



ASIAN LEGAL RESOURCE CENTRE

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Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review on human rights in the Republic of Korea

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1. The Asian Legal Resource Centre (ALRC), an NGO with general consultative ECOSOC status, wishes to make a brief, non-exhaustive submission concerning one recent and crucial human rights issue that has arisen in the days prior to the deadline for submissions to the Universal Periodic Review by the members of civil society. While there are many issues that require the attention of the Human Rights Council and the international community concerning the state of human rights in the Republic of Korea, however, the ALRC wishes here to concentrate on one key issue - the growing threats to the independence of the National Human Rights Commission of Korea (NHRCK) – as this issue must be taken up without fail during the review process if such threats materialise in the coming weeks.
2. A recommendation made by the Chairperson of the Presidential Transition Committee in mid-January to bring the National Human Rights Commission of Korea (NHRCK) under the immediate control of the President currently threatens the independence of this commission. The commission was established in 2001 as the result of national consensus, in order to prevent the repetition of the human rights violations that had taken place during the country's military dictatorships in recent decades. The NHRCK is an important landmark in Korea's development as a democracy. An attack on the independence of this commission will therefore be a serious setback in the country's struggle for democracy and human rights.
3. On 16 January 2008, the Chairperson of the Presidential Transition Committee, Lee Kyung-sook, published a draft plan concerning the restructuring of the government's organizations, purportedly in order to streamline and increase the effectiveness of the various government organs. The Committee is mandated to propose various practical measures to be taken by the next administration when it is inaugurated in February.
4. Amongst several other plans, the Committee's draft states that the National Human Rights Commission of Korea (NHRCK) is to be under the immediate control of the President. According to the Committee the three main reasons for this are:

- There are a large number of committees within the government and they impede responsible administration and prevent speedy decision making;
 - Currently, the NHRCK violates the principle of separation of the three powers stipulated by the Korean Constitution because the body has an independent status and does not belong to the administration, the legislature or the judiciary;
 - The NHRCK has been evaluated as occupying too high a position and the body must therefore be placed under the Office of the President in order to normalise this situation.
5. The NHRCK was established on November 25, 2001 after a three year consultation period with a wide range of sectors and actors in Korean society. Under the past military regime, the prosecution played a leading role in violating human rights and the judiciary did not fulfil its role to protect and promote human rights. Human rights violations that occurred during this time remain unresolved to date. With the acknowledgment of this situation, the people participating in the discussion concerning the establishment of the NHRCK agreed to guarantee the body's independence from any of the country's institutional pillars.
 6. The Act on the Establishment of the National Human Rights Commission provides the NHRCK with the authority to monitor human rights violations committed by the country's law enforcement agencies. This monitoring also applies to the executive, including the Office of the President. If the NHRCK is to be under the direct control of the President, such monitoring will undoubtedly be hindered or even halted, and the body will likely be heavily politicised. The independence of national human rights institutions is a requirement that is stipulated within the "Paris Principles" adopted by General Assembly resolution 48/134 on December 1993. There is no doubt that the independence of such bodies is the cornerstone of their existence, effectiveness and utility.
 7. As mentioned above, the Presidential Transition Committee declared that one of its reasons for suggesting the NHRCK be brought under the Presidential control is the question of the "separation of three powers." As it stands, the Committee argues that the NHRCK cannot remain outside these three constitutional powers, and must therefore be placed under one of them – in this case, the executive. This argument, however, runs contrary to the Paris Principles and must therefore not be pursued. It is vital for national human rights institutions to remain as independent organs that can ensure that international human rights norms and standards are respected by the three constitutional powers. Human rights are considered as being among the main principles guiding the Korean Constitution and all of the government's institutions, including the three powers - the legislature, executive and judiciary. The NHRCK must be independent from these in order to ensure that the Constitution is being respected in terms of the respect for human rights by the State.

8. The Asian Legal Resource Centre urges the various committees within the National Assembly that will be evaluating this plan, to reject it, as it will be a significant step backwards for human rights if allowed to go ahead. In the case that the National Assembly decides to place the NHRCK under the Office of the President, the ALRC calls on the government of President-elect of South Korea, Lee Myung-bak, to immediately begin a process of consultation and consensus-building with Korean civil society as soon as it comes to power. It is recalled that the NHRCK was created as the result of a lengthy consultation process and that all stake-holders in this process should be consulted before any such radical changes to the system are made. If Korean society opposes this plan, it must be abandoned.
9. The Asian Legal Resource Centre is gravely concerned about the above plans to undermine the independence of the National Human Rights Commission of Korea. Such plans will hopefully be abandoned, but, if they were to be carried out, the ALRC insists that this issue be taken up as a central matter of concern within the Universal Periodic Review process.