republic of Korea. In cases where the parents of children born in the Republic of Korea cannot make registrations to their country due to reasons such as refugee recognition, permission for stay including alien registration is granted to the children if the biological relationship with their parents can be confirmed by birth certificates issued by the hospital and other institutions.

18. **Recommendation 35.** The question of the abolishment or the execution of the death penalty is a matter of fundamental significance in terms of the criminal jurisdiction of a state. Accordingly, the issue of abolishing the death penalty will remain under careful review through comprehensive evaluation of public opinion and legal perception, social realities, as well as the function of the death penalty in criminal policy.

Equality and non-discrimination

19. The following recommendations enjoy the support of the Republic of Korea: **12, 21, 22, 23, 25, 26, 27, 30, 31, 32, and 33.**

20. **Recommendation 28** enjoys the partial support of the Government. The Government accepts the recommendations to combat discrimination against single mothers and their children (Brazil) and to conduct national awareness campaigns to eradicate the discrimination against single mothers, in law and in practice (Mexico). The Government

wishes to note that the Ministry of Gender Equality and Family is currently carrying out support and counseling work for single mothers and their children.

21. **Recommendation 24.** The Government will consider the inclusion of sexual orientation in the research and review process for the enactment of the *Anti-discrimination Act*.

22. **Recommendation 34.** Article 92(5) of the *Military Criminal Act* has the purpose of maintaining discipline within the military by punishing specific acts of indecent conduct; it is not a regulation for the punishment of sexual orientation itself.

Right to life, liberty and security of the person

23. The following recommendations enjoy the support of the Republic of Korea: **37, 38, 39, 40, 41, 42 and 43.**

24. **Recommendation 44.** The Government will carry out a comprehensive review through consultation among the related ministries, taking into account national finance and equity with victims of other types of damages.

Right to privacy, marriage and family life

25. **Recommendation 47** enjoys the support of the Republic of Korea.

Freedom of religion or belief, expression, association and peaceful assembly, and the right to participate in public and political life

26. The following recommendations enjoy the support of the Republic of Korea: **50 and 54.**

27. **Recommendation 36.** It is envisaged unnecessary to establish another mechanism of monitoring the use of force by the police, as it is sufficiently and effectively carried out through the National Assembly, courts, prosecutors, National Human Rights Commission, Police Commission, civil society organizations, media, etc.

28. **Recommendation 51.** The Republic of Korea is providing maximum guarantee for the freedom of expression in accordance with Article 21 of the Constitution (freedom of press, assembly, association, etc.).

29. **Recommendation 52.** The Korea Communications Standards Commission is an independent private organization established by a statute that carries out fair and objective deliberation, and its members are nominated by the Speaker of the National Assembly, the relevant Standing Committee of the National Assembly and the President, by which the independence of the composition of the Commission is protected. In a constitutional petition case regarding the function of the Korean Communications Standards Commission, the Constitutional Court ruled on 23 February 2012 that the related provisions do not violate the principle of clarity and the principle of proportionality.

30. **Recommendation 53.** The introduction of alternative service is difficult when taking into account factors such as the special security situation of the Republic of Korea, the procurement of military resources under a conscription system, the equal burden sharing of military duties, and the lack of public consensus. Nevertheless, the Government will examine the issue while taking into consideration the future changes in the security situation and formation of public consensus.

31. **Recommendations 55, 56 and 57.** Taking into consideration the unique security concern of the Republic of Korea in terms of the division of the Korean Peninsula, the *National Security Act* is necessary for the state's existence and security. The *Act* is strictly interpreted and applied in consistent compliance with the guidelines for interpretation of the *Act* presented in the rulings of the Constitutional Court and the Supreme Court, thereby thoroughly preventing possibility for abuse. The application of the *Act* is limited only to cases of clear threat of actual harm to the existence and security of the State or the democratic fundamental order so that the freedom of expression and the right to assembly and association are guaranteed to the fullest extent possible. Such cases include praise and support for an anti-government organization's principles and claims, thereby knowingly endangering the existence and security of the state or the democratic fundamental order.

32. **Recommendation 58.** The *Security Surveillance System* does not violate the freedom of conscience as it takes the standard for decision-making to be the possible threat of harm to the democratic fundamental order caused by the same crime, not the subject's conscience. The Ministry of Justice ensures that the security surveillance measure is not abused through objective and substantial review of the risk of recidivism, which is a requirement for the security surveillance measure; thorough investigation using methods such as face-to-face and phone interview of subjects, aside from the examination of records made by officials of the Ministry of Justice; and diversifying of members of the Security Surveillance Disposition Review Board, etc.

Right to work and to just and favorable conditions of work

33. **Recommendation 48** enjoys the support of the Government.

34. **Recommendation 49.** With regard to criminalizing sexual harassment in the workplace, careful review is necessary for the amendment of relevant laws.

Right to social security and to an adequate standard of living

35. The following recommendations enjoy the support of the Republic of Korea: **59, 60,** and **61.**

Right to health

36. **Recommendation 62** enjoys the support of the Republic of Korea.

Right to education

37. **Recommendation 63** enjoys the support of the Republic of Korea.

Protection of migrants, refugees and asylum-seekers

38. The following recommendations enjoy the support of the Republic of Korea: **66, 67,** and **68.**

39. **Recommendation 64.** The Government continues to review the needs for policy measures and relationship with the relevant laws following the enforcement of the Refugee Act in July 2013.

40. **Recommendation 65.** The Government is striving for continued systematic improvements to ease restrictions on the mobility of migrant workers within a reasonable scope.

41. **Recommendation 69.** Illegal migrants are subject to administrative measures including deportation for their violation of relevant legislations. However, due process is observed so that the human rights of migrants will not be unfairly violated, and efforts are also made to address grievances including the settlement of overdue wages.

Right to development and environmental issues

42. **Recommendation 70** enjoys the support of the Republic of Korea.

Conclusion

43. The Government of the Republic of Korea appreciates the vibrant and valuable interaction with the member states at the Universal Periodic Review Working Group session, and the recommendations provided will serve as guidance for the respect of human dignity and fundamental rights and freedoms. The Government will incorporate the recommendations that enjoy the support into the Second National Action Plan for the Promotion and Protection of Human Rights, and the recommendations that do not enjoy our support at the moment will be also considered for enhancement of human rights protection in the future.

44. In the first half of 2013, the National Human Rights Policy Council will convene to modify the Second National Action Plan for the Promotion and Protection of Human Rights in order to reflect and incorporate the UPR recommendations.

45. Additionally, as done for the implementation of recommendations provided at the first cycle of the UPR, a working group for the follow-up of the UPR will be established within the government and will annually report to the National Human Rights Policy Council. The Government is considering ways to consult with the civil society in the follow-up process.
