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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review

Republic of Korea

Addendum

Response of the Republic of Korea on the Universal Periodic Review recommendations*

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

I. SUMMARY OF THE REPUBLIC OF KOREA RESPONSE TO THE RECOMMENDATIONS

<i>No. Recommendations</i>	<i>Response of the Republic of Korea</i>
1 To work on the implementation and dissemination of observations of treaty bodies (Brazil);	Acceptable
2 To ratify the Convention of the Rights of Persons with Disabilities without reservations (Brazil);	Reservation to only Art. 25 (e) of the Convention is being considered.
3 To strengthen efforts to uphold the Act on the Foreign Workers Employment in order to ensure the effective protection of the rights of foreign workers in the country (Indonesia);	Acceptable
4 To take concrete measures with a view to abolishing the "Security Law" (Democratic People's Republic of Korea);	Republic of Korea reaffirmed that the National Security Law should not be misused or interpreted arbitrarily. ^a
5 While expressing concern at the Security Surveillance Law, which restricts freedoms of former political prisoners and of prisoners of conscience to adopt measures to address the situation (Democratic People's Republic of Korea);	Republic of Korea will further review its response to this recommendation.
6 To adopt relevant measures for legislative and criminal justice improvements in relation to concerns expressed by the Committee against Torture in relation to allegations of torture in detention facilities and improper definition of torture in the Criminal Code, and by the Committee on the Rights of the Child in relation to limitations on freedom of expression and assembly of students (Democratic People's Republic of Korea);	'Torture' is broadly defined in domestic law to punish all acts of torture. ^b The Amendment to the Elementary and Secondary Education Act of March 2008 established the provision guaranteeing human rights of students stipulated in the Constitution and international human rights treaties.
7 To accede to the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families (Algeria, Philippines, Egypt, Mexico, Peru), to withdraw reservations to other treaties restricting the protection of migrant workers and their families (Mexico) and to ratify the Palermo Protocol (Peru);	Republic of Korea welcomes the intention and spirit of this recommendation to protect migrant workers and their family members, but does not accept at this stage the recommended accession to the ICRMW which is now in conflict with some key domestic laws. ^c In the meantime, Republic of Korea will do its best to protect human rights including their health and safety and employment rights under current national laws covering human rights and welfare for foreigners in the Republic of Korea. Republic of Korea will positively consider ratifying the Palermo Protocol.
8 To take measures to protect and fulfill the rights of all women migrant workers and to ensure that they are not subjected to discriminatory practices (Algeria);	Acceptable

<i>No. Recommendations</i>	<i>Response of the Republic of Korea</i>
9 That the guarantee provided for the freedom of association and assembly be enshrined into law (Algeria);	Acceptable
10 To enact a crime of torture as defined in Article 1 of the Convention against Torture (Canada);	“Torture” is broadly defined in domestic law to punish all acts of torture. ^b
11 To provide human rights training to law enforcement personnel and that measures are taken to ensure that the human rights of migrants are protected at all times (Canada);	Acceptable
12 That all allegations of torture and ill-treatment by law enforcement officers be investigated (Canada);	Acceptable
13 To review its resident registration system to safeguard the right to privacy and limit the uses of registration numbers to those strictly necessary for the provision of public services (Canada);	Acceptable
14 That marital rape, child abuse and domestic violence be criminalized, perpetrators are prosecuted and sanctioned, human rights training be provided for officials dealing with instances of domestic violence and child abuse, and that child-sensitive procedures be adopted during criminal proceedings involving children (Canada);	Acceptable
15 To place special emphasis on women and children when formulating policies to protect the rights of migrant workers (Canada);	Acceptable
16 To sign the international Convention for the Protection of All Persons from Enforced Disappearance (France);	Republic of Korea’s position will be made on this recommendation following the study of the scope of domestic laws to be revised, which is currently under way.
17 To recognize the right of conscientious objection by law, to decriminalize refusal of active military service and to remove any current prohibition from employment in Government or public organizations, in line with the recommendation by the Human Rights Committee (Slovenia);	Alternative service programs for conscientious objectors are currently being studied.
18 To include a gender perspective into the UPR follow-up process in a systematic and continuous manner (Slovenia);	Acceptable
19 Noting that sexual crime is categorized as an offence that is subjected to investigation only upon complaint from the victim, it was recommended that this legal provisions be reviewed, along with other relevant provisions, in order to enhance protection of victims (Slovenia);	The relevant provisions will be reviewed.

No.	Recommendations	Response of the Republic of Korea
20	To maintain the current de facto moratorium (Belgium, Italy) and to progress towards the abolition of the death penalty (Belgium, Italy, Mexico) and to pass the special bill to abolish the death penalty into law in the new National Assembly that starts on 1 June 2008 (Netherlands, United Kingdom of Great Britain and Northern Ireland);	This issue requires a broad consensus at the national level. Various aspects should be considered in a comprehensive manner, such as criminal justice, social conditions and public opinion.
21	As recommended by CEDAW, that a definition on discrimination against women in compliance with Article 1 of CEDAW be adopted and that the fight against trafficking in foreign women be intensified (Belgium);	Acceptable
22	To further strengthen measures against torture and ill-treatment, including accession to the Optional Protocol to the Convention against Torture in the near future, and that it establish an effective national preventive mechanism (Czech Republic);	Inter-Ministerial consultations on the accession to the OP-CAT is currently underway.
23	That discrimination on basis of sexual orientation also be included in the draft antidiscrimination bill (Czech Republic);	It is interpreted that discrimination is prohibited by the Constitution, human rights treaties and relevant domestic laws. The National Human Rights Commissions conducts its activities against discriminatory practices.
24	That the National Security Act be brought in line with international standards regarding clarity of criminal law, and that active steps be taken to introduce alternatives to military service for conscientious objectors (United Kingdom);	Republic of Korea reaffirmed that the National Security Law should not be misused or interpreted arbitrarily. ^a Alternative service programs for conscientious objectors are currently being studied.
25	The withdrawal of the reservation on Article 22 of the International Covenant on Civil and Political Rights within a specific timeframe (United Kingdom);	Tripartite consultations and inter-ministerial consultations are needed. It needs further reviews on the trade union pluralism and labour rights of public officials. ^d
26	To ratify the Optional Protocol to the Convention against Torture (United Kingdom);	Inter-Ministerial consultations on the accession to the OP-CAT are currently underway.
27	Recommended that the Government and the Permanent Commission on Law and Justice of the National Assembly comply with the obligations of United Nations reference texts and immediately work to finalize the legislative procedure underway with a view to the abolition in law of the death penalty (Luxembourg);	This issue requires a broad consensus at the national level. Various aspects should be considered in a comprehensive manner, such as criminal justice, social conditions and public opinion.
28	That the issue of improvement of women's rights be considered as one of the main priorities in the Government's human rights policies (Italy);	Acceptable

<i>No. Recommendations</i>	<i>Response of the Republic of Korea</i>
29 To urgently amend relevant legislation to expressly prohibit corporal punishment in schools and at home and implement educational measures promoting positive and non-violent forms of discipline (Italy);	Republic of Korea will continue to review appropriate measures including complementing the relevant act and decree. ^e
30 To implement the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and ensure that the refugee recognition procedures be improved in line with international refugee law (Romania);	Acceptable
31 To carry out public campaigns to make the provisions of the new legislation eliminating the Family Head System and establishing equal rights in the marriage more effective (Mexico);	Acceptable
32 To strengthen legislation regarding domestic violence and to take measures to ensure access of migrants to services including access to the justice system (Mexico);	Acceptable
33 Amending the National Security Law to prevent abusive interpretation by the law (United States of America).	Republic of Korea reaffirmed that the National Security Law should not be misused or interpreted arbitrarily.

Notes

^a The Government reaffirms that the National Security Law should not be misused or interpreted arbitrarily. The Constitutional Court has presented strict criteria of interpretation for the law so as to prevent abuse and arbitrary interpretation of the law and to ascertain the constitutionality of its application. The Ministry of Justice and the Prosecutors' Office are also making efforts to apply the law prudently in accordance with the jurisprudence of the Constitutional Court and other courts.

^b Although there are no provisions in domestic law that provide a direct definition of the act of torture, there are many provisions that prohibit torture. The term 'torture' is defined broadly in domestic law to punish all acts of torture, including acts that do not inflict even "severe pain or damage." Therefore, most acts of cruel, inhuman, or degrading treatment or punishment are deemed to be acts of torture under domestic law. Acts of torture such as cruel acts by official workers are punishable by Article 123 (Abuse of Authority), Article 124 (Unlawful Arrest and Unlawful Confinement), Article 125 (Violence and Cruel Act) of Criminal Act, Article 4.2 of the Act on the Aggravated Punishment, etc. of Specific Crimes, Article 62 of the Military Criminal Act and Article 19 of the National Intelligence Service Act.

^c Of all the various provisions of the Convention - those on allowing migrant workers to be accompanied by their family members (Article 44), prescribing the conditions under which a migrant worker is authorized to engage in work on his/her own account (Article 52 Paragraph 4), according each child of a migrant worker the right to registration of birth and to a nationality (Article 29) and taking measures to ensure that an irregular situation does not persist (Article 69 Paragraph 1) - are in conflict with various domestic laws such as the Immigration Control Act, the Korean Nationality Act, the Act on Foreign Workers' Employment, etc. The government will accord careful consideration to whether to ratify the Convention, and will continue to take various measures to prevent infringements upon the human rights of foreign workers and guarantee their rights and interests.

^d Some measures, such as allowing trade union pluralism and expanding the scope of public officials eligible to join a trade union etc., need to be taken before withdrawing the reservation on Article 22. Regarding the full implementation of union pluralism, the government is seeking ways to improve the situation through a process of tripartite consensus. In the belief that stabilizing industrial relations is of paramount importance for social

integration and sustainable national development, the tripartite representatives meeting agreed to postpone the implementation of union pluralism for three years until 1 January 2010. During the grace period, the Tripartite Commission will set up a framework to engage in intensive discussions on measures to minimize confusion in the event that enterprise-level multiple unions are allowed, and come up with specific implementation measures.

As for public officials, with the entering into force of the Act on Establishment, Operation of Public Officials' Trade Unions in 2006, their basic labor rights, such as the right to organize and right to collective bargaining, have been guaranteed to public officials below the Deputy Director level (Grade 5).

^e Corporal punishment against children in school is banned under the Enforcement Decree of the Primary and Secondary Education Act, except in circumstances in which it is inevitable for educational purposes. The Government exerts every effort to prevent abuse of corporal punishment against children in schools through various measures such as expanding education for primary and middle school teachers on the rights of children and prohibiting the re-appointment of teachers who have been dismissed due to acts of corporal punishment. In addition, my government has been endeavoring to develop alternative disciplinary measures. The Government will continue to review and complement the relevant act and decree regarding corporal punishment.

II. RESPONSES TO QUESTIONS NOT SUFFICIENTLY ADDRESSED IN THE UPR SESSION

1. Pakistan raised a question with respect to whether the Employment Permit is used to discriminate against migrant workers of countries who have not signed an MOU with the Republic of Korea. In accordance with Article 6 of the Labour Standards Act, employers should not discriminate against workers in their working conditions on the grounds of their nationality. Foreign workers who have entered and are working in the Republic of Korea are not subjected to discriminatory treatment in terms of working conditions, even in case that they are not from countries that have signed an MOU with the Republic of Korea.

2. Japan posed a question as to what measures have been taken to address the violation of human rights on the Internet, such as a person's privacy and harmful information including discriminatory expressions and child pornography. While protecting the full freedom of expression on the Internet, the Government's policies have been mainly directed at protecting the individual's privacy and personal data. Through the amendment of the Telecommunication Network Act, the Government adopts the basic principles and regulations on procedural matters including collecting and use of personal data and the obligation to delete personal data in accordance with international standards. All websites handling personal information are required to have secure Internet servers to protect the personal data of their clients. With regard to the Resident Registration Number system, major legal forms do not require the Resident Registration Numbers. However, limited confirmation of identity of users has been conducted to tackle the negative effects including defamation and verbal abuse occurring on the Internet. In addition, the Government has provided training on the protection of personal information to service users and providers, and remedies for the victims through the receipt of complaints and personal information dispute mediation. The Internet service providers can take temporary measures voluntarily or on the request of the victims of infringement of privacy or defamation.

3. Colombia posed a question relating to the National Human Rights Commission of Korea (NHRCK)'s role in facilitating human rights education for companies and the media. In the Republic of Korea, the Commission enjoys full independence from the Government in its activities. Human rights education for businesses and media constitutes one of the major areas of the Commission's work together with education focused on law enforcement officers and students. Human rights education for businessmen and journalists ranges from the development

and provision of educational programs or material, special lectures by human rights experts, exploring best practices through international conferences and media monitoring. The education for business sectors puts an emphasis on corporate social responsibility and socially responsible investment. The media education covers the representation of minorities in the media, monitoring the media in the field of the disabled, migrants, women, elders, and sexual minorities, and, encouraging the press to deal with human rights-related issues and to produce projects to instill human rights-friendly media.

4. The Netherlands and France raised a question regarding what measures the Korean Government is taking to make sure that vulnerable groups in society, including gays and lesbians, receive equal treatment. Article 11 of the Constitution stipulates that there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status. It is interpreted that sex, religion or social status are enumerative ones, thus discrimination based on other grounds stipulated in international human rights instruments is also prohibited. Furthermore, a variety of laws have relevant provisions preventing discrimination. In this regard, the National Human Rights Commission of Korea has carried out activities such as investigating any discriminatory practices when receiving complaints against discriminatory acts including sexual orientation and recommending that relevant authorities provide remedy. The Government submitted to the 17th National Assembly, in December 2007, a draft Anti-Discrimination Act that prohibits ungrounded discrimination in all areas of life and will continue to take into consideration opinions of Member States when pursuing a new draft Act.
